

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————  
Certiorari to Laurens County

Honorable L. Casey Manning, Circuit Court Judge

—————  
TITO O. MARIN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-002025

—————  
APPENDIX  
—————

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South Carolina Commission on Indigent  
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ATTORNEYS FOR RESPONDENT

**RECEIVED**

**Sep 21 2020**

S.C. SUPREME COURT

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State of South Carolina  
County of Laurens

Court of General Sessions

State of South Carolina )  
 )  
 )  
 v. )  
 )  
 Tito Olan Marin )  
 )  
 \_\_\_\_\_ Defendant.)

Transcript of Record  
2017-GS-30-989  
2017-GS-30-990

February 27, 2018  
Laurens, South Carolina

B E F O R E:

The Honorable Frank Addy, Judge.

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

C. Dale Scott, Deputy Solicitor  
Attorney for the State

Angelica Hernandez, Esquire  
Attorney for the Defendant

Emily Ortiz Alfonso, Interpreter

Lisa Scott  
Circuit Court Reporter

I N D E X

WITNESS

PAGE

No Witnesses.

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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No Exhibits.

P R O C E E D I N G S

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1  
2  
3 THE COURT: All right. I think that we  
4 probably need to swear the translator first. Your  
5 name, ma'am? I'm sorry.

6 THE INTERPRETER: Emily Ortiz Alfonso.

7 THE COURT: Ms. Alfonso, if you would just  
8 raise your right hand.

9 THE INTERPRETER: (Complying.)

10 THE COURT: Do you swear the translation you  
11 give between English and Spanish and vice versa will  
12 be the correct translation?

13 THE INTERPRETER: I do.

14 THE COURT: You know the routine. Okay.  
15 Solicitor, if you'll call the next case,  
16 please.

17 MR. SCOTT: Your Honor, the case you're about  
18 to hear is *State v. Tito Olan Marin*. Olan is  
19 O-l-a-n. Indicted on two true-billed indictments.

20 The first one is 17-GS-30-0989. That is an  
21 indictment for criminal sexual conduct with a minor,  
22 first degree. A listed victim in that indictment is  
23 a MINOR [REDACTED]

24 The next one is 17-GS-30-0990. That is an  
25 indictment for criminal sexual conduct with a minor,

1 first degree. The victim in that indictment is

2 **MINOR**

3 THE COURT: All right. Are there any  
4 negotiations or recommendations in this case?

5 MR. SCOTT: This is a negotiated 25 years to  
6 run concurrent with one another.

7 THE COURT: And correct me if I'm wrong,  
8 Solicitor, but this is a minimum of 25, maximum of  
9 life?

10 MR. SCOTT: That's correct, Your Honor.

11 THE COURT: All right. Okay. Ms. Hernandez,  
12 you are representing Mr. Marin; is that correct?

13 MS. HERNANDEZ: Yes, Your Honor.

14 THE COURT: I'm told he wants to plead guilty  
15 to two counts of criminal sexual conduct with a  
16 minor in the first degree; is that correct?

17 MS. HERNANDEZ: Yes, Your Honor. He admits to  
18 first degree.

19 THE COURT: And you have explained to him that  
20 this carries a man -- mandatory minimum of 25 years  
21 and a maximum of life, correct?

22 MS. HERNANDEZ: We have discussed that at  
23 length, Your Honor.

24 THE COURT: And I assume you've also reviewed  
25 with him the fact that this is an 85 percent

1 offense, so he'll have to serve 85 percent of that  
2 25 years?

3 MS. HERNANDEZ: Yes, Your Honor.

4 THE COURT: And it is also classified as a most  
5 serious offense, meaning if he's convicted of  
6 another most serious offense, the State could seek  
7 life without the possibility of parole.

8 MS. HERNANDEZ: Yes, Your Honor.

9 THE COURT: Ms. Hernandez, from your  
10 investigation of the facts and circumstances  
11 surrounding this incident, do you believe that the  
12 State has sufficient credible evidence to prove  
13 Mr. Marin's guilt beyond a reasonable doubt?

14 MS. HERNANDEZ: Yes, Your Honor, I do.

15 THE COURT: Okay. And you have reviewed with  
16 him, again, all of his Constitutional rights,  
17 including his right to a jury trial?

18 MS. HERNANDEZ: I have met with Mr. Olan Marin  
19 on several occasions in his own language, and we  
20 have discussed this case.

21 THE COURT: And would there be any implications  
22 concerning possible deportation of Mr. Marin after  
23 he's released from his 25-year sentence?

24 MS. HERNANDEZ: Yes, Your Honor. And we have  
25 also discussed those ramifications of this

1 conviction.

2 THE COURT: All right. Mr. Marin, if you  
3 could, just raise your right hand, please, sir.

4 THE DEFENDANT: (Complying.)

5 THE COURT: Do you swear or affirm the  
6 testimony you're about to give is the truth?  
7 (Through the interpreter:)

8 THE DEFENDANT: Yes.

9 THE COURT: Sir, are you Tito Olan Marin?

10 THE DEFENDANT: Yes.

11 THE COURT: Mr. Marin, I'm told that you want  
12 to plead guilty to two counts of criminal sexual  
13 conduct with a minor in the first degree; is that  
14 correct, sir?

15 THE DEFENDANT: Yes.

16 THE COURT: You understand each of these counts  
17 carry a minimum of 25 years and a maximum of life in  
18 prison? Do you understand?

19 THE DEFENDANT: Yes.

20 THE COURT: I'm told by your attorney and the  
21 Solicitor that you have negotiated a 25-year  
22 sentence; is that correct?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand, Mr. Martin -- or  
25 Mr. Marin, that if I accept your plea, I will have

1 to impose a sentence of 25 years? I cannot go above  
2 that; I cannot go below it.

3 THE DEFENDANT: Yes.

4 THE COURT: And under the laws of our State,  
5 you'll have to serve 85 percent of that 25-year  
6 prison sentence. Do you understand, sir?

7 THE DEFENDANT: Yes.

8 THE COURT: So you would have no hope of being  
9 released until you've served 85 percent of 25 years.  
10 You understand, sir?

11 THE DEFENDANT: Yes.

12 THE COURT: Mr. Marin, in the last 24 hours,  
13 have you taken any medication or any substances that  
14 affect your thinking?

15 THE DEFENDANT: No.

16 THE COURT: And have you ever been treated for  
17 any mental illness issues or problems understanding  
18 what's going on?

19 THE DEFENDANT: No.

20 THE COURT: And, Mr. Marin, you understand that  
21 when you get done serving this time, it's very  
22 likely that you will be deported to your country of  
23 origin. Do you understand that, sir?

24 THE DEFENDANT: Yes.

25 THE COURT: I have no control over that, but as

1 the law currently stands, that's something that will  
2 be likely today. I don't know what will happen  
3 years from now, but that's a likely result today.  
4 Do you understand that, sir?

5 THE DEFENDANT: Yes.

6 THE COURT: Mr. Marin, are you, in fact, guilty  
7 of these charges?

8 THE DEFENDANT: Yes.

9 THE COURT: So you did engage in a sexual  
10 battery with these young girls?

11 THE DEFENDANT: Yes.

12 THE COURT: Mr. Marin, I want you to pay  
13 attention to what Mr. Scott tells me happened. When  
14 he's done speaking, I will then ask you if that's  
15 what took place. Okay, sir?

16 THE DEFENDANT: (No response.)

17 THE COURT: Do you understand, sir?

18 THE DEFENDANT: (Affirmative response.)

19 THE COURT: He nods "yes." Solicitor, go  
20 ahead, please, sir.

21 MR. SCOTT: Thank you, Your Honor. To my right  
22 are two very brave girls. I have to my immediate  
23 right, MINOR [REDACTED] And then in the green  
24 hoody, that's MINOR [REDACTED]

25 March 7th of last year, MINOR [REDACTED] was a ten year

1 old, a fourth grader. And at school they were  
2 learning about good touches and bad touches. Okay.  
3 This is sort of a, I guess, precursor to sex ed in  
4 public schools.

5 During a presentation, a teacher noticed **MINOR**  
6 weeping and was physically reacting to some of the  
7 information she was learning. The teacher became  
8 concerned, took **MINOR** aside, and asked her if  
9 everything was alright.

10 She began indicating that she had been the  
11 recipient of bad touches, and these bad touches had  
12 come at the hands of her second cousin. I believe  
13 it's her second cousin, Mr. Marin, who was an adult  
14 male.

15 This was passed on to the principal who  
16 notified DSS. At that point, Jared Honeycutt with  
17 the sheriff's department interviewed her, and she  
18 described incidents from approximately two years  
19 before this, so she would've been eight years old.

20 And **MINOR** described how Tito Marin had sexual  
21 intercourse with her when she was eight. She  
22 attended a forensic interview March 10th of 2017 and  
23 disclosed in further detail how it would occur.

24 From time to time, Mr. Marin would babysit her  
25 while her mother was at work. And the first assault

1 occurred when Marin walked into her room. He closed  
2 the door behind her -- behind him rather, and he  
3 locked it. He began touching the eight year old's  
4 body, her breasts, and -- and her vagina. **MINOR**  
5 describes being very confused and very frightened.  
6 She says at that time only her mother had seen her  
7 without clothes on.

8 Ominously, at that -- some point, he says, "It  
9 is time." At that point, he began to take her  
10 clothes off which further confused and frightened  
11 her. Made her lay on the bed, and at some point he  
12 placed a pillow over the eight year old's face. She  
13 couldn't see anything. All she could hear was the  
14 rattling of his belt and his boots on the floor.

15 He then proceeded to have sexual intercourse  
16 with the eight year old. When she -- when it was  
17 over, she vomited she felt so sick. He made her  
18 leave the pillow on her head. And, again, she  
19 describes only hearing the clicking of his boots and  
20 his belt as he got dressed. He told her to get  
21 dressed, and then he left the room. She said she  
22 just laid in bed crying at that point.

23 It happened more than that -- that time. Each  
24 time, the pillow was over the head. Each time,  
25 Mr. Marin was charged with the responsibility of

1 watching after [REDACTED] or entrusted with the  
2 responsibility of looking after [REDACTED].

3 Whenever he was finished, he would warn her  
4 against telling anyone. He would say things like,  
5 "It's your fault too. What we did was wrong." She  
6 would get in trouble if she reported, and her  
7 parents would not love her anymore if they found  
8 out.

9 All right. So this is the delay. This is two  
10 years. And only when she's learning in school about  
11 these good touches and bad touches does it come to  
12 light.

13 The sheriff's department, during their  
14 interview of [REDACTED] begins talking with other family  
15 members in the Hernandez household. Upon speaking  
16 with a 17-year old cousin, [REDACTED] without  
17 knowing the details, without knowing the specifics  
18 of allegations against -- or involving [REDACTED] [REDACTED]  
19 burst into tears. There was, again, this physical  
20 reaction upon Jared Honeycutt asking certain  
21 questions about Tito.

22 She indicated she too had been raped by Tito  
23 when she was ten years old. She said that Tito took  
24 her to his house and into his bedroom. He locked  
25 the door behind him and began touching her. He told

1 her to take her clothes off, and he placed a pillow  
2 over her head. He then had sexual intercourse with  
3 her, told her what they did was wrong and not to  
4 tell anyone because if her parents found out, they  
5 would hate her forever, is what he told the ten year  
6 old MINOR [REDACTED]

7 Judge, MINOR [REDACTED] she shouldn't. MINOR [REDACTED] feels a lot  
8 of guilt. She feels like because she delayed and  
9 didn't tell anybody, this occurred with MINOR [REDACTED]  
10 I've tried to tell her this is not her fault. This  
11 is Mr. Marin's fault, but she does harbor a lot of  
12 guilt about that. And I just want, again, to say  
13 she's a very brave girl. None of this is her fault.

14 I think those are all the substantive facts  
15 that lead to the indicted charges, Your Honor. At  
16 the appropriate time, MINOR [REDACTED] does want to address the  
17 Court. Her mother, Maribel, M-a-r-i-b-e-l,  
18 Hernandez, I believe wants to address the Court.  
19 And I think that's all.

20 THE COURT: I assume that Mr. Marin doesn't  
21 have any prior criminal history for this kind of  
22 thing?

23 MR. SCOTT: No sexual based crimes, Your Honor.  
24 Really magistrate level -- drinking, alcohol-type  
25 offenses are all I see on his record.

1 THE COURT: All right. Mr. Marin, did you hear  
2 what the Solicitor told me a few moments ago, sir?

3 THE DEFENDANT: Yes, I heard.

4 THE COURT: Is what they say true, sir?

5 THE DEFENDANT: Yes.

6 THE COURT: All right. Mr. Marin, I need to  
7 review with you rights that you're giving up by  
8 pleading guilty. If you don't understand something  
9 I tell you, stop me and I'll let you talk to  
10 Ms. Hernandez as long as you need to. Okay, sir?

11 THE DEFENDANT: Yes.

12 THE COURT: You understand that you do not have  
13 to plead guilty. You could have a jury trial on  
14 both of these cases. You understand that, sir?

15 THE DEFENDANT: Yes.

16 THE COURT: In a jury trial, you would help  
17 pick 12 people from Laurens County. We would pick a  
18 jury, and the State would have the burden of proving  
19 your guilt to their unanimous satisfaction beyond a  
20 reasonable doubt. Do you understand, sir?

21 THE DEFENDANT: Yes.

22 THE COURT: So all 12 jurors would have to  
23 agree that you were guilty before you could be  
24 punished for any crime. Do you understand, sir?

25 THE DEFENDANT: Yes.

1           THE COURT: The State would try to meet that  
2 burden by calling witnesses that would come forward  
3 and be sworn, and you and Ms. Hernandez would have a  
4 chance to see, confront, and question those  
5 witnesses. Do you understand, Mr. Marin?

6           THE DEFENDANT: Yes.

7           THE COURT: And at trial you have no burden of  
8 proof whatsoever, but if you wanted, you could call  
9 your own witnesses to testify. You could also  
10 subpoena any reluctant witnesses and force them to  
11 come to court. You understand, sir?

12          THE DEFENDANT: Yes.

13          THE COURT: You could also take the stand in  
14 your own defense. You understand that, sir?

15          THE DEFENDANT: Yes.

16          THE COURT: You'd be treated pretty much the  
17 same way as any other witness though, so if you  
18 decided that you didn't want to testify, I would  
19 instruct the jury that they couldn't hold it against  
20 you or talk about your failure to testify. In other  
21 words, they couldn't use your failure to testify as  
22 evidence of guilt. Do you understand, sir?

23          THE DEFENDANT: Yes.

24          THE COURT: If you plead guilty though, you  
25 waive this right and that you admit to me that you

1 did, in fact, commit these crimes. Do you  
2 understand, sir?

3 THE DEFENDANT: Yes.

4 THE COURT: Now at trial, Mr. Marin, you  
5 understand that you would be presumed innocent. You  
6 would also be able to challenge any of the evidence  
7 the State has against you. I've only been given a  
8 brief overview of the evidence that they have in  
9 this case, but whatever evidence they had, you could  
10 challenge it at trial. You understand, sir?

