

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————  
Certiorari to Spartanburg County

Honorable Michael G. Nettles, Circuit Court Judge  
—————

**RECEIVED**

**Sep 08 2020**

S.C. SUPREME COURT

RASHAWN TREMAYNE CARSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000084  
—————

APPENDIX  
—————

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF
	)	GENERAL SESSIONS
COUNTY OF SPARTANBURG	)	OF THE SEVENTH
	)	JUDICIAL CIRCUIT
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	TRANSCRIPT OF RECORD
	)	2016-GS-42-00022
vs.	)	2016-GS-42-00023
	)	2016-GS-42-05362
RASHAWN TREMAYNE CARSON,	)	
Defendant.	)	
	)	

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October 17, 2016  
Spartanburg, South Carolina

B E F O R E :

HONORABLE J. MARK HAYES, II, Judge.

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

HILLARY C. WELBORN, ASSISTANT SOLICITOR  
For Plaintiff

JAMES CHEEK, ESQUIRE  
For Defendant

Julie A. Ashbrook,  
Circuit Court Reporter  
Seventh Judicial Circuit

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EXHIBITS

MARKED

ENTERED

NO EXHIBITS PROFFERED

1 THE STATE OF SOUTH CAROLINA VS. RASHAWN TREMAYNE CARSON

2 THE COURT: All right. When I call your name, if  
3 you would just raise your hand and let me eyeball where  
4 you are. And, in fact, if I call your name and you're  
5 sitting in the audience I need for you to please come  
6 forward and have a seat at the jury box.

7 All right. We have Gregory Bennett, Randy  
8 Burgess, Jerry Byars, Amy Cannon, Rashawn Carson, Larisa  
9 Paris, Albert Scott, Marsha Smith, Tyshan Williams, Amy  
10 Cannon.

11 (Whereupon, all were present.)

12 Michael Cashmir. All right. So we're not doing  
13 that one.

14 MS. WELBORN: That's one of Mr. Schultz's. I'm  
15 not sure where he -- where the defendant's gone.

16 THE COURT: Okay. Patrick Kelly. Patrick Kelly.  
17 (Not present.)

18 All right. Jonathan Solesbee, Randy Burgess.

19 MR. SARRATT: He's in the box, Your Honor,  
20 raising his hand, I see.

21 THE COURT: Uh-huh. Pamela Mullinax, Bobby  
22 Howell, Brandon Hammett, Casey Greenway, Gary Lewis,  
23 Jesse Haulbrooks, Andrew Copeland, Eddie Ruff.

24 (Whereupon, all were present.)

25 Anybody whose name I didn't call that needed to

1 be called? Any of the lawyers, did I miss anybody?

2 (Whereupon, there was no response.)

3 Okay. All right. I need for everyone to please  
4 listen to me for a few moments. I've been told that  
5 each one of you has one or more matters that are  
6 presently pending in the court of General Sessions.  
7 I've also been told that each one of you has expressed a  
8 desire or intent to want to enter a plea to those  
9 matters.

10 I need to let you know that as a part of every  
11 plea that is present in front of me, we make a  
12 recording. This lady who is seated over here to my  
13 right, she's a court reporter. She's taking down  
14 everything that's said. I tell you that because if ever  
15 during this process, now or later today, if you need to  
16 speak to me I need for you to speak up loud enough so  
17 both she and I can hear you because if we cannot hear  
18 you I cannot accept your plea. But, likewise, if ever  
19 during this process if you cannot hear me, you  
20 immediately let me know and I'll speak up as well.

21 Now in just a few moments I'm gonna ask you a  
22 series of questions. I'm gonna ask you these questions  
23 as a group. I don't wish for you to think or conclude  
24 that simply because I'm asking you these questions as a  
25 group that for some reason these questions are not

1 important because these questions are very important.  
2 The questions that I ask you and the answers you give me  
3 to these questions help me decide whether or not I can  
4 in fact accept your plea, so please listen to them.

5 If you need to respond to the question, I'm gonna  
6 ask you, if you would, to please stand up and let me  
7 call on you one at a time. Just don't everybody speak  
8 out at once, but stand up and let me call you one at a  
9 time. Now, if ever during this process if any of you  
10 wish to speak to your lawyer, you just let me know and  
11 I'll allow you to talk to your lawyer in private.

12 I'm now gonna call your names one more time.  
13 This time when I call your name, I'm gonna ask you, if  
14 you would, to please stand up and remain standing.  
15 After everybody's name's been called and the court  
16 reporter has your names written down, the lady on this  
17 side of the courtroom, the clerk of court, she's gonna  
18 swear you in. So please respond out loud when she asks  
19 you to do so.

20 All right. Don't forget to stand up. Andy  
21 Copeland, Jesse Haulbrooks, Gary Lewis, Casey Greenway,  
22 Tyshan Williams, Marsha Smith, Albert Scott, Larisa  
23 Paris, Rashawn Carson, Amy Cannon, Jerry Byars, Randy  
24 Burgess, Gregory Bennett. Please raise your right  
25 hands.

1 (Whereupon, all stood and raised right hands.)

2 THE CLERK: Do you solemnly swear that the  
3 testimony you're about to give will be the truth, the  
4 whole truth and nothing but the truth so help you God?

5 (Whereupon, all respond in the affirmative.)

6 THE CLERK: Thank you. You may be seated. (All  
7 comply.)

8 THE COURT: Now, these are the questions that I  
9 need for you to please listen to. During the last 24  
10 hours have you consumed any type of substance that is  
11 adversely or negatively affecting -- during the last 24  
12 hours have any of you consumed any type of substance  
13 that is adversely or negatively affecting your ability  
14 to understand what we're doing today? If you have taken  
15 something, I need for you to please stand at this time.

16 (Whereupon, nobody stood.)

17 If you've ever been treated for any type of  
18 substance abuse issues in the past, then I need for you  
19 to please stand at this time. All right, we'll start  
20 here. Your name, ma'am?

21 MS. CANNON: Amy Cannon.

22 THE COURT: And, Ms. Cannon, did you receive  
23 treatment for drugs, alcohol or both?

24 MS. CANNON: Drugs.

25 THE COURT: And where did you receive that last

1 treatment?

2 MS. CANNON: Um, the last treatment I did a detox  
3 seven days in Greer.

4 THE COURT: About how long ago?

5 MS. CANNON: Oh, last June. And that was only  
6 for seven days. And then I've also completed SADAC  
7 twice.

8 THE COURT: Is it being successful?

9 MS. CANNON: Yes, sir.

10 THE COURT: Thank you, ma'am, you may be seated.  
11 Yes, ma'am, your name?

12 MS. SMITH: Marsha Smith.

13 THE COURT: Ms. Smith, did you receive treatment  
14 for drugs, alcohol or both?

15 MS. SMITH: Drugs.

16 THE COURT: And where did you receive that last  
17 treatment?

18 MS. SMITH: It was April 2014 at West Street in  
19 Columbia.

20 THE COURT: Was it successful?

21 MS. SMITH: Yes, sir.

22 THE COURT: Thank you, ma'am.

23 If you are satisfied with the work that your  
24 lawyer has done for you, I need for you to please stand  
25 at this time. If you're satisfied with the work your

1 lawyer has done, please stand. Let the record reflect  
2 that everyone stood. Thank you very much, you may be  
3 seated. (All comply.)

4 If anybody has come to you and threatened you in  
5 any way or if they have made you any promises in order  
6 to get you to make the decision to enter the plea, then  
7 I need for you to please stand. If you have been  
8 threatened in any way or promised anything, please  
9 stand.

10 (Whereupon, nobody stood.)

11 If the decision by you to enter the plea is a  
12 free and voluntary decision on your part, then I need  
13 for you to please stand at this time. If this is a free  
14 and voluntary decision, please stand. Let the record  
15 reflect that everyone stood. Thank you very much, you  
16 may be seated. (All comply.)

17 I need for each of you to understand that under  
18 the law you are presumed innocent of every charge that's  
19 presently against you and you are entitled to have a  
20 jury trial on each and every one of those charges. Now,  
21 at any jury trial that would take place, it would be the  
22 State that has the burden of proof and the State would  
23 have to convince all 12 members of a jury that you are,  
24 in fact, guilty beyond a reasonable doubt on each and  
25 every one of those charges.

1           Now, in order to enter a plea, however, you have  
2 to give up your right to that jury trial. But if you  
3 wish to have a jury trial on any of the charges that are  
4 presently against you, that is perfectly fine, we will  
5 simply schedule a jury trial for you.

6           Is there anyone who wishes to have a jury trial  
7 on any of the charges that are presently against them?  
8 If you do wish to have a jury trial, please stand at  
9 this time.

10           (Whereupon, nobody stood.)

11           In addition to giving up your right to a jury  
12 trial there are other very important constitutional  
13 rights that you are entitled to but that you have to  
14 give up in order to enter a plea. You have to give up  
15 your right to confront and cross-examine State's  
16 witnesses. You also have to give up your right to  
17 present evidence which you or your lawyer -- ma'am, I  
18 need for you to sit down. (Complies.)

19           Let me start this part over. I need for you to  
20 understand that in addition to giving up your right to a  
21 jury trial, there are other very important  
22 constitutional rights that you are entitled to, but that  
23 you have to give up in order to enter a plea. You have  
24 to give up your right to confront and cross-examine the  
25 State's witnesses. You also have to give up your right

1 to present evidence which you or your lawyer might be  
2 able to establish a defense to the charge or charges  
3 against you. And you have to give up your right of  
4 subpoena, as well as you have to give up your right to  
5 remain silent.

6 Now, if you understand all of those rights and  
7 you wish to give up those rights and go forward with  
8 entering the plea, then I need for you to please stand  
9 at this time. Let the record reflect that everyone  
10 stood. Thank you very much, you may be seated. (All  
11 comply.)

12 Now, if any of you ever wish to speak to your  
13 lawyer, just let me know and I'll allow you to talk to  
14 your lawyer in private. Those of you who joined us from  
15 the gallery, you can return to back to the gallery.  
16 (All comply.) Thank you very much.

17 (Whereupon, group qualifying ends.)

18 MS. WELBORN: Your Honor, before you is Rashawn  
19 Carson, represented by attorney James Cheek. Mr. Carson  
20 is before the Court on 2016-GS-42-21, contributing to  
21 the delinquency of a minor. Also, 2016-GS-42-22,  
22 contributing to the delinquency of a minor. Lastly,  
23 2016-GS-42-5330, criminal sexual conduct with a minor in  
24 the second degree.

25 The defendant is pleading with a recommendation

1 of concurrent sentencing. And the State is dismissing a  
2 warrant for incest as a part of the plea agreement.

3 THE COURT: You are Mr. Carson?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Sir, you do understand that you  
6 remain under oath?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And it is your intent to enter a plea  
9 to the charges that were announced by the solicitor?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: How old are you, sir?

12 THE DEFENDANT: Thirty-seven.

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

14 THE DEFENDANT: Two years of college.

15 THE COURT: Did you get a high school diploma --

16 THE DEFENDANT: Yes, sir.

17 THE COURT: -- with that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Married, single, divorced or widowed?

20 THE DEFENDANT: Single.

21 THE COURT: Do you have children?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: How many?

24 THE DEFENDANT: Three.

25 THE COURT: How old?

1 THE DEFENDANT: Ten months, three and sixteen.

2 THE COURT: Prior to your arrest on these charges  
3 did you have a job outside the home?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: What were you doing?

6 THE DEFENDANT: I was driving a forklift in Mesa  
7 Valley (phonetic).

8 THE COURT: Military?

9 THE DEFENDANT: No, sir.

10 THE COURT: On these charges how long a time have  
11 you been in jail?

12 THE DEFENDANT: 315 Days.

13 THE COURT: 315?

14 THE DEFENDANT: 315, yes, sir.

15 THE COURT: Please listen to the solicitor, she's  
16 going to tell us the facts.

17 THE DEFENDANT: Yes, sir.

18 MS. WELBORN: Thank you, Your Honor. On April  
19 26, 2015, officers of Spartanburg City responded to the  
20 Spinx located at 1507 W.O. Ezell Boulevard in  
21 Spartanburg County in reference to a noise complaint in  
22 a car parked at the business. Officers arrived to find  
23 the defendant sitting in the driver's seat and the  
24 defendant's 14 year-old daughter and her 13-year-old  
25 male friend sitting in the backseat.

1           The defendant was acting very nervous and kept  
2 reaching under the seat and the officer could smell a  
3 strong odor of alcohol. The minors told the officer  
4 that the defendant had given them wine to drink. And  
5 the officers could see multiple bottles of wine in the  
6 car in plain sight. There was also an open can of beer  
7 under the defendant's front seat.

8           The victim in the criminal sexual conduct with a  
9 minor second-degree charge is also the defendant's  
10 daughter who is now 16 years old. On October 12th,  
11 2015, the victim's cousin called police to report that  
12 the victim was six months pregnant by the defendant, who  
13 was her biological father.

14           The officer responded to 1605 John B. White  
15 Boulevard -- John B. White, Sr. Boulevard, which is the  
16 Spinx in Spartanburg City, to take the report. The  
17 victim told the responding officer her father had been  
18 molesting her and having sex with her for a while and  
19 that her mother did not know it had been going on.

