

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Edgefield County

Honorable William A. McKinnon, Circuit Court Judge

\_\_\_\_\_  
JERRY DEAN HEARD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-000731

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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S.C. SUPREME COURT

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State of South Carolina )  
County of Edgefield )

In the Court  
Of General Sessions

Indictment No.: 2016GS1900385

State of South Carolina, )  
Plaintiff, )  
vs. )  
Jerry Dean Heard, )  
Defendant. )

Transcript of Record

July 24, 2017  
Edgefield, South Carolina

B E F O R E:

The Honorable R. Scott Sprouse, Judge.

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

Suzanne Mayes, Deputy Solicitor  
Attorney for the State

Erik J. Drylie, Esquire  
Attorney for the Defendant

Brenda J. Sigwald, Circuit Court Reporter  
To The Honorable Doyet A. Early III  
P.O. Box 206, Jackson, South Carolina 29831

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

**GUILTY PLEA**

1  
2 THE COURT: Madam Solicitor, you may call your  
3 case.

4 MS. MAYES: Yes, sir. We have been made aware that  
5 the defendant, Mr. Heard, now wishes to tender a plea of  
6 guilty on the indictment for criminal sexual conduct with a  
7 minor in the first degree, 2016-GS-19-385. Your Honor,  
8 this is an indictment pursuant to South Carolina code  
9 section 16-3-655(a)(2). And this particular statute  
10 involves an offender who had a prior conviction for sex  
11 offender registry order, regarding a prior sex offense.  
12 And it certainly applies to Mr. Heard in this case.

13 And he tenders a plea of guilty at this time  
14 pursuant to this indictment which involves the sexual  
15 battery of **MINOR 2** on or about January 1st, 2015  
16 through March 12, 2015. In this particular case, we do  
17 know the exact date of at least one incident, which would  
18 be the early morning hours of January 24th, 2015.

19 THE COURT: All right. And this is without  
20 recommendation?

21 MS. MAYES: This is a straight up plea, Your Honor,  
22 10 to 30 years.

23 THE COURT: All right. You are Jerry Dean heard;  
24 is that correct, sir?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Mr. Clerk, is the defendant under oath?

2 THE CLERK: No, sir, not yet.

3 THE COURT: Please put him under oath.

4 JERRY DEAN HEARD,

5 having been duly sworn, testified as follows:

6 THE COURT: You are Jerry Dean Heard; is that  
7 correct, sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You are charged with criminal sexual  
10 conduct with a minor with a victim under 16 when the  
11 offender with a previous record under this code section  
12 16-3-651. You understand that carries potential penalties  
13 of a minimum of 10 years and up to 30 years incarceration?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: This plea, as stated by the solicitor,  
16 is straight up; meaning that the State may ask the Court to  
17 impose the maximum sentence, just as your attorney will be  
18 free to ask the Court to impose some alternative sentence  
19 and ultimately like any other sentence, it would be up to  
20 this Court to determine what the appropriate sentence would  
21 be. You understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: With that knowledge, how do you plea to  
24 criminal sexual conduct with a minor with a victim of 16 --  
25 under 16 years of age with an offender with a previous

1 record?

2 THE DEFENDANT: Guilty.

3 THE COURT: Are you pleading guilty of your own  
4 free will?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Are you under the influence of any  
7 alcohol, drugs, or anything that might affect your judgment  
8 today?

9 THE DEFENDANT: No, sir.

10 THE COURT: Now, Mr. Heard, when you plead guilty,  
11 you give up certain rights that you have. The first of  
12 those rights was one that you were about to exercise here  
13 and that's a right to trial by jury. You would be entitled  
14 to have a jury of twelve persons hear the evidence in your  
15 case.

16 Now, it's important to note that your attorney  
17 would participate in the selection of that jury. You would  
18 have him, put through your attorney to select twelve jurors  
19 to hear your case; do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: That jury would sit and hear the case  
22 and in order for you to be convicted of the charge, that  
23 jury would have to be unanimous in finding you guilty. Do  
24 you understand that right?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You have the right to call and subpoena  
2 witnesses on your behalf. You understand that right?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You have the right to confront and  
5 cross-examine the witnesses who are against you. You  
6 understand that right?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You have the right to remain silent and  
9 that could not be held against you in the proceedings; do  
10 you understand that right.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You also would have to opportunity in a  
13 trial to present any defenses that you might have to the  
14 charge. You understand that right?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You are presumed innocent and the State  
17 would have the burden of proving you guilty beyond a  
18 reasonable doubt; do you understand that right?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You have been represented by Mr. Drylie  
21 in the case. Have you had enough time to talk to him?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Has he answered your questions?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you have any questions for him now?

1 THE DEFENDANT: No, sir.  
2 THE COURT: Are you completely satisfied with his  
3 services?  
4 THE DEFENDANT: Yes, sir.  
5 THE COURT: Madam Solicitor, let me hear a synopsis  
6 of the facts.  
7 MS. MAYES: Yes, sir, Your Honor, may it please the  
8 Court. Your Honor, Mr. Heard was in the role of a quasi  
9 grandfather to these children. They refer to him as PaPa,  
10 although in reality he was just a family acquaintance. He  
11 had known their mothers for years. And because of that  
12 both girls had been entrusted on numerous occasions.  
13 Your Honor, he resided here in Edgefield County at  
14 [REDACTED] Drive where both girls had stayed on  
15 multiple occasions, even having bedrooms in his home. In  
16 addition to that, Your Honor. There is a specific incident  
17 that we have identified as occurred on January 24th, 2015,  
18 at approximately 11:23 p.m., on into the early morning  
19 hours of the following day.  
20 On that particular day, Your Honor, what we know is  
21 that the defendant, who's a long distance truck driver, had  
22 come back to Edgefield County. **MINOR 1** was 9 years  
23 old at that point in time. Her parents were on a cruise.  
24 She was staying with neighbors. At some point there in  
25 January, he picked **MINOR 1** up. They stayed at **MINOR 1**

1 residence where her parents were not, home, and it was only  
2 MINOR 1 in his care and a 6 year old. And that  
3 six-year-old is MINOR 2 MINOR 2 is a friend of  
4 MINOR 1 and she also was a child who called the  
5 defendant PaPa and had been entrusted in his care in the  
6 past.

7 On this particular day, he found himself there  
8 alone with both girls. Your Honor, 9-year-old MINOR 1 had  
9 an iPad tablet and during the course of a sexual assault,  
10 she recorded all of the events as they occurred. We do  
11 have a audio from that incident. That audio would be  
12 evidence in this case, and Your Honor, we'll present  
13 additional facts as we go. But as for right now, suffice  
14 it to say that there is substantial evidence of sexual  
15 battery committed with MINOR 2 on that particular incident  
16 that included, according to her forensic interview, his  
17 mouth on her vaginal area as well as penetration, vaginal  
18 penetration. And so that is going the meet the  
19 requirements of 16-3-655 subsection (A)(2).

20 In addition he has a prior conviction as a sex  
21 offender from the State of Alabama. That particular  
22 conviction is for substance abuse, first degree.

23 THE COURT: All right. Mr. Heard, did you hear the  
24 solicitor stating the facts?

25 THE DEFENDANT: Yes, sir, I did, but I've never

1 tried to penetrate them.

2 THE COURT: All right.

3 THE DEFENDANT: That wasn't done.

4 THE COURT: My next question is, do you agree that  
5 those are the facts in the case?

6 THE DEFENDANT: I didn't try to penetrate the  
7 little girl, whatsoever.

8 THE COURT: All right. Mr. Drylie, why don't you  
9 go off the record so you can discuss this with your client.

10 MS. MAYES: And I believe the secondary allegation  
11 there would be oral contact.

12 (The defendant was consulting with his attorney).

13 MR. DRYLIE: Judge, my client tells me he agrees  
14 that there was oral contact, which I believe qualifies  
15 under this setting.

16 MS. MAYES: It does, Your Honor, under the  
17 definition of sexual battery, it includes the oral contact,  
18 whether it's cunnilingus or fellatio.

19 THE COURT: All right. You stipulate that, Mr.  
20 Drylie?

21 MR. DRYLIE: He did.

22 THE COURT: Okay.

23 All right. Mr. Heard, we had -- that clarification  
24 by your attorney, do you agree that that portion of the  
25 facts is indeed a factual basis for the case?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Mr. Drylie, have you been  
3 over the facts in the case and the applicable law with your  
4 client?

5 MR. DRYLIE: I have, Your Honor.

6 THE COURT: And based on your conversations with  
7 him and talking to him, are you satisfied that he  
8 understands his rights?

9 MR. DRYLIE: He does.

10 THE COURT: And after you've had the opportunity to  
11 investigate this case, do you concur in his decision to  
12 plead guilty to this charge?

13 MR. DRYLIE: I do.

14 THE COURT: I find there is a factual basis for the  
15 plea. The defendant pleads guilty freely, voluntarily,  
16 intelligently and with the advice of competent counsel with  
17 whom he is satisfied.

18 All right. Let me hear from anything the State  
19 wishes to present. And then I'm going to turn it over to  
20 you, Mr. Drylie, and I'll hear from the defense.

21 MS. MAYES: Yes, sir, Your Honor. Again, as to  
22 that prior record, it is out of the State of Alabama. We  
23 have obtained certified records related to that particular  
24 conviction. And, of course, that's an element of the  
25 particular indictment that we're proceeding under.

1 But what we learned upon review of that prior  
2 record is that that charge, sexual abuse first degree, did  
3 involve the sexual assault of a child under the age of 12  
4 and that is confirmed by a certified copy of the indictment  
5 that we received from the circuit court, judicial circuit  
6 in Bessemer, Alabama, which is in Jefferson County. Here  
7 it states that sexual contact occurred with the child who  
8 was less than 12 years of age and that is the charge that  
9 he was found guilty of at trial. Your Honor he was  
10 sentenced to 5 years, suspended to 1 year incarceration and  
11 then that was followed by probation.

12 He's also been served with notice since he's been  
13 incarcerated here most recently, this week, with notice  
14 that he would also be required to register as a sex  
15 offender, due to that prior conviction from 1990, which we  
16 would have to serve retroactive notice, which has been  
17 done, because that particular conviction preceded Megan's  
18 Law or the enactment of our official sex offender registry  
19 here in South Carolina.

20 Your Honor, as I stated **MINOR 2** was 6  
21 years old at the time of this offense. In addition to this  
22 occurring to her, **MINOR 1**, the 9-year-old, was  
23 present and observed everything that was occurring. I have  
24 met with both girls and they are able to give a very  
25 detailed account of those events, which, of course, are

1 recorded by audio. And I believe there was a segment of  
2 that audio that we do wish to play for Your Honor.

3 (The audio recording is playing for the Court.)

4 (While the video is playing, the defendant interrupted as  
5 follows:)

6 THE DEFENDANT: Your Honor, I did this -- I pleaded  
7 guilty, not to put them through this, but they're sitting  
8 there --

9 THE COURT: Hold on. Stop now.

10 (The recording was stopped.)

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right.

13 THE DEFENDANT: They're sitting there listening to  
14 this.

15 THE COURT: All right. Mr. Drylie, anything you  
16 want to put on the record?

17 MR. DRYLIE: Judge, he's stating that he pled  
18 guilty because he didn't want to put them through having to  
19 relive this again. He feels like they're having to relive  
20 it right now.

21 THE DEFENDANT: That's right.

22 MS. MAYES: And I do believe Your Honor has heard  
23 the primary context of this.

24 Your Honor, one thing that is stated throughout  
25 that audio is that the 9-year-old is telling him to put his

1 clothes back on and also MINOR 2 the 6-year-old is heard  
2 saying quit, quit.

3 Your Honor, the family does wish to address the  
4 Court regarding sentencing.

5 Based on the prior record that also involved a  
6 child and this offense which involved a child, Your Honor,  
7 the State is asking for the maximum sentence. We believe  
8 he will always be a danger to children. Your Honor, he is  
9 65 years old, but we do not foresee any period of time in  
10 which he could ever revisit society and not be a danger to  
11 children.

12 Ms. Sarah Waddle: I just want to see justice for  
13 these girls.

14 MS. MAYES: Your Honor, one thing that MINOR 1  
15 said this morning is that she wants him to be in jail, her  
16 words were, forever. And she's also discussed she wants to  
17 know that he won't hurt any other children.

18 THE COURT: Other than the prior conviction in  
19 Alabama, is there any other criminal record?

20 MS. MAYES: Yes, Your Honor, I believe he has also  
21 a conviction for simple assault. That conviction -- that  
22 conviction, Your Honor, is from 2005, and that is out of  
23 Aiken County.

24 THE COURT: All right. Anything further from the  
25 State?

1 MS. MAYES: Nothing further, Your Honor.

2 THE COURT: All right. Mr. Drylie?

3 MR. DRYLIE: Thank you, Your Honor.

4 Jerry is 65 years old. He's been incarcerated  
5 since June of 2018. I don't have the exact days in front  
6 of me.

7 Judge, what I do want to let you know is that he  
8 told me he wanted to plead guilty because he didn't want to  
9 put the girls through the trial, and we'd ask that you give  
10 him some credit for that. Judge, he does say that he cares  
11 for them very much and that's why he doesn't want to go  
12 forward with a trial.

13 Judge, he wants me to let the judge know that his  
14 prior conviction is from 1989, nearly 30 years ago and that  
15 other than that he's been relatively out of trouble. He's  
16 worked as a truck driver for most of his life.

17 Judge, we just ask for any mercy and any credit  
18 that the Court can show him.

19 THE COURT: All right. Mr. Heard, anything you'd  
20 like to tell me?

21 THE DEFENDANT: No.

22 THE COURT: How many days of service does your  
23 client have, Mr. Drylie.

24 MR. DRYLIE: I'd couldn't give you the exact  
25 number. It's since June of 2013.

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THE COURT: Okay.

MS. MAYES: 2015?

MR. DRYLIE: I'm sorry, 2015. 2015, I misspoke.

THE COURT: All right. I heard the facts put into record. This is a very troubling case.

The order of the Court would be as follows: That he be confined in the department of corrections for a 25 years, sex offender registry. Good luck to you, sir.

MS. MAYES: Thank you, Your Honor.

MR. DRYLIE: Thank you, Judge.

\* \* \* \* \* END OF TRANSCRIPT \* \* \* \* \*

1	State of South Carolina	) Certificate of Reporter
2	County of Aiken	
3		
4		
5		
6	I, Brenda J. Sigwald, Official Court Reporter for	
7	the Second Judicial Circuit of the State of South Carolina,	
8	do hereby certify that the foregoing is a true, accurate,	
9	and complete Transcript of Record of the proceedings had	
10	and evidence introduced in the trial of the captioned case,	
11	relative to appeal, in the Court of General Sessions in and	
12	for the State of South Carolina on the 24th day of July,	
13	2017.	
14	I FURTHER CERTIFY that I am neither kin, counsel,	
15	nor of interest to any party hereto.	
16	IN WITNESS WHEREOF, I have hereunto set my hand and	
17	seal at Aiken County, this 12th day of October, 2018.	
18		
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21		
22	<i>Brenda Sigwald</i>	
23	Brenda J. Sigwald, Court Reporter and Notary Public For the State of South Carolina My commission expires January 4, 2020	
24		
25		

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WITNESSES  
 ECSO  
 BURTON

ARREST WARRANT NUMBER  
 DIRECT

ACTION OF GRAND JURY

*Sherrie Campbell*  
 Foreperson of Grand Jury  
 Date: JUL 06 2016

VERDICT  
 TRUE BILL

Foreperson of Petit Jury  
 Date:

DOCKET NO. 2016-GS-19- 385  
**The State of South Carolina**  
 County of EDGEFIELD  
 COURT OF GENERAL SESSIONS  
 JULY TERM 2016

THE STATE  
 vs.  
 JERRY DEAN HEARD

CDR#3022

Indictment for  
 CSC with a Minor  
 1<sup>st</sup> degree  
 16-3-655(A)(2)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF EDGEFIELD )

INDICTMENT FOR  
 CSC with a Minor  
 1<sup>st</sup> degree  
 16-3-655(A)(2)

At a Court of General Sessions, convened on July 6, 2016 the Grand Jurors of Edgefield County present upon their oath:

That Jerry Dean Heard, DOB [REDACTED] did in Edgefield County, state aforesaid, on or about January 1, 2015 through March 12, 2015, willfully and unlawfully commit criminal sexual conduct with a minor in the first degree by engaging in sexual battery as defined in Section 16-3-651(h) with a minor who was less than sixteen (16) years of age, to wit **MINOR 2** DOB [REDACTED]; and furthermore the actor has previously been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent for an offense listed in Section 23-3-430(C), or of a similar offense in another jurisdiction or in a comparable court, or has been ordered to be included in the sex offender registry pursuant to Section 23-3-430(D), being a conviction for Sexual Abuse in the State of Alabama, furthermore, such act of sexual battery including but not limited to fellatio, cunnilingus, and/or intrusion of the genital opening, furthermore, in violation of Section 16-3-655(A)(2), S.C. Code of Laws, 1976, as amended.

