

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Jennifer B. McCoy, Circuit Court Judge

GUSSIE HENRY HILTON, JR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001226

APPENDIX

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

BENJAMIN LIMBAUGH
Assistant Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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SC Court of Appeals

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) Court of General Sessions
3) Case No. 2016-GS-10-01527
4)
5 STATE OF SOUTH CAROLINA)
6)
7 VS.) Transcript of Record
8)
9 GUSSIE HENRY HILTON, JR,)
10)
11 Defendant.)
12)
13 DATE: May 18, 2017 .
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B E F O R E:

THE HONORABLE BROOKS P. GOLDSMITH

A P P E A R A N C E:

JENNIFER KNEECE SHEALY
Attorney for the State

JOHN JOSEPH KOZELSKI, III
Attorney for the Defendant

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

1 MS. SHEALY: Thank you, Your Honor. I am Jennifer
2 Shealy from the solicitor's office. Before you is Gussie
3 Hilton. He is pleading guilty to criminal sexual conduct
4 with a minor in the first degree, CSC in the first degree,
5 and three counts of kidnapping. This is without
6 negotiations or recommendations.

7 THE COURT: I take it you agree with your client's
8 decision then to plead guilty to these five charges?

9 MR. KOZELSKI: I do, Your Honor.

10 THE COURT: Have you explained to him the charges
11 contained in the indictments, the possible punishment, and
12 you explained to him his constitutional rights?

13 MR. KOZELSKI: I have, Your Honor.

14 THE COURT: Do you agree with his decision to plead
15 guilty?

16 MR. KOZELSKI: I do.

17 THE COURT: Based on your investigation, the facts
18 and circumstances of this case, do you believe it likely
19 that the State could convince a jury of his guilt beyond a
20 reasonable doubt?

21 MR. KOZELSKI: I do, Your Honor.

22 THE COURT: Mr. Hilton, how old are you, sir?

23 THE DEFENDANT: 29, sir.

24 THE COURT: What kind of work have you normally
25 done?

1 THE DEFENDANT: Fast-food restaurant, car wash,
2 construction, concrete, or some people yards, anything,
3 just, you know what I say, maintenance, something.

4 THE COURT: Have you ever been in criminal court
5 before?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Last time would have been approximately
8 how long ago?

9 THE DEFENDANT: 2011.

10 THE COURT: What happened to you as a result of you
11 being in court?

12 THE DEFENDANT: I got five years nonviolent.

13 THE COURT: Have you ever been treated for your
14 abuse of alcohol, abuse of drugs, or treated for any mental
15 illness?

16 THE DEFENDANT: No, sir.

17 THE COURT: In the past 24 hours, have you taken
18 any medication, drugs, or have you consumed any alcohol?

19 THE DEFENDANT: Medication, yes, sir.

20 THE COURT: Tell me what kind of medication you are
21 taking.

22 THE DEFENDANT: For diabetic.

23 THE COURT: Okay. Does that interfere with your
24 ability to understand what's going on here today?

25 THE DEFENDANT: No, sir.

1 THE COURT: Are you aware today of any physical,
2 nervous or emotional problem you might have that would
3 interfere with your ability to understand what's going on?

4 THE DEFENDANT: No, sir.

5 THE COURT: In other words, have you had a chance
6 to speak with your attorney today?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Are you having any problems
9 understanding what he said?

10 THE DEFENDANT: No, sir.

11 THE COURT: Any trouble understanding what I've
12 been saying to you?

13 THE DEFENDANT: No, sir.

14 THE COURT: Mr. Hilton, your attorney and the
15 solicitor both tell me they believe you wish to plead guilty
16 to these charges; is that correct?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Let me ask you this. What is your
19 understanding of the most time that you could receive on any
20 one charge?

21 THE DEFENDANT: Life.

22 THE COURT: And you wish to plead guilty to these
23 charges?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: I'm going to ask the solicitor to give

1 me some facts about each of these charges. Please listen.

2 MS. SHEALY: Thank you, Your Honor. On August
3 30th, 2015, a 911 phone call was placed by Margaret Campbell
4 reporting that she had been held against her will, along
5 with her daughter, [Minor Victim] who is -- excuse me,
6 [Minor Victim] who is present in the courtroom. Ms. Campbell
7 reported that she and her daughter were forced into the
8 woods near Ellington School Road in Charleston County. Ms.
9 Campbell reported that she had broken free, but her daughter
10 remained in the woods with their captor.

11 When the Charleston County Sheriff's Office arrived
12 at the scene, this defendant and [Minor Victim], who was 13
13 years old at the time, Your Honor, were located in the
14 woods.

15 Ms. Campbell indicated to the Charleston County
16 Sheriff's Office that she and her daughter were getting a
17 ride from this defendant to see her other children that
18 resided in North Charleston. She had had other rides set up
19 for that journey, but they fell through, and asked this
20 defendant to give them a ride.

21 He picked them up. They got in his vehicle. And
22 then he pulled over, stopped his vehicle near the wooded
23 area, and brandished a knife. Forced Ms. Campbell, the
24 person who called 911, to take off her clothes and to walk
25 into the woods against her will, along with her daughter.

1 The defendant later confessed to holding her
2 against her will and forcing her to remove her clothing.

3 Regarding [Minor Victim], she advised the police that
4 she was forced to have full sexual intercourse with the
5 defendant, and that the defendant had a knife the whole time
6 that he threatened to use, and that he had bound her hands
7 with tape.

8 The tape was found by the police officers. He
9 removed the tape before raping her. He forced her to take
10 off her clothes after asking her whether she had ever had
11 sex before. And when she said no, he told her, today you
12 will.

13 The defendant confessed that he had had full
14 intercourse with the juvenile, and that he was in possession
15 of a knife, which he was using to scare [Minor Victim].

16 As the defendant was exiting the woods, he made an
17 unsolicited statement that he had done something bad. This
18 was made to the police officers. He advised that there was
19 a six-year-old female at his residence located at [REDACTED]
20 Martin Street in Ravenel, heading out towards Edisto,
21 Beaufort that way, which is in Charleston County. While
22 saying this, he used a physical gesture towards the officers
23 suggesting that he had had sex with the six-year-old.

24 Deputies went to the residence and found the young
25 victim inside, bloody and shell-shocked. There was blood

1 throughout the residence. And she was complaining of
2 stomach pain. The defendant also confessed to having full
3 sexual intercourse with this victim while she begged him not
4 to. He also admitted that he was giving the little girl a
5 ride in his car, and instead, took her to his house and
6 raped her.

7 He is the first cousin of that child, [Minor Victim]
8 [redacted] mother. So she was his first cousin once
9 removed.

10 Both girls had sexual assault exams conducted. And
11 vaginal and rectal swabs were taken from them, as well as
12 buccal swabs. The defendant's buccal swab was detained.
13 SLED analyzed those.

14 And regarding [Minor Victim] vaginal swabs,
15 the DNA from the defendant was matched to him. And it had a
16 1 in 44 quadrillion chance of being an unrelated foreign
17 contributor.

18 Regarding [Minor Victim] rectal swabs, Gussie Hilton
19 was a match with the possibly of randomly selecting an
20 unrelated individual match being 1 in 56 billion.

21 [Minor Victim], out of her vaginal area -- inner thigh
22 and the labia, were swabbed. The defendant was found to be
23 a match with a 1 in 31 quintillion probability of randomly
24 selecting an unrelated individual.

25 There are some other facts, Your Honor, that I

1 would like to share with you. But for the purpose of giving
2 the factual basis, I can discontinue right now.

3 THE COURT: Okay. Mr. Hilton, you heard the
4 solicitor's recitation of the facts concerning each of these
5 charges. Do you agree with what she said?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: If you don't agree, now is the time to
8 say it. If you don't want to agree or don't want to enter
9 this plea, you certainly don't have to. I say that only
10 because I notice some reluctance in your facial expression.

11 THE DEFENDANT: I stand by what I say.

12 THE COURT: I'm sorry?

13 THE DEFENDANT: I stand by what I said.

14 THE COURT: In other words, you do agree with what
15 she told me? You have to speak up. I'm sorry.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You do? Okay. Are you guilty of each
18 one of those charges, the three kidnapping charges, the
19 criminal sexual conduct, first degree, and criminal sexual
20 conduct with a minor in the first degree?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Has your attorney explained to you your
23 right to have a jury trial on each of these charges?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Have you ever had a jury trial?

1 THE DEFENDANT: No, sir.

2 THE COURT: Well, I need tell you, as you stand
3 there now, you are still entitled to have a jury trial. But
4 if you were to have a jury trial, if you were, I just
5 want -- bear with me just a minute. I know your attorney
6 has told you this. But if you were to have a jury trial,
7 among other things, the Court would instruct the jury that
8 you are presumed innocent, and that the burden would be upon
9 the State to prove your guilt to the jury beyond a
10 reasonable doubt.

11 You would have the right to cross-examine any
12 witnesses that the State might call against you. Of course,
13 you could have your own witnesses testify for you. You
14 yourself could testify or not. And if you decided not to
15 testify, the court would instruct the jury that they could
16 not hold that against you, because you have a constitutional
17 right not to testify.

18 If you had made any incriminating statements,
19 confessions, things similar to what was mentioned a moment
20 ago, you would actually have the right to challenge the
21 State's right to use that evidence against you. But, of
22 course, you would have the right to challenge the State's
23 right to introduce any evidence against you.

24 Do you understand you have all of these valuable
25 rights, as well as other rights?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And do you understand by pleading
3 guilty to these charges, you are giving up those rights?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And is that what you wish to do?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Have you had enough time to discuss
8 these matters with your attorney?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Has he answered all of your questions?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you have any complaints of any kind
13 against your attorney?

14 THE DEFENDANT: No.

15 THE COURT: Are you satisfied with his services?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Mr. Hilton, has anyone threatened you
18 or coerced you in any way to make you or cause you to plead
19 guilty?

20 THE DEFENDANT: No, sir.

21 THE COURT: Has anyone promised you anything or
22 held out any hope or reward as an inducement to get you to
23 plead guilty?

24 THE DEFENDANT: No, sir.

25 THE COURT: Are you guilty of your own free will?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Are you pleading guilty because you
3 are, in fact, guilty --

4 THE DEFENDANT: Yes, sir.

5 THE COURT: -- of each of these charges?

6 THE DEFENDANT: Yes.

7 THE COURT: All right. I find there is a
8 substantial factual basis for each of the pleas. And the
9 decision to enter these pleas has been made freely and
10 voluntarily, with the advice of an attorney with whom the
11 defendant states he's satisfied. And the Court accepts the
12 pleas.

13 MS. SHEALY: Thank you, Your Honor. If I may
14 introduce who is present in the courtroom. If you could
15 raise your hand, **Minor Victim** This is **Minor Victim** She is 14
16 now. She is one of the victims, the victim of the CSC
17 first. Next to her is her foster care mother, Gloria
18 Ricoma.

19 Then we have the family of **Minor Victim**
20 Obviously, the 7-year-old is not present in the courtroom.

21 If you will raise your hand and put it back down as
22 I introduce you. Kathy West, her grandmother, she has care
23 of **MINOR VICTIM**, her mother; Damond Frazier,
24 her father; Vaughn Moultrie, a family friend; and Arlene
25 Chisolm, a family friend.

1 Your Honor, I will show this to defense counsel.
2 Since [MINOR VICTIM] couldn't be here, I wanted you to at least put
3 a face with a name. She is seven years old, six years old
4 at the time. As I mentioned, Mr. Hilton was her mother's
5 first cousin.

6 On top of everything, this family has also dealt
7 with just the betrayal within their family. Mr. Hilton
8 would stay with both his first cousin, who was [Minor Victim]
9 mother, and [Minor Victim] aunt. They would feed him. Had no
10 reason to believe he would do something as violent and
11 offensive as he did with [Minor Victim] And so this family has
12 been grieving in multiple ways since this has occurred.

13 When [Minor Victim] was found, she was in a house that had
14 blood in it. As I mentioned before, she was complaining
15 about her stomach. And when she got to the hospital, she
16 was wrapped in bloody towels. Dr. Carrie Busch, who is a
17 pediatric emergency room physician and child abuse
18 pediatrician, worked with [Minor Victim]. They had to sedate her
19 to even take a look at what kind of damage had been done to
20 her.

21 The injuries included a tear through the floor of
22 her vagina, through her hymen, all the way to the rectum.
23 The laceration exposed her underlying muscle.

24 These injuries, according to Dr. Busch, were
25 physical evidence of very forceful penetration. Dr. Busch

1 was unable to rule out anal penetration. And noted that
2 there was a good deal of blood that had been lost.

3 The defendant confessed to the crimes. As I noted,
4 when he came out of the woods, he told the officers about
5 MINOR VICTIM and that she was at his house.

6 As it related to the 911 caller, the mother of
7 MINOR VICTIM Mr. Hilton indicated to the police that he asked her
8 to undress because he wanted to see her naked. And he
9 admitted that he touched her breast.

10 Regarding MINOR VICTIM he told the officers how much he
11 wanted to have sex with MINOR VICTIM and that he had told MINOR VICTIM he
12 wanted her to have his baby.

13 Your Honor, I apologize for the crudeness of this
14 next description, but he asked -- he told the officers that
15 he asked MINOR VICTIM Have you ever gotten ate out? Referencing
16 oral sex, and she said no, and so he did.

17 He then went on, when talking to law enforcement
18 officers, and described the positions in which he forced MINOR
19 MINOR VICTIM to have sex. When the police told him that they would
20 be getting a buccal swab from him, he told the police they
21 would find his DNA in both of the very young girls. And he
22 admitted to having full intercourse with MINOR VICTIM

23 Regarding MINOR VICTIM when he was interviewed, he
24 indicated that he wanted sex, that he was, and I'm quoting
25 him, "horny", and she was the only opportunity for him to

1 have sex. He indicated to her that he was going to make her
2 a big girl. And he indicated that the little girl cried
3 during the whole process.

4 Her medical records reflect, Judge, that at the
5 time she weighed 40 pounds. He started by putting his
6 little finger into her vaginal opening. He explained that
7 he realized it was too small. So he put another finger in,
8 stretching and applying pressure until it opened large
9 enough that he could enter her. He opened her legs. He
10 licked between her legs. The little girl was indicating
11 that her stomach was hurting. She then started throwing up.
12 And the police found her panties with vomit on them.

13 He indicated that after he entered her and had full
14 intercourse, he tried to get her up to walk, but it was too
15 painful for her. He told her she would feel a lot different
16 after this, and if she needed sex, to play with herself.

17 He also noted to the officers that while he was
18 having sex with [Minor Victim] that his heart and his mind stopped
19 worrying about the things he usually worried about. He also
20 noted that he has a small child. He mentioned that
21 previously he had been interested in younger girls, but not
22 quite as young as [Minor Victim] And he told the police that when
23 he got up off of her, he realized that he had done something
24 really messed up.

