

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

—————
Certiorari to Union County

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

CLEVELAND EDWARD YOUNG,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000367
—————

APPENDIX
—————

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INDEX

INDEX i

TRANSCRIPT OF TRIAL HELD MARCH 28-31, 2016..... 1

APPLICATION FOR POST-CONVICTION RELIEF382

RETURN.....493

TRANSCRIPT OF POST-CONVICTION RELIEF HEARING
HELD JANUARY 10, 2020502

ORDER OF DISMISSAL.....554

INDICTMENTS567

STATE OF SOUTH CAROLINA)
)
 COUNTY OF UNION)
)
)
)
 CLEVELAND E. YOUNG, #141241,)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

2018-CP-44-00122

AFFIDAVIT OF SERVICE BY MAIL

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

Leah B. Moody, Esquire
Law Office of Leah B. Moody, LLC
Post Office Box 1015
Rock Hill, South Carolina 29730

DATED this the 3rd day of July, 2018.

Caroline Collins, Administrative Coordinator
 For Respondent

STATE OF SOUTH CAROLINA
UNION COUNTY

IN THE COURT OF GENERAL SESSIONS
CIRCUIT COURT DIVISION
2018-CP-44-00122

-----x
Cleveland Edward Young, :
 :
 Plaintiff, :
 :
 vs. :
 :
 The State, :
 :
 Defendant. :
-----x

TRANSCRIPT OF POST
CONVICTION RELIEF HEARING

January 10, 2020
Union, South Carolina

B E F O R E:

The Honorable Michael G. Nettles, Judge Presiding.

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I N D E X

PROCEEDINGS	3
RULING BY THE COURT	51
PROCEEDINGS CONCLUDED	51
CERTIFICATE OF REPORTER	52

P R O C E E D I N G S

* * *

THURSDAY, JANUARY 10, 2020

YORK, SOUTH CAROLINA

(Whereupon, the following proceedings were held in open court. The Defendant was present with her attorney, along with counsel for the State.)

1 THE COURT: Yes, ma'am, you're recognized. If
2 you could call the case and put the procedural history
3 on the record, it would be appreciated. Thank you,
4 ma'am.

5 MS. SCHILL: Yes, Your Honor.

6 Before you is Cleveland Young. This is Case
7 Number 2018-CP-44-00122. Applicant was indicted by
8 the Union County Grand Jury for first degree CSC with
9 a minor and third-degree CSC with a minor.

10 On March 28, 2016, applicant proceeded to a trial
11 before Judge McMahon. On March 31st of 2016, Judge
12 McMahon sentenced the applicant to life without the
13 possibility of parole. Applicant filed a timely
14 notice of appeal. Appellate defender David Alexander
15 of the Office of Appellate Defense submitted a brief,

1 a motion to be relieved pursuant to Anders v.
2 California.

3 The South Carolina Court of Appeals granted
4 counsel's motion to be relieved and dismissed the
5 appeal on June 28, 2017. The remittitur was issued
6 July 14th, 2017.

7 Applicant then filed an application for post-
8 conviction relief alleging he was being held
9 unlawfully for numerous reasons. Applicant is present
10 today and represented by Mr. Richey.

11 THE COURT: Mr. Richey, if you could summarize
12 the specific grounds that you intend to go forward
13 with?

14 MR. RICHEY: Thank you, Your Honor.

15 My first ground would be failure to investigate a
16 favorable plea offer to client; failure to discover
17 the pros and cons of the case, with included case law
18 and the facts of the case; failure to investigate the
19 case; failure to have a coherent trial strategy; and
20 failure to zealously represent Mr. Young.

21 THE COURT: Does that conclude the grounds?

22 MR. RICHEY: Yes, sir, it does.

23 THE COURT: Okay. Very good.

24 You may call your first witness.

25 MR. RICHEY: I call Mr. Young.

1

2

3

* * *

4

CLEVELAND EDWARD YOUNG

5

called as a witness by and on behalf of

6

the Defendant to testify, being first duly

7

sworn was examined and testified as follows:

8

DIRECT EXAMINATION

9

BY MR. RICHEY:

10

Q Sir, are you currently housed in the Department

11

of Corrections?

12

A Yes, sir.

13

Q And what county were you convicted in?

14

A Union County.

15

Q And what were you convicted of?

16

A Criminal sexual conduct with a minor, first

17

degree, and they went and got a direct indictment and

18

give me a lewd act of a minor charge.

19

Q What happened?

20

A They went and got a direct indictment at the

21

Grand Jury and gave me a lewd act of a minor third-

22

degree direct indictment.

23

Q And what type of sentence did you receive on

24

these charges?

25

A I got two natural life sentences without parole.

1 Q And who represented you on those charges?

2 A Mr. Erik Delaney and Jennifer Williams.

3 Q Okay. And you filed an application for post-
4 conviction relief; is that correct?

5 A Yes, sir.

6 Q And you filed that because it's your position
7 that they did not effectively represent you; is that
8 correct?

9 A Yes, sir.

10 Q And this was a case -- you believe that they did
11 not discuss the pros and cons with you in your case?

12 A Yes, sir.

13 Q In terms of going to trial?

14 A Yes, sir, I believe they did not.

15 Q Did you understand at the time what the case law
16 was?

17 A No, sir.

18 Q Did you understand that the victim statement did
19 not have to be corroborated to a certain degree?

20 A No, sir.

21 Q Okay. Did you-all discuss that?

22 A No, sir.

23 Q And this was a case where this victim made an
24 allegation against you, correct?

25 A Yes, sir.

1 Q And was there any physical evidence that you were
2 aware of in your case against you?

3 A No, sir.

4 Q And did you and your lawyers talk about the pros
5 and cons of it not being any physical evidence that
6 you still could be convicted?

7 A No, sir.

8 Q Okay, and had you known all those things, would
9 it have had an effect on your decision-making in the
10 case?

11 A Yes, sir.

12 Q And did you believe -- did your attorney discuss
13 with you that you could actually be convicted on this
14 evidence?

15 A No, sir.

16 Q And did they give you any kind of advice on the
17 pros and cons in terms of winning and losing on your
18 case?

19 A No, sir.

20 Q They never told you you could have a percentage
21 of losing this case?

22 A No, sir.

23 Q So during the case, the only thing that you were
24 told or discussed was winning?

25 A Yes, sir.

1 Q You had no discussions on losing?

2 A No, sir.

3 Q You didn't have any discussions on how the State
4 could still convict you with the lack -- and I'll say
5 lack of evidence?

6 A No, sir.

7 Q Okay, so in this case, there were no forensics
8 tying you into this, correct?

9 A No, sir, there wasn't.

10 Q Essentially there was the allegation made, and
11 you got charged, correct?

12 A Yes, sir.

13 Q And they came to court with a forensic
14 pediatrician, correct?

15 A Yes, sir.

16 Q You-all did various things to prove your
17 innocence, correct?

18 A Yes, sir.

19 Q Like the child had a positive STD test, correct?

20 A Yes, sir.

21 Q And you were able to take a test, correct?

22 A Yes, sir.

23 Q What was the result of that test?

24 A Negative.

25 Q And at some point in the case, your attorney

1 discussed with you about a potential plea offer?

2 A No, sir. He spoke on it, but he never elaborated
3 on it.

4 Q Well, what did he say?

5 A He said if they offered me time served, would I
6 take it? And I told him I am not pleading this, I
7 told him for something I didn't do. And that was the
8 end of the discussion.

9 Q Okay. So in that discussion, did your counsel
10 ever talk to you about weighing time served versus
11 life without parole?

12 A No, sir.

13 Q Did he ever discuss with you, "Hey, you can get
14 life and this gives you the ability to get out of
15 jail"?

16 A No, sir.

17 Q He did not?

18 A No, sir.

19 Q Had he had those discussions with you, would that
20 have made an impact in your case?

21 A No, sir.

22 Q It would not?

23 A Not with me not being the one that did this.

24 Q But he did not discuss with you the pros and cons
25 of taking this potential plea offer and life without

1 parole?

2 A No, sir.

3 THE COURT: Did you say that it wouldn't have
4 made any difference regardless because you maintain
5 you did not do it?