11 THE DEFENDANT: Yes.

12 THE COURT: If you plead guilty though, you  
13 don't get to challenge that evidence. Do you  
14 understand?

15 THE DEFENDANT: Yes.

16 THE COURT: Finally, Mr. Marin, at trial you  
17 could present any defense you might have to this  
18 charge. Do you understand, sir?

19 THE DEFENDANT: Yes.

20 THE COURT: Now, I have no way of knowing if  
21 you have any defense to this charge. I'm sure  
22 that's something you've discussed with  
23 Ms. Hernandez, correct?

24 THE DEFENDANT: Yes.

25 THE COURT: And you understand a defense to

1 this charge could be something as simple as, "All  
2 this is made up. I never touched either of these  
3 girls." You understand that's a defense that you  
4 could present?

5 THE DEFENDANT: Yes.

6 THE COURT: If you plead guilty though, you  
7 waive your right to present that or any other  
8 defense. And you also waive your right to do all  
9 the things I've just described.

10 Mr. Marin, are you sure that you want to give  
11 up these rights and plead guilty?

12 THE DEFENDANT: (No response.)

13 THE COURT: You may speak to her. Yes, sir.

14 (Brief discussion between counsel and the  
15 defendant.)

16 THE DEFENDANT: Yes.

17 THE COURT: And you do understand that by my  
18 calculation, the soonest you would be getting out of  
19 prison may be around age 62, 63. You understand  
20 that, sir?

21 THE DEFENDANT: Yes.

22 THE COURT: And are you satisfied with the  
23 discovery response from the State, and you shared  
24 that with Mr. Marin to the extent he wanted to see  
25 it?

1 MS. HERNANDEZ: Yes, Your Honor.

2 THE COURT: Mr. Marin, are you happy with the  
3 way that Ms. Hernandez has represented you?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you have any complaints to make  
6 about her?

7 THE DEFENDANT: No.

8 THE COURT: You've talked to her often enough  
9 and long enough so that she could prepare a defense  
10 for you?

11 THE DEFENDANT: Yes.

12 THE COURT: Has she done everything that you  
13 wanted her to do in this case?

14 THE DEFENDANT: Yes.

15 THE COURT: So you're totally happy with her  
16 services, correct?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you have any complaints to make  
19 against the Solicitor's Office, law enforcement, the  
20 police, court personnel, or anyone involved in this  
21 case?

22 THE DEFENDANT: Yes.

23 THE COURT: You have a complaint?

24 THE DEFENDANT: Oh, no.

25 THE COURT: Okay. So you've been treated

1 fairly, sir?

2 THE DEFENDANT: Yes.

3 THE COURT: And aside from the sentence of  
4 25 years, has anyone promised you anything else or  
5 held out any other promise or reward in return for  
6 your plea?

7 THE DEFENDANT: (No response.)

8 THE COURT: Has any -- anybody promised you  
9 anything other than 25 years in return for your  
10 guilty plea?

11 THE DEFENDANT: No.

12 THE COURT: Mr. Marin, are you pleading guilty  
13 of your own free will because you did, in fact,  
14 commit these crimes?

15 THE DEFENDANT: Yes.

16 THE COURT: And have you understood all the  
17 questions I've asked you?

18 THE DEFENDANT: Yes.

19 THE COURT: Is there anything that you need to  
20 ask me or Ms. Hernandez about before I accept your  
21 guilty plea?

22 THE DEFENDANT: No.

23 THE COURT: And you're certain that you want to  
24 plead guilty, sir?

25 THE DEFENDANT: Yes.

1 THE COURT: Very good. I do find there's a  
2 basis for this plea. It is freely, voluntarily,  
3 knowingly, and intelligently made, and Mr. Marin is  
4 fully satisfied with Ms. Hernandez's services. I  
5 will accept the plea.

6 Before I turn to you, I'm more than happy to  
7 hear anything that either MINOR or MINOR may want  
8 to say to me.

9 Ladies, I cannot tell you how sorry I am to  
10 meet y'all under these circumstances. And I have no  
11 idea what you're going through, but I'm happy to  
12 hear anything that you want to tell me, ladies.

13 VICTIM ONE: I want to give thanks for finally  
14 getting justice. I know I shouldn't have hide it  
15 because I do feel guilty for what happened to my  
16 cousin, but I know I should never take blame for  
17 what he did. And thanks to that justice, I finally  
18 get to close that chapter of my life and start a new  
19 one without that burden.

20 THE COURT: Thank you, MINOR  
21 MINOR anything that you want to say?

22 VICTIM TWO: (Negative response.)

23 THE COURT: And did Ms. Hernandez want to say  
24 anything?

25 MR. SCOTT: I believe Maribel -- Maribel wants

1 to address the Court, Your Honor. This is MINOR  
2 mother.

3 THE COURT: Maribel Hernandez. Yes, ma'am.

4 (Through the interpreter:)

5 VICTIM'S MOTHER: Yes. I would've never wanted  
6 this for any girl. Someone who was trusted. I want  
7 to thank God and all of you who have helped us  
8 because justice has been served, because in my  
9 country, there is no justice. Here I discovered  
10 that there were -- is good to be heard.

11 Thank you to the lawyers from my family.

12 THE COURT: Thank you, Ms. Hernandez. Are you  
13 from Guatemala, ma'am, or no?

14 VICTIM'S MOTHER: Mexico.

15 THE COURT: Mexico. I apologize, ma'am.  
16 Anything further from the State, Solicitor?

17 MR. SCOTT: No, Your Honor.

18 THE COURT: Ms. Hernandez, happy to hear  
19 anything that you want to tell us obviously, and  
20 certainly anything that Mr. Marin wants to tell me.  
21 Obviously, it's a negotiated plea, but go ahead.

22 MS. HERNANDEZ: Yes, Your Honor. I just want  
23 to say to the victim, I feel their pain. I'm also  
24 from Mexico. There is justice here, that's why I'm  
25 here. He needs representation, as well as they need

1 representation, so I want to make sure that that --  
2 all of this is part of the justice system that is  
3 working also for my client and for their sake also.

4 My client is a 42-year-old male that is from  
5 Mexico. As Mr. Scott explained to you, he does not  
6 have any substantial criminal history other than  
7 some minor stuff. He accepts responsibility for it  
8 and his actions. And he asks you to go along with  
9 the recommendation of the prosecution.

10 THE COURT: Very good. When was he taken into  
11 custody?

12 MS. HERNANDEZ: March 6th of 2017. And I  
13 started representing Mr. Marin after he had been  
14 represented by the Public Defender in January of  
15 this year. I think he felt comfortable with the way  
16 we could communicate with each other on his own --  
17 his own language.

18 THE COURT: Mr. Marin, is there anything that  
19 you want to tell me, sir?

20 THE DEFENDANT: No, thank you.

21 THE COURT: Yes, sir.

22 All right. MINOR MINOR again, I can't tell  
23 you how sorry I am that y'all had to endure this.  
24 And I'm going to tell you that in life a lot of bad  
25 stuff is going to happen to you, and I'm going to

1 tell you that you're supposed to be affected by the  
2 bad things that happen to you. Okay?

3 You're not going to be able to keep bad stuff  
4 from happening to you. You both know that now. All  
5 right. You're not going to be able to keep that  
6 from happening. It's going to happen to everybody.  
7 The only thing that you can do is figure out some  
8 way -- the best way to react to those bad things  
9 that happen to you girls. Okay?

10 And, **MINOR** this is not your fault. Okay?  
11 What happened to your sister and what happened to  
12 you is not your fault. And if -- I can't stop you  
13 from feeling that way. And I understand that I  
14 might feel that way too, but I promise you, ma'am,  
15 what happened to you, what happened to her, was his  
16 doing and his doing alone. Okay?

17 All right. Mr. Marin, I followed the  
18 negotiations in this case. On each charge, sir, I  
19 sentenced you to 25 years in the Department of  
20 Corrections. By law, you do get credit for 358 days  
21 that you served in jail since March the 6th of 2017,  
22 and these sentences will run concurrently with each  
23 other.

24 Mr. Scott, does this comply with y'all's  
25 negotiations?

1 MR. SCOTT: It does, Your Honor.

2 THE COURT: Ms. Hernandez?

3 MS. HERNANDEZ: It did, Your Honor. Thank you.

4 THE COURT: Mr. Marin, you have ten days to  
5 file any appeal from this matter. You need to  
6 instruct your attorney if you want her to appeal  
7 this guilty plea. I don't know that that would be  
8 very fruitful, but do understand you do have the  
9 right to any appeal from this guilty plea.

10 And you do have one year to file any action for  
11 post-conviction relief from either today's date or  
12 from the conclusion of any appeal. Do you  
13 understand, sir.

14 THE DEFENDANT: Yes.

15 THE COURT: Good luck to everyone.

16 (The proceedings concluded at 4:36 p.m.)

17 - - -

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## 1                   C E R T I F I C A T E   O F   R E P O R T E R

2

3                   STATE OF SOUTH CAROLINA

4                   COUNTY OF LAURENS

5

6                   I, the undersigned, Lisa Scott, Circuit Court  
7                   Reporter for the Eighth Judicial Circuit of the  
8                   State of South Carolina, do hereby certify that the  
9                   foregoing is a true, accurate and complete  
10                  transcript of record of all the proceedings had and  
11                  the evidence introduced in the hearing of the  
12                  captioned cause, relative to appeal in the Criminal  
13                  Court for Laurens County, South Carolina, on the  
14                  27th day of February, 2018.

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

17

18

September 6, 2018

19

20

/s/Lisa Scott

21

22

*Lisa Scott*  
*Circuit Court Reporter*

23

24

25

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

County of Laurens )

Tito Olan Masin )  
Full name and prison number (if any) of Applicant )

v. )

State of South Carolina )

APPLICATION FOR  
POST-CONVICTION RELIEF

LAURENS COUNTY  
CLERK OF COURT

2018 JUL -5 PM 12:01

LYNN W. LANCASTER

**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 Perry Correctional Institution, 430 Oaklawn Rd, Pelzer, SC 29669

2. Name and location of Court which imposed sentence Laurens County General Sessions

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) 17GS30-0989 CSC with a minor, First Degree

(b) 17GS30-0990 CSC with a minor, First Degree

- (c) \_\_\_\_\_
- 5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) 2-27-18 / 25 years run concurrent
  - (b) \_\_\_\_\_
  - (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?  
N/A

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. \_\_\_\_\_

- 9. If you answered "no" to (7), state your reasons for not so appealing:
  - (a) N/A
  - (b) \_\_\_\_\_

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

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

(a) See Attachments

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

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

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

(a) See Attachments

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

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

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

(a) any petition in a State Court under South Carolina Law? N/A

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A

(d) any other petitions, motions or applications in this or any other Court? N/A

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. \_\_\_\_\_

10(A) Ineffective assistance of counsel for failure to discharge his duty of due diligence to investigate the evidence, facts, and witness(es) in this case.

(B) Ineffective assistance of counsel for coercing the defendant into a guilty plea.

(C) Ineffective assistance of counsel for a involuntary plea.

(D) Ineffective assistance of counsel for his abandonment of his client, before trial.

11(A)(1) Counsel failed to properly investigate the case.

(2) Counsel failed to provide a proper defense for physical evidence, for case.

(3) Counsel failed to spend adequate time with Petitioner reviewing discovery with him, and preparing for trial.

(4) Counsel failed to adequately investigate the alleged crime scene or the allegations so as to be prepared to present testimony of relevant evidence related to the matter.

(5) Counsel failed to investigate witness(es) and prepare for trial.

(1)

(6) Counsel was ineffective for providing erroneous and incorrect advice to plead guilty instead of challenging the State's evidence through the protections of trial. Therefore, Petitioner's Plea was unknowing and involuntary entered into, due to incomprehension of the indictment, and the guilty plea. Petitioner has never seen the indictment, or reviewed it with counsel. Furthermore, Petitioner did not understand that a guilty plea must be entered voluntarily and intelligently. The defendant must be advised of his privilege against self-incrimination, the right by trial by jury, and the right to confront one's accusers. A valid waiver of these rights cannot be presumed from a silent record. *Boykin vs Alabama* 395 U.S. 238, 89 S.Ct 1709 (1969) The court in *Boykin* also noted that "Ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats might be the perfect cover up of unconstitutionality." 395 U.S. at 242-243, 89 S.Ct. at 1712." The Petitioner's counsel used coercion, and scare tactics, with a threat of a life sentence, to obtain a guilty plea in this case.

(7) Counsel failed to provide a strategy for trial.

(8) Before the day of the trial, defendant's attorney used terror and scare tactics towards his client, "telling him to enter the plea bargain for 25 years or he was going into court, and for sure get a life sentence." Thereby, effectively abandoning him / his client before trial.

16(A) (B) and (C) Ineffective assistance of counsel: This is the only venue I am aware of for these type of claims.

(c) the disposition thereof:

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

N/A

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. \_\_\_\_\_

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. Angelica Hernandez, 217 East Stone Ave Ste 21,  
Greenville, SC 29609
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
- i. Guilty plead
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

Reverse and Remand

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

N/A

STATE OF SOUTH CAROLINA )  
County of Laurens )

VERIFICATION

I, Tito Masin, 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.

Tito Masin Olav

SWORN to and subscribed before me this 2<sup>nd</sup> day of July, 2018.

Nancy C. Marshant (L.S.)  
Notary Public

My Commission Expires: 1-23-2023

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

I, Tito Marin, 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.

Tito Marin Olán ✓  
Applicant

SWORN or affirmed to and subscribed before me this  
2<sup>nd</sup> day of July, 2018.

Nancy C. Muehbach  
Notary Public

My Commission Expires: 1-23-2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS	)	EIGHTH JUDICIAL CIRCUIT
	)	
Tito Olan Marin, #375585	)	Case No.: 2018-CP-30-512
	)	
Applicant,	)	
	)	<b>RETURN</b>
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The State (“Respondent”), making its Return to the application for Post-Conviction Relief filed on July 5, 2018, would respectfully show this Court:

**I. Procedural History**

Tito Olan Marin (“Applicant”) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Laurens County Clerk of Court. During the May 2017 term, the Laurens County Grand Jury indicted Applicant for two counts of first degree criminal sexual conduct with a minor (2017-GS-30-0989; -0990). Lydia Angelica Hernandez, Esquire (“Counsel”) represented Applicant. Deputy Solicitor C. Dale Scott of the Eighth Circuit Solicitor’s Office prosecuted the case.

On February 27, 2018, Applicant appeared before the Honorable Frank R. Addy, Jr and pled guilty as indicted. Pursuant to a negotiated sentence between the State and Applicant, Judge Addy sentenced Applicant to concurrent terms of twenty-five-years’ imprisonment on each charge, along with credit for time served of 358 days. Applicant did not appeal his guilty plea.