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

  
 ASSISTANT SOLICITOR

(10-30 years)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Edgefield
STATE VS.

Jerry Dean Heard

AKA:

Race: White Sex: M Age: 65

DOB: SS#:

Address: Rd

City, State, Zip: Trenton, SC 29847-2315

DL#: SID#:

\*CDL Yes No CMV Yes No Hazmat Yes No

INDICTMENT/CASE#: 2016GS1900385

A/W#: 2016GS1900385

Date of Offense: 7/6/2016

S.C. Code §: 16-03-0655(A)(2)

CDR Code #: 3022

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was TO: Sex / Criminal sexual conduct with minor - victim under 16 years of age and offender w/previous record under 23-03-0430(c) or (

in violation of § 16-03-0655(A)(2) of the S.C. Code of Laws, bearing CDR Code # 3022
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45 (CSC w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

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

ATTEST: Solicitor 64191 SC Bar# Defendant Attorney for Defendant 100066 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$ 255; provided that upon the service of days/months/years and/or payment of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence ) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Recipient:
\*Fine: \$
§ 14-1-206 (Assessments 107.5%) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 61.6 (Public Def/Probation) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114 (BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
3% to County (if paid in installments) \$3.75

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
\$ paid to Public Defender Fund
Other: Sex Offender Registry.

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk Charles Ruff
Court Reporter: Bruner Sigwald

Appointed PD or appointed other counsel.
§ Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge:
Judge Code: 2752
Sentence Date: 7-24-17

SCCA/217 (07/2016)

FORM 5

STATE OF SOUTH CAROLINA 2018 JUN 18 AM 9:31 IN THE COURT OF COMMON PLEAS

County of Edgefield

Jerry Dean Heard, 373296

Full name and prison number (if any) of Applicant

v.

State of South Carolina  
Its Department and Agents,  
Alan Wilson, Attorney  
General For South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

Case # 2018CP 1900176

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Broad River Correctional Institution  
Columbia, South Carolina 29210
2. Name and location of Court which imposed sentence Edgefield County Clerk  
of Court, P.O. Box 34, Edgefield County
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2016-GS-19-385, Criminal Sexual Conduct with a minor
  - (b) First Degree

(c) \_\_\_\_\_

5. The date upon which sentence was imposed and the terms of the sentence:

(a) July 24, 2017,

(b) 25 Years

(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

(a) after a plea of guilty XX

(b) after a plea of not guilty \_\_\_\_\_

(c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?  
Counsel did not perfected an appeal in my case "NO"

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

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

i. None

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. None

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. None

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. None

ii. \_\_\_\_\_

iii. \_\_\_\_\_

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) Counsel failed to perfected appeal on my behalf

(b) \_\_\_\_\_

(c) \_\_\_\_\_  
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel, prior bad acts,
- ~~(b) Expert witness violation, Hearsay testimony violation~~
- (c) Failure to perfected an appeal, Due Process of Law

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

- (a) See Attachments
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? This is the only application Filed
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? None
- (d) any other petitions, motions or applications in this or any other Court? NO

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

- (a) the specific nature thereof:
  - i. NONE
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. None
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

(c) the disposition thereof:

- i. **None**  
\_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. **None**  
\_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. **None**  
\_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

**No**

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

(a) which grounds have been presented:

- i. **None**  
\_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. **None**  
\_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) No grounds have been raised because this is my  
 (b) first PCR application  
 (c) \_\_\_\_\_

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

- (a) your arraignment and plea? Yes  
 (b) your trial, if any? Yes  
 (c) your sentencing? Yes  
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No appeal from the conviction  
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?  
None

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

- (a) the name and address of each attorney who represented you:  
 i. Mr. Eric Dryley, Attorney from the Public Defender  
Office Edgefield county  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_  
 (b) the proceedings at which each such attorney represented you:  
 i. Trial: Mr. Eric Dryley, Esquire,  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_

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

**Reverse conviction or Remand for new trial**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

**NO**

\_\_\_\_\_  
\_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
County of Edgefield )

VERIFICATION

I, Jerry Dean Heard, # 373296, 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 \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
*Notary Public* (L.S.)

My Commission Expires: \_\_\_\_\_

CLERK OF COURT  
CLERK'S REEL

2018 JUN 18 AM 9:31

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

I, Jerry Dean Heard, # 373296, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

\_\_\_\_\_  
*Applicant*

SWORN or affirmed to and subscribed before me this  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
*Notary Public*

My Commission Expires: \_\_\_\_\_

Applicant have suffered a miscarriage of justice and his conviction only stands due to severe denial of due process and equal protection in the state courts in multiple and gross violation of the United States supreme court precedents and the United States constitution that constitutes an outrage of mockery of justice that the Federal Courts who sworn to uphold the United States constitution should not tolerats.

The applicant suffered prejudice at the hands of trial counsel and the trial court and the applicant's plead of guilty under North Carolina v. Alford, was entered Involuntarily, Unknowingly, unwillingly, and unintelligently, Hill v. Lochart, 106 S.Ct. 366 (1985). See also Jordan v. State, 374 S.E. 2d 683 (1988).

Applicant's trial counsel's deficiencies prejudiced the applicant would have otherwise proceeded to trial as original insisted upon, and under no circumstances would not have plea guilty under Alford otherwise had it not been for trial counsel's advise. Neverthe less, the allegation of the applicant not having pled guilty knowingly, voluntarily and intelligently probably raises questions of fact which may not be conclusively refuted by the PCR record presently before this court.

The trial 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 (11th cir. 1992). Based of the aforementioned matters, counsel has provided ineffective assistance.

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DUE PROCESS OF LAW

Applicant'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 rights cannot be presumed from a silent record. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969). In State v. Armstrong, 263 S.C. 594, 211 S.E. 2d 889 (1975), this court held that the "essence" of Bokin, was to make the requirement of rule 11 of the federal rules of criminal procedure applicable to the states. In State v. Paterson, 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 Bokin, the record must clearly establish it.

In Boykin, Supra, the U.S. supreme court held that trial courts 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.

Ineffective assistance of counsel, in violation of the fourteenth and sixth Amendments of the United States constitution and Article I section 13 & 14 of the South Carolina constitution.

Counsel should be afforded reasonable opportunity to prepare to defend the applicant and to confer as often without undue delay to advise his of his rights and to elicit matters of defense or to ascertain that potential defenses are available applicant contends that his trial counsel failed to investigate both factual and legal matter to determine if defense can be developed. It is a detinitive objective description of the competency normally demanded of counsel in certain aspect of their services.

And with this discretion the courts should admonish that if the right to counsel guaranteed by the constitution cannot be left to the mercies of incompetent counsel. Judge should strive to maintain proper standards of performance by attorney who are representing defendant's 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).

Applicant further contends trial counsel was ineffective as trialcounsel's repretation fell below an objective standard or reasonableness, and had it not been for trial counsel's error of ineffectiveness, there is more than a reasonable probability the outcome, had applicant gone to trial, would have been different. Trial counsel was ineffective. Glover v. State, 458 S.E. 2d 538 (1995). As a direct result of trial counsel's error and ineffectiveness, the applicant was Denied Due process of Law. equal protections of Law. Denied the exclusive right to a fair trial, and Denied effective assistance of trial counsel thus violating applicant's (5th), (6th) and (14th) Amendments to the United States constitution, and in violation of the South Carolina state constitution Article I section 3, and 14. Trial counsel was ineffective. Boykin v. Alabama, 89 S.CT. 1709 (1969).

A reading of both of the PCR and transcripts in this case shows applicant did not understand the ramifications of pleading guilty. Moreover, there is no evidence he knowingly, voluntarily, and intelligently waived his right to a direct appeal of both proceedings. See. e.g. Wilson v. State, 348 S.C. 215, 559 S.E. 2d 518 (2002) (" A defendant has the procedural right to one fairbite at the apple. That is, every defendant has a right to file a direct appeal and one PCR application.

Applying these principles of Law, it is clear counsel's performance was deficient because applicant did not understand his rights, including the right to a direct appeal. Applicant was prejudiced by the deficient performance because, but for counsel's unprofessional errors he would have insisted on going to trial.

The questions presented are whether or not the plea of guilty was involuntary or, in the alternative, was based on the inadequate assistance of counsel (discussed B. infra). The Law is equally clear. An involuntary plea is unconstitutional Machiroda v. United States, 368 U.S. 487 (1962). This court has ruled that a plea induced by the misrepresentation of defense counsel may be involuntary. Blackledge, Supra. fn. 8. The court indicated that the question of whether or not the defense attorney misinformed.

A defendant who pleads guilty on the advise 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 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 and defendant will prove that counsel's advise was not within the competence demanded of attorney in criminal cases.

Because a guilty plea is more than an admission it is a conviction trial judges must discharge the function of ensuring an accused has a full understanding of what the plea connotes and of its consequence. Boykin v. Alabama, 395 U.S. 242, 242-43 (1969); Pittman v. State, 337 S.C. 597, involuntary); State v. Lambert, 266 S.C. 574, 225 S.E. 2d 340 (1976).

Applicant contends due to his illiteracy to the Law he was entitled to rely upon his counsel to make reasonable decision. Pursuant to U.S. v. Dewalt, 92 F. 30 1209 without some authoritative guidance the defendant cannot know whether he understood anything correctly at his plea.

Counsel failed to hire Expert witness

[T]he United States supreme court has held that the defendant must have a fair opportunity to present his defense, there by requiring the state to provide the 'basic tools for an adequate defense to an indigent defendant. Bailey v. State, 309 S.C. 455, 459, 424 S.E. 503, 506 (1992) quoting Ake v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087, 84 L.Ed. 2d 53 (1985)). Thus although the state is not required to provide the indigent defendant with unlimited funding, it must ensure that the defendant has competent counsel and the services of expert necessary to a meaningful defense. Id.

Upon a finding in ex parte proceedings that investigative, expert or other services are reasonably necessary for the representation of defendant, the court shall authorize the defendant's attorney to obtain such services on behalf of defendant and shall order the payment, from funds available to the office of indigent Defense, of fees and expenses not to exceed five hundred dollars as the court consider appropriate.

In this case, we find trial counsel was deficient because he should have discussed hiring an expert with defendant to more thoroughly challenge the state's forensic evidence presented at trial. See Strickland, 466 U.S. at 691, 104 S.Ct. 2052 ("counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. Trial counsel admitted he did not consult with an expert prior to trial even though he knew the state would attempt to admit evidence of a expert on there side for the state.

EDGEFIELD COUNTY  
CLERK OF COURT  
CHARLES L. REEL

STATE OF SOUTH CAROLINA  
COUNTY OF EDGEFIELD

2018 NOV 26 PM 2:55

IN THE COURT OF COMMON PLEAS  
FOR THE ELEVENTH JUDICIAL CIRCUIT

Jerry Dean Heard, #373296,

Case No.: 2018-CP-19-00176

Applicant,

**RETURN AND PARTIAL MOTION  
TO DISMISS**

v.

State of South Carolina,

Respondent.

Respondent, making its Return to the application for post-conviction relief filed on June 18, 2018, would respectfully show this Court:

**I. Procedural History**

Jerry Dean Heard (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Edgefield County Clerk of Court. During its July 2016 term, the Edgefield County Grand Jury indicted Applicant for first-degree criminal sexual conduct with a minor (2016-GS-19-385). Erik J. Drylie, Esquire, represented Applicant on this charge. Deputy Solicitor L. Suzanne Mayes, of the Eleventh Circuit Solicitor's Office, prosecuted the case. On July 24, 2017, Applicant appeared before the Honorable Donald B. Hocker and pled guilty as indicted. Judge Hocker accepted the plea, finding there was a factual basis to support the plea and further finding the plea were made freely, voluntarily, and intelligently and sentenced Applicant to a term of imprisonment of twenty-five years. Plea Tr. 10, 15. Applicant did not appeal his plea or sentence.

**II. Factual History**

On January 24, 2015, Applicant picked up nine-year-old girl, to whom he was a quasi-grandparent, at her neighbor's house and took her back to her house, where her parents were not at

home.<sup>1</sup> Plea Tr. 7-8. Six-year-old girl (Victim) was also there. Plea Tr. 8. At approximately 11:23 at night, Applicant committed a sexual battery against Victim. Plea Tr. 7-8. Specifically, Applicant placed his mouth on Victim's vaginal area. Plea Tr. 8. Nine-year-old girl was able to record the assault on an iPad. Plea Tr. 8. On that recording, nine-year-old girl is heard telling Applicant to put his clothes back on and Victim is heard saying "quit, quit." Plea Tr. 12-13.

### III. Current Application

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on:

1. Ineffective Assistance of Counsel;
  - a. "[T]rial counsel coerced [A]pplicant into entering a guilty plea through deceptive tactics [sic] when [A]pplicant wished to stand trial by jury[;]"
  - b. "[A]pplicant contends that his trial counsel failed to investigate both factual and legal matter[s] to determine if defense can be developed[;]" and
  - c. "Counsel failed to hire Expert witness."
2. Prior Bad Acts;
3. Expert Witness Violation;
4. Hearsay Testimony Violation;
5. Failure to perfect an appeal;
6. Involuntary Guilty Plea; and
7. Due Process of Law.
  - a. "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."

Attached to this Return and incorporated by reference are the records of the Edgefield County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the transcript from Applicant's guilty plea proceeding, and the post-conviction relief application. Respondent reserves the right to amend this Return upon receipt of any

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<sup>1</sup> Applicant had previously taken care of nine-year-old girl and six-year-old girl. Plea Tr. 7-8.

relevant materials.

Additionally, Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)-(b), SCRCF. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCF. *Pro se* filings will not be considered at the post-conviction relief hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. *See* Rule 15(a), SCRCF.

#### IV. Involuntary Guilty Plea

Applicant alleges his plea was not knowingly or intelligently entered. Respondent submits this allegation is without merit. In post-conviction relief 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: (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. United States*, 519 F.2d 347 (4th Cir. 1975); *Edmonds v. Lewis*, 546 F.2d 566 (4th Cir. 1976).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. In particular, Applicant indicated to the plea court he was pleading guilty of his own free will. Plea Tr. 5. After being informed of all of his constitutional rights, Applicant indicated to the plea court he understood those rights. Plea Tr. 5-6. He specifically indicated he understood his right to a trial by jury, to remain silent, to raise a defense, and to confront the witnesses against him. Plea Tr. 5-6. Applicant also told the court he understood at trial, he would be presumed guilty and the State would have the burden of proving him guilty beyond a reasonable doubt. Plea Tr. 6. Applicant also understood the potential sentence he was facing. Plea Tr. 4. Moreover, Applicant agreed there was oral contact between him and the victim. Plea Tr. 9.

Based on the facts set forth above, Respondent submits Applicant's allegation his plea was involuntarily made is without merit. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which 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. Ineffective Assistance of Counsel

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a post-conviction relief action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied

upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland v. Washington*, 466 U.S. 668. First, the applicant must prove that counsel’s performance was deficient. *Id.*; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. In order to satisfy the prejudice prong of this test following a guilty plea, the applicant “must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

#### ***Failure to Investigate and Failure to Hire an Expert Witness***

Applicant alleges his counsel was ineffective for failing to investigate. “There is a strong presumption counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case.” *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). “Counsel’s concern is the faithful representation of the interest of his client and such

representation frequently involves highly practical considerations as well as specialized knowledge of the law.” *Tollett v. Henderson*, 411 U.S. 258, 267-68 (1973). “Although counsel should conduct a reasonable investigation into potential defenses, *Strickland* does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client.” *Tucker v. Ozmint*, 350 F.3d 433, 442 (4th Cir. 2003) (quoting *Green v. French*, 143 F.3d 865, 892 (4th Cir. 1998)). “In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” *Strickland*, 466 U.S. at 691; *Wiggins v. Smith*, 539 U.S. 510, 521-22 (2003). Moreover, “failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result.” *Porter*, 368 S.C. at 385-86, 629 S.E.2d at 357, *abrogated on other grounds by Smalls*, 422 S.C. 174, 810 S.E.2d 836 (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

Here, Applicant has wholly failed to identify what additional investigation he wanted plea counsel to partake and failed to identify for what purpose an expert needed to be hired. Indeed, at the plea, plea counsel indicated he agreed with Applicant’s decision to plead guilty based on his investigation into the facts and circumstances of the case. Plea Tr. 10. Because counsel is presumed to have rendered adequate assistance and because Applicant has failed to identify any investigation in which he wanted plea counsel to partake, Respondent submits Applicant cannot establish any deficiency on the part of counsel.