6 THE WITNESS: Yes, sir, I did not do this here.

7 THE COURT: So you wouldn't have pled guilty
8 under any circumstances?

9 THE WITNESS: No, sir.

10 THE COURT: Very good.

11 BY MR. RICHEY:

12 Q And you-all --

13 THE COURT: Did you tell your lawyer that?

14 THE WITNESS: No, sir, I told him that I would --
15 I didn't do this so we carried on at trial.

16 THE COURT: So that was your directive to him was
17 go forward with trial?

18 THE WITNESS: Yes, sir.

19 THE COURT: Yes, sir.

20 BY MR. RICHEY:

21 Q And in terms -- did you understand the strategy
22 you-all had at this trial?

23 A No, sir.

24 Q You didn't understand what you-all were going to
25 do, how they were going to prove your innocence?

1 A No, sir.

2 Q Did they talk to you about how they were going to
3 prove your innocence?

4 A No, sir. The only thing I got just what Mr.
5 Delaney wrote down about the -- you saw it, that no
6 evidence, no cooperation, no physical evidence, no
7 forensic evidence, no -- just inconsistent statements
8 and ---

9 Q So the lawyer that -- your discussions with the
10 lawyer, the lawyer told you they have no evidence,
11 correct?

12 A Yes, sir.

13 Q Can you take that out?

14 A (Witness complies.)

15 Q Okay. You got it?

16 A Yes, sir.

17 Q Okay. The lawyer told you what?

18 A He said direct indictment, no evidence or
19 something -- or innocent. Direct evidence none,
20 circumstantial evidence none, credibility of
21 witnesses, inconsistent statements, and right not to
22 testify.

23 Q And at the time he told you all those things
24 about your case, did he ever discuss with you that the
25 jury still could find you guilty and you get life

1 without parole?

2 A No, sir.

3 Q So that discussion with you was like, hey, we've
4 got a good case, we're going to win, let's get on with
5 it, right?

6 A Yes, sir. That was the way that looked.

7 Q And was it ever said to you that the victim's
8 statement doesn't have to be corroborated, but the
9 State's still got to prove the case beyond a
10 reasonable doubt?

11 A Beyond a reasonable doubt.

12 Q And you had asked him, the lawyer, to get a
13 forensic pediatrician, correct?

14 A Yes, sir.

15 Q Did he talk to you about the difficulties of
16 doing that?

17 A No, sir, he told me that he would have to go in
18 front of -- to a judge to do that. And he said it
19 would be \$250 an hour. So I looked into it and found
20 one in Columbia that I asked him to talk to.

21 MS. SCHILL: Objection, Your Honor.

22 MR. RICHEY: We're offering this to present him
23 with the pros and cons of his case, and I'll go a
24 little farther on this ---

25 THE COURT: I'll allow him to ask it.

1 BY MR. RICHEY:

2 Q So you were not told the difficulties of finding
3 that person?

4 A No, sir.

5 Q And you were not told that the person that you
6 had in the area you had was not available?

7 A No, sir.

8 Q You were not told that?

9 A No, sir, I wasn't told.

10 Q And what was that person's name?

11 A Alicia Feaster.

12 Q And you gave them that name?

13 A Yes, sir.

14 Q And you did not get any information that the
15 information you had on Ms. Feaster was incorrect?

16 A No, sir.

17 Q And that Ms. Feaster that you relied upon in the
18 location of is not a person who actually does that
19 area of practice. Were you told that?

20 A No, sir.

21 Q Do you believe if you had been told all of that
22 information -- do you believe that it would have had
23 an effect on your case?

24 A Yes, sir.

25 Q And do you believe -- and the Court asked you

1 about not accepting the plea offer and all that stuff,
2 but if you had known at the time that with the
3 evidence and the advice the counsel gave you that you
4 told us, that the outcome would have been different?

5 A Yes, sir.

6 Q Also that this Feaster lady is not going to be
7 found to do exactly what you're asking her to do,
8 would you have had a different outlook on trying to
9 accept some offer from the State?

10 A No, sir. I asked my attorney to bring the doctor
11 in that did the STD test on me, and he said that he
12 was going to use the prosecutioner's (sic)
13 pediatrician doctor.

14 Q And that test was favorable for you, correct?

15 A Yes, sir.

16 Q It shows you were negative, correct?

17 A Yes, sir.

18 Q So let me make sure I clear this up. So under no
19 circumstances in this case in light of the evidence,
20 the law that was presented to you, under no
21 circumstance would you ever entertain any kind of
22 offer from the State?

23 A No, sir.

24 MR. RICHEY: Thank you. Answer questions from
25 the Solicitor.

1 THE COURT: Cross-examination?

2 MS. SCHILL: Thank you, Your Honor.

3 ***

4 CROSS-EXAMINATION

5 BY MS. SCHILL:

6 Q Good morning, Mr. Young.

7 A Good morning.

8 Q How many times did you meet with your attorneys?

9 A How many times did I meet with them?

10 Q Right.

11 A I met with Jennifer Williams twice when

12 Mr. Delaney was on vacation about a month. I met with

13 Mr. Delaney probably eight, nine, times.

14 Q And did they go over discovery, like the

15 evidence, with you?

16 A No, sir -- no, ma'am.

17 Q Do you ever recall any of the discovery provided

18 to you.

19 A I've got it. I've got it all right here, but we

20 never really talked about discovery. Ms. Jennifer

21 Williams, she never asked me anything about discovery

22 because --

23 Q What about -- I'm sorry.

24 A Because when Ms. Williams cross-examined Shariana

25 (phonetic), Shariana made one statement at the school

1 and she testified entirely different when Ms. Williams
2 questioned her about the situation.

3 Q Okay. But did Erik Delaney or Jennifer Williams
4 go over any of the State's evidence, the discovery,
5 with you, the evidence against you, anything like
6 that?

7 Did they go over your case with you during those
8 meetings?

9 A No, there wasn't really no -- no input.

10 Q Okay. And you testified earlier that they told
11 you that you were going to win your case; is that
12 accurate?

13 A No, Mr. Delaney told me, "Come on, let me get you
14 on back home to Anita at trial time."

15 Q Indicating that you wouldn't be found guilty,
16 right?

17 A Yes, ma'am.

18 Q So that you would win your trial?

19 A Yes, ma'am.

20 Q Okay. And who is Alicia Feaster?

21 A She's a forensic interviewer from Columbia.

22 Q And you said you gave that information to
23 Mr. Delaney and Ms. Williams?

24 A I gave it to Mr. Delaney.

25 Q Delaney? Okay.

1 MS. SCHILL: No further questions, Your Honor.

2 THE COURT: Any redirect?

3 MR. RICHEY: Just a couple.

4 ***

5 REDIRECT EXAMINATION

6 BY MR. RICHEY:

7 Q You say -- maybe I didn't hear it straight, but
8 did you go over discovery with the lawyers?

9 A No -- no -- no, sir. Ms. Williams never talked
10 to me about discovery. Mr. Delaney, he was not
11 sufficient about the discovery, you know.

12 Q Did you get a copy of it?

13 A Yes -- yes, sir, I got it.

14 Q When did you get that copy?

15 A Probably about two months after I had been in
16 jail.

17 Q So at the time you were in the Union County
18 Detention Center awaiting trial --

19 A Yes, sir.

20 Q -- did you have a copy of your discovery?

21 A Yes, sir.

22 Q You did?

23 A Part of it like the forensics interview, if you
24 look at the copy that I got on paper, the forensic
25 interview is longer than what's on the paper. They

1 talks about a man in the white car, but it's not in my
2 discovery, but it's on the forensics -- as part of the
3 prosecution of discovery.

4 Q I'll ask the question simpler. At the time you
5 were in the Union County Detention Center, did you
6 have all of your discovery?

7 A No -- no -- no, sir.

8 Q And did your lawyers come to the Detention Center
9 and discuss your discovery with you?

10 A No, sir.

11 Q Neither one of them?

12 A Not Ms. Williams, but Mr. Delaney, he would come
13 and speak on a certain thing but not the whole thing.

14 Q What certain things? What does that mean?

15 A Certain things?

16 Q Yeah.

17 A Like when we sat down and watched the forensic
18 interview, and I had been in jail six months then,
19 Mr. Delaney -- he was looking at me from the side when
20 I was watching the video, and I seen him looking at
21 me, and when we got to the second vid -- you know,
22 forensic interview, and when it went off, he looked at
23 me and he said, "Man, something ain't right about this
24 right here." And I asked him, I said, "I've been
25 telling you for the last six months it ain't right.

1 And he never did anything about it.

2 Q Okay. And so he did come to the jail and review
3 some of the discovery with you?

4 A Yes, sir -- yes, sir.

5 MR. RICHEY: Yes, sir.

6 THE COURT: You may step down. You may call your
7 next witness.

8 MR. RICHEY: We call Jennifer Nichols.

9 * * *

10 JENNIFER NICHOLS WILLIAMS

11 called as a witness by and on behalf of
12 the Defendant to testify, being first duly
13 sworn was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. RICHEY:

16 Q Ma'am, are you employed as an attorney?

17 A I am.

18 Q And do you recall representing Mr. Young?

19 A I do.

20 Q And can you tell me how you came to that
21 representation?

22 A Yes, I was brought on for adjudication right
23 before trial as far as a second chair position.

24 Q Okay. And so in terms of the investigation and
25 the discussing of the evidence and outcome of the

1 trial, that was not your role?