20           The victim's cousin told the officer that the  
21 victim's mother was mentally challenged. The victim was  
22 sent to the Children's Advocacy Center and disclosed  
23 that the defendant started having sex with her when she  
24 was 14 years old, that it always occurred at her  
25 grandfather's house in Inman.

1           However, she said in April of 2015, the defendant  
2 moved in with her and her mother at the Woodland,  
3 Woodland Apartments, located at 180 Pine Lake Drive in  
4 Spartanburg County, and then started having sex with her  
5 in the apartment on a regular basis whenever her mother  
6 was not home.

7           She said it always occurred in the bedroom. She  
8 said all of the sexual acts were penial, vaginal  
9 penetration. The child was crying when she talked to  
10 the officer and said she didn't tell anyone at first  
11 because she did not want her dad to get into trouble  
12 because he was the only person who understood her.

13           She said she found out she was pregnant in May of  
14 2015 and she told her father about it. The child gave  
15 birth to a baby in December of 2015. The swabs from the  
16 defendant, the 15-year-old daughter and the baby were  
17 sent to SLED for DNA analysis which revealed that the  
18 defendant is the biological father of his daughter's  
19 child. The SLED report stated it is approximately 420  
20 million times more likely to see these genetic results  
21 if the alleged father is the true biological father than  
22 if a random man is the father, given the genetic  
23 evidence greater than 99.99 percent of randomly tested  
24 men would be excluded as the biological father.

25           THE COURT: Do you believe that as she stated the

1 facts that the solicitor is substantially correct?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And, sir, do you understand that on  
4 the contributing to the delinquency of a minor charges  
5 that I'm not bound by a recommendation made by the State  
6 and that today I could sentence you up to three years on  
7 each of those charges?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And do you also understand that on  
10 the criminal sexual conduct with a minor, victim under  
11 16 years of age in the second degree that I could  
12 sentence you up to 20 years on that particular charge?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you also understand that that  
15 particular offense is classified as both a violent and  
16 also as a most serious offense?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And have you been able to talk to  
19 your lawyer as to the consequences and ramifications of  
20 this offense being classified as violent and most  
21 serious?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Understanding the possible sentence I  
24 could impose as well as the two classifications of  
25 violent and most serious and understanding the

1 ramifications of those classifications, would you still  
2 wish to enter this plea?

3 THE DEFENDANT: Yes, sir.

4 878THE COURT: (Indicating.)

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Are you in fact guilty of the  
7 criminal sexual conduct with a minor, victim under 16  
8 years of age, in a second-degree charge?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Are you also guilty of both the  
11 contributing to the delinquency of a minor charges?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have all of your answers to my  
14 questions today been truthful and honest?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Discovery been shared with the  
17 defense?

18 MS. WELBORN: Yes, Your Honor.

19 THE COURT: Prior record?

20 MS. WELBORN: 2006, possession of -- sorry, 2005,  
21 possession of marijuana, open container, violation of  
22 the liquor law. 2006, possession of marijuana and  
23 driving under suspension.

24 THE COURT: And do you have anybody that was  
25 going to address the Court on behalf of the victim?

1 MS. WELBORN: Yes, Your Honor. I have Dana  
2 Dillard, who is here from the City who would like to  
3 speak, as well as Trisha Austin from the Children's  
4 Advocacy Center. And the victims are not present, but I  
5 do have something that I would like to share with the  
6 Court on their behalf.

7 THE COURT: Do you want to do it before they  
8 speak or after?

9 MS. WELBORN: Sure. The victim -- the victim's  
10 mother said she did not want to attend the plea but she  
11 wanted me to tell Your Honor she hopes he gets what he  
12 deserves for doing that to their daughter.

13 (Whereupon, woman comes forward.)

14 THE COURT: Just come up here, ma'am, and stand  
15 beside the solicitor. Just begin by giving us your full  
16 name and speak up loud enough so that both the court  
17 reporter and I can hear you.

18 MS. DILLARD: Okay. I'm Dana Dillard and I'm  
19 with the City of Spartanburg Police Department. Your  
20 Honor, thank you for allowing me to speak. I'm an  
21 investigator with the City of Spartanburg police. I  
22 primarily work crimes against children and it is not  
23 uncommon, sadly, to have acquaintances sexually assault  
24 a child.

25 But, Your Honor, Mr. Carson is the biological

1 father of the minor victim. Girls are known to be a  
2 daddy's girl, but this daddy's girl was violated by her  
3 own daddy. Please keep this in mind, Your Honor, when  
4 deciding his sentence.

5 THE COURT: Thank you.

6 (Whereupon, woman comes forward.)

7 THE COURT: If you would, just start by giving us  
8 your full name and speak up loud enough so that both the  
9 court reporter and I can hear you.

10 MS. AUSTIN: Yes. My name is Trisha Austin and I  
11 work at the Children's Advocacy Center. Thank you, Your  
12 Honor, for the opportunity to speak. My name is Trisha  
13 Austin and I'm a licensed professional counselor and  
14 conducted the assessment of these allegations at the CAC  
15 when this investigation began.

16 I wanted to share about the concerning nature and  
17 the multi-faceted impact of this case and request that  
18 the Court please consider the maximum sentence  
19 available. There's so much that could be said about  
20 this case but the details really speak for themselves.

21 Rashawn Carson began to sexually abuse his  
22 biological daughter when she was 14 years old. He  
23 cultivated an ongoing sexual and emotional relationship  
24 with her that resulted at age 15 in both her pregnancy  
25 and an inability for her to see the abuse for what it

1 was. The impact of this type of abuse is complex and  
2 far reaching.

3 [Victim] 's warped sense of love and connectedness to  
4 her father is an obstacle for her healing now and will  
5 likely be one of many roadblocks in her future. She  
6 will struggle over and over because of her abuse and its  
7 incestuous nature as she copes during different stages  
8 of life.

9 Like other survivors of sexual abuse, [Victim] will  
10 struggle with life events such as puberty, romantic  
11 relationships and having her own children. Unlike many  
12 other survivors, [Victim] has already given birth to her  
13 first child, with whom she shares a biological father  
14 and all that entails, genetics, unforeseen physical and  
15 mental consequences and a future filled with obstacles.

16 There are really two victims to consider, [Victim]  
17 and her infant child. This child will also have to  
18 reconcile the circumstances of his story throughout the  
19 lifetime of milestones that lie ahead for him. During  
20 his innocent childhood when he first begins to  
21 understand his family and how they are a part of his  
22 world. As he ages and begins to navigate adolescents  
23 and romantic relationships. And probably more daunting  
24 for him will be fatherhood and what that will mean for  
25 him. Simply said, these victims will require

1 professional help for years to come.

2 No amount of jail time can undo the damage that's  
3 been done or prevent the struggles that lie ahead for  
4 **Victim** and her son. What this conviction and a maximum  
5 sentence can provide is justice and a specified amount  
6 of time when we know Mr. Carson will not be able to  
7 victimize **Victim** or anyone else.

8 Thank you again for your thoughtful consideration  
9 in this matter.

10 THE COURT: Thank you.

11 Anything else from the State?

12 MS. WELBORN: Nothing further from the State,  
13 Your Honor.

14 THE COURT: Yes, sir.

15 MR. CHEEK: May it please the Court, Your Honor.  
16 Your Honor, I would expect to ask the Court to take into  
17 consideration that my client's family is here. They  
18 remain and have remained concerned about the process of  
19 this, as well as how all this could have possibly  
20 happened. Your Honor, they have only a brief  
21 explanation. They did not wish to address the Court  
22 today, but asked me to let the Court know they are here  
23 and that they care.

24 They care, Your Honor, because not only is their  
25 son before the Court today for these charges and for

1 sentencing, they too are to be impacted. And, of  
2 course, I hope that the professional counselors who will  
3 be dealing with this situation in the future would  
4 include them in the healing process because they care  
5 about what has happened and they care about this child  
6 and this grandchild and this great grandchild,  
7 essentially, that will be always connected to them from  
8 what we know about the connection.

9 I've heard the term biological father used  
10 several times before the Court today. I really don't  
11 know if that's ever been established, Your Honor. And  
12 the reason I don't know if that's been established is  
13 because certainly our office has not investigated.  
14 We're going by what we've been told. I'm assuming that  
15 everyone involved in this is going by what they've been  
16 told.

17 I appreciate the professionals and the stance  
18 they've taken because the one thing I did hear the young  
19 lady from the Children's Advocacy Center state is that  
20 she would hope that justice would be served. And, Your  
21 Honor, we likewise would hope that justice be served.  
22 And I'm not always assuming -- I hope the Court would  
23 not assume, that a maximum sentence in this case would  
24 require a maximum sentence of incarceration and that it  
25 could possibly ever achieve the goal that anyone would

1 hope that it would as far as no one else being involved  
2 or subjected to any kind of contact like this.

3 But, Your Honor, throughout this whole process  
4 there's been extensive investigation into the matter  
5 about law enforcement, as well as the review the  
6 comments and interviews done by the child home that says  
7 that they've never heard that this man ever in his  
8 entire life, as a child, as a juvenile, as a young man,  
9 and as a person involved for the last three years with  
10 his daughter ever molested or abused anybody else in  
11 society, whether it be financially, emotionally,  
12 physically or otherwise. I'd ask the Court to take that  
13 aspect of his past and his personality, as the Court  
14 looks into this.

15 As the Court is aware, we have to follow the laws  
16 of America. And that's what we'd ask the Court to  
17 consider in this situation, the laws of America. But we  
18 don't live in this world alone, Your Honor. And what we  
19 view as heinous in this world called America, is not  
20 looked the same way by three-quarters of the world we  
21 live in.

22 This man, Mr. Rashawn Carson, was never allowed  
23 by the mother, childish mentally or otherwise, to be  
24 around his child. I agree some things we consider  
25 warped happened. For a concerned man to have allegedly

1 fathered this young lady and not have been allowed to be  
2 a part of her life for the first decade of her life and  
3 beyond and then to be made to feel guilty to be involved  
4 with her is something I'd ask the Court to consider.  
5 And unlike a lot of men, Your Honor, he stepped up to  
6 the plate and did what he felt was the best he could do  
7 to be involved in his child's life.

8 Rashawn's father is in the courtroom. From the  
9 conversations I've had with him, he did everything  
10 possible to try to figure out a way to parent this young  
11 lady, as far as economic involvement, as far as being  
12 present for activities that the child was interested in  
13 in the community, he was there. As far a religious  
14 instruction he was there. As far as other family  
15 gatherings and visitations at his parent's home, he was  
16 there.

17 Then he was encouraged to go a step further and  
18 move in with the mother. Big mistake, Your Honor.  
19 Because at that point, any cuddling or anything that  
20 happened prior to then exaggerated and elevated to a  
21 criminal behavior. And we'd ask the Court to take that  
22 into consideration, that for a while he stepped up to  
23 the plate, did what he could.

24 There is no excuse, Your Honor. He has not been  
25 psychologically evaluated to see if there's something

1 wrong with him. His trial attorney, Ms. Andrea Price,  
2 did not foresee any problems in his background that  
3 would have warned of this. And nothing to be seen as  
4 far as his ability to function in society.

5 He went to two years of college, Your Honor. I  
6 think he's put that on the record here today. He went  
7 to Virginia College and actually got a degree there to  
8 better prepare himself to take care of his family  
9 obligations.

10 There are two other children, Your Honor, who  
11 will be impacted by what happens here today. We know  
12 those children will be impacted because he is the  
13 biological father of those two children, a ten-month-old  
14 and a three-year-old. I'd ask the Court to take them  
15 into consideration also, Your Honor, because what he has  
16 done would impact them. And what sentence the Court  
17 imposes would impact them.

18 And so what we are essentially saying, Your  
19 Honor, is that we have to balance one child's  
20 experience, who is now 16 years old, against the  
21 experience that a three-year-old and a ten-month-old  
22 would have if we ripped their father from their lives  
23 and have them not benefit from whatever lesson he's  
24 learned.

25 And, Your Honor, fortunately in America we do

1 have professionals who are licensed and certified to  
2 deal with this kind of situation, not only for the  
3 victim of this young girl and their young child, but for  
4 this man here too who has somehow been, in my  
5 estimation, victimized also.

6 Your Honor, I'd just ask the Court to consider  
7 that we do follow the laws that we have in this world  
8 and that he should have never, ever had any physical  
9 contact with even a young girl that he even thought he  
10 was the father of because that child was entrusted to  
11 him, not only by the mother or the grandparents, our  
12 society, but he violated a trust and it was an egregious  
13 violation of that trust. We acknowledge that.

14 Your Honor, I always talk to my client to try to  
15 get a feel of what could have possibly impacted this.  
16 And, Your Honor, I didn't get that in this situation  
17 except that they were all together. And when he first  
18 met her, they had an immediate connection. I think that  
19 she depended on him, from what she says.

20 There are others who's saying that she will have  
21 difficulty dealing with this. That has not yet  
22 happened, Your Honor. My client shows remorse. He  
23 shows an interest in trying to do what he can in order  
24 to turn all this around and make whatever positive good  
25 that can come out of this.

1           I plead mercy, Your Honor. I know mercy. I  
2 plead grace, Your Honor, for my client. I know that  
3 grace is when you get something that you deserve. I  
4 know mercy is when you don't get what you do deserve.  
5 I'd ask the Court to consider it's a wide range of  
6 sentencing in this situation for a very good reason.  
7 And we'd ask the Court to consider that.

