

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

Eugene C. Griffith, Jr., Circuit Court Judge

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S.C. Supreme Court

PAUL F. REID,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-211926

APPENDIX

ROBERT M. DUDEK
Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

JOHN WALT WHITMIRE
Assistant Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS

2007-GS-32-3173

2007-GS-32-3174

2007-GS-32-3175

2007-GS-32-3176

2007-GS-32-3177

STATE OF SOUTH CAROLINA

vs.

PAUL F. REID

DEFENDANT

TRANSCRIPT OF RECORD

January 30, 2008
Lexington, South Carolina

B E F O R E:

THE HONORABLE J. C. NICHOLSON, JR., JUDGE.

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

DONALD V. MYERS, SOLICITOR
Attorney for the State

JACK DUNCAN, ESQ.
Attorney for the Defendant

CAROL M. THUEME, RPR
Official Court Reporter

I N D E X

DEFENDANT:

PAGE

PAUL FLETCHER REID

3

EXHIBITS

(There were no exhibits marked.)

1 THE CLERK: Indictment 2007-GS-32-3173, State
2 versus Paul Fletcher Reid, indicted for criminal sexual
3 conduct first degree. He is pleading as charged.

4 Indictment 2007-GS-32-3174, State versus Paul
5 Fletcher Reid, indicted for criminal sexual conduct first
6 degree. He is pleading as charged.

7 Indictment 2007-GS-32-3175, State versus Paul
8 Fletcher Reid, indicted for criminal sexual conduct first
9 degree. He is pleading as charged.

10 Indictment 2007-GS-32-3176, State versus Paul
11 Fletcher Reid, indicted for kidnapping. He is pleading as
12 charged.

13 All indictments are true-billed, and he is
14 represented by Mr. Duncan.

15 THE COURT: Thank you very much.

16 THE CLERK: Raise your right hand, please.

17 PAUL FLETCHER REID, after being duly sworn,
18 testified as follows:

19 THE COURT: All right. Mr. Duncan, you
20 represent the defendant; is that correct?

21 MR. DUNCAN: I do, your Honor.

22 THE COURT: Have you explained to the defendant
23 the charges contained in the indictments?

24 MR. DUNCAN: Yes, sir, I have.

25 THE COURT: Have you explained to him the

1 possible punishment?

2 MR. DUNCAN: Yes, sir.

3 THE COURT: Let me see. CSC, Solicitor, what is
4 the max on that?

5 MR. MYERS: Thirty years.

6 THE COURT: And there's one, two, three CSCs
7 first and kidnapping. What's the max on kidnapping?

8 MR. MYERS: Thirty years.

9 THE COURT: Have you explained to him the
10 maximum time on each indictment, he could get 30 years on
11 each one?

12 MR. DUNCAN: Yes, sir, your Honor.

13 THE COURT: Did he appear to understand?

14 MR. DUNCAN: Yes, sir, he does.

15 THE COURT: Have you explained to him his rights
16 to a jury trial?

17 MR. DUNCAN: I have, your Honor.

18 THE COURT: Did he appear to understand?

19 MR. DUNCAN: He does.

20 THE COURT: Have you explained to him all his
21 constitutional rights, his fifth amendment right to remain
22 silent?

23 MR. DUNCAN: Yes, sir.

24 THE COURT: Did he appear to understand?

25 MR. DUNCAN: Yes, sir.

1 THE COURT: Have you had any difficulty in
2 communicating with him at all?

3 MR. DUNCAN: No, your Honor, not that all.

4 THE COURT: Have you seen any indication
5 whatsoever he would need some type of mental evaluation?

6 MR. DUNCAN: No, sir, but I have had him
7 evaluated.

8 THE COURT: You have?

9 MR. DUNCAN: Yes, sir.

10 THE COURT: Okay. What were the results of the
11 evaluation?

12 MR. DUNCAN: He's competent to proceed. And I
13 will explain at a later time, Judge, what occurred.

14 THE COURT: Okay. How does he wish to plead?

15 MR. DUNCAN: Guilty, your Honor.

16 THE COURT: All right. Do you agree with his
17 decision to plead guilty?

18 MR. DUNCAN: I do.

19 THE COURT: From your investigation of the facts
20 and circumstances, do you think the State could produce
21 sufficient evidence to prove the defendant guilty beyond a
22 reasonable doubt if he was to stand trial?

23 MR. DUNCAN: No question, your Honor.

24 THE COURT: All right. Mr. Reid, how old are
25 you?

1 THE DEFENDANT: Forty-six.

2 THE COURT: Forty-six?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: How far did you go in school,
5 Mr. Reid?

6 THE DEFENDANT: Two years of college.

7 THE COURT: Two years college?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Where did you go to college?

10 THE DEFENDANT: Midlands Tech.

11 THE COURT: Where?

12 THE DEFENDANT: Midlands Tech.

13 THE COURT: And what did you take?

14 THE DEFENDANT: Associates in arts degree.

15 THE COURT: What was the degree in?

16 THE DEFENDANT: Associate in arts.

17 THE COURT: Okay. Have you used that degree
18 since you finished?

19 THE DEFENDANT: No, sir, I haven't.

20 THE COURT: When did you finish?

21 THE DEFENDANT: 1987.

22 THE COURT: And have you worked anywhere since
23 '87?

24 THE DEFENDANT: Yes, I have.

25 THE COURT: Where?

1 THE DEFENDANT: I worked for Southland Log Homes
2 driving a truck. I worked for AAA Cooper delivering
3 freight. And I've worked for the City of Columbia as a
4 heavy equipment operator.

5 THE COURT: Okay. Now, driving a truck, were
6 you driving long distance, local distance?

7 THE DEFENDANT: It was local.

8 THE COURT: All local?

9 THE DEFENDANT: Usually from 3 in the morning
10 until 4, 5, 6 in the afternoon.

11 THE COURT: And how long did you do this?

12 THE DEFENDANT: Five and a half years.

13 THE COURT: All right. How long have you been
14 in jail?

15 THE DEFENDANT: Nine months the 9th of February.

16 THE COURT: Approximately nine months?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Have you ever been involved in the
19 criminal system before?

20 THE DEFENDANT: Yes, sir, I have.

21 THE COURT: How many times?

22 THE DEFENDANT: Twice to the best of my memory,
23 sir.

24 THE COURT: Twice?

25 THE DEFENDANT: Yes.

1 THE COURT: Are you married?

2 THE DEFENDANT: My wife deceased in June, this
3 coming June will be two years ago.

4 THE COURT: Okay. How long were you married?

5 THE DEFENDANT: Eight years.

6 THE COURT: Do you have any children?

7 THE DEFENDANT: I have a four-year-old son.

8 THE COURT: All right. What was your prior
9 criminal record?

10 THE DEFENDANT: In 1984 I had two counts of CSC
11 first degree and a burglary charge. I received a 30-year
12 sentence.

13 THE COURT: How much did you actually serve from
14 the 30-year sentence?

15 THE DEFENDANT: Nine years and eight months.

16 THE COURT: Nine years and eight months?

17 THE DEFENDANT: With ten years parole.

18 THE COURT: And when did you get out?

19 THE DEFENDANT: 1994.

20 THE COURT: 1994?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. Have you had any drugs
23 or alcohol within the last 24 hours?

24 THE DEFENDANT: Other than my normal medication
25 at the detention center, no, sir.

1 THE COURT: All right. What medication are you
2 taking?

3 THE DEFENDANT: I'm taking Cymbalta for
4 antidepressant. I take Flomax, I take Lipitor, and they
5 have me taking two Vicodin a day.

6 THE COURT: What is that all for?

7 THE DEFENDANT: Okay. Flomax is for a urinary
8 problem.

9 THE COURT: All right.

10 THE DEFENDANT: Lipitor is for high cholesterol.
11 The Cymbalta is for antidepressant. And they got me on a
12 Valium twice a day for anxiety, not only because of what
13 transpired on May 9th of this past year but also because
14 of the loss of my wife two years ago and because of my
15 son.

16 THE COURT: All right. Do you take the
17 medication in the mornings or at night?

18 THE DEFENDANT: I take the medication in the
19 morning at different times depending on what time they
20 come around with meds, usually around 9:30 or 10, and then
21 we take it again at night. It's twice a day.

22 THE COURT: All right. Have you taken it today?

23 THE DEFENDANT: Yes, sir, I took it this
24 morning.

25 THE COURT: All right. This medication doesn't

1 interfere with your thought process at all, does it?

2 THE DEFENDANT: Not one bit.

3 THE COURT: You understand why you're here?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have any question as to why you're
6 here?

7 THE DEFENDANT: No, sir.

8 THE COURT: All right. Other than your
9 depression for which you're taking medication, has a
10 doctor ever found you with any emotional, nervous or
11 mental condition, other than your depression that you've
12 already told me about?

13 THE DEFENDANT: No, sir.

14 THE COURT: Ever been diagnosed with
15 schizophrenia, bipolar, anything?

16 THE DEFENDANT: No, sir.

17 THE COURT: All right. Are you satisfied with
18 the services of your attorney?

19 THE DEFENDANT: Yes, sir, I am.

20 THE COURT: Has he done everything you've asked
21 him to do?

22 THE DEFENDANT: To the best of my ability, yes,
23 sir.

24 THE COURT: Is there anything else that you need
25 to tell him about your case?

1 THE DEFENDANT: No, sir.

2 THE COURT: Have you understood all the
3 conversations that you have had with your attorney?

4 THE DEFENDANT: Absolutely.

5 THE COURT: Have you talked to him as often and
6 for as long as you feel like it was necessary?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you need any more time to talk to
9 your attorney?

10 THE DEFENDANT: No, sir.

11 THE COURT: Are you completely satisfied with
12 your attorney's services?

13 THE DEFENDANT: Yes, sir, I am.

14 THE COURT: All right. Solicitor, now any
15 charges being dropped?

16 MR. MYERS: There's a minor charge on a neglect
17 of a child. That one's not being followed because it
18 carries a much lesser sentence than these, your Honor.
19 Other than that, none have been dropped.

20 THE COURT: Okay. And I presume this would be
21 his second most serious strike?

22 MR. MYERS: Yes, sir.

23 THE COURT: The first one on the CSC and then
24 this would be the second most serious?

25 MR. MYERS: Yes, sir.

1 THE COURT: Okay. Mr. Reid.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand on all these
4 charges, these are non-parolable offenses? You will not
5 be eligible for parole, do you understand? You'll serve a
6 minimum of 85 percent.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Have any question about it?

11 THE DEFENDANT: No, sir.

12 THE COURT: Do you understand that this is your
13 second most serious offense?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: If you get out of jail on these
16 charges and you commit another serious offense, you could
17 go to jail for life without parole. Do you understand?

18 THE DEFENDANT: Absolutely.

19 THE COURT: Any question about that?

20 THE DEFENDANT: No, sir.

21 THE COURT: You've got two strikes. The third
22 strike that could happen to you. Do you understand?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Solicitor, you withholding any
25 discovery materials as a condition of the plea?

1 MR. MYERS: No, sir, we gave them pretty much
2 our entire file.

3 THE COURT: All right. Mr. Reid, do you
4 understand under the fifth amendment of the Constitution
5 you have a right to remain silent?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: No one can make you testify against
8 yourself. Do you understand?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: However, when you enter a guilty
11 plea, you will acknowledge your guilt.

12 THE DEFENDANT: That's correct.

13 THE COURT: That will be an admission against
14 your interest. Do you understand?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Are you willing to give up your
17 fifth amendment right to remain silent and enter your
18 guilty plea today?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you understand you're entitled to
21 a jury trial?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand that at a jury
24 trial the State would be required to prove you guilty
25 beyond a reasonable doubt? All 12 jurors would have to

1 find you guilty. Your attorney could make motions to
2 suppress evidence, call witnesses on your behalf, or
3 challenge any statements you may have made or any evidence
4 that the State may produce at the jury trial. Do you
5 understand that about a jury trial?

6 THE DEFENDANT: Absolutely, your Honor.

7 THE COURT: All right. Knowing that about a
8 jury trial, do you want a jury trial?

9 THE DEFENDANT: No, sir.

10 THE COURT: Do you understand that you have the
11 right to appeal the guilty plea ten days from today?

12 THE DEFENDANT: I do, sir.

13 THE COURT: Has anybody coerced you, intimidated
14 you or threatened you to make you plead guilty?

15 THE DEFENDANT: No, sir.

16 THE COURT: Have any promises been made to you
17 other than the dismissal of the minor charge that the
18 Solicitor just told the Court about?

19 THE DEFENDANT: That would be correct.

20 THE COURT: Have you had enough time to make
21 your decision to plead guilty?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Are you pleading guilty of your own
24 freewill and accord?

25 THE DEFENDANT: Absolutely.

1 THE COURT: Have you understood all my
2 questions?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Have you answered the questions
5 truthfully and correctly?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Have any questions you want to ask
8 the Court or your attorney?

9 THE DEFENDANT: No, sir.

10 THE COURT: Mr. Reid, do you understand when you
11 plead guilty, you admit the truth of the charge that's
12 made against you?

13 THE DEFENDANT: I do, sir.

14 THE COURT: All right. How do you wish to
15 plead?

16 THE DEFENDANT: Plead guilty, your Honor.

17 THE COURT: Are you guilty?

18 THE DEFENDANT: Yes, sir, I am.

19 THE COURT: All right. I'm going to ask the
20 Solicitor to give me the facts of the case, okay?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: I want you to listen very carefully.
23 Because after I get the facts, I'm going to ask you if you
24 agree with the facts. And if you disagree with the facts,
25 I want to know specifically what facts you disagree with.

1 Can you do that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Solicitor.

4 MR. MYERS: Your Honor, this occurred on May the
5 9th of last year.

6 The defendant was acquainted with the victim and
7 the victim's husband. He was kind on a cocaine binge;
8 he'd been taking cocaine a good bit. He was talking with
9 a friend of his early that morning and they started
10 talking about the victim and there was sexual talk
11 involved. He decided that he would go over to the
12 victim's house that morning and have sex with her. He had
13 his three-year-old son in his vehicle with him.

14 He went over to the victim's house and talked
15 with her and it was under the pretense to repay a loan.
16 The victim and her husband had loaned him some money for
17 the burial of his wife previously and he had not paid that
18 back. So there was some talk about him going back over
19 there to talk about that loan.

20 When he got over to the house, it was about
21 8:30 in the morning, and he went in and he started talking
22 with the victim, and once inside, he started talking about
23 sexual activity. He told her he was going to have sex
24 with her. And said if she didn't, that he was going to
25 hit her.. He made her take off her clothes, he took off

1 his clothes. He had sex with her as outlined in the three
2 indictments, three types. He had her there the whole
3 while his son was out in the vehicle.

4 At one point he made her lie down and he put
5 cocaine on her stomach and sniffed cocaine off of her
6 stomach.

7 She had told him, look, I'm expecting customers.
8 She had a business there at the house, and she said some
9 customers are going to be coming soon and they're going to
10 want to know where I am and something's going to happen.
11 She was able to talk him into leaving. He said he was
12 going to be there for awhile, he was going to have sex,
13 that was accomplished, and then later on either the son
14 blew the horn or the victim was talking about somebody
15 coming to the house and he finally got up and left.

16 After he left, your Honor, there became a
17 confrontation with law enforcement. I'm going to let
18 Detective Eric Russell with the sheriff's department tell
19 you about that.

20 THE COURT: Okay.

21 DETECTIVE RUSSELL: Your Honor, I'm Eric Russell
22 with the sheriff's office.

23 THE COURT: Before you start, Mr. Reid, up until
24 this point do you agree with the facts that the
25 Solicitor's given to the Court?

1 THE DEFENDANT: To some extent.

2 THE COURT: All right. Tell me what facts you
3 specifically disagree with that the Solicitor gave to the
4 Court.

5 THE DEFENDANT: Yes, sir, I agree.

6 THE COURT: Did you agree with the facts the
7 Solicitor gave to the Court?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. Now listen to the police
10 officer because I'm going to ask you the same question
11 when he finishes, okay?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: All right. Thank you very much.

14 DETECTIVE RUSSELL: Yes, sir.

15 Your Honor, once Ms. Williams was able to get
16 Mr. Reid to leave her home, he gets back into his vehicle
17 with his child and drives to an old residence where his
18 mother had lived at one time and obtains a shotgun. He
19 and his child then leave that residence with the shotgun
20 and go to his sister's house where he drops off the child
21 with his sister and takes off again.

22 By this time law enforcement has been notified
23 of what had happened, what was going on and the kind of
24 vehicle that Mr. Reid was in, and in the Gaston area of
25 Lexington County on Highway 321, an officer gets behind

1 Mr. Reid. He starts to make a traffic stop on him, but
2 then through a family member I believe it was learns that
3 Mr. Reid has threatened suicide if he is stopped, so the
4 officer stays behind him for a ways and they go down
5 Highway 21.

6 Roughly in this time the sheriff's department
7 crisis negotiation team finds out what's going on and make
8 a call to Mr. Reid and there's calls back and forth
9 between one of our hostage negotiators and Mr. Reid
10 several times during all this. He makes several
11 statements that he's going to kill himself or he's going
12 to have the police kill him, because if he kills himself
13 then he would not be able to go to heaven, so he's
14 thinking about suicide by cop.

15 They go down Highway 321 to 21, stops several
16 times, gets on I-26 going down towards Orangeburg and
17 Calhoun County. On I-26 they also stop. Mr. Reid would
18 pull over, stop several times. The officer that was
19 talking to him would stop behind him. They continued to
20 talk on the phone. This went on probably an hour or so,
21 stopping and going, stopping and going. There was a large
22 law enforcement presence there. Calhoun and Orangeburg
23 County was also involved.

24 Once he got down to about the mile marker 140 on
25 I-26 eastbound, the interstate had been shut down due to

1 the threats Mr. Reid had made about shooting himself or
2 having someone else shoot him. The negotiator was able to
3 continue to talk to him and convince him eventually to
4 give himself up where he throws the gun out of the car and
5 he comes out and he was taken into custody by the SWAT
6 team. He was taken to the hospital to be checked out and
7 then taken to the jail.

8 I originally attempted to interview Mr. Reid as
9 soon as he was brought to the jail at which time he said,
10 yeah, I want to talk to you but I want to talk to a lawyer
11 first, so I didn't talk to him any further at that point.

12 The next day I received a request form from the
13 jail from Mr. Reid requesting that I come back and speak
14 with him again. I went and signed him out of the jail and
15 brought him back up to the sheriff's department and this
16 time after he was Mirandised, he did give a full written
17 confession to the charges of kidnapping, the three CSCs,
18 and explained all that in his written statement, your
19 Honor. We have that if you would like to see it.

20 THE COURT: Okay. Thank you so very much. We
21 appreciate you being here.

22 All right. Mr. Reid, do you agree with the
23 facts that the police officer's given to the Court?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. I find there's a factual

1 basis for the plea, and the defendant's freely,
2 voluntarily, knowingly and intelligently made the decision
3 to plead guilty with the advise of his attorney. All
4 elements of the charge have been met.