2 A That was not my role.

3 Q So your role was just a trial second chair to
4 give a different look in court on stuff; does that
5 describe it?

6 A That's fair.

7 Q And were you abreast of the facts of the case?

8 A Oh yeah.

9 Q And so you've done some preparation in terms on
10 trying the case and the evidence, correct?

11 A Yes, I had done research for trial prep on the
12 case as far as my role in the trial.

13 Q You did that, of course, with Mr. Delaney, and
14 you say you've done some independent of him?

15 A Yes.

16 Q And based off your review of the facts and the
17 law and evidence of this case, was there any
18 discussion with Mr. Young about whether he could win
19 the case or lose the case?

20 A At that point, from what I can remember,
21 Mr. Young was or had always been adamant about going
22 forward with a trial, and at that point he was -- he
23 -- he was going to trial.

24 Q But the question is, did anybody talk to him and
25 say, "Hey, we know you want to go to trial, we

1 understand that, but this is the cons in your case?

2 This is the bad stuff in your case?"

3 A Yes, that had been done by Mr. Delaney. We --

4 Mr. Delaney and I had already had discussions about

5 Mr. Delaney discussing with Mr. Young the pros and

6 cons of the case.

7 Q So you weren't a party to that discussion?

8 A I don't recall being a party to that discussion.

9 Q So pretty much all the heavy lifting with regard
10 to your case in his representation was done by Mr.

11 Delaney?

12 A Yes, sir.

13 Q And this Feaster lady, have you ever heard of
14 that name before?

15 A No, sir.

16 Q But that was being something that you would do,
17 and you were just there to assist at the trial?

18 A Yes, sir.

19 MR. RICHEY: Thank you. Answer any questions
20 that the Solicitor may have for you.

21 ***

22 CROSS-EXAMINATION

23 BY MS. SCHILL:

24 Q Good morning, Ms. Williams.

25 A Good morning.

1 Q Were you part of developing the trial strategy in
2 this case?

3 A A lit -- yes, a little bit towards the end.

4 Q Okay. What was the trial strategy in this case?

5 A It was, from what I can remember, the
6 inconsistencies with what I would say for the
7 testimony of the minor witness. I remember obviously
8 the negative STD test and using the State's witness as
9 to confirm that that was a negative test. Just the
10 reasonable doubt aspect, that's all I can remember.

11 Q And what was your -- you cross-examined one
12 witness; is that accurate?

13 A I believe so.

14 Q Was there anything throughout that trial as
15 Mr. Young has alleged that he was not zealously
16 represented? Was there anything that you feel like
17 you could have or should have done differently to draw
18 different facts in cross-examination?

19 A No, I don't believe so.

20 Q And were you -- did you participate in any
21 investigation leading up to trial? You said you did
22 your own trial prep.

23 Did you do any independent investigation?

24 A Not -- not -- no, I believe that was completed at
25 the point in time that I came on board.

1 Q That you came on board, okay.

2 MS. SCHILL: No further questions.

3 THE COURT: Any redirect?

4 MR. RICHEY: One moment, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. RICHEY:

7 Q Ma'am, you -- you actually handled some of the
8 authorizations for him to sign to DHEC to get any
9 previous STD tests he had? You handled that and had
10 him sign that, just to get the information from DHEC
11 that he did not have any previous STD ---

12 A I do believe I did, yes.

13 MR. RICHEY: Thank you, ma'am.

14 THE COURT: You may step down.

15 MR. RICHEY: I call Mr. Delaney.

16 * * *

17 ERIK DANIEL DELANEY

18 called as a witness by and on behalf of
19 the Defendant to testify, being first duly
20 sworn was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. RICHEY:

23 Q Mr. Delaney, do you recall representing
24 Mr. Young?

25 A Yes, sir.

1 Q And how did you come into that representation?

2 How did you get him? I'll use that phrase.

3 A Yeah, as all -- all my clients, we were appointed
4 to Mr. Young's case. Don't have the exact appointment
5 date, but it looks like he had initial appearance date
6 of April of 2015. It looks like we received discovery
7 a little early. I show March the 31st, 2015, would
8 have been the initial -- initial wave of discovery
9 would have come in around that time.

10 Q Was your appointment through the Public
11 Defender's office?

12 A Yes, sir.

13 Q And that's where you were employed at the time?

14 A That's correct. I was employed there -- employed
15 there at the time.

16 Q And so he was assigned to you, and he was in the
17 jail when he got assigned to you? Do you recall?

18 A Yes, he was -- he was incarcerated at the time.

19 Cleveland remained incarcerated during my entire
20 representation of him.

21 Q Okay. So he didn't have any opportunity to do
22 any other investigation of his case, it was all relied
23 upon through lawyers and investigators, correct?

24 A That's correct. Cleveland had a girlfriend at
25 the time, Anita Kinard. She was someone that was

1 involved with his case as well, so that was kind of my
2 contact point on the outside for him as far as being
3 able to get information.

4 Q And during your representation, did -- the truth
5 is Mr. Young testified that you went over some of the
6 discovery with him.

7 Do you recall whether you went over the entire
8 discovery with him at the jail?

9 A I'm confident in saying that anything that I
10 have, I'm going to go over that with him. Anything
11 that I have, I'm going to make a copy for him if he
12 wants a copy. Sometimes in cases of this nature,
13 sometimes my clients don't want copies to take back to
14 the -- to the cell. I can't recall if Cleveland
15 wanted everything that I had, but I know I would have
16 gave him that option. We also watched any of the CAD
17 videos. I think there was a couple in the case. We
18 would have watched those. I would have brought my
19 computer to the County Detention Center, and we would
20 have watched those videos.

21 Q Okay. And during the representation of
22 Mr. Young, did you sit down with him and discuss the
23 pros and cons of his case?

24 A Yes, I'm, again, confident, especially in a case
25 of this nature. That's one of the main things I'm

1 going to do is go through the pros, the cons,
2 especially when the stakes are as high as they were in
3 a case of this nature.

4 You know, I can't recall ever being confident --
5 you know, anytime I have a case like this involving
6 children potentially getting on the stand and
7 testifying, my confidence level is just not going to
8 be high. From what I recall, unfortunately Cleveland
9 had a high confidence level about this case and some
10 of the lack of evidence in this case. And there were
11 some lack of, I guess you could say, evidence, but my
12 confidence level was never high, and I did point out
13 cons.

14 Q You did --

15 A I did point out and we would definitely have went
16 over any cons or negatives, bad facts in the case.

17 Q And you were part of the PD's office, Public
18 Defender's office?

19 A Yes.

20 Q Okay. And you have probably tried a lot of these
21 cases or been involved in them?

22 A A handful, yes.

23 Q And during that representation, and I think you
24 touched on it a little bit, these are very difficult
25 cases to predict, correct?

1 A Correct.

2 Q Because of the child involved, correct?

3 A Correct.

4 Q And you have -- Mr. Young had testified that you
5 had told him -- you had, I guess, suggested to him if
6 they offer you time served would you take it? And his
7 response was no. Do you remember that? Do you
8 remember anything of that nature?

9 A Prob -- vaguely, you know, I think it would have
10 been unfortunately from my perspective, there was
11 never an interest from Cleveland to allow me to work
12 out something, you know, through my conversations with
13 the Solicitor early on, the feedback I was getting, we
14 were going to get a good -- in my opinion, a good plea
15 offer. We never got to the point of talking
16 specifics. Cleveland was adamant he didn't do this.
17 He didn't want to talk plea offer. I may have said --
18 thrown out the hypothetical, and it was never -- there
19 was never a plea offer at the time, but I made a firm
20 hypothetical, what if I could get you time served in
21 this case, would you even take that, and I think, you
22 know, his response today was consistent with his
23 response back then.

24 Q So he wouldn't ---

25 A He wouldn't take time served.

1 Q So you took the extreme position to see whether
2 he was going to see whether he was going to take ---

3 A Yeah, there wasn't any interest in pleading to
4 anything in the case. So I think at that point, you
5 know, the Solicitor -- it would have been at least
6 something I could have taken back to the Solicitor and
7 said, hey, this is what my guy will do, but I never --
8 unfortunately, from my perspective, never had the
9 opportunity to go back to the Solicitor and say, hey,
10 Mr. Young would take this.

11 Q And even though he spelled out on direct exam
12 some of the things that you had told him about the
13 case, are those consistent with your recollection?

14 A Some of the things, yes, as far as what the State
15 -- what the case against him was lacking, I guess you
16 could say, as far as there was no physical evidence in
17 the case that the State had against Mr. Young in terms
18 of, as you've heard, the victim in the case tested
19 positive for chlamydia. Mr. Young voluntarily gave
20 his sample. They took a -- you know, he volunteered
21 himself to testing. He was negative.