**II. Factual History**

On March 7, 2017, Victim 1 was in fourth grade and was learning about good touches and bad touches. (GP Tr. 9-10.) During the class, Victim 1 began to cry and physically react to the

information she was learning. (GP Tr. 10.) The teacher took Victim 1 aside and asked her if everything was alright. (GP Tr. 10.) Victim 1 told her teacher she had received bad touches from Applicant. (GP Tr. 10.) The teacher notified the principal, who in turn notified DSS. (GP Tr. 10.) The Victim was interviewed by Jared Honeycutt (“Honeycutt”) with the Laurens County Sheriff’s Department and she told him about incidents that occurred when she was eight years old. (GP Tr. 10.) Victim 1 was sent to a forensic interviewer and disclosed the details of Applicant’s actions. (GP Tr. 10.) Victim 1 stated Applicant – who is her second cousin- would babysit her while her mother was at work. (GP Tr. 10.) During the first assault, Applicant walked into her room and locked the door behind him. (GP Tr. 11.) He began touching Victim 1’s breasts, body, and vagina. (GP Tr. 11.) Victim 1 described being frightened because only her mother had seen her without clothes on at that time. (GP Tr. 11.) At some point, Applicant began to take her clothes off and laid her on the bed. (GP Tr. 11.) Applicant covered Victim 1’s face with a pillow, but she described being able to hear his belt rattling and his boots on the floor. (GP Tr. 11.) Applicant then proceeded to have sexual intercourse with Victim 1. (GP Tr. 11.) Victim 1 stated she vomited after the first assault and “felt so sick.” (GP Tr. 11.) Applicant left the pillow over her head and told her to get dressed when he left her room. (GP Tr. 11.)

Applicant assaulted Victim 1 more than one time and each time he would place a pillow over her head. (GP Tr. 11-12.) Applicant told Victim 1 his actions were her fault too and what they did was wrong, so she better not tell her parents because they would not love her anymore. (GP Tr. 12.)

Upon further investigation into the family by the Laurens County Sheriff’s Office, they located Victim 2. (GP Tr. 12.) Victim 2 was interviewed by Honeycutt, and, without knowing the specifics of Victim 1’s allegations, Victim 2 began to cry when Honeycutt asked certain questions

about Applicant. (GP Tr. 12.) Victim 2, who is now 17 years old, told Honeycutt Applicant raped her when she was ten years old. (GP Tr. 12.) Victim 2 said Applicant took her into his bedroom, locked the door behind him, and began touching her body. (GP Tr. 12.) Applicant took her clothes off and placed a pillow over her head. (GP Tr. 13.) Applicant then had sexual intercourse with Victim 2, and told her if her parents found out they would hater her forever. (GP Tr. 13.)

### **III. Allegations Raised and Relief Sought**

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. “failure to discharge his duty of due diligence to investigate the evidence, facts, and witnesses in this case”
  - b. “for coercing the defendant into a guilty plea”
  - c. “for an involuntary plea”
  - d. “for his abandonment of his client, before trial”
  - e. “counsel failed to investigate the case”
  - f. “counsel failed to provide a proper defense for physical evidence for the case”
  - g. “counsel failed to spend adequate time with petitioner reviewing discovery with him and preparing for trial”
  - h. “counsel failed to adequately investigate the alleged crime scene or the allegations so as to be prepared to present testimony of relevant evidence related to the matter”
  - i. “counsel failed to investigate witnesses and prepare for trial”
  - j. “counsel was ineffective for providing erroneous and incorrect advice to plead guilty instead of challenging the state’s evidence through the protections of trial”
2. Involuntary Guilty Plea
  - a. “Petitioner’s plea was unknowing and involuntary entered into, due to incomprehension of the indictment and the guilty plea. Petitioner has never seen the indictment or reviewed it with counsel. Furthermore, petitioner did not understand that a guilty plea must be entered voluntarily and intelligently. The defendant must be advised of his privilege against self-incrimination, the right by trial by jury and the right to confront one’s accusers.”
  - b. “The Petitioner’s counsel used coercion and scare tactics with a threat of a life sentence, to obtain a guilty plea in this case”
  - c. “Before the day of the trial, defendant’s attorney used terror and scare tactics, towards his client telling him to enter the plea bargain

for 25 years or he was going into court and for sure, get a life sentence”. Thereby, effectively abandoning him/his client before trial”

As requested relief, Applicant requests that his conviction be “reversed and remanded.”

Attached to this Return and incorporated by reference are the records of the Laurens 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.

### **III. Response to Allegation of Ineffective Assistance of Counsel**

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

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, the applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made

all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. Counsel explained to the plea court she had met with Applicant on several occasions “in his own language” to discuss his case. (GP Tr. 6.) Counsel also testified she received full discovery from the State and investigated the case. (GP Tr. 6, 17.) Applicant testified he was “totally happy” with the way Counsel represented him, she had done everything Applicant asked her to do, and he had enough time to talk to her in order to prepare his case. (GP Tr. 18.) 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. Involuntary Guilty Plea**

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)).

In this case, the record refutes any allegation Applicant did not knowingly enter his guilty plea. At the guilty plea hearing, Judge Addy conducted a thorough colloquy with Applicant where he advised Applicant of the charges against him and Applicant testified that he understood them. (GP Tr. 6-9.) Applicant was also advised of his constitutional rights he would waive by pleading guilty, including the right to a trial, which Applicant testified he understood. (GP Tr. 14-17.) Furthermore, Applicant testified he was pleading guilty because he was in fact guilty and was not promised anything in exchange for his guilty plea. (GP Tr. 19.)

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).

#### **V. Any Future Amendments**

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)-(b), SCRCF. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized

to file amendments to this application. See Rule 11, 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.

**VI. Response to All Other Allegations**

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

**VII. Request for an Evidentiary Hearing**

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

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

JANELL H. GREGORY  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

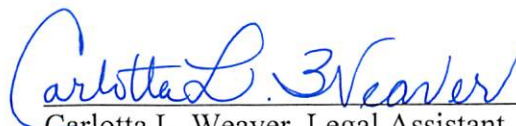
December 14, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS	)	
	)	
	)	2018-CP-30-512
	)	
TITO OLAN MARIN, #375585,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

**Ashley A. McMahan, Esquire**  
**Mac | Vance Attorneys, LLC**  
**Post Office Box 5501**  
**West Columbia, South Carolina 29171**

DATED this the 14th day of December, 2018.

  
 Carlotta L. Weaver, Legal Assistant  
 For Respondent

1 STATE OF SOUTH CAROLINA )  
2 COUNTY OF LAURENS ) IN THE COURT OF COMMON PLEAS

3  
4 TITO OLAN MARIN )  
5 APPLICANT, ) TRANSCRIPT OF RECORD  
6 -vs- ) 2018-CP-30-00512  
7 STATE OF SOUTH ) OCTOBER 14, 2019  
8 CAROLINA, ) GREENWOOD, SOUTH CAROLINA  
9 RESPONDENT. )

10  
11 B E F O R E:

12 THE HONORABLE L. CASEY MANNING, JUDGE.  
13

14  
15 A P P E A R A N C E S:

16 ASHLEY A. MCMAHAN, ESQUIRE  
17 ATTORNEY FOR THE APPLICANT

18 BRIANNA L. SCHILL, ASSISTANT ATTORNEY GENERAL  
19 ATTORNEY FOR THE RESPONDENT

20 ALSO PRESENT: MS. EMILY ALPHONSO, INTERPRETER

21 MICHAEL R. WATTS  
22 CIRCUIT COURT REPORTER  
23  
24  
25

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EXHIBITS

1	NO.	DESCRIPTION	ID.	EV.
2				
3		(NO EXHIBITS MARKED)		
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1 (PROCEEDINGS, OCTOBER 14, 2019)

2 (NOTE: Whenever "THE APPLICANT" was used as  
3 colloquy in this transcript, that designates the applicant  
4 answered in broken English and, therefore, created some  
5 unintelligible answers)

6 THE COURT: Yes, ma'am.

7 MS. MCMAHAN: Your Honor, also on this one we have  
8 Ms. Alphonso as the interpreter. Do you want to swear her  
9 in as well?

10 THE COURT: Well, I'm a little hard of hearing.  
11 Could I ask you to speak up a little bit? Do you have a  
12 microphone up there? Just speak up a little bit, please, or  
13 come up to the microphone.

14 Yes, ma'am.

15 MS. MCMAHAN: On this case, Your Honor, we have  
16 Ms. Alphonso, the interpreter. Did you want to swear her  
17 in, or would you like the clerk to do it?

18 THE COURT: The clerk may do so.

19 THE CLERK: Do you solemnly promise and swear that  
20 you shall interpret the testimony of the defendant or he or  
21 she make any answers posed to you, so help you God?

22 THE INTERPRETER: I do.

23 THE COURT: Yes, ma'am.

24 MS. SCHILL: May it please the court, Your Honor,  
25 the first case is Tito Marin versus the State of South

1 Carolina. This is case number 2018-CP-30-512.

2 The applicant is presently confined in the South  
3 Carolina Department of Corrections pursuant to orders of  
4 commitment of the --

5 THE COURT: Slow down a little bit for the  
6 interpreter, please, ma'am.

7 MS. SCHILL: Okay.

8 -- of the Laurens County Clerk of Court during the  
9 May 2017 term.

10 The Laurens County Grand Jury indicted applicant  
11 for two counts of first degree criminal sexual conduct with  
12 a minor.

13 Lydia Angelica Hernandez, Esquire, represented  
14 applicant at applicant's guilty plea hearing.

15 Deputy Solicitor C. Dale Scott of the Eighth  
16 Circuit Solicitor's Office prosecuted the case.

17 On February 27th, 2018, applicant appeared before  
18 the Honorable Frank R. Addy, Jr. And pled guilty as  
19 indicted.

20 Pursuant to a negotiated sentence between the  
21 State and applicant Judge Addy sentenced applicant to  
22 concurrent terms of 25 years imprisonment on each charge,  
23 along with credit for time served of 358 days.

24 Applicant did not appeal his guilty plea or  
25 sentence.

1           On July 5th, 2018, applicant filed his timely  
2 application for post-conviction relief alleging various  
3 claims which respondent interprets as the following:

4           Ineffective assistance of counsel as to Ms.  
5 Hernandez for:

6           1, failure to investigate applicant's case and  
7 witnesses.

8           2, failure to "provide a proper defense for  
9 physical evidence for the case."

10           And 3, failure to adequately prepare for trial.

11           And also claims for involuntary guilty plea by:

12           1, not being advised of his Constitutional Rights  
13 that were waived by way of his guilty plea.

14           And, 2, by being coerced by counsel to plead  
15 guilty.

16           Applicant is present today and represented by Ms.  
17 Ashley McMahan, Esquire. And I would just ask that she  
18 verify that those are the allegations that they are going  
19 forward on.

20           THE COURT: All right.

21           Yes, ma'am.

22           MS. MCMAHAN: Yes, Your Honor, we are going  
23 forward on the allegations as they are written in the PCR  
24 application.

25           We will call Mr. Marin.

1 THE COURT: All right.

2 Come around, sir.

3 TITO OLAN MARIN, having been first duly sworn,  
4 testified as follows:

5 THE DEFENDANT: Yes.

6 DIRECT EXAMINATION BY MS. MCMAHAN:

7 Q. Mr. Marin, would you state your name for the record?

8 A. Tito Marin Olan.

9 Q. And did you file this PCR application?

10 A. Yes.

11 Q. Who was your first attorney that you had?

12 A. Joel Broome.

13 Q. And did anybody else help Mr. Broome? Chelsea McNeill?

14 A. The last week it was Chelsea.

15 Q. And how long was Mr. Broome your attorney?

16 A. I think seven and a half months, something like that.

17 Q. And you were in the detention center the whole time?

18 A. One year.

19 Q. And how many times did you meet with Mr. Broome?

20 A. Maybe six times, something like that.

21 Q. Did you speak better English -- do you speak better  
22 English now than you did with Mr. Broome?

23 THE APPLICANT: Yes, I do, because now I got  
24 education in the department of corrections.

25 BY MS. MCMAHAN:

1 Q. Did Mr. Broome bring an interpreter with him?

2 A. Never.

3 I told the judge that I needed an interpreter and she  
4 said no. No, they never gave me one.

5 MS. SCHILL: Your Honor --

6 THE COURT: The judge was a she?

7 THE WITNESS: The one that -- the one that read  
8 the charges?

9 THE COURT: The Clerk of Court.

10 THE WITNESS: So it was about two months had  
11 passed and then like maybe a month and a half after when  
12 they were doing the sentencing. I told her "I don't have an  
13 attorney."

14 She goes "no, no, you are doing it."

15 I said "no, I don't have one."

16 Like "yeah, you do."

17 I said I didn't have one, so then when she looked  
18 she saw that I didn't have one and then about 15 minutes  
19 later she came back and said "well, you have one now."

20 BY MS. MCMAHAN:

21 Q. Was that for a bond hearing?

22 A. Uh-huh.

23 Q. And that'S when Mr. Broome started representing you?

24 A. Yes, about two months and a few days after.

25 Q. Okay. And then Mr. Broome represented you until you

1 hired Ms. Hernandez?

2 A. Yes.

3 Q. And what did you and Mr. Broome talk about?

4 A. Well, and I spoke to him the first time I told him to  
5 investigate it because I wasn't in South Carolina. I was in  
6 Wilmington, North Carolina at the time.

7 Q. Okay.

8 THE COURT: Can we stop and see y'all a minute,  
9 please?

10 (Whereupon, the lawyers approached the bench for  
11 an off-the-record discussion)

12 THE COURT: I think we can continue with this, but  
13 Mr. Broome is going to have to be here in person.

14 MS. MCMAHAN: Do you want me to go ahead and  
15 finish with Mr. Morin's testimony and then --

16 THE COURT: I think you can --

17 MS. MCMAHAN: -- get in touch with Mr. Broome?

18 THE COURT: -- but probably it's best for Mr.  
19 Broome to be here the whole time.

20 Mr. Broome is not available, he's in another  
21 court, which probably takes precedent over this one. It's  
22 General Sessions.

23 MS. MCMAHAN: Yes, sir.

24 THE COURT: It would bump this one.

25 I have been around a long time and I think Mr.

1 Broome needs to be here with his file, okay?

2 MS. MCMAHAN: Okay.

3 THE COURT: You know, we need to call him and see  
4 when he can be here.

5 MS. MCMAHAN: That's what I was going to get to.  
6 If we could just stand down for a minute?

7 THE COURT: Yeah, let's do that.

8 MS. MCMAHAN: And then let me take a break and  
9 call Mr. Broome.

10 THE COURT: If I need to talk to Mr. Broome, I  
11 would be happy to do so.

12 MS. MCMAHAN: Okay. Thank you.

13 Mr. Marin, we are going to take a break real fast  
14 on your case. If you want to go back and hang out, we will  
15 bring you back out.

16 (Whereupon, proceedings were adjourned).

17 (Whereupon, proceedings were reconvened)

18 THE COURT: This morning we started the testimony  
19 of the applicant. He gave testimony indicating that Mr.  
20 Joel Broome?

21 MS. MCMAHAN: Broome, B-R-O-O-M-E.

22 THE COURT: He indicated that Mr. Broome was his  
23 lawyer for several months, talked to him about six times at  
24 the county jail before somebody else took over. That was  
25 his testimony in a nutshell. Is that fair enough for

1 everybody?