5 And, Mr. Duncan, I assume you have seen this
6 statement?

7 MR. DUNCAN: Yes, sir.

8 THE COURT: All right. Just give me a chance to
9 read this statement.

10 Solicitor, I'll be glad to hear from you or any
11 of the victims or anybody that you would like for me to
12 hear from for the purposes of sentencing.

13 MR. MYERS: The victims are extremely emotional,
14 your Honor.

15 THE COURT: Yes, sir.

16 MR. MYERS: And they want to say something
17 briefly, but they have a relative and a friend who would
18 like to address the Court.

19 THE COURT: Okay. I'll be glad to hear from
20 anybody that would like to address the Court.

21 MR. MYERS: This is Rusty Shannon, your Honor.
22 He is a friend of the husband and the victim.

23 MR. SHANNON: Your Honor, I met Mr. Williams and
24 his wife in the early '90s. We've been friends for about
25 15 years. We've been best friends. I don't like him and

1 his wife, I love them. They're personal friends to me.

2 Mr. Williams and his wife are some of the most
3 gracious people I know. They'll do anything they can to
4 help you in any kind of way.

5 Mr. Williams met Mr. Reid when they was in about
6 the ninth grade. And after school, Mr. Reid got in some
7 trouble the first time, he started contacting
8 Mr. Williams. Mr. Williams went to see him after he
9 admitted his guilt for what he had done that time. And
10 Mr. Williams even loaned him money while he was in jail,
11 took him money there and sent him money a couple of times.
12 And when it come time for parole, Mr. Williams even wrote
13 a letter on behalf of Mr. Reid to the parole board to try
14 to help him get out of jail.

15 Well, it worked, and when he got out of jail,
16 Mr. Williams asked his brother to get him a job with the
17 company he was working with. And they did, they got him a
18 job, so they helped him get back on his feet.

19 Mr. Williams personally financed a vehicle for him along
20 that time, too, so he was doing everything he could as a
21 friend.

22 And that's the nature of Mr. Williams. I mean,
23 he's the kind of guy that will bend over backwards, do
24 anything he can to help you or your family or anybody he
25 loves or knows that needs help, you know.

1 We all, you know, in life do things we shouldn't
2 do, but Mr. Reid had admitted his guilt, and so
3 Mr. Williams had accepted him back as a friend and was
4 trying to help him get back on his feet.

5 In June of 2006, Mr. Reid's wife died, and he
6 didn't have money for the burial, and the way my friend
7 thinks is he didn't want him to be thinking about, you
8 know, during his grieving process how am I going to pay
9 for this, so he took a -- what he did, he took a loan of
10 sort in his overdraft on his checking account that he had
11 to pay interest on. It was over \$4,000 that he gave to
12 Mr. Reid.

13 He said he would make at lease the minimum
14 monthly payment, which is basically just the interest. He
15 never made any payments. His brother made a couple for
16 him. And so then as time went by, he offered him,
17 Mr. Williams has a business that his wife runs at their
18 residence and he has several acres of land there.

19 THE COURT: What kind of business?

20 MR. SHANNON: They rent motor homes.

21 THE COURT: Motor home, okay.

22 MR. SHANNON: Big motor homes and stuff. And
23 Mrs. Williams stays busy. She pretty well runs that while
24 Mr. Williams is working his FedEx job. So they're very
25 hard working people. But he offered, he said if you come

1 over, you know, he's got a horse and some goats and stuff.
2 They've got a beautiful place out here where they live.
3 They've got about nine acres of land and stuff.

4 He said, if you come out here and do some work
5 for me, I'll pay you \$10 an hour. Now \$5 an hour of
6 that's going to go towards the loan and the other five
7 I'll give you, and on top of that he said, I'll give you
8 gas money to get here and buy your lunch.

9 Well, he come out and he worked six hours. That
10 was the extent of that. So he wasn't too worried about
11 working off his debt.

12 And after December of '06, and his wife had died
13 in June of '06, Mrs. Williams started calling him monthly
14 and saying, hey, look, you need to make this payment for
15 us, you know; we need to get this money. Well, on May the
16 8th, the day before the crime took place, she called him
17 that morning and she said, you know, it's almost been a
18 year, this is ridiculous. If I don't hear back from you
19 today, we're going to have to take this to another level,
20 okay? And that was on May 8th that she left a message.

21 Well, the morning of May the 9th at around
22 7:20, he called and she was taking her kids to school and
23 he asked her, he said, Are you going to be home today?
24 She said, yeah, I'll be back home about 8 o'clock. And so
25 he said he would come by. And he'd said this before and

1 not showed, so she didn't know whether to warrant what he
2 said or not.

3 She was actually on the phone with her husband
4 when he showed up. And her words I think she said to me
5 was oh, my God. And her husband said what? And she said,
6 well, we all know him as Sam. She said, Sam's here. And
7 Todd said, well, good, he'll probably get straight with
8 you. Go ahead and take care of that. And the rest is
9 history.

10 The reason I didn't hesitate to speak on the
11 family's behalf is I just wanted the Court to know the
12 facts, the history of what has went on with this man and
13 this family.

14 And, you know, my Bible in church on Sunday
15 tells me to pray for my enemies and you're supposed to
16 forgive your enemies. It's hard for me to pray for him
17 right now. It's hard for me to forgive him. I don't know
18 if I ever will, but I know that's the way you're supposed
19 to do in God's eyes. But the public needs to know or the
20 Court needs to know what the facts here in this case.
21 This man and his family has bent over backwards to help
22 this man, get him back on his feet, and to be a friend to
23 him, more so than most of our friends are to us in a
24 day-to-day life.

25 And I guess that's all I have to say, your

1 Honor. Thank you.

2 THE COURT: Okay. Thank you very much,
3 Mr. Shannon. Appreciate it.

4 MR. MYERS: Your Honor, a relative, Wendy
5 Timmons, is next.

6 THE DEFENDANT: Wendy Simmons?

7 MR. MYERS: Timmons.

8 THE COURT: Okay.

9 MS. TIMMONS: Your Honor, my brother, that's my
10 brother Todd and my sister-in-law Tracy. And I've known
11 Tracy for almost --

12 THE COURT: This is your brother here?

13 MS. TIMMONS: My brother and his wife Tracy.

14 And I've known Tracy for almost 20 years. And
15 she is one of the sweetest individuals that you'll ever
16 meet in your life. You can talk to a hundred people that
17 know Tracy and not a one of them could ever come up with a
18 negative thing to say about her. And this man has taken
19 something from her that no one should ever be taken
20 advantage of in that way. And I believe that anybody who
21 even has an ounce of humanity in them would never take
22 anything from these people that have done so much for
23 them, much less what he took from her.

24 And it's not just for him that they extend their
25 hearts and their help to. That's just the way that they

1 are with all of their friends.

2 And they didn't have the money to do this. They
3 didn't have the money to give him to bury his wife. They
4 took a loan, just because they thought that was the right
5 thing to do because that's how they are. And he took
6 advantage of that.

7 You know, after all this happened, we took up,
8 my brother and I and a couple other friends, we got
9 together and we paid off that loan. We had to replace all
10 the furniture in their living room so that they wouldn't
11 have to be reminded of what happened in that room and what
12 happened on that furniture.

13 He served nine years in CCI briefly. Obviously
14 that didn't -- he didn't learn anything from that time.

15 He's clearly a danger to society. He's a danger
16 to every woman that we know. I don't know about you, but
17 I have two daughters, two beautiful little girls who
18 should never, ever be exposed to someone like that. And I
19 just ask this courtroom and I ask your Honor to please
20 sentence him to the maximum allowable by law.

21 THE COURT: Okay. Thank you so very much, Ms.
22 Simmons.

23 MR. MYERS: This is Mr. Williams.

24 MR. WILLIAMS: Your Honor, I kind of second
25 pretty much what my sister and Rusty Shannon said. I

1 don't feel like anybody should ever be subjected to what
2 my wife was or what our family was.

3 When I say our family, we have a six-year-old
4 son, excuse me, and a nine-year-old, and our
5 nine-year-old, all he knows is somebody tried to hurt his
6 momma. He may know more than that, and that's all we know
7 he knows, and since May the 9th when he found that out,
8 he's been having anger problems. There's no way to
9 reverse that.

10 Your Honor, you have the power, the
11 authority, means to make sure that another family does
12 not experience what my wife and I and our sons and our
13 friends experienced. And as my sister said, I ask
14 what you sent Sam maximum.

15 THE COURT: Okay. Thank you. Mr. Williams. I'm
16 sorry you've had to suffer through this indignity and this
17 guilt. And I hope your life gets better and I hope
18 you get better.

19 Thank you very much for being here.

20 Williams, anything you would like to say or
21 add?

22 MRS. WILLIAMS: No, I think they've pretty much
23 said enough, but I just -- what's been taken from me is
24 just the trust issues. I can't trust anybody. My husband
25 knew him 35 years. I mean, if you can't trust a friend of

1 35 years, who can you trust?

2 The impact, the fear I have is, I can't even
3 explain it. I just can't. In dealing with an angry child
4 who has no clue why he's angry is hard enough, but for him
5 to do what he did to us, he can't get any worse than that.
6 He just deserves -- he deserves to stay there for as long
7 as you can possibly keep him there.

8 THE COURT: Thank you so very much.

9 Is there anything else?

10 MR. MYERS: Your Honor, there's many more people
11 in the courtroom supporting Mr. and Mrs. Williams. And
12 the reason that law enforcement got on this so quickly is
13 that she was able to call her husband immediately and
14 notified law enforcement. She's had to undergo some
15 counseling, probably not enough. He had to take some time
16 off work to stay there because she was afraid of people
17 coming to the house. It's been an extremely difficult
18 thing.

19 On his prior record, your Honor, you've heard
20 about that in Richland County, and there's two indictments
21 for criminal sexual conduct; one occurred on October the
22 2nd of 1984. There was also a burglary involved. And
23 the other CSC occurred February 3rd of 1985. On
24 May 21st of '85, the judge gave him 30 years each on the
25 CSC and ten years on the burglary. They ran concurrently.

1 And then he had another charge in Richland
2 County, it was a drug charge, and he pled to criminal
3 conspiracy. This was in June of 2005. And he was given
4 five years suspended on two years probation. I'm informed
5 that that probation was terminated. And he is before you
6 now.

7 He told Detective Russell that he realized he'd
8 never get out of prison again and that he wanted to plead
9 guilty.

10 The public defender originally had this case.
11 We gave them our file. Mr. Duncan came in and he got that
12 file plus anything else. He's had what we've had.

13 THE COURT: Okay. Thank you very much,
14 Solicitor.

15 Mr. Duncan, I'll be glad to hear from you or
16 anyone you would like for me to hear from concerning
17 sentencing.

18 MR. MYERS: Your Honor.

19 THE COURT: Yes, sir.

20 MR. MYERS: Another thing. The victims wanted
21 to leave right now because of the emotional part of
22 this --

23 THE COURT: That's fine.

24 MR. MYERS: -- but they will come back for
25 sentencing.

1 THE COURT: Okay. Thank you, sir.

2 MR. DUNCAN: Your Honor, as you've heard,
3 Mr. Reid, Paul is 46. These are his family members here
4 with him.

5 He does have two years of college work. His
6 work history is mainly truck driving and operating heavy
7 equipment.

8 He is a widower, father of a four-year-old son
9 who is in his sister's custody.

10 I had him examined by Dr. Donna Schwartz-Watts
11 to give me and the Court at least some kind of explanation
12 or some background on Mr. Reid and what brought him here
13 to this tragic situation.

14 He has a life-long history of drug abuse. Dr.
15 Schwartz-Watts says that there would be a genetic
16 predisposition there; both his mother and father died with
17 substance abuse problems. Others in his family have
18 suffered the same.

19 His health is not good, mainly from his
20 cocaine-induced arrhythmia. It is known as the V-tach
21 form of arrhythmia which is the most deadly form, most
22 severe and often fatal, and this is due to his drug abuse.
23 If he were a Social Security Disability applicant, he
24 would be considered to have a class four heart impairment.
25 That's how severe it is and disabling.

1 Donna Schwartz-Watts, in spite of everything,
2 she told me that she was surprised at the conclusion she
3 came to. She sees hundreds and hundreds of sex offenders.
4 She says that Paul Reid is different from most; that the
5 great majority are untreatable and there's really no
6 reason to make any sort of effort time wise or money wise.
7 She says that Paul is different and she would not hesitate
8 to treat him. She says incarceration at this point in
9 time has saved his life and that it prevents him from
10 abusing cocaine.

11 Absent drugs, Dr. Schwartz-Watts indicates there
12 has been no history and no probability of aberrant
13 behavior on his part. He has gone long periods of time
14 without using, but 2005 started a downward spiral that
15 culminated in the tragedy your Honor is seeing here today.

16 The love of his life and his wife of many years
17 died following years' long complications from the birth of
18 their child. His mother had recently passed away and he
19 didn't have the money to bury either one of them. That
20 weighed heavily on his mind. Severe depression led to
21 self-medication and his death wish, I guess you could say,
22 had started.

23 He began abusing cocaine on the day in question.
24 He suffered, she indicates, from cocaine intoxication,
25 alcohol intoxication, paranoia, and severe depression

1 including delusions.

2 She indicates that she sees many people that for
3 lack of a better word she would consider bad or evil
4 people. She does not consider Paul Reid to be in that
5 category of folks. He has bad habits and bad chemistry
6 and that leads to bad acts and the tragedy that we're here
7 for today.

8 His ingestion of cocaine in a very small
9 minority of people causes hyper-sexualization, and
10 unfortunately for everyone involved here today, Paul Reid
11 is in that small minority.

12 She did indicate that he's one of the few people
13 she thinks is treatable. She says that she would
14 immediately begin Depo-Provera treatment as a chemical
15 inhibitor for Mr. Reid as he has abnormally high levels of
16 testosterone for his age.

17 She recommends that the Court consider alcohol
18 and drug treatment in SCDC along with sex offender
19 treatment. She indicates that he will be eligible for the
20 sexually violent predator program if he ever concludes his
21 sentence.

22 She does also indicate that he's at high risk of
23 death in prison due to his heart condition.
24 Parenthetically, he was just released last week from
25 Lexington Medical Center for that heart condition. He has

1 both a pacemaker and a defibrillator implanted in his
2 chest wall as a result of these V-tach heart problems.
3 She believes that he will become an invalid and basically
4 bedridden within the next ten years.

5 Paul wanted to commit suicide the day he was
6 arrested. On that day she indicates that everything just
7 spiraled out of control, that his depression was just so
8 overwhelming with the admittedly voluntary intoxication
9 that he just lost his mind that day, not to the level of
10 claiming any sort of insanity or incompetency defense
11 legally, but she says that's what happened.

12 He told the police that he didn't want a lawyer.
13 That was written prominently in magic marker upon one of
14 the police reports I received, and he wanted to plead
15 guilty. That's been his unchanging stance since that
16 time.

17 The only request I would make of your Honor is
18 to consider a sentence that gives him some hope of release
19 when he's elderly, if nothing else, a management tool for
20 the Department of Corrections, if he makes it that far.
21 Dr. Schwartz-Watts doesn't seem to think that he's a good
22 candidate for lasting any length, substantial length of
23 time in the first place.

24 He has great remorse for what he's done every
25 time I talk to him. It's evident, I've seen lots of

1 people in 30 years who I thought were faking it and I
2 don't see that in Paul. He thinks of all the pain he's
3 caused his family, the family of the victim, and it just
4 overwhelms him at times.

5 I would ask your Honor to consider a 20 to
6 25-year sentence, which your Honor knows the 85 percent
7 rule very well. I think I would like to suggest that that
8 would be justice for the State, the victims, both
9 families, and Paul Reid.

10 I don't know if anybody in his family would like
11 to speak. If they do, they need to give their name for
12 the court reporter.

13 MS. LANGDALE: I would. I'm Mary Langdale.

14 THE COURT: Langdale?

15 MS. LANGDALE: Yes, sir.

16 THE COURT: Yes, ma'am, I'll be glad to hear
17 you.

18 MS. LANGDALE: Thanks for giving me the
19 opportunity.

20 Not only is Paul a wonderful brother and father,
21 he's my best friend in the whole world. He's a great
22 caregiver. His fall down is depression and using cocaine
23 as his dependent for that downfall.

24 He's very remorseful for taking, for what took
25 place in May, and he's shed many tears over it, as we have

1 also.

2 I'm asking you, I'm asking you, your Honor,
3 please, please give him the least limit as possible.

4 I've lost my mother, my father, and oldest
5 brother, and I can't go on without him, too, in my life.
6 He's everything to me. And I know he's done wrong and he
7 knows he's done wrong. Just don't keep him away forever.
8 I don't want him to die in prison.

9 THE COURT: Well, it's a real tragedy for both
10 families.

11 MS. LANGDALE: It is, and I understand that and
12 I have a lot of sympathy for the Williamses.

13 THE COURT: But at the same time, irrespective
14 of why he did this, and I don't question Donna
15 Schwartz-Watts' reason or how he did it or why he did it.
16 It's the second time he's done it.

17 MS. LANGDALE: Right.

18 THE COURT: He's obviously, whether it's drug
19 induced or whatever, he's basically a danger to society.

20 Now, the bad part and the tragic part is the
21 fact that apparently his illness was treatable. And our
22 society does not give the means by which he was treated.
23 He was in jail. Apparently he received no treatment. If
24 he had been treated early on and cured and it wouldn't
25 have happened to the Williamses, he wouldn't be standing

1 before me today. But there's no effort in our society
2 right now to do anything about drugs other than locking
3 them up. And there's nothing I can do about it except
4 preach on my soapbox that if he had been treated early on
5 maybe he wouldn't be here today and maybe the Williamses
6 wouldn't have suffered that. But there's no effort
7 through the legislature or anybody except a few churches
8 that offer treatment programs in this state. And it's a
9 real tragedy, and this is a prime example of the tragedy
10 that has basically destroyed two families. I mean, that's
11 all I got to say about it, but I got to put him in jail,
12 and I'm going to put him in jail for a substantial period
13 of time because he hasn't been treated and he's a danger,
14 so I got to get him off the streets. I hope you
15 understand that, okay?

16 But I want to thank you for being here, and I
17 sympathize with you, I'm sorry it happened.

18 MS. LANGDALE: Thank you.

19 THE COURT: Anything else?

20 MR. DUNCAN: No, sir, your Honor.

21 THE COURT: Okay. Mr. Duncan, I didn't mean to
22 cut you off. I'll be happy to hear from anybody that
23 would like to say anything.