8           I too ask the Court to consider whatever the  
9 maximum sentence might be, but I ask the Court to  
10 consider a split sentence requiring that this man have a  
11 period of time to be transitioned back into our  
12 community.

13           Because essentially what happened, Your Honor,  
14 given the resource at the Department of Corrections, we  
15 have a young man who would still be of childbearing age  
16 if he is sentenced to the maximum sentence allowed by  
17 law. And without counseling, without professional  
18 attention, without being under supervision in the  
19 community beyond just monitoring, we are not assured  
20 that we don't have a worse situation in the future than  
21 we do here today.

22           So based on all that, Your Honor, I'd ask the  
23 Court to consider that historically there have been a  
24 lot of people who have had children at the age of 14 and  
25 15 by people who have either been loving of them or

1 abusive of them. But given where we find ourselves  
2 today, Your Honor, I ask the Court to please consider a  
3 split sentence so that we can use every resource we have  
4 in our society to require this man to take care of his  
5 other obligations, as well as to adjust themselves,  
6 subject themselves to the very best professional care in  
7 the world and make sure that we've done all we can  
8 psychologically and counseling wise to make sure this  
9 never happens again.

10 THE COURT: Do you agree with the statements that  
11 were just made by your lawyer?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Am I correct that this is mandatory  
14 sex offender registration?

15 MS. WELBORN: Yes, Your Honor.

16 THE COURT: And, Mr. Carson, do you understand  
17 that by entering a plea to the criminal sexual conduct  
18 with a minor, victim 16 years of age and second degree,  
19 that I am required to have you listed as a sex offender  
20 and be registered as such?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And you still wish to enter the plea?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And, Mr. Carson, is there anything in  
25 addition to what your lawyer has said, is there anything

1 else that you would like to say or want me to know or  
2 consider?

3 THE DEFENDANT: Um, yes, sir. I am sorry for  
4 doing this. And I have been praying every day for my  
5 family, for my mother and father and also for Victim and  
6 Jeremiah, that the Lord comfort them through this  
7 situation. And, um, I would ask for your grace and  
8 mercy today because I have prayed for that too. I do  
9 apologize for the situation.

10 THE COURT: Thank you Mr. Carson.

11 I find that there's a substantial factual basis  
12 for the plea. On the criminal sexual conduct with a  
13 minor, the victim 16 years of age in the second degree,  
14 the sentence on that case will be a 20-year sentence at  
15 the state Department of Corrections. He'll get credit  
16 for the 315 days. I've indicated on the sentencing  
17 sheet that there is the sex offender registration.

18 I've also indicated on the sentencing sheet my  
19 instruction to the Department of Correction that he be  
20 provided the sex offender counseling while he is in the  
21 Department of Corrections, as well as to do mental  
22 health counseling as well. That will run concurrent  
23 with the three-year sentences on the contributing to  
24 delinquency of a minor cases, all of which he'll receive  
25 credit for the 315 days. Good luck to you, sir.

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MR. CHEEK: Thank you, Your Honor.

MS. WELBORN: Thank you, Your Honor.

(Whereupon, hearing concluded at 11:37 a.m.)

--- THIS ENDS REQUESTED TRANSCRIPT ---

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COURT REPORTER CERTIFICATE

I, the undersigned Julie A. Ashbrook, Court Reporter for the Seventh Judicial Circuit Court of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings and evidence introduced in the hearing and/or trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 17th day of October, 2016.

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

s/Julie A Ashbrook.  
Julie A. Ashbrook  
Circuit Court Reporter  
Seventh Judicial Circuit

FORM 5

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF )  
 Rashawn Tremayne Carson )  
 #00370192 )  
 Full name and prison number (if any) of Applicant. )  
 )  
 v. )  
 )  
 State of South Carolina )  
 )

IN THE COURT OF COMMON PLEAS

**2017-CP-42-3717**

**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 Broad River Correctional Institution
2. Name and location of Court which imposed sentence Spartanburg County Court House  
180 Magnolia Street P.O. Box 3483 Spartanburg, SC 29304-3483
3. Name(s) of co-defendant(s) (if any) N/A
4. **The indictment number or numbers** (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2016G5425330
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) 10/17/16
  - (b) \_\_\_\_\_

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- (c) \_\_\_\_\_
- 6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty  \_\_\_\_\_
  - (b) after a plea of not guilty \_\_\_\_\_
  - (c) after a plea of nolo contendere \_\_\_\_\_
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?  
NO

- 8. If you answered "yes" to (7), list:
  - (a) the name of each Court to which you appealed:
    - i. N/A
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (b) the result in each such Court to which you appealed:
    - i. N/A
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (c) the date of each such result:
    - i. N/A
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (d) if known, citations of any written opinion or orders entered pursuant to such results:
    - i. N/A
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_

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- 9. If you answered "no" to (7), state your reasons for not so appealing:
  - (a) \_\_\_\_\_
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: "SEE ATTACHMENT"

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

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

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

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? \_\_\_\_\_

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. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

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

(c) the disposition thereof:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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iv. \_\_\_\_\_

(d) the date of each such disposition:

i. N/A

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

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

iv. \_\_\_\_\_

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

i. N/A

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

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

iv. \_\_\_\_\_

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

NO

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

(a) which grounds have been presented:

i. N/A

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

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

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

i. N/A

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

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

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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) \_\_\_\_\_

*"See Attachment"*

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

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

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

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

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

- (a) the name and address of each attorney who represented you:
  - i. Andrea Price | Spartanburg County Court House 180 Magnolia Street  
PO Box 3483 Spartanburg SC 29304-3483
  - ii. James Cheeks | Spartanburg County Court House 180 Magnolia Street  
PO Box 3483 Spartanburg, S.C. 29304-3483
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Andrea Price was my initial attorney. She handled my bond hearing and preliminary hearing. Then Mr. James Cheeks took over for the
  - ii. guilt plea.
  - iii. \_\_\_\_\_

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

APPLICANT SEEK SENTENCE REDUCTION AND/OR TRIAL

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

NO

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STATE OF SOUTH CAROLINA )  
County of Richland )

VERIFICATION

I, RTC, 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.

Retain Case

SWORN to and subscribed before me this 2nd  
day of October, 2017.

Janelle T. Spearman (L.S.)  
Notary Public

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



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

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

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

Rodawn Lora  
Applicant

SWORN or affirmed to and subscribed before me this  
one day of October, 2017

Janelle T. Spearman  
Notary Public

My Commission Expires:

JANELLE T. SPEARMAN  
Notary Public - State of South Carolina  
My Commission Expires  
August 26, 2025

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"ATTACHMENT"  
(FORM 5)

39  
Pg 1/3

STATE of SOUTH CAROLINA )  
COUNTY of SPARTANBURG )

RASHAWN T. CARSON #370192 )  
APPLICANT, )

vs. )

STATE of south Carolina )  
RESPONDENT )

IN THE COURT OF  
COMMON PLEAS

"ATTACHMENT"  
TO PDR APPLICATION

2017 OCT 12 AM 9:12  
M. HOPE BLACKLEY

10) STATE CONCISELY THE GROUNDS ON WHICH YOU BASE  
YOUR ALLEGATION THAT YOU ARE BEING HELD IN  
CUSTODY UNLAWFULLY:

A.) INEFFECTIVE ASSISTANCE OF COUNSEL

1.) FAILED TO ADVOCATE

2.) FAILED TO INVESTIGATE

3.) FAILED TO OBTAIN LAWYER/CLIENT RELATIONS

4.) FAILED TO SUPPRESS PREJUDICIAL EVIDENCE

5.) FAILED TO OBJECT TO THE INDICTMENT

6.) FAILED TO ASK FOR A MENTAL EVALUATION

7.) FAILED TO ALLOW APPLICANT ALL EVIDENCE

8.) FAILED TO PROVIDE FUNDAMENTAL FAIRNESS

B.) DUE PROCESS VIOLATIONS AND PROSECUTORIAL MISCONDUCT.

C.) INVOLUNTARY GUILTY PLEA

D.) THE CONVICTION OR SENTENCE IS OTHERWISE SUBJECT TO COLLATERAL ATTACK UPON ANY GROUND OF ALLEGED ERROR PREVIOUSLY UNAVAILABLE UNDER ANY COMMON LAW STATUTORY OR OTHER WRIT, MOTION, PETITION, PROCEEDINGS OR REMEDY...

11.) STATE CONSIDERABLY AND IN THE SAME ORDER THE FACTS WHICH SUPPORT EACH OF THE GROUNDS SET OUT IN (10):

A.) INEFFECTIVE ASSISTANCE OF COUNSEL

- 1.) DID NOT EFFECTIVELY ASSIST ME
- 2.) DID NOT PROPERLY INVESTIGATE
- 3.) DID NOT VISIT ME.
- 4.) ALLOWED PREJUDICIAL EVIDENCE
- 5.) FAILED TO OBJECT TO INDICTMENT
- 6.) DID NOT ASK FOR MENTAL EVALUATION
- 7.) VIOLATION IN REGARDS TO BRADY.
- 8.) VIOLATED FEDERAL CONSTITUTIONAL RIGHTS

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- B.) THE STATE FAILED TO SEND ALL RELATED INFORMATION PERTAINING TO CASE
- C.) APPLICANT HAS HISTORY OF MENTAL DISTURBANCES.
- D.) ACCUMULATION OF ERRORS, IN CONFLICT WITH THE CONSTITUTION.

APPLICANT CONTENDS THAT THIS COURT HAS MISTAKENLY CONDUCTED APPLICANT OF THE CRIME IN QUESTION, AND AT THIS TIME WILL SUBMIT THIS ATTACHMENT INCLUDED WITH THE PR (FORM 5).

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SEND THIS 2<sup>nd</sup> DAY OF OCT, 2017

Raymond T. Carson  
Raymond T. Carson  
B.R.C.I (WAT 214)  
4460 Broad River  
COLUMBIA, S.C  
29210

(Continued)

16.) If<sup>42</sup> any ground set forth in (10) has not 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.) Ineffective Assistance of Counsel

- 1) Failed to advocate
- 2) Failed to investigate
- 3) Failed to obtain lawyer/client relations
- 4) Failed to suppress prejudicial evidence
- 5) Failed to object to the indictment
- 6) Failed to ask for a mental evaluation
- 7) Failed to allow applicant all evidence
- 8) Failed to provide fundamental fairness

B.) Due process violations and Prosecutorial misconduct

C.) Involuntary guilty plea

D.) The conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error previously unavailable under any common law Statutory or other writ, motion, petition, proceedings or remedy

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STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

Rashawn Tremayne Carson, #370192,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

2017-CP-42-3717

**RETURN AND PARTIAL  
MOTION TO DISMISS**

Respondent, making its Return to the application for Post-Conviction Relief ("PCR") filed on October 12, 2017, would respectfully show this Court:

I.

Applicant is presently incarcerated pursuant to orders of commitment of the Spartanburg County Clerk of Court. In January 2016, the Spartanburg County Grand Jury indicted Applicant for two counts of contributing to delinquency of a minor (2016-GS-42-0021, -0022). Applicant was subsequently arrested for second-degree criminal sexual conduct ("CSC") with a minor (2016-GS-42-4459) and incest (warrant no. 2015A4210104644). The contributing to the delinquency of a minor charges resulted from Applicant providing alcohol to his 14-year old daughter and her 13-year old friend. (Tr. p. 13-14). The CSC and incest charges arose from Applicant impregnating his 15-year old daughter (victim). After the victim gave birth, a DNA analysis revealed Applicant was the biological father of the child. (Tr. p. 15). The victim disclosed Applicant had been having sex with her regularly since she was 14 years old. (Tr. p. 14).

James A. Cheek, Esquire, represented Applicant. Assistant Solicitor Hillary C. Welborn represented the State. On October 17, 2016, Applicant pleaded guilty to two counts of contributing to

delinquency of a minor and second-degree CSC with a minor before the Honorable J. Mark Hayes, II. The State dismissed the warrant for incest in exchange for Applicant's guilty pleas. The State also recommended concurrent sentencing. Judge Hayes sentenced Applicant to imprisonment for twenty years for CSC and three years for each count of contributing to delinquency of a minor, to be served concurrently. Applicant did not appeal his convictions or sentences.

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

## II.

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

1. "Ineffective Assistance of Counsel"
  - a. "failed to advocate"
  - b. "failed to investigate"
  - c. "failed to obtain lawyer/client relations"
    - i. "did not visit me"
  - d. "failed to suppress prejudicial evidence"
  - e. "failed to object to the indictment"
  - f. "failed to ask for a mental evaluation"
  - g. "failed to allow Applicant all evidence"
  - h. "failed to provide fundamental fairness"
2. "Due process violations and prosecutorial misconduct"
  - a. "The State failed to send all related information pertaining to case"
3. Involuntary guilty plea
  - a. "Applicant has history of mental disturbances."
4. "Accumulation of errors, in conflict with the Constitution"

## III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for

counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

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

#### IV.

Applicant also alleges prosecutorial misconduct, specifically that the State failed to provide discoverable information to the defense. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at the plea hearing or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised the alleged discovery violation on appeal. The failure to do so has waived this allegation as grounds for relief. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

To the extent Applicant is claiming prosecutorial misconduct has been discovered post-trial, and could not have been discovered, in the exercise of due diligence, prior to trial, in evaluating post-trial Brady<sup>1</sup> claims, the applicant must show (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10<sup>th</sup> Cir. 1988). The Brady disclosure rule requires the

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<sup>1</sup> Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194 (1963).

prosecution to provide to the defendant any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment. State v. Kennerly, 331 S.C. 442, 452, 503 S.E.2d 214, 220 (Ct. App. 1998) (citing Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194 (1963)). Favorable evidence includes both exculpatory evidence and evidence which may be used for impeachment. United States v. Bagley, 473 U.S. 667, 676, 105 S.Ct. 3375 (1985).

“Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). “A ‘reasonable probability’ of a different result is accordingly shown when the government’s evidentiary suppression ‘undermines confidence in the outcome of the trial.’” Bagley, 473 U.S. at 678, 105 S.Ct. at 3381. A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. See Clark, 315 S.C. 385.

Applicant has failed to make the requisite *prima facie* showing to warrant an evidentiary hearing that the State withheld any evidence that would have produced a different outcome at his trial. Therefore, Respondent submits this allegation should be summarily dismissed for failing to specifically set forth the facts upon which the application is based.

#### V.

Applicant also asserts his plea was involuntary. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant

would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not “within the competence demanded of attorneys in criminal cases.” Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, “[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing.” McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, “whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases.” Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both.” Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, “[a] guilty plea is a solemn, judicial admission of the truth of the charges” against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137–38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions “made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. (citing Crawford v. United States, 519 F.2d

347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). “In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing.” Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant’s plea. However, allegations regarding the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

## VI.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR 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), SCRCP. All claims should be made well in advance of the evidentiary hearing. If Applicant has is represented by an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. 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), SCRCP.

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, witnesses, and materials used to produce potential expert witness testimony be provided 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.

VII.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VIII.

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

[Signature block to follow]

IX.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel.

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

VALERIE GARCIA GIOVANOLI  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

January 11, 2018

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

STATE OF SOUTH CAROLINA )  
 COUNTY OF SPARTANBURG )  
 )  
 )  
 RASHAWN TERMAYNE CARSON, )  
 #370192, )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

2017-CP-42-3717

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

**Rodney Wade Richey, Esquire**  
**Richey & Richey, PA**  
**Post Office Box 10916**  
**Greenville, South Carolina 29603-0916**

DATED this the 11th day of January, 2018.

  
 \_\_\_\_\_  
 Lindsey McCoy, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) SIXTEENTH JUDICIAL CIRCUIT  
 COUNTY OF SPARTANBURG ) CASE NO.: 2017-CP-42-3717

RASHAWN TREMAYNE CARSON )  
 )  
 vs. ) TRANSCRIPT OF RECORD  
 )  
 STATE OF SOUTH CAROLINA )

FEBRUARY 20, 2018  
 SPARTANBURG, SOUTH CAROLINA

BEFORE THE HONORABLE MICHAEL G. NETTLES

APPEARANCES:

VALERIE GIOVANOLI, ASSISTANT ATTORNEY GENERAL  
 COLUMBIA, SOUTH CAROLINA

ATTORNEY FOR THE STATE

RODNEY W. RICHEY, ESQUIRE  
 SPARTANBURG, SOUTH CAROLINA

ATTORNEY FOR THE APPLICANT

SHIRLEY BROOM  
 16<sup>TH</sup> Circuit Court Reporter

I-N-D-E-X

WITNESSES:	DIRECT	CROSS	RE-DIRECT	RE-CROSS
RASHAWN CARSON				
BY MR. RICHEY	7			
BY MS. GIOVANOLI		13		
ANDREA L. PRICE				
BY MR. RICHEY	15			
BY MS. GIOVANOLI		18		
By The Court	23			
JAMES A. CHEEK				
BY MR. RICHEY	25			
BY MS. GIOVANOLI		27		

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(NO EXHIBITS)

1 THE COURT - Yes, ma'am.

2 MS. GIOVANOLI - Thank you, Your Honor. This is  
3 Rashawn Carson vs. The State of South Carolina, Docket  
4 Number 2017-CP-42-3717. We're before the Court on an  
5 application for post conviction relief that was filed on  
6 October 12th, 2017. Applicant was indicted in January,  
7 2016 for two counts of contributing to the delinquency of a  
8 minor. He was subsequently arrested for second degree  
9 criminal sexual conduct with a minor and incest. The  
10 contributing to the delinquency of a minor charges resulted  
11 from applicant providing alcohol to his fourteen year old  
12 daughter and his thirteen -- and her thirteen year old  
13 friend. The CSC and incest charges arose from applicant  
14 impregnating his fifteen year old daughter. After the  
15 victim gave birth, the DNA analysis revealed applicant was  
16 the biological father of the child. The victim disclosed  
17 applicant had been having sex with her regularly since she  
18 was fourteen years old. James Cheek and Andrea Price  
19 represented applicant. On October 17th, 2016 applicant  
20 pled guilty to two counts of contributing to the  
21 delinquency of a minor and the second degree CSC with a  
22 minor before The Honorable J. Mark Hayes, II. The State  
23 dismissed the warrant for incest in exchange for  
24 applicant's guilty pleas, and the State also recommended  
25 concurrent sentencing. Judge Hayes sentenced applicant to

1 imprisonment for twenty years for the CSC and three years  
2 for each count of contributing to the delinquency of a  
3 minor to be served concurrently. Applicant did not appeal  
4 his convictions or his sentences, but he subsequently filed  
5 an application for post conviction relief by having a  
6 number of claims of ineffective assistance counsel  
7 including a failure to advocate, failure to investigate,  
8 failure to obtain lawyer/client relations by specifically  
9 not visiting him, failed to suppress prejudicial evidence,  
10 failed to object to the indictment, failed to ask for a  
11 mental evaluation and failed to allow applicant all  
12 evidence. There is also an allegation of due process  
13 violation and prosecutorial misconduct alleging that the  
14 State failed to give him all the information relating to  
15 the case, an involuntary guilty plea allegation, that  
16 applicant had a history of mental disturbances and then  
17 also cumulative error argument.

18           The State's present and ready to proceed.  
19 Applicant is also present, and he's represented by Mr.  
20 Rodney Richey to whom I'll hand it over.

21           THE COURT - Mr. Richey, if you could delineate  
22 the causes of action for which you're going forward here  
23 today.

24           MR. RICHEY - Your Honor, my client is going  
25 forward with failure to investigate and failure to visit

1 him and I think failed -- failed to go over all the  
2 evidence with him.

3 (WHEREUPON, DISCUSSION IS HELD BETWEEN MR. RICHEY  
4 AND MR. CARSON WHICH WAS NOT REPORTED)

5 MR. RICHEY - Those are the issues, Your Honor.

6 THE COURT - Very good. Failure to investigate,  
7 failure to visit and failure to review evidence.

8 MR. RICHEY - Yes, sir. (pause) Okay. And  
9 failure to objection indictment, Your Honor. Those are the  
10 issues.

11 THE COURT - You may call your first witness.

12 MR. RICHEY - Thank you. We call Mr. Carson.

13 THE COURT - Mr. Carson, please comes forward.

14 I'm going to ask you if you could to place your left hand  
15 on the bible and raise your right hand as I administer the  
16 oath. Come forward. You'll see the bible right there.  
17 Place your left hand on the bible and raise your right  
18 hand.

19 RASHAWN CARSON, AFTER BEING FIRST DULY SWORN,  
20 TESTIFIES AS FOLLOWS -

21 THE COURT - I'm going to ask you to have a seat  
22 in the witness chair there. Pull up real close to that  
23 microphone and speak loudly, clearly and slowly in order  
24 that we can hear everything that you have to say.

25 Mr. Richey?

RASHAWN CARSON - DIRECT BY MR. RICHEY

7

1 MR. RICHEY - Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. RICHEY -

4 Q Sir, would you state your name please?

5 A Rashawn Carson.

6 Q And, Mr. Carson, are you currently in the department  
7 of corrections?

8 A Yes.

9 Q And what -- what charges are you there for?

10 A Contributing to the delinquency of a minor.

11 Q And is there a second charge?

12 A Yes, it's two of those.

13 Q Okay, and are you in on the CSC with a minor?

14 A Yes.

15 Q Okay. Who represented you on those charges?

16 A Andrea Price was my public defender at the time, but  
17 Mr. James Cheeks (sic) came in for the guilty plea.

18 Q Okay. So you had Price and then Cheeks came in to do  
19 the guilty plea with you.

20 A Yes, sir.

21 Q Is that correct?

22 A Yes, sir.

23 Q Okay. You filed a case for ineffective assistance of  
24 counsel against them. Is that correct?

25 A Yes, I did.

1 Q And you believe that they did not effectively  
2 represent you. Correct?

3 A I do believe that.

4 Q And one of the issues you raise -- you said they  
5 failed to investigate your case. Is that correct?

6 A Yes.

7 Q And what investigation did they not do on it?

8 A Well, they didn't -- they failed to investigate --  
9 they didn't uh, investigate the witnesses. They didn't do  
10 anything as far as showing me any evidence at all. I  
11 didn't see anything as far as when I was in the county at  
12 all. I didn't get my Rule 5 until I got to the department  
13 of corrections.

14 Q Okay, let me get this. Your second allegation is they  
15 did not visit you -- correct? -- that you -- that the  
16 lawyers did not visit you. Is that right?

17 A Yes, sir.

18 Q Did you ever communicate with them prior to your  
19 guilty plea?

20 A Prior to it?

21 Q Yes.

22 A Only time I saw Ms. Andrea Price was at a preliminary  
23 hearing. Only thing she did was waive the preliminary  
24 hearing, and then she told me that they didn't have any  
25 evidence at that time and then when they did have any

RASHAWN CARSON - DIRECT BY MR. RICHEY

9

1 evidence that she would get in touch with me and let me  
2 know what evidence they did have, so she failed to do --  
3 she failed to do that.

4 Q Okay, so didn't talk to her other than at the  
5 preliminary hearing. Is that correct?

6 A That's right.

7 Q What about Mr. Cheeks? Did you talk to Mr. Cheeks?

8 A Only briefly.

9 Q Briefly. What does that mean? Did you talk to him  
10 one times, two times, three times?

11 A One time. He came to me one time and when he did come  
12 to me, he came to me with a guilty plea.

13 Q Okay. And so is your contention that nobody reviewed  
14 the discovery with you?

15 A Exactly.

16 Q Exactly?

17 A Yes, sir, they didn't.

18 Q Okay. In this case there was an allegation that --  
19 and going to ask you about a test coming back that you were  
20 the father of this child that's in this transcript. So  
21 it's your testimony nobody went over this test with you.

22 A Yes, sir. Nobody did go over the test.

23 Q Okay, did anybody -- did Mr. Cheeks or Ms. Price tell  
24 you the results of the test?

1 A They told me the results, but never actually showed me  
2 the test or explain to me any -- I never seen it or they  
3 even showed me anything about any test. Ms. Andrea Price  
4 was ---

5 Q So, -- go ahead, I'm sorry.

6 A --- she was at the -- when they did the swab.

7 Q She was what?

8 A She was there when they did the swab.

9 Q And so they did a swab test of your DNA.

10 A They did a swab, but she never, not, you know -- and  
11 this was in January of 2016 when they did the swab. And in  
12 February of 2016 when I did -- when I had a preliminary  
13 hearing she tells me that they haven't had -- they hadn't -  
14 - they didn't have it or haven't given it to her for any  
15 evidence or anything at all pertain to my case, and she  
16 said when they do have it, that she will bring it to me so  
17 I can see it, so I don't understand why Ms. Andrea Price  
18 didn't come to me with it and Mr. James Cheeks came to me  
19 with a guilty plea.

20 Q Okay, when you say come to you, you just saying that  
21 she didn't come to you and say, look, here's the test and  
22 the results, ---

23 A No.

24 Q --- she just told you the results.

1 A No, she never even -- she never told me any results  
2 either. That's what I'm telling you. She never came to me  
3 with anything.

4 Q So on page 15 of this transcript where they talk about  
5 all this, you know, the swabs from the fifteen year old  
6 daughter and then the -- all this stuff they talking about  
7 this baby on this transcript, nobody told you this until  
8 the day of this transcript. Is that -- is that what you're  
9 saying?

10 A Right.

11 Q Okay. So -- so you're saying you pled guilty and at  
12 the guilty -- nobody told you prior to the guilty plea  
13 about this test results. Is that your testimony?

14 A No, they said that they had it.

15 Q Okay.

16 A They said they had it, but what I'm saying is that  
17 they never showed me a test or anything like that.

18 Q So you're saying that they wanted you to take their  
19 word that they had the results.

20 A Exactly, that's -- that's also in the transcript. Mr.  
21 where Mr. James (sic) keeps saying that in the transcript  
22 himself, that he's going by what he's been (sic) heard, and  
23 everyone else involved in it is going by what they heard.