2 MS. MCMAHAN: Yes.

3 THE COURT: That's what I recall off the top of my  
4 head. And at that point I stopped the trial and said I  
5 think it's important enough for the gentleman to be here.  
6 Is that fair enough?

7 MS. MCMAHAN: Yes.

8 MS. SCHILL: Yes.

9 THE COURT: All right. Do you want to back up a  
10 little bit for his benefit?

11 MS. MCMAHAN: Yes, Your Honor.

12 I'm sorry. I was talking too fast. I do  
13 apologize.

14 THE INTERPRETER: That's all right, Your Honor.

15 THE COURT: Did you have an opportunity to explain  
16 to him what I said?

17 THE INTERPRETER: I did interpret what you said.

18 THE COURT: Did he understand what I just said?

19 THE INTERPRETER: Yes.

20 BY MS. MCMAHAN:

21 Q. Mr. Marin, you had just testified that you had a bond  
22 hearing and you didn't have an attorney at that bond  
23 hearing. Is that correct?

24 THE APPLICANT: Yeah. I -- I first time -- the  
25 first time Joel Broome come and see me was June 1st or June

1 2nd, I think.

2 BY MS. MCMAHAN:

3 Q. Okay.

4 THE APPLICANT: The first time they gave me my  
5 phone call, my free phone call.

6 BY MS. MCMAHAN:

7 Q. So you had talked to him on the phone from the jail  
8 once?

9 A. No. Mr. Broome, no.

10 Q. Okay. But you said that when he came to see you, he  
11 didn't bring an interpreter?

12 A. No. None of the times that he came to see me.

13 Q. So some of your ineffective issues I believe were like  
14 to both Mr. Broome and Ms. Hernandez, is that correct?

15 A. Yes.

16 Q. Did you feel like you had to hire Ms. Hernandez because  
17 of Mr. Broome?

18 A. Yes.

19 Q. So you met with Mr. Broome six times. How many times  
20 did you meet with Ms. McNeill?

21 A. Who is McNeill?

22 Q. Chelsea?

23 A. Chelsea? Two times.

24 Q. And when you met with Chelsea and Mr. Broome, was that  
25 to talk about going to trial?

1 A. Yes, they said that it would be the next week.

2 Q. What did they tell you that the solicitor had offered  
3 you to plead guilty to?

4 Mr. Broome.

5 A. (No response).

6 Q. You didn't discuss any plea offers with him at all?

7 A. No.

8 Q. Did you tell him that you would plead guilty to  
9 something?

10 A. No. Well, you know, being in the county, I mean, they  
11 usually offer something and I asked, you know, did they  
12 offer anything and he didn't say.

13 Q. Did Chelsea ever say anything to you about it, a plea  
14 offer?

15 A. No.

16 Q. So why did you hire Ms. Hernandez?

17 A. Well, when -- because when Mr. Broome would come, he  
18 would always ask me, you know, the same questions.

19 And, for example, I told him that Santiago Caldena, my  
20 cousin who was living with me, that he was my witness, that  
21 I was working in North Carolina. And the family, they were  
22 coming to over to where I was going to work, but he was  
23 going to get deported, but I told him he needed to speak to  
24 him, you know, before the next week. So, you know, I saw  
25 him and I said "hey, did you call him," and he said, you

1 know, no. And I was like "you need to talk to him because  
2 he is going to Mexico on a voluntary departure."

3 Then Mr. Broome came and told me, "hey, I need to speak  
4 with Santiago."

5 And so then Mr. Broome said "hey, I need to speak with  
6 Santiago" and I told him "it's too late. He's already been  
7 deported." You know, I had given him a month to speak with  
8 him and he hadn't done that, and, you know, I needed that  
9 witness for my particular case.

10 Q. Where is Mr. Santiago now?

11 A. Mexico.

12 Q. And did Mr. Broome tell you that he spoke to him at all  
13 or not?

14 A. No. He said no.

15 Q. Did Mr. Broome represent you at your bond hearing?

16 A. No.

17 Q. Besides talking to Santiago, what else did you ask Mr.  
18 Broome to do that he didn't do?

19 THE APPLICANT: He asked the investigator about  
20 my (unintelligent). I think she said (unintelligent) and she  
21 was working three hours a day and I was working in North  
22 Carolina (unintelligent) and I lose my job, you know, and  
23 (unintelligent).

24 BY MS. MCMAHAN:

25 Q. So also that you were working in North Carolina part of

1 the time?

2 A. So I asked him if he had, you know, investigated. I  
3 told him I had been working there for four months. He said,  
4 "yeah, but it was just 15 days," but I have the W-2 from  
5 working there and the amount proves that I had been there  
6 for four months.

7 Q. You felt like the W-2 had proven that you were actually  
8 in the State of North Carolina for four months?

9 A. Yes, the federal taxes, the federal papers.

10 Q. Who has that W-2 now?

11 A. I believe Ms. Hernandez or Mr. Broome. He also might  
12 have a copy.

13 Q. So tell me about Ms. Hernandez and what she did when  
14 you hired her.

15 A. Okay. So that's when I acquired Mr. Broome with  
16 Chelsea and he said "Tito, to be honest with you, I don't  
17 have experience in this case." And he came back two days  
18 later with Chelsea and said "you know, she's going to help  
19 me because she has more experience," but, you know, she was  
20 asking me, you know, about the name of Zong, the name of my  
21 boss, and I didn't understand why she needed that, because  
22 that was from Florida; and asking about the wife and the  
23 kids, and so I called James. I already had Ms. Hernandez'  
24 number and I asked him to call her.

25 She came to see me. It was a Thursday, so I explained

1 to her what was going on and the papers and she was like  
2 "ah, how long have you been in," and I told her 11 months,  
3 and she's like "ah, I'll get you out for time served." And,  
4 you know, that's -- that's what I wanted to hear because  
5 that's what I wanted to do.

6 She said "the only thing that's going to cost you is  
7 \$3,000" and I said "that's no problem. Just talk to my  
8 friend, the one who has spoken with you."

9 Q. Who is James?

10 A. James is a friend of mine. He's 75. He's a really  
11 good friend of mine when I lived in Joanna. He's spoke a  
12 lot with Mr. Broome. He -- he knows him.

13 Q. And so James took care of paying Ms. Hernandez?

14 A. Yes, he told me that on Monday he had sent it via bank  
15 number.

16 Q. When did you see Ms. Hernandez again?

17 A. From what I recall, I don't think I saw her again until  
18 the court date.

19 Q. Until you went to court and pled guilty?

20 A. Uh-huh, yeah.

21 Q. Who did you talk to most of the time between the first  
22 time that you saw Ms. Hernandez and the last time?

23 A. The person is not here. I don't know who it was. I'm  
24 not sure if it was another lawyer or if it was Ms.

25 Hernandez' assistant.

1 Q. It was somebody else with her office?

2 A. Yeah.

3 Q. And what did they tell you about your case?

4 A. Well, when she came, after I fired Mr. Broome, he said  
5 "look, there is no problem. You know, I don't know that  
6 much about it. There is no hard feelings."

7 You know, he asked me who was my new attorney and I  
8 told him Angelica. I couldn't remember her last name and he  
9 said that he would look it up in the directory. And he said  
10 "you know, tell her to call my office. You know, I can help  
11 her. I can give her papers. I can give her the things that  
12 I have."

13 So he asked me "hey," he says, "so who is your lawyer?  
14 She hasn't contacted me." He came by a couple of times and  
15 I told him "I don't know. I told her to call you." And he  
16 said "you know, because your trial is next week and she  
17 hasn't come and I'm worried. I mean, if you want, I can go  
18 with you to trial."

19 Q. So did you see anybody else from Ms. Hernandez' office  
20 in this time and talk to them?

21 A. Actually it was about a month later that someone from  
22 her office came. As a matter of fact, I was happy and I  
23 asked "you have good news for me?"

24 She said "no.

25 "No?

1 "Well, you know, they are offering you a deal."

2 I said "what about the proof? Don't they believe me?"

3 It was like "well, in North Carolina, no, it was just a  
4 few days." She was telling me the same thing that Mr.

5 Broome had told me. And she said "well, we have 20 years.

6 "20 years? Why? Don't they believe me?"

7 And she said "no. You know, just, you know, take the  
8 deal or it's 25.

9 "But I don't have an option?

10 "No. Or life."

11 And I said -- I asked her, I spoke to her, but, you  
12 know, my mind was closed. I was innocent. She said "take  
13 what they offer," but I wasn't really sure what the offer  
14 was and the 20 years.

15 THE APPLICANT: And she -- and she say okay.

16 And the next day she coming back and she said "oh,  
17 wow, what happened? You got something good news for me  
18 now?"

19 She said "no, now they don't want to give you 20.  
20 They wanted a deal for 25."

21 I say -- I said "what do you mean 25?" I said  
22 "what the deal with 20?" I said --

23 She said "if you don't want the deal, you are  
24 going to a trial."

25 And I said "I'll go through that trial, they don't

1 have enough to defend me, nothing to prove I'm not guilty  
2 and I don't have a choice."

3 I said "well, I don't have a choice?"

4 She said "no."

5 I said "okay, I'll take the deal. Maybe they give  
6 me life, yeah." I said "yeah, that scare me." I said put  
7 in my hand 25 is life, I don't have a choice." I said  
8 "okay, nobody wanted to help me. Everything is up to me  
9 now. I'll just take 25.

10 BY MS. MCMAHAN:

11 Q. And so is that why you decided to take the 25 years --

12 THE APPLICANT: Yeah.

13 BY MS. MCMAHAN:

14 Q. -- because you felt like you had no other choice?

15 THE APPLICANT: I don't have a choice.

16 BY MS. MCMAHAN:

17 Q. What happened at the guilty plea when Ms. Hernandez  
18 said that you had to say you did it?

19 THE APPLICANT: Well, the last time was Joel, he  
20 told me "Mr. Marin" -- what did he say?

21 A. The judge said "do you waive your rights?"

22 THE APPLICANT: And when he told me that, he said  
23 "you waive your right and are you sure that you want to  
24 plead guilty and be prepared to say that you did it, Tito?"  
25 And I talked to -- tell Ms. Hernandez, I said "I won't say

1 yes because I know I did not do it," and she told me "if you  
2 don't say yes, we are not going to have a deal," and she  
3 said "don't worry about it, I'll look for you to deportation  
4 and I'll do your appeal." She said --

5 I think she got everything under control and a few  
6 minutes I said in my mind it's a hundred percent right --  
7 maybe a thousand percent. I say "okay, I'll go everything.  
8 I don't have no choice." She filed my deportation. I don't  
9 have any other choice.

10 BY MS. MCMAHAN:

11 Q. She was trying to get your deportation done quickly?

12 THE APPLICANT: Yeah. She said "I'll do your  
13 deportation."

14 BY MS. MCMAHAN:

15 Q. Did she sit and go over your case with you, like any  
16 papers that the solicitor had sent her, or any discovery, or  
17 anything like that?

18 A. I don't recall.

19 Q. Did she tell you what the evidence was against you?

20 A. No. She had not come to speak with me in the room. It  
21 was just right there.

22 Q. And did you give her the W-2's also about you being in  
23 North Carolina for four months?

24 A. Yes. I gave her copies, yes.

25 Q. Do you feel like she forced you into pleading guilty?

1 A. So, yes, but I wasn't guilty and I wasn't going to say,  
2 you know, yes to that, so I told her that, and she said  
3 "look, if you don't say yes, we are got going to have a deal  
4 and you are going to have to have a trial and the trial was  
5 going to be next week," and how was I going to be able to  
6 have a defense.

7 Q. Did you not feel like Ms. Hernandez had discussed with  
8 you about possible defenses?

9 A. Yes, I felt that she didn't say anything to me.

10 Q. Did Mr. Broome discuss a possible defense for you?

11 A. Yes. One, the video of the girl. The questions -- he  
12 wanted to see it, because he felt that Honeycutt, the one  
13 who did the investigation, was doing the questions and the  
14 answers and so he wanted to see the video. He didn't see  
15 it, but his intention was to see it.

16 Q. Is there anything else you want to tell the court today  
17 about how Ms. Hernandez failed to provide you a proper  
18 defense or forced you into pleading guilty?

19 A. Yes.

20 Q. What is that?

21 A. I feel that if they had explained to me, you know, what  
22 a guilty plea actually was, that I would not have taken it.

23 Q. So nobody told you what you were going to have to go in  
24 there and do when you pled guilty?

25 A. No. See, if -- with being guilty, I just figured that

1 it would be like a year and she would continue to work on my  
2 case and represent me to be able to work on that. I don't  
3 realized that once I did the plea, then I went one way and  
4 she was done with the case.

5 Q. Answer any questions that Ms. Schill has.

6 A. Okay.

7 CROSS EXAMINATION BY MS. SCHILL:

8 Q. Okay. So you have an allegation that you were coerced  
9 into taking a guilty plea. Did you not tell Ms. Hernandez  
10 that you wanted the best plea you could get?

11 A. I'm sorry, what do you mean? Like what do you mean the  
12 best plea?

13 Q. So you received the benefit from a plea offer, your  
14 guilty plea hearing. Do you recall that?

15 A. The 85 percent?

16 Q. The 25 years for each charge to run concurrent.

17 Do you recall your guilty plea hearing and receiving  
18 your sentence?

19 A. Yes, I remember.

20 Q. Okay. Did you ever -- when you hired Ms. Hernandez,  
21 did you ask her to get you a favorable deal so that you  
22 didn't have to go to trial?

23 A. No.

24 Q. Okay. And I recall you had testified earlier that Mr.  
25 Broome did not have a translator for you for the first few

1 visits. Is that okay? Is that what you said?

2 A. No, no, he never had a translator.

3 Q. Okay. So were you alleging that you had trouble  
4 communicating with Mr. Broome?

5 A. I believe so, because each time he would come and see  
6 me, he would ask me the same questions and I would tell him  
7 what to look for and what to investigate, but he would ask  
8 me the same questions each time.

9 Q. Okay. But are you alleging that because you didn't  
10 have a translator, you couldn't communicate with him at all  
11 and he couldn't effectively represent you? Is that what you  
12 are alleging?

13 A. Yes, because there were things that I wanted to say in  
14 English but I didn't have the words to.

15 Q. Okay. So are you saying that you can understand or  
16 interpret English better than you can speak it?

17 A. Yeah.

18 Q. Do you recall Judge Addy going over your Constitutional  
19 Rights with you at your guilty plea hearing?

20 A. Yes.

21 Q. Okay. And do you recall waiving those Constitutional  
22 Rights?

23 A. Yes.

24 Q. Do you recall telling Judge Addy that you were  
25 satisfied with your representation?

1 A. Yes. After I pled guilty, Ms. Hernandez had said --  
2 you know, after that she said, you know, about being guilty  
3 "you know, don't worry. You know, I'll get you deported as  
4 quickly as I can." And so I thought that she had everything  
5 under control, just as, you know, I had stated yes to the  
6 questions to get the deal, so I said yes to all the  
7 questions.