24 MS. QUENTIN: Well, I can't talk anyway, but I
25 just wanted to --

1 THE COURT: Yes, ma'am, your name?

2 MS. QUENTIN: I'm his granny. I'm Ivy Lee
3 Quentin and I'm his granny. And I love him so much and
4 we're a wonderful family. He just got on that cocaine and
5 it's just done everything to him.

6 THE COURT: Well, it's the scourge of our
7 society, that and meth.

8 MS. QUENTIN: It's the saddest thing everytime I
9 see it on TV, but I want you to know we love him and he's
10 a good man. He's a good man.

11 THE COURT: Well, when he's sober he may be. I
12 don't know.

13 MS. QUENTIN: No, I know.

14 THE COURT: But when he's on cocaine, he's
15 obviously very dangerous.

16 MS. QUENTIN: I understand. I understand.
17 Well, he's never hurt me. He's always been a very
18 gentleman to me. And I'm 88 years old and I just wanted
19 to let you know I love him and I'll stand by him as long
20 as I can.

21 And thank you so much.

22 THE COURT: Okay. Thank you for being here.

23 Anybody else, Mr. Duncan?

24 MR. DUNCAN: I don't think so, Judge.

25 THE COURT: Okay. Indictment No. 3175, that's

1 CSC first degree, sentenced to the State Department of
2 Corrections for a period of 30 years. That's concurrent
3 with the other indictments. Give you credit for how many
4 months?

5 THE DEFENDANT: Eight months, sir.

6 MR. MYERS: Since May the 9th of 2007.

7 THE COURT: May the 9th, okay. Eight months; is
8 that correct?

9 MR. MYERS: Pretty close.

10 THE COURT: Okay. Give you credit for eight
11 months.

12 Indictment No. 3174, CSC first, sentenced to the
13 State Department of Corrections for a period of 30 years.
14 That's concurrent with the other indictments.

15 Indictment No. 3173, CSC first, sentenced to the
16 State Department of Corrections for a period of 30 years.

17 Indictment No. 3176, kidnapping, sentenced to
18 the State Department of Corrections for a period of 30
19 years .

20 Good luck to you.

21 THE DEFENDANT: Thank you, sir.

22 THE COURT: Thank you very much.

23 MR. DUNCAN: Your Honor, could you consider the
24 request for the treatment and ordering those?

25 THE COURT: Yes. I'll be happy to order ATU. I

1 mean, he's going to automatically go into the sexual
2 offender program. I mean, that's going to automatically
3 happen.

4 MR. DUNCAN: All right, sir.

5 THE COURT: But it won't happen until probably
6 right before he's released.

7 MR. DUNCAN: All right, sir.

8 THE COURT: But I will order ATU.

9 Thank you very much.

10 (The proceedings were concluded.)

11 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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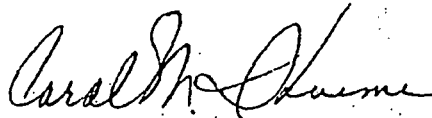
1 CERTIFICATE OF REPORTER

2
3
4 STATE OF SOUTH CAROLINA)5 COUNTY OF LEXINGTON)
6
7

8 I, CAROL M. THUEME, RPR, Official Court Reporter for
9 the 11th Judicial Circuit of the State of South Carolina,
10 do hereby certify that the foregoing is a true, accurate
11 and complete Transcript of Record of the proceedings had
12 and evidence introduced in the trial of the captioned
13 case, relative to appeal, in the Court of General Sessions
14 for Lexington County, South Carolina, on the 30th day of
15 January, 2008.

16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
18

19
20 June 20, 2008

21 
22

23 CAROL M. THUEME, RPR
24 Circuit Court Reporter
25

SCANNED

RS

ORIGINAL

DEC 13

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

FILED

County of LEXINGTON)

2010 DEC 14 A 9:59

PAUL FLETCHER REID)

Full name and prison number, if any, of applicant.)

v.)

STATE OF South CAROLINA)

Name of Respondent)

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

APPLICATION FOR

POST-CONVICTION RELIEF

2010CP3205312

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 it clear to which question any such continued answer refers.

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

If the applicant 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 applicant was convicted.

1. Place of detention BROAD RIVER CORRECTIONAL INSTITUTION - 4460 BROAD RIVER Rd. Columbia
2. Name and location of Court which imposed sentence LEXINGTON COUNTY GENERAL SESSION COURT SC 29210
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2007-GS-32-3173, 2007-GS-32-3174, 2007-GS-32-3175
 - (b) 2007-GS-32-3176
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) JAN 30, 2008 (30) YES.
 - (b) _____
 - (c) _____

A TRUE COPY

Lex. Co. C.C.C.P., C.S. & F.C.

5. Check whether a finding of guilty was made

(☒) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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2010 DEC 14 A 9 59

6. Did you appeal from the judgment of conviction or the imposition of sentence? DIRECTED Appeal

JEITH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

7. If you answered "yes" to (6), list:

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

i. COURT OF APPEAL

ii. _____

iii. _____

2010CP3205312

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

i. Affirm Feb 01, 2010 - Feb 24, 2010

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. No. 2010-UP-164

ii. RULE 215 SCACR

iii. RULE 220 (b)(1) SCACR

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

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

(a) INEFFECTIVENESS ASSISTANCE OF COUNSEL

SEE ATTACHMENT 3

(b) INVOLUNTARY PLEA / BLAIR HEARING / SUBJECT MATTER JURISDICTION

(c) MOTION TO RECONSIDER AND MODIFIED SENTENCE

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

- (a) COUNSEL WAS INEFFECTIVE FOR NOT TIMELY OBJECTED TO THE COURT SENTENCE, HIS CLIENT TO THE MAXIMUM 30 YEARS SENT.
- (b) COURT LACK SUBJECT MATTER JURISDICTION TO ACCEPTED AND IN VOLUNTARY PLEA, BLAIR HEARING
- (c) COUNSEL INFORM DEFENDANT IF HE DIDN'T ACCEPTED THE PLEA THE STATE WOULD BE SEEKING A LIFE WITHOUT PAROLE

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law ?

N/A

- (b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

N/A

- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) N/A

- (d) any other petitions, motions or applications in this or any other Court?

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

- (a) the specific nature thereof:

2010CP320531

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

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

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

- (c) the disposition thereof:

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

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2010 DEC 14 A 9:59
JETH A. CARRIG
CLERK OF COURT
LEXINGTON SC

(d) the date of each such disposition:

FILED

i.

ii.

2010 DEC 14 A 9:59

iii.

iv.

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

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

i.

ii.

iii.

iv.

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? _____

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i.

ii.

iii.

2010CP3205312

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

i.

ii.

iii.

15. If any ground set forth in (9) 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) _____

(b) _____

(c) _____

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

(a) your arraignment and plea? JACK DUNCAW ESQ.

(b) your trial, if any? _____

(c) your sentencing? _____

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

ELIZABETH A. FRANKLIN - BEST, APPELLATE DEFENDER

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? DIRECTED APPEAL

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i.

ii.

iii.

~~XXXXX~~
~~XXXXX~~ Division of the Appellate Defense
N/A

(b) the proceedings at which each such attorney represented you:

i.

ii.

iii.

N/A
N

18. State clearly the relief you seek in filing this application.

To have sentence reconsidered and modified sentence

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

No

2010CP3205312

FILED

2010 DEC 14 A 9 59

DETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

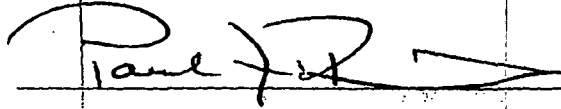
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STATE OF SOUTH CAROLINA)

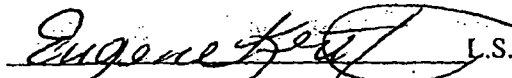
VERIFICATION

COUNTY OF LEXINGTON)I, Paul F. Reid

, 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.



Sworn to and subscribed before me

This 15th day of December, 2010


Notary Public for South Carolina

My Commission Expires My Commission Expires April 4, 2016

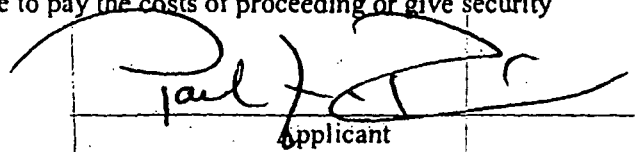
2010CP3205312

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

I, Paul F. Reid

, 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 proceeding or give security therefor.



Applicant

Sworn to and subscribed before me

This 15th day of December, 2010


Notary Public for South Carolina

My Commission Expires: My Commission Expires April 4, 2016

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2010 DEC 14 A 9:59

FILED

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

ELEVENTH JUDICIAL CIRCUIT

COUNTY OF LEXINGTON

2010-CP-32-5312

Paul Fletcher Reid, # 127458,

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post conviction relief (PCR) filed December 14, 2010, 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 Lexington County Clerk of Court. The Applicant was indicted at the October 2007 term of the Lexington County Grand Jury for Kidnapping (2007-GS-32-3176), and three counts of Criminal Sexual Conduct—First Degree (2007-GS-32-3173, -3174, -3175). He was represented by Jack Duncan, Esquire. On January 30, 2008, the Applicant appeared in the Lexington County Courthouse and pled guilty as charged. He was sentenced by the Honorable J.C. Nicholson, Jr., to confinement for an aggregate period of thirty (30) years.

A timely notice of appeal was filed on the Applicant's behalf. The South Carolina Court of Appeals subsequently affirmed the Applicant's conviction by decision dated on or about February 1, 2010 (2010-UP-164). Remittitur was issued on or about February 24, 2010.

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

II.

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

1. Ineffective Assistance of Counsel
 - a. "Counsel was ineffective for not timely objecting to the court sentence of his client to the maximum 30 year sentence."
 - b. "Blair Hearing"
2. Involuntary Guilty Plea
 - a. "Counsel informed defendant if he didn't accept the plea the state would be seeking a life without parole sentence."
3. Subject Matter Jurisdiction
 - a. "Court lacked subject matter jurisdiction to accept an involuntary plea, Blair Hearing."

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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

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

Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. Nevertheless, the allegation of ineffective assistance of counsel probably raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is

without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant 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 defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

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

VI.

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

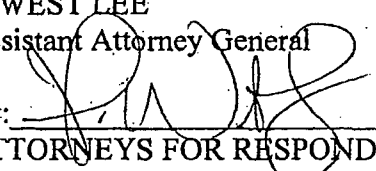
Respectfully submitted.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

A. WEST LEE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

February 28, 2011.

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

2010-CP-32-5312

PAUL FLETCHER REID. #127458)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

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

Michelle Dickerson, Esquire
Post Office Box 4024
West Columbia, SC 29171

DATED this 28th day of February, 2011

Lena Pelishenko

Lena Pelishenko, Legal Assistant
 For Respondent

MR. PAUL FLETCHER REID, #127458
BROAD RIVER CORRECTIONAL INSTITUTION
4460 BROAD RIVER ROAD
COLUMBIA, SC 29210

DATE: April 13, 2011

RECEIVED

MAY 31 2011

THE ATTORNEY GENERAL OFFICE
POST OFFICE BOX 11549
COLUMBIA, SC 29211-1549

ATTORNEY GENERALS
OFFICE

Please find enclosed an Amendment and memorandum of Laws in support in the above reference matter to be included with my application for post-conviction relief action. I would greatly appreciate if you would add the enclosed materials with the post-conviction that was filed with the Lexington county clerk of court office on December 14, 2010.

Thanking you in advance for your assistance and cooperation in this matter.

SINCERELY YOURS,

S/ Paul F. Reid

SC Attorney General
RECEIVED

MAY 27 2011

Referred to Elliot

Answered _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
	)	
PAUL FLETCHER REID, #127458	)	
APPLICANT,	)	
	)	MOTION TO AMEND TO POST-CONVICTION
	)	RELIEF APPLICATION
VS.	)	2010CP3205312
	)	
STATE OF SOUTH CAROLINA	)	
RESPONDENT.	)	
	)	

This is before the courts of common pleas by motion to amend Laws supported applicant's post-conviction relief application, said application was filed with the Lexington county clerk of court of common pleas on December 14, 2010.

This motion to amend is being made pursuant to South Carolina Rules of civil procedure "71.1 (D).

Furthermore, this motion to amend post-conviction relief application stems from applicant's trial, which was held January 30, 2008, at the Lexington county courthouse.

RESPECTFULLY SUBMITTED

s/ Paul F. Reid

INEFFECTIVE ASSISTANCE OF COUNSEL

The applicant have suffered a miscarriage of Justice and his conviction only stand because of counsel coerced applicant into entering a guilty plea through deceptive tactics when applicant wished to stand trial by jury when counsel employes an unreasonable trial strategy and make that decision without a full assessment of the facts and evidence at issue counsel's performance is considered ineffective. Cave v. Singletary, 971 F. 2d 1513 (4th cir. 1992). Based of the aforementioned matter, counsel has provided ineffective assistance.

The applicant was unconstitutionally deprived of Law, by the acts and omissions of counsel; that deprived the applicant of effective assistance of counsel in violation of the fourteenth and sixth Amendments of the United States constitution; and Article 1 § 3 & 14 of the South Carolina constitution.

Applicant contends his trial counsel failed to investigate both factual and legal matter to determine if defense can be developed. It is a definitive objective description of the competency normally demanded of counsel in certain aspects of their service. An with this discretion the courts should admonish that if the right to counsel guaranteed by the constitution is to serve its purpose, defendant can not be left to the mercies of incompetent counsel. Judges should strive to maintain proper standards of performance by attorney who are representing defendants in criminal cases in their courts. McMann v. Richardson, 397 U.S. 759, 90 S.Ct. 1441 25 L.Ed. 2d 736 (1970) Marzullo v. State of M.D. 561 F. R. 2d S. 56 544 Example; Coles v. Peyton, 389 F. 2d 224, 226, (4th cir. 1968); 397 U.S. at 771, 90 S.Ct. at 1449.

INEFFECTIVE ASSISTANCE OF COUNSEL

Petitioner's case is one of clear and plain manifest injustice not only of the plea trial, but also there after to a gross degree. Petitioner's trial was extremely unfair, and then all review in the courts there after have not been meaningful fair or served any degree of justice.

An attorney's performance is deficient if it is not reasonable under prevailing professional norms. Id. When a defendant pleads guilty in exchange for trial counsel's promise of certain sentence, and does not receive that sentence his guilty plea is invalid Cradlock v. State, 327 S.C. 303, 491 S.E. 2d 251 (1997). This is true even where the defendant has admitted factual guilt. Id. Petitioner reasonable believed, based on counsel's representation that he would receive a sentence not exceeding (20 to 25) years in exchange for his guilty plea in fact he received a sentence nearly twice the agreed length, counsel was ineffective, and petitioner pleas was invalid.

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, 524 S.E. 2d 623 (1999).

A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea must be established by a complete record, and may be accomplished by colloquy between the court and the accused, between the court and the accused's counsel, or both. Robby v. State, 339 S.C. 29, 528 S.E. 2d 418 (2000).

INEFFECTIVE ASSISTANCE OF COUNSEL

A guilty plea is a solemn, judicial admission of the truth of the charges against the applicant. Statement made during the plea should be considered conclusive unless the applicant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F. 2d 347 (4th cir. 1975); Edmonds v. Lewis, 546 F. 2d 566 (4th cir. 1976). 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, 535 S.E. 2d 649 (2000).

The defendant next argues that his confession of guilty was not made voluntarily in that he only agreed to sign the statement after counsel told him what sentence he would receive if he signed the plea agreement prepared by them as opposed to the sentence. Counsel told defendant he would receive (20) twenty to (25) twenty-five years if he signed the plea agreement prepared by them as opposed to the sentence he would receive life without parole if he did not sign the plea agreement. In light of defense counsel's erroneous advice that defendant was in jeopardy of receiving life without parole if he went to trial and was convicted of the three CSC charges and the kidnapping charge, defendant's guilty plea was invalid.

Requirements for entering a plea. Rule 11 Requires that the terms of a plea bargain be disclosed in open court when an agreement is reached or, upon a showing of good cause, in chambers at the time the plea is offered. If the agreement requires the prosecutor to dismiss other charges or to agree to a specific sentence in exchange for the defendant's guilty plea, the court may accept the agreement, or reject it or defer decision until it has considered the presentence report. If the agreement is rejected, the court must advise the defendant that he may withdraw the plea and that if the plea is not withdrawn a less favorable sentence may be imposed. If the plea agreement requires that the prosecutor recommend or not oppose the defendant's request for a particular sentence, the recommendation is not binding on the court. Before accepting such an agreement, the court must explain to the defendant that it is not bound by the government's

INEFFECTIVE ASSISTANCE OF COUNSEL

sentencing recommendation and that the defendant has no right to withdraw the plea should the court choose not to follow that recommendation.

Rule 11 establishes guidelines to ensure that a guilty plea is made knowingly and voluntarily. To ensure that a plea is made knowingly, a judge must address the defendant in open court to establish that the defendant understands (1) the nature of the charge; (2) the mandatory minimum and maximum sentences for charge, including any special parole, supervised release and restitution terms; (3) the constitutional rights waived, by a guilty plea; and (4) that answers to the court's questions, if under oath on the record and in the presence of defendant's counsel, may be used against him in a subsequent proceeding. The court need not, however, inform the defendant of any collateral consequences pleading. Defendant's guilty plea not knowing, intelligent and voluntary because court did not tell defendant of provision waiving right to appeal conviction and sentence, nor discuss elements of charged crime). U.S. v. Standiford, 148 F. 3d 864, 869 (7th cir. 1998).

A plea agreement rest on contractual principles and each should receive the benefit of their plea bargain. Thrift v. State, 312 S.C. 282, 440 S.E. 2d 341 (1994); Clark v. State, 468 S.E. 2d 653. When an accused pleads guilty upon a promise of the counsel or the prosecutor, the agreement must be fulfilled. State v. Torrence, 305 S.C. 45 406 S.E. 2d 315 (1991). When the state's attorney has given his word in the form of a plea agreement or bargain and that bargain is accepted by the trial court, it behaaves the state's attorney to make every reasonable effort to correct and deviation form the bargain when the deviation is called to his attention. Alston v. State, 38 M.D. App. 611, 379 A 2d 754, 757. Once a court accepts a plea agreement it is bound to honor its promise to perform the agreement, in so as the terms of the agreement are within the power of the court to order. State v. Rhinehart, 312 S.C. 36, 430 S.E. 2d 536.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant's trial counsel displayed ineffective assistance of trial counsel. Jordan v. State, 374 S.C. 2d 683 (1988). Applicant's trial counsel deficiencies prejudiced the applicant in that applicant would have otherwise proceeded to trial as originally insisted upon and under no circumstance would not have pleaded guilty under Alford or otherwise, had it not been for trial counsel advice of the twenty (20 to 25 twenty-five years range. See Tr. p. 35, lines 5-7). Under the circumstances, this would have been an appropriate sentence, that the applicant would receive twenty (20) to twenty-five (25) years for his guilty plea, agreement, trial counsel failed to argue.