25 Judge, his prior record consists of a 2007

1 shoplifting; a 2009 possession of a stolen vehicle and petty
2 larceny; 2013, two financial transaction card thefts; 2013,
3 strong-arm robbery and breaking into a motor vehicle and
4 entering a premises after warning.

5 He was released from prison on October 31st, 2014.
6 Nine months later, he kidnapped the three and raped the two
7 young girls.

8 I've spoken to both [Minor Victim] and [Minor Victim] family
9 about how they are doing since all of this. And for [Minor
10 [Minor Victim] our 14-year-old now, 13 at the time, this says
11 something about her, the most upsetting thing other than --
12 well, she said two things. One is, she hasn't been able to
13 see her half brothers as often as she would like to since
14 this happened. She is in DSS custody.

15 Also, she's a good student, but after this
16 happened, she said she couldn't quiet her thoughts. And so
17 when she was in school, she wasn't paying attention. And
18 when she was to do her homework, she relived it so
19 frequently that she had to be put back a year for 8th grade,
20 which was very upsetting to her.

21 Her mother, of course, will always have to live
22 with leaving her in the woods to go seek help, realizing
23 that when her mother left the woods, her daughter was raped.

24 Regarding [Minor Victim] I already touched on how
25 betrayed this family feels by their first cousin. And it

1 has been completely upsetting in so very many ways. Minor Victim
2 had to switch schools. She has an incontinence problem.
3 She wets herself. She wets herself at school, which
4 obviously causes embarrassment. She wakes in the middle of
5 the night crying. And when they ask her what she is crying
6 about, she cannot articulate it. She's had to be put on, at
7 the age of six, sleeping medications so she can get some
8 rest.

9 One of the things that's most heartbreaking for
10 them is, she has a little brother that's three years old.
11 She doesn't feel comfortable if her little brother looks at
12 her or touches her. And that's particularly painful for the
13 family, that their closeness has been affected by her
14 distrust of men.

15 Judge, the defense attorney has provided you with a
16 report by Dr. Mulbry. And of interest in the report is that
17 Mr. Hilton, from a very young age, looking on page 3, the
18 bottom paragraph, from the age of 6, he has either
19 experienced or witnessed molestation and sexual assaults
20 from a very young age among family members. And he notes
21 that -- Dr. Mulbry notes that beginning at the age of 12,
22 Mr. Hilton indicated that he, Mr. Hilton, was having
23 problematic sexual behaviors.

24 On page 4, it also notes that a sister that he has
25 had accused Mr. Hilton's father of molesting her, that he

1 had a sister that molested him, that he watched a cousin
2 rape his mother.

3 And when his educational history is discussed by
4 Dr. Mulbry, he had to repeat the 8th grade due to behavior,
5 and that he had been suspended multiple times for harassing
6 females at the age -- whatever age you are in 8th grade.

7 And on page 5, Dr. Mulbry notes -- or I think he's
8 actually referencing a previous evaluation of Mr. Hilton
9 that he has conduct problems involving aggression or unusual
10 behaviors.

11 Judge, in this situation, we have very distinct
12 crimes with separate victims. And I think that this case
13 begs for sentencing that reflects each crime individually.
14 We have two young girls whose lives will absolutely never be
15 the same. And the repercussions of Mr. Hilton's conduct, we
16 can't even assess at this point, they are so young.

17 The State would ask that you individually sentence
18 as to each case. They are solid, strong cases, with the
19 defendant admitting his conduct. They are egregious. We so
20 frequently have cases involving minors where there is
21 absolutely no physical evidence of abuse. And here we have
22 a little girl that was ripped open from the vaginal area to
23 the rectal area.

24 We would just ask, Your Honor, that given his
25 background, given his conduct here, that the mere desire for

1 sex allowed him to violate these young girls so
2 aggressively, that the sentence reflect his conduct and the
3 likelihood that there's no rehabilitation.

4 Thank you, Your Honor.

5 THE COURT: All right. Thank you.

6 Glad to hear from you.

7 MR. KOZELSKI: Thank you, Your Honor. May it
8 please the Court. This is certainly, without a doubt, a
9 tragic event of what happened. Going over this evidence and
10 going over all of it with Gussie, has been a traumatic
11 experience I think for everybody involved, and that includes
12 Gussie. I think Gussie, from the very beginning, has
13 realized what he's done is an egregious wrong. He's
14 admitted to that. He admitted it to the police. He has
15 been begging for forgiveness ever since.

16 There is no real explanation for why this happened,
17 Your Honor, other than it was a psychological break. He has
18 a family history of schizophrenia. There is history in Dr.
19 Mulbry's report of sexual abuse. And it is a vicious cycle.

20 And, unfortunately, we see many times victims of
21 sexual abuse turn that into abuse themselves. And this is
22 what we are looking at in Gussie's situation.

23 I do believe that Gussie can conform to societal
24 norms. He proved that for many years growing up, graduating
25 from high school at Mathis Hill in 2005. He was able to

1 keep a job at McDonald's for three and a half years. He
2 worked at a car wash for two years. All of these things
3 that he did without incident.

4 And he did that in a way that his family did trust
5 him. They trusted him to take **Minor Victim** where she was
6 supposed to go. Unfortunately, that didn't happen. And,
7 like I said, Your Honor, there's no real explanation for it.
8 But what my client tells me is, he felt possessed. He told
9 the police this multiple times.

10 When he confessed shortly afterwards, he said: My
11 heart, my mind, my sole wasn't there. I deserve to go to
12 prison. I'm sorry. I will ask for forgiveness every day.

13 You know, he's tearful.

14 Even though he did an awful thing, Your Honor, he
15 has redeeming qualities about him. As far as him being a
16 client of mine, he's never complained once. He has always
17 had a willingness to plead guilty to these charges. This is
18 the first opportunity that he's had to do so. The reason
19 that this has taken so long ago is we have been waiting on
20 Dr. Mulbry's report, a number of reports, one of which was
21 criminal responsibility, another one was competency, and the
22 last one was the medication report. So he spent a great
23 deal of time with Mr. Hilton.

24 There was nothing to Dr. Mulbry that indicated that
25 he would be unable to conform these actions to societal

1 norms, that he cannot make something of his life in the
2 future.

3 Now, Gussie knows he will be spending a good deal
4 of time in prison. He knows that the minimum sentence is 25
5 years. I've also told him that even if he were to get a
6 sentence that he would be able to get out one day, he would
7 be subject to the Sexually Violent Predator Act, which means
8 that if he cannot conform himself to the laws of society,
9 that they could involuntarily commit him into SCDC until
10 they view that he could. So there is that potential that he
11 could never get out if he could not conform to the law. But
12 he also knows he's facing a life sentence just by itself.

13 That being said, he knows that pleading guilty is
14 the best opportunity that he has in order to one day maybe
15 potentially get out of jail. He would like to have a bit of
16 hope, I think, back in prison that he could one day redeem
17 himself outside of a prison cell. I think one of the
18 easiest things for people to do is say they're sorry behind
19 a prison cell, but he wants to get out.

20 He has a small daughter around this age. Her name
21 is Minor He's only seen her three times. And he
22 desperately wants to be forgiven. He desperately wants to
23 prove that he is more than the worst thing he's ever done.

24 I would ask the Court to strongly take into
25 consideration his willingness to plead guilty to this, to

1 not put his family and the victims through a trial. I think
2 that, in and of itself, is deserving of a nonlife sentence.

3 But we do understand the severity of these charges
4 and the actions that happened that day and why they
5 happened. And while it's very hard to explain why they
6 happened, we think that he has taken responsibility and he
7 would like to live his life in a way that shows he's a
8 person that can be redeemed.

9 I know his family, some of his family is here. His
10 father, Gussie Hilton, Sr. is here. His sister is also
11 here. I believe the Court -- I believe Mr. Hilton would
12 like to address the Court at the appropriate time.

13 THE COURT: This would be fine. You can speak
14 now.

15 MR. HILTON, SR.: My name is Gussie Hilton, Sr.,
16 Gussie Jr.'s father. I'm sorry about your victim, or
17 whatever. And he made a mistake. He didn't trust his self.
18 I know from my knowledge, his dad, he had a young lady, a
19 girlfriend or whatever, you know, that used to come to the
20 house. He used to take care of my mom. My mom was 91 years
21 old. She died February 11th, three o'clock that morning.
22 But at the time when we was home, or whatever, his
23 girlfriend and him, used to go to the church on Sunday, you
24 know. And he used to take his girlfriend back and forth to
25 work, or whatever, every day.

1 I don't know what -- one thing I could just say,
2 drugs, one probably drift him off into some kind of state
3 that he made that act, or whatever, against **Minor Victim** and the
4 young lady, the other young lady, or whatever.

5 But he's a good kid. He may have some problems
6 through schools and whatever and stuff like that, but when
7 they give him an opportunity to work, he work at McDonald's,
8 car wash, a place in Johns Island that he had worked at,
9 seafood place.

10 But I know in everybody's heart, they might don't
11 have forgiveness, or whatever, but Jesus forgive everybody
12 who need help, who turn against or whatever. I just ask him
13 for the mercy of the Court. He's a real good kid.

14 And just, like I say, what drift him off during
15 that end, because the young lady that he was going with, you
16 know, is a nice girl, or whatever. And I used to tell my
17 niece, which is **Minor Victim** mama, take care of your own kid,
18 you know. Don't, you know, put it off on my kids and all
19 that. And my kids, it's a problem and stuff like that. My
20 kids -- he made an act. He made a mistake. But take care
21 of your own kids.

22 He had a good girlfriend. But just, like I say,
23 drugs or whatever, something triggered him. The Devil get
24 in him, or whatever.

25 I don't know what the situation you are in, but my

1 mom always say, govern yourself accordingly. But I praying
2 for y'all to have mercy on him. But he is a good kid. He's
3 a grown man, but he is a good man.

4 THE COURT: Thank you, Mr. Hilton.

5 I'm sorry. Does your client wish to speak?

6 MR. KOZELSKI: I believe so, Your Honor.

7 THE DEFENDANT: I wish today that August 30th never
8 existed. As saying that, I destroyed two lives. I can't
9 take that back. But yet, everyday I'm going to have to take
10 that to my heart. I can't look into my family's eyes no
11 more as a man.

12 I knew that one day, all the pressures that I got
13 on myself, I will break. But I didn't know it was going to
14 break like that. I apologize to my family and to **Minor Victim** and
15 to her mother. I know that they will never forgive me, but
16 at same time, I am asking for forgiveness. I know that this
17 road will take a long time. Until my last breath, I'm still
18 asking for that forgiveness from them.

19 I don't want them to hurt no more. That's why I'm
20 here. I don't want them to go through the pain, the
21 suffering. That's why I'm here, to show that I got some
22 type of heart. If you don't believe me, that's all right.
23 But I do want everybody to understand, before I set foot on
24 society again, I would rather kill myself before I go
25 through that same pain.

1 So, Your Honor, I can't tell you -- I can't sit
2 there and tell you that I'm a right man to go back in
3 society. I can't sit there and look at these people right
4 now and tell them I'm right back for in society. The things
5 I did, I did for two years. I can't see my child. What's
6 wrong with me? What happened? I don't know. I can't
7 answer those questions.

8 But before I put these people back through pain and
9 suffering, I would rather give up my life for them to have
10 their freedom, their peace of mind. So, Your Honor, I'm
11 just asking for apology.

12 THE COURT: All right. Thank you, sir. I'm going
13 to recess this for five minutes while I do a couple of
14 things, think about what all is involved in here and finish
15 reading the psychiatric evaluation you have submitted. I've
16 looked at it before you came in here, but I did not
17 completely finish reading it. So give me five minutes,
18 ladies and gentlemen. I will be right back with you. Court
19 will be in recess for five minutes.

20 (Whereupon, a recess transpired.)

21 (Whereupon, the defendant is present.)

22 THE COURT: I've had a chance to review the
23 psychiatric evaluation for mitigation that was submitted by
24 the defendant. Anything else from the State?

25 MS. SHEALY: No, Your Honor. Thank you.

1 THE COURT: From the Defense?

2 MR. KOZELSKI: No, Your Honor.

3 THE COURT: Mr. Hilton, on the three kidnapping
4 cases that you've just pled guilty to, on each of those, I
5 will sentence you to 30 years concurrent each with the
6 other. And you get credit for time served against the 30
7 years.

8 On the criminal sexual conduct, the first-degree
9 case, I sentence you to 30 years consecutive to the criminal
10 sexual conduct with a minor in the first degree on that
11 case. I'm sorry. You will get credit for time served
12 against the 30 years I just referred to.

13 On the criminal sexual conduct with a minor in the
14 first degree, I sentence you to the Department of
15 Corrections for life, and you get credit for time served.
16 Good luck to you. Court will be in recess for five minutes.

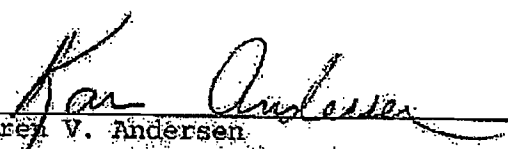
17 MS. SHEALY: Thank you, Your Honor.

18 (Whereupon, proceedings are adjourned.)
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

FORM 5

STATE OF SOUTH CAROLINA

County of Charleston, South CarolinaGussie Henry Hillen Jr
353945

Full name and prison number (if any) of Applicant

v.

State of South Carolina

2018-CP-10-2615
IN THE COURT OF COMMON PLEASFILED
2018 MAY 22 PM 4:46
CLERK OF COURT

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention B.R.C.T.
Broad River Correctional Inst.
2. Name and location of Court which imposed sentence Charleston
South Carolina 100 Broad Street
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-101514

(b) 2016-GS-10-01528, 2016-GS-10-01527
 (c) 2016-GS-10-01526, 2016-GS-10-01525

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

(a) CSC with a minor, First Degree term ~~Life~~ Life
 (b) CSC Sexual Conduct First Degree term 30 years
 (c) 3 kidnapping 30 years (A piece) Sentence May 18, 2017

6. Check whether a finding of guilty was made:

☒ after a plea of guilty _____
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

No

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

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

i. _____
 ii. N/A
 iii. _____

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

i. _____
 ii. N/A
 iii. _____

(c) the date of each such result:

i. _____
 ii. N/A
 iii. _____

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

i. _____
 ii. N/A
 iii. _____

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

(a) This is my First appeal

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) _____
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Aggravated sexual abuse
- (b) Sexual abuse of a minor or ward
- (c) Abusive sexual contact
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____

iv.

(c) the disposition thereof:

i.

ii.

iii.

iv.