8 Q. Do you recall telling Judge Addy that Ms. Hernandez did  
9 everything that you wanted her to do?

10 A. Yes.

11 Q. Do you recall telling Judge Addy that you had enough  
12 time to discuss your case with Ms. Hernandez?

13 A. Yes.

14 Q. Do you recall telling Judge Addy a second time that you  
15 were satisfied with the services of Ms. Hernandez?

16 A. Yes.

17 Q. And for the record, you don't deny that you had an  
18 interpreter at your guilty plea hearing, correct?

19 A. No. No.

20 Q. Do you recall telling Judge Addy that you were not  
21 promised anything, other than your sentence negotiation, in  
22 exchange for your guilty plea?

23 A. Yes, I remember that.

24 Q. Do you recall responding affirmatively when Judge Addy  
25 asked if you were "pleading on your own free will because

1 you did, in fact, commit those crimes?"

2 A. Yes.

3 Q. Do you recall telling Judge Addy you understood all the  
4 questions he asked you?

5 A. Yes.

6 Q. Okay. And then I want to go talk about this Santiago  
7 person that you had mentioned earlier.

8 A. Uh-huh.

9 Q. So what -- what testimony would Santiago have provided  
10 for you?

11 THE APPLICANT: He was living with me. We live in  
12 the same house and he know that people accuse me like I do  
13 this, rape this girl, but he know and, you know, he is like  
14 a witness, because he take it upon me to while working, you  
15 know, like "okay, Tito not here." And that's why I wanted  
16 Mr. Broome to investigate Santiago. He asked a lot of  
17 questions out there in the hallway. He know. Santiago take  
18 his own car to his family over there and how am I going to  
19 do something they accuse me and how can I do it when I'm in  
20 North Carolina, you know.

21 BY MS. SCHILL:

22 Q. What's Santiago's last name?

23 A. Caldena.

24 Q. Okay. So you gave both Mr. Broome and Ms. Hernandez  
25 this name and did you provide any contact information?

1 A. I don't remember if I gave it to Ms. Hernandez, but I  
2 did give it to Mr. Broome, because I was constantly  
3 reminding him to contact him.

4 Q. So you said that you were working in North Carolina?

5 THE APPLICANT: Yes.

6 BY MS. SCHILL:

7 Q. Where in North Carolina?

8 THE APPLICANT: Wilmington.

9 BY MS. SCHILL:

10 Q. Wilmington?

11 THE APPLICANT: 350 miles from my house.

12 COURT REPORTER: I didn't understand that.

13 THE INTERPRETER: Wilmington, about 350 miles from  
14 my house.

15 COURT REPORTER: Thank you.

16 BY MS. SCHILL:

17 Q. I think you testified earlier that Mr. Broome asked you  
18 for your employer's name and contact information, is that  
19 correct?

20 A. Yes.

21 Q. Did you provide that information?

22 A. Yes, I gave it to Chelsea --

23 THE APPLICANT: The first time she come.

24 A. The first time that she had come.

25 Q. So Santiago is the only witness that you wanted Mr.

1 Broome to investigate?

2 THE APPLICANT: Yes.

3 BY MS. SCHILL:

4 Q. Okay.

5 THE APPLICANT: He asked me for more witnesses.  
6 My friends, they all live in -- they live in North Carolina.  
7 I don't have nobody here. Only the guy working from South  
8 Carolina over there in Wilmington. Everybody over there in  
9 Charlotte, in Lumberton, Fayetteville. (Unintelligible).

10 BY MS. SCHILL:

11 Q. Okay.

12 MS. SCHILLE: Beg the court's indulgence, Your  
13 Honor.

14 THE COURT: Yes, ma'am.

15 (Off the record).

16 (Back on the record)

17 MS. SCHILL: Those are all the questions that I  
18 have.

19 THE COURT: Anything further?

20 MS. MCMAHAN: Nothing further from this witness,  
21 Your Honor.

22 THE COURT: I'm sorry?

23 MS. MCMAHAN: Nothing further from this witness,  
24 Your Honor.

25 THE COURT: All right.

1                   You may step down, sir.

2                   MS. MCMAHAN: The applicant calls Mr. Broome.

3                   THE COURT: All right.

4                   JOEL BROOME, ESQUIRE, having been first duly  
5 sworn, testified as follows:

6                   THE WITNESS: I do.

7 DIRECT EXAMINATION BY MS. MCMAHAN:

8 Q. Did you represent --

9 Will you spell your last name for the court reporter?

10 A. Sure. B-R-O-O-M-E, like you sweep, with an E on the  
11 end.

12 Q. And did you represent Mr. Marin at some point during  
13 his case?

14 A. I did. I represented him from -- whenever his  
15 appointment date it was, but I think in March of 2017, until  
16 he hired Ms. Hernandez I believe in January of 2018.

17 Q. Did you go see him at the detention center?

18 A. Yes, several times.

19 Q. Did he have an ICE hold on him?

20 A. Let me check my notes.

21 The only note I have mention of it was -- I usually --  
22 I think I checked, but I have a note from the bond hearing  
23 we had on July 24th of 2017, in front of Judge Addy, because  
24 Judge Addy inquired about an ICE hold --

25 Q. Okay.

1 A. -- and my notes said that there was no ICE hold, but it  
2 may be now.

3 Q. And so at some point while you were representing him,  
4 you guys were getting prepared for trial, is that correct?

5 A. Correct.

6 Q. And what were the prior offers on this case?

7 A. He could plead straight up as charged.

8 Q. Was that the only offer Mr. Scott had given him?

9 A. Yes.

10 Q. Was there ever --

11 A. Well, I -- let me -- no. Let me see if that was --

12 He originally -- let me check the e-mails.

13 Actually had to inquire, which is not uncommon. He had  
14 been in jail for awhile.

15 Q. It's not uncommon for Mr. Scott --

16 A. For Mr. Scott to not necessarily reach out with an  
17 offer, especially on a case like this, so time had gone by  
18 and sometimes placed him on the trial docket.

19 So Mr. Scott and I had had some conversations. It  
20 looks like I e-mailed Mr. Scott about --

21 Mr. Scott e-mailed me. I don't have the original  
22 e-mail. He just said he could plead straight up. And when  
23 I asked him to clarify, he said "I could offer him 25 on a  
24 CSC first with a minor."

25 Q. Which is the minimum, is that correct?

1 A. That's correct.

2 Q. And did you ever try to get him maybe to reduce it to a  
3 CSC second for 20 years, or anything like that?

4 A. I did.

5 Q. Was that successful?

6 A. No.

7 Q. So it was always, no matter what, CSC first, whether it  
8 was a trial or plead, he would get 25?

9 A. Right. And I don't remember if Tito and I had  
10 discussed. I really don't recall from my notes whether he  
11 had said "I would plead to 20 years," or if that's something  
12 I just threw out there. I'm sure myself or Ms. McNeill  
13 would have spoken to Mr. Scott and said "can you offer him  
14 anything other than that?"

15 And he e-mailed me back on January the 4th, 2018,  
16 saying "I spoke to the victims about Marin pleading to 20 on  
17 a CSC with a minor second and they said no, they want a  
18 trial."

19 Q. Did Mr. Scott indicate to you how strong he thought his  
20 case was?

21 A. No.

22 Q. And when did Mr. Marin tell you that he had hired Ms.  
23 Hernandez?

24 A. I think he told me -- bear with me.

25 He told me -- I went to go see Tito on January the 11th

1 of 2018, with Chelsea McNeill. We were going to show him  
2 the forensic video for the first time. He told me on that  
3 date that he had hired an attorney out of Greenville. Her  
4 name was Angelica, but did not recall her last name.

5 Q. And at that point did you still show him the video?

6 A. We did not show him the video, since he indicated -- my  
7 notes say we didn't, since he wanted to hire -- he had hired  
8 someone else.

9 Q. And did you continue to work on the case after that, or  
10 did you try to get in touch with Ms. Hernandez, or both, or  
11 what?

12 A. Both, because at that point I believe that Tito was on  
13 the trial docket, and in Laurens, I think that particular  
14 term the trial docket was the 29th, and they always give us  
15 exactly ten days before trial. Sometimes -- now the case  
16 was four years old and you are up for trial ten days to go,  
17 but Mr. Scott had indicated that it was going to be a trial,  
18 so I was preparing for trial. And because at that point on  
19 the 11th I had not received a letter of representation from  
20 any other attorney, I was going to do what I needed to do,  
21 which was continue to work the case.

22 Q. So you hadn't gotten a letter of representation, or  
23 consent order for substitution, or anything like that?

24 A. Not on the 11th or on the 16th. We had to reach out to  
25 attorney Angelica Hernandez several times and she never --

1 she's never personally responded to me.

2 Q. It was always somebody in her office?

3 A. Correct. I think the -- and I have some notes that  
4 Chelsea McNeill called her on the 16th of January of 2018  
5 and it went to her voicemail. She left a voicemail and the  
6 only person who called her back was someone saying that her  
7 name was Angela and then we had reached out to us.

8 We sent a Facebook message on her Facebook law office  
9 account and then she e-mailed me. Then Ms. Hernandez  
10 e-mailed back saying that she represented Tito now.

11 Q. And at your -- throughout the case was the position  
12 that this was always going to be a trial, or was he willing  
13 to plead to something, or how did --

14 A. He always maintained his innocence to me. I mean --

15 Q. So you felt like it was always going to be a trial  
16 posture, since he maintained his innocence?

17 A. My -- yes, and also I tried when I have clients that  
18 come, until they tell me they want to plead guilty, I  
19 prepare for trial. So until he had told me let's work out a  
20 deal, then I would have tried to work out a deal, but that  
21 was never the issue with Mr. Marin.

22 Q. You stated earlier that you had a -- you were  
23 representing him at a bond hearing in front of Judge Addy.  
24 So you were with him at a bond hearing?

25 A. I was.

1 Q. Okay. Answer any questions that Ms. Schill has.

2 CROSS EXAMINATION BY MS. SCHILL:

3 Q. Mr. Broome, thank you for being here.

4 Did you ever have trouble communicating effectively  
5 with the applicant?

6 A. I felt like I was able to communicate with him without  
7 an interpreter. I never got an interpreter, but I never had  
8 any problems communicating with him about the facts of the  
9 case.

10 Q. Did he speak English back to you?

11 A. He did.

12 Q. Okay. Did he -- whenever you asked him a question, did  
13 he answer appropriately, in terms of -- in a way that made  
14 you feel like he understood what you were saying?

15 A. Yes.

16 Q. Okay. Did the applicant ever allege to you that he was  
17 working in North Carolina during the time of the incident?

18 A. Yes.

19 Q. Were you able to corroborate that?

20 A. Let me check my notes.

21 Q. Okay.

22 A. He told me the first time I met him, so on June 1st of  
23 2017 that he was working in Wilmington, North Carolina  
24 construction during the time frame that -- the indictment  
25 and the warrant were very specific in narrow. Usually they

1 are much broader. And --

2 Let's see, I confirmed over the phone with a Labor  
3 Source, Incorporated that he -- Jose Marrero had worked for  
4 I.Q. Contracting from July to September of 2014, and that I  
5) needed to send over some pay stubs, social security number  
6 and date of birth to get that information released.

7 Q. Okay. And did you ever do that, or --

8 A. Well, I spoke to someone over the phone and they  
9 confirmed, and I don't remember that person. It looks like  
10 on January the 2nd of 2018 I faxed a letter from Tito  
11 authorizing release of his employment files to the North  
12 Carolina Labor Source, Incorporated. My notes say that the  
13 company verified to me over the phone that he did work in  
14 North Carolina for their company from July to September of  
15 2014, and I don't know if I actually got anything in writing  
16 from them back, but I did fax something on January the 2nd.

17 Q. So you had received verification that --

18 I'm sorry, you mentioned a Jose?

19 A. Uh-huh.

20 Q. What was that name, I'm sorry?

21 A. Jose Marrero.

22 Q. Okay. Is that the person that you talked to?

23 A. No, no, no, that was -- that was -- sorry. That was  
24 the name on the pay stub.

25 Q. Okay. So that is not the applicant?

1 A. That was also him.

2 THE COURT: I'm sorry?

3 THE WITNESS: That was also Mr. Marin.

4 THE COURT: Okay.

5 THE WITNESS: Yeah.

6 BY MS. SCHILL:

7 Q. Okay. So he has two different names?

8 A. Yes.

9 Q. Okay. And could you tell the court the dates that were  
10 on the indictment, as far as the alleged incident?

11 A. Yeah.

12 THE COURT: There is two indictments.

13 THE WITNESS: Thank you, Your Honor.

14 A. One for June 1st, 2010 to August 1st, 2010 is for one  
15 indictment.

16 And the second indictment was June 15th to July 15th,  
17 2014.

18 BY MS. SCHILL:

19 Q. Okay. Did the applicant provide contact information  
20 for a Santiago?

21 A. Yes.

22 Q. Okay. Did you attempt to get in contact with Santiago?

23 A. I did. I tried to call him on -- my notes say I called  
24 him on June 30th, 2017, and I received a -- from the number  
25 he provided, but I never spoke to anyone who identified

1 themselves as Santiago Mendez.

2 Q. Okay. And I'm sorry I'm flip-flopping here.

3 A. That's fine.

4 Q. As far as the employment information is concerned, you  
5 said that you received his W-2's for --

6 A. I think Mr. Crisley, who had his main source of contact  
7 on the outside. I have his name as James Crisley, who knew  
8 Tito. I think he provided me with getting me his W-2's. So  
9 I spoke to Mr. Crisley back in June, and then I -- I had  
10 that information on June 2nd, because I had a phone  
11 conversation with someone in North Carolina regarding his  
12 employment.

13 Q. Okay. So you had received W-2's as opposed to pay  
14 stubs that would have specific times and days of when he was  
15 working, is that correct?

16 A. Correct. I think from my notes, whoever I spoke to,  
17 Labor Source, Incorporated out of -- I think they were the  
18 referral service that hooked him up, for lack of a better  
19 word, with I.Q. Contracting, who I think he was employed  
20 for. They said they could send the pay stubs to me. They  
21 needed his authorization. They needed Tito's authorization  
22 before they could send that to me.

23 Q. Okay. Did you talk to Tito about that?

24 A. I did, and I faxed over -- I don't know why the delay  
25 happened, but on January the 2nd I must have -- I assume I

1 spoke to him, I don't have a note, but on January the 2nd I  
2 made a note that I faxed a letter from Tito authorizing the  
3 release of that information from Labor Source verifying his  
4 pay stubs to me. That would have been January 2nd.

5 Q. Did he ever send the -- fill that form back?

6 A. I don't think that I ever got anything back from North  
7 Carolina Labor Source --

8 Q. Okay.

9 A. -- but I didn't see anything in my notes.

10 Q. Okay.

11 MS. SCHILL: Beg the court's indulgence, Your  
12 Honor.

13 (Off the record).