22 We went back and got all of his records in the
23 past going back a number of years, that included time
24 that he was in prison for a number of years, we went
25 through all his prison records. There was never any

1 evidence that Mr. Young ever had chlamydia, so that
2 was obviously a main argument in our case. Victim had
3 it; he didn't have it.

4 Q And this -- when the -- listened to the testimony
5 in totality, the case was -- appeared to be very
6 favorable to you-all, correct? I mean there was a lot
7 of stuff that you all could argue as to his innocence,
8 correct?

9 A Yeah. We had -- you know, I had -- we had things
10 to argue, I would agree. Now there was still -- you
11 know, I get that I said earlier, I was not overly
12 confident though, you know, with a case like this.
13 You know, the victim, she appeared to be in her
14 videos, she was fairly strong. You know, there's
15 always some inconsistencies, in my opinion, when
16 children are giving their version of what happened.
17 So obviously we tried to make a big deal about that,
18 but she was adamant what happened, you know, and she
19 testified to that as well, and that was a main concern
20 of that kid getting up there and saying this is what
21 happened.

22 Q And did you express to him that even though you
23 say all this stuff, you can be found guilty?

24 A I know I did.

25 Q And that "I don't feel as confident as you do"?

1 A Yes.

2 Q And you expressed that to him?

3 A Yes.

4 Q And do you know what his response was to that?

5 A From what I recall, you know, Mr. Young was
6 pretty unflappable, you know. It didn't -- to me it
7 didn't seem to phase him. Again, he was adamant he
8 did not do these things. He was not interested in
9 pleading.

10 At some point, you know, I can -- you know,
11 sometimes -- every case is different, sometimes I will
12 continue to go at my clients, you know, to try to
13 ultimately get it through them, you know, that this is
14 not in your best interest, but, you know, in my
15 opinion, this is kind of a little bit of a unique
16 situation where he was just so adamant from the
17 beginning and I was never able to, you know, persuade
18 him to get another type of mindset.

19 Q So he was trial or bust, correct?

20 A Yeah, trial or bust from the very, very
21 beginning.

22 Q This Feaster lady, do you recall him bringing
23 that name to your attention?

24 A Not Cleveland. I don't remember Cleveland
25 necessarily giving me that name. Now as I mentioned

1 earlier, there was a lady, his girlfriend, who he was
2 living with at the time, Anita Kinard. She would
3 provide me with a lot of information. That may have
4 been a name that she provided to me, but through, you
5 know, obviously on behalf of Cleveland.

6 Q Then do you know whether he -- well, he discussed
7 about this expert, did you-all talk about that?

8 A I'm sure -- I'm sure we did. You know, from what
9 I recall, Anita Kinard wanted me to get in touch with
10 this lady to have her watch the forensic interviews.
11 I ultimately made the decision to -- and I don't
12 remember honestly what the particulars were as far as
13 -- I didn't obviously know who this lady was. I did
14 have some questions as far as her qualifications to
15 assist, but then at the same time, there was nothing
16 in the forensic videos that I viewed where I thought I
17 needed to bring somebody else on to get their opinion
18 as far as how the questioning was done.

19 You know, I have done that in cases like this
20 where I will get somebody that has some expertise or
21 has worked in this line, done forensic interviewing in
22 the past, and they can tell me if there's something
23 going on here the way the questions were asked.
24 Again, from what I recall, I just don't remember
25 anything standing out with these interviews where I

1 was like, oh, I don't like how they asked these
2 questions or anything like that.

3 Q So the request was not for an expert in general,
4 it was for this particular lady?

5 A I know that there was a particular lady that was
6 brought to my attention, but I also -- I also will say
7 that, you know, there was a -- they wanted -- there
8 was at least a request made to get someone else to
9 check out the forensic interviews.

10 Q Okay. And I don't know if you recall, but what
11 was the trial strategy?

12 A Lack of -- one of the main things would be lack
13 of physical evidence in the case. There was no
14 physical evidence. The allegations were of
15 intercourse. There was no physical evidence to back
16 that up. Obviously we talked about the STD that the
17 victim had, Mr. Young did not have. Also, you know,
18 this type of case, any inconsistencies with what the
19 victim was testifying to are in the investigation,
20 that would have been the prime strategy to try to
21 create reasonable doubt.

22 Q And there were a lot of inconsistencies, correct?

23 A There were a few that I would -- from my
24 perspective, yeah. That's what we argued that there
25 were -- there were -- there were inconsistencies with

1 the State's case.

2 MR. RICHEY: One moment, Your Honor.

3 No further questions, Your Honor.

4 THE COURT: Any questions?

5 MS. SCHILL: Just a few, Your Honor. I'll try
6 not to be very repetitive.

7 CROSS-EXAMINATION

8 BY MS. SCHILL:

9 Q Good morning, Mr. Delaney.

10 A Good morning.

11 Q You've honestly answered most of my questions,
12 but I just want to discuss your trial strategy because
13 one of the other allegations is that you did not
14 zealously represent him. Now you stated during your
15 direct that your trial strategy was to bring out the
16 inconsistent statements of the victim.

17 Do you recall in your cross-examination that you
18 discussed the inconsistent statements with several
19 witnesses? Do you have a copy of the transcript?

20 A I'm sorry.

21 Q You're fine.

22 A I have it -- it's actually sitting -- I can ---

23 Q Oh, no, I can grab it.

24 A I think Ms. Williams can grab it.

25 Q I just want to highlight a few areas. If you

1 could turn to page 237?

2 A (Complies.)

3 Q And in that line of questioning, do you recall
4 where you pointed out the lack of corroboration by
5 Ms. Kinard, by Mr. Young's medical history, by medical
6 evidence presented by Dr. Henderson and by the
7 victim's mother and father; do you recall bringing
8 that up?

9 A It appears, yes, in the -- looks like cross-
10 examination of one of the ---

11 Q Detectives?

12 A --- detectives in the case. That would -- yes,
13 she was questioned about that.

14 Q Because the victim had stated that she had
15 disclosed to Ms. Kinard every time that the abuse
16 occurred, but she had not let -- her statements were
17 inconsistent about that.

18 A Right. Ms. Kinard was one of the witnesses that
19 we called in the case to -- you know, Ms. Kinard
20 testified that, you know, these things are not
21 reported to me.

22 She lived with Mr. Young at the residence where
23 this allegedly occurred, and Ms. Kinard
24 testified that, you know, she never witnessed anything
25 and that the victim never reported to her any

1 inappropriate conduct -- conduct by Mr. Young.

2 Q And you brought that out during cross-examination
3 initially?

4 A Yes.

5 Q Did you also summarize that in your closing
6 arguments?

7 A Yes.

8 Q Okay. Now going back to discovery, you went over
9 all of that with Mr. Young, correct?

10 A Yes, I believe -- I believe I did.

11 Q And he said -- you testified that he gave you the
12 name of that Fester -- Feaster lady?

13 A Yeah, either Mr. Young or Ms. Kinard.

14 Q And it's your testimony that she would not have
15 been accepted for this particular trial?

16 A I don't believe so. I -- you know, I -- always
17 in hindsight we didn't win this -- win this trial
18 obviously, but I just don't recall there was anything
19 in these CAP videos that would make me think that I
20 needed to get somebody to get a second opinion on
21 those.

22 Q Okay. And this wasn't your first CSC case?

23 A No.

24 Q Okay. Any -- and regarding the self-
25 representation, you cross-examined the expert witness,

1 the forensic pediatrician?

2 A Yes.

3 Q And you were able to obtain very favorable
4 testimony from her, is that correct, regarding that
5 Mr. Young did not have chlamydia, that the Z-Paks that
6 the State indicated Ms. Kinard obtained for Mr. Young
7 to clear up his chlamydia, that she would not have
8 prescribed that; is that correct?

9 A I believe that -- that -- that's correct as far
10 as, you know, there were certain things that obviously
11 we had in our favor.

12 Q Sure.

13 A He did not test positive for chlamydia. We were
14 obviously -- the State's doctor or pediatrician was
15 obviously able to confirm that, and then anything else
16 that we thought we could get out from her, we would
17 have tried to do that. And as far as no physical
18 evidence ---

19 Q Correct.

20 A --- with the child and anything, yes, obviously
21 the State tried, there was an argument that the State
22 made that Ms. Kinard may have been getting some types
23 of her medication to try to clear up chlamydia that he
24 may have had.

25 Q Okay. She also researched a study that chlamydia

1 could potentially clear itself on its own?