(d) the date of each such disposition:

i.

ii.

iii.

iv.

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

i.

ii.

iii.

iv.

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

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

(a) which grounds have been presented:

i.

ii.

iii.

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

i.

ii.

iii.

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

(a) _____
 (b) _____
 (c) _____

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

(a) your arraignment and plea? _____
 (b) your trial, if any? _____
 (c) your sentencing? _____
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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. John J. Kozelski
Downtown Charleston South Carolina 29403

ii. _____

iii. _____

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

i. 100 Broad Street Downtown
Charleston South Carolina

ii. _____

iii. _____

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

Charleston, South Carolina, I would
like to sue for 7.5 Million's dollars
for suffering for time I spent in prison

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

None

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Charleston)

VERIFICATION

I, Gussie Henry Hilton Jr, 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.

Gussie Hilton Jr

SWORN to and subscribed before me this 17th
 day of May, 2018.

[Signature] (L.S.)
 Notary Public

My Commission Expires: March 8, 2028

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

I, Gussie Henry Hilton Jr, 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.

☒ Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Gussie Hilton Jr
Applicant

SWORN or affirmed to and subscribed before me this

12th day of May, 2018.
Jennifer W. Wolf
Notary Public

My Commission Expires: March 8, 2028

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

(A) Defendant was entitled to Jury Charge on lesser included offense of assault and battery of a high and aggravated Nature (A.B.H.A.N)

(B) Defendant was not entitled to Jury Charge on lesser included offense of Simple assault and battery; And

(C) Probative value of rape trauma evidence from state's expert witness outweighed its prejudicial impact

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
Gussie Henry Hilton, Jr., #353945	)	Case No.: 2018-CP-10-2615
	)	
Applicant,	)	
	)	RETURN AND MOTION TO DIMSISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The State (Respondent), making its Return to the pro se application for Post-Conviction Relief filed on May 22, 2018, by Gussie Henry Hilton, Jr. (Applicant), would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. On August 30, 2015, Applicant was arrested for three counts of kidnapping, one count of first-degree criminal sexual conduct, and one count of first-degree criminal sexual conduct with a minor, stemming from two separate incidents. In one of the incidents, Applicant held a woman and her thirteen year old daughter hostage and forced them into the woods against their will. Applicant made them take off their clothing. The mother was able to break free and call 911 but her daughter remained with the Applicant. Applicant taped the minor's hands and forced her to have sexual intercourse with him. Once the police arrived, Applicant made a statement that suggested he had sexual assaulted a six year old and that she was at his residence. Law enforcement went to his residence and found the minor inside, bloody and complaining of stomach pain. Applicant confessed to having sexual intercourse with the six year old and admitted he took her to his house to rape her. Applicant also

gave a confession where he admitted to raping the thirteen year old victim.

During its March 2016 term, the Charleston County Grand Jury indicted Applicant for criminal sexual conduct with a minor, first degree (2016-GS-10-1514), criminal sexual conduct, first degree (2016-GS-10-1528), three counts of kidnapping (2016-GS-10-1525; 2016-GS-10-1526; 2016-GS-10-1527). Assistant Public Defender John J. Kozelski, III, of the Charleston County Public Defender's Office represented Applicant. Assistant Solicitor Jennifer Kneece Shealy of the Ninth Circuit Solicitor's Office prosecuted the case.

On May 18, 2017, Applicant appeared in the Charleston County Court of General Sessions before the Honorable Brooks P. Goldsmith, circuit court judge, where he pled guilty as indicted to all five offenses without negotiation or recommendation. During the plea proceeding, Applicant admitted he was guilty and had committed the conduct giving rise to these offenses as outlined by the State. He informed the court that he wanted to plead guilty and he was knowingly, voluntarily, and freely waiving his constitutional rights to enter guilty pleas to all five offenses. He told the court he had not been threatened, coerced, or promised anything to induce his guilty plea and that he was satisfied with the services of counsel. In mitigation, counsel presented the court with a psychiatric evaluation of Applicant performed by Dr. L. W. Mulbry, Jr., M.D., and highlighted a family history of mental illness and sexual abuse. Applicant also addressed the court, during which he acknowledged the heinous actions he committed and apologized to the victims. After hearing the presentations from Applicant and the State, the court sentenced Applicant to concurrent terms of thirty years imprisonment for kidnapping, to a consecutive term of thirty years imprisonment for first-degree criminal sexual conduct, and to life imprisonment for first-degree criminal sexual conduct with a minor.

Counsel filed a timely motion to reconsider Applicant's sentence and a memorandum in

support. The State filed a response to the motion. By written order dated November 20, 2017, the court denied Applicant's motion to reconsider his sentence.

Thereafter, Applicant filed a timely notice of appeal. On January 9, 2018, the South Carolina Court of Appeals dismissed the appeal for failure to provide a sufficient guilty plea explanation as required by Rule 203(d)(1)(B)(iv), SCACR. The remittitur was returned to the circuit court on January 25, 2018.

II. Allegations Raised and Relief Sought in Post-Conviction Relief Application

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Aggravated sexual abuse."
2. "Sexual abuse of a minor or ward."
3. "Abusive sexual conduct."
4. "Defendant was entitled to a jury charge on lesser included offense of assault and battery of high and aggravated nature (A.B.H.A.N)"
5. "Defendant was not entitled to a jury charge on less[e]r included offense of simple assault or battery; and"
6. "Probative value of rape trauma evidence from State's expert witness outweighed its prejudicial impact."

As requested relief, Applicant stated, "Charleston, South Carolina I would like to sure for 7.5 million's dollars for suffering for time I spent in prison."

As will be discussed more below, neither Applicant's allegations raised nor relief sought are proper for post-conviction relief.

Attached to this return and incorporated by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III. Failure to State a Cognizable Claim

Respondent submits this application for post-conviction relief should be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, 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.

Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Applicant's first three allegations ("aggravated sexual abuse," "sexual abuse of a minor or ward," and "abusive sexual conduct") are statements describing the conduct to which he pled guilty but in no way raise any allegations that support a claim for relief under the Post-Conviction Procedure Act. Applicant's final three allegations raise direct appeal issues that are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973).

Applicant could have raised these issues at trial or on appeal. Instead, Applicant elected to forgo his right to a jury trial and he knowingly, voluntarily, and intelligently entered guilty pleas to the indicted offenses. Moreover, Applicant's allegations are nonsensical, as there were no jury instructions given and no expert witnesses testified, as he pled guilty.

For these reasons and pursuant to Rule 12(b)(6), SCRPC, Respondent moves for summary dismissal of this application for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

IV. Response to Any and All Other Allegations

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

VI. Motion for Summary Dismissal

WHEREFORE, Respondent moves to summarily dismiss the application for failure to state a claim upon which post-conviction relief can be granted.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

August 8, 2018

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

GUSSIE HENRY HILTON, #353945

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent,

IN THE COURT OF COMMON PLEAS

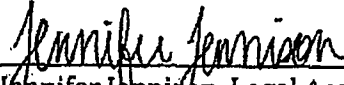
2018-CP-10-2615

AFFIDAVIT OF SERVICE BY MAIL

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 Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire
 Falk Law Firm, LLC
 Post Office Box 1058
 Charleston, SC 29402

DATED this 8th day of August, 2018.


 Jennifer Jennison, Legal Assistant
 For Respondent

cc
HG
AT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Gussie Henry Hilton, Jr., #353945

Applicant,

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2018-CP-10-2615

CONDITIONAL ORDER OF DISMISSAL

2018 AUG 23 AM 10:15
CLERK OF COURT

This matter comes before this Court by way of an application for Post-Conviction Relief filed on May 22, 2018, by Gussie Henry Hilton, Jr. (Applicant). Respondent made its return and motion to dismiss the application or failure to state a cognizable claim upon which post-conviction relief can be granted.

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. On August 30, 2015, Applicant was arrested for three counts of kidnapping, one count of first-degree criminal sexual conduct, and one count of first-degree criminal sexual conduct with a minor, stemming from two separate incidents. In one of the incidents, Applicant held a woman and her thirteen year old daughter hostage and forced them into the woods against their will. Applicant made them take off their clothing. The mother was able to break free and call 911 but her daughter remained with the Applicant. Applicant taped the minor's hands and forced her to have sexual intercourse with him. Once the police arrived, Applicant made a statement that suggested he had sexual assaulted a six year old and that she was at his residence. Law enforcement went to his residence and found the minor inside, bloody and complaining of stomach pain. Applicant confessed to having sexual

intercourse with the six year old and admitted he took her to his house to rape her. Applicant also gave a confession where he admitted to raping the thirteen year old victim.

During its March 2016 term, the Charleston County Grand Jury indicted Applicant for criminal sexual conduct with a minor, first degree (2016-GS-10-1514), criminal sexual conduct, first degree (2016-GS-10-1528), three counts of kidnapping (2016-GS-10-1525; 2016-GS-10-1526; 2016-GS-10-1527). Assistant Public Defender John J. Kozelski, III, of the Charleston County Public Defender's Office represented Applicant. Assistant Solicitor Jennifer Kneece Shealy of the Ninth Circuit Solicitor's Office prosecuted the case.

On May 18, 2017, Applicant appeared in the Charleston County Court of General Sessions before the Honorable Brooks P. Goldsmith, circuit court judge, where he pled guilty as indicted to all five offenses without negotiation or recommendation. During the plea proceeding, Applicant admitted he was guilty and had committed the conduct giving rise to these offenses as outlined by the State. He informed the court that he wanted to plead guilty and he was knowingly, voluntarily, and freely waiving his constitutional rights to enter guilty pleas to all five offenses. He told the court he had not been threatened, coerced, or promised anything to induce his guilty plea and that he was satisfied with the services of counsel. In mitigation, counsel presented the court with a psychiatric evaluation of Applicant performed by Dr. L. W. Mulbry, Jr., M.D., and highlighted a family history of mental illness and sexual abuse. Applicant also addressed the court, during which he acknowledged the heinous actions he committed and apologized to the victims. After hearing the presentations from Applicant and the State, the court sentenced Applicant to concurrent terms of thirty years imprisonment for kidnapping, to a consecutive term of thirty years imprisonment for first-degree criminal sexual conduct, and to life imprisonment for first-degree criminal sexual conduct with a minor.

Counsel filed a timely motion to reconsider Applicant's sentence and a memorandum in support. The State filed a response to the motion. By written order dated November 20, 2017, the court denied Applicant's motion to reconsider his sentence.

Thereafter, Applicant filed a timely notice of appeal. On January 9, 2018, the South Carolina Court of Appeals dismissed the appeal for failure to provide a sufficient guilty plea explanation as required by Rule 203(d)(1)(B)(iv), SCACR. The remittitur was returned to the circuit court on January 25, 2018.

II. Allegations Raised and Relief Sought in Post-Conviction Relief Application

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Aggravated sexual abuse."
2. "Sexual abuse of a minor or ward."
3. "Abusive sexual conduct."
4. "Defendant was entitled to a jury charge on lesser included offense of assault and battery of high and aggravated nature (A.B.H.A.N)"
5. "Defendant was not entitled to a jury charge on less[e]r included offense of simple assault or battery; and"
6. "Probative value of rape trauma evidence from State's expert witness outweighed its prejudicial impact."

As requested relief, Applicant stated, "Charleston, South Carolina I would like to sure for 7.5 million's dollars for suffering for time I spent in prison."

Before this Court are records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application.



III. Findings of Fact and Conclusions of Law

The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law:

This Court finds this application for post-conviction relief should be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, 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.

Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Applicant's first three allegations ("aggravated sexual abuse," "sexual abuse of a minor or ward," and "abusive sexual conduct") are statements describing the conduct to which he pled guilty but in no way raise any allegations that support a claim for relief under the Post-Conviction Procedure Act. Applicant's final three allegations raise direct appeal issues that are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could

have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised these issues at trial or on appeal. Instead, Applicant elected to forgo his right to a jury trial and he knowingly, voluntarily, and intelligently entered guilty pleas to the indicted offenses. Moreover, Applicant's allegations are not coherent grounds, as there were no jury instructions given and no expert witnesses testified, as he pled guilty.

For these reasons and pursuant to Rule 12(b)(6), SCRCP, this Court finds this application must be summarily dismissed for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

S.C. Code Ann. § 17-27-70(c) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." This Court finds that Applicant failed to comply with the filing procedures set forth in the Act. Therefore, this application for post-conviction relief is summarily dismissed with prejudice.

IV. Conclusion

S.C. Code Ann. § 17-27-70(b) states in pertinent part:

When a court is satisfied, on the basis of the application, the answer or motion, and on the record, that the Applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and give reason for so doing. Applicant shall be given an opportunity to reply to the proposed dismissal.

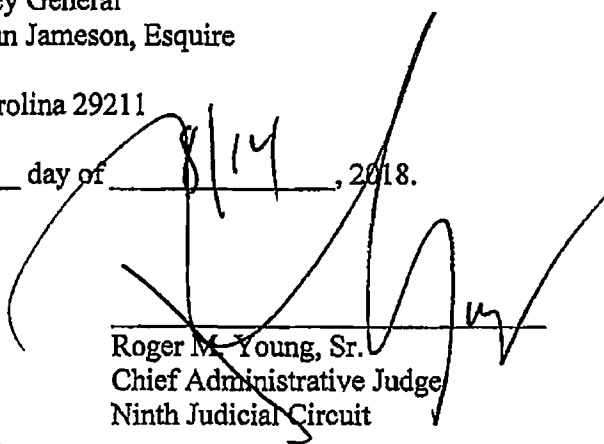
Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. Applicant is granted twenty days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file



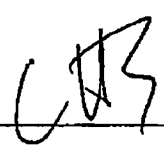
any reasons he may have with the Charleston County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Megan Harrigan Jameson, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this ____ day of 8/14, 2018.



Roger M. Young, Sr.
Chief Administrative Judge
Ninth Judicial Circuit


_____, South Carolina

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE 9th JUDICIAL CIRCUIT
	)	
Gussie Henry Hilton 353945	)	
Applicant	)	Applicant's Response to Conditional Order
Vs.	)	of Dismissal
	)	
State of South Carolina	)	
Respondent,	)	

Applicant by counsel hereby submits the following factual and legal grounds why the Court should not enter a final order dismissing this action with prejudice.