14 (Back on the record)

15 BY MS. SCHILL:

16 Q. Let me go back to the double name scenario here.  
17 How -- were you able to actually verify that Tito Marin also  
18 had the name of Jose -- I'm sorry, I forget the last name  
19 that you stated, but --

20 A. Jose Marrero?

21 Q. Yes.

22 Did you check his social security number or anything  
23 like that?

24 A. I'm not sure if that was just a name that was on the  
25 W-2 that he provided for me, because I don't have the W-2,

1 so I'm not sure, but I went to check into the NCIC, because  
2 sometimes they have aliases. And when I mean NCIC, I mean  
3 what was provided to me when I got original discovery from  
4 the State. That's my -- that's my best guess is that Jose  
5 Marrero was on the W-2 that were provided to me.

6 Q. Okay. But you were never able to match his social  
7 security number or anything like that?

8 A. I don't recall.

9 Q. So theoretically it might not have been Tito Marin?

10 A. In theory, yes.

11 Q. Okay.

12 MS. SCHILL: Beg the court's indulgence, Your  
13 Honor.

14 (Off the record).

15 (Back on the record).

16 Those are all the questions that I have. Thank  
17 you.

18 THE COURT: Anything on recross?

19 MS. MCMAHAN: Just briefly.

20 THE COURT: I'm sorry, redirect.

21 REDIRECT EXAMINATION BY MS. MCMAHAN:

22 Q. Okay. So you said you got W-2's of Jose Marrero?

23 A. Yes.

24 Q. Did those time frames of the W-2's overlap at all with  
25 the times listed in the indictment?

1 A. Yes.

2 Q. Did you indicate that to Mr. Scott?

3 A. No.

4 Q. Why not?

5 A. Probably for trial strategy purposes and I don't think  
6 that he would -- I don't think that he would have taken that  
7 into consideration.

8 Q. So that's something that you would have saved possibly  
9 for a trial?

10 A. Well, not an alibi. I mean, if I had had confirmed  
11 parts that he had been Jose, then I would, you know, have  
12 waited until I had notified and identified the last second  
13 before trial.

14 Q. Okay.

15 A. I would have given them ten days notice.

16 Q. So assuming that you were able to prove that Jose  
17 Marrero and Tito Marin were the same person and that they  
18 had, in fact, been in --

19 A. Correct, and I wanted to try to find some more  
20 witnesses who could confirm he was the same person.

21 Q. Okay. That he went by that name also?

22 A. He went by that name, correct.

23 Q. Okay. And you never got the pay stubs? It was just  
24 the W-2's?

25 A. Correct.

1 Q. And then the W-2's showed that he worked 15 days, or  
2 was it a whole set time period?

3 A. I don't remember, because I don't have the W-2's. I  
4 spoke to two different companies.

5 I will just tell you what I do have. I did speak to  
6 someone with MDA Construction Services out of Mississippi  
7 and he confirmed that he worked for the University of South  
8 Carolina for them from November 10th to November 22nd, 2014.

9 And whoever I spoke to on the phone out of North  
10 Carolina did confirm that he worked for I.Q. Contracting  
11 from July to September of 2014.

12 Q. Did that confirm, though, that he was actually in  
13 Wilmington, or that he was working for that company?

14 A. Just for that company.

15 MS. MCMAHAN: I have no further questions, Your  
16 Honor.

17 THE COURT: Anything further?

18 MS. SCHILL: No, Your Honor.

19 THE COURT: Thank you.

20 MS. MCMAHAN: I would just ask that Mr. Broome be  
21 excused.

22 THE COURT: Huh?

23 MS. MCMAHAN: I would just ask that Mr. Broome be  
24 allowed to be excused.

25 THE COURT: Yeah, of course he can.

1 Thank you, Mr. Broome.

2 MR. BROOME: Thank you, Your Honor.

3 MS. MCMAHAN: At this time the applicant calls Ms.  
4 Hernandez.

5 THE COURT: Could I see y'all for a minute,  
6 please?

7 (Whereupon, the lawyers approached the bench for  
8 an off-the-record discussion)

9 LYDIA ANGELICA HERNANDEZ, ESQUIRE, having been  
10 first duly sworn, testified as follows:

11 THE WITNESS: I do.

12 DIRECT EXAMINATION BY MS. MCMAHAN:

13 Q. Will you state your full name for the record?

14 A. Lydia Angelica Hernandez.

15 Q. Do you go by Lydia or Angelica?

16 A. Angelica.

17 Q. And obviously for today I'll call you Ms. Hernandez.

18 A. Thank you.

19 Q. And did you represent Mr. Marin?

20 A. Yes, I did.

21 Q. And what were the circumstances that came about that  
22 you ended up representing him?

23 A. Mr. James -- last name -- Crisley, he contacted me by  
24 phone and asked me if I could go see his friend at the  
25 Laurens County detention center.

1 Q. And did you go see Mr. Marin?

2 A. Yes, I did, on January the 10th --

3 Q. And what --

4 A. -- of '17.

5 Q. And what did you guys talk about?

6 A. I had my notes over here.

7 We talked about he had two charges for first degree --  
8 for a crime against a minor of sexual nature.

9 He told me that -- something about his past; he had a  
10 DUI, a public drunk charge from 2008, and some traffic  
11 tickets.

12 He also told me that the victims were his nieces or his  
13 second cousins, age 11 and 17 now, and that back then one of  
14 them was eight and the other one was about ten.

15 And he told me that he was -- for the 2014 charges, he  
16 was working in North Carolina.

17 And he also told me he came every two weeks on Fridays  
18 and stayed there the weekend.

19 And he asked me if I could help him reduce the charges  
20 to child abuse second degree.

21 Q. And did you try to do that?

22 A. I did.

23 Q. Did you ever promise him that you would get him time  
24 served?

25 A. Never. I would never do that to any of my clients.

1 Q. And how long have you been practicing law?

2 A. I have been practicing law for two and a half years.

3 Q. And do you speak another language besides English?

4 A. I speak Spanish.

5 Q. Did you speak to him in Spanish?

6 A. Spanish, where -- he's from Mexico and I'm from Mexico,  
7 so we understand each other perfectly.

8 Q. Okay. So you never told him time served, but he had  
9 indicated to you that he wanted a lesser -- to try to get a  
10 lesser?

11 A. Yes. When I actually spoke to him, he told me that he  
12 had another attorney, that the attorney wanted for him to go  
13 all the way to trial.

14 He explained to me that that would mean that he would  
15 probably spend the rest of his life in jail and that he did  
16 not want to do that, that he wanted to see if I could get  
17 him a plea deal in which he could plead to a lesser  
18 sentence.

19 Q. And his case was coming for trial, wasn't it?

20 A. Well, I did not know that at the time, the day I went  
21 to see him. He only told me that he previously said he  
22 wanted to go to trial.

23 I found out later when I actually sent the notice of  
24 representation the 16th that Ms. Chelsea McNeill, that when  
25 I contacted her, she told me that even though it's coming up

1 for trial January 29th of '18, and I said "well, I did not  
2 know that, but now I know."

3 Q. And you were able to get it continued?

4 A. After a lot of trouble. I sent a motion for  
5 continuance to Mr. Scott and he was very adamant. He said  
6 "no, absolutely not. It's been in the courts for so long, I  
7 went to go ahead and try this case."

8 I had to actually send all of that to Judge Addy and  
9 there was some exchanges of e-mails talking about all of  
10 this until I finally Judge Addy continued it.

11 Q. And did you talk to Mr. Scott about trying to get a  
12 plea deal for Mr. Marin?

13 A. I did.

14 Q. And how did that go?

15 A. No, not good. Mr. Scott was so fixated about "I'm not  
16 going to give him any more deals. He needs to go to trial.  
17 I spoke to the families, to the victims, and they are coming  
18 to trial. I had him prepared for the 29th. There is no way  
19 that I could even give him a deal any more."

20 Q. So how did you manage to resurrect the straight-up  
21 25 years?

22 A. I actually -- that was not a resurrection. When I  
23 spoke to -- well, when I e-mailed with Ms. McNeill, Ms.  
24 McNeill told me that the most that she had got in was  
25 20 years, that Mr. Scott had given them that 20-year deal.

1 So when I approached Mr. Scott, I actually was trying to get  
2 that deal and he told me "no, no, no, that's not even on the  
3 table and I don't even want to do a deal."

4 So I know he -- with all that exchange with Judge Addy,  
5 the judge actually encouraged us to get into conversations  
6 and see if -- there was two charges for first degree and see  
7 if we could do something about it and he actually encouraged  
8 Scott and I and that's how he finally said "okay, not the  
9 20, I'll do 25 and he will have to plead to both of them,  
10 but I'll recommend the 25."

11 Q. What was he talking about the deportation and you  
12 trying to get that taken care of?

13 A. When I first met with Mr. Olan Marin, he told me "you  
14 know I'm from Mexico. I don't have any papers here. We  
15 waive that. Instead of the sentence, can you get me  
16 deported?"

17 And I said "well, usually if your charges are less,  
18 second degree or first degree, you get less time, and  
19 instead of having to do jail time, they will let you -- they  
20 will deport you, but your case is two first degrees.  
21 Eventually, once you do your sentence, you can get  
22 deported," but we never actually pulled it out. I have no  
23 power to get him deported. And with Mr. Scott and the way  
24 that he was, he was not going to even entertain the idea,  
25 and I did speak to him about that. He was not --

1 Q. He wasn't willing to entertain a less -- a plea to a  
2 lesser charge, knowing that he would probably get deported  
3 quicker?

4 A. That's what he wanted. He wanted -- he wanted second  
5 degree.

6 Actually he told me he wanted second degree because he  
7 was deal to 15 or 16 years. He was -- he knew all about  
8 with this one I'm going to get 25 to life; with the other  
9 one I'm going to get zero to 15. I want second degree. We  
10 did try to get that for him.

11 Q. So that just wasn't happening though?

12 A. It wasn't.

13 Q. And did you force him to plead guilty that day?

14 A. No. No, no, no.

15 Q. Did you tell him that he was going to have to say yes,  
16 that he did it?

17 A. No.

18 MS. MCMAHAN: I have no further questions, Your  
19 Honor.

20 CROSS EXAMINATION BY MS. SCHILL:

21 Q. Hi, Ms. Hernandez. Thank you for being here.

22 A. Thank you.

23 Q. I'll try to keep this as brief as possible.

24 So your main purpose of --

25 Would you state the main purpose of your representation

1 was to get the applicant the best plea deal as possible?

2 A. That was the reason why he contacted me. He did not  
3 want to go to trial. He wanted me to negotiate a deal and  
4 it didn't seem to seem like the defense -- the defendant --  
5 the defense attorney that he had was going to do that for  
6 him. He was not going to go to trial, no matter what.

7 Q. Okay. Did he ever mention to you some sort of alibi  
8 about working in North Carolina, or anything like that?

9 A. He mentioned that he did work in North Carolina in  
10 2014. Of course, the allegations were also for 2010. And  
11 he gave me like a top letter of some income tax letter. It  
12 was for -- he had filed in 2014, but he was -- he had filed  
13 in 2016, but it was actually for 2014, but he only gave me  
14 the first page that they give you, like if you went to go to  
15 a place and they give you like a section of what the income  
16 tax did not look like. I didn't actually get an income tax,  
17 W-2's, or anything like that.

18 Q. And did he ever mention a Santiago or any witnesses  
19 that you --

20 A. No, no witnesses.

21 Q. Okay. Did you guys discuss the elements and possible  
22 defenses of the crime, to the charges?

23 A. We did discuss the elements of the -- of the  
24 allegations, the indictments and the charges, and we did  
25 discuss the possible penalties.

1           We did not discuss any defenses, because he did not  
2           want to go to trial.

3           Q.    Okay.

4           A.    He was specific about that, "don't even waste your time  
5           on that."

6           Q.    Okay. Did you discuss the terms of the plea agreement  
7           prior to the guilty plea hearing?

8           A.    Yes. On -- on February 15th I have in my notes that  
9           the associate attorney working with me at that time, Levon  
10          Jones, went with an interpreter to visit him in court and  
11          told him that there was a -- that the offer for 20 years was  
12          no longer on the table and that the prosecutor --

13          Q.    Okay. Do you think it was in Tito's best interests to  
14          plead guilty?

15          A.    Yes.

16          Q.    If he had ultimately wanted to go to trial, what would  
17          you have done?

18          A.    I -- well, I probably would have gone on with the  
19          trial, but because he did not pay me enough to go through a  
20          trial, that's why my fees were only 3,000, because he only  
21          wanted me to negotiate that plea at the last negotiation  
22          when he was going to plead. Otherwise I would probably  
23          charged more for that.

24          Q.    All right. Whose decision is it ultimately whether  
25          they want to plead guilty or go to trial?

1 A. Of course the defendant.

2 Q. Okay. And, to your knowledge, did Mr. Marin have a --  
3 go by a second name? Did he have an alias or anything?  
4 Have you ever heard him referred to as Jose?

5 A. I did not.

6 Q. Okay.

7 MS. SCHILL: Beg the court's indulgence, Your  
8 Honor.

9 THE COURT: Yes, ma'am.

10 (Off the record)

11 (Back on the record)

12 BY MS. SCHILL:

13 Q. Just one other question briefly.

14 Could you just briefly state the evidence that the  
15 State had against Mr. Marin?

16 A. I only had what Chelsea had sent me and she didn't send  
17 me the video. She said the video is in the mail.

18 The evidence they had was statements from both of the  
19 girls that were accusing him. Apparently one of the girls  
20 had had a sexual class in school and she had reported that  
21 after hearing that she had -- she knew that that was bad  
22 touching and there was the --

23 Once the second had that testimony, then they asked  
24 another one of his nieces or second cousins and she also  
25 testified to that same thing, and both of them were --

1 without knowing that the other one had testified were very  
2 similar in the specific things that they alleged Mr. Marin  
3 did to them. And even the day of the plea they were there  
4 and they gave powerful testimony against Mr. Marin. And  
5 their mom, it was like they are here today, there were there  
6 on that date of the plea.

7 Q. Okay. Those are all the questions that I have. Thank  
8 you.

9 MS. MCMAHAN: I have no further questions, Your  
10 Honor.

11 THE COURT: Thank you.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: Anything further?

14 MS. MCMAHAN: Nothing further, Your Honor.

15 THE COURT: Anything further?

16 MS. SCHILL: Nothing further.

17 THE COURT: Thank you for you quick presentation.

18 Once again I will consider what I've heard here today,  
19 review the trial and let you know my decision.

20 MS. SCHILL: Thank you.

21 MS. MCMAHAN: Thank you.

22 (END OF REQUESTED TRANSCRIPT OF RECORD)

23

24


25

## CERTIFICATE

1  
2 I, the undersigned, Michael R. Watts, Official Court  
3 Reporter for the Seventh Judicial Circuit of the State of  
4 South Carolina, do hereby certify that the foregoing is a  
5 true, accurate and complete Transcript of Record of the  
6 proceedings had and the evidence introduced in the trial of  
7 the captioned case, relative to appeal, in the Court of  
8 Common Pleas for Laurens County, South Carolina, on the 14th  
9 day of October, 2019.

