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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Sumter County

William Jeffrey Young, Circuit Court Judge

WAYNE COOLEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-212162

A P P E N D I X

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STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

THE STATE OF SOUTH CAROLINA,
PLAINTIFF

VS.

WAYNE L. COOLEY,
DEFENDANT

GUILTY PLEA
2008-GS-43-223
2008-GS-43-805
2007-GS-43-276

NOVEMBER 17, 2009
SUMTER, S.C.

BEFORE THE HONORABLE R. FERRELL COTHRAN, JUDGE.

A-P-P-E-A-R-A-N-C-E-S

MR. W. HARRY CONNER,
ASSISTANT SOLICITOR FOR THE STATE

MS. B. MCKNEW,
ASSISTANT SOLICITOR FOR THE STATE

MR. TOD WILLIAMS, IV
ATTORNEY FOR DEFENDANT

MR. ARTHUR WILDER,
ATTORNEY FOR DEFENDANT

MARGARET T. SULLIVAN,
COURT REPORTER

1 THE COURT: Solicitor.

2 MR. CONNER: This is Indictment No.
3 2008-GS-43-223. The State versus Wayne L. Cooley.
4 He is charged in the indictment with kidnapping
5 and criminal sexual conduct in the first degree.
6 He is represented by Tod Williams and Arthur
7 Wilder who is sitting with him at this time.

8 MR. CONNER: May it please the Court.

9 THE COURT: Yes, sir.

10 MR. CONNER: The defendant, Wayne Lewis
11 Cooley, has indicated to us that he would plead
12 guilty for a 23-year negotiated sentence on the
13 case we are trying now. Which is Indictment No.
14 2008-223. I believe you have the paperwork on
15 that.

16 THE COURT: That's correct.

17 MR. CONNER: If you would mark that please
18 sir, as a negotiated sentence. I don't believe I
19 did.

20 THE COURT: No, sir, you didn't.

21 MR. CONNER: In addition to that, Your
22 Honor, we have two other rape cases on him. One,
23 is 2008-805. That was criminal sexual conduct in
24 the first degree, kidnapping and possession of a
25 knife during the commission of a violent crime.

1 We are accepting his plea on Count 1, criminal
2 sexual conduct in the first degree. The other two
3 charges will be dismissed pursuant to his plea.

4 The -- he is also entering a guilty plea
5 on Indictment 2007-276. Where he was charged with
6 criminal sexual conduct first degree, assault with
7 intent to commit criminal sexual conduct in the
8 first degree and kidnapping. And that is on
9 Indictment 2007-276. He is entering a plea of
10 guilty to assault with intent to commit CSC in the
11 first degree. Your Honor, we have -- our
12 negotiation is for a 23-year sentence to run
13 concurrent on all three cases.

14 (Whereupon, the defendant is sworn.)

15 THE COURT: Mr. Wilder, have you explained
16 the nature of the charges against Mr. Cooley, as
17 well as his constitutional rights?

18 MR. WILDER: Yes, Your Honor, I have.

19 THE COURT: Does he understand the
20 significance of this plea?

21 MR. WILDER: Yes, Your Honor. The only
22 thing I would add to what Mr. Conner said is, that
23 we discussed the credit for time served would be
24 given to him. He has been in jail for some length
25 of time prior to today.

1 THE COURT: Is that your understanding,
2 Mr. Conner?

3 MR. CONNER: That's correct.

4 THE COURT: Mr. Cooley, do you want to
5 plead guilty, sir?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Have you had enough time to
8 talk to your lawyer about your decision?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Are you satisfied with his
11 representation?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you got any complaints
14 against him at all?

15 THE DEFENDANT: No, sir.

16 THE COURT: Outside of the negotiations
17 today as presented by the State, has anybody
18 promised you anything, or threatened you in any
19 way to get you to plead guilty?