1. As recognized in Strickland v Washington, 466 U.S. 668 104 S.Ct. 205 280 L.Ed.2d 67 (1984) Applicant has a right under the 6th Amendment to the United States Constitution to a judicial review of whether his trial counsel provided effective representation. Additionally applicant has a statutory right to such collateral review under S.C. Code Ann. § 17-27-10 et seq.
2. A Defendant who pleads guilty on the advice of counsel has the right to collaterally attack his guilty plea upon a showing that his trial counsel provided deficient performance and that there is a reasonable probability that but for his trial counsel's deficient performance he would not have plead guilty. Johnson v Catoe, 336 S.C. 354, 520 S.E.2d 617 (1999).
3. Undersigned counsel was appointed to represent Applicant in this PCR action on June 7, 2018. On August 8, 2018 Counsel received the State's Return to the PCR application, the applicant's court file, and a copy of the plea transcript. Counsel has had an insufficient opportunity to review these documents and evaluate the merits of Applicant's claims.
4. Additionally, counsel is informed and believes that Applicant has a history of mental health issues which may have affected his abilities to understand the consequences of his decision to plead guilty. Counsel needs additional time to determine whether to seek funding for an expert to conduct a psychological examination upon applicant.
5. Contemporaneous with this filing, Applicant is filing an Amendment to his PCR application in which he will assert that his guilty plea was involuntary and the direct result of deficient advice of his trial counsel.

WHEREFORE, Applicant asks that the Court not take any action on this matter for 90 days from today's date in order to provide counsel an adequate opportunity to properly investigate applicant's case.

Respectfully Submitted,



James K. Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402
(843) 606 6007
jfalklaw@gmail.com

CERTIFICATE OF SERVICE

Undersigned certifies that on August 28, 2018 a copy of the above was mailed to Megan Jameson, Esq. at the address listed above.



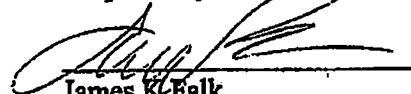
James Falk
Counsel for Applicant

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE 9th JUDICIAL CIRCUIT
	)	
Gussie Henry Hilton 353945	)	
Applicant	)	Applicant's Amendment to Post-Conviction
	)	Relief application
Vs.	)	
	)	
State of South Carolina	)	
Respondent,	)	

Applicant by counsel amends his May 22, 2018 application for post-conviction relief to add the following ineffective assistance of counsel claim.

1. Applicant plead guilty based solely upon the advice of trial counsel, and trial counsel's advice was not within the range of competence demanded of attorneys in criminal cases. Applicant's plea was therefore neither voluntary nor knowing, and but for trial counsel's deficient advice, applicant would have exercised his 6th Amendment right to a jury trial.

Respectfully Submitted,



James K. Falk
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James Falk
Counsel for Applicant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
Gussie Henry Hilton, Jr., #353945	)	Case No.: 2018-CP-10-2615
Applicant,	)	
	)	AMENDED RETURN
State of South Carolina,	)	
Respondent.	)	

The State (Respondent), making its Return to the pro se application for Post-Conviction Relief filed on May 22, 2018, by Gussie Henry Hilton, Jr. (Applicant), would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. On August 30, 2015, Applicant was arrested for three counts of kidnapping, one count of first-degree criminal sexual conduct, and one count of first-degree criminal sexual conduct with a minor, stemming from two separate incidents. In one of the incidents, Applicant held a woman and her thirteen year old daughter hostage and forced them into the woods against their will. Applicant made them take off their clothing. The mother was able to break free and call 911 but her daughter remained with the Applicant. Applicant taped the minor's hands and forced her to have sexual intercourse with him. Once the police arrived, Applicant made a statement that suggested he had sexual assaulted a six year old and that she was at his residence. Law enforcement went to his residence and found the minor inside, bloody and complaining of stomach pain. Applicant confessed to having sexual intercourse with the six year old and admitted he took her to his house to rape her. Applicant also

gave a confession where he admitted to raping the thirteen year old victim.

During its March 2016 term, the Charleston County Grand Jury indicted Applicant for criminal sexual conduct with a minor, first degree (2016-GS-10-1514), criminal sexual conduct, first degree (2016-GS-10-1528), three counts of kidnapping (2016-GS-10-1525; 2016-GS-10-1526; 2016-GS-10-1527). Assistant Public Defender John J. Kozelski, III, of the Charleston County Public Defender's Office represented Applicant. Assistant Solicitor Jennifer Kneese Shealy of the Ninth Circuit Solicitor's Office prosecuted the case.

On May 18, 2017, Applicant appeared in the Charleston County Court of General Sessions before the Honorable Brooks P. Goldsmith, circuit court judge, where he pled guilty as indicted to all five offenses without negotiation or recommendation. During the plea proceeding, Applicant admitted he was guilty and had committed the conduct giving rise to these offenses as outlined by the State. He informed the court that he wanted to plead guilty and he was knowingly, voluntarily, and freely waiving his constitutional rights to enter guilty pleas to all five offenses. He told the court he had not been threatened, coerced, or promised anything to induce his guilty plea and that he was satisfied with the services of counsel. In mitigation, counsel presented the court with a psychiatric evaluation of Applicant performed by Dr. L. W. Mulbry, Jr., M.D., and highlighted a family history of mental illness and sexual abuse. Applicant also addressed the court, during which he acknowledged the heinous actions he committed and apologized to the victims. After hearing the presentations from Applicant and the State, the court sentenced Applicant to concurrent terms of thirty years imprisonment for kidnapping, to a consecutive term of thirty years imprisonment for first-degree criminal sexual conduct, and to life imprisonment for first-degree criminal sexual conduct with a minor.

Counsel filed a timely motion to reconsider Applicant's sentence and a memorandum in

support. The State filed a response to the motion. By written order dated November 20, 2017, the court denied Applicant's motion to reconsider his sentence.

Thereafter, Applicant filed a timely notice of appeal. On January 9, 2018, the South Carolina Court of Appeals dismissed the appeal for failure to provide a sufficient guilty plea explanation as required by Rule 203(d)(1)(B)(iv), SCACR. The remittitur was returned to the circuit court on January 25, 2018.

II. Allegations Raised and Relief Sought in Post-Conviction Relief Application

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Aggravated sexual abuse."
2. "Sexual abuse of a minor or ward."
3. "Abusive sexual conduct."
4. "Defendant was entitled to a jury charge on lesser included offense of assault and battery of high and aggravated nature (A.B.H.A.N)"
5. "Defendant was not entitled to a jury charge on less[e]r included offense of simple assault or battery; and"
6. "Probative value of rape trauma evidence from State's expert witness outweighed its prejudicial impact."

As requested relief, Applicant stated, "Charleston, South Carolina I would like to sure for 7.5 million's dollars for suffering for time I spent in prison."

Applicant amended his application on May 22, 2018 to include the following claim:

1. "Applicant plead guilty based solely upon the advice of trial counsel, and trial counsel's advice was not within the range of competence demanded of attorneys in criminal cases. Applicant's plea was therefore neither voluntary nor knowing, and but for trial counsel's deficient advice, applicant would have exercised his 6th Amendment right to a jury trial."

As will be discussed more below, neither Applicant's allegations raised nor relief sought are proper for post-conviction relief.

Attached to this return and incorporated by reference are the records of the Charleston

County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III. Failure to State a Cognizable Claim

Respondent submits this application for post-conviction relief should be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, 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.

Thereafter, on August 28, 2018, Applicant through counsel, filed an amended application for post-conviction relief. In this amended application, Applicant incorporates the previously mentioned allegations and sets forth the following grounds for post-conviction relief:

1. Applicant plead guilty based solely upon the advice of trial counsel, and trial counsel's advice was not within the range of competence demanded of attorneys in criminal cases. Applicant's plea was therefore neither voluntary nor knowing, and but for trial counsel's deficient advice, applicant would have exercised his 6th amendment right to a jury trial.

Applicant also requests that a hearing on the merits be scheduled.

Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Applicant's first three allegations ("aggravated sexual abuse," "sexual abuse of a minor or ward," and "abusive sexual conduct") are statements describing the conduct to which he pled guilty but in no way raise any allegations that support a claim for relief under the Post-Conviction Procedure Act. Applicant's final three allegations raise direct appeal issues that are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised these issues at trial or on appeal. Instead, Applicant elected to forgo his right to a jury trial and he knowingly, voluntarily, and intelligently entered guilty pleas to the indicted offenses. Moreover, Applicant's allegations are nonsensical, as there were no jury instructions given and no expert witnesses testified, as he pled guilty.

VI. Response to Applicant's Allegations of Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of trial counsel are without merit. In a post-conviction relief action, the 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, 466 U.S. 668. First, an applicant must prove 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 judgement." (citing Strickland, 466 U.S. at 690). An 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 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.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegations of ineffective assistance of counsel probably raises questions of fact 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).

Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in the 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), SCRCP. 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, SCRPC, Pro se filings will not be considered at the PCR 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), SCRPC.

Pursuant to §17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

For these reasons and pursuant to Rule 12(b)(6), SCRPC, Respondent moves for summary dismissal of this application for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

IV. Response to Any and All Other Allegations

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

VI. Motion for Summary Dismissal

WHEREFORE, Respondent moves to summarily dismiss the allegations in the original application for failure to state a claim upon which post-conviction relief can be granted and for an evidentiary hearing on the ineffective assistance of counsel allegation.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BENJAMIN HUNTER LIMBAUGH
Assistant Attorney General

By: Benjamin Limbaugh
ATTORNEYS FOR RESPONDENT

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

January 30, 2019

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Gussie Henry Hilton, Jr., #353945

Applicant,

v.

State of South Carolina

Respondent,

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

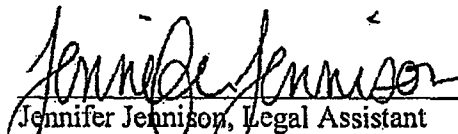
Case No.: 2018-CP-10-2615

Affidavit of Service by Mail

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 Amended Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire
Falk Law Firm, LLC
Post Office Box 1058
Charleston, SC 29402

DATED this 30th day of January, 2019.


Jennifer Jennison, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
Gussie Henry Hilton, Jr.,	)	CASE NO. 2018-CP-10-02615
	)	
APPLICANT,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	ORIGINAL
	)	
The State of South Carolina,	)	
	)	
RESPONDENT.	)	
	)	

March 19, 2019

Charleston, South Carolina

B E F O R E:

The Honorable Jennifer B. McCoy

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

James K. Falk, Esquire
For the Applicant

Benjamin H. Limbaugh, Esquire
For the Respondent

Phyllis Norton, CVR-Master, Nationally Certified Verbatim Court Reporter
636 Long Point Road, Unit G, #74, Mt. Pleasant, South Carolina 29464
PNorton@sccourts.org

I N D E X

(AW) - DENOTES APPLICANT'S WITNESS

(RW) - DENOTES RESPONDENT'S WITNESS

PCR Hearing -- 03

WITNESSES(AW) John J. Kozelski, III:

Direct Examination by Mr. Falk -- 03

Cross-Examination by Mr. Limbaugh -- 20

(AW): Gussie H. Hilton, Jr.:

Direct Examination by Mr. Falk -- 25

Cross-Examination by Mr. Limbaugh -- 34

EXHIBITS - None ProfferedCERTIFICATION OF TRANSCRIPT -- 38

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

Gussie H. Hilton, Jr. v. The State
2018-CP-10-02615

1 THE COURT: All right. Are we ready for Mr. Hilton then,
2 is that who we are going forward on?
3 MR. LIMBAUGH: Yes, Your Honor.
4 MR. FALK: Yes, Your Honor.
5 THE COURT: Perfect. And I see Mr. Kozelski already in
6 the courtroom. So if you will bring in Mr. Hilton.
7 (WHEREUPON, pause awaiting Mr. Hilton.)
8 THE COURT: Good morning. Are you Gussie H. Hilton?
9 APPLICANT HILTON: Yes, ma'am
10 THE COURT: All right, Mr. Hilton. We are here today for
11 a post-conviction relief hearing. Is that your understanding
12 as well?
13 APPLICANT HILTON: Yes, ma'am.
14 THE COURT: All right. You are represented today by Mr.
15 Falk.
16 Mr. Falk, I am happy to hear from you.
17 MR. FALK: We would call Mr. Kozelski to the stand.
18 THE COURT: All right. Mr. Kozelski, please come to the
19 stand then.
20 (WHEREUPON, the witness was duly sworn.)
21 THE CLERK: For the record please state your full name,
22 spelling your last.
23 THE WITNESS: John Kozelski. K-O-Z-E-L-S-K-I.
24 **DIRECT EXAMINATION BY MR. FALK OF JOHN KOZELSKI:**
25 Q. Mr. Kozelski, were you the only person in the Public

1 Defender's Office who was representing Mr. Hilton?

2 A. At this time, yes.

3 Q. Yeah, I mean so if you were representing -- from to
4 beginning to end in this case?

5 A. Yes.

6 Q. And can you tell me something about the charges against
7 him?

8 A. They were very serious charges. This involved an
9 incident that occurred on a single day which was August 30th,
10 2015. The first charge is a CSC with a minor first-degree.
11 That charge involved Mr. Hilton's six-year-old niece. They
12 had been driving home. She had -- he had been staying with a
13 sister -- or his cousin and was entrusted to take the niece
14 back to his place, I believe, and along the way they went off
15 of the side of the road and this incident occurred.

16 Shortly after that Mr. Hilton was at his house and then
17 asked to give a ride to people that he knew that were in his
18 neighborhood. And at that time it was a man, a woman, and the
19 woman's child. I think she was about 14 at the time; 13, 14.

20 He agreed. I believe his father asked them to give them
21 a ride to the Wal-Mart. He agreed to do that. In the process
22 of that he did drop the woman's boyfriend back off at home and
23 then -- this is -- this is while the niece is still at his
24 house. And his father did not know anything that was going on
25 at the time.

1 When he was asked to give them a ride he dropped the
2 boyfriend off at their house and then again took a detour into
3 the woods where he took the mother and her daughter out into
4 the woods and from there -- he did -- he did release the
5 mother. The mother ran back and got help. And the police
6 came to search for Mr. Hilton and the girl. And at that time
7 they were coming back out of the woods. But there was the
8 allegation that he had engaged in sexual activity with her as
9 well.

10 Q. What was sort of the strength of the evidence that they
11 had against your client?

12 A. Well, as I just stated, that they did -- the police had
13 arrived with the K-9 unit to track them. And they were coming
14 out of the woods as they had arrived there on the scene.

15 Obviously there was the witness statements of what
16 happened, the mother's in particular. She had told the police
17 that Mr. Hilton had made them -- made her strip naked and
18 forced her out into the woods at knife point.

19 And that -- it is hard to say about the -- the youngest
20 of the girls didn't really say much to police. I think she
21 was in somewhat of a state of shock. Which she somewhat
22 remained throughout the course of this litigation.

23 But the older of the two did confirm that there was
24 sexual intercourse or an attempted sexual intercourse in the
25 woods. And there was also Mr. Hilton's confession. He

1 confessed to the police.

2 Q. Let me come back around to that. Was there a forensic
3 interview done on the four-year-old?

4 THE COURT: I thought he said six.

5 A. Six.

6 Q. And I'm sorry. And the youngest?

7 A. Yeah, there was; but it was not -- it was not fruitful I
8 guess. She didn't really give answers to any of the
9 questions.