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

12  
13  
14 MARCH 24, 2020

15  
16  
17 

18 Michael R. Watts  
19 Circuit Court Reporter  
20  
21  
22  
23  
24  
25

STATE OF SOUTH CAROLINA )  
 COUNTY OF LAURENS )  
 Tito O. Marin, )  
 S.C.D.C. No. 375585, )  
 Applicant, )  
 v. )  
 State of South Carolina, )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 OF THE EIGHTH JUDICIAL CIRCUIT

2018-CP-30-512

**ORDER OF DISMISSAL**

LAURENS COUNTY  
 CLERK OF COURT  
 2019 NOV 25 AM 11:00  
 LYNN W. LANCASTER

This matter comes before the Court by way of an application for post-conviction relief filed on July 5, 2018, by Tito O. Marin (Applicant). The State (Respondent) filed a Return on December 14, 2018, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on October 17, 2019, at the Greenwood County Courthouse. Applicant was present at the hearing and represented by Ashley McMahan, Esquire. Assistant Attorney General Brianna L. Schill of the South Carolina Attorney General’s Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. Joel T. Broome (Broome) and Lydia Angelica Hernandez (Hernandez), Esquires, also testified. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application with prejudice.

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Laurens County Clerk of Court. During the May 2017 term, the Laurens County Grand Jury indicted Applicant for two counts of first degree criminal sexual conduct with a minor (2017-GS-30-0989; -0990). Hernandez represented Applicant. Deputy Solicitor C. Dale Scott of the Eighth Circuit Solicitor’s Office prosecuted the case.

On February 27, 2018, Applicant appeared before the Honorable Frank R. Addy, Jr. and pled guilty as indicted. Pursuant to a negotiated sentence between the State and Applicant, Judge Addy sentenced Applicant to concurrent terms of twenty-five-years' imprisonment on each charge, along with credit for time served of 358 days. Applicant did not appeal his guilty plea or sentence.

## **II. FACTUAL HISTORY**

On March 7, 2017, Victim 1 was in fourth grade and was learning about good touches and bad touches. (GP Tr. 9-10.) During the class, Victim 1 began to cry and physically react to the information she was learning. (GP Tr. 10.) The teacher took Victim 1 aside and asked her if everything was alright. (GP Tr. 10.) Victim 1 told her teacher she had received bad touches from Applicant. (GP Tr. 10.) The teacher notified the principal, who in turn notified DSS. (GP Tr. 10.) The Victim was interviewed by Jared Honeycutt (Honeycutt) with the Laurens County Sheriff's Department and she told him about incidents that occurred when she was eight years old. (GP Tr. 10.) Victim 1 was sent to a forensic interviewer and disclosed the details of Applicant's actions. (GP Tr. 10.) Victim 1 stated Applicant – who is her second cousin – would babysit her while her mother was at work. (GP Tr. 10.) During the first assault, Applicant walked into her room and locked the door behind him. (GP Tr. 11.) He began touching Victim 1's breasts, body, and vagina. (GP Tr. 11.) Victim 1 described being frightened because only her mother had seen her without clothes on at that time. (GP Tr. 11.) At some point, Applicant began to take her clothes off and laid her on the bed. (GP Tr. 11.) Applicant covered Victim 1's face with a pillow, but she described being able to hear his belt rattling and his boots on the floor. (GP Tr. 11.) Applicant then proceeded to have sexual intercourse with Victim 1. (GP Tr. 11.) Victim 1 stated she vomited after the first assault and "felt so sick." (GP Tr. 11.) Applicant left the pillow over her head and told her to get dressed when he left her room. (GP Tr. 11.)

Applicant assaulted Victim 1 more than one time and each time he would place a pillow over her head. (GP Tr. 11-12.) Applicant told Victim 1 his actions were her fault too and what they did was wrong, so she better not tell her parents because they would not love her anymore. (GP Tr. 12.)

Upon further investigation into the family by the Laurens County Sheriff's Office, they located Victim 2. (GP Tr. 12.) Victim 2 was interviewed by Honeycutt, and, without knowing the specifics of Victim 1's allegations, Victim 2 began to cry when Honeycutt asked certain questions about Applicant. (GP Tr. 12.) Victim 2, who is now seventeen years old, told Honeycutt Applicant raped her when she was ten years old. (GP Tr. 12.) Victim 2 said Applicant took her into his bedroom, locked the door behind him, and began touching her body. (GP Tr. 12.) Applicant took her clothes off and placed a pillow over her head. (GP Tr. 13.) Applicant then had sexual intercourse with Victim 2, and told her if her parents found out they would hate her forever. (GP Tr. 13.)

### **III. ALLEGATIONS RAISED**

In his application for post-conviction relief, Applicant makes the following allegations as to Hernandez:

1. Ineffective Assistance of Counsel
  - a. "failure to discharge his duty of due diligence to investigate the evidence, facts, and witnesses in this case"
  - b. "for coercing the defendant into a guilty plea"
  - c. "for an involuntary plea"
  - d. "for his abandonment of his client, before trial"
  - e. "counsel failed to investigate the case"
  - f. "counsel failed to provide a proper defense for physical evidence for the case"
  - g. "counsel failed to spend adequate time with petitioner reviewing discovery with him and preparing for trial"
  - h. "counsel failed to adequately investigate the alleged crime scene or the allegations so as to be prepared to present testimony of relevant evidence related to the matter"

- i. “counsel failed to investigate witnesses and prepare for trial”
- j. “counsel was ineffective for providing erroneous and incorrect advice to plead guilty instead of challenging the state’s evidence through the protections of trial”

## 2. Involuntary Guilty Plea

- a. “Petitioner’s plea was unknowing and involuntary entered into, due to incomprehension of the indictment and the guilty plea. Petitioner has never seen the indictment or reviewed it with counsel. Furthermore, petitioner did not understand that a guilty plea must be entered voluntarily and intelligently. The defendant must be advised of his privilege against self-incrimination, the right by trial by jury and the right to confront one’s accusers”
- b. “The Petitioner’s counsel used coercion and scare tactics with a threat of a life sentence, to obtain a guilty plea in this case”
- c. “Before the day of the trial, defendant’s attorney used terror and scare tactics, towards his client telling him to enter the plea bargain for 25 years or he was going into court and for sure, get a life sentence.” Thereby, effectively abandoning him/his client before trial”

An evidentiary hearing was held on October 17, 2019. At the outset of the hearing, PCR stated Applicant would be going forward on the allegations as set forth in Applicant’s PCR application.

## **IV. SUMMARY OF PCR TESTIMONY**

### *Applicant’s Testimony*

Applicant testified Broome was his first attorney. Applicant testified he met with Broome approximately six times. Applicant testified when he met with Broome they mainly discussed trial strategy. Applicant testified he could not understand his conversations with Broome because Broome never used an interpreter.

Applicant testified Broome represented him until Applicant retained Hernandez. Applicant testified he retained Hernandez because Broome kept asking him the same questions repeatedly. Applicant also testified he instructed Broome to contact his cousin Santiago, but that Broome did not do so.

Applicant testified he did not visit with Hernandez personally until immediately prior to his plea hearing. Applicant testified he mostly consulted with someone else from Hernandez's office, although he could not specifically recall who. Applicant testified he received news from Hernandez's office that there was plea offer of twenty-five years. Applicant testified the unknown individual from Hernandez's office told him to go to trial if he did not want to accept that plea offer. Applicant testified he was worried about the proof the State had against him. Applicant testified he was scared of receiving a life sentence and that he pleaded guilty because he thought he did not have a choice. Applicant testified he was coerced into taking the plea offer. Applicant testified he believed the guilty plea offer was not adequately explained to him, and that if it had, he would not have taken the plea offer.

Applicant testified Hernandez did not discuss the evidence the State had against him. Applicant also testified Hernandez did not discuss possible defenses with Applicant. Applicant testified he gave his W2s to Hernandez as well, but she didn't do anything with them.

Applicant testified he could not recall whether he gave Santiago's name to Hernandez, but he testified he did give it to Broome. Applicant testified Santiago would have corroborated his story that he was working in North Carolina during the underlying incidents in this case. Applicant testified Hernandez told him she could get him a sentence of time-served.

Applicant testified he recalled Judge Addy discussing his constitutional rights with him at his guilty plea hearing, and he recalled waiving those constitutional rights. Applicant testified he recalled telling Judge Addy he was satisfied with Hernandez's representation, although Applicant testified he responded "yes" to Judge Addy's questions when appropriate so he could "get the deal." Applicant testified he recalled telling Judge Addy that Hernandez did everything he wanted her to do, and then subsequently reaffirmed that he was satisfied with Hernandez's representation.

Applicant testified he recalled telling the Court he was not promised anything other than what was offered to him under the terms of his plea offer in exchange for his guilty plea. Applicant testified he recalled telling Judge Addy that he was pleading guilty on his own free will and he was pleading guilty because he was in fact guilty.

*Broome's Testimony*

Broome testified he represented Applicant from his appointment date until Applicant hired Hernandez in 2018. Broome testified he visited Applicant in the detention center several times. Broome testified they were in a trial posture during his representation of Applicant. Broome testified the plea offer Applicant received during Broome's representation of Applicant was to plead straight up for a sentence of twenty-five years, but Applicant declined that offer.

Broome testified he did not have issues communicating with Applicant without an interpreter. Broome testified Applicant answered Broome's questions in English and appropriately. Broome testified Applicant appeared to understand Broome, and Broome testified he could understand Applicant.

Broome testified Applicant told him he was working for a construction company in North Carolina during the time frame of the underlying incidents. Broome testified he received W2s for an individual named Jose Morrara, which indicated Morrara was employed by the construction company during the summer of 2014. Broome testified the date of employment contained in the W2s only coincided with one of the two incidents in this case. The first indictment referred to an incident occurring between June 1 and August 1, 2010, and the second indictment referred to an incident occurring between June 15 and July 15, 2014. Broome also testified that he could not verify whether Applicant had an alias and was in fact the individual whose name appeared on the W2s. Broome also testified he attempted to obtain Applicant's paystubs so he could specifically

corroborate whether Applicant was working during the timeframe listed on the indictment pertaining to the 2014 incident, but the construction company indicated Applicant had to sign a release. Broome testified he sent the release to Applicant but he never heard back from Applicant, and Applicant subsequently hired Hernandez.

*Hernandez's Testimony*

Hernandez testified she had no trouble communicating with Applicant because she is from Mexico and could speak fluent Spanish. Hernandez testified she began representing Applicant after her friend James Chrissley contacted her about Applicant. Hernandez testified Applicant retained her for the purpose of obtaining the best plea offer possible. Hernandez testified Applicant told her Broome wanted to go to trial, but that Applicant did not want to go to trial. Hernandez testified she got Applicant's case continued shortly after she was retained so she could work on getting Applicant the best plea offer possible. Hernandez testified Solicitor Scott was adamant that he would not re-offer a plea offer, in part because the Victims wanted Applicant to go to trial. Hernandez testified that after some encouragement from the Court to reach a solution, Solicitor Scott agreed to offer the twenty-five year plea offer in exchange to pleading to both charges.

Hernandez testified Applicant told her he was working in North Carolina during the 2014 incident, but that Applicant came home every two weeks and stayed at the home where the incident occurred on the weekends. Hernandez also testified that the dates of Applicant's alleged employment with the construction company in North Carolina did not coincide with the 2010 incident. Hernandez testified she received a letter for income tax and filing for the year 2014, but did not receive any actual W2s or paystubs. Hernandez testified she did not know whether Applicant had a second legal name or alias. Hernandez testified Applicant never gave the name of any witnesses, including the name of a cousin named Santiago. Hernandez testified she

reviewed the State's evidence with Applicant and that he was aware of the evidence the State had against him.

Hernandez testified Applicant wanted her to get him deported as soon as possible, but that she told Applicant his charges were too severe and he would be deported after he served his time. Hernandez testified she discussed with Applicant the elements of the charges and the possible sentences for his charges. Hernandez testified she did not force Applicant to plead guilty. Hernandez testified she never promised him a sentence of time-served, and would never make such a promise to any of her clients. Hernandez testified she discussed the terms of the plea agreement with Applicant prior to the plea hearing and Applicant appeared to understand the terms of the plea agreement. Hernandez testified she believed it was in Applicant's best interest to plead guilty, and that it is ultimately Applicant's decision to plead guilty or to go to trial.

## V. APPLICABLE LAW

### *Ineffective Assistance of Counsel, Generally*

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 300 S.C. 115. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 300 S.C. 115. When there has been a guilty plea, the applicant must prove that but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985).

#### *Involuntary Guilty Plea*

In evaluating issues concerning guilty pleas, this Court will consider the entire record, including the transcript of the guilty plea proceeding and the evidence presented at the post-conviction relief hearing. Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000). Voluntariness of a guilty plea is not merely determined by an examination of a specific inquiry by the plea court alone but rather is determined by the record of both the guilty plea proceeding and the post-conviction relief hearing. Id. In order to find a guilty plea was knowingly and voluntarily entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 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).

## **VI. FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

This Court viewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the plea transcript, Applicant’s records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

### **Ineffective Assistance of Counsel**

#### *I. Failure to Investigate<sup>1</sup>*

Applicant alleges Hernandez was ineffective for failing to investigate the facts and witnesses pertaining to his case.

Hernandez testified Applicant contacted her for the purpose of getting Applicant the best plea offer possible. Hernandez testified she reviewed the file and the evidence against Applicant, which primarily consisted of statements made by the two victims. Hernandez testified Applicant never gave her any witness names or contact information, including Applicant’s cousin Santiago. However, Hernandez testified Applicant alleged he was working in North Carolina at the time of one of the incidents, and that Applicant gave her a letter for income tax and filing for the year 2014

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<sup>1</sup> This allegation encompasses allegations 1(a), 1(e), 1(h), and 1(i) contained in Applicant’s application.

in an attempt to corroborate this allegation. However, Applicant did not provide the actual W2 form, nor did Applicant have on any paystubs that would corroborate the specific dates and times he was in North Carolina. Furthermore, Hernandez testified the income tax letter only concerned the timeframe of one of the two underlying incidents in this case.

Applicant testified he could not recall whether he gave Santiago's name to Hernandez for her to investigate. Applicant testified he gave Hernandez his W2s, which, according to Applicant, would have proven his innocence. Applicant testified he generally believed Hernandez did not investigate his case thoroughly.

This Court finds the testimony of Hernandez as to this allegation very credible, while also finding Applicant's testimony not credible. This Court finds Applicant has failed to establish how Hernandez was deficient in any way regarding investigating Applicant's case. Hernandez reviewed the evidence and file pertaining to Applicant's case. Furthermore, Applicant did not provide Hernandez with any possible witness names to investigate. Applicant hired Hernandez for the purpose of obtaining the best possible plea offer for Applicant, and by pleading guilty, Applicant waived his right to pursue any defenses that would have been supported by findings of any additional investigation. Moreover, Applicant testified at his guilty plea hearing that he was satisfied with Hernandez's representation and that he did not need any more time to discuss his case with Hernandez. (GP Tr. 18.)