Moreover, Applicant cannot establish any prejudice from this alleged deficiency. A guilty plea generally acts as a waiver of all non-jurisdictional defects and defenses.” *State v. Thomason*, 341 S.C. 524, 526, 534 S.E.2d 708, 710 (Ct. App. 2000) (citing *State v. Munsch*, 287 S.C. 313, 338 S.E.2d 329 (1985)). Through a plea, a defendant admits all of the elements of the offense charged

and waives all defenses, except for the sufficiency of the indictment. *Id.* At Applicant's plea, Applicant indicated there was oral contact between him and the victim. Plea Tr. 9. He further admitted, with the clarification there was only oral contact between him and the victim, there was a factual basis for the case. Plea Tr. 9-10. Moreover, Applicant indicated to the plea court he understood by pleading guilty he would not have a jury trial, would not be able to confront the witnesses against him, would be waiving his right to remain silent, and would not present a defense to these charges. Plea Tr. 5-6. Based on Applicant's solemn admission of guilt at the plea, Respondent submits he cannot meet his burden.

Additionally, because Applicant has failed to identify what benefit would have been realized from plea counsel hiring an expert witness, Applicant's assertions are merely speculative. See *Bannister v. State*, 333 S.C. 298, 304, 509 S.E.2d 807, 810 (1998) (finding Applicant was not prejudiced by counsel's alleged deficiency when Applicant failed to produce the testimony of a witness and Applicant's assertions as to what this testimony would have been was merely speculative). Accordingly, Applicant cannot establish any deficiency or resulting prejudice.

#### ***Failure to File an Appeal***

Applicant alleges Counsel was ineffective for failing to file an appeal on his behalf. Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. *Roe v. Flores-Ortega*, 528 U.S. 470 (2000). When a defendant has pled guilty, "there must be proof that extraordinary circumstances exist, such as where a defendant inquires about an appeal, in order for counsel to be required to advise a defendant of the right to appeal." *Rolen v. State*, 384 S.C. 409, 415, 683 S.E.2d 471, 474-75 (2009) (citing *Weathers v. State*, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)). When

counsel has consulted with the defendant regarding the right to appeal, "Counsel performs in a professionally unreasonable manner *only* by failing to follow the defendant's express instructions with respect to an appeal." *Flores-Ortega*, 528 at 478 (emphasis added).

Here, Applicant wholly fails to set forth with any specificity what extraordinary circumstances existed such that plea counsel should have filed an appeal on Applicant's behalf. In fact, Applicant wholly fails to assert he even asked plea counsel to file an appeal on his behalf. Accordingly, Respondent submits Applicant cannot establish his burden.

Respondent submits Applicant can satisfy neither requirement of the *Strickland* test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### VI. Summary Dismissal Based on Failure to State a Cognizable Claim

Applicant further alleges "prior bad acts" and "hearsay testimony violation." Respondent submits these allegations should be summarily dismissed for failing to state a cognizable claim upon which relief can be based. *See* S.C. Code Ann. §17-27-10 to -160. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A).

Applicant's allegations of "prior bad acts" and "hearsay testimony violation" do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Therefore, these allegations should be summarily dismissed.

VII. Denial of All Other Claims

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

VIII. Request for evidentiary hearing

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of counsel and whether or not Applicant's plea was knowingly and voluntarily made.

*[signature block to follow]*

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

KELLY OPPENHEIMER  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

November 19, 2018

EDGEFIELD COUNTY  
CLERK OF COURT  
CHARLES L. REEL

STATE OF SOUTH CAROLINA )

2018 NOV 26 PM 2: 55 IN THE COURT OF COMMON PLEAS

COUNTY OF EDGEFIELD )

2018-CP-19-00176

JERRY DEAN HEARD, #373296 )

Applicant, )

vs )

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA, )

Respondent. )

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

Kristy G. Goldberg, Esquire  
Law Office of Kristy Goldberg, LLC  
1720 Main Street, Suite 303  
Columbia, South Carolina 29201

DATED this 19<sup>th</sup> day of November, 2018.

Camille Henry  
Camille Henry, Legal Assistant  
For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF EDGEFIELD	)	
	)	2018-CP-19-176
JERRY DEAN HEARD,	)	
SCDC #373296,	)	
Applicant,	)	
	)	AMENDED APPLICATION FOR
v.	)	POST-CONVICTION RELIEF
	)	
STATE OF SOUTH CAROLINA	)	
Respondent.	)	

1. Place of Detention: Broad River Correctional Institution.
2. Name and location of Court which imposed sentence: Edgefield County Court of General Sessions, Edgefield County Courthouse, Edgefield, South Carolina.
3. Name(s) of co-defendant(s): n/a.
4. The indictment number or numbers upon which and the offense or offenses for which sentence was imposed:
  - a. 2016-GS-19-385 Criminal Sexual Conduct with a Minor 1<sup>st</sup> Degree.
5. The date upon which sentence was imposed and the terms of the sentence:
  - a. July 24, 2017 - 25 years.
6. A finding of guilty was made after a plea of guilty.
7. Did you appeal the judgment of conviction or the imposition of sentence? No.
8. If you answered "yes" to (6), list
  - a. The name of each Court to which you appealed:
    - i. n/a
  - b. The result in each such Court to which you appealed:
    - i. n/a
  - c. The date of each such result:
    - i. n/a
  - d. If known, the citations of any written opinion or orders entered pursuant to such results:
    - i. n/a
9. If you answered "no" to (7), state your reasons for not so appealing: Counsel failed to file notice of appeal or any post-trial motion of any kind.

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

- a. Trial counsel was ineffective for failing to properly prepare with the Applicant to assert a potential alibi defense at trial;
- b. Trial counsel was ineffective for failing to properly share discovery information with the Applicant;
- c. Trial counsel was ineffective for failing to ensure that the Applicant sufficiently understood the ramifications of pleading guilty, and as a result the Applicant did not understanding his rights and did not enter a knowing, voluntary and intelligent guilty plea;
- d. Trial counsel was ineffective for allowing his private investigator to coerce the Applicant to plead guilty;
- e. Trial counsel was ineffective for leading the Applicant to believe and/or allowing his private investigator to lead the Applicant to believe that he would receive a five year sentence in exchange for his guilty plea;
- f. Trial counsel was ineffective for failing to file notice of appeal.

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

- a. As described above;
- b. As described above;
- c. As described above;
- d. As described above;
- e. As described above;
- f. As described above.

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


- a. Any petition in a State Court under South Carolina Law? No.
- b. Any petitions in State or Federal Courts for habeas corpus or post-conviction relief? No.
- c. Any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in #7? No.
- d. Any other petitions, motions or applications in this or any other Court? No.

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

- a. The specific nature thereof: n/a.

- b. The name and location of the Court in which each was filed: n/a.
  - c. The disposition thereof: n/a.
  - d. The date of each such disposition: n/a.
  - e. If known, citations of any written opinions or orders entered pursuant to each such disposition: n/a.
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No.
15. If you answered "yes" to (14) identify:
- a. Which grounds have been presented: n/a
  - b. The proceedings in which each ground was raised: n/a.
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:
- a. All issues are reflective of ineffective assistance of counsel.
17. Were you previously represented by an attorney at any time during the course of:
- a. Your arraignment and plea? Yes.
  - b. Your trial, if any? n/a.
  - c. Your sentencing? Yes.
  - d. Your appeal, if any, from the judgment of conviction or imposition of sentence? N/a.
  - e. Preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction which you filed? N/a.
18. If you answered "yes" to one or more parts of (17), list:
- a. The name and address of each attorney who represented you:
    - i. Eric Drylie, 1600 Hampton Street, Suite 502, Columbia, South Carolina 29208.
  - b. The proceedings at which each such attorney represented you:
    - i. Plea and sentencing July 24, 2017.
19. State clearly the relief you seek in filing this application: Remand for a new trial.
20. Are you now under sentence from any other court that you have challenged? No.

Respectfully submitted,

  
\_\_\_\_\_  
Kristy Goldberg  
Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.  
1720 Main Street, Suite 303  
Columbia, SC 29201  
Phone (803) 667-6633  
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Columbia, South Carolina

This 15th day of MARCH, 2019

STATE OF SOUTH CAROLINA )  
COUNTY OF EDGEFIELD )

IN THE COURT OF COMMON PLEAS

JERRY DEAN HEARD, )  
SCDC #373296, )  
Applicant, )


2018-CP-19-176

v. )

CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA )  
Respondent. )

I certify that on this date I served the Application for Post-Conviction Relief in this case on The State of South Carolina by delivering a copy of this Notice to the State Attorney General's Office, by delivering a copy of this motion via U.S. Mail said copy to the Office of the Attorney General, Post Office Box 11549, Columbia South Carolina 29211.

  
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Columbia, South Carolina

This 15th day of March, 2019

STATE OF SOUTH CAROLINA	)	
COUNTY OF LEXINGTON	)	COURT OF COMMON PLEAS
	)	2018-CP-19-00176
	)	
	)	
	)	
Jerry Dean Heard	)	TRANSCRIPT OF RECORD
vs.	)	
State of South Carolina	)	
	)	
DEFENDANT	)	April 4, 2019
	)	Lexington, South Carolina

B E F O R E:

THE HONORABLE WILLIAM A. MCKINNON.

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

KRISTY G. GOLDBERG, ESQ.  
Attorney for the Applicant

DAVID SPENCER, Assistant Attorney General  
Attorney for the Respondent

KESHIA REED  
Official Court Reporter

	<u>I N D E X</u>				
	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1					
2					
3	Jerry Heard				
4	Ms. Goldberg	5			
5	Mr. Spencer		35		
6					
7	Donald Kneece				
8	Mr. Spencer	48		55	
9	Ms. Goldberg		50		
10					
11	Erick J. Drylie				
12	Mr. Spencer	56		74	
13	Ms. Goldberg		69		
14					
15	Certificate of Reporter	77			
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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
A-1	Fuel Receipt Log		18

1 THE COURT: Let's proceed.

2 MR. SPENCER: Thank you, Your Honor. This next  
3 case if you would like me to call it is 2018-CP-19-00176.  
4 For the record, my name is David Spencer with the attorney  
5 general's office. This case is Jerry Heard vs. State.  
6 Mr. Heard pled guilty, was indicted in Edgefield and pled  
7 guilty to first degree criminal sexual conduct with a  
8 minor and he was represented by Erik Drylie who's here  
9 today. And he was sentence to a -- sentence of 25 years  
10 imprisonment and he denied appeal to his conviction or  
11 sentence. I would just ask -- and I did receive an  
12 amended application I believe from Ms. Goldberg, but I  
13 would just ask -- verify any allegations beyond that  
14 amended application.

15 THE COURT: Ms. Goldberg.

16 MS. GOLDBERG: Thank you, Your Honor. Today, we  
17 are proceeding on the amended application that's stamped  
18 by the clerk of court on March 18th of 2019.

19 MR. SPENCER: And I believe I should have that  
20 in the judge's packet, Your Honor.

21 THE COURT: Yes, it's in the judge's packet. I  
22 got the amended application. I got the amended  
23 application.

24 MR. SPENCER: Yes, Your Honor.

25 THE COURT: Okay. Whenever you're ready.

1 MS. GOLDBERG: All right. Your Honor, nothing  
2 else to address. At this time I would call Mr. Heard.

3 THE CLERK: Put your left hand on the Bible,  
4 raise your right as much as you can. Do you swear or  
5 affirm the testimony you're about to give will be the  
6 truth, the whole truth, and nothing but the truth so help  
7 you God?

8 THE DEFENDANT: I do.

9 WHEREUPON,

10 Jerry Dean Heard,  
11 after first having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 MS. GOLDBERG:

14 Q All right. State your name for the record please?

15 A Jerry Heard.

16 Q Thank you. Mr. Heard, where are you currently  
17 incarcerated?

18 A At Broad River.

19 Q And what sentence are you serving?

20 A I'm serving 25 years.

21 Q For what charge?

22 A CSC.

23 Q First degree?

24 A Yes.

25 Q There aren't any other convictions you're serving at

1 this time?

2 A No, ma'am.

3 Q No other sentences pending on you at this time?

4 A No, ma'am.

5 Q Okay. Do you recall about when you were arrested?

6 A That will be in Detroit.

7 Q Do you remember when?

8 A I don't remember the date and time, no.

9 Q 2015?

10 A Okay.

11 Q Does that sound accurate?

12 A Well, I spend two years -- little over two years in  
13 the county, so it should have be about right.

14 Q Okay. And if the warrants states it was served on  
15 you May 5th of 2015, does that sound correct to you?

16 A Yes.

17 Q You said you were arrested in Detroit. Were you  
18 extradited to South Carolina?

19 A Yes, ma'am.

20 MR. SPENCER: I'm sorry I didn't hear that  
21 answer.

22 A Yes, ma'am. Yes, sir.

23 Q When you came to South Carolina, did you go to bond  
24 court or did you have a bond setting or no?

25 A I had a bond setting somewhere around a year after I

1 was in there.

2 Q All right. So not immediately after coming to jail?

3 A No.

4 Q Immediately after coming to jail, did you have an  
5 attorney appointed right away or did it take some time?

6 A It took some time.

7 Q All right. So assuming you got to jail around or  
8 about May 5th of 2015, do you have any idea when you may  
9 have first spoke with any sort of attorney in this case?

10 A If I'm not mistaken, it was around at least 20 days  
11 or something like that.

12 Q Okay. So maybe within a month or so?

13 A Right.

14 Q Now, this first attorney you spoke to was that  
15 Mr. Drylie?

16 A Yes, ma'am.

17 Q Mr. Drylie was appointed to represent you?

18 A Yes, ma'am.

19 Q Did you ever hire an attorney in this case?

20 A No, ma'am. You mind if I get some water?

21 Q I'll help you with that if the Court doesn't mind.

22 A Thank you.

23 Q All right. Mr. Heard, the guilty plea in this case  
24 was July 24th of 2017 does that sound, correct?

25 A Yeah.

1 Q So between May 5th of '15 and July of '17, were you  
2 in jail the entire time?

3 A Yes, ma'am.

4 Q Okay. And was Mr. Drylie the attorney the entire  
5 time?

6 A Yes, ma'am.

7 Q Okay. While he was your attorney, would he come to  
8 the jail and discuss your case with you, meet with you  
9 about this case regularly?

10 A Not regularly not in my opinion four or six months  
11 would pass, six months pass or whatever he's come by and  
12 discuss it.

13 Q Do you have any specific recollection of how many  
14 times or just?

15 A Approximately six times.

16 Q Okay. And did he review the discovery in this case  
17 with you?

18 A Do what?

19 Q Did he review the discovery with you? Do you know  
20 what that means?

21 A No.

22 Q So related to your criminal charges, I'm sure you're  
23 aware there were police reports, documentation, things  
24 like that, correct?

25 A Yes, ma'am.

1 Q Did he talk with you about the information contained  
2 in that documentation?

3 A Yes, ma'am, some of it.

4 Q Okay. So for the best of your knowledge, he told you  
5 about what the case was?

6 A Yes, ma'am.

7 Q What other evidence did he share with you in this  
8 case?

9 A Just about all of it except for the part about what a  
10 girl said, this girl.

11 Q Did he give you a copy of the documentation?

12 A Not until the Friday before we went to court on  
13 Monday, Friday afternoon. I got the documents of  
14 everything Friday afternoon. We were suppose to go to  
15 trial Monday.

16 Q All right. And there was actually an audiotape in  
17 evidence in this case, correct?

18 A Right.

19 Q Did he give you the opportunity to listen to that?

20 A The first time I listen to it I could barely -- I  
21 couldn't hardly understand it. I heard some of it, but I  
22 couldn't understand it very well. With his computer, I  
23 couldn't understand hardly at all, all right. I asked him  
24 to get me a headset to where I could hear what exactly was  
25 going on. Then they deleted stuff and whatever they did

1 to it suppose to have cleared it up and all that stuff and  
2 I heard that the Friday when he got my stuff.

3 Q Could someone have maybe used the word redacted part  
4 of it? Does that -- is that what you're talking about or  
5 no?

6 A I don't understand.

7 Q Okay, fair enough.

8 A They just say they cleaned it up.

9 Q Okay. You said the first time you listen to it it  
10 was hard for you to hear and understand?

11 A Very hard.

12 Q Did you listen to it a second time?

13 A Yes.

14 Q When was that?

15 A I asked him to listen to it before they cleaned it up  
16 again.

17 Q Okay. So in his office again?

18 A In the courthouse.

19 Q So he let you listen to it twice?

20 A Right.

21 Q The second time were you able to understand it?

22 A No, ma'am.

23 Q Okay.

24 A That's about when I asked him if he could get a  
25 better -- some better equipment so I could understand it

1 and he said this was the best he could do.

2 Q Okay. Do you believe that there's anything specific  
3 he should have done in this regard, something he should  
4 have done more to assist you in understanding the evidence  
5 against you?

6 A He should have let me have -- he should have gave me  
7 all the paperwork, you know, where I could understand what  
8 was going on.

9 Q In regarding the audio?

10 A Regarding what the girl said.

11 Q Do you think there's anything more he should have  
12 done regarding the audio?

13 A He should have gotten -- he should have gotten it  
14 where I like to listen to it again now, the original where  
15 I can understand it with headsets on where I could hear it  
16 understand what's going on with it.