10 Q. Okay. So then the other victim was 14?

11 A. Yes, I believe so.

12 Q. And was she a witness to both of the allegations or just
13 herself?

14 A. No, there are two separate incidents. That they did not
15 know anything about the other. As I said, he took his niece,
16 MINOR VICTIM I believe her name is, to his house, wrapped her up
17 and put her in his bed, I believe. And that is when his
18 father asked, hey, can you give these people a ride, they are
19 asking for a ride, they need somebody to drive them. His
20 father not knowing what was going on either. And Gussie
21 agreed to do that.

22 And so there are two separate incidences. They didn't
23 know anything about what was going on. But it was in around
24 the same timeframe.

25 Q. So regarding the six-year-old there wasn't going to be a

1 forensic interview. Then was there any forensic evidence that
2 tied Mr. Hilton to that?

3 A. Yes, there later would be forensic evidence that was
4 collected. Mr. Hilton told them where it had happened and
5 they went to that scene and they recovered a piece of evidence
6 from that -- from the actual scene of where that incident took
7 place that could tie Mr. Hilton to the -- to the crime.

8 Q. Now you said that he made a statement?

9 A. He did. He gave several statements to the police, most
10 of which were captured on body cam or dash cam. I think the
11 thrust of what I looked at and observed was from a dash cam
12 video that was taken immediately upon his arrest and, you
13 know, him talking to the officers both inside and outside of
14 the car.

15 Q. Would there have been any potential Jackson V. Denno
16 issues regarding the statements that he gave?

17 A. I didn't see any at the time. You know, it has been a
18 while since I looked over it. But I mean it was -- it was
19 fairly clear-cut.

20 Q. Was -- but he was -- he came up to the police. Was he
21 under arrest at the time?

22 A. Yes, at that time I believe he was under arrest. As I
23 said, the mother had gone to get the police. Hence why there
24 was a pretty large police presence at the time. And I believe
25 they put him in cuffs and mirandized him fairly immediately.

1 Q. Can you tell me something about the plea negotiations in
2 this case?

3 A. There were real -- there were no real plea negotiations.
4 I had talked to Jennifer Shealy who was the assistant
5 solicitor in the case. You know, my main concern was getting
6 Mr. Hilton evaluated.

7 So I picked Dr. Mulbry to do the evaluations. I had Dr.
8 Mulbry do three evaluations -- or three reports; one for
9 competency, one for criminal responsibility, and one for
10 mitigation.

11 I got him on the case fairly early on, I think within a
12 month of me getting the case. I had Dr. Mulbry come check out
13 Gussie because I did have obviously some competency concerns.
14 I had criminal responsibility concerns. And also we were
15 going to be in desperate need of mitigation.

16 Q. Okay. So tell me what was his conclusion about
17 competency to stand trial.

18 A. He said he was competent to stand trial. You know, I
19 never had any issues interacting with Mr. Hilton, nor did Dr.
20 Mulbry in the sense that he did not understand what was going
21 on.

22 You know, my -- my other concern, as I said, was criminal
23 responsibility. Some of the things that Mr. Hilton told me
24 during the course of our representation, in particular he
25 thought he was possessed by a devil figure. By the devil is

1 what he told me. And I thought that that would be, you know,
2 maybe something that Dr. Mulbry needed to check into to see
3 whether or not he understood the consequences of what he was
4 doing while he was doing it.

5 But I think Dr. Mulbry in large part relied upon the
6 statements that were made to police at the time to conclude
7 that he did possess the adequate criminal responsibility at
8 the time.

9 Q. Can you tell me -- and so there was no NGRI issue and
10 there is no Blaire issue in this case, right?

11 A. No, there wasn't a NGRI. I remember speaking -- and I
12 wrote this down. I met with Dr. Mulbry at the jail on it
13 looks like August 16th, 2016. And that was the first time
14 that Dr. Mulbry told me there was no NGRI but he did think he
15 was guilty but mentally ill.

16 At that point it had been about a year, almost a year
17 exactly into the case. I told him, you know, no rush, you
18 know, to get the three reports in.

19 But I think part of his concern is he was also trying to
20 find other family members to talk to. And that took a great
21 deal of time in trying to get these reports, which somewhat
22 stalled our plea negotiations.

23 You know, essentially the plea that was offered -- and I
24 think I have this email from Ms. Shealy. I basically told her
25 I was waiting on these reports from Dr. Mulbry, as soon as he

1 gives me the reports I will touch with -- touch base with Mr.
2 Hilton to see what he wants to do, I take it there is no
3 offer. And she replied, no; no, I think his admitting it
4 would be about as best he could do.

5 So we are looking at a situation in which, you know, you
6 are charged with very serious crimes, up to life in prison,
7 they are not making any type of an offer to -- for him to
8 plead guilty and accept responsibility to all of these
9 charges. I expressed this to Mr. Hilton in as many ways as
10 possible.

11 And, you know, for a long time I thought we were on the
12 same page. We were -- we were trying to get a cap of 40. We
13 thought a cap of 40 would be appropriate for this case
14 considering Mr. Hilton's age and prior record and everything
15 that comes along with it.

16 You know, my main -- my main push in the plea was to not
17 put these people through a trial. I think that would have
18 been devastating for them to have to go through, especially
19 the youngest of these two.

20 And so I told Ms. Shealy that Mr. Hilton was always
21 willing to plead guilty. But we thought, you know, we
22 deserved something for doing that. And she would not relent.

23 MR. FALK: If I could have a moment, Your Honor.

24 THE COURT: Uh-huh.

25 Q. So what did -- what was Dr. Mulbry's response as far as

1 mitigating factors?

2 A. Well, I believe that Mr. Hilton had a number of
3 mitigating factors that I expressed in the plea in front of
4 Judge Goldsmith. Primarily that he was from an unstable home,
5 his mother was addicted to crack, his father suffered from a
6 significant mental illness - I think paranoid schizophrenia.

7 I actually -- you know, and I think this was a judgment
8 call at the time, but the father did want to address the
9 court. And he did in the colloquy. And I think that that
10 was, you know, with him talking to the judge I think it was
11 abundantly clear that he also had a mental illness. And I did
12 try to tie that into my plea that this was somewhat of a
13 hereditary affliction.

14 And Dr. Mulbry also found that Gussie had been exposed to
15 violence and neglect as a child, he had been through many
16 relative's homes or group homes throughout -- throughout his
17 childhood and, you know, as a result of that he started
18 self-medicating and that got him off the train I guess.

19 Q. So was there anything helpful in Dr. Mulbry's mitigation
20 report?

21 A. There were some helpful things. To be perfectly honest
22 with you I thought it was they were somewhat overshadowed
23 by -- by some of the worst things. It wasn't -- it wasn't the
24 greatest report that I have ever received from a doctor. But
25 at the same time he had had a lot more time to review all of

1 this stuff. He had had almost two years to do it, and our
2 time for accepting a plea had sort of run out.

3 I think he was on a trial docket. We pled in May. But
4 he was on pretty much the next trial docket. So they had
5 really given us a chance to plead in front of a judge who I --
6 normally under my research had never given a life sentence
7 before. And I don't think we -- we really wanted to pass up
8 that opportunity. But at the same time I believed Mr. Hilton
9 understood sort of that if he did plead guilty there was the
10 possibility of him getting life in prison.

11 Q. When you said that the mitigating factors were
12 overshadowed by some of the bad things what were you referring
13 to?

14 A. It is a 16-page report. But I think that -- I think that
15 the report gave an overall tone of that this was not an
16 isolated incident, that if Mr. Hilton were to get out there is
17 a chance that he could do something like this again.

18 And I think that the solicitor in this case actually used
19 that against us in our plea. She quoted numerous sections of
20 the report that says he has trouble following through with
21 discipline and structure and these types of antidotes within
22 the report that I think made it sound like he was not able to
23 be redeemed I guess you could say.

24 Q. I sort of drew the same conclusion from -- but my -- did
25 you ever consider not turning the mitigation report over to

1 the State?

2 A. Briefly. I did consider doing it, but at the same time I
3 had asked for so many continuances based upon getting the
4 actual mitigation report. Not that I felt that it was a duty
5 to do it, but it was essentially two years; it was the only
6 report that I had had. I trusted Dr. Mulbry to give me an
7 honest report.

8 I think had I had gotten this report maybe a year earlier
9 I probably would have gotten another doctor to look at it.
10 But there is no reason for me to second-judge I guess what Dr.
11 Mulbry put into the report.

12 Q. Well, did you consider speaking with Dr. Mulbry and
13 finding out his opinion before he memorialized it in a report?

14 A. I had spoken to Dr. Mulbry a number of times. Like I
15 said, I think the last time that I had spoken with him
16 directly about the report was on August 16th, 2016. No, it
17 looks like the last time I spoke to him was in November 10th
18 of 2016 about the three reports.

19 Because he essentially said, you know, I find that he is
20 competent and I find that he is criminally respons- -- he
21 meets the standard of criminal responsibility, do you want me
22 to write these reports.

23 And at that point I told him, no, there is no reason to
24 write these reports if that is what you are finding. I didn't
25 really know at that time -- or I don't think I could have

1 known at that time what his mitigation report was going to
2 say. Because at that time he did tell me he wanted to speak
3 to somebody other than the father.

4 But he had compiled a lot of information about Gussie's
5 father who goes by the same name, Gussie Hilton, Sr. So I
6 think when he requested a lot of medical records he had gotten
7 both the son's and the father's medical records. So he didn't
8 have a lot of information about that. But he wanted to speak
9 to other members of his family. Which I think he had a good
10 bit of trouble finding. Because, like I said, his mother had
11 issues with drug use. And a lot of his family members were
12 scattered about.

13 Q. Do you think that Dr. Mulbry's report helped the judge
14 make a sentencing decision? I guess here's my question: Do
15 you think the sentencing decision may have been different had
16 he not had the benefit of Dr. Mulbry's report?

17 A. You know, I don't know. I mean I think there are certain
18 things within the report that are -- that are good for Gussie.
19 But there are certainly things in the report that do not show
20 Gussie in a great light.

21 I did a motion to reconsider the sentence, and Judge
22 Goldsmith wanted us to brief the issue rather than arguing it
23 in front of him. So I did do that. I submitted an eight-page
24 brief and memorandum of law in support of our motion to
25 reconsider. And I attached the report to that. I did make it

1 an attachment to that.

2 Because I wanted to cite certain things to sort of help
3 ease his mind about the recidivist statute. I talked a lot
4 about the Sexually Violent Predator Act and how if he didn't
5 believe that -- or if SCDC did not believe that he was able to
6 conform his actions to societal norms then the Sexual Violent
7 Predator Act would keep him in jail indefinitely until he
8 would be able to conform his actions.

9 So I thought the thrust of some of what Dr. Mulbry was
10 saying about recidivism was hopefully quelled by the laws that
11 we have in place under the SVP Act. So that is why I kind of
12 attached it.

13 But I don't know one way or another if not having the
14 report would have helped or hurt in this case.

15 Q. But it is -- it is pretty clear that Jennifer Shealy
16 found information out, relayed that information to the court
17 by having read the memorandum -- I mean by having read Dr.
18 Mulbry's report?

19 A. Yes.

20 Q. And you had said earlier that you were aware that you
21 could have just -- Dr. Mulbry said he wasn't going to be able
22 to help like on the criminal responsibility or the competency
23 to stand trial, he didn't have to put it in a report?

24 A. That is true.

25 Q. And he could have -- and so you could have just advised

1 Jennifer Shealy that he's not going to be able to help; I mean
2 would that have been an option for you; did you consider that?

3 A. I think it could have been an option. But I think at the
4 time -- like I said, there were things in here that are
5 helpful to Gussie that I wanted to get to the judge and
6 explain to the judge.

7 And in that sense I think I had a duty to hand that over
8 to the prosecution to make sure that, you know, whatever I am
9 saying it not -- not off course. And obviously they took the
10 bad parts and ran with those as well.

11 Q. So when he went before Judge Goldsmith and life was still
12 on the table, one of the things that your early testimony was
13 you were -- you maybe wanted to spare the family from having
14 to go through the trial?

15 A. Right.

16 Q. But that doesn't necessarily benefit Mr. Hilton, does it?

17 A. No, it doesn't. I mean (pause) ---

18 Q. What would have been the risk had you taken it to trial?
19 If life was going to still be on the table what's the risk of
20 taking it to trial?

21 A. There was no risk. And to be perfectly honest with you,
22 I thought this was going to be a trial when they didn't offer
23 us anything. I thought making a counteroffer of a cap of 40
24 was in a sense generous to the State. I don't -- you know, I
25 think a judge probably would have given him to the higher end,

1 obviously with what he got.

2 And I was prepared to get ready for trial. I thought
3 maybe if we had waited a little longer, got closer to trial,
4 they might have offered him something. But they seemed to be
5 very firm in not offering him any type of deal no matter
6 whether that be 40 years, 50 years, anything.

7 So I was actually -- I think I went to see Gussie the day
8 before the plea or the night before the plea at the jail and
9 explained to him the situation.

10 And I believe we were on the same page when, you know, he
11 was saying -- this was sort of the firm line, I want a cap of
12 40, if we don't get a cap of 40 then I don't want to plea.

13 That is exactly what I was expecting when I went to see
14 Gussie down in lockup. But I think a sense of wanting to just
15 get this over with was sort of the impression that I got from
16 him; and so he wanted to plea, and that is what we did.

17 Q. What did you tell him; did you explain to him that if he
18 was going to plea he was going to have to answer some of the
19 judge's questions?

20 A. Yeah, I went all over all of the questions with Gussie.
21 And which I believe he answered appropriately from the judge.
22 I think he gave a heartfelt speech to the judge.

23 I mean, to be honest with you, I think I got teary-eyed
24 when he was speaking. His father also spoke to the court.
25 You know, I think he was penitent towards what happened. He

1 wanted forgiveness.

2 The only thing that I could get out of Ms. Shealy for him
3 pleading guilty was for the State not asking for life. And I
4 got her to redact anything in her statement that referenced
5 life in prison. Which she took out. She did not mention that
6 within the colloquy.

7 Q. Did you tell him how to answer the questions?

8 A. No, I don't believe so.

9 Q. Do you think if he went to trial there could have been
10 any hope of lesser-included offenses that a jury could have
11 come back with?

12 A. It is possible. Yeah, I mean it -- the facts of both
13 CSC's were very murky. They would have definitely had to have
14 taken testimony. But there was -- there was still I think
15 substantial -- substantial circumstantial evidence to support
16 that. Whether or not that you got that testimony I think
17 there was other evidence to support the charge.