24 Q So it's your position that you should have a new trial  
25 on this case. Correct?

1 A Yes, sir.

2 MR. RICHEY - All right, answer any question the  
3 State have for you.

4 THE COURT - I think there was some issue with  
5 regard to the indictment?

6 MR. RICHEY - Oh, okay. I'm sorry, Your Honor.  
7 I'm sorry.

8 Q It's your position that your counsel should've  
9 objected to the indictment?

10 A Yes, sir.

11 Q All right.

12 A Yes, sir.

13 Q Okay. And you believe the indictment wasn't valid?

14 A Yes, sir.

15 Q And can you tell me why you believe that?

16 A I don't -- I don't -- nobody -- nobody explained to me  
17 why they were valid from the beginning. I don't  
18 understand.

19 Q Okay. You don't believe that they're valid. Right?

20 A Yes, sir.

21 Q But you don't have any reason why they're not valid.  
22 You just believe they're not valid.

23 A No, nobody's ever explained to me why it would be, and  
24 second, I understand that they have to have the indictment  
25 within ninety days and neither one of those indictments

1 were within ninety days, and then for them to get an  
2 extension on them, they would have to file a special motion  
3 to get an extension on them, and I'm not sure if they did  
4 that or not.

5 MR. RICHEY - Thank you. Answer anything the  
6 attorney general have for you.

7 THE COURT - Ms. Giovanoli?

8 MS. GIOVANOLI - Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MS. GIOVANOLI -

11 Q Good morning, Mr. Carson.

12 A (witness mumbles)

13 Q Isn't it true that you had two years of college?

14 A Yes, ma'am.

15 Q Okay. And at the guilty plea you were under oath. Is  
16 that correct?

17 A Yes, ma'am.

18 Q Okay, at the very end of the guilty plea, do you  
19 recall the plea Judge giving you an opportunity to speak?

20 A Yes, ma'am.

21 MS. GIOVANOLI - And for the Court's reference,  
22 it's on page 29.

23 Q And you said, quote, I am sorry for doing this. What  
24 exactly were you sorry for?

1 A I'm sorry for being a part of anything like this,  
2 because I've never been in any trouble before. I was under  
3 a lot of pressure, because I didn't understand what was  
4 going on around me, and I was being led to believe that I  
5 should plead guilty, and I didn't have any help with  
6 understanding how I should handle the situation, so I was  
7 under an emotional strain at the time, and I didn't really  
8 understand what I was doing when I said what I said,  
9 because I was afraid, and I didn't understand.

10 Q But it's true that you had a child with your daughter.  
11 Isn't that correct?

12 A I didn't say that, no, ma'am.

13 MS. GIOVANOLI - Okay, I have no further  
14 questions. Thank you.

15 THE COURT - Re-direct?

16 MR. RICHEY - No other questions.

17 THE COURT - You may step down. Thank you.

18 MR. RICHEY - I'd call Ms. Price.

19 THE COURT - Ms. Price, place your left hand on  
20 the bible and raise your right hand as I administer the  
21 oath.

22 ANDREA PRICE, AFTER BEING FIRST DULY SWORN,  
23 TESTIFIES AS FOLLOWS -

24 THE COURT - All right, have a seat; pull up real  
25 close to that microphone and state your full name.

ANDREA PRICE - DIRECT BY MR. RICHEY

15

1 MS. PRICE - Andrea, A-n-d-r-e-a, Price, P-r-i-c-  
2 e.

3 DIRECT EXAMINATION

4 BY MR. RICHEY -

5 Q Ms. Price, do you recall representing Mr. Carson?

6 A I do.

7 Q And you were representing him for the CSC cases?

8 A Yes, I was assigned those, because I was previously  
9 representing him on another case at the time he was  
10 arrested on that.

11 Q As to this test, do you -- you heard the testimony.  
12 Did you ever review and go over the actual results of this  
13 test with Mr. Carson?

14 A I have no independent recollection of that, but it is  
15 a -- it is part of what I do to give them all their  
16 discovery, go over it with them what I have with them at  
17 the time.

18 Q You -- I guess the question, you had the actual test -  
19 - is that correct? -- the actual results of the test?

20 A I -- yes. It was a SLED test.

21 Q And did -- and so would there be any reason why you  
22 did not actually show him the results or give him a copy of  
23 it or anything like that?

24 A Well, actually there would be a reason I didn't give a  
25 copy to him, because, um, he was in jail at the time, and

1 it is my personal opinion that when you have allegations  
2 like this, a very serious nature, that you not keep a copy  
3 of your discovery in the jail, because there's no telling  
4 who could get a hold of it and use that against you, so --  
5 but it is -- I did share with him what I -- his discovery,  
6 but to giving him a copy of it, he did upon -- after he got  
7 to DOC, he did write me a letter, and I did give him a copy  
8 of it.

9 Q So he did see the results prior to pleading guilty.

10 A Yes.

11 Q Okay. And did he -- did he express to you he did not  
12 want to plead guilty?

13 A No. I had the case originally. He was in jail, and  
14 that's why the case was handed over to Mr. Cheek at that  
15 point.

16 Q And he had -- he's alleged that you all failed to  
17 investigate the case. In the CSC, the investigation part  
18 of it, what -- what was have to be done? (sic) Was it  
19 essentially getting the test?

20 A And getting the discovery, yes, and the statements  
21 from -- from this young lady and the reports from  
22 children's advocacy center.

23 Q And do you recall visiting him at the jail?

24 A Uh, yes, he actually was -- the first time I met him,  
25 he was actually out of jail on bond, and that was as a

ANDREA PRICE - DIRECT BY MR. RICHEY

17

1 result of his first case that I had which was the  
2 contributing to the delinquency of a minor case, and then  
3 he was subsequently arrested on these charges and his bond  
4 was revoked; met with him at the jail on that; met with him  
5 at the jail for his prelim and then shortly after that with  
6 James got him all for that.

7 Q So, Mr. Cheeks done the actual guilty plea?

8 A He was. I was not -- he did; I was not present.

9 Q So, in terms of the indictment, do you -- do you feel  
10 that there was anything wrong with them at the time you had  
11 the case?

12 A No, sir.

13 Q And were they true billed?

14 A Yes, sir, they were and they were signed by -- by the  
15 solicitor who actually was prosecuting this particular  
16 case.

17 Q Did -- and did you talk to Mr. Carson about that,  
18 about the indictments and whether they were sufficient or  
19 anything?

20 A I don't recall having a specific conversation with him  
21 about that? I don't remember him having any objection to  
22 it.

23 Q So did you go to the jail to visit him? I'm sorry, I  
24 forgot to ask you that.

1 A Oh, yes, I visited him in jail and also out from  
2 previously.

3 Q Okay, and I think you testified you had him on  
4 previous charges before you got these?

5 A Yes, sir, that's right.

6 Q Do you know how many times you could've met with him  
7 by any chance?

8 A I met with him at least three that I remember.

9 Q Okay. And those don't include the day of the guilty  
10 plea -- right? -- because Mr. Cheeks did that.

11 A Right. Correct. He did that.

12 MR. RICHEY - All right, thank you. Answer any  
13 question of the attorney general.

14 THE COURT - Yes, ma'am?

15 MS. GIOVANOLI - Thank you, Your Honor.

16 Good morning, Ms. Price?

17 MS. PRICE - Hello.

18 CROSS EXAMINATION

19 BY MS. GIOVANOLI -

20 Q So you said that the indictments were true billed.  
21 Were you referring to the contributing to the delinquency  
22 of a minor, two indictments?

23 A Yes.

24 Q And he actually waived presentment on the CSC second  
25 degree. Is that your recollection?

1 A If that's what the -- if that's what it says, because  
2 I wasn't there at the time.

3 Q Okay. Is your testimony that you didn't see any --  
4 any fatal defects in the indictments?

5 A That's right.

6 Q Did you review the indictments?

7 A Yes.

8 Q So -- oh, and by way of background, you're an  
9 assistant public defender. Is that correct?

10 A Yes.

11 Q And you were at the time of this case.

12 A Yes.

13 Q And you've been practicing criminal law for eleven  
14 years?

15 A Eleven years and one day.

16 Q Eleven years and one day. Congratulations! And you  
17 motioned for discovery in this case.

18 A That's right.

19 Q And you received all the discovery from the State.  
20 Is that correct?

21 A I did. It came on two CDs.

22 Q Okay. And at the time that you received it, were you  
23 able to review all of it with the applicant prior to him  
24 pleading guilty?

25 A Yes.

1 Q Did he have any questions about it?

2 A No.

3 Q Did he appear to understand it?

4 A Yes. If I -- if I have any issues about -- about  
5 anything like that, with competency or misunderstanding,  
6 that is something that I totally go over and I wouldn't  
7 hesitate to have a mental evaluation done with him, but I  
8 didn't get that impression from Mr. Carson at all.

9 Q Okay. Thank you. As far as the SLED test, did you  
10 discuss the results of that with him?

11 A I'm sure I did at some point.

12 Q Okay. And I think on direct examination, Mr. Richey  
13 asked you if he had -- if he had ever expressed to you a  
14 desire to go to trial. Did he -- I'm not sure if he asked  
15 you that. Did he ever express a desire to go to trial on  
16 this case?

17 A Not that I recall, not at all.

18 Q And is that sort of why it was -- the case was handed  
19 over to Mr. Cheek?

20 A Yes. Mr. Cheek does pleas straight out of our jail.

21 Q Okay. You mentioned a bond revocation. Was there a  
22 revocation hearing?

23 A No, there was not a revocation hearing. The State  
24 moved to revoke his bond on his original charge that I had  
25 him in based on his re-arrest on this one. I went and I

1 spoke to Mr. Carson about that and indicated that if we did  
2 have a hearing, the State would put the allegations on the  
3 record in open Court, and Mr. Carson was absolutely adamant  
4 that he did not want to have a hearing, that he would agree  
5 to revocation.

6 Q And why was that that he did not want to have a  
7 hearing?

8 A I can only speculate as to that, but the nature of  
9 these allegations were very serious.

10 Q Okay, and were there a lot of people present in the  
11 courtroom?

12 A It was full. It was full. It was full of inmates; it  
13 was full of, otherwise, people -- defendants who were out  
14 on bond, lawyers. It was a full courtroom.

15 Q At the -- was there was a preliminary hearing in this  
16 case for the CSC charge?

17 A Sure. I can even -- it was on -- let's see -- yes,  
18 February 15th of 2016.

19 Q So that was not waived. You actually had a hearing?

20 A Yes, it was waived.

21 Q Okay. And at that point you met with the applicant.

22 A Yes.

23 Q And that was the first time you had met with him with  
24 regard to the CSC charge.

25 A I believe so.

1 Q And at that point you did not have the discovery  
2 regarding the criminal sexual conduct.

3 A I got my copy of the discovery a few days later, but  
4 the State had a copy of theirs that I was able to share  
5 with him.

6 Q Okay. And then you later went to the jail and met him  
7 to discuss the discovery?

8 A I'm sure -- I'm sure I did.

9 Q And you testified earlier that you recall meeting him  
10 at least three times?

11 A Yes.

12 Q Did you also have discussions with Mr. Cheek regarding  
13 the case?

14 A Yes.

15 Q And that entailed reviewing the State's evidence?

16 A Yes. I'll -- a lot of times the prosecutor will  
17 contact me and, say, hey, I have an offer for this client  
18 of yours, I'm going to go talk to James about it. That's  
19 often how that process gets started.

20 Q Did you or Mr. Cheek engage in plea negotiations in  
21 this case?

22 A Mr. Cheek did.

23 Q Did you advise applicant of his right to a jury trial?

24 A Yes.

1 Q And did you also advise him of the potential sentences  
2 he was facing?

3 A Yes.

4 MS. GIOVANOLI - I have no further questions.

5 MR. RICHEY - No further, Your Honor.

6 THE COURT - Any cross examination?

7 MR. RICHEY - No.

8 EXAMINATION

9 BY THE COURT -

10 Q Did you indeed investigate the allegations and speak  
11 with the witnesses necessary to prepare this case?

12 A I had all of the things with CAC, but I don't remember  
13 ever speaking with this young lady.

14 Q But you had the statements?

15 A Yes, yes, sir.

16 Q And you are confident that you reviewed the evidence  
17 and were prepared to either enter a plea or to try the case  
18 if he so desired?

19 A Yes, sir. This young lady also was the same young  
20 lady on the contributing to the delinquency of a minor  
21 case, so I had some statements for her on that as well.

22 THE COURT - Mr. Richey, you're recognized.

23 MR. RICHEY - Thank you, Your Honor. (Pause)

24 No questions, Your Honor.

25 THE COURT - You may step down.

1 MS. PRICE - May I be excused, Your Honor?

2 THE COURT - Yes.

3 MS. PRICE - Thank you, sir.

4 THE COURT - You may call your next witness.

5 MR. RICHEY - Mr. Cheeks.

6 THE COURT - Mr. Cheeks, if you could please come  
7 forward. I'm going to ask you if you could to place your  
8 left hand on the bible and raise your right hand as the  
9 clerk administers the oath.

10 (WHEREUPON, THE DEPUTY CLERK IS NOT IN THE  
11 COURTROOM AND THE COURT PROCEEDS TO SWEAR THE WITNESS)

12 THE COURT - Oh, I'm sorry.

13 JAMES CHEEK, AFTER BEING FIRST DULY SWORN,

14 TESTIFIES AS FOLLOWS -

15 THE COURT - Have a seat in the witness chair, and  
16 I'm going to ask if you could to state your name for the  
17 record and spell your last.