20 THE DEFENDANT: No, sir.

←*

21 THE COURT: So you are pleading guilty
22 freely and voluntary?

23 THE DEFENDANT? No, sir. Would you tell
24 me?

25 THE COURT: Your understanding other than

1 the negotiations today, nobody has promised you or
2 threatened you to get you to plead guilty today,
3 have they?

4 THE DEFENDANT: No, sir.

5 THE COURT: You are doing this of your own
6 free will and accord? You understand the lawyers
7 can advise you of your legal rights and advise you
8 of their opinion, but this is ultimately your
9 decision. Do you understand?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Now are you under the
12 influence of alcohol or drugs today?

13 THE DEFENDANT: No, sir.

14 THE COURT: Do you have any mental or
15 physical diseases that would keep you from
16 understanding what you are doing here today?

17 THE DEFENDANT: No, sir.

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

19 THE DEFENDANT: I went up to the 11th
20 grade.

21 THE COURT: Have you worked since you have
22 been out of school on any job?

23 THE DEFENDANT: Well I was going to work
24 on my own.

25 THE COURT: By pleading guilty to these

1 charges, you are giving up your constitutional
2 rights under the 5th Amendment to remain silent.
3 Do you understand?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You are also giving up your
6 right to a jury trial on each of these
7 indictments. We are in a jury trial now on one of
8 these indictments. During that trial, you are
9 presumed innocent, the State has the burden of
10 proving you guilty beyond a reasonable doubt to
11 all 12 jurors. You will be able to sit there in
12 the other trials as well as this one, listen to
13 the witnesses testifying against you. You
14 understand as your lawyer has done. Cross examine
15 those witnesses and subpoena any witnesses who
16 will testify on your behalf. But when you plead
17 guilty, you give all that up. Do you understand
18 that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You understand that these
21 charges you are pleading guilty to, are
22 non-parolable offenses. Do you understand that?
23 You have to serve at least 85 percent of the
24 sentence. Do you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Also, these are serious
2 offenses. Which means if you get three serious
3 offenses against you or two most serious offenses,
4 both of those, you may be looking at life without
5 the possibility or parole. Do you understand
6 that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: So if you ever get in the
9 future get charged with an offense that qualifies
10 as a serious or most serious, you will looking at
11 life. Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: They are also going to require
14 you to be registered as a -- the sexual registry
15 of the State, do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: For the rest of your life.

18 THE DEFENDANT: Yes.

19 THE COURT: Have you got any questions you
20 want to ask me concerning your rights?

21 THE DEFENDANT: No, sir.

22 THE COURT: Do you understand that by
23 going through this guilty plea, and not completing
24 the jury trial, you are also giving up any appeals
25 that may come out of this trial?

1 THE DEFENDANT: Yes.

2 THE COURT: By the guilty plea.

3 THE DEFENDANT: Yes.

4 THE COURT: And any appeals that come out
5 of the other two trials in the future. Do you
6 understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: Now if you want to appeal this
9 guilty plea and sentence today, you must do so by
10 filing with the Clerk's office within 10 days.
11 You or your attorney must file an appeal. If you
12 don't you waive that. Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: Have you got any questions you
15 want to ask me at all?

16 THE DEFENDANT: No, sir.

17 THE COURT: You understand that since this
18 is a negotiated plea, if I don't feel like I can
19 follow the negotiations, I will allow you to
20 withdraw your plea. Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: The solicitor is going, I
23 think I have got a pretty good handle on the facts
24 of this case. He's going to go over the facts; as
25 well as the facts of the two cases. I'm going to

1 ask you about them, okay.

2 MR. CONNER: In regards to the case we are
3 trying, Your Honor, the only thing we haven't put
4 up yet is the results of the DNA testing. And
5 they did obtain the swabs at the hospital. They
6 did take them to sled. And they were tested
7 there, and it proved that there was semen in the
8 vaginal cavity. There was semen in the lady's
9 rectum. And there was also some suspected semen
10 on her body. And that all three of those swabs
11 matched him. And the statistics were
12 overpowering. It's something like 1 and 26
13 quadrillion. The -- Ms. McKnew will tell you
14 about the other two, Your Honor.