18 Q. Because for the six-year-old you said there was not going
19 to be a forensic interview that was going to come in?

20 A. No, I don't believe that -- from all indications that I
21 got from the State was that essentially she was in state of
22 shell shock and she wasn't able to talk to anybody about the
23 incident. And that is, you know, even two years after that
24 she wasn't able to talk about it.

25 Q. And although he was clearly under arrest when he made

1 those statements you did not believe that there could have
2 been some type of Jackson versus Denno argument to be made?

3 A. No. I mean he fully cooperated. I don't think there was
4 anything that the police did that sort of over -- was
5 overbearing of his will. You know, he wanted to help. I
6 think he immediately realized what he had done was very wrong
7 and he wanted to help rectify the situation.

8 Q. You did have -- at some point along the line Dr. Mulbry
9 did some IQ testing, did he not?

10 A. He did.

11 Q. And where that he believed he would fit on that spectrum?

12 A. You know, to be honest with you, I don't know if he got
13 the ---

14 Q. Was it around the 70?

15 A. -- the IQ -- the IQ number I think it was a 71. I don't
16 know if he had gotten that from his school records. I don't
17 believe he did any additional testing ---

18 Q. Oh, okay.

19 A. --- as to his IQ. I think -- I think how that works
20 is -- yeah, he will get that -- records from the Charleston
21 school system, the Charleston County school system. If the
22 person is over 18 their IQ should be established and they will
23 rely on the school records to get that. So that is what it
24 looked like, he got a full-scale IQ of 71.

25 Q. I mean my only concern coming back to the Jackson v Denno

1 issue is whether or not somebody was more of a diminished
2 intellectual capacity -- understood his Miranda rights at the
3 time.

4 A. And, you know, I think he did. And I think that that was
5 in part of Dr. Mulbry's finding with criminal responsibility
6 that he understood what was going on at the time.

7 He told the police several times both inside and outside
8 of the patrol car that he should be in prison for the rest of
9 his life for what he did. And that was -- that was something
10 that I had to keep the prosecution from talking about during
11 the plea. I think that was the one concession that they did
12 give me.

13 But I did not see anything at the time. And I -- you
14 know, but for his confession I think the evidence still was
15 overwhelming.

16 MR. LIMBAUGH: No further questions.

17 MR. FALK: May it please the court, Your Honor.

18 THE COURT: Uh-huh.

19 **CROSS-EXAMINATION BY MR. LIMBAUGH OF JOHN KOZELSKI:**

20 Q. So is it fair to say you did a substantial amount of
21 investigation in this case?

22 A. Well, I don't know about investigation. I didn't send my
23 investigator out to recheck the work that Charleston County
24 Sheriff's Office had made. I mean it was a fairly clear-cut
25 case.

1 I mean most of my representation of Gussie came on the --
2 with talking to family members, talking to Gussie, and talking
3 with Dr. Mulbry about the best -- you know, what we could do
4 to prepare for trial, is he competent yet is he criminally
5 responsible. Because we didn't discuss a potential NGRI
6 defense.

7 Q. Okay. And you said he was mirandized when he gave those
8 statements to law enforcement?

9 A. Yes.

10 Q. Okay. And he confessed to these crimes to law
11 enforcement; is that correct?

12 A. Well, he -- I think you could coin it a confession. When
13 he was caught coming out of the woods he did tell them that
14 MINOR VICTIM was in his room, that he had another room. And then
15 they went and searched the room and found her.

16 So, yes, it could be coined a confession.

17 Q. Would it have been difficult to take this to trial with
18 those kind of admission coming in in front of the jury?

19 A. Well, I think, you know, from a -- from a prosecutor's or
20 solicitor's point of view confessions are sort of worth their
21 weight in gold in the court of law. But I don't think it was
22 just that. I mean he was caught at the scene.

23 Q. Right. And I believe you said there was forensic
24 evidence also found at the scene that they found because he
25 told them where to go; is that correct?

1 A. Yes. Yes.

2 Q. Now I think you said earlier that there would have been
3 no risk of going to trial. But in your experience do
4 defendants typically get lesser sentences when they plead
5 guilty as opposed to being found guilty at a trial?

6 A. Yeah, I mean that was our only I think incentive to plea
7 in front -- particularly in front of the judge that we were
8 set to plea in front of was the possibility of a not-life
9 sentence. And that is essentially what I was arguing for at
10 his plea is a not-life sentence. I threw out a cap of 40 or
11 discussions about a cap of 40. And I felt that that was
12 appropriate because I thought that, you know, he -- he was
13 sorry for what he did and he was asking for forgiveness for
14 what he did.

15 I wanted to give him -- I was asking the judge to give
16 him some modicum of hope that he could have while in SCDC so
17 that one day he may get out and be able to redeem himself
18 outside -- outside of the jail setting.

19 Q. So would it be fair to say that your strategy in this
20 case was to mitigate your client's exposure?

21 A. Yes.

22 Q. Did Mr. Hilton ever express to you that he wished to go
23 to trial?

24 A. Well, like I said, I talked to him the night before the
25 plea when I went to see him and basically explained to him

1 what was going on, that they were not going for any of our
2 counteroffers.

3 And I think he stuck to that if they don't offer me, you
4 know, a cap of 40 then, you know, there's no reason to plead
5 to this.

6 And, you know, I kind of felt along the same lines that,
7 you know -- I thought that a 40-year sentence would have been
8 reasonable.

9 But I -- I was surprised that he wanted to go forward.
10 But I also think that all of this time he -- he wanted to get
11 this over with. He wanted to put this behind him.

12 Q. So you say you were surprised he wanted to go forward.
13 But it lends to my ear that he was the one they came to you
14 and said that he wanted to plea that day?

15 A. Well, I went down into lockup down here at the jail to
16 see if he wanted to get signed up or just to talk to him just
17 to -- I essentially went down there to tell him they are not
18 offering you anything, I know we talked about this the night
19 before so, you know, if you want to plea you can plea, if you
20 don't want to plea that is fine and we will just we will
21 prepare for a trial.

22 Q. So it was ultimately his decision to plead that day?

23 A. Yes.

24 Q. Okay. After you had spoken to him a number of times
25 about that this case -- the non-offers from the Solicitor's

1 Office, things of that nature ---

2 A. Yeah, we had -- we'd seen each other, spoken to each
3 other, a number of times.

4 Q. And he understood those conversations, to the best of
5 your knowledge?

6 A. Yes.

7 MR. LIMBAUGH: A moment's indulgence, Your Honor.

8 THE COURT: Okay.

9 Q. And you did file a motion to reconsider the sentence; is
10 that correct?

11 A. I did.

12 Q. Okay. Do you feel that you did that to the best of your
13 ability?

14 A. Yes.

15 MR. LIMBAUGH: That is all the State has for this
16 witness, Your Honor.

17 THE COURT: Anything else, Mr. Falk?

18 MR. LIMBAUGH: No redirect.

19 THE COURT: All right. All right. Mr. Kozelski, thank
20 you very much.

21 Any objection to Mr. Kozelski leaving today's hearing?

22 MR. LIMBAUGH: Nothing from the State, Your Honor.

23 THE COURT: All right.

24 MR. FALK: No, Your Honor.

25 THE COURT: All right. Thank you, Mr. Kozelski. You are

1 free to leave.

2 (WHEREUPON, witness steps down.)

3 THE COURT: Mr. Falk, do you have any other witnesses you
4 wish to call at this time?

5 MR. LIMBAUGH: I would call Mr. Hilton to the stand.

6 THE COURT: Okay.

7 (WHEREUPON, the witness was duly sworn.)

8 THE CLERK: For the record please state your full name
9 spelling your last.

10 THE WITNESS: All right. Gussie Henry Hilton, Jr.
11 H-I-L-T-O-N.

12 **DIRECT EXAMINATION BY MR. FALK OF GUSSIE HILTON:**

13 Q. Hello, Mr. Hilton. What kind of conversations did you
14 have with your attorney regarding whether or not you were
15 going to go to trial or not?

16 A. Well, for the first 18 months only I saw Mr. Kozelski
17 four times. Because the first time was when he explained how
18 much time I was going -- I was getting. The second time was
19 when he kind of came and showed the insurance people. The
20 third time is when -- I have got all this in my FOIA. Can
21 get my FOIA, please?

22 MR. LIMBAUGH: Your Honor, can I?

23 THE COURT: Uh-huh.

24 (WHEREUPON, documents provided to witness.)

25 A. Thank you. All right. The third time was when he let me

1 know when like I would see the mental health doctor to come
2 and see me. And the fourth time was to tell me how much time
3 I was doing -- I am looking at.

4 Really he didn't really come to see me to explain -- to
5 talk to me about my case. He didn't advise me what is really
6 going to happen. He didn't really -- he didn't really
7 participate as a real lawyer that advised me about my case or
8 like how much -- you know what I am saying. The only thing,
9 he just tell me how much time I was getting. I mean he never
10 really discussed my case with me.

11 Q. Well, did he tell you how much time you were going to
12 get?

13 A. He said obviously I am looking at life. And I --
14 basically I just shook my shoulders. I mean I just -- I
15 really shook my shoulders. Because I mean I -- okay, I'm --
16 this is the first time I have ever been in this predicament.
17 You know what I am saying? So I am looking for somebody to
18 really help me. And he is not the really person.

19 I asked my father can I switch lawyers, because I felt
20 like Mr. Kozelski wasn't performing.

21 Q. Did he go over with you the evidence that the State had?

22 A. No.

23 Q. Did he go over with you the statements that you had made
24 to the police officers when you were arrested?

25 A. No.

1 Q. Did he go over with you the forensic evidence that was in
2 the file -- did he go over with you -- and what I mean by
3 forensic evidence, was there any DNA testing done?

4 A. Yes, there was. On my motion the only thing that they
5 find was my sperm inside of a 13-year-old. As of that date I
6 didn't know she was 13. But -- I didn't even ask her how old
7 she was. You know what I'm saying? I believed she was 17, 18
8 years, at the time.

9 For **MINOR VICTIM** they didn't find -- find my sperm inside of
10 her. They tested out of my car. They didn't find -- they
11 didn't find the victim's fingerprints inside of my car. They
12 took my clothes. I voluntarily give the police officer my
13 saliva, whatever they needed -- that you know what I'm saying --
14 to prove my innocence.

15 Q. Did they find blood inside of your car?

16 A. No, they couldn't -- they couldn't describe what -- what
17 was it.

18 Q. Okay. So did you have a discussion with him about
19 pleading to a cap of 40 years?

20 A. Yes, I -- yes, sir.

21 Q. And what was your thought about that?

22 A. My thought -- really I wanted to go to trial. I asked
23 him four times specifically -- actually really five times.
24 The fifth time was with an assistant, when he came -- the
25 assistant came to see me.

1 I asked Mr. Kozelski four times can he please let's go to
2 trial. He told me it is not in the best interest that I go to
3 trial because I still would be looking at life.

4 I felt that like that was wrong, because this is my life.
5 And I feel like all of the evidence that they are showing you
6 they are not showing everything that -- that they are saying
7 that happened.

8 Q. What evidence did you want to be able to develop at
9 trial?

10 A. The evidence that -- the evidence that I've got right now
11 is they didn't have a knife. Yeah, we all discussed that on
12 my confession that I had a knife. I just -- I just said
13 anything just to - you know what I'm saying - to the officers
14 at the time ---

15 Q. I'm sorry?

16 A. --- even though they are going to believe me.

17 Q. Could you -- could you -- I am not sure I heard you.
18 Could you repeat that?

19 A. Oh, at the time -- at the confession I just said anything
20 to believe, because I knew they just wasn't going to say it.
21 So I just played along. You know what I'm saying? At the
22 time I was this -- I can't even pronounce the word properly.
23 But I was a little syndrome I guess. I am not even saying it
24 right.

25 Q. What are you trying to say? Were you not in your right

1 mind do you think?

2 A. No, I was in my right mind; but I also knew that this was
3 a lost cause because -- I'm not trying to be racist here; but
4 a black man and two white women, this is a lost cause.

5 Q. But what evidence did you want to try and develop at the
6 trial?

7 A. Well, the evidence that I wanted to develop is that they
8 didn't have a knife, that they took the car and they didn't
9 find no fingerprints on my car. For all four individuals they
10 didn't find no fingerprints inside of my car. When they find
11 the lint, spurs of fingerprints, but they cannot identify who
12 was inside my car.

13 They -- I also wanted to bring up the clothes that they
14 took away for me. And I also wanted to bring up that if I
15 physically raped this -- the 13-year-old that they said, why
16 didn't her clothes was ripped, why didn't she have a bruise
17 outside of her body, why didn't -- I mean it just -- I mean
18 it -- hold on. I mean -- for -- hold on on that -- I am going
19 to have to go through this whole thing.

20 For -- for -- and the knife that they said for the
21 kidnapping and all of this stuff but then how can that -- how
22 can that for -- physically overpower two women that weigh over
23 400 pounds, together?

24 They had an opportunity -- they had an opportunity to
25 scream. Because it is not five feet away. They could -- they

1 could have -- they could have screamed. Because we have got
2 neighbors right there.

3 Q. So what you are saying, that there was -- you are not
4 keeping them in -- confined, that they could have left any
5 time that they wanted to?

6 A. They could -- yes.

7 Q. I'm sorry I interrupted you. What else were you going to
8 say?

9 A. Ms. -- the -- Ms. Campbell at the time -- I was -- the
10 question -- another question I was going to bring up too at
11 the trial is Ms. -- her daughter, Ms. ^{Minor}Victim, she had a cell
12 phone the whole time. Now they say I put a knife to her
13 throat. I was thinking why wouldn't -- why wouldn't your
14 child call 911 at the time. Even if you don't have to talk to
15 them, let the operator hear what is going on. That she didn't
16 call.

17 Also I was wanting to bring up they said in her statement
18 Ms. Campbell said that she left out of the woods with my car
19 butt naked and went to my father's house.

20 I would wonder why -- where is the dress that -- the
21 dress that she had on why is it not in evidence. Also ---

22 Q. So you thought that you could develop evidence that would
23 draw questions about the statements that the victims made,
24 correct?

25 A. Yes.

1 Q. All right. So now you had all of this stuff that you
2 wanted to say and you wanted to develop. So why did you walk
3 up here and plead guilty?

4 A. Because at the time even though -- this is what I
5 believe, because Mr. Kozelski wasn't on my side. So other
6 than trying to fight this and do this I just pled guilty. And
7 I knew it was wrong and I knew it wasn't right, but what
8 choice did I have?

9 Q. Now the judge I know one of the lines in your -- during
10 the plea, the transcript of your plea hearing, I know the
11 judge asked you whether or not you are satisfied with what Mr.
12 Kozelski did.