18 MR. CHEEK - My name is James Cheek. I am an  
19 assistant public defender here in the Seventh Judicial  
20 Circuit with Spartanburg County Public Defender's Office.

21 THE COURT - Spell your last name.

22 MR. CHEEK - C-h-e-e-k.

23 THE COURT - Very good.

24 DIRECT EXAMINATION

25 BY MR. RICHEY -

1 Q Mr. Cheek, do you recall representing Mr. Carson?

2 A I do.

3 Q And you represented him on the CSC charge and  
4 delinquent -- contributing to the delinquency of a minor.

5 Is that correct?

6 A Yes, sir. I represented him in preparation for the --  
7 entering the plea.

8 Q And the way this process was, is in terms of the  
9 investigation or to gather information, that would be Ms.  
10 Price's responsibility. Y'all kind of work together with  
11 that?

12 A When you say gather -- I review the file.

13 Q Right.

14 A I don't necessarily go out and talk to law enforcement

15 ---

16 Q Right.

17 A --- or anything like that, ---

18 Q Right.

19 A --- but I interview the client and I talk to the  
20 prosecutor and review the State's file.

21 Q Okay, and -- and once he made that decision to plead  
22 guilty, you handle that process. Correct? The guilty  
23 plea. You did that?

24 A I do, yes.

1 Q Okay. And at this point, did Mr. Carson relay to you  
2 that he wanted to go to trial at any point?

3 A His communication with me would've always been that he  
4 wanted to go forward with a plea. Once any conversation  
5 comes up regarding the desire for a trial, I immediately  
6 stop the conversation and I refer the matter back to the  
7 trial attorney in our office.

8 Q Okay.

9 A That never happened in this case.

10 Q And -- and you've seen the transcript and you heard  
11 Ms. Price's testimony, the -- well, this test, this DNA  
12 test that showed that he was the father, do you know  
13 whether you talked to him about that?

14 A Oh, I know I absolutely did. The -- I talked with him  
15 about that. I -- once he communicated with me that he  
16 wanted to go forward with the plea, I went and reviewed  
17 everything in the State's file, as I typically do. It's  
18 really easy for me to have access to the State's file,  
19 because I spend most of my time here at the courthouse, and  
20 but for any work-product issues, anything like that, I've  
21 never been denied an opportunity to go through the State's  
22 file. Once I did that, I went back and talked with Mr.  
23 Carson at the jail, explained to him the DNA and curiously  
24 I asked him was he sure he was the father of this girl,  
25 because there's been some issues about whether or not he

JAMES CHEEK - CROSS BY MS. GIOVANOLI

27

1 took the right kind of parental interest in this child, so  
2 I asked him did he ever have a DNA test done; he said, no,  
3 but he was confident he was father of the child. When I  
4 said the child, I mean the victim, the daughter. And then  
5 the morning of the plea, I sat down with him with the  
6 State's file and went through it and I showed him the test  
7 results for the -- for the infant child.

8 Q So, you went over the results and actually showed him  
9 the physical results.

10 A Yeah, and didn't have a problem with him understanding  
11 anything because he actually attended Virginia College, so  
12 he had some knowledge of the process as well as the terms  
13 and all of those kinds of issues. In other words, I didn't  
14 have any problem communicating with him. I never got any  
15 impression he did not understand what ninety-nine point  
16 nine nine percent meant as far as the determination of  
17 being the father of this infant.

18 MR. RICHEY - Thank you. No other questions.

19 THE COURT - Any?

20 MS. GIOVANOLI - Thank you, Your Honor.

21 CROSS EXAMINATION

22 BY MS. GIOVANOLI -

23 Q Briefly, can you describe your position with the  
24 public defender's office in Spartanburg County?

1 A Yeah, my office has several attorneys with regards to  
2 the staff who are designated trial attorneys. My  
3 employment does not require that I ever try a case. I am  
4 assigned the duty of being present and most available to  
5 the inmates at the jail and to also communicate  
6 occasionally with those who are at the department of  
7 corrections, particularly when we had them at the jail and  
8 be something they can get many stuff or part of a plea was  
9 left undone for some reason, so I have communication or  
10 duties also with inmates at the department of corrections,  
11 but my office is actually located in the detention facility  
12 itself, and I typically make the rounds of the pod areas.  
13 We receive copies of kiosks -- kiosks is a e-mail type  
14 system at the jail that inmates have access to to notify  
15 their trial attorneys if they want to have any kind of  
16 meeting with them or anything of that nature -- and the  
17 staff at the jail also makes copies of those e-mails and  
18 puts them in our boxes -- I want to say our -- I have this  
19 duty as well as Mr. Tam Boggs has this duty -- to deal  
20 directly with the inmates and answer questions as things go  
21 along. Sometimes even if they're going to be going to  
22 trial, if we can communicate something back an forth  
23 quicker to the trial attorneys on staff or our support  
24 staff and we're given that responsibility also, just makes

1 sure that things are moving and that no one is being  
2 overlooked or neglected while they're incarcerated.

3 Q So is the location of your office kind of for jail  
4 inmates to have easier access to you in the public  
5 defender's office?

6 A That's the -- that's the theory.

7 Q How long have you been practicing criminal law?

8 A Forty years. No, I'm sorry, I apologize. I have not.  
9 Thirty-seven years. Three years of that time I worked with  
10 the legal services. We didn't handle -- we didn't handle  
11 criminal cases, but I've been an attorney for forty years.

12 Q Is it fair to say that your experience kind of led you  
13 into this position?

14 A I would say so, yes.

15 Q And you've tried criminal cases in your history, past  
16 history.

17 A I have.

18 Q Okay, so this case was referred to you by Andrea  
19 Price. Is that correct?

20 A Yes, it was; she told me to stay on top of it, and  
21 then I got some communications from Mr. Rashawn Carson  
22 himself, so I gave him priority. He indicated which Judge  
23 he would prefer to plead in front of -- given what his  
24 knowledge was of what he thought his activity would be with  
25 some as some degree of mercy in this case, and I followed

1 his direction and made certain that we took him in front  
2 the Judge that he requested.

3 Q And so was that Judge Hayes?

4 A It was Judge Hayes.

5 Q And you said that you reviewed the file and that was  
6 the State's file.

7 A I -- yes, sir, yes, ma'am. Something this serious I  
8 go page-by-page with the clients to make certain we haven't  
9 overlooked anything.

10 Q And the State has an open-file policy with you.

11 A They do.

12 Q So you actually saw the DNA test or the paternity test  
13 done by SLED, the report?

14 A And discussed -- I just saw it and actually reviewed  
15 it with Mr. Carson, and I explained to him what his options  
16 were, even at that point would still have gone to trial if  
17 he wanted to, but he never expressed an interest of going  
18 to trial. I cooperated with him by communicating with his  
19 family, make sure they knew when they were going to appear  
20 in Court. They were actually here that morning. I had a  
21 conversation with them prior to the plea starting. I  
22 encouraged them to please say something that I thought  
23 would be impacting. It's been my experience that Judge  
24 Hayes generally would invite some input from the family so  
25 he could get some idea of what it is that this person had

1 not only been through as a defendant but what kind of  
2 support system might be for that person if they were to  
3 reenter society. He tends to take a great interest in  
4 that, so we kind of make sure we have family members here,  
5 but at this particular plea, none of the family members  
6 wanted to come forward to say anything. They felt  
7 conflicted because it would get -- not only their child,  
8 the Defendant, Mr. Carson, but also with the putative  
9 grandchild and in some cases great-grandchild depending on  
10 the age of the family members that were present that -- in  
11 Court that day, but they were present. They wanted the  
12 Judge to know they were present to support him as well as  
13 the extended relative at this point in time.

14 Q Okay, and I just wanted to clarify something that was  
15 in record. You have -- do you have a copy of the  
16 transcript up there with you?

17 A I do.

18 Q On page 22, you actually have a paragraph starting on  
19 line 9, -- and I think the applicant referred to it in his  
20 direct testimony -- I've heard the term biological father  
21 used several times before the Court today, I really don't  
22 know if that's ever been established, Your Honor, and the  
23 reason I don't know if it's been established is -- is  
24 certainly our office has not investigated it. We're ---

25 A That's correct.

1 Q --- going by what we've told. I'm assuming that  
2 everyone involved in this is going by what they've been  
3 told.

4 A That's right.

5 Q Can you just explain that comment? I mean you --  
6 because you had a SLED ---

7 A There was -- no, no, no, no, no. That's not relative  
8 to this case. Those comments had nothing to do with the  
9 child that's the subject of the criminal matter. Those  
10 comments were relative to a person I saw being referred to  
11 as biological father. I know that my client took the role  
12 as father, but no one ever established he was the  
13 biological father of the sixteen year old child.

14 Q Okay. I understand. So ---

15 A He had been denied any contact with that child for ten  
16 years, and then the mother of that child -- I'm sure she  
17 was the mother -- communicated with him. The mother of the  
18 child was mentally challenged, so no one ever came forward  
19 to say, we want a test, and certainly Mr. Rashawn Carson  
20 never told me, no one in his family ever had told me that  
21 they denied him being the father of this sixteen year old,  
22 and at that time would've been a fourteen year old child.

23 Q But the incest charge was dropped. Isn't that  
24 correct?

25 A The incest was dropped.

1 Q Okay.

2 A And I wanted to make sure that the Court knew that  
3 there may have been some question of whether or not there  
4 was any incest really involved, that the State was -- was  
5 not doing us a great deal of favor by dismissing the incest  
6 charges, because no one ever established he was the  
7 biological father of this young lady.

8 Q Okay. Thank you for clarifying that, because it was  
9 kind of confusing. But she was fifteen when she had the --  
10 gave birth to the child.

11 A Yes, and fourteen when they were having -- when she  
12 was having sex in the car or drinking, at least drinking in  
13 the car with her little boyfriend with the defendant the  
14 driver of that vehicle.

15 MS. GIOVANOLI - Okay, I have no further  
16 questions. Thank you very much, Mr. Cheek.

17 THE COURT - Any re-direct?

18 MR. RICHEY - No other questions, Your Honor.

19 THE COURT - All right, you may step down. You're  
20 free to leave. Thank you.

21 MR. CHEEK - Thank you, Your Honor.

22 THE COURT - Anything further?

23 MR. RICHEY - No, Your Honor.

24 THE COURT - Anything, Ms. Giovanoli?

25 MS. GIOVANOLI - No.

1 THE COURT - All right, be glad to hear from you,  
2 Mr. Richey.

3 MR. RICHEY - Thank you, Your Honor. May it  
4 please the Court. Your Honor, essentially the one issue is  
5 -- I think the testimony was brought out is whether or not  
6 he actually saw the discovery. I think counsel testified,  
7 Mr. Cheek said he went to the jail and went over it with  
8 him. My client says that he never saw it. That just gets  
9 to the credibility of who the Court decides the Court wants  
10 to believe, but that's what his issue was, he never saw the  
11 stuff, but counsel -- both counsel did testify they went  
12 over the stuff with him, but it's his position that he  
13 never saw the physical test but they gave him the results.

14 Thank you, Your Honor.

15 THE COURT - Ms. Giovanoli?

16 MS. GIOVANOLI - Well, to address that argument, I  
17 don't think that it's necessary for him to actually see the  
18 physical test, just like he probably didn't see the -- see  
19 the child advocacy center video, the CAC video. A lot of  
20 times attorneys will explain to the applicants the  
21 discovery, maybe show it to them. In this case I think it  
22 was a valid reason why Ms. Price didn't provide him the  
23 discovery while he was in county detention and that was  
24 because it can potentially be dangerous to have that stuff  
25 lingering around with those types of serious allegations,

1 but the testimony was pretty thorough between Mr. Cheek and  
2 Ms. Price that they both reviewed the discovery with him  
3 and discussed the SLED paternity test analysis. Applicant  
4 had two years of college at Virginia College; he's very  
5 well spoken and neither attorney had any indication that he  
6 didn't understand their conversations. So I think that --  
7 and with the transcript that we have here, as well as  
8 counsel's testimony, that the plea was very much  
9 voluntarily given, and it was given upon the advice of good  
10 sound -- sound advice from counsel, so we'd argue that he  
11 failed to present -- to prove his burden in the case.

12 THE COURT - I'm going to take just a moment to  
13 finish reading the transcript.

14 (WHEREUPON, BRIEF PAUSE IN THE RECORD TO ALLOW  
15 THE COURT TO REVIEW THE TRANSCRIPT)

16 THE COURT - I'm going to be asking this question  
17 to you, Ms. Giovanoli. We've heard Mr. Cheek testify that  
18 they made an effort to get the case before Judge Hayes. Do  
19 you think that's good lawyering or inappropriate Judge-  
20 shopping?

21 MS. GIOVANOLI - I have never really thought about  
22 it enough to determine, but I don't think that there's  
23 anything in the rules that preclude them from doing so.

24 THE COURT - What do you think about that, Mr.  
25 Richey?

1 MR. RICHEY - I think in some cases it's  
2 appropriate lawyering to try to protect your client's  
3 interest if a lawyer is aware that a Judge -- if a Judge is  
4 going to sentence his client more harshly than another  
5 Judge. I think you have to look at what's in the best  
6 interest of your client.