2 A That's correct. There was a study, from what I
3 remember, that study involves, I think it was -- it
4 included or it was done on pregnant women, so
5 obviously we, you know, tried -- I tried to make the
6 argument ultimately to the jury in closing that that
7 didn't apply, shouldn't apply to that -- this
8 particular trial as far as that case study because it
9 was involved with just only pregnant women, and
10 obviously Mr. Young was not a pregnant woman.

11 Q Right. And was there anything that you believe
12 you could have or should have asked that would have
13 prevented -- or provided additional information that
14 could have potentially affected the outcome of this
15 trial?

16 A Again, always -- you always sit back and maybe
17 wish you could have said this or that, but ultimately
18 no, I think we -- our strategy, we stuck to it as far
19 as trying to get out as many inconsistencies as we
20 could. The lack of physical evidence and our hope was
21 that was going to leave the jury with doubt in the
22 case.

23 Q Okay. And the pro/con discussion really wouldn't
24 have mattered because Mr. Young is maintaining that
25 today that he wouldn't have accepted a plea no matter

1 what, so ---

2 A Yeah, like I say, at some point that there was a
3 shift, you know, early on, I was hoping I was going to
4 be able to convince him not to go to trial, but once
5 that didn't appear, I wasn't going to be able to do
6 that, you know, we went to a trial posture.

7 Q Regarding the investigation, did you have an
8 investigator in this case?

9 A Unfortunately, no. I did the, you know, whatever
10 investigator work as far as going out to the scene,
11 what happened, taking photos, trying to talk to, you
12 know, whoever I could, talking to Ms. Kinard, those
13 are things that I did. We did not have an
14 investigator at the office at that time. Since then,
15 thankfully we do, but we didn't have an investigator
16 at that time.

17 Q And is there anything an investigator would have
18 done that you didn't do in this case?

19 A I don't think so.

20 MS. SCHILL: No further questions, Your Honor.

21 THE COURT: Anything further?

22 MR. RICHEY: No other questions from me.

23 THE COURT: You may step down.

24 You may call your next witness.

25 MR. RICHEY: No other witnesses.

1 THE COURT: I'll be glad to hear summation from
2 each side.

3 MR. RICHEY: Thank you, Your Honor. May it
4 please the Court?

5

6

* * *

7

CLOSING ARGUMENT BY MR. RICHEY

8 MR. RICHEY: Your Honor, this case, and I'm going
9 to say this, I've worked at the PD's office, I
10 understand the situations they deal with with
11 defendants. I will say in this particular case, the
12 lawyers -- or Mr. Delaney's testimony was that he felt
13 that he could get a favorable plea offer from the
14 State, and I understand the testimony is that he would
15 have never accepted and all that stuff, but I think in
16 effectively representing your client, if there's a
17 potential favorable outcome that the client can have
18 in the case, I believe that the lawyer should get the
19 favorable outcome and present it to his client.

20 Okay? And to me, in this case, this opposition
21 that because, the phrase Counsel used, the stakes were
22 so high that this gentleman's facing a life without
23 parole in this case, I believe that in this case a
24 favorable offer should have been presented to Mr.
25 Young. And even though the testimony was all he would

1 have taken all this stuff, I think the reality, I
2 believe, in representing criminal defendants, you
3 don't know they're not going to take it until they
4 don't take it.

5 THE COURT: Let me ask you this.

6 I thought -- and correct me if I'm wrong, I
7 thought that your client, the applicant Mr. Young, at
8 least intimated to the fact that there was an offer of
9 time served and sex offender registry but he would not
10 take it because of the fact that he did not do it.
11 And that was -- he was maintaining that position. And
12 do you think that the very real possibility if he had
13 indeed negotiated a plea deal where he would have been
14 -- say, for instance, gotten five, ten, fifteen years,
15 and he was taking the position that he's taken when he
16 was talking with Mr. Delaney throughout the
17 preparation of this case, and what he's testified
18 after he's already received two life sentences, that
19 he did not want to do that, and he has an absolute
20 right to a -- constitutional right to a jury trial.
21 If a deal is forced on him, the judge is going to ask
22 him did anybody put any pressure on you to do that.
23 And would that not be ineffective assistance of
24 counsel if he forced a deal on him?

25 MR. RICHEY: No, that's not the point that I'm

1 making, but in that scenario, yes, a counsel cannot
2 force a defendant to plead guilty. I mean, I think
3 that's one of the bedrocks of what we do here.

4 THE COURT: Right.

5 MR. RICHEY: But my position is something
6 different. My position is the lawyer has to procure a
7 favorable outcome for his client.

8 THE COURT: Okay. What do you think about the
9 fact that your client, Mr. Young, and admirably so,
10 maintains his innocence, and regardless of anything
11 that Mr. Delaney could have cured, even time served,
12 that he wasn't going to take it?

13 MR. RICHEY: Well, I believe the time served was
14 not an offer made to him.

15 THE COURT: Right.

16 MR. RICHEY: I believe he --

17 THE COURT: But that would say that even if it
18 was, he wouldn't take it.

19 MR. RICHEY: I understand that. And I'll just
20 tell the Court in 24 years I've had tons of cases
21 where my clients tell me I'm not going to plead, I'm
22 not going to plead, I'm not going to plead, and then
23 when we're under the gun, then they plead, but they
24 have that, I use the phrase, safety net.

25 THE COURT: Right.

1 MR. RICHEY: That -- I've had clients tell me I'm
2 never going to plead, I'm never going to plead, dah,
3 dah, dah, dah, dah, all this stuff, and then a lot of
4 times in these CSC cases, after that victim testifies,
5 the client comes back and says, "Mr. Richey, go see if
6 that whatever is still out there." Okay?

7 And that is my position is as lawyers, and a
8 lot of times as criminal defense lawyers, we have to
9 attempt to save our clients from themselves even if
10 they don't want to be saved. And I'm saying in this
11 particular case, because this gentleman was facing a
12 life without parole sentence, I think if a lawyer has
13 a favorable outcome potentially for the client, if he
14 hasn't pursued that outcome, present that to his
15 client saying, "Hey, this is a five-year plea offer.
16 You can turn it down. You can accept it or not."
17 Because at each stage of the proceeding, the client
18 can clear you or whatever, but if there's no safety
19 net, okay, if there's no safety, then he's got one
20 road to take.

21 And it's our position that to effectively
22 represent his client, it's our position that he should
23 have pursued that order and gave his client an option.
24 Now he can't make him take it. He can't make -- he
25 can't make him do it. He can't do any of that. He

1 can't save the client from himself.

2 THE COURT: Right.

3 MR. RICHEY: Okay. He can't do it.

4 THE COURT: I understand your argument in that
5 regard, but one thing that is flawed with regard to
6 that position is he's not -- he was not willing to do
7 it then, he heard -- after he heard the victim
8 testify, he wasn't willing to do it, and as he stands
9 here today, he's still not willing to do it.

10 MR. RICHEY: Well, Your Honor, I think if Mr.
11 Young was here today and he was offered the offer that
12 he was offered, then I'm pretty -- almost 100 percent
13 sure he'd take it.

14 THE COURT: Well, that's not what he said. Okay?

15 MR. RICHEY: I think if he was offered time
16 served right now for him to get out, he would take it.
17 I think that's -- I believe that. I could be wrong,
18 but that's what I believe. And I'm just saying in
19 these criminal cases, we all started trials where the
20 defendant pled.

21 THE COURT: Right.

22 MR. RICHEY: We've all had them plea right before
23 trial. We've all ran around the courtroom a week
24 before trial, the courthouse, trying to get them a
25 plea. We've done that. Now I understand in this

1 particular case that option should have been pursued.
2 And, Your Honor, as to -- and I'll just say I thought
3 that Mr. Young, he testified that the lawyers did not
4 go over all the discovery with him, and I'll just say
5 I believe the record speaks to that.

6 I believe the lawyer testified he normally does
7 that, but Mr. Young's position was that he didn't do
8 it. But I'll tell you, the lawyer's testimony was
9 that he did do it. Okay.

10 And, Your Honor, one of the things that we put in
11 was failure to discuss the pros and cons of the case.
12 That is -- and I will tie that in to my previous
13 argument, the case, and I'll say this, look -- for a
14 criminal case, it'd look favorable to my client,
15 because I think Counsel pointed out that there was a
16 lot of inconsistencies and, you know, that type of
17 stuff, the chlamydia test, but we also, trying cases,
18 especially criminal cases, that you still have to tell
19 these clients that -- especially with these CSCs that
20 you could be found guilty on this case anyway. Okay?

21 THE COURT: Right.

22 MR. RICHEY: And I tie that in to have the
23 favorable plea offer in that sitting out there, look,
24 you know, and listen, this is what he will testify to,
25 this is the evidence, circumstantial evidence, but I'm

1 telling you they still can believe this child and you
2 can be out of here. Okay?