17 Q Just giving you access to a headset?

18 A Right.

19 Q Okay. Is there anything to your knowledge regarding  
20 the evidence in this case that was withheld from you or  
21 that you don't know about or never saw, is there anything  
22 like that?

23 A I didn't see what the girl said originally from what  
24 she had told the people originally.

25 Q And ---

1 A The original report that she told them what I was  
2 suppose to have done or what they asked or what I did?

3 Q And when you say them are you ---

4 A DSS or whoever.

5 Q You believe somewhere out there there's an original  
6 report ---

7 A Right.

8 Q --- made by the victim ---

9 A Right.

10 Q --- to an authority of some sort ---

11 A Right.

12 Q --- that you never saw?

13 A Right, until the Friday before we were suppose to go  
14 to trial.

15 Q And then you did see it?

16 A Right.

17 Q So it's not that it was kept from you forever. It  
18 was kept from you until the last minute?

19 A Right.

20 Q Okay. Now, during these two years you sat in jail  
21 waiting on these charges to be resolved, were there any  
22 plea offers?

23 A Yes.

24 Q And what -- start with the first plea offer you  
25 remember getting?

1 A It was around ten years.

2 Q Okay.

3 A I told them I wouldn't do ten years for something --  
4 ten years is a lifetime to a 65-year-old man at least  
5 that's what I felt like.

6 Q Okay.

7 A I said I won't plead guilty to ten years. I didn't  
8 do anything worth spending the rest of my life in prison.

9 Q You didn't do it and you didn't want to do ten years?

10 A Right.

11 Q And you told Mr. Drylie you were rejecting that plea  
12 offer?

13 A Right.

14 Q Were there any other additional plea offers extended?

15 A His assistant or investigator whatever they would  
16 come down and ask me will you take ten. No. I wouldn't  
17 do it. I had that offered to me a couple times.

18 Q While you were in jail?

19 A Right.

20 Q And when you say his assistant are you talking about  
21 Mr. Drylie's investigator?

22 A His investigator.

23 Q Is that the gentleman that's in the courtroom right  
24 now?

25 A Yes.

1 MS. GOLDBERG: All right. And for the record  
2 that's Donald Kneece.

3 BY MS. GOLDBERG:

4 Q Were there ever any plea offers extended to you other  
5 -- you know, I'm not talking about when you go to court,  
6 but prior to that while you're sitting in jail, any other  
7 plea offers other than ten years?

8 A No, not that I remember.

9 Q That was the only offer that you had?

10 A It was offered a couple times. They ask me will you  
11 take ten. I -- no. Because like I told him ten years is  
12 life to me why should I take ten years. I was 65 year  
13 olds then.

14 Q Is there any other reason why you didn't accept that  
15 plea offer?

16 A I didn't do anything worth ten years, worth spending  
17 the rest of my life in prison for. I got a letter from  
18 one of my granddaughters that tells me you didn't do  
19 nothing worth spending life -- it's her niece -- I mean,  
20 it's her aunt that wrote me a letter and told me you  
21 didn't do anything worth spending the rest of your life in  
22 prison for.

23 Q All right. Now, when you would meet with Mr. Drylie  
24 in jail or leading up to going to court, did you ever  
25 discuss with him the possibility that you might have an

1 alibi defense?

2 A Yes.

3 Q Okay. Did you personally seek out any information to  
4 support this information?

5 A Yes.

6 Q All right. Now, first of all, what is this potential  
7 alibi defense?

8 A I wasn't there. I could prove I wasn't there.

9 Q And when you say I wasn't there, where is there?

10 A I was being -- one time I was in Nitro, West  
11 Virginia. The next time I was in Beaverdam, Ohio, which  
12 is a little over 100 miles north of Nitro, West Virginia.  
13 The next time I been in Findlay, Ohio, which is somewhere  
14 around 96 miles north of Beaverdam.

15 Q And when you say the first time, this second time,  
16 the third time, there were actual multiple indictments  
17 originally in this case?

18 A Every time I get -- every time they indictment me, I  
19 prove I wasn't home. Okay, then they indictment me again.  
20 I prove it wasn't home. Then they indicted me again, I  
21 proved I wasn't home. I would prove by the minute that I  
22 wasn't home.

23 Q And ultimately all of those indictments were  
24 dismissed except for the one conviction we have here  
25 today; is that right?

1 A Right.

2 Q Okay. And when you say you weren't there you weren't  
3 home, you mean you weren't in South Carolina?

4 A South Carolina, right.

5 Q Now, what did you do personally to seek out  
6 information to back it up?

7 A I got my company to send the information -- my  
8 fueling information to where I fueled which where I swipe  
9 my card and signed. And it gave the minute -- the hour  
10 and the minute that I was there the date, the hour and the  
11 minute.

12 Q How did you request this information?

13 A I wrote my company in Canada and the guy's name was  
14 Ted somebody and he sent it all to me.

15 Q Just by mail?

16 A Right.

17 Q And when you received this information, did you  
18 provide it to Mr. Drylie?

19 A Yes.

20 MS. GOLDBERG: All right. Beg the Court's  
21 indulgence.

22 THE COURT: Yes, ma'am.

23 MS. GOLDBERG: Your Honor, at this time I'm  
24 going to hand the applicant what's been premarked as  
25 Applicant's Exhibit Number 1, which is a one page

1 document.

2 BY MS. GOLDBERG:

3 Q Mr. Heard, is that the document you received from  
4 your employer?

5 A I received multiple paperwork.

6 Q Is that the particular document that addresses the  
7 days relevant to this case?

8 A Yes, ma'am.

9 Q And you are testifying that you provided Mr. Drylie  
10 with a copy of that document?

11 A Yes, ma'am.

12 MS. GOLDBERG: Okay. At this time, Your Honor,  
13 I'd ask that this document be admitted into evidence.

14 THE COURT: Any objection?

15 MR. SPENCER: I -- it is as I understand it in  
16 Mr. Drylie's file, so I would object as to notice to the  
17 attorney to research an alibi potentially, but I'd object  
18 to anything further than that.

19 THE COURT: Okay.

20 MS. GOLDBERG: Your Honor, I mean, it's not a  
21 jury here Your Honor. When the testimony is all out, you  
22 can take it for whatever ---

23 THE COURT: I'll admit it.

24 MS. GOLDBERG: Thank you, Your Honor.

25

1                   (WHEREUPON, Applicant Exhibit No. 1 was admitted  
2                   into evidence.)

3 BY MS. GOLDBERG:

4 Q     All right. Mr. Heard, you've looked at that document  
5     that's in front of you. Is -- when you first received  
6     that document, were you able to remember the days and  
7     times generally of where you were on the road -- what was  
8     your job I don't think that's clear?

9 A     Drove a truck.

10 Q    You were a truck driver?

11 A    Truck driver, uh-huh.

12 Q    And what company did you work for?

13 A    FTI.

14 Q    And is that a national company?

15 A    Well, they got -- they have places all over. They  
16     actually out of Canada.

17 Q    Typically when you were on a trucking route would  
18     this be within the state, outside of the state?

19 A    Outside.

20 Q    Okay. Long distance?

21 A    Right.

22 Q    All right. When you first obtained this document and  
23     looked at it, did it appear to correctly reflect your  
24     memory as to where you were when?

25 A    Yes, ma'am.

1 Q Okay. That was your personal memory of where you had  
2 been and when?

3 A Right.

4 Q All right. So the transcript in this case of the  
5 guilty plea on page seven states that the State allege  
6 that the incident occurred on or about January 24th 2015  
7 at 11:23 p.m. So, Mr. Heard, do you believe ---

8 MR. SPENCER: Your Honor, I object. We haven't  
9 heard any authentication about this -- oh, I'm sorry  
10 withdraw that. I was jumping ahead.

11 THE COURT: That's okay.

12 BY MS. GOLDBERG:

13 Q Mr. Heard, do you believe you have an alibi for  
14 January 24th?

15 A Yes, ma'am.

16 Q Where do you believe you were on January 24th.

17 A I was in Walton, Kentucky.

18 Q Walton, Kentucky?

19 A At 11:41.

20 Q And are you talking about a.m. or p.m.?

21 A That would be a.m. there.

22 Q 11:41 a.m. You believe you're in Walton, Kentucky at  
23 11:41 a.m.?

24 A Right.

25 Q All right. Now, as I said, the allege audio

1 recording that is relative to this case is from the same  
2 date at 11:23 p.m. So can you explain to the Court  
3 whether or not you believe you would have physically been  
4 able to be in Edgefield County that time and date?

5 A I cannot. I could not make it.

6 Q Tell the Court why?

7 A A big truck can only do around average of 50 miles  
8 per hour. At that time we could only drive about 11  
9 hours, okay. From Walton, Kentucky that's just over the  
10 line of Cincinnati, Ohio. I made it to Tennessee and I  
11 can't make it from Tennessee -- I couldn't make it home  
12 from Tennessee -- well, I can just barely make it home  
13 from Tennessee the next day, that be on the 25th.

14 Q Okay.

15 A I would leave Tennessee on the 25th and I could  
16 barely make it home then.

17 Q So when you able to explain -- were you able to  
18 explain all that to Mr. Drylie?

19 THE COURT: Let me ask ---

20 MS. GOLDBERG: Yeah, go ahead.

21 THE COURT: Sir, I just did Google Maps and it  
22 says it's 489 miles from Walton to Edgefield. You said  
23 you average 50 miles a hour, that's ten hours driving that  
24 you would be back.

25 MR. HEARD: But you have to estimate time for

1 taking breaks.

2 THE COURT: So you're telling me that the  
3 average of 50 miles an hour doesn't include breaks?

4 THE DEFENDANT: No, sir.

5 THE COURT: How fast you drive on a truck.

6 MR. HEARD: I average about 300 -- somewhere  
7 around 300 miles a day.

8 THE COURT: Driving for how many hours?

9 MR. HEARD: Eleven hours.

10 THE COURT: You drive 300 miles in 11 hours?

11 MR. HEARD: That's about all I can do, about all  
12 I can do.

13 THE COURT: That seems really slow.

14 MR. HEARD: A big truck it depends on what route  
15 you're going. If I going down 10 say from Louisiana down  
16 towards Texas, I can go average -- I can do around 500  
17 miles because it's flat land. If you're loading coming  
18 from Detroit, you can't go over those hills on 77.  
19 Sometimes you get 20 miles an hour going up those hills,  
20 so that's where it all messes up.

21 THE COURT: Thank you, sir.

22 MR. HEARD: I just say they average -- I think  
23 if you called any company, the average trucks going an  
24 average of 45 miles an hour to get to where he's going if  
25 he drives straight through. However, it's about 300 miles

1 a week -- I mean, 300 mile a day, I am sorry.

2 THE COURT: Thank you, sir.

3 MR. HEARD: And if I could get my logbook at  
4 home I could show you that on the logbook.

5 THE COURT: Thank you, sir.

6 BY MS. GOLDBERG:

7 Q All right. Mr. Heard, so you did review -- told all  
8 of that, you shared all of that with Mr. Drylie, correct?

9 A Yes, ma'am.

10 Q All right. And did he ---

11 A Well, I don't think he ask me about how long I could  
12 drive.

13 Q He didn't ask how long it would take you to get to  
14 Edgefield?

15 A No.

16 Q From the last ---

17 A In an automobile I can do it easily.

18 Q Well, basically from the last time you filled up your  
19 gas tank in the truck, he didn't ask you how long it take  
20 to get to Edgefield from there?

21 A He didn't ask.

22 Q Okay. Did you explain it to him like you explain to  
23 the Court?

24 A No.

25 Q Okay. What was the next step as far as this -- was

1 Mr. Drylie going to try and present an alibi defense for  
2 you at trial or did he tell you not to or where did that  
3 go?

4 A Every time I prove where I got indicted, every time I  
5 prove I wasn't there, the next thing I know I'm indicted  
6 again. I prove I wasn't there. The next thing I know I'm  
7 indicted again. And they did that until finally they just  
8 said we're going to indict you from this date all the way  
9 to that date.

10 Q There was a time frame?

11 A Right, they caught me home one day.

12 Q Under the indictment?

13 A Right, Mr. Drylie said it only takes one day.

14 Q Okay. And you admit you didn't have an alibi for  
15 that entire time frame?

16 A Just my receipts.

17 Q Right. But the time and dates stated in the plea,  
18 you believe you would have had an alibi for that?

19 A Yes, ma'am.

20 Q Okay. You were -- we're preparing to have a jury  
21 trial in this case, correct?

22 A Right.

23 Q All right. Aside from developing the alibi, do you  
24 know what defenses your lawyer was going to put up in your  
25 behalf, had you discussed it with him?

- 1 A No, ma'am.
- 2 Q Okay. Aside from preparing this alibi defense, what  
3 else do you think your lawyer should have done to prepare  
4 for trial that he didn't do?
- 5 A I don't know.
- 6 Q That's just the one that comes to mind?
- 7 A That's it.
- 8 Q Okay. Now, on July 24th, you were transported to  
9 court, that was the day your jury trial was to begin,  
10 correct?
- 11 A I don't know, yeah, okay.
- 12 Q Well, when you got to court on July 24th, did they  
13 change your clothes?
- 14 A Yes, ma'am.
- 15 Q They put you in a suit, button up shirt?
- 16 A Nice shirt and pair of pants.
- 17 Q Nice shirt and pants took off your jail uniform?
- 18 A Right.
- 19 Q And it was -- was it your understanding you were  
20 going to have a trial that day?
- 21 A Yes, ma'am.
- 22 Q Okay. What happened when you got to court?
- 23 A When we got there, they put me in a room.
- 24 Q Okay.
- 25 A And the investigator would come talk to me.

1 Q Okay. And is this Mr. Donald Kneece who's in the  
2 courtroom right now?

3 A Yes.

4 Q What did you talk about?

5 A We talked about -- well, he said, you know, want me  
6 to take the plea bargain, want me to plead guilty. And he  
7 said, you know, he prayed with his preacher that a couple  
8 times that I would plead guilty. And he -- the first time  
9 he said they must have been praying the wrong prayer, so  
10 they prayed a different prayer that I plead guilty. You  
11 know, wouldn't put these girls through this, okay. So I  
12 asked him, you know, if my Little River was there.

13 Q Who is my Little River?

14 A She one of my granddaughters.

15 Q She one of the -- were the alleged victim in this  
16 case?

17 A Right.

18 Q Okay. You asked if the victim was present?

19 A Right.

20 Q And he said?

21 A He said, yeah, they here.

22 Q Okay.

23 A So I had asked him if he take a picture of her so I  
24 can see they here, so he got me a video.

25 Q He went out into the courtroom or somewhere?

- 1 A In a back room and got a video for me, show me the  
2 video.
- 3 Q Was this -- what was the video of?
- 4 A Of Little River and the other girl there.
- 5 Q Were they talking into the video?
- 6 A They was just talking.
- 7 Q To each other?
- 8 A Right.
- 9 Q Okay. They weren't sending a message to you?
- 10 A No, uh-uh.
- 11 Q Okay. The investigator came back and showed you the  
12 video?
- 13 A Right.
- 14 Q In order to show you that they were in fact there at  
15 the courthouse?
- 16 A Right.
- 17 Q For the trial?
- 18 A Right.
- 19 Q And you said that he had asked you to take the plea  
20 bargain?
- 21 A Yes. Well, he didn't ask me to take the plea  
22 bargain, he just asked me to plead guilty.
- 23 Q Okay. So there was no plea deal?
- 24 A Not that I know of.
- 25 Q Okay. He brought you the video to show the victims

1 were present. What else?

2 A He just -- he told me said you won't be there long.  
3 You won't be there very long. You'll be in there long  
4 enough -- before you know it, you'll be out there on a  
5 bank with a fishing pole in one hand and a beer in the  
6 other.

7 Q And by you won't be there long he meant?

8 A I wouldn't have a very long sentence.

9 Q You won't have a long sentence?

10 A Right.

11 Q You won't be in prison long?

12 A Right. I won't be in prison long, but he just didn't  
13 know it that I don't like beer and don't like fish.

14 THE COURT: Let me ask one more question.

15 MS. GOLDBERG: Yes, please.

16 THE COURT: Mr. Heard, you said that the  
17 investigator told you you would be in and out, but  
18 literally from the transcript the very first thing the  
19 Solicitor said in court was a minimum ten year sentence  
20 that you were pleading guilty to.

21 MR. HEARD: I didn't know that until I got in  
22 the courtroom.

23 THE COURT: Okay, but you went through with the  
24 plea, right?

25 MR. HEARD: I gave up. I didn't care. I was so

1 upset. They could have locked me up. I didn't care. I  
2 was so upset. I was in tears sitting in the room. I know  
3 that 65-year-old man crying.