The applicant argues that the Honorable J.C. Nicholson, Jr., Judge, did not accept the guilty plea in open court, the transcript does not reflect that proceeding where the Honorable J.C. Nicholson, Jr., Judge accepting the guilty plea. Therefore, applicant's guilty plea was involuntarily entered. The Law is equally clear. An involuntary plea is unconstitutional Machibroda v. United States, 368 U.S. 487 (1962). The court has Ruled that a plea induced by the misrepresentation of defense counsel may be involuntary, Blackledge v. Allison, 431 U.S. 63 (1977). In Blackledge, Supra. FN. 8. The court indicated that the question of whether or not the defense attorney misinformed his client concerning the sentence promised had constitutional implications.

The Judge abused his discretion by sentencing defendant to the maximum on each count when defendant pleaded guilty and accepted responsibility for his action. Doing so obviated the need for the victim to endure a difficult trial, and defendant should have received more sentencing consideration in light of that fact. Given defendant's age, the judge essentially gave him a life sentence.

INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant was convicted of raping one victim with whom he has had a long relationship. Defendant was a close friend of the victim's family. Defendant's attorney had him evaluated by Dr. Schwartz-Watts, she told his attorney this: [I]n spite of everything, she told Mr. Jack Duncan defense counsel, that she was surprised at the conclusion she came to. She sees hundreds and hundreds of sex offenders. She says that Paul Reid is different from most; that the great majority are untreatable and there's really no reason to make any sort of effort time wise or money wise. She says that Paul is different and she would not hesitate to treat him. She says incarceration at this point in time has saved his life and that it prevents him from abusing cocaine. See Tr. p. 32, lines 1-10). Then, she indicates that she sees many people that for lack of a better word she would consider bad or evil people. She does not consider Paul Reid to be in that category of folks. She did indicate that he's one of the few people she thinks is treatable, she says that she would immediately begin Depo-Provera treatment as a chemical inhibitor for Mr. Reid as he has abnormally high levels of testosterone for his age. See Tr. p. 33, lines 2-16).

Defendant's attorney explained to the court that he has "great remorse" for what he has done. (Tr. p. 34, lines 24-25). He is forty-six (46) years old. (Tr. p. 6, lines 2-3). He completed two (2) years of college at Midland Technical college and has an associate of arts degree. (Tr. p. 6, lines 4-16). He has worked several jobs-at Southland log homes as a truck driver. AAA Cooper, and for the city of Columbia operation heavy equipment. (Tr. p. 6, line 22 to page 7, line 4). His wife had recently passed away, and he has a four (4) year old son. (Tr. p. 8, lines 2-7). Despite all of defendant's significant mitigation, the judge still sentenced him to thirty (30) years on each charge. Given defendant's age this is the equivalent to a life sentence. Additionally, defendant is in very poor health. Dr. Schwartz-Watts, believes that he is at high risk to die in prison due to his heart condition. (Tr. p. 34, lines 1-2). Likely he will become bedridden within the next ten (10) years. See (Tr. p. 34, lines 3-4).

INEFFECTIVE ASSISTANCE OF COUNSEL

"An abuse of discretion occurs when the trial court's ruling is based on an error of Law of factual conclusion without evidentiary support. State v. Tumbleston, 376 S.C. 90, 93654 S.E. 2d 849, 851 Ct. App. 2007). See also State v. Douglas, 367 S.C. 498, 506, 626 S.E. 2d 59, 63 (Ct. App. 2006) cert. granted June 7, 2007. An excessive sentence can violate the 8th Amendment to the Federal constitution. See also State v. Kimbrough, 212 S.C. 348, 46 S.E. 2d 273 (1948) (an excessive sentence can violate our state provision forbidding cruel and unusual punishment). The facts of defendant's plea support a lower sentence than he received. His attorney asked the court to consider a sentence in the twenty (20) to twenty-five (25) years range. (Tr. p. 35, lines 5-7). Under the circumstances, this would have been an appropriate sentence. Respectfully, defendant asks this court to grant him a new sentencing hearing.

A petitioner 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 for counsel's errors, the defendant would not have plea guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E. 2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel. The record will prove that counsel's advice was not within the competence demanded of attorney in criminal cases. The defendant was unconstitutionally deprived of a full and fair trial, and denied due process of Law by acts and omissions of counsel, deprived the applicant of effective assistance of counsel in violation of the fourteenth and sixth amendments of the United States constitution; and Article 1, § 3 & 14 of the South Carolina constitution.

INEFFECTIVE ASSISTANCE OF COUNSEL

The sixth Amendment guarantees that every criminal defendant shall receive assistance of counsel in establishing his defense. U.S. const. Amend. VI. On May 14, 1984, the United States supreme court handed down two opinions holding that the sixth Amendment requires that the criminal defendant receive effective assistance of counsel. United States v. Cronig, 456 U.S. 548, 104 S. Ct. 2039, 80 L.Ed. 2d 657(1984); Strickland v. Washington, 456 U.S. 658 104 S.Ct. 2052, 80 L.Ed. 2d 574 (1984).

DENIED OF COMPETENCY HEARING

Tr. p. 5, lines 1-13. THE COURT: have you seen any indication whatsoever defendant need some type of mental evaluation?

Mr. Duncan defense counsel: indicated no Sir. but he had Mr. Paul Reid, evaluated. THE COURT: You have?

Mr. Duncan: yes Sir.

THE COURT: okay, what were the results of the evaluation?

Mr. Duncan: He's competent to proceed. And I will explain at a later time, Judge, what occurred.

See Tr. p. 35, lines 5-9. Doctor Donna Schwartz-Watts, was the doctor that examined Mr. Paul Reid, she gave her report to defense counsel Mr. Jack Duncan, but she was not present at trial to give her testimony to and to give defense counsel and the court at least some kind of explanation or some back ground on Mr. Reid and what brought him here to this tragic situation.

The state requires that there be two examiners from either their agency or Department of mental Health that participate in these types of evaluations. So there would always be a lead examiner designated as well as a secondary examiner.

Appellant's guilty plea failed to comply with the mandates set forth in Boykin v. Alabama.

Due process of Law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination. The right to trial by jury, and the right to confront one's accusers. A valid waiver of these right cannot be presumed from a silent record. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969). State v. Armstrong, 263 S.C. 594, 211 S.E. 2d 889 (1975), this court held that the essence of Boykin, was to make the requirements of Rule 11 of the Federal Rules of criminal procedure applicable to the state. In State v. Patterson, 278 S.C. 319, 295 S.E. 2d 264 (1982), this court held that for there to be a valid waiver under the due process clause of the three constitutional right listed in Boykin, the record must clearly establish it.

Boykin, Supra, the U.S. supreme court held that trial court were mandated to use the utmost solicitude when canvassing a guilty plea to insure that the plea was given freely and voluntarily with a full knowledge of the circumstances surrounding the plea and the attendant waiver of right occurring with the guilty plea.

Defendant argues that on May 9, 2007, he was charge with three criminal sexual conduct offenses. When confronted with whether trial court had subject matter jurisdiction to accept defendant's guilty plea when there were three indictments on the same offenses. The defendant was charge with three indictments on one count of criminal sexual conduct (CSC). Which there was only victim whom he had a long relationship with, the trial court

erred in charging defendant with three separately indictments for the same offense which was criminal sexual conduct (CSC). Duplicitous indictments obscure the specific charges and may violate the defendant's constitutional right to notice of the charges against him or hinder the defendant's ability to plead double jeopardy in a subsequent prosecution. (count of indictments charging defendant with multiple means of intimidation not duplicitous because statute recited each means of committing offense. U.S. v. Hubbell, 177 F. 3d 11, 14 (D.C. cir. 1999)).

There is no evidence that the court had an indictments to imposed sentence in this case. S.C. App. 2000. A defendant cannot be convicted of a crime for which he is not indicted if it is not a lesser included offense to that charged in the indictment. State v. Green, 539 S.E. 2d 419, 343, S.C. 207. S.C. 2000. Circuit court does not have subject matter jurisdiction to hear a guilty plea unless the defendant has been indicted by a grand jury or has waived presentment. State v. Grim, 533 S.E. 2d 329, 341 S.C. 63.

In his current application, the applicant alleges that he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel.
2. violation of due process rights.
3. Lack of subject matter jurisdiction.
4. Blair Hearing violation.
5. Hearsay testimony improper corroboration.
6. Guilty plead not accepted in open court.
7. Denied of Denno Hearing.
8. Miranda rights violated.
9. invalid arrest warrant.

The applicant has claimed that the trial court lacked subject matter jurisdiction due to defects in his warrant and indictments the elements in the body of the warrant. See State v. Gentry, 383 S.C. 93, 610 S.E. 2d 494 (2005); U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002).

The indictments is a notice document, and any challenges to its sufficiency must be made in accordance with section 17-19-90 of the South Carolina code. See also S.C. code Ann. § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of case, and it has nothing to do with the indictment document. See Gentry, *Supra*; Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E. 2d 598 (1994).

In post-conviction relief, an applicant wishing to raise challenges to the sufficiency of an indictments must do so in the context of ineffective assistance of trial counsel, basically alleging that his trial counsel failed to properly move to quash the indictments in accordance with section 17-19-90 of the South Carolina code. S.C. code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform post-conviction procedure Act- notably the statute of limitations and successiveness. See S.C. code §§ 17-27-45 and-90 (2003). An applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E. 2d 846 (2001), overruled in part by Gentry, *supra*. However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, *supra*, 610 S.E. 2d at 499; see also S.C. const. Art. v, § 7. Thus, the applicant will present evidence that his case is of some class over which the circuit court does not have the authority to preside.

STATEMENT OF THE CASE

Paul F. Reid was indicted by the Lexington county Grand jury for three (3) counts of criminal sexual conduct-1st degree, and kidnapping (2007-GS-32-3173, 3174, 3175, and 3176, respectively). On January 30, 2008, he pleaded guilty before the Honorable J.C. Nicholson, Jr. He was represented by Jack Duncan, Esquire. Judge Nicholson sentenced him to thirth (30) years on each count, sentences ordered served concurrently.

Due to applicant illiteracy to the Law he was entitled to rely upon his counsel to make a reasonable decision. Pursuant to U.S. Dewalt, 92 F. 3d 1205 without some authoritative guidance, the applicant cannot know whether he understood anything correctly at his plea trial.

Under the South Carolina constitution, no person may be tried for any crime in circuit court except on a presentment of indictment of a grand jury of the county where the crime has been committed, or unless he waives presentment or is tried for an offense whose elements are included within a properly - indicted. S.C. const. Art. § 11; Joseph v. State, 351 S.C. 551, 571 S.E. 2d 280 (2002). Additionally, a person may not be convicted with irrelevant, prejudicial evidence of uncharged bad acts. Rule 404 (b), SCR3; State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923).

Without a proper indictment, the court lacks subject matter jurisdiction to enter conviction or impose sentence for a crime. S.C. code of Laws Ann. 17-19-10, S.C. const. Art. I, § 11. An indictment is proper if it is sufficient in charging the elements of the offense and is returned true billed by the grand jury, or presentment is waived. State v. Beachum, 342 S.E. 2d 597 (1986). An indictment is sufficient in the charge if it contains the necessary elements of the offense and gives notice to the defendant of what he must be prepared to meet. State v. Smalls, 519 S.E. 2d 793 (1999). Hence, if the indictment fails to allege the necessary elements of the offense charged, the indictment is not sufficient, and the court lacks authority to enter a conviction or impose sentence. Beachum, Supra.

DENIED OF COMPETENCY HEARING

Criminal defendant's failure to request competency hearing did not waive right to such hearing where defendant's sanity was crucial issue throughout the plea. Code 1976, §§ 44-23-410, 44-23-430..

The word "shall" may be construed as permissive to effect legislative intent, particularly when statute directs courts to determine certain matter. Code 1976, § 44-23-430, a statutory provision is generally regarded as mandatory where power or duty to which it relates is for security of protection of private rights. Statute providing that upon receiving report of designated examiners, the court shall set a date for competency hearing is designed to protect accused's right to fair trial by due process determination of his competency and fitness to stand trial. Code 1976, § 44-23-430, U.S.C.A. const. Amend. 14.

See Plea transcript page 5, lines 1-11. THE COURT: Asked defense counsel Mr. Jack Duncan, have you had any difficulty in communicating with the defendant? Defense counsel stated no Sir. But I have had him evaluated. The defendant met with Doctor Donna Schwartz-Watts, to give counsel and the court at least some kind of explanation or some back ground on the defendant and what brought him here to this tragic situation.

The applicant asserts upon information and belief the court should not have sentence defendant for the crime. Under the BLAIR-HEARING the due process the conviction of a person who is mentally incompetent and this right cannot be waived by a guilty plea. U.S.C.A. const. Amend. 14. Godinez v. Moran, 509 U.S. 389, 113 S.Ct. 2680 (1993). Jeter v. State, 308 S.C. 230, 232 417, S.E. 2d 594, 594, (1992). The accused must have sufficient capability to consult with his counsel with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him. Jeter, 308 S.C. at 232, 417 S.E. 2d at 596. Petitioner bears the burden of showing by a preponderance of the evidence that he was incompetent at the time of his plea trial. the trial judge erred by finding

DENIED OF COMPETENCY HEARING

defendant could comprehend the seriousness of the trial before any competent hearing could be properly prepared.

When ever a judge of the circuit court, or county court, or family court has reason to believe that a person on trial before him charged with the commission of a criminal offense, is not fit to stand trial because such person lacks the capacity to understand the proceedings against him or to assist in his own defense a result of a lack of mental capacity the judge shall; order examination of such person by two examiners designated by the Department of Mental Health or the Mental Retardation Department or both, such examination shall be made within fifteen days after the court's order such person committed for examination and observation to an appropriate facility for a period not to exceed fifteen (15) days, the report to such examination shall be admissible as evidence in subsequent hearing pursuant to § 44-23-430. The records does not reflects any report from the appointment of defendant from Mental Health Department of Doctor Donna Schwartz-Watts, the Dr. indicated to defense that she made and observation of the defendant. No dates this were made, the premise of the constitutional right to be present is that the defendant has the right to participate in his own defense. Indeed, participation by the defendant is ordinary essential to assure that witnesses are fully cross-examined, exculpatory facts are presented courts are challenged when necessary, etc. But if defendant is mentally incapable of participating in his own defense the right to be present is a nullity. It follows that it would be fundamentally unfair to try a defendant who is incompetent. Not surprisingly the supreme court has held that the due process clause prohibits the criminal prosecution of a defendant who is not competent to stand trial. Drope v. Missouri, 420 U.S. 162 (1975); Pate v. Robinson, 383 U.S. 375 (1966).

DENIED OF COMPETENCY HEARING

In Dasky v. United States, 362 U.S. 402 (1960), the court held that the standard for competence to stand trial is whether the defendant has sufficient present ability to consult with his Lawyer with a reasonable degree of rational understanding and has a rational as well as factual understanding of the proceedings against him.

ARGUMENT OF STATEMENT

The defendant argues that the court and counsel was aware that the defendant was incapacitated by a large quantitie of cocaine and alcohol the potent alcohol and drugs mix, defendant maintained at the time of the arrest and statement it rendered him physically unable to understand clearly. See Tr. p. 31, lines 10-25. - p. 32, lines 1-25. - p. 33, lines 1-25. - p. 34, lines 1-25. Doctor Donna Schwartz-Watts, assessment of the defendant, he has a life - long history of drugs abuse. Doctor Schwartz-Watts, in her report says that there would be a genetic predisposition there; both his mother and father died with substance abuse problems. Other in his family have suffered the same. See Tr. p. 31, lines 14-18.

The defendant argues that the court for lack of subject matter jurisdiction to accept the defendant's guilty pleas when the record show that defendant was on medication prescribe by the Detention Center staff prior to enter the court room ... court clearly abused it's discretion for not actual postponing the defendant's guilty plea to a later date. The court and counsel was aware that the defendant was taking four medications (1) Lipitor, (2) Cymbalt, (3) Valium, and (4) ~~Vicodin~~ ^{Vicodin}, of the pleas agreement the date of defendant's arrest being two (2) of the four (4) were narcotics the defendant was suicidal. The defendant right was violated by the court and counsel when the court relied on counsel opinion that he believe his client was competent to understand the guilty plea proceeding.

HEARSAY EVIDENCE

Doctor Schwartz-Watts, statement was improperly corroborated because Doctor Schwartz-Watts, was not present at the trial on January 30, 2006, the South Carolina supreme court has addressed the issue of improper corroboration testimony in criminal sexual conduct cases on many occasions resulting in a rule as a matter of law that when the improper corroboration testimony is erroneously allowed in it satisfies the prejudice prong of Strickland v. Washington, 466 U.S. 560, 104 S.Ct. 2052. In State v. Barratt, 299 S.C. 495, 386 S.E. 2d 242 (1989).

The defendant argues that he was under the influence of alcohol, and drugs when he was arrested on May 9, 2007, the view that the admissibility of a confession obtain by custodial interrogation should depend on the "totality" of circumstances. See Tr. 31, p. 10-25. Defendant was examined by Doctor Donna Schwartz-Watts, to give the court at least some kind of explanation and some background on the defendant and what brought him here to this tragic situation. This examination was positive for drugs the defendant was intoxicated which impaired him at the time of the interrogation.

SUMMARY OF ARREST

They go down highway 321 to . . . stops several times, gets on I-26 going down towards Orangeburg and Calhoun county. On I-26 they also stop. The defendant Mr. Paul Reid, would pull over, stop several times. The officer that was talking to him would stop behind him. They continued to talk on the phone. This went on probably an hour or so, stopping and going, stopping and going. There was a large Law Enforcement presence there. Calhoun and Orangeburg county was also involved. Once he got down to about the mile marker 140 on I-26 eastbound, the interstate had been shut down due to the threats that defendant Mr. Paul Reid, had made about shooting himself or having someone else shoot him. The negotiator was able to continue to talk to him and convince him eventually to give himself up where he throws the gun out of the car and he comes out and he was taken into custody by the SWAT team. He was taken to the hospital to be checked out then taken to the jail.

Statement of Detective Russell

I went and signed him out of the jail on May 10, 2007, and brought him back up to the Sheriff's Department and this time after he was mirandised on May 10, 2007, he did give a full written confession to the charges of kidnapping the three CSC; that happened at the same time and date, and explained all that in his written statement, your Honor. We have that if you would like to see it. THE COURT: thank you so very much. We appreciate you being here. Detective Russell testimony was inconsistent with the reports and transcript page 20, lines 1-19. When Detective Russell stated he originally attempted to interview Mr. Reid as soon as he was brought to the jail on May 9, 2007, at which time he said yeah, I want to talk to you but I want to talk to a lawyer first, so Detective Russell, indicated that he didn't talk to him any further at that point. The very next day which was May 10, 2007, Detective Russell, stated he received a request form from the jail from Mr. Reid requesting that he come back and speak with him again. Detective Russell, went and signed Mr. Reid out of the jail and brought him back up to the Sheriff's Department and this time after he mirandised, he did give a full written confession to the charges. This day in question was May 10, 2007, that Detective Russell, had explained to the court. the records will reflect the date and times.