3 That's our position. Thank you, Your Honor.

4 THE COURT: All right. You had mentioned
5 something about failure to set forth a trial strategy,
6 and it seems to me that the trial strategy was to
7 point out reasonable doubt, which is probably 99
8 percent of criminal cases, that's what you do ---

9 MR. RICHEY: Yes, sir.

10 THE COURT: --- is you point out the fact they
11 didn't have the DNA, they didn't have -- well, you had
12 the chlamydia that was very positive. Had
13 inconsistency in the victim's statement, that's really
14 in my mind the only thing that he could do.

15 MR. RICHEY: Yes, sir.

16 THE COURT: My question to you is what strategy
17 would you -- after having prepared this application
18 with your client, what strategy would you propose that
19 would be different today?

20 MR. RICHEY: No, I -- and I'll say this, I don't
21 think the strategy -- I mean that's the reason, but I
22 don't think the strategy was flawed.

23 THE COURT: Right.

24 MR. RICHEY: I just think strategy to me is you
25 sit down and you look at the totality of the case.

1 THE COURT: Right.

2 MR. RICHEY: When you go to trial, to me, you
3 look at the pros and cons, and I'll say this, the pros
4 could be, hey, you've got to plea, that's part -- to
5 me, in every case, that's part of trial strategy to me
6 is that I go over --

7 THE COURT: We're back on the plea, but as far
8 as, you know, having reviewed the transcript, he did
9 indeed point out the fact that the victim had
10 chlamydia and he did not.

11 MR. RICHEY: Yes.

12 THE COURT: And the fact there was no DNA.

13 MR. RICHEY: Right.

14 THE COURT: And there was no video evidence and
15 there was inconsistencies in the statement made by the
16 victim. Those are pretty strong strategies to point
17 that out; wouldn't you agree?

18 MR. RICHEY: And -- I'm sorry -- I'm sorry, Your
19 Honor.

20 THE COURT: Wouldn't you agree?

21 MR. RICHEY: That's strong strategy.

22 THE COURT: And the only strategy really.

23 MR. RICHEY: Well, I will say Mr. Young, and I
24 interject this, and I'll say -- I'll say to the Court
25 this Feaster lady, I made an attempt to try to find

1 her, and she did not exist in this form that was
2 submitted.

3 THE COURT: Right.

4 MR. RICHEY: Okay, I'll just say this. And in
5 all my years in practice, this Feaster lady was a lady
6 from Chester County. She went to Harvard to play
7 basketball, all this stuff, but I think they got that
8 name, but she doesn't -- from my investigation, she
9 doesn't do what they thought she did. Okay?

10 THE COURT: Right.

11 MR. RICHEY: But I will say that to say in this
12 strategy, counsel has to tell the client this expert
13 that you're asking me about, we don't need her, we
14 don't think -- whatever, we don't need her because of
15 X, Y, Z. Okay. And the client has to have the okay
16 with that of going forward, but as to the Court's
17 questions about what he did in the transcript, I
18 cannot contest what he did in the transcript was not
19 sufficient. I can't contest that. Because he did
20 cross-examine these witnesses. He did bring up
21 inconsistencies. He did all that well.

22 THE COURT: Well, let me ask you this.

23 You're sort of in a difficult situation
24 because you have the burden of proof to show that his
25 representation was ineffective, and if Feaster or

1 somebody like Feaster would have been helpful, it's
2 incumbent upon the applicant to proffer that here
3 today; wouldn't you agree?

4 MR. RICHEY: Yeah. And I'm not maintaining --
5 I'm not maintaining ---

6 THE COURT: Yeah, I don't know what that person
7 could or could not have done. And likewise, with
8 regard to retaining an expert -- not an expert, but an
9 investigator, we don't know what an expert -- I mean
10 what an investigator could have uncovered that
11 Mr. Delaney did not.

12 MR. RICHEY: Your Honor, that's not my position.
13 My position here today is, you know, I was trying the
14 CSC cases, you know, I view them as a specialty in
15 criminal work.

16 THE COURT: Right.

17 MR. RICHEY: I mean I view them as being, you
18 know, a separate subsection of a criminal trial
19 because -- and -- and -- and with that being said, you
20 know, and I don't want to keep repeating this, but I
21 just think your strategy in a CSC case with life
22 without parole, I think the lawyer has to procure a
23 favorable position for his client even if the client
24 doesn't want to accept it.

25 THE COURT: So we aren't going about trial

1 strategy, we're back to the fact that he did not ---

2 MR. RICHEY: Yes, sir. Yes, sir.

3 THE COURT: --- procure a plea offer?

4 MR. RICHEY: Yes, sir. And I think that
5 encompasses a lot of this stuff, because I do believe
6 plea offer as far as trial strategy, because you have
7 to have an offer up when you try these cases in front
8 of these clients.

9 THE COURT: Very good.

10 MR. RICHEY: Thank you, Your Honor.

11 THE COURT: All right. I'll be glad to hear from
12 the State.

13 MS. SCHILL: Thank you, Your Honor.

14 * * *

15 CLOSING ARGUMENT BY MS. SCHILL

16 MS. SCHILL: Looking at the allegation, Mr. Young
17 had failed to meet this burden in this case.

18 Regarding the plea, obviously based on the testimony
19 from Mr. Young himself and Mr. Delaney, he was not
20 interested in a plea at any point. And not even today
21 is he interested in a plea. So even though he didn't
22 discuss the pros and cons, according to Mr. Delaney's
23 testimony, it certainly wouldn't have changed his mind
24 that ---

25 THE COURT: He did discuss with Mr. Young the

1 possibility of a plea, but he would have to make that
2 decision on his own.

3 MS. SCHILL: Correct. And he still maintains
4 that position, Your Honor, so I don't think any plea
5 would have changed his mind at that point since he's
6 sitting in jail now and still has not changed his
7 mind.

8 Failure to investigate, Your Honor, as
9 Mr. Delaney testified, they did not have an
10 investigator in their office at the time, but there is
11 nothing that he -- that an investigator would have
12 done that he did not do, so I believe the case was
13 thoroughly investigated based on the record and his
14 ability to cross-examine the witnesses very
15 effectively.

16 I believe he did do a significant amount of
17 investigation in this case. And as Your Honor pointed
18 out, the reasonable doubt trial strategy was
19 consistently brought out throughout the entire trial
20 and nicely summed up in his closing arguments. And
21 I'm not sure what the applicant is pointing to that
22 shows his allegation that he was not zealously
23 represented. But I think the record speaks for itself
24 showing that he was very zealously represented in this
25 case, Your Honor, and we would just ask you to deny

1 his application with prejudice.

2 THE COURT: Anything further?

3 MR. RICHEY: No, sir.

4 THE COURT: All right.

5 * * *

6 RULING BY THE COURT

7 THE COURT: Mr. Young, unfortunately I find that
8 you have not met the burden to grant the relief
9 requested, and I'm going to ask the State to prepare
10 an order to that effect. However, you can have the
11 absolute right to appeal my decision, and I wish you
12 the best of luck. Good luck to you.

13 MS. SCHILL: Thank you, Your Honor.

14 THE COURT: I'll ask that you prepare that order
15 and send it to me.

16 MS. SCHILL: Yes, Your Honor.

17 THE COURT: Anything further from the State?

18 MS. SCHILL: No, sir.

19 THE COURT: All right. We'll stand adjourned
20 sine die.

21 MS. SCHILL: All right. Thank you.

22 * * *

23 - - -END OF TRANSCRIPT- - -

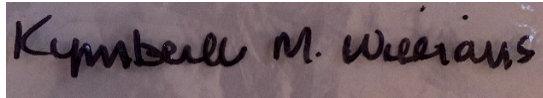
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CERTIFICATE OF REPORTER

I, Kymberlee M. Williams, Certified Shorthand Reporter/Registered Professional Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Union County, South Carolina, on the 10th day of January, 2020.

I do further certify that I am not related, of counsel, or of interest to any party hereto.

This, the 30th day of April, 2020.

A rectangular area containing a handwritten signature in black ink on a light-colored background. The signature reads "Kymberlee M. Williams".