4 MR. SPENCER: And I apologize, Your Honor.  
5 Mr. Heard is a little soft spoken and I thought it was an  
6 attorney who was saying that. I understand now it's an  
7 investigator and I know that's an allegation in the  
8 application. I would object on the grounds of hearsay.  
9 Certainly conversations back and forth with counsel are  
10 not hearsay, but in this case I would assert that, you  
11 know, the conversation between an investigator and  
12 Mr. Heard is not necessarily not hearsay. I think in this  
13 instance would be hearsay.

14 THE COURT: Well, but it's coming in for the  
15 affect on the listener, right? I'm going to overrule the  
16 objection.

17 MR. SPENCER: And if I could just add, I think  
18 as to the substance that there was a five-year plea deal  
19 or something like or, you know, whatever it is, then that  
20 would still be hearsay I think.

21 THE COURT: I'm going to overrule the objection.

22 MR. SPENCER: Certainly I understand, Your  
23 Honor.

24 BY MS. GOLDBERG:

25 Q Mr. Heard, I think and you were clear that the

1 investigator basically gave you the impression that you  
2 wouldn't be in there long? Was there any specific plea  
3 offer stated that day by your attorney or anyone else?

4 A No.

5 Q So there was no five-year plea offer?

6 A It wasn't stated, no.

7 Q It wasn't stated?

8 A Right.

9 Q Did you assume that there was?

10 A Yes.

11 Q Why?

12 A There was a little place on there where the five  
13 years was over there.

14 Q And ---

15 MS. GOLDBERG: Beg the Court's indulgence.

16 THE COURT: Certainly.

17 (WHEREUPON, a pause in the proceedings.)

18 BY MS. GOLDBERG:

19 Q Mr. Heard, I'm going to hand you a copy of the  
20 sentencing sheet in this case. Is this what you're  
21 talking about when you say something was written  
22 somewhere?

23 A Yes, ma'am.

24 Q Okay. And explain what you saw that made you think  
25 that?

1 A Well, determinative five years there, that word is  
2 scribbled out. This wasn't marked at all when -- that I  
3 know of there.

4 Q All right. So just to try and help the Court with  
5 this. Mr. Heard's pointing at the checked boxes for  
6 violent, most serious and GPS. And you said that none of  
7 that was checked?

8 A That was not checked.

9 Q And then there is a section where the actual sentence  
10 is written where there is something stretched out and you  
11 are telling the Court what?

12 A That was a five-year term, that's what I thought it  
13 was.

14 Q The number five was written in that book -- blank?

15 A That's what I thought it was, yes.

16 Q When you signed the sheet?

17 A Right.

18 Q Okay.

19 THE COURT: Which box is he referring to?

20 BY MS. GOLDBERG:

21 Q So you're saying that the sentencing sheet -- the  
22 sentence itself was already filled out when you signed the  
23 sheet?

24 A Right.

25 Q And that was before or after you pled guilty?

1 A That part of it was. The marking is up there where  
2 it was check. I didn't see that.

3 Q Okay. And you signed the sheet before you pled  
4 guilty or after?

5 A After.

6 Q Okay. You signed the sheet after you pled guilty?

7 A It was in the room where I was kept at. That's where  
8 I signed it.

9 Q The room where you were kept at while you were  
10 talking to the investigator?

11 A Right.

12 Q And he was sharing all this information?

13 A Right.

14 Q Before you went in front of the judge?

15 A Right.

16 Q So did you sign the sheet before you pled guilty?

17 A I didn't -- I signed it in that room. I guess, I'm  
18 assuming that I pled guilty.

19 Q Fair enough. Do you remember any conversation you  
20 had with Mr. Drylie that particular day that are  
21 significant or make a difference in your decision making  
22 here?

23 A No, that day only saw him when I sign that sheet.

24 Q Okay. The conversation ---

25 A Stepped in front of the judge afterwards.

1 Q The conversations that matter to you were the  
2 conversations with Mr. Kneece?

3 A Right.

4 Q So ultimately you went in front of the judge and you  
5 pled guilty that day, correct?

6 A I was -- my granddaughter -- Little River was sitting  
7 over there and it got me so upset that I told the judge I  
8 didn't care just stop upsetting her. She was sitting over  
9 there crying.

10 Q You didn't want to upset her further is that why you  
11 pled guilty?

12 A Yes.

13 Q Do you believe that you should have pled guilty?

14 A Not -- no.

15 Q All right. Do you believe anything improper was done  
16 or said that led you to plead guilty?

17 A I was coerced into pleading guilty. I was talked  
18 into it.

19 Q By who?

20 A By -- every time somebody would come to see me they  
21 would try to talk me into it over two years.

22 Q Are you talking about legal counsel and the  
23 investigators?

24 A Right.

25 Q You're not talking about your family or friends or

1 anybody like that?

2 A No, not family and friends, no.

3 Q Okay. Have you read the transcript of the guilty  
4 plea?

5 A I think read it one time.

6 Q Okay. Was there anything in it that you thought was  
7 wrong?

8 A I don't remember, been a couple of years.

9 Q Okay. Do you believe that you understood the  
10 ramification of pleading guilty or the consequences?

11 A No, I didn't.

12 Q What didn't you understand?

13 A That I would be spending the rest of my life in a  
14 level three prison.

15 Q Was your decision well thought out and intelligent?

16 A No.

17 Q Why not?

18 A I didn't have all the time to think about it as far  
19 as setting up when I pled because I was going to trial  
20 with it. As far as I cared, I was going to trial.

21 Q After your guilty plea, did you speak with Mr. Drylie  
22 at all?

23 A No.

24 Q Did you before or after or at any time thereafter  
25 ever speak with him about filing an appeal in this matter?

1 A No.

2 Q Do you believe that -- did you want to appeal this  
3 case?

4 A Yes.

5 Q Did -- but you never asked him to file notice of  
6 appeal?

7 A Didn't know I could from that point.

8 Q Didn't know you could appeal?

9 A Right.

10 Q Okay. Mr. Drylie never told you you could?

11 A Right.

12 Q Okay. Do you believe he should have filed notice of  
13 appeal?

14 A Definitely.

15 Q Why?

16 A Because they had me so upset that I wasn't able to  
17 think straight, I wasn't thinking. I spent two and a half  
18 years down there, you know, fighting it. Why would I  
19 agree to 25 years.

20 MR. HEARD: Okay. All right. I have no other  
21 questions. The attorney general is going to ask you some  
22 questions, okay.

23 THE COURT: All right.

24 CROSS-EXAMINATION

25 BY MR. SPENCER:

1 Q Mr. Heard, do you recall a judge telling you -- Judge  
2 Sprouse telling you that your potential sentence was  
3 between ten and 30 years?

4 A I don't know.

5 Q And you don't have a copy of the transcript up there  
6 with you?

7 A No, sir.

8 Q Okay.

9 MR. SPENCER: Judge, if I may approach?

10 THE COURT: You may.

11 BY MR. SPENCER:

12 Q Mr. Heard, can you read?

13 A I can put it up close enough to read.

14 Q You can put it up close enough to read, okay. You  
15 want to read lines nine through 13 -- nine through 14 if  
16 you would to yourself. Let me know when you're ready.  
17 Let me take that back if I may.

18 A Okay.

19 Q So Judge Sprouse told you that it carries between ten  
20 and 30 years?

21 A That's what it said, yes, sir.

22 Q And you said yes?

23 A Yes.

24 Q And, I mean, you understood at the time the guilty  
25 plea. The result was you were going to prison?

1 A I knew I was going to prison, yeah.

2 Q You knew you were going prison. And Judge Sprouse  
3 was telling you the minimum right there, the minimum was  
4 ten years, right?

5 A I was paying more attention to my granddaughter  
6 sitting over there crying, when she started crying and I  
7 wasn't listening to any of it, but I said, yes.

8 Q All right. And you testified today that a ten year  
9 sentence would be a life sentence to you?

10 A Yes, sir.

11 Q In your opinion. At what point did you tell Judge  
12 Sprouse I thought it was going to be five years?

13 A I never -- like I said, I was watching my  
14 granddaughter more then I was listening. I didn't say  
15 anything. I knew I couldn't get anywhere from down there.

16 Q What was that?

17 A I couldn't get anywhere down there. I knew I was  
18 already hung. The girl was kin to the woman -- the  
19 investigator down there. So I just knew I was gone, but  
20 even my son told me that I was gone.

21 Q And you knew you were in big trouble, right?

22 A Right.

23 Q And you knew the evidence was pretty substantial  
24 against you?

25 A No, it wasn't that substantial.

1 Q You knew you had a right to a trial?

2 A I was going to trial. I didn't find out what the  
3 girl had said until the Friday before the trial when I  
4 read what the girl said.

5 Q And you knew what the girl said. You were planning  
6 to go to trial on Thursday, right?

7 A Monday.

8 Q You were planning to go to trial Monday?

9 A Monday. I got the information Friday what the girl  
10 said.

11 Q And you understood what a jury trial was? You  
12 understood...

13 A Right.

14 Q And you told the judge that you were satisfied with  
15 your attorney, right?

16 A Yes. Like I said, I was just -- hey, just get it  
17 over with. I know I can't do nothing down here.

18 Q You didn't tell the judge that?

19 A No.

20 Q You told the judge you were satisfied with your  
21 attorney?

22 A Uh-huh.

23 Q Okay. You told the judge that Mr. Drylie had asked  
24 -- answered all your questions?

25 A Yes, I did. Like I said, I was -- I just give up.

1 My little girl was over there crying and I was...

2 Q So are you saying you gave up because one of the  
3 victims was crying?

4 A She wasn't one of the victims, but she was crying.

5 Q Okay. Let me ask you something because you said  
6 something before I want to understand is you said you  
7 didn't do anything worth ten years, but you did something,  
8 right?

9 A No, I change clothes that's all I did.

10 Q You told Mr. Drylie that there was oral stimulation?

11 A No, I did not.

12 Q Did you read that in the transcript?

13 A I heard him say that. He told the judge that  
14 himself. I didn't say that.

15 Q Okay. Let's back up a little bit.

16 MR. SPENCER: Beg the Court's indulgence.

17 THE COURT: Certainly.

18 (WHEREUPON, a pause in the proceedings.)

19 BY MR. SPENCER:

20 Q Okay. So you -- and I understand what point did you  
21 give up?

22 A Right there in the courtroom I just -- it was before  
23 that.

24 Q Was it like right at the start of the guilty plea?

25 A No, it was right there while I was in -- I gave up

1 all along. I already knew I was gone.

2 Q You knew you were gone the minute you stepped in the  
3 courtroom?

4 A I knew I was gone after I found out the girl was kin  
5 to the investigator.

6 Q All right. You knew you were gone when you stepped  
7 into the courtroom even though you thought you were  
8 getting five years?

9 A Right. So that ---

10 Q The five years is not a life sentence?

11 A Right.

12 Q That's what you wanted. You wanted a five-year  
13 sentence, right?

14 A Ten years was too much. I spent over two years --  
15 sat there telling them I wouldn't take ten years. I would  
16 go to trial for it.

17 Q But you thought five years would be the best thing to  
18 do?

19 A Just through with it, not to hurt my grandkids, yes,  
20 forget about it. Five years would be all right.

21 Q Five years would be all right?

22 A That's what I said five years.

23 Q So you weren't lost right when you came into the  
24 courtroom then?

25 A Do what, sir?

1 Q You weren't lost when you came into the courtroom  
2 were you at that point? You thought you were getting five  
3 years? You weren't happy about it, but it was a better  
4 way to end the case, right?

5 A Right, just to get it over with.

6 Q Just to get it over with for five years?

7 A I'd already spent a little over two years in jail, so  
8 I wouldn't be long in there. I be out ---

9 Q So just be three more years according to your  
10 testimony?

11 A Right.

12 Q Okay. And do you remember after the prosecutor went  
13 through facts of the case, the judge ask you if you agreed  
14 with those -- whether or not those were the facts of the  
15 case?

16 MR. SPENCER: And I'm on page nine. I don't  
17 know if I said that, Your Honor.

18 BY MR. SPENCER:

19 Q Do you remember the judge asking you if you agreed  
20 with the Solicitor's statement of the facts?

21 A I don't remember that.

22 Q Okay. Let me give you a chance to read that over.

23 A Okay.

24 Q I'm going to hand you the transcript on page nine  
25 lines four through -- four through 21. Please take your

1 time.

2 A Thank you.

3 Q Thank you. And do you normally wear glasses for  
4 reading?

5 A Yes, sir, I wear them all the time.

6 Q Okay. Originally, you said you have to pull it close  
7 to your face, but I saw you were able to lay it on the  
8 table and read it?

9 A Yes, it's pretty big writing.

10 Q So you were able to go ahead and read this?

11 A Yes, sir.

12 Q Okay. So you interrupt the judge when the judge says  
13 are those the facts of the case. You tell the judge I  
14 didn't try to penetrate the little girl whatsoever; is  
15 that right?

16 A Right.

17 Q Okay. And then -- and then there's a discussion,  
18 right?

19 A Off the record.

20 Q Off the record. And then Mr. Drylie says, Judge, my  
21 client tells me he agrees there was oral contact, which I  
22 believe qualifies under the setting?

23 A He said that and I did not agree to that.

24 Q At what point did you say -- tell the judge, you  
25 know, I don't agree with that?

1 A I didn't say anything. I just let it ride. I was  
2 watching my little girl sit over there upset and that  
3 upset me.

4 Q Okay. So at this point you already were upset and  
5 given up or whatever, but at this point did you think you  
6 were going to get more than five years?

7 A No, I didn't. I didn't pay that much attention to  
8 it. I still didn't think I was going to get that.

9 Q So you're upset because the child -- the one of the  
10 two children that are alleged that the State believes is  
11 the victim?

12 A She had brown eyes, so I couldn't even see the whites  
13 in her eyes she was so upset.

14 Q Now, did Mr. Drylie ever tell you there was a  
15 five-year deal?

16 A That's what that little piece of paper said right  
17 there.

18 Q You're talking about the sentencing sheet?

19 A Right. That's what I looked at. That's what I seen.

20 Q Did Mr. Drylie ever tell you there was a five-year  
21 deal?

22 A I don't recall, no.

23 Q Did you ever ask Mr. Drylie is that right is it five  
24 years?

25 A No, I was just looking at the sheet.

1 Q And this is pretty substantial because, I mean, much  
2 more than five we're talking about what you view as a life  
3 sentence?

4 A Ten years was a life sentence to me.

5 Q Right. And everything you'd heard up at that point  
6 had been ten years, ten years, ten years?

7 A Right.

8 Q And Mr. Drylie said ten years?

9 A Well, he didn't say anything. He just walked in and  
10 he said sign right here and I sign there.

11 Q At what point did you say ask Mr. Drylie it is five  
12 years, right?

13 A I didn't ask him at all.

14 Q And you're saying what was blacked out on the  
15 sentencing sheet said five years at the time?

16 A I seen a five, yes.

17 Q Okay. And you said you signed that before you walked  
18 into the courtroom and pled guilty?

19 A Right.

20 Q Okay. And the judge didn't give you five years,  
21 right? You said 25 years?

22 A Right.

23 Q Okay. At what point did you ask Mr. Drylie what  
24 happened. I thought it was five?

25 A Like I said, I just give up. I didn't care no more.

1 Q You did not tell Mr. Drylie that, hey, I thought this  
2 was going to be five years?

3 A I didn't say nothing. I just give up.

4 Q Because the reality is you knew you were going to get  
5 a big sentence and you knew there was never a five-year  
6 deal and the reality is is you pled guilty knowing that it  
7 was ten to 30 years?

8 A I didn't do anything worth spending ten years and I  
9 told him that.

10 Q What did you do that wasn't worth some prison time?

11 A Didn't do really anything.

12 Q Are you saying you never touched these girls?

13 A No.

14 Q Are you saying that you got up and pled guilty to  
15 something you didn't do?

16 A Yes.

17 Q Are you saying ---

18 A I didn't want to put them through it. I did what I  
19 had to do.

20 Q You told the attorneys that that was you on that  
21 recording, right?

22 A I didn't tell them that was me.

23 Q You did not tell them that was you?

24 A No.

25 Q Okay. Well, Mr. Heard, why did you plead guilty if

1 there's not much evidence? That's not you on the tape?

2 A I already told you I give up. I was done in from the  
3 start when the girl -- I found out the girl was kin to the  
4 investigator down there. The investigator knows the  
5 lawyer. The investigator knows the judges. The  
6 investigator knows the DA. The investigator knows  
7 everybody. I knew I wasn't gone get nothing. I knew I  
8 was gone.

9 Q Is that what you told Mr. Drylie?

10 A I believe I did tell him that.

11 Q Okay. Why did you tell -- did you tell Mr. Drylie  
12 why you were pleading guilty?

13 A No, I just -- like I said, I was so upset I just give  
14 up.

15 Q You thought the victims would never testify against  
16 you?

17 A No, I knew they was there, that's what they were  
18 there for.

19 Q You knew they were going to testify against you?

20 A I guess they would. They didn't -- I didn't know  
21 what she was gone say until the Friday before that Monday.

22 Q What did you find out she was gone say?

23 A She said that how did it feel when he touched you?  
24 Sad. How did it feel when you touched his? Sad. What  
25 his look like? I don't know. Now, if there was oral sex,

1 she would know what mine look like.