The defendant's inculpatory statement must be voluntarily and understandingly made in order to be admissible. State v. Thompson, 287 N.C. 303, 214 S.E. 2d 742 (1975). The test of admissibility of a statement is voluntariness. State v. Franklin, 382 S.E. 2d 911 (S.C. 1989), if defendant was advised of his miranda rights, but chose to make a statement anyway, the burden is on the state to prove by a preponderance of the evidence that his rights were voluntarily waived. State v. Washington, 296 S.C. 54, 370 S.E. 2d 511, 512 (1982) (emphasis in original). The state bears this burden of proof even where a defendant has signed a waiver of rights form. State v. Coolsby, 275 S.C. 110, 268 S.E. 2d 31 (1980), cert. denied, 449 U.S. 1037, 101 S.Ct.-616, 66 L.Ed. 2d 500 (1980). The trial judge's determination of the voluntariness of a statement must be made on the basis of the totality of the circumstances, including the back grounds, experience, and conduct of the accused. state v. Linnen, 278 S.C. 175, 293 S.E. 2d 851

The fifth Amendment provides that [N]o person shall be compelled in any criminal case to be a witness against himself. Police interrogation of a suspect in custody threatens the exercise of the fifth Amendment privilege against self-incrimination by providing officer with an opportunity to: (1) actively compel confession through overtly coercive interrogation or (2) passively compel confessions by exposing suspects to the "inherently coercive. In determining whether a confession is voluntary, the court looks at the totality of the circumstances surrounding the statement. State v. Hicks, 333 N.C. 467, 482-83, 428 S.E. 2d 167, 176 (1993). Some important factors to be considered are (1) whether defendant was in custody (2) defendant's mental capacity (3) the physical environment of the interrogation and (4) the manner of the interrogation. *Id.* The state has the burden of showing by a preponder of the evidence that the defendant made a knowing and intelligent waiver of his rights and that his statement was voluntary. State v. Reid, 335 N.C. 647, 440 S.E. 2d 776 (1994). The test regarding the admissibility of a confession is always voluntariness. State v. Von Dohlen, 322 S.C. 234, 243, 471 S.E. 2d 689, 694 (1985). The trial judge erred by finding defendant could comprehend the seriousness of the statement after he was intoxicated with drugs, and alcohol on the day in question and mentally impaired at the time of the interrogation. The evidence in this case shows defendant was grossly intoxicated at the time of so call statement. Defendant statement should have been suppressed. CF State v. Crawley, 349 S.C. 459, 562 S.E. 2d 683 (Ct. App. 2002). Citing Bright v. State, 365 Ga. 235, 485 S.E. 2d 37 (1995).

Trial counsel's ineffectiveness, and lack of preparation in creating a defense to prove the Police prepared alleged confession was invalid and not the confession of the applicant. Trial counsel was ineffective. Martinez v. State, 304 S.C. 39, 403 S.E. 2d 113 (1991); Trial counsel should have objected to the erroneous ruling by the trial court, concerning the invalid confession, and trial counsel should have objected to the trial court's erroneous determination surrounding the Jackson v. Danno Hearing, which was not in conformity with the mandates governing

Miranda v. Arizona, 86 S.Ct. 1602 (1968); The applicant will show trial counsel was ineffective and should have objected to the trial court's ruling concerning the applicant's alleged confession which never took place.

Did petitioner receive effective assistance of counsel in accordance with the sixth Amendment when his trial counsel failed to adequately investigate the finding as to the validity of the statement that the Police obtained without holding a Jackson Denno Hearing this was a violation. Trial counsel's ineffectiveness, and lack of preparation in creating a defense, to prove the Police officers prepared alleged confession was invalid and not the confession of the applicant.

The court's erroneous determination surrounding the Jackson v. Denno hearing, which was not in conformity with the mandates governing Miranda v. Arizona, 86 S.Ct. 1602 (1968); the applicant will show trial counsel was ineffective and should have moved before the court to request a Jackson Denno Hearing to demonstrate that the court violated his privilege against self-incrimination and the right to retained or appointed counsel U.S.C.A. const. Amend.5.

If interrogation continues without presence of attorney and statement is taken government has heavy burden to demonstrate that defendant knowingly and intelligently waived his privilege against self-incrimination and his right to counsel. Defendant's constitutional rights have been violated if his conviction is based in whole or in part, on involuntary confession regardless of its truth or falsity, even if there is ample evidence aside from confession to support conviction. Voluntariness doctrine is state cases encompasses all interrogation practices which are likely to exert such pressure upon individual as to disable him from making free and rational choice. Warning as to right to consult with a Lawyer and have a Lawyer present during interrogation is absolute prerequisite to interrogation, and no amount of circumstantial evidence that person may have been aware of this right will suffice to stand in its stead. U.S.C.A const. Amend.5.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
	)	CASE/NO. 2010-CP-3205312
PAUL FLETCHER REID, #127458	)	
PETITIONER,	)	
	)	
VS.	)	CERTIFICATE OF SERVICE
	)	
STATE OF SOUTH CAROLINA	)	
RESPONDENT.	)	
	)	

This is to certify that I, Paul Fletcher Reid, #127458, have served a copy of the foregoing motion to Amend Laws supported applicant's post-conviction relief application, said application was filed with the Lexington county clerk of court of common pleas on December 14, 2010. In connection with the above-captioned case, by placing the said documents in the United States mail postage pre-paid, upon the following parties at the following addressed.

- (1) CLERK OF COURT LEXINGTON COUNTY
BETH A. CARRIGG, CLERK
205 EAST MAIN STREET-SUITE. 128
LEXINGTON, SOUTH CAROLINA 29072
- (2) STATE OF SOUTH CAROLINA
THE ATTORNEY GENERAL OFFICE
POST OFFICE BOX 11549
COLUMBIA, SOUTH CAROLINA 29211-1549

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 13th DAY OF April 2011

NOTARY PUBLIC FOR SOUTH CAROLINA My Commission Expires
MY COMMISSION EXPIRES: August 25, 2015

S/ Paul J. Reid

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

PAUL FLETCHER REID, #127458)
PETITIONER,)

CASE/NO. 2010-CP-3205312

VS.)

MOTION TO ADDRESS ALL ISSUES

THE STATE OF SOUTH CAROLINA)
RESPONDENT.)

The applicant Paul Fletcher Reid, #127458, by and through pro-se motion who ask this Honorable court to require the attorney involved in this action to be meticalous in preparation of any order prepared in this matter.

Specifically, the applicant request that each and every issue raised or raised in any Amendment of this action at this hearing to be addressed in the order of the court to be issued at the conclusion of the evidentiary hearing in this matter.

This motion is requested pursuant to S.C. code, § 17-27-80; and citing, Pruitt v. State, 423 S.E. 2d 127 (1992); Byron v. State, 493 S.E. 2d 500 (1997).

Wherefore, the motion should be granted.

s/ Paul F. Reid

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 13TH DAY OF April 2011

NOTARY PUBLIC FOR SOUTH CAROLINA My Commission Expires

MY COMMISSION EXPIRES: August 25, 2015

1 State of South Carolina) In the Court
2 County of Lexington) Of Common Pleas
3
4 Docket No: 2010-CP-32-5312
5
6 Paul Reid,)
7 Applicant,)
8 vs.) Transcript of Record
9
10 State of South Carolina,)
Respondent.)

11
12 January 30, 2012
13 Lexington, South Carolina
14

15 B E F O R E:
16

17 The Honorable Eugene C. Griffith, Jr., Judge.
18

19 A P P E A R A N C E S:
20

21 Montford Caughman, Esquire
22 Attorney for the Applicant
23

24 Kaelon E. May, Assistant Attorney General
25 Attorney for the Respondent

Brenda J. Sigwald, Circuit Court
P.O. Box 206, Jackson, South Carolina 29831

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(REPORTER'S NOTE: There were no
exhibits entered during this hearing.)

1 THE COURT: All right. Ms. Maye, you ready.

2 MS. MAYE: Yes, Your Honor. May it please the
3 Court.

4 THE COURT: Yes.

5 MS. MAYE: This is Paul Reid v State, Case No.
6 2010-CP-32-5312. This case is from a PCR application filed
7 on December 14th, 2010 by Mr. Reid. Mr. Reid was charged
8 with kidnapping and three counts of criminal sexual
9 conduct, first degree.

10 January 30th, 2008, he pled guilty before Judge
11 Nicholson. Judge Nicholson sentenced Mr. Reid to a total
12 of 30 years. There was an appeal and the Court of Appeals
13 subsequently affirmed Mr. Reid's conviction; and now I'll
14 turn it over to Mr. Caughman.

15 THE COURT: All right. Mr. Caughman?

16 MR. CAUGHMAN: That's correct. Your Honor, just
17 before we begin, I think I need to raise -- I certainly
18 don't want you to recuse yourself from this matter, but I
19 think we need to make sure that everybody in the courtroom
20 is of the understanding -- I think you and I worked
21 together some 25 years ago as city pages for --

22 THE COURT: For Senator Shealy's office.

23 MR. CAUGHMAN: That is correct.

24 THE COURT: And Senator Pogue's office.

25 MR. CAUGHMAN: That is correct. But I certainly

Paul F. Reid - Direct Examination by Mr. Caughman

1 don't think that it would have anything to do that would
2 cause us a conflict today in this PCR.

3 THE COURT: All right. For the record, that was
4 1985, I believe.

5 MR. CAUGHMAN: That is correct.

6 THE COURT: I can remember that because '85 was
7 Senator Pope's first year as a freshman senator; prior to
8 that, Senator Lake was the senator from Newberry.

9 MR. CAUGHMAN: That is correct.

10 THE COURT: So I changed senators that year.

11 Ms. Maye, do you have any objection?

12 Understand that Mr. Caughman worked for Senator
13 Ryan Shealy, not for Senator Pogue.

14 MR. CAUGHMAN: That is correct, Your Honor.

15 THE COURT: They just shared office space.

16 MS. MAYE: No, Your Honor.

17 THE COURT: Very good. All right.

18 MR. CAUGHMAN: I'd call Paul Reid, Your Honor.

19 THEREUPON,

20 PAUL REID,

21 after being duly sworn, testified as follows:

22 THE CLERK: Please be seated and state your name
23 for the record.

24 THE WITNESS: My name is Paul Fletcher Reid.

25 ///

Paul F. Reid - Direct Examination by Mr. Caughman

DIRECT EXAMINATION

By Mr. Caughman:

Q Paul, you are currently incarcerated in the Broad River Correctional Institute; is that correct?

A Yes, sir.

Q Okay. And you are here today on a post-conviction relief here at -- on a post-conviction relief application, which is seeking reduction of your sentence, or a new trial; is that correct? Or a new sentencing trial?

A That's correct.

Q All right. And basically, you have two main qualms to what you're looking at today. The first is that you -- basically it's an ineffective assistance of counsel PCR; is that correct?

A Correct.

Q Okay. The first part deals with the fact that you pursued a plea that you relied upon in -- or a deal that you thought you were going to get and you relied upon in your sentencing; is that correct?

A That's correct.

Q Okay. And the second part of that is whether or not your counsel actually effectively looked at your competency prior to the hearing; is that correct?

A Correct.

Q Okay. Now, let's go back a little bit. What were

Paul F. Reid - Direct Examination by Mr. Caughman

1 you arrested for, Mr. Reid?

2 A Three counts of criminal sexual conduct in the
3 first degree and kidnapping.

4 Q Okay. When did -- when did that occur and when
5 were you arrested?

6 A It was May 9th of 2007; and I was arrested May 9th,
7 2007.

8 Q All right. And you remained in jail for how long
9 prior to your plea itself?

10 A Approximately eight months.

11 Q All right. Were you originally represented by Mr.
12 Duncan?

13 A Originally, no, sir, I was represented by Arie Bax.

14 Q Okay.

15 A I was not satisfied with how long it was taking me
16 to see him and then obtained Mr. Duncan.

17 Q How did you come about obtaining Mr. Duncan as your
18 counsel?

19 A Through a friend -- actually, through my cousin who
20 was dating a friend of Mr. Duncan's secretary.

21 Q Okay. And did he come to see you at the detention
22 center?

23 A Mr. Duncan?

24 Q Yes.

25 A Yes, sir, he did.

Paul F. Reid - Direct Examination by Mr. Caughman

1 Q Okay. And what did -- what did y'all's original
2 discussions entail as far as what he -- what he could do
3 for you?

4 A The first conversation we had was in reference to
5 just my background; what I had been arrested for; family
6 issues that had transpired in the last past years prior to
7 my arrest as far as my wife's death, my mother's death; I
8 had a son, at the time three and-a-half-years old and he --
9 I think he asked me about his well being; the type of work
10 I was doing at the time of the arrest and things of that
11 nature.

12 Q All right. Was he also talking to your family at
13 that point in time about what he could do to help you? Do
14 you remember?

15 A If I'm not mistaken, yes, sir, he was in touch with
16 my sister -- either himself -- and I know that she had
17 spoken to his secretary on several occasions as well.

18 Q All right. And as you begin to talk to him about
19 representing you, what was his -- what was his plan for
20 what you could -- what he was going to be able to do for
21 you?

22 A Initially, the conversation was, he would -- at the
23 time I was -- did not have bond -- have my bond hearing.
24 He thought that he could possibly get me a bond, get me
25 out, and let me -- I was going to pay him \$5,000 down and

Paul F. Reid - Direct Examination by Mr. Caughman

1 over a period of year and a half, two years, pay him the
2 remaining \$10,000 prior to us going to trial.

3 Q Okay.

4 A That was what we spoke about on our first
5 conversation.

6 Q All right. Now, when did the idea of there being a
7 plea offer come about?

8 A The second time and the last time that I seen Mr.
9 Duncan, he come to me, told me that Donnie Meyers from the
10 solicitor's office spoke with him and said if I would take
11 a guilty plea that he would not seek life without parole,
12 nor would he seek thirty years. And I asked him at that
13 time what amount of time were we looking at. And he told
14 me somewhere in the range of twenty to twenty-five years.

15 Q Okay. Was this the first time that the idea of
16 life without parole had come up in a discussion with anyone
17 involved in your case?

18 A Yes, sir.

19 Q Okay. Did you ask him at that point in time
20 whether that was actually a sentence that you would be
21 facing or not?

22 A I asked him how was I facing life without parole.

23 Q And did he explain it to you?

24 A He told me because of a conviction in 1984, some
25 twenty-three years earlier that that put me in the class

Paul F. Reid - Direct Examination by Mr. Caughman

1 for a life-without-parole sentence.

2 Q All right. And I believe you said just a minute
3 ago -- and I want to make sure that I understood you -- you
4 met with Jack actually -- Mr. Duncan actually twice.

5 A Right.

6 Q And that was the only two meetings you had with him
7 prior to pleading guilty in this case?

8 A Yes, sir.

9 Q Okay.

10 A Other than the morning of the plea.

11 Q Right. Right. Other than seeing him at the court
12 the day you pled?

13 A Correct.

14 Q Okay. Did you ever see a plea offer in writing?

15 A No, sir.

16 Q Okay. Did you ever discuss that plea offer with
17 other people in your family or anybody else?

18 A I spoke with my sister about it.

19 Q Okay.

20 A Yes, sir, I did.

21 Q All right. And did you rely upon what you believed
22 that plea offer to be in deciding to plea guilty?

23 A Yes, sir, I did because I felt intimidated by the
24 life without parole and at the same time, I still didn't
25 understand how I was facing life without parole.

Paul F. Reid - Direct Examination by Mr. Caughman

1 Q And it -- and it -- okay.

2 And indeed, when you pled guilty, the Judge went
3 through a analysis of your background and determined that
4 you were not facing life without parole; is that correct?

5 A Correct.

6 Q Okay. But he still sentenced you to the maximum
7 sentence available to him?

8 A Correct.

9 Q Okay. Now, at trial, you did plea guilty; why did
10 you do that?

11 A I pled guilty for two reasons. First and foremost,
12 because I was guilty of what I had done and I was willing
13 to accept responsibility for what I had done. And also
14 because I was told that I would receive life without parole
15 if I did not take this plea.

16 Q All right. At the time you pled guilty, were the
17 details of the plea agreement that you believed you were
18 pleading under ever disclosed to the Court?

19 A No, sir.

20 Q Okay. When the Judge asked you if you'd been
21 promised anything other than the dropping of a child -- a
22 single child neglect charge -- which had been attached to
23 other charges; is that correct?

24 A (Witness nodded.)

25 Q Were you -- why did you tell him, no? Why did you

Paul F. Reid - Direct Examination by Mr. Caughman

1 tell the Judge no?

2 A Prior to -- prior to walking up to the -- to the
3 podium to take my plea, I told Mr. Duncan, I said, Mr.
4 Duncan, I said, When I get in front of the Judge and he
5 asked me if I was promised anything that I was going to
6 tell him yes. Mr. Duncan told me right then, You cannot
7 tell the judge you have made any promises or he will not
8 accept your plea.

9 Now, that being said, had I known the outcome was
10 going to be maximum thirty years, I would have told the
11 judge so he wouldn't have accepted the plea.

12 Q And why is that?

13 A Because I was told that I was looking at the twenty
14 to twenty-five. I mean --

15 Q Are you -- are you saying that you wouldn't have --
16 if you knew you were going to get the maximum anyway, you
17 wouldn't have pled guilty?

18 A No, because the whole purpose of taking the guilty
19 plea was to get the lesser sentence.

20 Q Okay.

21 A I mean --

22 Q All right. Let's talk about that for a minute.
23 What discussion had you and Mr. Duncan had about the
24 possible lengths of sentences you were facing?

25 A He told me prior to the plea that I was looking at

Paul F. Reid - Direct Examination by Mr. Caughman

1 thirty years before he came to me with the recommendation
2 from Donnie Meyers. We had discussed it and he told me I
3 was facing thirty years. And he never mentioned to me that
4 I was facing life without until Donnie Meyers sent him to
5 see me, telling me that if I would take the guilty plea, he
6 would not seek the life without.

7 Q All right. And did he indicate to you that he
8 believed that the thirty years was a probability or a
9 possibility?

10 A I never felt -- felt the indication of that nature
11 because I'm going on the twenty-to twenty-five that he's
12 telling me. So he never stressed to me that I was going to
13 get the thirty years, but I guess, yeah, there's always the
14 possibility.

15 Q Sure. Where --

16 A Excuse me a second. I need some water please.

17 Q I'll get it.

18 A Thank you.

19 Q Where did the twenty to twenty-five come from?
20 Where did that -- where did that term possibility come
21 from? Did you believe it was part of a negotiated plea?