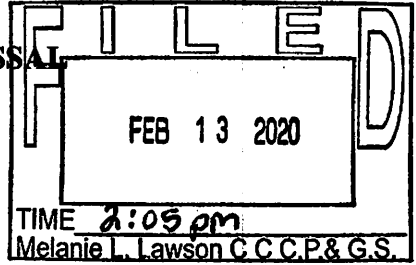
Kymberlee M. Williams, CSR/RPR

STATE OF SOUTH CAROLINA)
 COUNTY OF UNION)
 Cleveland Edward Young, #141241,)
) Applicant,)
))
) v.)
))
 State of South Carolina,)
) Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE SIXTEENTH JUDICIAL CIRCUIT

2018-CP-44-00122

ORDER OF DISMISSAL



This matter comes before this Court by way of an application for post-conviction relief filed on March 19, 2018, by Cleveland Edward Young (Applicant). The State (Respondent) filed a Return on July 5, 2018, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on January 10, 2020, at the Moss Justice Center. Applicant was present at the hearing and represented by Rodney W. Richey, Esquire. Assistant Attorney General Janell H. Gregory of the South Carolina Attorney General’s Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. Assistant Public Defender Erik Delaney (Delaney) of the Sixteenth Circuit Public Defender’s Office and Jennifer Nichols Williams (Williams), Esquire, 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 and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Union County Clerk of Court. In July 2015, the Union County Grand Jury indicted Applicant for first-degree criminal sexual conduct with a minor (2015-GS-44-0501) and third-degree criminal sexual conduct with a minor (2015-GS-44-0913). Delaney and

Williams represented Applicant. Deputy Solicitor John C. Anthony of the Sixteenth Circuit Solicitor's Office prosecuted the case. Applicant proceeded to trial before the Honorable R. Knox McMahon. The jury found Applicant guilty as indicted. On March 28, 2016, Judge McMahon sentenced Applicant to imprisonment for life without parole.

Applicant filed a timely notice of appeal. David Alexander, Esquire, of the Office of Appellate Defense submitted a brief and motion to be relieved pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals granted counsel's motion to be relieved and dismissed the appeal on June 28, 2017. The remittitur was returned to the circuit court on July 14, 2017.

SUMMARY OF FACTS

On January 28, 2015, Sarah Arnold, the teacher of the seven year-old victim, observed Victim making inappropriate gestures with a yogurt stick. (Trial Tr. 60.) Victim placed the yogurt stick in her mouth as if she was performing oral sex and then made gestures that imitated an ejaculating man. (Trial Tr. 60.) The teacher talked to Victim about her actions and Victim disclosed incidents of sexual abuse committed by Applicant. (Trial Tr. 91-93.) The school reported the allegations to law enforcement and Victim was taken for a physical examination. (Trial Tr. 62.) Following that examination, Victim tested positive for rectal chlamydia. (Trial Tr. 62.)

During the investigation it was learned that Victim lived with her mother and father in Union County and would visit her grandparents, Aunt "Nita" and "BB", Applicant, in Whitmire, South Carolina. (Trial Tr 69-70.) Aunt "Nita" and Applicant owned two dogs that Victim would play with during her visits. (Trial Tr. 70 -71.) At times, Victim would be outside alone with Applicant and that is when Applicant penetrated Victim anally, vaginally and had her perform oral

sex on him behind buildings on his property. (Trial Tr. 63-62.) During the trial, Victim testified Applicant “humped” her more times than she could count. (Trial Tr. 72, 74.)

ALLEGATIONS RAISED

On January 10, 2020, Applicant’s post-conviction relief hearing was held at the Moss Justice Center. During the hearing, Applicant proceeded on the following allegations:

1. Ineffective Assistance of Counsel:
 - a. Counsel was ineffective for failing to investigate a plea offer for Applicant;
 - b. Counsel was ineffective for failing to discuss the pros and cons of going to trial with Applicant;
 - c. Counsel was ineffective for failing to investigate Applicant’s case;
 - d. Counsel was ineffective for failing to have a cohesive trial strategy;
 - e. Counsel was ineffective for failing to zealously represent Applicant.

APPLICABLE LAW

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.

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 trial transcript, 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

Counsel was ineffective for failing to investigate a plea offer for Applicant.

Applicant alleges Delaney and Williams were ineffective for failing to investigate whether the State would provide a plea offer in his case. However, at the post-conviction relief hearing, Applicant testified he would not have pleaded guilty under any circumstances and would not have entertained any offer from the State. Applicant testified he would not have pleaded guilty to his charges because he is not guilty of his charges.

Delaney testified Applicant was never interested in a plea offer. Delaney testified he thought they could get a good plea offer, but Applicant was adamant that he did not commit these crimes and would never entertain a plea offer prior to trial. Delaney testified he provided Applicant with a hypothetical situation of a plea offer for time served and Applicant still would not entertain accepting a plea offer. Delaney testified Applicant's attitude was "trial or bust."

Williams testified Applicant was always adamant about going forward with trial and was not interested in any plea offers from the State.

This Court also questioned Applicant regarding his testimony that he would not have entertained a plea offer from the State, and Applicant adamantly stated he would not have plead guilty under any circumstances. This Court finds the testimony of Delaney, Williams, and Applicant credible as to this allegation. This Court finds Delaney and Williams cannot be found deficient for failing to provide Applicant with a plea offer as his own testimony is that he would not have accepted any plea offer from the State. Further, based on his own testimony, Applicant has failed to establish that he would have accepted a plea offer from the State rather than proceed to trial had his attorneys been able to secure a favorable offer from the State. Therefore, based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing Delaney and Williams were constitutionally ineffective and this allegation is denied and dismissed with prejudice.

Counsel was ineffective for failing to discuss the pros and cons of going to trial with Applicant.

Applicant alleges Delaney and Williams were ineffective for failing to discuss with him the pros and cons of proceeding to a jury trial in his case. Applicant testified his attorneys did not discuss the lack of physical evidence against him, or the witness statements made by Victim. Applicant testified he did not know he could still be convicted without physical evidence. Applicant testified his attorneys never discussed the possibility of losing his case at trial and that he could risk conviction even though there was no physical evidence. Applicant testified his attorneys told him they had a good case and they would win.

Delaney testified he went over the pros and cons of proceeding to trial with Applicant. Delaney testified the stakes were high in this case and testified he is never confident in cases like

this where the victim is a young child. Delaney testified Applicant was confident he would not be convicted despite Delaney's discussions with him regarding his concerns with proceeding to a jury trial in Applicant's case. Delaney testified he has been involved in a handful of criminal sexual conduct cases and they are difficult cases to predict. Delaney testified he expressed concerns to Applicant about taking this case to trial and Delaney's concerns did not seem to faze Applicant. Delaney testified he never told Applicant that they would win at trial.

Williams testified Delaney discussed problems with Applicant's case with Applicant, but that Applicant was always adamant about proceeding to trial.

Here, this Court finds the testimony of Delaney and Williams credible as to this allegation, whereas Applicant's testimony is not credible. This Court finds Delaney discussed the pros and cons of proceeding to trial with Applicant, however, based on Applicant's own testimony, he was adamant about proceeding to a jury trial in his case and would not have entertained entering a guilty plea despite Delaney's concerns with proceeding to trial. Further, Applicant has failed to show any resulting prejudice from the alleged deficiency as Applicant's own testimony shows he was not willing to accept a plea offer in this matter regardless of Delaney's concerns with Applicant proceeding to trial. Therefore, based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing Delaney and Williams were constitutionally ineffective as to this allegation and this allegation is denied and dismissed with prejudice.

Counsel was ineffective for failing to investigate Applicant's case.

Applicant alleges Delaney and Williams were ineffective for failing to investigate his case. Applicant testified his attorneys did not review discovery with him and did not provide him with any input on the evidence in his case. Applicant testified he located an expert witness, Alicia

Fester, for his attorneys to call as a witness, however, they did not call her or utilize her at trial. Applicant testified his attorneys told him the State did not have any direct or circumstantial evidence and that the State's witnesses were not credible.

Delaney testified he obtained discovery in Applicant's case and reviewed it with him. Delaney testified he would have made copies of the discovery for Applicant, but that sometimes defendant's in a CSC case do not want copies of their discovery to take back to their cells. Delaney testified there were a few videos of Victim during her forensic interview at the Child Advocacy Center, and Applicant was shown those videos. Delaney testified he did investigate the case despite his office not having an investigator at the time. Delaney testified he talked to people involved in the case, including Anita Kinard, and took photos of the areas where the abuse was alleged to have occurred. Delaney testified he does not believe there is anything an investigator would have done that he did not do in this case. Delaney testified he does not recall Applicant providing him with the name Alicia Fester, but he believes Anita Kinard provided him with that name. Delaney testified he was not familiar with Fester and had questions about her qualifications. Delaney testified he did not believe he needed to bring anyone else on as he did not recall anything standing out with the way the forensic interviews were conducted.

Williams testified she was brought into the case as a second chair right before trial. Williams testified the investigation had already been completed by the time she was added to the case. Williams testified she has never heard of Alicia Fester.

“[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case.” Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012), reversed on other grounds by Walker v. State, 407 S.C. 400, 756 S.E.2d 144

(2014). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

Further, to establish Counsel failed to adequately prepare the case, 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); 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). Applicant's mere speculation about what Counsel would have discovered is insufficient to support his burden of proof.