2 Q All right. You're saying that what she had said was  
3 not incriminating? She didn't accuse you of anything?

4 A She didn't accuse me of anything. I didn't know this  
5 until Friday.

6 Q So you got a victim who's not accusing you of  
7 anything and you're ready to go to trial and then you  
8 decide you give up?

9 A I didn't know this until the Friday before we suppose  
10 to go to trial.

11 Q And did you tell -- and because of that, you changed  
12 your mind and pled guilty?

13 A Like I said, I give up. I just quit caring because  
14 I'm already gone. I had already spent two years sitting  
15 down there.

16 MR. SPENCER: Beg the Court's indulgence.

17 THE COURT: Certainly.

18 (WHEREUPON, a pause in the proceedings.)

19 BY MR. SPENCER:

20 Q And that gas log that says that you were in Kentucky  
21 south of Cincinnati at 11 a.m.?

22 A Walton, Kentucky.

23 Q And you don't have anything that says you were in  
24 Kentucky or Tennessee or somewhere else at 11:00 p.m.?

25 A That looks like 1315 here at Walton.

1 Q Okay.

2 MR. SPENCER: Your Honor, I have no further  
3 questions.

4 THE COURT: Any redirect?

5 MS. GOLDBERG: No, Your Honor.

6 THE COURT: Thank you, sir, you can step down.

7 (WHEREUPON, the witness leaves the witness  
8 stand.)

9 MS. GOLDBERG: Your Honor, that concludes the  
10 applicant's case.

11 THE COURT: That concludes the applicant's case?

12 MS. GOLDBERG: Yes.

13 THE COURT: Sir.

14 MR. SPENCER: Thank you, Your Honor. I would  
15 call Investigator Kneece to the stand.

16 THE COURT: All right.

17 THE CLERK: Do you swear or affirm the testimony  
18 you're about to give will be the truth, the whole truth,  
19 and nothing but the truth so help you God?

20 THE WITNESS: Yes, ma'am.

21 MR. SPENCER: Your Honor, just to kind of  
22 thinking this through a little bit, I believe Mr. Heard  
23 had identified Mr. Kneece in the audience, but I don't if  
24 we said let the record reflect Investigator Kneece was  
25 identified. So I would just ask if there's no objection.

1 MS. GOLDBERG: No objection.

2 THE COURT: The record will reflect that  
3 Investigator Kneece is identified by the applicant.

4 WHEREUPON,

5 Donald Kneece,  
6 after first having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. SPENCER:

9 Q Mr. Kneece, you were a private investigator?

10 A Correct, yes, sir.

11 Q And were you hired by Mr. Drylie to work on this  
12 case?

13 A Yes, sir, I was.

14 Q And were you present on the day of the guilty plea?

15 A Yes, sir, I was.

16 Q Okay. Now, at any point in any conversations that  
17 you might have had with Mr. Heard, did you ever tell  
18 Mr. Heard that there was a five-year plea deal?

19 A No, sir.

20 Q Did you ever tell Mr. Heard that he should plead  
21 guilty so he can do five years?

22 A No, sir.

23 Q Did you ever tell him that he be back fishing and  
24 drinking or whatever?

25 A No, sir.

1 Q Is any of that conversation match your recollection?

2 A No, sir.

3 Q Is that conversation just simply false?

4 A Yes, sir.

5 Q Okay. While you were working for Mr. Drylie, did you  
6 investigate any potential alibi?

7 A Yes, sir, Mr. Heard presented us with copies of gas  
8 receipts.

9 Q Okay.

10 A And when we showed him on the indictment there was a  
11 window of opportunity, it wasn't down to a single day at  
12 that point. He said, well, this is not going to help me.  
13 I even made calls to Canada and spoke with the dispatcher  
14 in Canada about the gas receipts, how accurate they were  
15 and was there any time differences based on the  
16 geographical location. And he said that the times were  
17 reflected and as eastern time on the receipts.

18 Q Okay. All right.

19 A We even talked about the possibility of someone that  
20 could authenticate the records if we send a subpoena would  
21 they be able to come down. And he said as long as we've  
22 got a few days notice we could.

23 Q Okay. Did you coerce Mr. Heard into pleading guilty?

24 A No, sir.

25 MR. SPENCER: I have no further questions.

1 THE COURT: All right, Ms. Goldberg.

2 MS. GOLDBERG: Yes, Your Honor. Thank you. May  
3 it please the Court.

4 CROSS-EXAMINATION

5 BY MS. GOLDBERG:

6 Q Mr. Kneece, when were you originally -- well, let me  
7 make this clear at the time that you were involved in this  
8 Mr. Heard's case you were a private investigator then,  
9 correct?

10 A Correct, yes.

11 Q With your own business?

12 A Correct.

13 Q The public defender's office contracted out to hire  
14 you to work on this case?

15 A Correct.

16 Q Okay. You weren't the in-house investigator?

17 A No, I'm not.

18 Q Okay. And so do you know from your records about  
19 when you got involved in this case?

20 A First indication is in November of 2015.

21 Q Okay. During the period of time that you were  
22 involved in this case, did you go down to the jail to see  
23 Mr. Heard?

24 A Yes, several times.

25 Q Several times. And I assume spoke with him about the

1 alibi and the facts of the case during those meetings?

2 A Correct.

3 Q Did you also talk with him about whether or not he  
4 needed to plead guilty during these meetings?

5 A That was discussed, yes, on several occasions.

6 Q And what were you saying? What were you telling him  
7 about his need to plead guilty?

8 A Well, when I first met with him and did the first  
9 interview, he kept saying that I couldn't have hurt the  
10 girls because they been molested by other people, so  
11 nothing I would have done to them would have caused them  
12 any pain. And at first he was denying that the audiotape  
13 existed, but when it was made available to him -- and like  
14 he testified he said that he couldn't understand what was  
15 on it, so a transcript was made of the audiotape in June  
16 of 2016. A copy of that transcript was provided to him.  
17 And whenever we would talk with him, he just kept saying a  
18 ten year sentence is a life sentence for me and so it's  
19 not worth ten years what I've done, so I'm not gone plead.

20 Q Okay. So that part of his testimony that he didn't  
21 want to plead to ten years specifically because he felt it  
22 was a life sentence, that's true he said that all along?

23 A Correct.

24 Q And you when speaking with him were trying to  
25 encourage him to plead guilty?

1 A Well, I was trying to find out what we could use as a  
2 defense for him that I could investigate. And the only  
3 thing that he kept coming up with was they been molested  
4 by other people. You need to go find the other people  
5 that's molested them so that they can testify that they  
6 had been molested before I got involved. And I told him  
7 we couldn't use that as his defense the fact they been  
8 molested by someone else doesn't give you the right to  
9 continue to molest them afterwards.

10 Q Was he trying to say -- did you ever take it that he  
11 was trying to say that because they were aware of this  
12 type of behavior in the past they were making it up this  
13 time?

14 A No, he didn't allude to that. He was saying that  
15 they been molested before, so I couldn't have hurt them  
16 with what I did.

17 Q The day of his guilty plea did you meet with him  
18 privately in a closed room?

19 A There's a holding cell at the courthouse and I did  
20 meet with him in the holding cell.

21 Q Did you go and take a photograph or a video of the  
22 victims present in court and bring it back to him to show  
23 him?

24 A Yes, I did because he kept saying that his girls  
25 would not show up to testify against him because he had

1 receive word that they were out of state and that they  
2 would not be here. He was not convinced that they would  
3 be present. So after speaking Mr. Drylie and speaking  
4 with the Solicitor, she gave me permission to go into a  
5 witness holding room that they've got. She accompanied me  
6 into that room along with two deputies. And she allowed  
7 me to use my cell phone to take about a 30 second video.  
8 And the two girls were -- and I forgot what they were  
9 playing, but they were playing together and laughing and  
10 their relatives were sitting along the wall behind them.  
11 And I don't know if they even realize that I was in the  
12 room, but after I took that video, I went back. I showed  
13 it to Mr. Heard and he started crying. And I said, you  
14 know, what do you want to do. And he said I don't want to  
15 put them through it. He said I didn't think they be here.  
16 And so at that point while he was crying he told me I'm  
17 going to plead. I'm going to plead.

18 Q Did you tell him you don't need to put these girls  
19 through this?

20 A I'm trying to remember. There was a discussion that  
21 he and I had about them having to testify, but I think  
22 that he was the first one that mentioned that he didn't  
23 think they would be there. And he didn't want to put them  
24 through that and then I said, well, you're going to put  
25 them through that if you want to have a trial.

1 Q Did you tell Mr. Heard the sentence wouldn't be very  
2 long sentence?

3 A No, ma'am. Matter of fact, while we were in that  
4 room and he said he wanted to plead, I said you know that  
5 this doesn't change the plea deal, that it's a ten to 30.  
6 And he was still crying and he said I'm going to plead.  
7 And so I went and got Mr. Drylie to let him know what  
8 Mr. Heard was saying. And then shortly after that,  
9 Mr. Drylie came in. He had the plea sheet that the  
10 defendant signed before going before the judge.  
11 Mr. Drylie went over it with him and I left the room  
12 during that time that they were going over the plea sheet.

13 Q Okay.

14 MS. GOLDBERG: Beg the Court's indulgence.

15 THE COURT: Certainly.

16 (WHEREUPON, a pause in the proceedings.)

17 BY MS. GOLDBERG:

18 Q All right. And just to be clear, did you make any  
19 comments to Mr. Heard about one day when that might be  
20 when he would be fishing or drinking beer in the future?

21 A I don't recall anything about a conversation of  
22 fishing and drinking beer.

23 MS. GOLDBERG: Okay. All right. No further  
24 questions.

25 THE COURT: Yes, sir.

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REDIRECT EXAMINATION

BY MR. SPENCER:

Q I just wanted to ask when the sentencing sheet was brought in did you see anything filled in in the sentencing sheet in regards said five years?

A No, sir, I didn't look at the sentencing sheet.

Q You didn't look at it yourself?

A That's the attorney's stuff.

Q Sure, sure.

MR. SPENCER: Beg the Court's indulgence.

(WHEREUPON, a pause in the proceedings.)

MR. SPENCER: I think that's it.

MS. GOLDBERG: Nothing further.

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

(WHEREUPON, the witness leaves the witness stand.)

MR. SPENCER: You know, I just ask Mr. Kneece be excused.

THE COURT: Any objection?

MS. GOLDBERG: No, Your Honor.

THE COURT: Mr. Kneece, you're excused. Thank you, sir.

MR. SPENCER: The next witness I would call would be Mr. Drylie.

THE CLERK: Do you swear or affirm the testimony

1 you're about to give will be the truth, the whole truth,  
2 and nothing but the truth so help you God?

3 THE WITNESS: I do.

4 WHEREUPON,

5 Erik J. Drylie,

6 after first having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. SPENCER:

9 Q Mr. Drylie, were you appointed to represent  
10 Mr. Heard?

11 A I was.

12 Q Okay. And I'm going to cut right to the alibi  
13 question. Did Mr. Heard raise the possibility of an alibi  
14 defense with you?

15 A He did. He tried to get some trucking logs to show  
16 that he was out of town on the specific allege date and he  
17 eventually got those logs, but when he gave those logs to  
18 me, he realize that, you know, it was in the morning on  
19 the date of when he was out of town. And he didn't think  
20 it would help him.

21 Q And he told you that?

22 A He did.

23 Q Okay. And in your opinion do those logs help with an  
24 alibi defense?

25 A They do not.

1 Q And would it constitute as your understanding of the  
2 log -- would it constitute a complete alibi?

3 A No.

4 Q Would even be sufficient enough to possibly get an  
5 alibi charge?

6 A I don't know. I -- possibly depending, but I don't  
7 think so.

8 Q But it doesn't say where he is from 11:00 p.m. into  
9 the early mornings of the next day?

10 A It doesn't.

11 Q Okay. Now, in terms of defenses, did he offer you  
12 any information in terms of potential witnesses or  
13 defenses?

14 A He did not. In fact, he had told us several times  
15 that it was him on that audio. And so, you know, I'd  
16 asked him many times leading up to the trial what's our  
17 defense going to be, what's our defense going to be and we  
18 didn't have anything.

19 Q Okay. What was -- and could you describe the content  
20 of those audios that we been referring to?

21 A It's probably a 20 to 30 minute recording. It was an  
22 audio recording on an iPad. And there was a sexual  
23 encounter going on between Mr. Heard and I think between  
24 the two minors in this case.

25 Q Both minors?

1 A Both minors. You couldn't tell exactly which minor  
2 was which minor, but yes.

3 Q Okay. In your view, how did that affect the strength  
4 of the State's case?

5 A It was overwhelming evidence of guilt.

6 Q Were the victim -- and I think this is reflected in  
7 the guilty plea transcript, but what can you hear the  
8 victims saying in this audio recording?

9 A There is lots of talk of a sexual nature. There's  
10 talk about putting your mouth on it. I remember there's  
11 an exact phrase of -- beg the Court for, but when dick's  
12 in the pussy, there's things like that on there. It was  
13 one of the most disturbing things I've ever had to listen  
14 to.

15 Q That's Mr. Heard saying that?

16 A It's Mr. Heard and the girls.

17 Q And the girls, okay.

18 A And I didn't review the audio transcript -- I briefly  
19 reviewed it before today, but I didn't read it with a fine  
20 tooth comb again.

21 Q Okay. But at the time of trial or at the time of the  
22 guilty plea, you gone through this?

23 A Many times.

24 Q Okay. I want to turn to the issue of any plea offers  
25 that were out there. Was there a ten-year offer out

1 there?

2 A Never.

3 Q So all that testimony we heard about a ten-year  
4 offer, that's not true?

5 A No, no. We talked with him -- so the very first time  
6 I played him the audio recording, he was very defeated  
7 when he heard it and said that there's pretty much nothing  
8 that we can do. And he wanted me to see what I could get  
9 for him. I e-mailed the Solicitor working on the case and  
10 I just never got a response. I e-mailed her several  
11 times. I was hopeful that maybe we could get something in  
12 the ten to 15 years range, but that was never a plea offer  
13 that was extended to us or extended to him.

14 Q Okay. So the first time he listen to it, did he  
15 indicate he was having trouble hearing it?

16 A Specific phrases maybe, but he understood the context  
17 of it and he understood specific phrases on there. The  
18 first copy that we got of it was somewhat difficult to  
19 hear. But I turned it all the way -- we had a private  
20 room in the Edgefield courthouse we could use and I turned  
21 the volume up and he could hear. And then, you know, most  
22 of the time when we met with him after, he want to hear it  
23 again and we played it for him again several times. There  
24 was one time where he asked me for headphones. I didn't  
25 have any headphones that I could give him. The Sunday

1 before we were going to pick a jury at about six o'clock,  
2 an investigator from the Solicitor's office actually drove  
3 out to my house and gave me an enhanced version that they  
4 had gotten. And that one was very clear and that's what  
5 we played for him the morning where we were qualifying a  
6 jury. And I didn't get that until Sunday at six o'clock  
7 in the evening. The investigator actually drove to my  
8 house.

9 Q Okay. But from the very first the nature of the  
10 content of the audio was very apparent?

11 A It was apparent, yes.

12 Q And it was very apparent to Mr. Heard?

13 A It was apparent to Mr. Heard.

14 Q As a matter of fact that put him into a sort of a  
15 defeated effect?

16 A That's correct.

17 Q Okay. And in terms of him wanting headphones, that's  
18 just trying to hear specific comments?

19 A I think -- he wanted to listen to that audio a lot  
20 like more times than I think needed to be. We played it  
21 for him at least I would say five or six times, but every  
22 time we met with him we -- he wanted to listen to it  
23 again. You know, we played it for him, you know, five or  
24 six times at least and then we played the clarified one.  
25 I couldn't bring my computer down to the jail every time I

1 went down there to meet with him.

2 Q Okay. And again you had mention this is something  
3 that really established overwhelming evidence. Was there  
4 any potential defense in that tape?

5 A There was not.

6 Q And he was listening to it more times than necessary  
7 to understand the content?

8 A Yes.

9 Q Okay. So it's questionable whether he was doing it  
10 for evidentiary purposes or to simply relive the moment?

11 MS. GOLDBERG: Objection, irrelevant.

12 THE COURT: I'm going to sustain the objection.

13 BY MR. SPENCER:

14 Q Was there ever a five-year offer?

15 A Never. There was no plea offer and they were  
16 proceeding under the ten to 30 statute, which is if you  
17 have a prior because there was a prior from '89. And, you  
18 know, we had a motion to bifurcate that to try and keep  
19 that out of the jury's ears.