22 A I believed that it was something -- the offer that
23 Donnie Meyers put on the table if I was to take the plea.

24 Q Did you believe that there had been discussions and
25 that in fact that the life without parole and thirty years

Paul F. Reid - Direct Examination by Mr. Caughman

1 had been taken off the table and replaced by the twenty to
2 twenty-five?

3 A Yes, sir.

4 Q Did Mr. Duncan ask the Court for a lesser sentence
5 when you were being sentenced?

6 A No, sir.

7 Q He didn't?

8 A No, sir.

9 Q He didn't ask that you be sentenced to twenty to
10 twenty-five years?

11 A No, sir.

12 Q Was that -- was that the deal that you believed
13 that you were pleading guilty to -- what you were going to
14 get out of this plea?

15 A I believed that I was going --

16 Q Twenty to twenty-five?

17 A -- to get twenty to twenty-five years.

18 Q All right. Now, once the sentence was handed down
19 and the judge went through his analysis, found that you
20 weren't eligible to be sentenced to life without parole;
21 and therefore sentenced you to the maximum, did Mr. Duncan
22 ever object to the length of the sentence that was handed
23 down?

24 A No, sir.

25 Q Did you say anything to him or ask him anything at

Paul F. Reid - Direct Examination by Mr. Caughman

1 that point in time?

2 A I'm going to be honest with you, I was in a state
3 of shock. I did not say anything. I didn't even have time
4 to address the Court as far as remorse or anything.
5 Nothing was ever -- I was never asked anything or never had
6 the opportunity to say anything after the sentence was
7 handed down.

8 And if I may recant one thing, I do believe that
9 Mr. Duncan did, if I'm not mistaken, ask the judge for a
10 twenty to twenty-five year sentence. I believe I was
11 mistaken by saying no to that.

12 Q Okay. Did -- after your sentence was handed down,
13 did Mr. Duncan make any motions about reducing your
14 sentence at that point in time or reconsidering the the
15 sentence that had been handed down?

16 A No, sir.

17 Q Okay. Did you try to appeal your sentence on the
18 basis that he had failed to object to the sentence or
19 failed to seek a modification of the sentence?

20 A Yes, sir. We filed a direct appeal.

21 Q And your direct appeal in fact was based on that
22 the judge had abused his discretion in sentencing you to
23 the maximum; is that correct?

24 A That's correct.

25 Q Okay. And that appeal was ultimately dismissed; is

Paul F. Reid - Direct Examination by Mr. Caughman

1 that right?

2 A Yes, sir.

3 Q All right. Now, let's go to the second prong of
4 your ineffective assistance of counsel argument that we
5 have today. At the time of your arrest, were you on
6 medication?

7 A Yes, sir.

8 Q Okay. And what kind of medications were you on at
9 that time? Well -- stop for a minute. Let me back that up
10 and ask you a different question.

11 What had occurred in your life directly prior to
12 this incident?

13 A I was married for eight years. My wife had
14 numerous medical problems and she was in and out of work.
15 There was a lot of financial strain on the family and in
16 May of 2006, I was in drug rehab in Richland Springs over
17 at Palmetto Richland receiving treatment for cocaine and
18 opium abuse. While I was there -- I was only there two
19 days -- my -- I went into ventricular tachycardia, in which
20 I had to have a defibrillator placed in my left chest wall,
21 defibrillator and pace maker and I now suffer from
22 ventricular tachycardia because of a disease.

23 One month later, my wife died after being
24 hospitalized at Lexington Medical Center for seventeen
25 days, receiving treatment for hemiplegic biograde in which

Paul F. Reid - Direct Examination by Mr. Caughman

1 she had an EJ in her neck and for those seventeen days, in
2 order to receive medications, she got a staph infection in
3 her blood from the EJ. She came home; two weeks later,
4 she's back in the hospital; seventeen days later, she
5 passed away from a blood clot that had formed on her
6 mechanical heart valve that went to her brain and ruptured
7 and killed her at the age of thirty-three.

8 Q Sometime just before that, your mother had passed,
9 too; is that correct?

10 A Correct. My mother -- my mother died in 2003, I
11 think three months prior to my son's birth.

12 Q Okay. Now, you were -- you were medicated at the
13 time of your wife's death and you were on medication at the
14 time that this incident occurred; is that correct?

15 A Yes, sir.

16 Q What medications were you taking?

17 A Are we --

18 Q Just in general.

19 A Are we talking prescribed medications?

20 Q Yes. Starting there.

21 A Okay. By my family doctor, I was prescribed
22 Cymbalta for antidepressant; I was taking Valium -- excuse
23 me, Xanax for anxiety; and I was taking Lortab for severe
24 back pain and arthritis in my lower spine. As well as
25 Amiodarone, Magnesium Oxide which was for my -- for my

Paul F. Reid - Direct Examination by Mr. Caughman

1 heart.

2 Q All right. Okay. Those were the prescribed
3 medications?

4 A Right.

5 Q What else were you self prescribing?

6 A The day of the crime, cocaine and Lortabs and
7 alcohol.

8 Q Okay. How -- had you ever been evaluated for
9 mental or psychiatric problems before Dr. Schwarz-Watts did
10 it at Mr. Duncan's request?

11 A Prior to the day of the crime?

12 Q Yes.

13 A Yes, sir, I had to.

14 Q And that would have been during your
15 hospitalization at Richland Springs?

16 A That one and also, after I had moved to Straight
17 Away Lane in two -- early 2008. I had an episode where
18 I -- depression was just taking the best of me and I felt
19 like that I wanted to die and I went -- called my sister at
20 home. She come and picked up my little boy and then EMS
21 came to the house and got me and took me to Lexington
22 Medical Center for an evaluation and I never really seen
23 anyone there. They kept me for about four hours and then
24 released me just by prescribing me more Lortabs. I never
25 really spoke to a psychiatrist or a psychologist.

Paul F. Reid - Direct Examination by Mr. Caughman

1 Q Did Mr. Duncan have you evaluated -- have your
2 competency evaluated prior to this -- your entering this
3 guilty plea?

4 A By Donna Schwartz-Watts?

5 Q Yeah.

6 A Yes.

7 Q And did you and he discuss the results of that
8 evaluation?

9 A On the most part, yes, sir.

10 Q Okay. Did you and he discuss how you -- how your
11 evaluation might be used at trial?

12 A Initially, when I spoke with him about this, I
13 asked him, would Ms. Schwartz-Watts be at the hearing so
14 she could, you know, speak to the Court as in to what
15 brought all this about the day of the crime. And he told
16 me that he would have her be there.

17 Now, of course, she wasn't there the day of the --
18 of the hearing.

19 Q Okay. Did you and he discuss the possibility of
20 having another evaluation or a secondary evaluation done?

21 A No, sir.

22 Q Did you believe yourself to be competent at the
23 time you entered this hearing -- entered this plea?

24 A Prior to coming into -- to take the plea that
25 morning, I had been on medication at the county jail. I

Paul F. Reid - Direct Examination by Mr. Caughman

1 was taking Lortabs and Valium at the county jail twice a
2 day. When I came to the Court, I felt that, you know, that
3 I was in a good state of mind and able to take this plea,
4 but, you know, looking back on it now, knowing what I know
5 now, I'm really not sure if I was competent to take the
6 plea or not.

7 Q Did you tell Mr. Duncan that you had that concern?
8 That you weren't -- you weren't concerned that day; you're
9 only concerned now; is that what you're saying? Looking
10 back on it now, you wonder if it was the right thing --

11 A Well, I wonder -- I wonder -- I know how
12 medication, narcotics and other drugs influenced my mind
13 into doing things that I normally would not have done.

14 Q Okay.

15 A And saying that, I was under the influence of
16 medication when I took the plea. So if it affected me in
17 other ways, I guess it possibly could have affected me the
18 morning of the plea.

19 Q Do you believe that what you and Mr. Duncan had
20 discussed and what you believed to be what was going to
21 happen, happened in the courtroom that day?

22 A Repeat the question.

23 Q Do you believe that what you and he had discussed
24 was going to be your plea actually occurred when you went
25 to the courthouse that day?

Paul F. Reid - Cross-Examination by Ms. Maye

1 A Did I believe it would happen? Yes, I did.

2 Q Did you -- did it occur the way that you -- you
3 relied upon what Mr. Duncan had told you; is that correct?

4 A Correct.

5 Q Was your reliance on that justified as to what you
6 ultimately received as a sentence and everything else?

7 A No.

8 Q Okay. And you're asking the Court to readdress
9 that at this point in time --

10 A Correct.

11 Q As best he can?

12 A Correct.

13 Q All right.

14 MR. CAUGHMAN: That's all I have on him, Your
15 Honor.

16 THE COURT: Ms. Maye?

17 MS. MAYE: May it please the Court, Your Honor.

18 **CROSS-EXAMINATION**

19 By Ms. Maye:

20 Q Mr. Reid, you understand that you were sworn to
21 tell the truth today?

22 A Yes, ma'am.

23 Q Okay. And you understand that at your guilty plea
24 that you were sworn to tell the truth then?

25 A Yes, ma'am.

Paul F. Reid - Cross-Examination by Ms. Maye

- 1 Q And you did?
- 2 A Yes, ma'am.
- 3 Q Okay. Do you recall the plea judge asking you what
4 medications you were taking at your plea hearing?
- 5 A Yes, ma'am.
- 6 Q Okay. And do you recall explaining for the judge
7 what the medications -- what each medication was prescribed
8 for?
- 9 A Yes, ma'am. I remember in detail telling him what
10 medication I was taking. I don't remember exactly --
11 explaining what each medication was for, but I possibly
12 did.
- 13 Q Okay. And you also explained to the plea judge the
14 time -- at what times when you took the medication?
- 15 A Correct.
- 16 Q What times you took them?
- 17 A Correct.
- 18 Q Okay. And do you recall the plea judge asking you
19 if any of your medications interfered with your thought
20 process?
- 21 A I did -- he did ask me that and I told him, no.
- 22 Q You told him that they do not?
- 23 A I told him they did not.
- 24 Q Okay. And that was the truth?
- 25 A Yes, it was -- yes, ma'am, it was the truth.

Paul F. Reid - Cross-Examination by Ms. Maye

1 Q Okay. And do you recall the plea judge asking you
2 if you understood why you were at you plea hearing?

3 A Absolutely.

4 Q Okay. And you told the plea judge that you did
5 understand why you were there, correct?

6 A Okay. And at the plea hearing as well, the judge
7 asked you if you were satisfied with Mr. Duncan's services
8 as your attorney?

9 A Correct.

10 Q And you told the judge that you were satisfied with
11 your representation?

12 A That's correct.

13 Q Okay. Let's see. And just going back a little
14 bit, the evaluation report by Dr. Swartz-Watts that was
15 read into the record and entered as an exhibit at the plea
16 hearing; is that correct?

17 A From the best of my recollection, when Judge
18 Nicholson asked about an evaluation, Mr. Duncan told him
19 that Dr. Schwartz-Watts had done an evaluation and that he
20 would explain at a later time. I do not remember anything
21 being discussed about the evaluation per se by Ms.
22 Schwartz-Watts. I mean, I can't -- I haven't had any
23 transcript where he tells Judge Nicholson that at a later
24 time, he would explain to him about the evaluation.

25 Q Okay. Well if I can refer you to page 31. Do you

Paul F. Reid - Cross-Examination by Ms. Maye

1 have a transcript up there with you?

2 Page 31 of the transcript starting at line 10
3 through page 34. The transcript reflects Mr. Duncan
4 reading the report for the Court. Do you agree with that?

5 A Yes, ma'am.

6 Q Okay. And I believe you said -- I just want to
7 make sure that I heard you correctly. You indicated that
8 Mr. Duncan told you that thirty years was a potential
9 sentence?

10 A He said that was what I was facing.

11 Q Okay.

12 A That was -- from my understanding, that was the
13 maximum sentence that I could receive.

14 Q Okay. And then I believe you stated that your
15 concern with your medications, that now you think you
16 weren't competent to do a plea that day based on your
17 knowledge of how the medications affect you?

18 A Yes, ma'am.

19 Q Hadn't you been taking Lortab quite a few years
20 prior to that plea.

21 A Yes, ma'am.

22 Q Okay.

23 MS. MAYE: I have no further questions.

24 MR. CAUGHMAN: I don't have anything on redirect,
25 Your Honor.

Mary Langdale - Direct Examination by Mr. Caughman

1 THE COURT: All right. You may step down, Mr.
2 Reid.

3 MR. CAUGHMAN: Your Honor, I call Mary Langdale,
4 Mr. Reid's sister.

5 THE COURT: All right. Langdale?

6 MR. CAUGHMAN: Langdale.

7 THE COURT: All right. Ms. Langdale, please come
8 forward. The clerk is going to place you under oath and
9 I'll let you have a seat.

10 THE WITNESS: Okay.

11 THEREUPON, .

12 MARY LANGDALE,
13 after being duly sworn, testified as follows:

14 THE CLERK: Please be seated and state your name
15 for the record.

16 THE WITNESS: Mary Elaine Langdale.

17 DIRECT EXAMINATION

18 By Mr. Caughman:

19 Q Ms. Langdale, you're Mr. Reid's sister; is that
20 right?

21 A Correct.

22 Q You were involved in the process of actually having
23 hired -- helping your brother to hire Mr. Duncan because he
24 was incarcerated at the time; is that correct?

25 A Yes.

Mary Langdale - Direct Examination by Mr. Caughman

1 Q Okay. Did you serve as a go between between Mr.
2 Reid and Mr. Duncan in some instances?

3 A Yes, sir.

4 Q All right. And how many times off the top of your
5 head -- and I know it's been a while -- how many times do
6 you think you talked to Mr. Duncan about your brother's
7 case?

8 A Face to face, probably three, maybe four times.

9 Q Okay. A couple of things. Did Mr. Duncan talk to
10 you about the plea that he was going to try to get your
11 brother to enter?

12 A Not on the first visit.

13 Q Okay.

14 A He pretty much was telling me what he was -- what
15 he could be facing. Thirty to thirty-five, life or
16 whatever.

17 Q Okay.

18 A And I think it was the second visit that it was
19 mentioned about pleading guilty.

20 Q Uh-huh.

21 A And maybe having a maximum of twenty-five.

22 Q Okay. And is that what you understood that was
23 being offered to your brother at this time?

24 A That's what I -- yes.

25 Q Okay. Did you talk to you brother about that after

Mary Langdale - Direct Examination by Mr. Caughman

1 that time? Did you and he have any discussions about
2 whether that's something that --

3 A Oh yes. Yeah.

4 Q -- he probably would consider taking?

5 A Uh-huh.

6 Q And indeed, y'all decided that that would be a good
7 deal if you could get it; didn't you?

8 A For him to plead guilty and go with the lesser
9 possible length.

10 Q Okay. And, in fact, that's what you expected to
11 happen the day that he pled guilty; is that right?

12 A Correct.

13 Q And you, like everybody else, was kind of shocked
14 when it didn't?

15 A Correct.

16 Q All right.

17 MR. CAUGHMAN: That's all I have for her, Your
18 Honor.

19 THE COURT: Ms. Maye, any questions?

20 MS. MAYE: No questions for her.

21 THE COURT: You may step down.

22 MR. CAUGHMAN: I call Mr. Duncan, Your Honor.

23 THE COURT: Come forward and be sworn.

24 ///

25 ///

John Duncan - Direct Examination by Mr. Caughman

1 THEREUPON,

2 JOHN DUNCAN,

3 after being duly sworn, testified as follows:

4 THE CLERK: Please be seated and state your name
5 for the record.

6 THE WITNESS: John Duncan, D-u-n-c-a-n. Everybody
7 calls me Jack.

8 DIRECT EXAMINATION

9 By Mr. Caughman:

10 Q Mr. Duncan, how did you come to represent Mr. Reid?

11 A I believe his sister called me or came to see me.
12 I seem to remember that.

13 Q Okay. And you ultimately then went to see him at
14 the jail; is that correct?

15 A Correct.

16 Q Okay. And you agree to -- you knew he was
17 represented by Arie Bax at the time; is that right?

18 A Right.

19 Q And so it -- obviously it had to have been --

20 A The public defender, yeah.

21 Q Yeah. And so there was an order of substitution
22 filed once you reached a plea agreement with him; that'd be
23 correct?

24 A I guess so. I don't remember, but I'm sure there
25 probably was.

John Duncan - Direct Examination by Mr. Caughman

1 Q All right. And do you remember what your plea
2 arrangement with him was?

3 A Only that I didn't get paid. I mean, I don't
4 remember what it was, but they never paid me, so...

5 Q All right. You first obviously met him at the
6 jail. Do you remember that conversation or parts -- what
7 you discussed at your initial meeting?

8 A I don't remember. I mean, I know my habit would
9 have been to have reviewed his file, the discovery, his
10 status. I think he gave a pretty good recitation of what
11 we talked about. His background, his prior record, his
12 family, those are the kind of things that I always ask and
13 I think Mr. Reid was accurate when he was describing our
14 meeting.

15 Q Okay. And at the time, he had no bond set; is that
16 right?

17 A I -- yes, that's correct.

18 Q Okay. And -- do -- would you have had this
19 discussion with him about the possibility of seeking a bond
20 for him?

21 A We did, but I told him it probably wasn't a good
22 idea because these folks, while they were nice people, were
23 of limited means financially, and I said any bond that, you
24 know, any bondsman -- any bond that's set, it would be --
25 still mean you'd have to pay somewhere at least 5 to

John Duncan - Direct Examination by Mr. Caughman

1 \$10,000, and I consider those kind of payments to be just
2 setting fire to your money. It just wasn't -- the cost
3 benefit analysis, I said it's just not something we -- we
4 really need to do.

5 Q Would you have had discussions with him at that
6 point in time about what the length of sentence he would be
7 facing would be?

8 A I don't remember exactly, but yeah we talked about
9 CSC with CSC and kidnapping and how that was potentially an
10 LWOP sentence.

11 Q Okay. And did you in fact go back and after
12 talking to him go back to your office or wherever do these
13 sorts of things and decide that he indeed he was or was not
14 facing that or that it appeared he was? The life without
15 possibility of parole?

16 A Well, I mean, I told him that he -- that that was a
17 possibility, but that there had been no LWOP letter or
18 notice from the solicitor's office.

19 Q Did you have discussions with him that you believed
20 you could get his sentenced reduced to the twenty to
21 twenty-five year range instead of the thirty or the life
22 without parole sentence?

23 A Yeah.

24 Q Okay. And --

25 A I thought that was the best possible result given

John Duncan - Direct Examination by Mr. Caughman

1 the horrendous nature -- repeat nature of what happened and
2 that between his circumstances, Donna Schwartz-Watts
3 reports and the characteristics of the judge, which were a
4 little unusual. I said, yeah, I think that's a
5 possibility.