This Court finds the testimony of Delaney and Williams credible as to this allegation, whereas Applicant's testimony is not credible. This Court finds Delaney investigated Applicant's case and obtained and reviewed discovery with Applicant. This Court finds Applicant has failed to prove deficient on behalf of his attorneys as he has failed to provide this Court with any evidence

showing what Delaney and Williams should have investigated that would have had a possible effect on the results of his trial.

Further, Applicant has failed to prove any resulting prejudice from the alleged deficiency as Applicant failed to provide testimony from Alicia Fester during the post-conviction relief hearing, so any alleged benefit Alicia Fester would have provided to Applicant at trial is speculative. As such, Applicant cannot meet his burden to show this Court that the outcome of his trial would have been different had Delaney and Williams utilized Alicia Fester at trial. See Rule 71.1(e), SCRCR (an applicant has the burden of proving the allegations in his or her application); Caprood, 338 S.C. at 109, 525 S.E.2d at 517 (an applicant has the burden of proving both deficiency and prejudice). See also State v. Decker, 275 Kan. 502, 507, 66 P.3d 915, 920 (2003) (internal citations omitted). Therefore, based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing Delaney and Williams were constitutionally ineffective as to this allegation and this allegation is denied and dismissed with prejudice.

Counsel was ineffective for failing to have a cohesive trial strategy.

Applicant alleges Delaney and Williams were ineffective for failing to maintain a cohesive trial strategy during his jury trial. Applicant testified neither Delaney nor Williams discussed a trial strategy with him or how they would prove his innocence. Applicant testified he knew the State had to prove his guilt beyond a reasonable doubt.

Delaney testified his trial strategy was to focus on the lack of physical evidence in Applicant's case. Delaney testified Victim tested positive for an STD and Applicant tested negative for that STD. Delaney testified Victim made inconsistent statements and, as part of his trial strategy, he cross-examine her on those inconsistencies during the trial. Delaney testified they

had certain things in their favor such as the State's medical expert claiming Applicant could have had the STD, but that before he was tested the STD went away without treatment. However, the study she based that opinion on was a study of pregnant women, which clearly would not have applied to a male defendant like Applicant. Delaney testified he cross-examined the State's medical expert on that study and highlighted it again during his closing argument. Delaney also testified they also obtained all of Applicant's medical records and records from the Department of Health and Environmental Control (DHEC), which all showed Applicant had never had the STD. Victim was alleged to have obtained from him as a result of the sexual abuse. Delaney testified he addressed all of the inconsistencies in the State's evidence and the lack of physical evidence in his closing argument as well. Delaney testified they stuck to their reasonable doubt trial strategy, but were ultimately unsuccessful.

Williams testified she was "a little bit" involved in developing a trial strategy in Applicant's case. Williams testified the strategy focused on the inconsistent statements of the witnesses, Applicant's negative STD test, and other reasonable doubt aspects of Applicant's case.

"Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" Strickland, 466 U.S. at 690. There is a strong presumption that counsel's decisions are based on tactical strategy rather than neglect. Gentry, 540 U.S. at 8 (quoting Massaro, 538 U.S. at 505). "Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith, 386 S.C. at 567, 689 S.E.2d at 632. See also Ingle, 348 S.C. at 470, 560 S.E.2d at 402 (holding counsel may avoid a finding of ineffectiveness if he articulates a valid reason for using a certain strategy). "Courts must be wary of second guessing

counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel." Whitehead, 308 S.C. at 122, 417 S.E.2d at 531.

This Court finds the testimony of Delaney and Williams credible as to this allegation, whereas Applicant's testimony is not credible. This Court finds Delaney and Williams had a reasonable trial strategy to focus on reasonable doubt in Applicant's case. This Court finds that strategy was executed consistently throughout Applicant's trial. This Court finds Applicant has failed to prove deficient on behalf of his attorneys as both attorneys testified they had a reasonable trial strategy in presenting Applicant's case at trial.

Further, Applicant has failed to prove any resulting prejudice from the alleged deficiency as Applicant failed to show this Court what trial strategy Delaney and Williams could have or should have presented that that would have had a reasonable probability of changing the outcome of his trial. Therefore, based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing Delaney and Williams were constitutionally ineffective as to this allegation and this allegation is denied and dismissed with prejudice.

Counsel was ineffective for failing to zealously represent Applicant.

Applicant alleges Delaney and Williams were ineffective for failing to zealously represent him at trial. However, Applicant failed to provide this Court with any evidence or testimony as to this allegation during the post-conviction relief hearing. Applicant failed to provide testimony regarding how the representation of Delaney and Williams fell short of zealous representation.

As discussed in previous sections, Delaney testified he met with Applicant, reviewed discovery with Applicant, investigated Applicant's case, and developed a valid trial strategy in Applicant's case. Delaney testified he provided the jury with a closing argument that summarized

the weaknesses of the State's case. Delaney and Williams testified they maintained a reasonable doubt trial strategy throughout the Applicant's trial.

This Court finds the testimony of Delaney and Williams credible as to this allegation. This Court finds that the performance of Delaney and Williams was reasonable under professional norms. Cherry, 300 S.C. 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, this Court finds Applicant has failed to carry his burden of establishing how he was prejudiced by any alleged deficiency. Therefore, based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing Delaney and Williams were constitutionally ineffective as to this allegation and this allegation is denied and dismissed with prejudice.

CONCLUSION

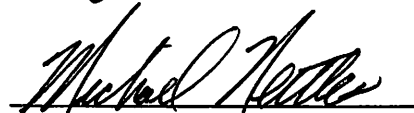
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this 7 day of Feb, 2020.


 MICHAEL G. NETTLES
 Presiding Judge
 Sixteenth Judicial Circuit

, South Carolina

DOCKET NO 2015-GS-44-0501

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

WITNESSES

Belue/UCSO

MA Black UCSO

**The State of South Carolina
County of Union**

Defendant

COURT OF GENERAL SESSIONS

AUGUST 03 TERM, 2015

I hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

2015A4410100152

Defendant

THE STATE

vs.

CLEVELAND EDWARD YOUNG

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRUE BILL

Clayton Sauls

Foreperson of Grand Jury

Date: JUL 30 2015

VERDICT

Indictment for

**CRIMINAL SEXUAL CONDUCT
WITH A MINOR, 1ST DEGREE**

6

Foreperson of Petit Jury

Date:

SC Code: 16-03-655

CDR Code: 385

STATE OF SOUTH CAROLINA)
)
 COUNTY OF UNION)

INDICTMENT

At a Court of General Sessions, convened on July 30, 2015, the Grand Jurors of Union County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, 1ST DEGREE

That in Union County, South Carolina, between on or about January 28, 2013 and on or about January 28, 2015, Cleveland Edward Young did commit the crime of Criminal Sexual Conduct with a Minor in the First Degree, in that the Defendant did commit a sexual battery upon the Victim, **Minor** **Minor**, who was a minor under the age of eleven (11) at the time of the incident, by engaging in intercourse, sodomy, or fellatio with the Victim, in violation of Section 16-03-655, Code of Laws of South Carolina (1976, as amended).

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


 DEPUTY SOLICITOR

DOCKET NO. 2015-GS-44-0913
Direct Indictment

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

WITNESSES

Belue/UCSO

MA Black ucso

The State of South Carolina
County of Union

Defendant

COURT OF GENERAL SESSIONS

AUGUST 03 TERM, 2015

I hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

DI2015A4410100152

Defendant

THE STATE

vs.

Witness:

CLEVELAND EDWARD YOUNG

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRUE BILL

Elizabeth Saylor

Foreperson of Grand Jury

Date: JUL 30 2015

VERDICT

Indictment for

**CRIMINAL SEXUAL CONDUCT
WITH MINOR, 3RD DEGREE**

SC Code: 16-03-0655

CDR Code: 3661

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF UNION)

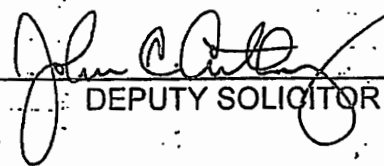
INDICTMENT

At a Court of General Sessions, convened on July 30, 2015, the Grand Jurors of Union County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH MINOR, 3RD DEGREE

That in Union County, South Carolina, between on or about January 28, 2013 and on or about January 28, 2015, Cleveland Edward Young, a person over the age of fourteen, did willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body, or any part or member thereof, of **Minor [REDACTED]**, a child under the age of sixteen (16) years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of himself or of the Victim, in violation of Section 16-03-0655, Code of Laws of South Carolina (1976, as amended).

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


DEPUTY SOLICITOR