20 Q Right.

21 A And, you know, the Solicitor and I met with the judge  
22 the morning that we're going to qualify the jury because  
23 we were first up and, you know, she wanted a ruling on  
24 that pretrial because it was my understanding that if they  
25 -- if the judge granted that, which the case law was not

1 on our side, but if for some reason the judge granted  
2 that, that she would proceed under the 25 to life section.

3 Q And so that would actually increase the exposure?

4 A That's correct.

5 Q And was there just this charge or was there ---

6 A There were two charges. One was dismissed when he  
7 pled guilty to the one charge.

8 Q All right. In terms of -- I wanted to back up.  
9 Basically, as I understand, there was a sentence -- a  
10 sentencing sheet was brought in when Mr. Heard decided he  
11 wanted to plead guilty. He signed a guilty plea sheet at  
12 that time in a separate room?

13 A He did and the sentence wasn't filled out.

14 Q There was a blank?

15 A I mean, the ten to 30 was written at the top, in the  
16 top part that, you know, the Solicitor would fill out and  
17 the part where I would fill out was -- you know, where I  
18 would sign.

19 Q Showing what the exposure is?

20 A Yeah. But the whole bottom section that the judge  
21 and the clerk of court does where the sentence is actually  
22 written in, that was blank.

23 Q That was blank and it didn't say five years?

24 A It did not.

25 Q Okay. Did you go over with him the amount of time he

1 was facing for these charges?

2 A Yes.

3 Q Okay. And what was your advice to him as to how much  
4 exposure he had.

5 A Ten to 30. And then if we had gone to trial on the  
6 two charges and he had lost both, so I explained it could  
7 be consecutive. So ten to 30 on each charge.

8 Q And if you could tell me were you prepared to go to  
9 trial?

10 A Yes.

11 Q Had you pursued every investigative lead that  
12 Mr. Heard offered?

13 A Yes.

14 Q And we heard some testimony, did Mr. Heard believe  
15 that the two victims were going to appear in court to  
16 testify against him?

17 A I don't know what he really believed, but he express  
18 to me that he didn't think that they would show up. And  
19 then as I recall the conversation that morning, he said he  
20 wanted proof that they were in the courthouse. And so  
21 that's when I told the Solicitor that he was telling me  
22 that he would plea if we had show them proof -- they were  
23 in the courthouse and she allowed us to take that short  
24 video of them that they were there.

25 Q Okay. And how did it come about that he told you he

1 wanted to plead guilty?

2 A I was actually in the courtroom getting ready to  
3 qualify the jury and he was talking with Mr. Kneece. And  
4 that's -- my understanding was that he told Mr. Kneece  
5 that, you know, if we could show him that they were there,  
6 that he wanted to plead guilty. And so that's what  
7 Mr. Kneece came out and told me.

8 Q Okay. And after that did you go and talk to  
9 Mr. Heard?

10 A I did. I did.

11 Q And what was your conversation like with Mr. Heard at  
12 that point?

13 A Well, there was one specific -- one of the victims  
14 that he wanted to plead guilty to and one that he didn't.  
15 And so, you know, I talked to the Solicitor and said he'll  
16 plead guilty to this one, but he doesn't want to plead  
17 guilty to that one and so she agreed to that. So the only  
18 plea was the dismissal of the one charge. And we went  
19 over that it was ten to 30, that, you know, there was  
20 going to be sex offender registry which they had served  
21 him with a retroactive notice, but still that there would  
22 be sex offender registry for this charge and lifetime GPS.  
23 There was no conversation about the amount of time. I  
24 told him I would ask for as much mercy as the Court could  
25 show. He didn't want me to ask for a specific number of

1 years. I thought may be asking for the 15 might be good  
2 and he said he didn't want me to do that.

3 Q And he understood the minimum sentence was going to  
4 be ten years?

5 A He did.

6 Q Okay. And I'm going to back up because I just  
7 thought of this, but was Mr. Kneece the only investigator  
8 that was involved in this case?

9 A No. So Mr. Kneece owns a firm and I think he's got  
10 four or five people working for him. And in the  
11 beginning, there was another investigator that also helped  
12 out with the case. His name was Jason Sabo.

13 Q So you had two investigators helping you with this  
14 case?

15 A At different times, yes.

16 Q And they would have ---

17 A I think one of them got busy with other stuff and  
18 that's part of why Don came in and helped out.

19 Q And they would have run down anything that Mr. Heard  
20 or you thought of as potential defenses?

21 A Yes.

22 Q Okay. And did you go through discovery with  
23 Mr. Heard?

24 A I did.

25 Q Was there anything that you went through in

1 discovery, you know, we mentioned the sort of enhanced  
2 video -- audio, but other than that, was there anything  
3 that was like last minute from the State that...

4 A I don't believe so, not that I recall. But, you  
5 know, the allegations were there from the beginning. And  
6 we went over those, you know, one of the first times I met  
7 with him we went over those. And then we went over the  
8 discovery page by page several times. You know, I explain  
9 to Mr. Heard that I could give him a copy of his discovery  
10 or I could hold on to it for him, you know, after we went  
11 over it. In my experience, a lot times in serious cases  
12 like that when defendants have a copy of their discovery,  
13 a jailhouse snitch comes out very quickly when things are  
14 left out and I told him that. And he said he thought it  
15 would be better if I held on to it, but I let him make  
16 that decision. Especially in that jail where it's so  
17 small and everything's so tight together.

18 Q This would have been the Edgefield ---

19 A The Edgefield County jail, yes.

20 Q Okay. I wanted to talk a little bit about -- and I  
21 don't know if you've had a chance to review the guilty  
22 plea transcript?

23 A I did.

24 Q Okay. And perhaps you heard testimony before --  
25 after the State had given its version of the facts, do you

1 recall Mr. Heard disputing a portion of the State's ---

2 A Yes, he disputed the penetration.

3 Q Okay. And we had talked about what the transcript  
4 reflects, but you had an off-record discussion with him?

5 A Yes.

6 Q And what you related to the judge that he agreed it  
7 was oral stimulation. Is that consistent with what  
8 Mr. Heard told you?

9 A Yes, and then at the top of the next page he agreed  
10 to it too on the transcript. You know, but what he had  
11 told me, yes, was that there had been oral stimulation.  
12 His whole sticking point the whole time was that there  
13 wasn't penetration, but that it had been more feeling  
14 around in oral stimulation.

15 Q And oral stimulation in your professional judgment  
16 would constitute -- constitute that element of the offense  
17 of CSC?

18 A It does.

19 Q Okay.

20 A He wanted to say that he did not have sexual  
21 intercourse with them, but that, you know, there was oral.

22 Q Okay.

23 MR. SPENCER: Beg the Court's indulgence.

24 THE COURT: Certainly.

25 (WHEREUPON, a pause in the proceedings.)

1 BY MR. SPENCER:

2 Q Mr. Drylie, who's decision was it to plead guilty?

3 A His decision.

4 Q Did you coerce him to plead guilty?

5 A I did not.

6 Q If Mr. Heard wanted to go to trial?

7 A We would have gone to trial. We were there  
8 qualifying the jury.

9 MR. SPENCER: Beg the Court's indulgence again.

10 THE COURT: Sure.

11 (WHEREUPON, a pause in the proceedings.)

12 BY MR. SPENCER:

13 Q And one thing I did want to follow up on based, Mr.  
14 Drylie, based on Mr. Heard's testimony is he -- he sort of  
15 -- testified he gave up. He wasn't able to think straight  
16 that sort of thing. In your view, did he appear to be  
17 able to think straight when you were dealing with him  
18 before and during the guilty plea?

19 A He did.

20 Q Okay. Did he seem to capable to understand what he's  
21 doing?

22 A He did.

23 Q And did he understand the gravitas of what was  
24 happening when he pled guilty?

25 A He did.

1 MR. SPENCER: I have no further questions, Your  
2 Honor.

3 THE COURT: Yes, ma'am, Ms. Goldberg.

4 MS. GOLDBERG: Thank you, Your Honor. May it  
5 please the Court.

6 CROSS-EXAMINATION

7 BY MS. GOLDBERG:

8 Q Good morning.

9 A Good morning.

10 Q All right. Mr. Drylie, this audio tape that you  
11 heard several times, can you tell just from listening to  
12 it that it's Mr. Heard's voice?

13 A I believe so. You know, I obviously listen to it  
14 several times and then getting ready for trial listen to  
15 it. It sounds like his voice. I'm not an expert on that  
16 but...

17 Q Was there ever an expert consultant either by the  
18 State -- not only by you, but by the State to prove their  
19 case?

20 A I don't believe so.

21 Q Okay. And, of course, if he didn't testify in trial,  
22 a jury would have actually limited opportunity to hear his  
23 voice, correct?

24 A That's true.

25 Q So a jury wouldn't necessarily be able to tell who's

1 voice that is without further testimony?

2 A That's correct.

3 Q Okay. Now, you mention that the indictments had a  
4 period of time?

5 A They did.

6 Q You reviewed the transcript?

7 A Yes.

8 Q Did you notice in the transcript where the State  
9 alleges a particular date and time in which the audio was  
10 recorded?

11 A They do.

12 Q Did you know that that was the position of the State  
13 that the audio was recorded that day and that time and  
14 what's when this incident actually happened?

15 A We had a pretty good idea that that's what they were  
16 going to allege. I don't remember if it's the warrant or  
17 if it was another piece in the discovery, but, you know,  
18 there was always a specific date where this happened  
19 because of the audio recording. I think with the period  
20 of time that the State might have been trying to allege  
21 that it could have been ongoing.

22 Q That there were other interactions other than just  
23 what's captured on video?

24 A Correct.

25 Q Audio I apologize.

1 A Audio.

2 Q On audio. But you knew going into this the date --  
3 generally the date and time that they would have alleged  
4 that this was reported?

5 A Yes.

6 Q And were you aware that Mr. Heard provided you  
7 records saying that he was out of the state earlier that  
8 day?

9 A Yes.

10 Q Okay. Did you discuss with him the fact that the  
11 distance away of that location was far enough that it  
12 would have prevented him from being back in Edgefield by  
13 the time?

14 A No, it was my understanding that he would have been  
15 back in Edgefield.

16 Q And how did you get that understanding?

17 A From talking with him.

18 Q Okay.

19 A He told me that the receipts were not going to help  
20 him when he first gave them to me.

21 Q When you met with him on the day of the plea to get  
22 him a sentencing sheet, was he crying?

23 A I don't remember.

24 Q Do you remember if he was distraught in any ---

25 A At some point there were tears in his eyes during

1 that day. He wasn't sobbing, but at some point he was  
2 showing -- he did have tears in his eyes.

3 Q During the plea itself, was he distraught or crying  
4 at that time?

5 A The only time he got upset during the plea was while  
6 they were playing the audio. And then after that had gone  
7 on for a while, he interrupted and said, you know, I  
8 thought they weren't going to have to go through this,  
9 talking about the two girls because they were in the  
10 courtroom. And the judge actually said that's nothing.  
11 The Solicitor agreed that they had gotten a firm  
12 understanding of what was on that recording.

13 Q Had Mr. Heard while the charges are pending all  
14 along, had Mr. Heard told you that even a ten-year  
15 sentence would be a life sentence for him so he didn't  
16 want to take ten years?

17 A I don't recall that. I knew he did not want to go to  
18 prison for a long time. And, you know, we talked about  
19 that these were pretty serious charges. I had been  
20 hopeful that maybe we could have gotten a reduction in the  
21 beginning, you know, and had been hopeful of something,  
22 you know, possibly in the lower range of what this  
23 carried. When I first played him the audio, I want to say  
24 it was probably around April of 2016 though I'm not  
25 100 percent sure on that. You know, and it was still less

1 than a year old and it was definitely less than a year  
2 since we had been reported or we had been appointed. You  
3 know, I had e-mailed the Solicitor trying to see if we can  
4 work something out quickly to try and get it taken care of  
5 in hopes that that might have led to a lesser charge for  
6 him, but I had never received a response to any of those  
7 e-mails. And then there was never a plea offer other than  
8 ten to 30.

9 Q Okay. He had denied committing this offense to you?

10 A At times and then he had also told me at times that  
11 he had done it and that it was on his audio. To me, he  
12 always denied penile penetration, but he had admitted  
13 other stuff and told me that it was him on the audio. And  
14 the first time I played him the audio, he said there's  
15 nothing we can do. He was very down beaten at that point  
16 once he heard that evidence. And this was up in the  
17 courthouse in the side room.

18 Q Have you seen the sentencing sheet in this case as it  
19 exists now?

20 A I have.

21 Q Do you know what is marked out or blacked out?

22 A I don't. Obviously, the bottom part was blank when  
23 we signed it.

24 Q Did you -- why didn't you speak with Mr. Heard about  
25 the possibility of filing an appeal in this matter?

1 A I told him he could file an appeal, you know, when we  
2 went over his rights probably that morning too and also --  
3 but he never told me that he wanted to file an appeal.

4 Q You mention it to him prior to the plea?

5 A Prior. And then I went by and said good luck  
6 afterwards and he never mention filing an appeal. I did  
7 not directly ask him afterwards if he wanted me to file an  
8 appeal of the guilty plea.

9 Q Did Mr. Heard appear shocked or surprised in regard  
10 to his sentence?

11 A Not even in the least.

12 Q All right.

13 MS. GOLDBERG: Beg the Court's indulgence.

14 THE COURT: Certainly.

15 (WHEREUPON, a pause in the proceedings.)

16 MS. GOLDBERG: Nothing further.

17 THE COURT: Anything further from the State?

18 MR. SPENCER: Yes, Your Honor, I have some brief  
19 follow up.

20 REDIRECT EXAMINATION

21 BY MR. SPENCER:

22 Q I just wanted to clarify something you said testimony  
23 about the conduct being ongoing. Do you mean ongoing as  
24 to that specific day or do you mean ongoing as like there  
25 was a continuous course of conduct over a series -- over a

1 longer stretch of time?

2 A I think it would have been allege that it was  
3 continuous over a longer period of time.

4 Q Okay. So there were more incidents than just this?

5 A Yes. However, with the recording that obviously made  
6 this the strongest incident to proceed on.

7 Q All right. And I thought I had one more thing. I'm  
8 trying to get my eyes on it. If he had asked you for an  
9 appeal, would you have filed one?

10 A Yes.

11 Q Was there any reason in your view that an appeal  
12 would have been appropriate?

13 A No.

14 Q Okay. Were there any objections during the guilty  
15 proceeding?

16 A No.

17 MR. SPENCER: Your Honor, I believe that's all I  
18 have.

19 THE COURT: Okay, Ms. Goldberg.

20 MS. GOLDBERG: Nothing further, Your Honor.

21 THE COURT: Thank you.

22 (WHEREUPON, the witness leaves the witness  
23 stand.)

24 THE COURT: Any further witnesses from the  
25 State?

1 MR. SPENCER: No further witnesses, Your Honor.

2 THE COURT: All right. Counsel, I think I've  
3 got a pretty good handle on this one, but if either side  
4 would like a closing, I'll be happy to give it to you.

5 MS. GOLDBERG: No, Your Honor, we can rely on  
6 the testimony. I think it was clear.

7 THE COURT: Okay.

8 MR. SPENCER: Your Honor, I just think it comes  
9 down to credibility on every single point. Obviously, the  
10 State's advocating its witnesses were credible witnesses.