6 Q Okay. And now -- but this -- I'm -- this would
7 have been -- I'm -- just so I'm clear. We're talking about
8 the first meeting he -- you had two meetings with him
9 actually, right; would that be correct? Is he correct in
10 that?

11 A I don't know. I mean, if he says it, that's fine,
12 I don't remember.

13 Q All right. And at the first one, you wouldn't have
14 had Donna Schwartz-Watts stuff to look at, correct?

15 A That's correct.

16 Q So the subsequent -- the conversation about how to
17 use that and the judge would have been of a secondary
18 conversation; is that right?

19 A That's fair.

20 Q Okay. Did you have discussions with either Mr.
21 Meyers or someone in his office about the possibility of a
22 plea negotiation for him?

23 A Well, certainly.

24 Q Okay. And what did you believe the results of that
25 to be?

John Duncan - Direct Examination by Mr. Caughman

1 A There was not going to be an LWOP letter. The --
2 there would not be -- Mr. Meyers indicated he wasn't going
3 to press for the maximum; it would just leave it up to the
4 judge, and that's what I reported to Mr. Reid.

5 Q Okay. You didn't ever go and tell Mr. Reid that
6 the max that they would recommend would be twenty-five
7 years?

8 A No.

9 Q Okay. And so his reliance upon that would have
10 been misplaced?

11 A I never told him that the solicitor's office was
12 going to recommend a particular -- or a set number of
13 years.

14 Q Okay. Did the solicitor's office -- they indicated
15 they would never -- they were not going to send the letter
16 indicating they were seeking life without parole, correct?

17 A That's correct.

18 Q All right. And they never put anything else in
19 writing; is that right? As far as a plea offer?

20 A That's correct. Which was normal.

21 Q Right. Right. Did you have a discussion with his
22 sister about the length of his sentence or what you
23 believed that he would come out of this with?

24 A I had lots of discussions with Ms. Langdale, yeah.
25 And we talked a lot.

John Duncan - Direct Examination by Mr. Caughman

1 Q So it's entirely possible that you indeed did?

2 A I'm sorry. That I had a conversation --

3 Q Did you have a conversation with her about the
4 length of sentence you thought her brother was facing?

5 A Sure. And what my hopes were, the best possible
6 results, and the maximum; yeah, I'm sure I did.

7 Q Okay. Did you -- did you -- during the course of
8 the trial itself, did you indicate to the Court that you
9 had had plea negotiations or that you believed that a plea
10 had been -- that you had negotiated a plea for Mr. Reid?

11 A A negotiated plea? No.

12 Q Okay. Because indeed there wasn't -- to your
13 knowledge -- to your mind, there was not negotiated plea,
14 simply leaving open to the judge the sentence that was
15 going to be handed down?

16 A There was not a negotiated plea where the Court
17 could say yes or no and not alter it, no.

18 Q All right. And so you didn't object when the
19 sentence was imposed. You didn't -- you know -- make an
20 objection for the record at that time; is that correct?

21 A That's true.

22 Q And you didn't file a motion for reconsideration
23 because to your mind -- from what you're telling me -- to
24 your mind, it was being left up to the judge and everyone
25 understood that; is that right?

John Duncan - Direct Examination by Mr. Caughman

1 A Yes.

2 Q Okay. Obviously, Mr. Reid is claiming he didn't
3 understand that. He believes something else was going on.
4 Where would he -- do you have any idea where he would have
5 gotten that? Was he -- was his reliance upon what your
6 discussions with him misplaced, do you?

7 A I don't know what Mr. Reid's motivation was. I
8 mean, he -- I always found him to be very pleasant, nice
9 fellow to talk to who had a god-awful drug problem; and
10 what Donna Schartz-Watts said he -- this was entirely
11 preventable and that, you know, he had genetic --
12 preexisting genetic conditions that affected his life and
13 that the -- you know his personal story was just
14 heartbreaking.

15 I mean, his small child, his wife, and those kind
16 of stressors were just awful, but his -- what he did after
17 that was even worse, so --

18 Q And you were well aware -- you were well aware of
19 the difficulties that he had faced. You had read -- you
20 had talked to him, you had read Donna's report, you knew
21 all that?

22 A Oh yeah. And she was very clear that he -- that he
23 was very treatable, that most sex offenders are not. That
24 absent the drug abuse, he was not the -- absent the drug
25 abuse he was a normal contributing member of society. And

John Duncan - Direct Examination by Mr. Caughman

1 that this was -- he was one of, you know, just -- an
2 incontestably small member of society that cocaine had this
3 effect on him and she was -- she was -- she and I had long
4 conversations about how this just didn't have to happen and
5 that Mr. Reid was not a victim, but it could have been
6 prevented and I knew that with Judge Nicholson, too.

7 Judge Nicholson has always been big on treatment
8 and possibilities and he's -- we've had several
9 conversations about the lack of treatment possibilities in
10 South Carolina; and so that's one reason why I thought a
11 twenty to twenty-five year sentence was possible because of
12 Judge Nickleson's characteristics.

13 Q Got ya. Were you aware -- you were aware of his
14 past hospitalizations and the other -- the other
15 problems -- the other psychiatric problems he faced?

16 A Yes.

17 Q The mental and emotional problems he faced?

18 A Right.

19 Q And you -- I think you just said that you and Ms.
20 Schwartz-Watts actually discussed those at some length as
21 well; is that correct?

22 A Oh yeah. No doubt.

23 Q Okay. And you ultimately came to the conclusion
24 in -- I guess with your conversations with her report that
25 there wasn't any reason to pursue this further as far as

John Duncan - Direct Examination by Mr. Caughman

1 evaluations or other looks into his mental competency were
2 concerned; is that correct?

3 A Well, I considered Dr. Schwartz-Watts to be the
4 best available in South Carolina; and I trusted her
5 judgement implicitly. I -- after the fact, I did regret
6 that in Mr. Reid's first case from the '80's when he went
7 in front of the parole board, the family did not bring me
8 those records until sometime after his sentence from Judge
9 Nicholson. And when looking through those records, I would
10 have liked to have had those records, which I had no idea
11 existed, at the time of his plea. And in fact, it -- part
12 of what the victim's husband said at the sentencing, turned
13 out to just be not true. I mean, for whatever reason, he
14 lied -- he lied to Judge Nicholson about what had happened
15 previously and what he had done. And I had no idea why
16 that would happen, but I didn't have those parole board
17 records until sometime after the plea.

18 Q And at that point in time, they weren't of any
19 substantive use to you?

20 A Oh, it was far too late to do anything. I would
21 have liked to have had them before the plea.

22 Q And you do a good bit of criminal work; is that
23 correct, Mr. Duncan?

24 A About 50 percent of my practice, yes.

25 Q Okay. And ultimately you realize that he did a

John Duncan - Cross-Examination by Ms. Maye

1 direct appeal of his sentence -- or his -- yeah -- well,
2 the sentence. And claimed that the judge had abused his
3 discretion in sentencing him to that length of time; is
4 that correct? Were you aware of that?

5 A No, I did not know anything about the appeal.

6 Q All right. And so you wouldn't have any knowledge
7 that your failed -- that a failure to object to the
8 sentence or to request it's modification would have
9 prevented him from bringing that up on appeal; is that
10 right? Not something you could have helped with at that
11 point in time?

12 A Well, I didn't do it, so I -- I mean, I confess. I
13 didn't do it.

14 Q Right.

15 A Yeah.

16 Q Okay.

17 MR. CAUGHMAN: That's all I have of this witness,
18 Your Honor.

19 THE COURT: All right. Ms. Maye?

20 MS. MAYE: May it please the Court, Your Honor.

21 CROSS-EXAMINATION

22 By Ms. Maye:

23 Q Mr. Duncan, when you met with Mr. Reid, did y'all
24 discuss the charges that were -- that were --

25 A Yes.

John Duncan - Cross-Examination by Ms. Maye

1 Q Okay. And did y'all discuss the indictments and
2 the elements of the two offences?

3 A I'm sure we did. I didn't -- I don't specifically
4 remember, but I -- his account of our meetings sounds
5 accurate to me.

6 Q In your meetings and discussions with Mr. Reid, did
7 you feel that he understood y'all's discussions?

8 A I thought so. He had a certain amount of anxiety
9 that I thought was -- you know, normal, but he was
10 definitely anxious; but, yeah, I think he understood
11 everything.

12 Q And did you review the possible punishments for
13 each charge with Mr. Reid?

14 A Yes.

15 Q Did you feel there was any reason to doubt Mr.
16 Reid's competence to plead guilty if had proceeded to
17 trial?

18 A Not after my discussions with Dr. Swartz-Watts.

19 Q And you did say that you filed a discovery motion?
20 Or did you receive the discovery from Mr. Bax, I guess?

21 A I believe I received it from Mr. Bax.

22 Q Okay.

23 A I don't remember filing one myself.

24 Q Okay. And do you recall, just general items that
25 were in the discovery materials?

John Duncan - Cross-Examination by Ms. Maye

1 A Well, there were extensive statements from the
2 victim, from Mr. Reid; as I recall, he was quite talkative
3 at the time he was arrested. And there were -- there were
4 lots of reports, lots of incident reports, lots of -- lots
5 of statements from witnesses.

6 Q I believe you stated that you and Mr. Reid reviewed
7 all the discovery materials together?

8 A I don't think I said that, but -- and I think we
9 would have. I don't specifically remember it, but that
10 would have been my habit.

11 Q Okay. And Mr. Reid -- I think you just stated that
12 he gave a written confession, correct?

13 A That's to the best of my recollection.

14 Q Okay.

15 A I know he gave an oral one. I don't remember the
16 written one specifically.

17 Q Okay. So do you recall if you received a copy of
18 that confession or a written copy of it?

19 A Well, I recall the -- at the very least the
20 detective's conversation, the detective's report relating
21 the conversation with Mr. Reid.

22 Q And did you review or discuss the contents of that
23 oral confession or written confession with Mr. Reid?

24 Q I believe so.

25 Q Okay. Did you have any -- based on your review or

John Duncan - Cross-Examination by Ms. Maye

1 discussion with the detectives or the confession and your
2 discussion with Mr. Reid, did you see any issues with the
3 confession? Whether it was voluntary or not?

4 A Well, there were issues, because -- but they were
5 mainly because of the level of his intoxication; because
6 his intoxication was voluntary. I have no doubts that he
7 had -- he had -- he related drinking -- I want to say a
8 case-and-a-half of beer this day before the incident. He
9 related that he had been awake for a couple of days and had
10 done like -- it was some ridiculous amount, something like
11 nine grams of cocaine; and like a day and a half or
12 something; and -- I mean I have no doubts that he was under
13 the influence at the time, but the -- I didn't see a
14 defense. I'll put it that way.

15 Q Okay. And did Mr. Reid indicate to you that he
16 wanted a plea from the get go or did y'all initially
17 discuss going to trial?

18 A We discussed trial. He told the arresting officer
19 he wanted to plead guilty. I think when he was arrested --
20 I think that's in my memory somehow.

21 Q And --

22 A He always showed great remorse every time I talked
23 to him.

24 Q Did Mr. Reid provide you with any witnesses who
25 might there been beneficial to his case?

John Duncan - Cross-Examination by Ms. Maye

1 A Well, I mean I spoke to his sister. I had retained
2 Donna Swartz-Watts to speak to him. I looked at the
3 discovery.

4 Q And did you and Mr. Reid discuss -- I guess this
5 really was -- with regard to the mental evaluation, did you
6 discuss any possible defenses and their likelihood of
7 success?

8 A Well, I would have sent it to him and and talked to
9 him about it; and how we -- how we could use it at the
10 plea.

11 Q Did y'all ever discuss any, I guess, insanity
12 defense or mentally ill issues?

13 A Well, he had mental illnesses. I mean there were
14 no doubts about that; but nothing that approached the
15 McNauten Standard; and I didn't see where the voluntary
16 intoxication and the mental illnesses that he had would be
17 beneficial except in the sence of mitigation for his
18 conduct.

19 Q Okay. Do you feel like you had sufficient time to
20 prepare Mr. Reid's case?

21 A Yes.

22 Q And you did engage in plea negotiations on Mr. Reid's
23 behalf?

24 A I spoke to Mr. Myers several time.

25 Q Okay. And you discussed all the plea negotiations

John Duncan - Cross-Examination by Ms. Maye

1 and offers with Mr. Reid?

2 A Certainly.

3 Q Okay. And did you discuss the benefits and draw
4 backs of pleading guilty versus proceeding to trial?

5 A Yes.

6 Q And I believe you said stated this earlier. There
7 was an issue of possibly life without parole?

8 A Well, I told him that there had been no letter from
9 the solicitor's office, but that if he -- if we had related
10 a desire that -- or a demand that the solicitor prove their
11 case with a jury trial, that I was certain that that would
12 be on the table.

13 Q Okay. But did you ever tell him, If you don't
14 plead you're going to get life without parole?

15 A I didn't tell him you were going to receive life
16 without parole. I told him that was something that we had
17 had to consider.

18 Q Okay. And did you ever promise Mr. Reid no more
19 than a twenty-five year sentence if he pled?

20 A I didn't promise it because that's not within my
21 power to promise.

22 Q But -- and that twenty to twenty-five years, that's
23 what you requested on his behalf at the plea?

24 A That's correct.

25 Q Okay.

John Duncan - Cross-Examination by Ms. Maye

1 A I was -- I think I'd even considered fifteen to
2 twenty, but during a plea you kind of get a sense for
3 what's reasonable and what's not reasonable and how
4 credible you're going to be and so I said, Well, asking for
5 fifteen right now is just not going to be credible. So I
6 made a mental adjustment and said twenty to twenty-five is
7 what I --

8 Q And would you have ever promised in your
9 discussions with Ms. Langdale that a twenty to twenty-five
10 year?

11 A I would not have promised it because I can't -- I
12 can't promise that. That's not within my power.

13 Q And do you recall how many years total for all the
14 charges that Mr. Reid was facing? Because he didn't
15 receive the maximum, did he?

16 A Well, he could have gotten consecutive time, which
17 was somewhere around a hundred years.

18 Q Right. And was it ultimately Mr. Reid's decision
19 to enter a guilty plea?

20 A I always tell the clients that you're the one
21 that's got to live with it.

22 Q Okay. And prior to the plea Mr. Reid, he was
23 evaluated by Dr. Swartz-Watts?

24 A That's correct.

25 Q And did you -- was the evaluation court ordered or

John Duncan - Cross-Examination by Ms. Maye

1 did you set that up? Do you recall?

2 A I want to say I did it myself. I just don't
3 remember.

4 Q And you say that you discussed this evaluation
5 report with Mr. Reid.

6 A I gave him a copy.

7 A And did you at any time tell -- inform -- tell Mr.
8 Reid that Dr. Schwartz-Watts would be at the plea hearing.

9 A I may have. I seem to remember that she had a last
10 minute problem.

11 Q Okay?

12 A But -- because I knew Judge Nickelson had a high
13 regard for her; and I may have told him that she was going
14 to be there because that may have been my belief.

15 Q But you did, in fact -- you were able to read the
16 findings of the report into the transcript?

17 A Certainly.

18 Q Now, did you -- did you see any reason to object to
19 the sentence at the time?

20 A I'm sorry, what did you say?

21 Q Did you see any reason to object to the sentence
22 that Judge Nickelson handed down at the time?

23 A No. I probably should have, but I didn't.

24 Q Okay. If you had objected, do you think based on
25 your experience and the facts of the case that an objection

John Duncan - Redirect Examination by Mr. Caughman

1 would have been successful?

2 A Knowing Judge Nickelson, he would probably have set
3 it for -- I have a high regard for Judge Nickelson and I
4 think he would have taken it under advisement. He would
5 not have ruled on the spot.

6 Q I have no further questions, thank you.

7 THE COURT: Mr. Caughman?

8 MR. CAUGHMAN: I just have two, Your Honor, very
9 quickly.

10 **REDIRECT EXAMINATION**

11 By Mr. Caughman:

12 Q Did you and Ms. Swartz-Watts, when you were talking
13 to her about the evaluation that she was going to do with
14 Mr. Reid, did y'all discuss the possibility of working into
15 the fact that your word was involuntary intoxication, plus
16 his mental illnesses and actually even plus the
17 prescription drugs he was on at the time, would have made
18 him competent to -- or capable of making a confession that
19 was a valid confession at the time?

20 A I don't specifically -- I'm sure I did, but I don't
21 specifically remember my conversation with Donna. We
22 talked for a long time on several occasions. The
23 officer -- I did speak to the officer in person, and I
24 thought the officer was articulate and very credible. He
25 would have made a credible, articulate witness as to Mr.

John Duncan - Redirect Examination by Mr. Caughman

1 Reid's mental condition at the time; and I -- I didn't see
2 much hope there.

3 Q Okay.

4 A Not with the total circumstances of all the facts
5 of Mr. Reid's case.

6 Q And finally, just so I'm clear, you didn't tell Mr.
7 Reid at any point in time that -- that they -- that part of
8 the plea negotiations you had had was that life without
9 parole was going to be taken off the table in return for
10 him making a guilty plea? Or did you or did you?

11 A I probably did say, you know, you're not going to
12 be facing LWOP --

13 Q If you plead?

14 A -- because of the plea.

15 Q Okay.

16 A If there were not a plea, then yeah, that was
17 something we were going to have to probably confront if we
18 said we want a jury trial.

19 Q Okay.

20 MR. CAUGHMAN: That's all I have, Your Honor.

21 THE COURT: Okay. Thank you, Mr. Duncan. You may
22 step down.

23 MR. CAUGHMAN: That's all we have.

24 THE COURT: Ms. Maye, you're not calling any
25 witnesses?

1 MS. MAYE: No, Your Honor.

2 THE COURT: Very well. All right. Do the parties
3 have anything else for the Court to consider?

4 MR. CAUGHMAN: No, Your Honor.

5 THE COURT: All right. I'm going to review the
6 entire file and I'll let y'all know my decision after I've
7 read the entire record.

8 MR. CAUGHMANS: Yes, sir.

9 THE COURT: I'll advise you as promptly as I can
10 get that done.

11 MR. CAUGHMAN: Thank you, sir.

12 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

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4
5
6 I, THE UNDERSIGNED, Brenda J. Sigwald,
7 Official Court Reporter for the Fifth Judicial Circuit of
8 the State of South Carolina, do hereby certify that I
9 reported the proceedings in the captioned case in the Court
10 of Common Pleas in and for the State of South Carolina on
11 the 30th day of January, 2012.

12 I FURTHER CERTIFY that the foregoing pages,
13 numbered 1 through 46 constitute a true, accurate and
14 complete transcript of said hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 29th day of August, 2012.

19
20
21
22 *Brenda J. Sigwald*
23 Brenda J. Sigwald,
24 Court Reporter and Notary Public
25 For the State of South Carolina
 My commission expires
 January 4, 2020.

ORIGINAL

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

COUNTY OF LEXINGTON

2010-CP-32-5312

Paul Fletcher Reid, # 127458,
Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,
Respondent.