13 A. I lied.

14 Q. Okay. And the judge asked you whether or not you are
15 pleading guilty because you were guilty.

16 A. I lied about that too.

17 Q. Did you know that you could have faced a life sentence
18 had you walked in there that day?

19 A. Yeah, from the very first talk with Mr. Kozelski, yeah, I
20 discussed it with him.

21 Q. Okay. What did he tell you that he thought the judge was
22 going to do?

23 A. Actually we didn't never discuss on that situation, so I
24 can't really tell you that. If I tell you something, I would
25 be lying to you.

1 Q. Okay. And at some point the judge said do you wish to
2 plead guilty today?

3 A. Yeah.

4 Q. And you said yes?

5 A. Yes.

6 Q. And your testimony why you didn't really want to plead
7 guilty, because you thought that it was a lost cause?

8 A. Repeat that question.

9 Q. Why did you tell the judge that you wanted to plead
10 guilty that day?

11 A. Well, I told the judge -- why I wanted to plead guilty, I
12 really didn't remember what that I said. Because the whole
13 time I was crying. Because I already know I was going to get
14 life regardless. I just -- I just broke down and just cried
15 because I already knew that I was going to get life. I mean I
16 just said everything just kind of out of my mouth.

17 Q. Is there anything else you want to tell the court?

18 A. Yes. The lies -- from the get go when I talked to the
19 officer about the case she -- she took my lying -- she had
20 been on the computer, and she erased what I said and put --
21 put her saying that Ms. Campbell had actually run away, and
22 she didn't. From that lie it went to another lie to another
23 lie.

24 I mean they -- what they took from me they took away from
25 my family. They said -- I -- I understand the prosecutor said

1 that, that I'm not edu- -- I am really not qualified in going
2 back on the street. Right now if even I am on the street I
3 don't want to stay in South Carolina. I don't want to be
4 around other people who said I hurt them. I mean I don't want
5 to be around my family because how can I trust anybody. You
6 know what I am saying?

7 And I just -- I just want the honesty to come out. I
8 don't want -- the truth to come out right now. Because I mean
9 I sit there and lie for -- I sit there for and lie to -- Mr.
10 Kozelski, I mean I didn't -- I told him the truth. I told him
11 from the beginning -- I told him straight for the truth. I
12 didn't sit there and lie to him. I didn't sit there and --
13 sit there and ball lagger him. You know what I'm saying?

14 But I also wanted his help. I also wanted him to be
15 there. You know what I'm saying? I mean I knew that if I
16 tell the truth I feel like -- okay, if I tell the truth, yeah,
17 yeah.

18 But I also found evidence inside -- inside a DSS case
19 that Ms. Campbell wasn't even a fit mother. I mean she -- I
20 mean she was using crack. She was doing marijuana. She was
21 acting -- hardly -- she was beating on her children. I mean I
22 see why she didn't have her children.

23 But it seemed like the victim was always right in the
24 situation; I mean I was wrong at the beginning and I was
25 guilty from the beginning, so I mean I wasn't innocent in the

1 state law -- the State of South Carolina.

2 Q. I have no further questions. Please answer any questions
3 Mr. Limbaugh has.

4 MR. FALK: May it please the court, Your Honor.

5 **CROSS-EXAMINATION BY MR. LIMBAUGH OF GUSSIE HILTON:**

6 Q. Earlier you said you lied when you were answering your --
7 the plea judge's questions; do you -- is that correct?

8 A. Yes.

9 Q. Were you under oath at that plea hearing?

10 A. To be honest with you, I really don't know.

11 Q. Okay. Are you under oath now to tell the truth?

12 A. Yes.

13 Q. Okay. And you said that you knew you were facing life
14 when you went in to plea that day?

15 A. Yes.

16 Q. Was it your decision to plea that day?

17 A. Well, yeah, I basically -- yes. Yes.

18 Q. Okay. That is all I have, Your Honor.

19 THE COURT: All right. Thank you. Anything else, Mr.

20 Falk?

21 MR. LIMBAUGH: No, Your Honor.

22 THE COURT: All right. Sir, you may step down and have a
23 seat back at your counsel's table.

24 (WHEREUPON, witness complied.)

25 THE COURT: Any other witnesses you wish to call, Mr.

Gussie H. Hilton, Jr.
2018-CP-10-02615

1 Falk, at this time?

2 MR. FALK: No, Your Honor.

3 MR. LIMBAUGH: None from the State, Your Honor.

4 THE COURT: All right. All right. Mr. Falk, anything
5 else you would like to say by way of just a brief close?

6 MR. FALK: Well, I think that there was testimony that my
7 client really wanted a trial, that he want -- that he had
8 evidence that he wanted the court to know, that he thought he
9 was going to be getting a 40-year deal, that he didn't feel
10 like his lawyer was representing his interests and therefore
11 going to trial was going to be difficult because his lawyer
12 wasn't -- he didn't feel like his lawyer was behind him and he
13 was in a situation where he just felt like he had to -- he had
14 no other option but to walk in there that day and plead guilty
15 and he was coerced because his lawyer was not assisting in his
16 defense.

17 And also, Your Honor, I would raise the issue of whether
18 or not Mr. Kozelski ever should have turned over the
19 mitigation report.

20 Which I believe that if you look at the transcript it was
21 rather -- it certainly was something that Jennifer Shealy was
22 using. Because when you are walking into a situation where,
23 you know -- if he goes to trial, he could get life, he is
24 going to plead, you know, he doesn't really get any benefit
25 for walking in there and pleading.

1 And we believe that Mr. Kozelski did indicate that he
2 knew that he could have just told the solicitor that the
3 report was going to be no help without them sort of supplying
4 her with the details that were going to in the end probably
5 push the judge who had never given a life sentence before to
6 sentencing him to life in this case.

7 THE COURT: All right. I will certainly take a closer
8 look at the plea transcript as well as various as there is --
9 I do have the report itself which is attached as an exhibit to
10 the motion to reconsider.

11 Anything else the State would like to tell me at this
12 point in time?

13 MR. LIMBAUGH: Just briefly, Your Honor. And just for
14 the record, the State would oppose consideration of the
15 lacking of turning over the report that was not specifically
16 alleged in the application. Just for the record.

17 THE COURT: Okay. Thank you.

18 MR. LIMBAUGH: And then the State would contend that
19 applicant's counsel advised him that he was facing life, he
20 went and talked to him the night before the plea and he said
21 he wasn't going to plead unless it was with a cap of 40 and
22 then spoke with him the next day. And Applicant just
23 testified that it was his decision to plead and he knew he was
24 risking life if he did the plea that day.

25 And that was also gone over with him on the record by his

Gussie H. Hilton, Jr.
2018-CP-10-02615

1 plea judge. And also I would contend that Applicant's
2 testimony here is not credible, as he testified to he lied
3 under oath at his plea hearing or says he did. And he is
4 under oath here today, so I am not sure if the court should be
5 able to take his testimony with much credibility.

6 Thank you, Your Honor.

7 THE COURT: All right. I will certainly take a closer
8 look, as I stated, at the record which of course is fully
9 incorporated for purposes of appeal.

10 And rather than having both submit proposed orders after
11 I take a look at it I will ask one of you to submit a proposed
12 order. Okay.

13 MR. FALK: Thank you, Your Honor.

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

15 MR. LIMBAUGH: Thank you, Your Honor.

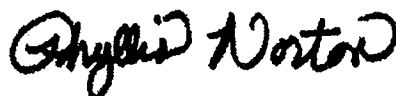
16 (WHEREUPON, the hearing concluded.)

(NOTE: Please contact the court reporter for additional copies or certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for South Carolina, on March 19, 2019.

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



PHYLLIS NORTON, CVR

Date: September 3, 2019

Certified Transcript Provided For: SCCID

Certification Reference #090319

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Gussie Henry Hilton, Jr., #353945

Applicant,

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2018-CP-10-2615

ORDER OF DISMISSAL

FILED
2019 JUL 15 PM 2:18
JULIE J. ARISTIDE
CLERK OF COURT

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. On August 30, 2015, Applicant was arrested for three counts of kidnapping, one count of first-degree criminal sexual conduct, and one count of first-degree criminal sexual conduct with a minor, stemming from two separate incidents. In one of the incidents, Applicant held a woman and her thirteen year old daughter hostage and forced them into the woods against their will. Applicant made them take off their clothing. The mother was able to break free and call 911 but her daughter remained with the Applicant. Applicant taped the minor's hands and forced her to have sexual intercourse with him. Once the police arrived, Applicant made a statement that suggested he had sexual assaulted a six year old and that she was at his residence. Law enforcement went to his residence and found the minor inside, bloody and complaining of stomach pain. Applicant confessed to having sexual intercourse with the six year old and admitted he took her to his house to rape her. Applicant also gave a confession where he admitted to raping the thirteen year old victim.

During its March 2016 term, the Charleston County Grand Jury indicted Applicant for criminal sexual conduct with a minor, first degree (2016-GS-10-1514), criminal sexual conduct, first degree (2016-GS-10-1528), three counts of kidnapping (2016-GS-10-1525; 2016-GS-10-

1526; 2016-GS-10-1527). Assistant Public Defender John J. Kozelski, III, of the Charleston County Public Defender's Office represented Applicant. Assistant Solicitor Jennifer Kneece Shealy of the Ninth Circuit Solicitor's Office prosecuted the case.

On May 18, 2017, Applicant appeared in the Charleston County Court of General Sessions before the Honorable Brooks P. Goldsmith, circuit court judge, where he pled guilty as indicted to all five offenses without negotiation or recommendation. During the plea proceeding, Applicant admitted he was guilty and had committed the conduct giving rise to these offenses as outlined by the State. He informed the court that he wanted to plead guilty and he was knowingly, voluntarily, and freely waiving his constitutional rights to enter guilty pleas to all five offenses. He told the court he had not been threatened, coerced, or promised anything to induce his guilty plea and that he was satisfied with the services of counsel. In mitigation, counsel presented the court with a psychiatric evaluation of Applicant performed by Dr. L. W. Mulbry, Jr., M.D., and highlighted a family history of mental illness and sexual abuse. Applicant also addressed the court, during which he acknowledged the heinous actions he committed and apologized to the victims. After hearing the presentations from Applicant and the State, the court sentenced Applicant to concurrent terms of thirty years imprisonment for kidnapping, to a consecutive term of thirty years imprisonment for first-degree criminal sexual conduct, and to life imprisonment for first-degree criminal sexual conduct with a minor.

Counsel filed a timely motion to reconsider Applicant's sentence and a memorandum in support. The State filed a response to the motion. By written order dated November 20, 2017, the court denied Applicant's motion to reconsider his sentence.

Thereafter, Applicant filed a timely notice of appeal. On January 9, 2018, the South Carolina Court of Appeals dismissed the appeal for failure to provide a sufficient guilty plea

explanation as required by Rule 203(d)(1)(B)(iv), SCACR. The remittitur was returned to the circuit court on January 25, 2018.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Aggravated sexual abuse."
2. "Sexual abuse of a minor or ward."
3. "Abusive sexual conduct."
4. "Defendant was entitled to a jury charge on lesser included offense of assault and battery of high and aggravated nature (A.B.H.A.N)"
5. "Defendant was not entitled to a jury charge on less[e]r included offense of simple assault or battery; and"
6. "Probative value of rape trauma evidence from State's expert witness outweighed its prejudicial impact."

As requested relief, Applicant stated, "Charleston, South Carolina I would like to sure for 7.5 million's dollars for suffering for time I spent in prison."

Applicant amended his application on May 22, 2018 to include the following claim:

"Applicant plead guilty based solely upon the advice of trial counsel, and trial counsel's advice was not within the range of competence demanded of attorneys in criminal cases. Applicant's plea was therefore neither voluntary nor knowing, and but for trial counsel's deficient advice, applicant would have exercised his 6th Amendment right to a jury trial."

Summary of Testimony

Applicant was represented by John Kozelski at the plea hearing. Counsel testified that police arrived on the scene with a K-9 unit as Applicant was walking out of the woods. Counsel testified that the statements given by witness referenced sexual intercourse. Counsel testified that a forensic interview was conducted of the six year old, but that it was not fruitful. Counsel testified that the fourteen year old was a separate incident and that the victims did not know each other. Counsel testified that forensic evidence was taken from the incident location that was

found through the witness statements. Counsel testified that Applicant gave numerous statements to police after he was under arrest and had been read his Miranda rights. Counsel testified that there were not any real plea negotiations in this case. Counsel's main concern was getting Applicant evaluated. Counsel testified that he was evaluated and the results were that he was competent and criminally liable. Counsel testified that Applicant believed he was possessed. Counsel testified that Dr. Mulbry was looking for other family members to talk to in order to properly get a picture of Applicant's history for mitigation purposes. Counsel testified that the solicitor told him that there was no offer in this case. Counsel testified that he tried to get a negotiated cap of forty years considering Applicant's age and not putting the victims through a trial. Counsel testified that Applicant was always willing to plead guilty. Counsel testified that he expressed mitigating factors to the court at the plea hearing. Counsel testified he brought out the family issues, the mental health issues, and the violence/neglect he was exposed to. Counsel testified that he got the plea in front of a judge that had never given a life sentence before. Counsel testified that the report was not the most helpful, saying that Applicant would likely do this again if he got out of jail. Counsel testified that there were some things in the report that were helpful to Applicant and some that were not. Counsel testified that he thought this was going to trial, but that the night before the trial Applicant told him that he wanted to plead. Counsel testified that he originally wanted the cap of forty, but that ultimately the State just did not ask for life. Counsel testified that he did not tell Applicant how to answer the judge's questions. Counsel testified that Applicant told police that he should be in prison for life.

Applicant testified that he met with counsel a number of times. Applicant testified that he first time they met was to discuss the possible sentences. Applicant testified that the second time was about the charges, the third time was about the mental health evaluations, and the fourth

time was about the potential sentence he was facing. Applicant testified that counsel did not discuss the case with him. Applicant testified that counsel was telling him that he was looking at a potential life sentence. Applicant testified that counsel did not go over the evidence or his statements with him. Applicant testified that he was aware the forensics found sperm inside of the fourteen year old victim. Applicant testified that he did not know that she was fourteen. Applicant testified that he asked counsel to take the case to trial. Applicant testified that he was in his right mind when he confessed to the police. Applicant testified that he could not have raped her, because her clothes were not ripped. Applicant testified that the victims could have left whenever they wanted. Applicant testified that one of the victims had a phone and doesn't understand why she didn't call the police. Applicant testified that he plead guilty because he had no choice. Applicant testified that he was lying when he answered the judge's questions at his plea. Applicant testified that he knew he was potentially facing life at his plea.