11 THE COURT: Thank you, counsel.

12 MS. GOLDBERG: Thank you, Your Honor.

13 END OF REQUESTED TRANSCRIPT  
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FUEL TICKETS FOR SELECTED UNITS  
 (LIBR:FINANCE/EN/CHRY:PTHR/UNIT)

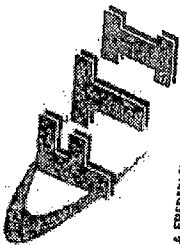
UNIT	MO	YR	BAT	REC	CODE	NAME	CITY	ST	DATE	TIME	INVT	QTY	L/S	AMOUNT	C/U	OH#	OSPR	CPO	PLT
U21417	1	2015	817	77	SC223	FLYING J #	COLUMBIA	SC	01/06/15	1653	44822								
		2015	819	52	OH761	PILOT #009	CIRCLEVILLE	OH	01/10/15	1023	21297	254.5	0						
		2015	821	56	OH761	PILOT #009	CIRCLEVILLE	OH	01/12/15	1040	21259	94.5	0	476.92	U	2574432	01	3.00	50
		2015	823	77	VA237	FLYING J #	WYTHEVILLE	VA	01/14/15	0711	30799	94.9	0	400.00	U	2574432	01	3.00	50
		2015	823	78	OH235	FLYING J #	TOLEDO	OH	01/14/15	1731	64235	101.4	0	300.00	U	2572816	01	3.00	50
		2015	824	58	NY667	PILOT #494	ROTTERDAM	NY	01/15/15	1446	59336	98.0	0	317.60	U	2572816	01	3.00	50
		2015	825	90	NY734	PILOT #322	BATH	NY	01/16/15	1510	54667	121.0	0	420.55	U	2572816	01	3.00	50
		2015	828	57	OH765	PILOT #015	TOLEDO	OH	01/19/15	0846	97903	103.6	0	444.97	U	2572816	01	3.00	50
		2015	829	79	KY229	FLYING J #	WALTON	KY	01/20/15	1352	93243	65.2	0	204.95	U	2574432	01	3.00	50
		2015	830	36	OH828	PILOT #457	BEAVER CREEK	OH	01/21/15	1311	52058	91.2	0	291.96	U	2572816	01	3.00	50
		2015	831	31	OH565	PILOT #360	FINDLAY	OH	01/22/15	1136	60569	100.0	0	300.00	U	2572816	01	3.00	50
		2015	832	72	KY226	FLYING J #	FRANKLIN	KY	01/23/15	0759	64203	77.4	0	229.04	U	2572816	01	3.00	50
		2015	833	45	KY228	FLYING J #	WALTON	KY	01/24/15	1421	95539	95.8	0	287.42	U	2572816	01	3.00	50
		2015	836	90	VA237	FLYING J #	WYTHEVILLE	VA	01/27/15	1901	36200	134.5	0	402.58	U	2572816	01	3.00	50
		2015	839	74	WV111	PILOT #242	METRO	WV	01/29/15	1103	33880	166.9	0	477.32	U	2572816	01	3.00	50
		2015	839	54	OH761	PILOT #009	CIRCLEVILLE	OH	01/30/15	1337	33077	146.2	0	424.12	U	2572816	01	3.00	50
					TOTAL						1,041.3			418.00		2572816	01	2.96	50
					COUNT 10									5,635.61					
		2015	831	24	OH761	PILOT #009	CIRCLEVILLE	OH	02/01/15	1357	35008	96.2	0	256.76	U	2572816	01	3.00	50
		2015	832	24	OH761	PILOT #009	CIRCLEVILLE	OH	02/02/15	1516	35449	171.2	0	508.55	U	2572816	01	3.00	50
		2015	834	74	OH765	PILOT #015	TOLEDO	OH	02/04/15	1920	31445	166.5	0	498.40	U	2572816	01	3.00	50
		2015	837	43	MI395	PILOT #264	MONROE	MI	02/07/15	1118	57755	143.9	0	431.92	U	2572816	01	3.00	50
		2015	839	74	OH236	PILOT #457	BEAVER CREEK	OH	02/09/15	1529	63213	170.6	0	484.34	U	2572816	01	3.00	50
		2015	840	97	NY667	PILOT #494	ROTTERDAM	NY	02/10/15	1620	62625	221.0	0	649.44	U	2572816	01	3.00	50
		2015	841	91	NY734	PILOT #322	BATH	NY	02/11/15	1601	73327	100.5	0	351.57	U	2572816	01	3.00	50
		2015	842	51	OH765	PILOT #015	TOLEDO	OH	02/13/15	1933	21290	136.3	0	409.76	U	2572816	01	3.00	50
		2015	845	12	MI395	PILOT #264	MONROE	MI	02/15/15	1235	62332	92.6	0	264.74	U	2572816	01	3.00	50
		2015	848	79	WV111	PILOT #242	METRO	WV	02/16/15	0754	44454	86.8	0	246.74	U	2572816	01	3.00	50
		2015	849	98	OH761	PILOT #009	CIRCLEVILLE	OH	02/19/15	1425	41594	145.9	0	432.01	U	2572816	01	3.00	50
		2015	851	35	MI324	FLYING J #	WOODHAVEN	MI	02/21/15	1817	26938	139.1	0	429.75	U	2572816	01	3.00	50
		2015	853	77	OH761	PILOT #009	CIRCLEVILLE	OH	02/23/15	0859	35158	163.6	0	452.47	U	2572816	01	3.00	50
		2015	854	53	GA232	FLYING J #	RESACA	GA	02/24/15	1307	5469	155.1	0	437.95	U	2572816	01	3.00	50
		2015	855	92	OH235	FLYING J #	BEAVER CREEK	OH	02/25/15	1435	59423	155.1	0	469.97	U	2572816	01	3.00	50
		2015	858	45	MI395	PILOT #264	MONROE	MI	02/28/15	1750	72439	136.7	0	421.90	U	2572816	01	3.00	50
					TOTAL						2,336.7			6,695.56					
					COUNT 32									12,328.17					
					FINAL TOTALS						1,041.3			13,325.17					
					TOTAL														
					COUNT 32														

... END OF REPORT ...



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 N6E 1N9

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EDGEFIELD COUNTY  
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 CHARLES L. REEL )  
 STATE OF SOUTH CAROLINA )  
 COUNTY OF EDGEFIELD )  
 2019 APR 29 AM 8:53 )  
 Jerry Dean Heard, #373296, )  
 Applicant, )  
 v. )  
 State of South Carolina, )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-19-00176

**ORDER OF DISMISSAL**

This matter is before this Court by way of an application for post-conviction relief (PCR) filed June 18, 2018. The State made its return on November 19, 2018. A hearing on the matter was convened at the Lexington County Courthouse on April 4, 2019. Applicant was present and represented by Kristi Goldberg, Esquire. The State was represented by Senior Assistant Attorney General David Spencer.

Applicant testified on his own behalf. Also testifying was his plea counsel, Eric J. Drylie, Esquire, and private investigator Donald Kneece. This Court also had before it the pleadings for both parties, the transcript of Applicant's guilty plea hearing, the Clerk of Court's records regarding the subject convictions, and Applicant's records from the South Carolina Department of Corrections.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Edgefield County Clerk of Court. During its July 2016 term, the Edgefield County Grand Jury indicted Applicant for two counts of first-degree criminal sexual conduct with a minor (CSC 1st - minor). Erik J. Drylie, Esquire, represented Applicant on the charges. Deputy Solicitor L. Suzanne Mayes, of the Eleventh Circuit Solicitor's Office, prosecuted the case. On July 24, 2017, Applicant appeared before the Honorable R. Scott Sprouse and pled

guilty to one of the counts of CSC 1st - minor. Judge Sprouse sentenced Applicant to twenty-five years imprisonment. Applicant did not appeal his plea or sentence.

#### **FACTS PRESENTED AT THE GUILTY PLEA**

During the guilty plea proceedings, the prosecutor advised the plea court about the facts supporting the charge upon which Applicant pled guilty: On January 24, 2015, Applicant picked up a six-year old girl and a nine-year-old girl (Victim). Applicant was considered a grandfather figure to both of them and watched them in the past. Guilty plea transcript (Tr.) pp. 7-8. At approximately 11:00 p.m., Applicant committed a sexual battery against Victim. Tr. pp. 7-8. Specifically, Applicant placed his mouth on Victim's vaginal area. Tr. p. 8. One of the girls recorded the assault on her iPad. Tr. p. 8. On that recording, one of the girls is heard telling Applicant to put his clothes back on and Victim is heard saying "quit, quit." Tr. pp. 12-13.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1985).

#### **Ineffective Assistance of Counsel and Involuntary Plea**

Applicant alleges his plea was rendered involuntary by ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRPC.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must

show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). With respect to guilty plea counsel, an applicant must show a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would insist on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985); Stalk v. State, 383 S.C. 559, 681 S.E.2d 592 (2009); Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, the PCR court should consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

This Court will now address each allegation of ineffective assistance of counsel:

#### Five year recommendation

Applicant alleges that he pled guilty under the belief there would be a recommendation for a five year prison term. According to Applicant, on the morning trial was set to begin, he spoke with Donald Kneece, one of two private investigators hired by counsel to work on the case. Applicant alleges Kneece told him the recommendation would be for five years if he pled guilty. He claims Kneece told him he would be fishing and drinking beer in short while, implying a short sentence. Applicant thought this was humorous because he did not like fishing or drinking. Applicant also

alleges counsel presented him with the sentencing sheet in which the sentence filled in was for five years. On the sentencing sheet before this Court, something is written in the space for the sentence, but blacked out. Written above it is the twenty-five year sentence that the plea court pronounced during the guilty plea hearing.

Kneece denied he told Applicant that Applicant would receive a five year sentence. Instead, he reminded Applicant that Applicant was facing ten to thirty years imprisonment. He denied having a conversation with Applicant about fishing or drinking beer.

Counsel testified that until the morning of trial, there were no plea negotiations. He explained when he originally played the audio recording of the assaults to Applicant, Applicant wanted to negotiate a plea deal. However, despite counsel's attempt to initiate negotiations, the prosecutor never entered negotiations with counsel. Only after Applicant informed counsel that Applicant wanted to plead guilty on the morning of trial did the prosecutor agree to allow Applicant to plead to one charge and to dismiss the other charge.

Counsel testified the prosecution was not making any recommendations and definitely there was no deal for five years. Counsel testified that when Applicant signed the sentencing sheet, the space for the sentence was blank, it did not reflect a five year sentence. At that point, Counsel advised Applicant again that he was facing a sentence of ten to thirty years imprisonment. Counsel suggested asking the plea court for a sentence of fifteen years. However, Applicant did not want counsel to ask for a specific amount of time. Counsel testified that when the plea court announced the sentence, Applicant did not seem surprised at all.

This Court notes that during the guilty plea proceeding, Applicant agreed with the plea court that he understood the charge he pled to carried between ten and thirty years imprisonment. Tr. p. 4, lines 9-14. Applicant further agreed that the State may ask for the maximum sentence to be imposed

and the sentence would be up to the plea court to determine. Tr. p. 4, lines 15-22.

This Court finds there was never a five year recommendation and further finds that Kneece never told Applicant that there was a five year recommendation. This Court finds that counsel advised Applicant of the proper sentencing range and Applicant understood the potential sentence he was facing. Further, the possibility of any misapprehension would have been cured by the colloquy with the plea court. This Court finds Applicant's testimony not credible, especially given the plea colloquy. This Court finds Kneece and counsel's testimony credible and gives their testimony great weight. This Court denies this allegation.

#### Alibi

Applicant alleges counsel was ineffective in failing to pursue an alibi defense. Applicant was a truck driver. Applicant submitted a record from his employer that purports to show that on the morning of the assault, at around 11 a.m., Applicant purchased gasoline for his truck in Walton, Kentucky, a town just south of Cincinnati, Ohio. Applicant claims that because of hills and mountains, and necessary stops, he would have been unable to return to Edgefield by 11 p.m., the time that the State alleged he picked up the victims.

Both counsel and Kneece testified that when Applicant provided them with the records, he admitted he did not think the records would help. Counsel reviewed the records and in his opinion, the records would not establish a viable alibi defense and were not very useful. Counsel testified that Kneece and another investigator from Kneece's agency (Kneece is the owner of the agency) worked on the case and would have been able to run down any leads and investigate any defenses, including the alibi defense.

This Court is skeptical of Applicant's claim that he would not have been able to return from Walton to Edgefield in roughly eleven to twelve hours' time. The Court takes judicial notice of the

fact Google maps reports a driving distance of 489.7 miles between Walton, KY and Edgefield, SC, with an estimated driving of time of 7 hours 33 minutes. Further, the indictment was for a much wider time range and time is not an element of criminal sexual conduct with a minor.

A charge on the defense of alibi "should be given when the accused submits that he could not have performed the criminal act because he was in another place at the time of its commission." State v. Robbins, 275 S.C. 373, 375, 271 S.E.2d 319, 320 (1980). "To be successful, [a defendant's] alibi must cover the entire time when his presence was required for accomplishment of the crime. To establish an alibi, the accused must show that he was at another specified place at the time the crime was committed, thus making it impossible for him to have been at the scene of the crime." Id. "[Because] an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all." Id.

This Court does not believe the evidence presented actually represents a complete alibi. This Court finds that it does not carry any force to establish a viable defense at trial. Further, this Court finds counsel's testimony on the subject credible and gives it great weight. This Court finds counsel's judgment in assessing the defense to be reasonable. This Court finds Applicant's testimony is not credible on this matter. This Court finds Applicant has failed to meet his burden of proving either prong of Strickland.

#### Failure to review discovery

Applicant alleges counsel did not provide him discovery and did not go through all the discovery. He further alleges he only heard the audio recording twice and the first time it was inaudible. The second time was immediately before trial. Applicant also alleges he did not see the victim's statement until shortly before trial was ready to begin.

Counsel testified he reviewed all of the discovery with Applicant. He explained he told Applicant he was willing to provide copies of discovery to Applicant, but he did not advise it because of the risk a jailhouse informant would use the materials to make a claim against Applicant. Counsel testified the audio recording was devastating. Applicant admitted he was the man in the recording. The recording contained coarse language and captured what sounded like a sexual assault on the children. Counsel testified that although the State would later provide better audio copies of the recording, even the first recording was sufficiently audible for its incriminating value to be apparent and it was sufficient for Applicant to understand its devastating evidentiary impact. In contrast to Applicant's testimony, counsel testified Applicant listened to the recording numerous times.

This Court finds counsel reviewed discovery in detail with Applicant and Applicant was keenly aware of the State's evidence against him so as to make an intelligent and knowing decision as to whether to proceed to trial or plead guilty. This Court finds counsel's testimony on the matter credible and gives it great weight. This Court finds Applicant's testimony lacks credibility. This allegation is denied as this Court finds Applicant failed to meet his burden of proving either prong of Strickland.

#### **Failure to file an appeal**

Applicant alleges he was never advised he could appeal the conviction and sentence from his guilty plea. Counsel testified that he advised Applicant of the right to appeal prior to Applicant pleading guilty. Counsel testified Applicant never indicated he wanted to appeal the guilty plea proceeding. Counsel testified that he did not see any circumstance suggesting an appeal was prudent. See Roe v. Flores-Ortega, 120 S.Ct. 1029 (2000) (finding counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either: (1) that a

rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing). This allegation is denied.

**Failure to understand rights and the ramifications of pleading guilty**

Applicant alleges he did not understand his rights and the ramifications of pleading guilty. Counsel testified that he was prepared for trial on the day of the guilty plea. He hired the investigators to run down any leads and pursue any defenses Applicant suggested. Applicant seemed to believe that the two victims would never testify against him. One of the investigators, with the prosecutor's permission, actually took a short video of the victims at the courthouse to convince Applicant that they were actually present for the trial and would testify against him.

Despite several meetings with Applicant, Applicant never offered anything that could constitute a real defense to the charges and admitted, at least partially, to some of the acts alleged. Applicant admitted he was the man in the audio recording. Applicant always denied penile penetration, but during the guilty plea, advised counsel he agreed there was oral stimulation sufficient to satisfy that element of CSC with a minor. Applicant understood his right to trial and was not coerced into pleading guilty.

The guilty plea transcript reflects the knowing and voluntary nature of the guilty plea. The plea court advised Applicant of his trial rights and the potential sentence. Tr. pp. 4-6. The State presented its version of the facts. When the plea court asked Applicant if he agreed with the facts, he disputed penetration. However, after consulting with Applicant off-record, counsel advised the plea court that Applicant agreed there was oral stimulation sufficient to meet the definition of a sexual battery, and Applicant agreed with counsel's comments. Tr. p. 9, line 4 - p. 10, line 1.

This Court finds that the plea transcript and counsel's testimony clearly demonstrates Applicant understood his rights and the ramifications of pleading guilty. This Court finds that

Applicant made a free, knowing, and voluntary decision to plead guilty with the proper advice of counsel. The guilty plea transcript also demonstrates the knowing and voluntary nature of the guilty plea. This Court finds Applicant's testimony on the matter to not be credible and finds counsel's testimony to be credible and gives it great weight. This allegation is denied.

**Investigator coerced confession**

Applicant alleges Kneece coerced him into pleading guilty. According to Applicant, Kneece said a prayer in front of Applicant asking Applicant not to put the victims through a trial. Applicant alleges Kneece pressured Applicant into pleading guilty. Applicant claimed he was not thinking clearly and was upset when he pled guilty.

On the other hand, Kneece denied he coerced Applicant into pleading guilty. He testified he did not tell Applicant he should not put the victims through a trial, although Applicant said he did not want to put the victims through trial. He claimed he simply gave up.

Counsel testified Applicant appeared to be thinking clearly when he pled guilty. He did tear up when the audio recording was played for the plea court, but was not so overwrought that he did not understand the proceedings.

This Court does not find Applicant's claims to be credible. This Court finds Kneece's testimony to be credible and a more accurate recollection of events than Applicant's contrary testimony. This Court also finds counsel's testimony credible. This Court finds Applicant has not met his burden of showing that his guilty plea was coerced. This Court denies this claim.

**CONCLUSION**


Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this Application for Post-Conviction Relief must be denied and dismissed with prejudice.

This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant shall remain in the custody of the Respondent.

AND IT IS SO ORDERED this 24 day of April, 2019.

  
 \_\_\_\_\_ #2761  
 William A. McKinnon  
 Presiding Judge  
 Eleventh Judicial Circuit

York, South Carolina