2012

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed December 14, 2010. Respondent made its Return on February 28, 2011. An evidentiary hearing into the matter was convened on January 30, 2012, at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Montford Caughman, Esquire. The Respondent was represented by Kaelon E. May of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Additionally, the Applicant offered the testimony of Mary Langdale. The State offered the testimony of John Duncan, Esquire (Mr. Duncan) Applicant's plea counsel. This Court also had before it the records of the Lexington County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the October 2007 term of the Lexington County Grand Jury for Kidnapping (2007-GS-32-

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3176), and three counts of Criminal Sexual Conduct—First Degree (2007-GS-32-3173, -3174, -3175). He was represented by Jack Duncan, Esquire. On January 30, 2008, the Applicant appeared in the Lexington County Courthouse and pled guilty as charged. He was sentenced by the Honorable J.C. Nicholson, Jr., to confinement for an aggregate period of thirty (30) years.

A timely notice of appeal was filed on the Applicant's behalf. The South Carolina Court of Appeals subsequently affirmed the Applicant's conviction by decision dated on or about February 1, 2010 (2010-UP-164). Remittitur was issued on or about February 24, 2010.

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

1. Ineffective Assistance of Counsel
 - a. "Counsel was ineffective for not timely objecting to the court sentence of his client to the maximum 30 year sentence."
 - b. "Blair Hearing"
 - c. Failure to investigate possible defenses
 - d. Failure to object to arrest warrants and indictments
 - e. Failure to request Denno hearing
 - f. Attorney promised Applicant would receive 20-25 year sentence
2. Involuntary Guilty Plea
 - a. "Counsel informed defendant if he didn't accept the plea the state would be seeking a life without parole sentence."
3. Subject Matter Jurisdiction
 - a. "Court lacked subject matter jurisdiction to accept an involuntary plea, Blair Hearing."

II. SUMMARY OF EVIDENCE AND TESTIMONY PRESENTED AT THE PCR

EVIDENTIARY HEARING

Applicant's Testimony

At the PCR hearing Applicant testified that his attorney did not look at the issue of competency adequately. Applicant testified that he was arrested on May 9, 2007 and remained in jail for eight months prior to his guilty plea. Applicant testified that he was originally represented by Arie Bax, but that Applicant was not satisfied with Mr. Bax and Applicant then obtained Mr. Duncan's services. Applicant testified that counsel visited Applicant, that the first time they met counsel and Applicant discussed Applicant's background, the charges, Applicant's family, issues from Applicant's past, and Applicant's wife's death. Applicant testified that counsel spoke with Applicant's sister, that Applicant was initially denied bond, and that counsel thought he could get Applicant out on a bond. Applicant testified that on the second and last occasion he met with counsel that counsel informed Applicant the solicitor's office was offering to take life without parole off the table in exchange for a guilty plea and that Applicant would be looking at twenty to twenty-five years. Applicant testified that counsel explained Applicant was eligible for LWOP based on a 1984 conviction, that Applicant never saw the plea offer in writing, and that Applicant spoke with his sister about entering a plea. Applicant testified that counsel told Applicant there was a possibility of a thirty year sentence.

Applicant testified that counsel did not object to the length of his sentence, that counsel did ask the judge for a twenty to twenty-five year sentence, and that counsel did not file a motion to reconsider. Applicant testified that in May 2006, he was in drug rehabilitation, that Applicant suffered from heart conditions, and that he was self-medicating with cocaine, loritab, and alcohol.

Applicant testified that his mother died in 2003, then his wife died soon after due to complications from giving birth to Applicant's son. Applicant testified that he underwent a mental evaluation prior to the guilty plea, that Applicant discussed the results with counsel, and that counsel said the Doctor would be at the guilty plea hearing.

Applicant testified that on the morning in his guilty plea he was taking loritab, that when Applicant arrived at court he felt he was in a good state of mind, but that Applicant is not sure if he was actually competent the day of his plea. Applicant testified that he knew how the medication influenced his mind. Applicant testified that he had taken the medication for years prior to his guilty plea hearing.

Mary Langdale's Testimony

At the PCR hearing, Ms. Langdale testified that she is the Applicant's sister and that she hired Mr. Duncan to represent Applicant. Ms. Langdale testified that she served as a go-between Mr. Duncan and Applicant, and that she met with Mr. Duncan three to four times. Ms. Langdale testified that Mr. Duncan did not speak to her about the plea offer after the first visit, but that at the second visit Mr. Duncan mentioned Applicant pleading guilty with a maximum of twenty-five years. Ms. Langdale testified that Applicant decided pleading guilty and receiving twenty-five years was the best option.

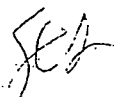
Mr. Duncan's Testimony

At the PCR hearing counsel testified that the Applicant's sister, Ms. Langdale, retained counsel. Counsel testified that the initial meeting with Applicant, counsel reviewed Applicant's file, the discovery, Applicant's background, prior record with Applicant. Counsel testified that he and Applicant discussed seeking a bond but Applicant had limited means and any bond set would be

\$10,000 to \$15,000, and that Applicant would not be able to afford such amount. Counsel testified that he discussed with Applicant the charges, criminal sexual conduct and kidnapping, and the potential of a life without parole sentence. Counsel testified that he discussed with Applicant that LWOP was a possibility, but that they had not received a notice of intent to seek LWOP from the solicitor's office, and that counsel believed Applicant would get thirty years instead of LWOP. Counsel testified that Applicant understood their discussions.

Counsel testified that the discovery materials consisted of, but not limited to, statements from the victim, Applicant's statements, incident reports, and witness statements. Counsel testified that he spoke with the officer who took Applicant's confession and that counsel reviewed Applicant's confession with Applicant. Counsel testified that the issues he had with Applicant's confession included the Applicant's level of intoxication at the time Applicant gave the statement, that Applicant drank the day before the incident and had been awake for days due to ingesting nine grams of cocaine. Counsel testified that he and Applicant discussed proceeding to trial, that counsel met with Applicant's sister at Applicant's request, and that counsel met with the arresting officer to ascertain his potential testimony. Counsel testified that based on his conversation with the arresting officer, counsel believed the officer would be very credible, articulate and would make a good witness for the state at trial. Counsel testified that he and Applicant discussed possible defenses. Counsel testified that with regard to an insanity defense and competency issues that based on Dr. Schwartz-Watts' evaluation, Applicant's mental illness issues did not approach the McNaughton standard. Counsel testified that he spoke with Dr. Schwartz-Watts at length about Applicant.

Counsel testified that he engaged in plea negotiations with the solicitor and that the solicitor informed counsel they would not seek LWOP, they would not press for the maximum and leave



sentencing up to the judge's discretion. Counsel testified that he never told Applicant that the solicitor would recommend twenty-five years, that the solicitor never put anything in writing, and that counsel discussed with Applicant's sister the best possible result as well as the maximum that Applicant could receive. Counsel testified that it was not indicated to the plea court that Applicant's plea was a negotiated plea, that counsel did not object to the sentence imposed because the sentence was being left to the judge's discretion. Counsel testified that Applicant was facing a total of 120 years for all the charges, that counsel never promised Applicant or Applicant's sister that Applicant would receive a specific sentence, and that Applicant made the decision to plead guilty.

Counsel testified that he reviewed Dr. Schwartz-Watts' evaluation report with Applicant and that Applicant was aware prior to the guilty plea that counsel would present the report to the plea judge. Counsel testified that the medical evaluation indicated that Applicant's actions were preventable, that Applicant had preexisting conditions, and that the doctor indicated Applicant was treatable absent drug abuse. Counsel testified that he was well aware of the difficulties faced by Applicant, that the plea judge was always 'big' on treatment possibilities and that this was one of the reasons counsel believed a twenty-five year sentence was possible. Counsel testified that he considered Dr. Schwartz-Watts as one of the best available doctors in South Carolina. Counsel testified that Applicant's family did not obtain Applicant's medical records concerning Applicant's charge in 1984 until after the guilty plea. Counsel testified that part of the victim's husband's statement at the guilty plea was not true but that counsel was not aware of that because counsel did not Applicant's parole board records until after the guilty plea.

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III. APPLICABLE LAW

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

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

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



IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

1. Ineffective Assistance of Counsel

a. Failure to Object to Sentence

Applicant asserts that counsel was ineffective for failing to object to the court's sentence of thirty years. Applicant faced a maximum sentence of 120 years. Counsel testified that he never promised Applicant that Applicant was going to receive a twenty-five year sentence and that counsel discussed with Applicant the possible punishments for each charge. Counsel testified that he did not object to the court's thirty year sentence because it was not a negotiated plea and that sentencing was being left up to the judge's discretion, and that Applicant did not receive the maximum sentence possible. A trial court has broad discretion in imposing criminal sentences within the limits prescribed by law. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976); Clark v. State, 259 S.C. 378, 192 S.E.2d 209 (1972). The courts normally have no jurisdiction to correct a sentence given within statutory limits. To be entitled to relief, the Applicant must prove that the alleged excessive sentence was the result of partiality, prejudice, oppression or corrupt motive, or that the sentence



constitutes cruel and unusual punishment per se. Clark, Id.; State v. Cogdell, 273 S.C. 563, 257 S.E.2d 748 (1979). This Court finds that Applicant did not receive a maximum sentence. Applicant has failed to provide any grounds on which counsel should have based an objection to Applicant's sentence on. Counsel provided a rational explanation as to why he did not object to Applicant's sentence and this Court accepts counsel's reasoning. Furthermore, there has been no showing by the Applicant that the outcome of his guilty plea would have been different if this objection has been made. This Court finds that Applicant has failed to show that counsel's performance was deficient and any resulting prejudice; therefore, this allegation is denied and dismissed.

b. Failure to Request Blair Hearing

Applicant asserts that counsel was ineffective for failing to request a competency hearing. At the PCR hearing Applicant testified that he was evaluated prior to his guilty plea. Applicant testified that on the day of his guilty plea he took his prescribed medication and that Applicant felt he was in a 'good state of mind.' Competency to enter a guilty plea is no more stringent than competency to stand trial. Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992). To sustain a claim of incompetency in fact at a plea, applicant in a PCR proceeding must show by the preponderance of the evidence he was incompetent at the time of plea. Id. To sustain a claim counsel was ineffective for failing to request a competency hearing, an applicant must show a reasonable probability that he would have been found incompetent. Id. This Court finds that the Applicant has failed to produce any evidence from any medical professional or produce any evidence other than his bare assertion that he did not comprehend what he doing at his guilty plea hearing because he was incompetent. The guilty plea transcript reflects that Applicant clearly understood the questions asked of him and that Applicant responded in an appropriate manner. Applicant was evaluated by Dr. Schwartz-Watts prior to his

guilty plea and was found to be competent to assist in his defense. This Court finds that Applicant failed to show counsel's performance was deficient and any resulting prejudice; therefore, this allegation is denied and dismissed.

c. Failure to Investigate Possible Defenses

Applicant asserts that counsel was ineffective for failing to investigate possible defenses. At the PCR hearing counsel testified that he reviewed the Applicant's confession with Applicant. Counsel testified that the voluntariness of Applicant's confession was a potential issue because of Applicant's level of intoxication and lack of sleep at the time Applicant gave the confession. Counsel testified that he interviewed the arresting officer concerning the procedures taken during Applicant's confession. The Applicant was evaluated and counsel testified that while Applicant had mental illness issues, nothing rose to the McNaghton standard. Counsel testified that he and Applicant discussed possible defenses based on a review of the discovery, the mental evaluation, and counsel's discussion with the arresting officer.

To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990). Counsel testified that Applicant's family did not provide counsel with Applicant's records from his previous charge or Applicant's

parole board records until after the plea. However, the Applicant could not point to any specific matters counsel failed to discover which would have caused him to proceed with a jury trial instead of pleading guilty. This Court finds the Applicant offered no evidence at the PCR hearing that counsel could have found that would have been likely to have any outcome more favorable to the Applicant. The Applicant did not produce any witnesses or offer any other evidence from which this Court could conclude that the outcome of the case would likely have been different, had that evidence been developed. Therefore, this Court finds that this allegation is denied and dismissed.

2. Involuntary Guilty Plea

Applicant asserts that counsel informed Applicant that if Applicant did not accept the plea, that the state would be seeking life without parole, and that Applicant believed he would not receive more than twenty-five years. This Court finds that Applicant has failed to meet his burden of proof in showing that his guilty plea was involuntary. At the plea hearing Applicant indicated to the plea judge that the medication he was taking did not interfere with Applicant's thought process. (Tr. p.9-10). Counsel indicated to the plea court that he explained to Applicant the maximum time on each indictment was thirty (30) years. (Tr. p.4). The Applicant informed the plea judge that he had not been threatened or coerced by anyone into pleading guilty. (Tr. p.14). Applicant indicated to the plea judge that he was in fact guilty. (Tr. p.15). The plea judge asked Applicant if Applicant understood and knew about his right to a jury trial, and Applicant indicated that he did not want a jury trial. (Tr. p.13-14). The Applicant told the plea judge that he was satisfied with counsel's representation and that counsel had done everything Applicant asked of him. (Tr. p.10-11). Additionally, Applicant agreed with the facts as stated by the solicitor and Detective Russell. (Tr. p.16-20). Counsel presented Dr. Schwartz-Watts' evaluation to the plea court for review. This Court finds the

overwhelming evidence in the record and presented through the testimony of the witnesses at the hearing reflects that the plea was knowingly and voluntarily entered. Boykin v. Alabama, 395 U.S. 238 (1969); Vickery v. State, 258 S.C. 33, 186 S.E.2d 827 (1972). Therefore, this Court finds that this allegation is denied and dismissed.

All Other Claims

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

V. CONCLUSION

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

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

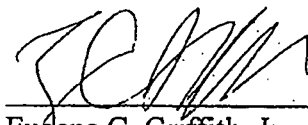


obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 21 day of March, 2012.



Eugene C. Griffith, Jr.
Presiding Judge

Nawbeny, South Carolina

WITNESSES

Lexington County Sheriffs Department

Eric Russell

DVM

ARREST WARRANT NUMBER

J054799

ACTION OF GRAND JURY

TRUE BILL

Foreman

Foreperson of Grand Jury

Date: 10-29-07

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-32- 3173

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

OCTOBER TERM 2007

THE STATE

vs.

PAUL FLETCHER REID

CDR #: 0160

Indictment for

Criminal Sexual Conduct, First Degree

§ 16-03-0652

DONALD V. MYERS, SOLICITOR

SOLICITOR

WITNESSES

Lexington County Sheriff's Department
Eric Russell

DVM

ARREST WARRANT NUMBER

J054800

ACTION OF GRAND JURY

TRUE BILL

Foreman

Foreperson of Grand Jury

Date: 10-29-07

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-32- 3174

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

OCTOBER TERM 2007

THE STATE

vs.

PAUL FLETCHER REID

CDR #: 0160

Indictment for

Criminal Sexual Conduct, First Degree

§ 16-03-0652

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Criminal Sexual Conduct, First Degree

§ 16-03-0652

RETURNED
GARY W. R.
521 GIBSON
LEXINGTON,
251-2542

At a Court of General Sessions, convened on October 2007, the Grand Jurors of Lexington County present upon their oath:

That PAUL FLETCHER REID, did in Lexington County, South Carolina on or about May 9, 2007, willfully and unlawfully engage in and commit sexual battery upon the victim, Tracy Williams, to wit: the defendant forced the victim to perform fellatio (oral sex) under the following circumstances:

- (a) the defendant/actor used aggravated force to accomplish the sexual battery; or
 - (b) the victim submitted to the sexual battery by the defendant/actor under circumstances where the victim was also the victim of forcible confinement, kidnapping, burglary, or any other similar offense or act,
- all in violation of Section 16-3-652, of the 1976 Code of Laws of South Carolina, as amended.

A TRUE COPY
[Signature]
Lexington County, S.C. Probate & P.C.

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

[Signature]
SOLICITOR

WITNESSES

Lexington County Sheriffs Department

Eric Russell

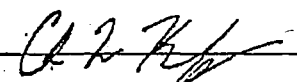
DVM

ARREST WARRANT NUMBER

J054801

ACTION OF GRAND JURY

TRUE BILL


Foreman

Foreperson of Grand Jury

Date: 10-29-07

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-32- 3175

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

OCTOBER TERM 2007

THE STATE

vs.

PAUL FLETCHER REID

CDR #: 0160

Indictment for

Criminal Sexual Conduct, First Degree

§ 16-03-0652

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Criminal Sexual Conduct, First Degree

§ 16-03-0652

143
RETURN
GARY W. A
521 GIBSON
LEXINGTON,
951-2542

At a Court of General Sessions, convened on October 2007, the Grand Jurors of Lexington County present upon their oath:

That PAUL FLETCHER REID, did in Lexington County, on or about May 9, 2007, willfully and unlawfully engage in and commit sexual battery upon the victim, Tracy Williams, to wit: the defendant engaged in cunnilingus (oral sex) upon the victim under the following circumstances:

- (a) the defendant/actor used aggravated force to accomplish the sexual battery; or
- (b) the victim submitted to the sexual battery by the defendant/actor under circumstances where the victim was also the victim of forcible confinement, kidnapping, burglary, or any other similar offense or act,

in violation of Section 16-3-652, of the 1976 Code of Laws of South Carolina, as amended.

A TRUE COPY

[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

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

[Signature]
SOLICITOR

WITNESSES

Lexington County Sheriffs Department

Eric Russell

DVM

ARREST WARRANT NUMBER

J054802

ACTION OF GRAND JURY

TRUE BILL

Foreman

Foreperson of Grand Jury

Date: 10-29-07

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-32- 3176

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

OCTOBER TERM 2007

THE STATE

vs.

PAUL FLETCHER REID

CDR #: 0095

Indictment for

Kidnapping

§ 16-03-0910

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Kidnapping

§ 16-03-0910

of 145
RETURN WARRANT
GARY W. REINH
521 GIBSON RD.
LEXINGTON, SC
2542
ORIG:

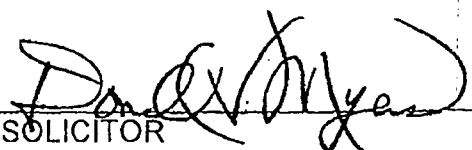
At a Court of General Sessions, convened on October 2007, the Grand Jurors of Lexington County present upon their oath:

That PAUL FLETCHER REID did in Lexington County, South Carolina on or about May 9, 2007, unlawfully, willfully, and feloniously seize, inveigle, decoy, kidnap, or confine the victim TRACY WILLIAMS by any means whatsoever in that the defendant did unlawfully deprive the victim of her freedom without authority of law, in violation of § 16-3-910 of the 1976 Code of Laws of South Carolina, as amended.

A TRUE COPY

Lex. Co. C.G.C.P., O.S. & F.C.

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


SOLICITOR