7 THE COURT - Do you think Judge Hayes is that type  
8 of Judge?

9 MR. RICHEY - With the choices that are here --  
10 with the choices that are here, he would be the most  
11 likely, being honest with the Court.

12 THE COURT - All right.

13 MS. GIOVANOLI - And if I can just add that I want  
14 to clarify, I don't think Mr. Cheek said he chose Mr. Hayes  
15 -- Judge Hayes --- but I think that his client at the time  
16 informed him that he preferred to plead ---

17 THE COURT - Requested and he said he was able to  
18 fulfill it.

19 MS. GIOVANOLI - Well, because his client  
20 requested that he be able to, ---

21 THE COURT - Right.

22 MS. GIOVANOLI - -- so he was just trying to, you  
23 know, help his client.

24 THE COURT - All right, Ms. Giovanoli, I'm going  
25 to ask that you prepare an order. I've listened to the

1 evidence. I've reviewed the plea transcript, and I've  
2 heard testimony of both defense counsel, Ms. Price and Mr.  
3 Cheek, and I specifically find that there was an adequate  
4 investigation of this case and he had good representation  
5 of very fine lawyers. They went over the statements from  
6 the victim's mother, the mother and daughter, the mother of  
7 the putative child, and all that was reviewed with the  
8 defendant. The fact that he did not get a physical copy of  
9 the DNA test is without consequence. The most important  
10 thing is the test results, which was -- is uncontroverted.  
11 In order for the applicant to make any hay out of the fact  
12 he did not receive the DNA report, -- I mean it's not  
13 anything real magical about getting the physical piece of  
14 paper. The thing that's magical about it is if defense  
15 counsel missed something, so in this proceeding it would be  
16 incumbent upon the applicant to show that the test results  
17 were wrong, that there was something -- something that went  
18 wrong with the test or the test was incorrect. None of  
19 that has taken place here today. The fact that he was not  
20 given a physical piece of paper is irrelevant. I find that  
21 there were, based on the testimony of Ms. Price and Mr.  
22 Cheek, they visited with him on a number of occasions, the  
23 evidence was reviewed with him and there was adequate  
24 preparation and adequate investigation. And there is  
25 absolutely no merit to find that the indictment was

1 defective in any way, shape or form. I'm seeing the  
2 indictments and essentially the only thing that is required  
3 in an indictment is a very low bar that he be informed of  
4 what he's being charged with, and the indictments meet that  
5 standard.

6 I think all of the matters have been addressed.  
7 Anything that I have not addressed, Mr. Richey?

8 MR. RICHEY - No, sir.

9 THE COURT - Ms. Giovanoli?

10 MS. GIOVANOLI - No, Your Honor.

11 THE COURT - I'm going to ask that you prepare an  
12 order to that effect. Send a copy of that to Mr. Richey to  
13 ensure that the order that you prepare is -- accurately  
14 reflects what my ruling is here today.

15 Thank you very much, and good luck to you, Mr.  
16 Carson. Application is denied.

17 (END OF TRANSCRIPT)

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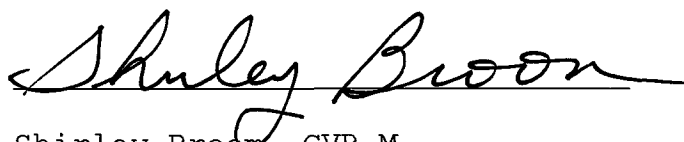
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## C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 38 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Rashawn Tremayne Carson vs. State of South Carolina, as taken by me in Court of Common Pleas for the Seventh Judicial Circuit on February 20, 2018, and provided by me this the 22<sup>nd</sup> day of February, 2020.

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



Shirley Broom, CVR-M  
Official Court Reporter,  
Certified Verbatim Reporter, In and  
for the State of South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

Rashawn Tremayne Carson, #370192,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

2017-CP-42-3717

**ORDER OF DISMISSAL  
WITH PREJUDICE**

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2018 JUN 25 PM 1:11  
M. HOPE BLACKLE

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Rashawn Tremayne Carson (Applicant) on October 12, 2017. The State (Respondent) made its return requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on February 20, 2018 at the Spartanburg County Courthouse. Applicant was present and represented by Rodney W. Richey, Esquire. Valerie Garcia Giovanoli, Esquire, of the Office of the Attorney General represented Respondent.

At the hearing, Applicant testified on his own behalf. Andrea Price, Esquire, (Trial Counsel) and James Cheek (Plea Counsel) also testified. This Court had before it a copy of the Spartanburg County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the plea transcript, the PCR application, and Respondent's return.

#### PROCEDURAL HISTORY

Applicant is presently incarcerated pursuant to orders of commitment of the Spartanburg County Clerk of Court. In January 2016, the Spartanburg County Grand Jury indicted Applicant for two counts of contributing to delinquency of a minor (2016-GS-42-0021, -0022). Applicant was subsequently arrested for second-degree criminal sexual conduct ("CSC") with a minor (2016-GS-42-4459) and incest (warrant no. 2015A4210104644). The contributing to the delinquency of a

minor charges resulted from Applicant providing alcohol to his 14-year old daughter and her 13-year old friend. (Tr. p. 13-14). The CSC and incest charges arose from Applicant impregnating his 15-year old daughter (victim). After the victim gave birth, a DNA analysis revealed Applicant was the biological father of the child. (Tr. p. 15). The victim disclosed Applicant had been having sex with her regularly since she was 14 years old. (Tr. p. 14).

Andrea L. Price and James A. Cheek, Esquires, represented Applicant. Assistant Solicitor Hillary C. Welborn represented the State. On October 17, 2016, Applicant pleaded guilty to two counts of contributing to delinquency of a minor and second-degree CSC with a minor before the Honorable J. Mark Hayes, II. The State dismissed the warrant for incest in exchange for Applicant's guilty pleas. The State also recommended concurrent sentencing. Judge Hayes sentenced Applicant to imprisonment for twenty years for CSC and three years for each count of contributing to delinquency of a minor, to be served concurrently. Applicant did not appeal his convictions or sentences.

### ALLEGATIONS

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

1. "Ineffective Assistance of Counsel"
  - a. "failed to advocate"
  - b. "failed to investigate"
  - c. "failed to obtain lawyer/client relations"
    - i. "did not visit me"
  - d. "failed to suppress prejudicial evidence"
  - e. "failed to object to the indictment"
  - f. "failed to ask for a mental evaluation"
  - g. "failed to allow Applicant all evidence"
  - h. "failed to provide fundamental fairness"
2. "Due process violations and prosecutorial misconduct"
  - a. "The State failed to send all related information pertaining to case"
3. Involuntary guilty plea
  - a. "Applicant has history of mental disturbances."

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2016 JUN 25 PM 1:14  
M. HOPE BLACKLEY

4. "Accumulation of errors, in conflict with the Constitution"

At the start of the hearing, Applicant informed this Court he would be proceeding on his allegations that Counsel failed to investigate, failed to visit him, failed to review with him all of the evidence against him, and failed to object to his indictments.

FILED COURT  
CLERK OF COUNTY  
SPARTANBURG  
2018 JUN 22  
PM 1:14  
AM HOOPER-BLACKLEY

**SUMMARY OF TESTIMONY AT PCR**

I. Applicant testified to the following:

Applicant testified Price ("Trial Counsel") was his first attorney and then Cheek ("Plea Counsel") was his attorney for his guilty plea. Trial Counsel never investigated witnesses. Trial Counsel never gave him his discovery and Applicant did not see his discovery until he got to the Department of Corrections. Trial Counsel never visited him except at his preliminary hearing, which was waived. At the preliminary hearing, Trial Counsel told Applicant she had no discovery, but that when she received it, she would review it with him and give it to him.

Applicant testified Plea Counsel met with him one time and came to his guilty plea. No one showed him the paternity test, but instead only told him the results. Trial Counsel was present when they took a swab from Applicant to use in the paternity test, but she never told him the results of the test – Plea Counsel told him the results. Applicant believed his indictment was not valid and either counsel should have objected to it. When asked why it was invalid, Applicant simply stated no one had ever explained to him how it was valid.

II. Trial Counsel testified to the following:

Trial Counsel is an Assistant Public Defender with Spartanburg County. She has been practicing criminal law for eleven years. Trial Counsel was assigned Applicant's CSC and incest case after she had previously been assigned to represent Applicant on his previous two contributing to delinquency of a minor charges. Trial Counsel reviewed the indictments and did not notice any

defects in the indictments. Trial Counsel also reviewed the discovery and met with Applicant to review it. Trial Counsel reviewed the SLED paternity test with Applicant, but did not give him his own copy. Trial Counsel's reason for not giving him a copy of his discovery was that Applicant was in custody at the county jail and felt that the seriousness of the allegations against him and evidence contained in the discovery would be dangerous for Applicant to have in his possession in jail.

Applicant never expressed a desire to pursue a jury trial, even though Trial Counsel advised him of his right to one. Since Applicant wanted to plead guilty, she forwarded the case to Plea Counsel, who assists her office in representing their clients for guilty pleas. Trial Counsel's investigation of the case included reviewing all the discovery, including the CAC videos and reports, the statements of the victim, and the SLED paternity test. Counsel did not interview the victim.

Trial Counsel recalled her first meeting with Applicant was while he was out of jail on bond from the contributing charges. After he was arrested for the CSC and incest charges while out on bond, a bond revocation hearing was scheduled. However, Applicant waived the hearing and did not oppose the bond revocation after Trial Counsel explained that the allegations against him would be presented to the bond court, before a courtroom full of people including many jail inmates. Later, Trial Counsel also visited Applicant in jail at which time she reviewed the discovery with him. Trial Counsel met with Applicant at least three times, not including the times Applicant met with Plea Counsel.

III. Plea Counsel testified to the following:

Plea Counsel has practiced criminal law for 37 years. He is an Assistant Public Defender in Spartanburg County. His position with the Public Defender does not require him to try cases, but rather to assist representation of criminal defendants who wish to plead guilty. His office is located in the county detention center which gives the defendant's easy access to him as well as allows him

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to visit regularly with defendants. Plea Counsel explained investigation in preparation for trial would have been the responsibility of Trial Counsel. However, Applicant was forwarded to Plea Counsel because he had expressed a desire to plead guilty. Still, Plea Counsel advised Applicant of his right to pursue a jury trial. Applicant never indicated he wanted a jury trial, but had he done so, Plea Counsel would have referred him back to his trial attorney – as is his usual practice.

In this case, Plea Counsel reviewed the State's file, negotiated for a plea, and talked to Applicant. The State has an open file policy which allows Plea Counsel to review everything they have against Applicant. He reviewed all of the evidence, including the results of the SLED paternity test with Applicant. Applicant had attended Virginia College and had no problems understanding Plea Counsel's discussions with him regarding the evidence and the paternity test. Plea Counsel explained his comments on page 22 of the transcript regarding no investigation with regard to Applicant being the biological father of the child. Plea Counsel explained he was referring to the child victim, not the infant to whom she gave birth. Applicant claimed he was the biological father of the victim, but Plea Counsel explained there was no testing done to prove that. Regardless, the incest charges were dropped. Lastly, Applicant requested Plea Counsel schedule him to plead before Judge J. Mark Hayes, II, and so Plea Counsel arranged for him to plead before Judge Hayes.

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

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and has weighed their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). Applicant has failed to prove by a preponderance of the evidence that Counsel was deficient or that he was prejudiced by any deficiency.

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### I. Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). First, the Applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117 (citing Strickland). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

#### *Failure to investigate*

Applicant failed to present any evidence in support of this allegation. To show ineffective assistance in this regard, Applicant must present evidence to show what counsel could have

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discovered had he more fully investigated. Jackson v. State, 329 S.C. 345, 354, 495 S.E.2d 768, 772 (1998) (“Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial.”). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). Applicant has failed to show what beneficial information could have been discovered had Trial Counsel done more investigation. This Court also notes Applicant only expressed a desire to plead guilty to his counsel. Investigation in preparation for trial is often times more involved and complex than the investigation performed in a case where the defendant has no interest in pursuing a jury trial. Even so, Trial Counsel performed an adequate investigation given the particular facts and circumstances of this case. This Court finds credible Trial Counsel’s testimony that she reviewed all of the evidence against Applicant, and went over the victim’s statements, reviewed the CAC videos and reports. The fact that Trial Counsel did not provide Applicant a physical copy of his discovery is of no consequence. Of importance is the fact that Applicant was aware of all the evidence the State had against him prior to making his decision to plead guilty. Likewise, Applicant’s complaint that Trial Counsel did not show him the actual paternity test, but simply told him the results of the test, lacks merit. This physical piece of paper is irrelevant. The results of the test are important; and Applicant has not offered any evidence that the test was wrong or performed incorrectly. Therefore, having failed to meet his burden of proof, this allegation is denied and dismissed.

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*Failure to visit and review all evidence with him*

Applicant alleged Trial and Plea Counsel only met him one time. This Court finds Trial Counsel's testimony regarding the amount of meetings they had more credible. Counsel specifically recalled meeting Applicant at least three times. Additionally, Plea Counsel also met Applicant once. Regardless, this Court does not find the number of meetings relevant, but rather the substance and nature of the meetings to be important. Trial Counsel testified she reviewed all the discovery with Applicant. This Court finds this testimony credible. Additionally, Plea Counsel also testified he reviewed all the discovery with Applicant. This Court also finds this testimony credible. Applicant has failed to demonstrate how more meetings would have done anything to change the evidence and facts of the case. This Court further finds Applicant's contention, that neither counsel reviewed the discovery with him, lacks merit. Applicant has failed to meet his burden to prove either counsel was deficient in this regard, or how Applicant could possibly have been prejudiced. Therefore, this allegation is denied and dismissed.