The credible evidence shows Hernandez did not force Applicant to answer Judge Addy's questions in any particular manner. Accordingly, the allegation made by Applicant that Hernandez forced Applicant to answer the plea court's questions in a particular way is not credible and therefore, does not negate the testimony that is contained in the guilty plea transcript. Applicant has also failed to establish any resulting prejudice from Hernandez's alleged deficiency. Based on

the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Hernandez and, therefore, this allegation is denied and dismissed with prejudice.

*II. Failure to Prepare for Trial<sup>2</sup>*

Applicant alleges Hernandez was ineffective for failing to adequately prepare for a trial.

To establish counsel failed to adequately prepare for trial, the applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. See Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (finding trial counsel not ineffective for failing to timely request discovery because the contents of the documents were not presented at the PCR hearing); Moorehead, 329 S.C. at 334, 496 S.E.2d at 417 (holding trial counsel's failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 217, 481 S.E.2d 129, 133 (1997) (finding applicant was not entitled to relief where no evidence was presented at the PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

As previously discussed, Hernandez testified she and Applicant were never in a trial posture because Applicant retained her for the purpose of getting him the best offer possible. Hernandez testified she reviewed the evidence with Applicant and Applicant was aware of the evidence against him. Hernandez also reviewed documentation provided by Applicant in an

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<sup>2</sup> This discussion encompasses allegations 1(d), 1(f), 1(g) of the application.

attempt to corroborate his alibi defense. Furthermore, Applicant never gave Hernandez names of any witnesses to contact or investigate.

Applicant testified Hernandez did not review the discovery in his case or the evidence against him. Applicant testified he did not believe she was prepared to go to trial and had not prepared any defenses for his case.

This Court finds the testimony of Hernandez as to this allegation very credible, and Applicant's testimony on this issue not credible. This Court finds Applicant has failed to establish how Hernandez was deficient in any way regarding the preparation of Applicant's case. Hernandez reviewed the evidence and file pertaining to Applicant's case. Furthermore, Applicant did not provide Hernandez any possible witness names to investigate. Applicant hired Hernandez for the purpose of obtaining the best possible plea offer for Applicant, and by pleading guilty, Applicant waived his right to a jury trial. Moreover, as previously discussed, Applicant testified at his guilty plea hearing that he was satisfied with Hernandez's representation and that he did not need any more time to discuss his case with Hernandez. (GP Tr. 18.) Applicant has also failed to establish any resulting prejudice from Hernandez's alleged deficiency. Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Hernandez and, therefore, this allegation is denied and dismissed with prejudice.

### **Involuntary Guilty Plea<sup>3</sup>**

Applicant alleges his plea was involuntary because his plea offer was not adequately explained to him and because he was coerced into pleading guilty.

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<sup>3</sup> This discussion encompasses allegations 1(b), 1(c), 1(j), 2(a), 2(b), 2(c) of Applicant's application.

Hernandez testified she discussed the charges, elements of the charges, and the possible sentences with Applicant. Hernandez also testified she did not coerce Applicant in any way to plead guilty. To the contrary, Hernandez testified Applicant retained her for the purpose of obtaining the best plea offer possible and that Applicant was adamant that he wanted to plead guilty rather than proceed to a jury trial. Furthermore, Hernandez testified she discussed the plea offer with Applicant prior to the plea hearing and that he understood the terms of the plea offer. Hernandez told Applicant that due to the severity of the crime, Applicant would likely be deported after he completed his sentence. As Hernandez testified, the terms of Applicant's guilty plea were that he would plead guilty to two counts of first-degree criminal sexual conduct with a minor in exchange for a negotiated sentence of twenty-five years for each charge, and the sentences would run concurrent to each other. Hernandez testified she believed it was in Applicant's best interest to plead guilty, and that it was ultimately Applicant's decision to plead guilty or go to trial.

Applicant testified he pled guilty because he was "told" he did not have a choice, although he did not indicate who specifically told him he did not have a choice. Applicant also testified he plead guilty because he was scared of getting life in prison. Applicant testified Hernandez forced him to answer the plea court's questions appropriately at his guilty plea hearing. Applicant testified he felt like he was forced to plead guilty.

This Court finds the testimony of Hernandez as to this allegation very credible, while also finding Applicant's testimony not credible. This Court finds Applicant's plea was entered freely and voluntarily. The credible testimony shows Applicant wanted to plead guilty and received a great benefit in accepting the State's plea offer. The record shows Applicant testified at his guilty plea hearing he was pleading guilty voluntarily of his own free will. (GP Tr. 19.) Furthermore, Applicant testified at his guilty plea hearing he was not promised anything other than the

negotiated sentence he received in exchange for his guilty plea. (GP Tr. 19.) Applicant told the plea court he was not suffering from any mental condition, nor was he under the influence of drugs or alcohol at the time of his guilty plea hearing. (GP Tr. 8.) As previously noted, the assertion that Hernandez coerced Applicant to answer a particular way during the guilty plea hearing is not credible, and therefore, does not negate the testimony that is contained in the guilty plea transcript.

The credible testimony shows Applicant was aware of the charges he was facing, the elements of the offense, and the potential sentences for each offense. Additionally, the plea court advised Applicant of the maximum sentences of the charges, as well as the terms of his plea agreement. (GP Tr. 5-9.) The credible testimony shows Applicant was not forced to plead guilty. To the contrary, Applicant retained Hernandez for the purpose of obtaining the best plea offer for Applicant. Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing that his plea was not entered freely and voluntarily. Therefore, this allegation is denied and dismissed with prejudice.

### CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief pursuant to the Uniform Post Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10 to -160. Hernandez was not deficient in any manner regarding her performance before or during trial, nor was Applicant prejudiced by Hernandez's representation. Furthermore, the record and the PCR testimony show Applicant freely and voluntarily entered his plea. Accordingly, all allegations are denied and dismissed with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule

203, SCACR (providing the appropriate procedure to perfect an appeal). Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Further, Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for the appropriate procedures for appealing a judgment in a PCR action.

**IT IS THEREFORE ORDERED:**

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall be remanded to the custody of SCDC.

**AND IT IS SO ORDERED.**

11-18, 2019

  
 L. CASEY MANNING  
 Presiding Circuit Court Judge  
 Eighth Judicial Circuit

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*Lynn W. Lancaster*  
 Lynn W. Lancaster  
 Laurens County CCCP & GS

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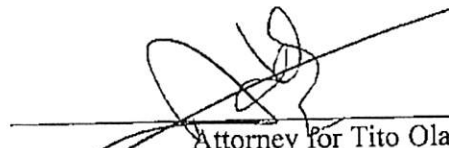
NOTICE OF INTENT TO APPEAL  
THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM LAURENS COUNTY  
IN THE COURT OF GENERAL SESSIONS  
HONORABLE JUDGE FRANK R. ADDY, JR.  
Docket No. 17-GS-30-0989; 0990

LAURENS COUNTY  
CLERK OF COURT  
2018 MAR -9 PM 4:02  
LYNN W. LANCASTER

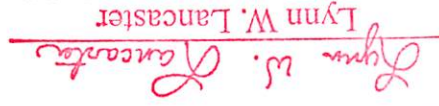
IN RE: State of South Carolina vs. Tito Olan Marin

NOTICE OF APPEAL

TITO OLAN MARIN appeals from the Order of the Honorable Judge Frank R. Addy, Jr., dated February 27, 2018, bearing the docket number 17-GS-30-0989; 0990 in the criminal proceeding.

  
\_\_\_\_\_  
Attorney for Tito Olan Marin  
Address: Angelica Hernandez Law  
2330 E. North St., Ste. A  
Greenville, SC 29607

NOTICE TO CLERK OF COURT: Notify S.C. Court Administration immediately upon receipt of this Notice of Appeal, so that the Court Reporter may be directed to prepare the transcript.

LAURENS COUNTY CCFP & GS  
Lynn W. Lancaster  
  
A TRUE COPY OF ORIGINAL

**WITNESSES**

J. Hunnicutt  
Laurens County Sheriff

**THE STATE OF SOUTH CAROLINA**

COUNTY OF LAURENS

**COURT OF GENERAL SESSIONS**

May Term, 2017

Indictment # 17GS30-0989

**WARRANT NUMBER**

2017A3010100279

**THE STATE**

vs.

Tito Olan Marin

*Travis Bell*

*Richard Patton*

Foreman of the Grand Jury

Date: 5/19/2017

**INDICTMENT FOR**

Criminal Sexual Conduct with Minor

First degree

§16-03-0655

CDR: 0385

**VERDICT**

Foreman

**A TRUE COPY OF ORIGINAL**  
*Lynn W. Lancaster*  
Lynn W. Lancaster  
Laurens County CCFP & GS

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

INDICTMENT FOR

**Criminal Sexual Conduct with Minor  
First degree**

§16-03-0655(A)(1)

At a Court of General Sessions, convened on the 19th day of May, 2017, the Grand Jurors of Laurens County present upon their oath:

That Tito Olan Marin did, on or about June 1, 2010 to on or about August 1, 2010, in Laurens County, being older than the victim, willfully and unlawfully commit criminal sexual conduct with a minor in the first degree, to wit: that the said defendant did engage in sexual battery upon a person under the age of eleven (11) years, to wit: one MINOR [REDACTED] (D.O.B. 1/12/2000), in violation of Section 16-3-655(A) (1) of the South Carolina Code of Laws, 1976, as amended.

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

  
Deputy Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LAURENS

STATE VS.

TITO OLAN MARIN

AKA:
Race: Hispanic/Latino Sex: M Age: 42
DOB: 06/09/1975 SS#:
Address: Moultrie St.
City, State, Zip: Joanna, SC 29351
DL# SID#

INDICTMENT/CASE#: 17GS30-0989
A/W: 2017A3010100279
Date of Offense: 06/01/2010
S.C. Code §: 16-03-0655
CDR Code #: 0385

SENTENCE SHEET

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

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

TO: Criminal Sexual Conduct With A Minor, First Degree

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

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

The charge is: [x] As indicted, [ ] Lesser Included Offense, [ ] Defendant Waives Presentment to Grand Jury. (def.'s initials)
The plea is: [ ] Without Negotiations or Recommendation, [x] Negotiated Sentence, [ ] Recommendation by the State.

ATTEST:
C. Dale Scott, Deputy Solicitor 73081 SC Bar #
Tito Olan Marin Defendant
Attorney for Defendant 102910 SC Bar #

WHEREFORE, the Defendant is committed to the [x] State Department of Corrections [ ] County Detention Center,
for a determinate term of 25 (Twenty-Five) days/months/years or [ ] under the Youthful Offender Act not to exceed \_\_\_\_\_ years
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and or payment
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

[x] CONCURRENT or [ ] CONSECUTIVE to sentence on: 17-65-30-990
[ ] The Defendant is to be given credit for time served pursuant to S.C. Code §24-17-40 to be calculated and applied by the State
Department of Corrections. Credit 358 days = jail. (Since March 6, 2017)
[ ] The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

[ ] RESTITUTION: [ ] Deferred [ ] Def. Waives Hearing
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_
Payment Terms: \_\_\_\_\_

[ ] Ordered PTUP \_\_\_\_\_ days/hours Public Service Employment
Obtain GED [ ]

[ ] Set by SCDPPPS \_\_\_\_\_

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

Table with 3 columns: Description, Amount, Total. Includes items like §14-1-206 (Assessments 107.5%), §14-1-211 (A)(1)(Conv. Surcharge) \$100, §14-1-211 (A)(2)(DUI Surcharge) \$100, §56-5-2995 (DUI Assessment) \$12, §56-1-286 (DUI Breath Test) \$25, Proviso 61.6 (Public Def/Prob) \$500, §14-1-212 (Law Enforce. Funding) \$25, §14-1-213 (Drug Court Surcharge) \$150, §50-21-114 (BUI Breath Test Fee) \$50, §56-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$, TOTAL \$138.75

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.

Clerk of Court/Deputy Clerk: Lynn W Lancaster
Court Reporter: Lisa Scott
SCCA/217 (07/2016)

Presiding Judge:
Judge Bar ID:
Sentence Date: 2/27/18

LAURENS COUNTY CCFP & GS
Lynn W. Lancaster
Lynn W. Lancaster
A TRUE COPY OF ORIGINAL

**WITNESSES**

Jared Hunnicutt  
Laurens County Sheriff

**THE STATE OF SOUTH CAROLINA**

COUNTY OF LAURENS

**COURT OF GENERAL SESSIONS**

May Term, 2017

Indictment # 17GS30-0990

**WARRANT NUMBER**

2017A3010200083

**THE STATE**

vs.

Tito Olan Marin

*True Bill*  
*Rubal Patton*

Foreman of the Grand Jury

Date: 5/19/2017

**INDICTMENT FOR**

Criminal Sexual Conduct with Minor

First degree

§16-03-0655(A)(1)

**VERDICT**

CDR: 0385

Foreman

A TRUE COPY OF ORIGINAL

*Lynn W. Lancaster*  
Lynn W. Lancaster  
Laurens County CCCP & GS

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

INDICTMENT FOR

Criminal Sexual Conduct with Minor  
First degree

§16-03-0655(A)(1)

At a Court of General Sessions, convened on the 19th day of May, 2017, the Grand Jurors of Laurens County present upon their oath:

That Tito Olan Marin did, on or about June 15, 2014 to on or about July 15, 2014, in Laurens County, being older than the victim, willfully and unlawfully commit criminal sexual conduct with a minor in the first degree, to wit: that the said defendant did engage in sexual battery upon a person under the age of eleven (11) years, to wit: one MINOR (D.O.B. 4/18/2006), in violation of Section 16-3-655(A) (1) of the South Carolina Code of Laws, 1976, as amended.

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

  
Deputy Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LAURENS

STATE VS.

TITO OLAN MARIN

AKA:
Race: Hispanic/Latino Sex: M Age: 42
DOB: 1975 SS#:
Address: Moultrie St.
City, State, Zip: Joanna, SC 29351
DL# SID#

INDICTMENT/CASE#: 17GS30-0990
A/W: 2017A3010200083
Date of Offense: 06/15/2014
S.C. Code §: 16-03-0655
CDR Code #: 0385

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No

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

TO: Criminal Sexual Conduct With A Minor, First Degree

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

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

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, (def.'s initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: C. Dale Scott, Deputy Solicitor 73081 SC Bar # Defendant Tito marin olán Attorney for Defendant 102910 SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 25 (Twenty-Five) years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment
of \$; plus costs and assessments as applicable\*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

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Department of Corrections. Credit 358 dgs = jail (since March 6, 2017)
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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 A TRUE COPY OF ORIGINAL
Total: \$ plus 20% fee: \$ 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.

Table with columns for Recipient, \*Fine, and various assessment codes (e.g., §14-1-206, §14-1-211) with handwritten amounts.

TOTAL \$ 1487.75
Clerk of Court/Deputy Clerk: Lynn W. Lancaster
Court Reporter: Lisa Scott
SCCA/217 (07/2016)

Presiding Judge: Judge Bar ID: Judge Code: 2159
Sentence Date: 2/27/18