Findings of Facts and Conclusions of Law

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented, which allowed the Court to scrutinize the credibility presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant has alleged numerous instances of ineffective assistance of counsel against trial counsel, William Brunson. Each allegation is addressed fully below.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland does not guarantee perfect representation, only a "reasonably competent attorney." 466 U. S. at 687 (quoting McMann v. Richardson, 397 U. S. 759, 770 (1970)); Representation is constitutionally ineffective only if it "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair trial. Strickland, 466 U.S. at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities. See generally Id.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286, 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.

Although courts may not indulge "post hoc rationalization" for counsel's decision making that contradicts the available evidence of counsel's actions, Wiggins, 539 U.S. at 526-527, neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. There is a "strong presumption" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Yarborough v. Gentry, 540 U. S. 1, 8 (2003) (per curiam). After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind. Id. at 688; Harrington v. Richter, 562 U.S. 86 (2011)

With respect to prejudice, an applicant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694. It is not enough "to show that the errors had some conceivable effect on the outcome of the proceeding." Id. at 693. Counsel's errors must be "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Id. at 687; Harrington, 562 U.S. 86.

"Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S. 356, 371 (2010). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the Strickland standard

must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. Strickland, 466 U.S. at 689-690. Even under de novo review, the standard for judging counsel's representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings knew of materials outside the record and interacted with the client, with opposing counsel, and with the judge. It is "all too tempting" to "second-guess counsel's assistance after conviction or adverse sentence." Id. at 689; see also Bell v. Cone, 535 U. S. 685, 702 (2002); Lockhart v. Fretwell, 506 U. S. 364, 372 (1993). The question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Strickland, 466 U.S. at 690.

In assessing prejudice under Strickland, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. Wong v. Belmontes, 558 U. S. 15 (2009); Strickland, 466 U.S. at 693. Instead, Strickland asks whether it is "reasonably likely" the result would have been different. Id. at 696. This does not require a showing that counsel's actions "more likely than not altered the outcome," but the difference between Strickland's prejudice standard and a more-probable-than-not standard is slight and matters "only in the rarest case." Id. at 693, 697. The likelihood of a different result must be substantial, not just conceivable. Id. at 693; Harrington, 562 U.S. 86.

Based on this standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to any of his various allegations. Applicant's allegation is addressed fully below:

Applicant's Plea was Involuntary

Applicant alleges that counsel's deficient performance led him to plead guilty involuntarily. Applicant alleged that counsel told him that the only way to potentially avoid a life sentence was to plead guilty, but that he ultimately got sentenced to life imprisonment. Counsel testified that he advised Applicant that the only way to potentially avoid a life sentence was to pursue a plea. Counsel testified that he reviewed the evidence with Applicant and reviewed Applicant's confessions that he gave to the police. Counsel testified that he had Applicant evaluated and had a report made for the purposes of mitigation. Counsel testified that there were never plea negotiations in this case, but that the State did not ask for life imprisonment at the plea. Counsel testified that Applicant ultimately made the decision to take the plea. This Court finds that Applicant's testimony was not credible, as he testified that he was lying when he answered questions in court at his plea hearing. This Court finds the testimony of counsel to be thorough and highly credible. This Court finds that counsel was not deficient in his representation of Applicant and that Applicant entered his plea freely and voluntarily. This Court finds that counsel presented mitigation evidence to the plea court in an effort to avoid Applicant being given a life sentence, but that it was ultimately out of his hands. This Court finds that Applicant has failed to meet his burden and that counsel was not deficient in this case.

III. CONCLUSION

Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings.

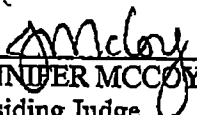
Counsel was not deficient, nor was Applicant prejudiced by Counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 15th day of July, 2019.


 JENNIFER MCCOY
 Presiding Judge
 Ninth Judicial Circuit

JBM/10

JKS/0308435
WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER
2015-013320

ARREST WARRANT NUMBER
2015A1010203808

DATE OF ARREST
08/30/2015

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

MAR 14 2016

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-10-01514

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
MARCH TERM 2016

THE STATE

VS.

GUSSIE HENRY HILTON, JR
B/M DOB: [REDACTED]

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR, FIRST DEGREE

SC Code: § 16-03-0655(A)(1)
CDR Code: 0385

FILED

3/22/2016 3:09:33 PM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

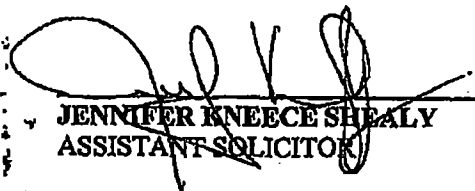
INDICTMENT

At a Court of General Sessions, convened March 2016, the Grand Jurors of Charleston County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

That in Charleston County, South Carolina, on or about August 30, 2015, the Defendant, Gussie Henry Hilton Jr, DOB [REDACTED]-1987, did commit, or assaulted with the intent to commit, a sexual battery, to wit: sexual intercourse, upon the victim, [REDACTED] Minor Victim DOB [REDACTED] 2009, a minor who was less than eleven years of age in violation of Sections 16-3-655(A)(1) and 16-3-656 of the South Carolina 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.


JENNIFER KNEECE SHEALY
ASSISTANT SOLICITOR

JKS/0308435
WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER

2015-013320

ARREST WARRANT NUMBER

2015A1010203810

DATE OF ARREST

08/30/2015

ACTION OF GRAND JURY

TRUE BILL

MAR 14 2016

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-10-01525

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

MARCH TERM 2016

THE STATE

VS.

GUSSIE HENRY HILTON, JR
B/M DOB: [REDACTED]

Indictment for

KIDNAPPING

SC Code: § 16-03-0910
CDR Code: 0095

FILED

3/22/2016 3:09:33 PM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened March 2016, the Grand Jurors of Charleston County present upon their oath:

KIDNAPPING

That in Charleston County, South Carolina on or about August 30, 2015, the Defendant, Gussie Henry Hilton Jr, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, [Minor Victim] without authority of law; all in violation of Section 16-3-910 of the South Carolina 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.


JENNIFER KNEECE SHEALY
ASSISTANT SOLICITOR

JKS/0308435
WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER
2015-013320

ARREST WARRANT NUMBER
2015A1010203811

DATE OF ARREST

08/30/2015

ACTION OF GRAND JURY

TRUE BILL

MAR 14 2016

Forfeiture of Grand Jury

Date:

VERDICT

Forfeiture of Petit Jury

Date:

DOCKET NO. 2016-GS-10-01526

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
MARCH TERM 2016

THE STATE

VS.

GUSSIE HENRY HILTON, JR
B/M DOB: [REDACTED]

Indictment for

KIDNAPPING

SC Code: § 16-03-0910
CDR Code: 0095

FILED

3/22/2016 3:09:33 PM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened March 2016, the Grand Jurors of Charleston County present upon their oath:

KIDNAPPING

That in Charleston County, South Carolina on or about August 30, 2015, the Defendant, Gussie Henry Hilton Jr, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, [Minor Victim] without authority of law; all in violation of Section 16-3-910 of the South Carolina 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.


JENNIFER KNEECE SHEALY
ASSISTANT SOLICITOR

JKS/0308435
WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER
2015-013320

ARREST WARRANT NUMBER
2015A1010203812

DATE OF ARREST

08/30/2015

ACTION OF GRAND JURY

TRUE BILL
MAR 14 2016

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-10-01527

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
MARCH TERM 2016

THE STATE

VS.

GUSSIE HENRY HILTON, JR
B/M DOB: [REDACTED]

Indictment for
KIDNAPPING

SC Code: § 16-03-0910
CDR Code: 0095

FILED

3/22/2016 3:09:33 PM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened March 2016, the Grand Jurors of Charleston County present upon their oath:

KIDNAPPING

That in Charleston County, South Carolina on or about August 30, 2015, the Defendant, Gussie Henry Hilton Jr, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Margaret L. Campbell, without authority of law; all in violation of Section 16-3-910 of the South Carolina 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.


JENNIFER KNEECE SHEALY
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened March 2016, the Grand Jurors of Charleston County present upon their oath:

CRIMINAL SEXUAL CONDUCT FIRST DEGREE

That in Charleston County, South Carolina, on or about August 30, 2015, the Defendant, Gussie Henry Hilton Jr, DOB [REDACTED] did commit a sexual battery, to wit: sexual intercourse, upon the victim, [REDACTED] Minor Victim DOB [REDACTED] 2002 accompanied by one or more of the following circumstances: (1) the defendant used aggravated force to accomplish the sexual battery and/or (2) the victim submitted to sexual battery under circumstances where the victim was also the victim of forcible confinement, kidnapping, trafficking in persons, robbery, extortion, burglary, housebreaking, or any other similar offense or act and/or (3) the defendant caused the victim, without the victim's consent, to become mentally incapacitated or physically helpless by administering, distributing, dispensing, delivering, or causing to be administered, distributed, dispensed, or delivered a controlled substance, a controlled substance analogue, or any intoxicating substance. This is in violation of Section 16-3-652, South Carolina 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.


JENNIFER KNEECY SHEALY
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON
STATE VS.GUSSIE HENRY HILTON, JRAKA: Gussie H. Hilton, Gussie HiltonRace: Black/African AmericanSex: MDOB: [REDACTED]SS#: [REDACTED]Address: Martin StreetCity, State, Zip: Ravenel, SC 29470-5450DL# [REDACTED]SID# SC01649653*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Criminal Sexual Conduct With A Minor, First Degree

In violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385

☐ 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 Presentation to Grand Jury,

(def.'s initials)

The plea is:

☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

7919

Jennifer Kennedy Shealy, Assistant Solicitor SC Bar #

Defendant

Attorney for Defendant

100153
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

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

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

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: _____

Recipient: _____

*Fine: _____

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

§14-1-211 (A)(2)(DUI Surcharge)

\$100

§56-5-2995 (DUI Assessment)

\$12

§56-1-286 (DUI Breath Test)

\$25

Proviso 61.6 (Public Def/Prob)

\$500

§14-1-212 (Law Enforce. Funding)

\$25

§14-1-213 (Drug Court Surcharge)

\$150

§50-21-114 (DUI Breath Test Fee)

\$50

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

3% to County (if paid in installments)

\$

TOTAL

\$ 128.75

Clerk of Court/Deputy Clerk: Dollar M. HarrisCourt Reporter: Karen AndersonPresiding Judge: 2/30/17Judge Code: 18, 2017Sentence Date: May 18, 2017

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON
STATE VS.GUSSIE HENRY HILTON, JRAKA: Gussie H Hilton, Gussie HiltonRace: Black/African AmericanSex: MDOB: [REDACTED]SSN: [REDACTED]Address: Martin StreetCity, State, Zip: Ravenel, SC 29470-5450DL# [REDACTED]SID# SC01642653*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: KidnappingIn violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s Initials)

The plea is:

☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTORNEY:

Jennifer Kneese Stealy, Assistant Solicitor SC Bar # 7919[Signature]
Defendant[Signature] 100153
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered PTUP Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS 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

pmis. of \$ Beginning \$ Paid to Public Defender Fund Other: Recipient: *Fine: \$ §14-1-206 (Assessments 107.5%) \$ §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 200.00§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/Prob) \$500 \$ §14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ §50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ \$ 3.75TOTAL \$ 128.75Clerk of Court/Deputy Clerk: [Signature]Court Reporter: [Signature]Presiding Judge: [Signature]Judge Code: 2139Sentence Date: July 18, 2017

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON
STATE VS.GUSSIE HENRY HILTON, JR.AKA: Guessie H Hilton, Guessie HiltonRace: Black/African AmericanSex: MDOB: [REDACTED]SS#: [REDACTED]Address: Martin StreetCity, State, Zip: Ravenel, SC 29470-5450DL# [REDACTED]SID# SC01649653*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: KidnappingIn violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0025☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Jennifer Kneese Shealy, Assistant Attorney General SC Bar # 7919Hilton
DefendantJohn R. [REDACTED]
Attorney for Defendant SC Bar # 100153

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

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

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

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: _____

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

Recipient: _____

*Fine: _____

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

Proviso 61.6 (Public Def/Prob)

§14-1-212 (Law Enforc. Funding)

§14-1-213 (Drug Court Surcharge)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Clerk of Court/Deputy Clerk: [Signature]Court Reporter: [Signature]Presiding Judge: [Signature]Judge Code: 2139Sentence Date: May 18, 2017

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

GUSSIE HENRY HILTON, JR.AKA: Gussie H Hilton, Gussie HiltonRace: Black/African AmericanSex: MDOB: [REDACTED]SS#: [REDACTED]Address: Martin StreetCity, State, Zip: Ravenel, SC 29470-5450DI.# [REDACTED]SID# SC01649653*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: KidnappingIn violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lowd Act)

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury,

(def.'s initials)

The plea is:

☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Jennifer Kneese Shady, Assistant Solicitor SC Bar # 7919Hilton
DefendantJohn Kneese
Attorney for Defendant SC Bar # 100153

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered PTUPTotal: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS 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: 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/Prob) \$500 \$ §14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ §50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(I) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ 8.45TOTAL \$ 128.45

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

Clerk of Court/Deputy Clerk: Dallas M. [Signature]Court Reporter: Karen [Signature]Presiding Judge: [Signature]Judge Code: 3139Sentence Date: May 18, 2017

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

GUSSIE HENRY HILTON, JR.AKA: Gussie H. Hilton, Gussie HiltonRace: Black/African AmericanSex: MDOB: [REDACTED]SS#: [REDACTED]Address: Martin StreetCity, State, Zip: Ravenel, SC 29470-5450DL# 100420375SID# SC01649653*CIDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Criminal Sexual Conduct First DegreeIn violation of § 16-03-0652 of the S.C. Code of Laws, bearing CDR Code # 0160☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Jennifer Kneese Shetty, Assistant Solicitor SC Bar # 7919

Defendant

Attorney for Defendant

SC Bar # 100153

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☒ CONSECUTIVE to sentence on: May 18, 2017

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

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: _____

Recipient: _____

*Fine: _____

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

Proviso 61.6 (Public Def/Prob)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$100.00	\$	200.00
\$100.00	\$	-
\$12	\$	-
\$25	\$	-
\$300	\$	-
\$25	\$	25.00
\$150	\$	-
\$50	\$	-
\$40/ea	\$	-
\$	\$	3.75
	\$	128.75

Clerk of Court/Deputy Clerk: Della McDanielCourt Reporter: Karla Anderson

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016-GS-10-01528A/W: 2015A1010203809Date of Offense: 08/30/2015S.C. Code §: 16-03-0652CDR Code #: 0160

SENTENCE SHEET

☐ CONVICTED OF or☒ PLEADS☐ Appointed PD or appointed other county

§47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge: 2139Judge Code: 18, 2017Sentence Date: May 18, 2017