*Failure to challenge indictments*

Applicant alleged counsel should have objected to his indictments. However, he has offered no reason as to why the indictments are objectionable or insufficient. Both counsel reviewed the indictments and neither found any defects. This Court has also reviewed the indictments and cannot find any defects. Rather, this Court finds the fundamental purpose of the indictments, to give Applicant notice of the accusations being made against him, was served. Applicant has failed to meet his burden of proof with regard to this allegation. It is therefore denied and dismissed.

**CONCLUSION**

Based on all the foregoing, this Court finds and concludes Applicant has not established any violations that would require this Court to grant his application. This Court finds Applicant has

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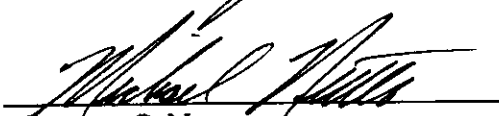
failed to prove any deficiencies on the part of Counsel and further, Applicant has failed to prove prejudice from any alleged deficiencies in Counsel's representation of him. Therefore, as Applicant has failed to meet his burden of proof in this post-conviction relief action, his application is denied and dismissed with prejudice.


This Court notifies Applicant he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCR. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 13 day of June, 2018.

  
 MICHAEL G. NETTLES  
 Presiding Judge  
 Seventh Judicial Circuit

  
 \_\_\_\_\_, South Carolina

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# Spartanburg County

Spartanburg County Court House  
180 Magnolia Street  
P. O. Box 3483  
Spartanburg, SC 29304-3483

Phone (864) 596-2591  
Fax (864) 596-2239



**M. Hope Blackley**  
Clerk of Court

*June 25, 2018*

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

7<sup>TH</sup> JUDICIAL CIRCUIT

*Rachael Tremayne Culson*  
Applicant # *370192*

CASE # *2018CP42-3717*

*State*  
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the *Order of Dismissal w/ prejudice*  
In this action dated *6-13, 2018* on *6-25-18*

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

*Megan Galloway*  
*Patricia Pickley*

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*6-25-18*  
(Date)

*Cassie Seay*  
(Signature)

WITNESSES

City of Spartanburg

*[Handwritten signatures and marks]*

ARREST WARRANT NUMBER

2015A4210104643

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

02

Foreperson of Petit Jury

Date:

DOCKET NO. **16-GS-42-5330**

The State of South Carolina

County of Spartanburg

*Barry J. Barnette, Solicitor*

COURT OF GENERAL SESSIONS

OCT 03 2016

TERM

THE STATE

vs.

Rashawn Carson

Indictment for

**CRIMINAL SEXUAL CONDUCT  
WITH A MINOR, SECOND DEGREE**

SC Code: 16-03-655 (B) (2)

CDR Code: 0397

Class FEL/C

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

INDICTMENT

SEP 30 2016

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

**CRIMINAL SEXUAL CONDUCT WITH A MINOR, SECOND DEGREE**

That the Defendant, Rashawn Carson, did in Spartanburg County, between the dates of July 14, 2014 and December 8, 2015, commit the crime of Criminal Sexual Conduct with a minor in the Second Degree in that the Defendant did engage in a sexual battery upon the minor, **A.R. [REDACTED]** who was at least fourteen (14) but less than sixteen (16) at the time of the battery, and the defendant is over the age of eighteen (18). Said incident occurred in Spartanburg County, South Carolina, in violation of Section 16-03-655 (B) (2), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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

  
\_\_\_\_\_  
ASSISTANT SOLICITOR

WITNESSES

SENTENCE MADE  
 Spartanburg Public Safety Dept  
 REPORT MADE  
 CHARGE MADE  
 INDEXED  
 CONTINUED VIOLATIONS  
 PROBATION AWARD  
 AS STAYED  
**ARREST WARRANT NUMBER**  
 2015A4210101563

ACTION OF GRAND JURY

**True Bill**

JAN 20 2016

Foreperson of Grand Jury  
Date:

VERDICT

104

Foreperson of Petit Jury  
Date:

DOCKET NO.

**16-GS-42-0021**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JAN 25 2016

TERM

THE STATE  
vs.

Rashawn Tremayne Carson

Indictment for

CONTRIBUTING TO DELINQUENCY  
OF A MINOR

SC Code: 16-17-490  
CDR Code: 048  
Class MIS-A

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF )

## INDICTMENT

At a Court of General Sessions, convened on JAN 20 2016, the  
 Grand Jurors of County present upon their oath:

**CONTRIBUTING TO DELINQUENCY OF A MINOR**

That Rashawn Tremayne Carson, did in Spartanburg County, on or about April 26, 2015, commit the crime of Contributing to the Delinquency of a Minor, in that the defendant, who was over the age of eighteen (18) years, did knowingly and willfully encourage, aid, or cause or did an act or acts which caused or influenced P.H. [REDACTED], being a minor under seventeen (17) years of age, at the time of the incident, and to so deport themselves as to willfully injure or endanger their morals or health or the morals or health of others, to wit: to commit the crime of possession and the use of alcohol, thereby causing said minor to become delinquent, in violation of §16-17-490, Code of Laws of South Carolina, (1976, as amended).

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

*Hillary C. Wellborn*  
 ASSISTANT SOLICITOR

WITNESSES

1. SENTENCE MADE

2. AFFIDAVIT FILED  
Spartanburg Public Safety Dept.

3. CARD FILED

4. INDEXED

5. CHECKED WITH CLERK

6. CLERK'S SIGNATURE

7. AFFIDAVIT AND RETURN FILED

ARREST WARRANT NUMBER

2015A4210101562

ACTION OF GRAND JURY

**True Bill**

JAN 20 2016

Foreperson of Grand Jury  
Date:

VERDICT

Foreperson of Petit Jury  
Date:

106

DOCKET NO. -

**16-GS-42-0022**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JAN 25 2016

TERM

THE STATE  
vs.

Rashawn Tremayne Carson

Indictment for  
CONTRIBUTING TO DELINQUENCY  
OF A MINOR

SC Code: 16-17-490  
CDR Code: 048  
Class MIS-A

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STATE OF SOUTH CAROLINA )  
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 COUNTY OF )

## INDICTMENT

JAN 26 2016

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

**CONTRIBUTING TO DELINQUENCY OF A MINOR**

That Rashawn Tremayne Carson, did in Spartanburg County, on or about April 26, 2015, commit the crime of Contributing to the Delinquency of a Minor, in that the defendant, who was over the age of eighteen (18) years, did knowingly and willfully encourage, aid, or cause or did an act or acts which caused or influenced A.R. being a minor under seventeen (17) years of age, at the time of the incident, and to so deport themselves as to willfully injure or endanger their morals or health or the morals or health of others, to wit: to commit the crime of possession and the use of alcohol, thereby causing said minor to become delinquent, in violation of §16-17-490, Code of Laws of South Carolina, (1976, as amended).

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

  
 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF 108 SPARTANBURG  
STATE VS.

INDICTMENT/CASE#: 2016GS42 5330

Rashawn Tremayne Carson

A/W#: 2015A4210104643

AKA:

Date of Offense: 4/1/2015

Race: BLACK Sex: M Age: 37

S.C. Code § : 16-03-0655(B)(2); 16-03-0

DOB: [REDACTED] SS#: [REDACTED]

CDR Code #: 0397

Address: [REDACTED] N. Blackstock Rd

City, State, Zip: Spartanburg, SC 29303

DL#: [REDACTED] SID#: [REDACTED]

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: Criminal sexual conduct with minor, victim under 16 years of age - Second degree (0-20 years)

in violation of § 16-03-0655(B)(2); 16-03-0 of the S.C. Code of Laws, bearing CDR Code # 0397

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC w/minor 1st or Lewd Act)  §17-25-45

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

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

ATTEST: Hillary C. Welborn 78366 Rashawn Carson [Signature]  
WELBORN, HILLARY C. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,

for a determinate term of 20 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years

and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

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

CONCURRENT or  CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 315 days

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

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

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered

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

Payment Terms: \_\_\_\_\_

Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine: \_\_\_\_\_ \$

§ 14-1-206 (Assessments 107.5 %) \_\_\_\_\_ \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk [Signature]

Court Reporter: [Signature]

PTUP \_\_\_\_\_

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: Sex offender counseling with in SC DOC

Monthly Hearing Counseling

Sex offender Registration

Appointed PD or appointed other counsel,

Proviso 61.6 requires \$500 be paid to Clerk

during probation and shall be collected before

any other fees.

Presiding Judge [Signature]

Judge Code: 2132

Sentence Date: 10/17/16

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

109

COUNTY OF SPARTANBURG VS. STATE

INDICTMENT/CASE#: 2016GS4200021

Rashawn Tremayne Carson

A/W#: 2015A4210101563

AKA:

Date of Offense: 4/26/2015

Race: BLACK Sex: M Age: 37

S.C. Code § : 16-17-0490

DOB: [redacted] SS#: [redacted]

CDR Code #: 0048

Address: [redacted] Culp St Apt D5

City, State, Zip: Inman, SC 29349-1664

DL#: [redacted] SID#: [redacted]

SENTENCE SHEET

\*CDL Yes [ ] No [ ] CMV Yes [ ] No [ ] Hazmat Yes [ ] No [ ]

In disposition of the said indictment comes now the Defendant who was [ ] CONVICTED OF or [X] PLEADS

TO: Contributing to the delinquency of a minor (0-3 years and/or \$0-\$3,000 fine)

in violation of § 16-17-0490 of the S.C. Code of Laws, bearing CDR Code # 0048 [X] NON-VIOLENT [ ] VIOLENT [ ] SERIOUS [ ] MOST SERIOUS [ ] Mandatory GPS(CSC w/minor 1st or Lewd Act) [ ] §17-25-45

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

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

ATTORNEYS: Hillary C. Wellborn 78366 Radwan [redacted] 1207 WELBORN, HILLARY C. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [ ] County Detention Center, for a determinate term of 3 days/months/years or [ ] under the Youthful Offender Act not to exceed [ ] years and/or to pay a fine of \$ [ ]; provided that upon the service of [ ] days/months/years and/or payment of \$ [ ]; plus costs and assessments as applicable\*; the balance is suspended with probation for [ ]

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

[X] CONCURRENT or [ ] CONSECUTIVE to sentence on: [X] 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. 315 days

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

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

SPECIAL CONDITIONS:

[ ] RESTITUTION: [ ] Deferred [ ] Def. Waives Hearing [ ] Ordered PTUP [ ] days/hours Public Service Employment

Total: \$ [ ] plus 20% fee: \$ [ ] Obtain GED [ ]

Payment Terms: [ ] Set by SCDPPPS [ ] Attend Voc. Rehab. or Job Corp. [ ]

Recipient: [ ] May serve W/E beginning [ ]

\*Fine: \$ [ ] Random Drug/Alcohol testing [ ]

§ 14-1-206 (Assessments 107.5 %) \$ [ ] Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ [ ] beginning [ ]

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ [ ] \$ [ ] paid to Public Defender Fund

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ [ ] Other: [ ]

§ 56-5-2995 (DUI Assessment) \$12 \$ [ ]

§ 56-1-286 (DUI Breath Test) \$25 \$ [ ]

Proviso 61.6 (Public Def/Probation) \$500 \$ [ ]

§ 14-1-212 (Law Enforce. Funding) \$25 \$ [ ]

§ 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) \$ 375

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk [Signature]

Court Reporter: [Signature]

SCCA/217 (07/2016)

Presiding Judge [Signature]

Judge Code: 2132

Sentence Date: 10/11/16

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF 110 SPARTANBURG VS. STATE

INDICTMENT/CASE#: 2016GS4200022

Rashawn Tremayne Carson

A/W#: 2015A4210101562

AKA: \_\_\_\_\_

Date of Offense: 4/26/2015

Race: BLACK Sex: M Age: 37

S.C. Code § : 16-17-0490

DOB: \_\_\_\_\_ SS#: \_\_\_\_\_

CDR Code #: 0048

Address: Culp St Apt D5

City, State, Zip: Inman, SC 29349-1664

DL#: \_\_\_\_\_ SID#: \_\_\_\_\_

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: Contributing to the delinquency of a minor (0-3 years and/or \$0-\$3,000 fine)

in violation of § 16-17-0490 of the S.C. Code of Laws, bearing CDR Code # 0048

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC  §17-25-45 w/minor 1st or Lewd Act)

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

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

ATTORNEYS: William C. Waller 78366 Rashawn Carson 1207  
WELBORN, HILLARY C. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 3 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

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

CONCURRENT or  CONSECUTIVE to sentence on:  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 315 days  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered

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

Payment Terms: \_\_\_\_\_

Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 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)		\$ <u>3.75</u>

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk [Signature]

Court Reporter: [Signature]

PTUP \_\_\_\_\_

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

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

Presiding Judge \_\_\_\_\_

Judge Code: 2182

Sentence Date: 10/11/16