15 MS. NCKNEW: As to Indictment
16 2007-GS-43-276. On May 15th 2006, officers
17 responded to a call at 11:07 in the evening.
18 Ms. Ballard stated that Mr. Cooley was asking her
19 for some money to get high. She told him she
20 didn't have any. And he became angry, and took
21 her behind an abandoned house and raped her. She
22 tried to yell. He put his hand on her neck, and
23 told her to shut up. And subsequently someone
24 came around the corner and saw what was going on.
25

1 MR. CONNER: And, Your Honor, this woman
2 has no legs. She propels herself around in a
3 wheelchair. And she -- we did not get any DNA in
4 her particular case because it was interrupted by
5 a witness who came along. And we talked with the
6 witness. And he indicated that he knew Wayne
7 Cooley. And when he walked up on them, Wayne was
8 on the ground on top of this woman, and had his
9 pants down. And when he said, "What are you
10 doing," Wayne jumps up and pulls up his pants.
11 Tell him about the other one.

12 MS. MCNEW: 2008-GS-43-805. The victim,
13 Victim reports that On February 16, 2007,
14 Mr. Cooley requested a ride from her to the store.
15 When she gave him the ride, he took out a knife,
16 and put it to the side of her neck and made her
17 drive to a dirt road. He became violent, cutting
18 her neck on the right side. And she had minor
19 cuts on her hands. He then hit her in the mouth,
20 and choked her. And forced her to perform oral
21 sex and then raped her without a condom.

22 He then made her drive him to the Young's
23 Market on Patricia Drive and Manning Road. He got
24 out of the car and walked away. These charges
25 followed. And both of the victims were in the

1 courtroom on Monday.

2 MR. CONNER: We got DNA samples from
3 Ms. Hughes, Your Honor. And that's when we had an
4 opportunity to get DNA from defendant Cooley. And
5 so they all tied together at that point. And the
6 DNA samples that we got from her, the swabs we got
7 from her; the DNA on those swabs matched Cooley.

8 THE COURT: Okay. Are those facts
9 correct, Mr. Cooley?

10 THE DEFENDANT: Yes.

11 THE COURT: That's what you did? I find
12 there is a substantial factual basis for these
13 pleas. They are freely and voluntarily entered.
14 You have had the advice of competent counsel with
15 whom you tell me you are satisfied, and I will
16 accept your plea.

17 Gentlemen, you all want to tell me
18 anything?

19 MR. WILDER: Your Honor, we just ask the
20 court to accept the plea.

21 MR. CONNER: May It please the Court,
22 could I speak with the victims here a minute?

23 THE COURT: Certainly.

24 MR. WILLIAMS: Your Honor, I might have
25 misheard the court, but these are most serious

1 offenses.

2 THE COURT: Yes.

3 MR. WILLIAMS: I just wanted to clarify
4 that for the record. I'm not sure if the court
5 said they are serious or most serious.

6 THE COURT: Well I first told him it was
7 serious. Then I said most serious.

8 MR. WILLIAMS: I just wanted to note that
9 for the record.

10 THE COURT: All three of them are most
11 serious. My understanding is if the defendant
12 were tried separately, the State would notice him
13 of life without parole. If you ever get out -- if
14 he would get out and ever get caught in the future
15 for this again, you would be looking at life
16 without the possibility of parole. And under the
17 current law, it would not be discretionary in the
18 judge's sentencing you. You understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Did you want to add something
21 else, Mr. Conner?

22 MR. CONNER: Nothing further, Your Honor.
23 I consulted with our victim advocate there. And
24 he tells me the victim in this case doesn't wish
25 to say anything further.

1 THE COURT: On Indictment 2008-GS-43-223,
2 the Sentence of the Court is you be committed to
3 the State Department of Corrections for a term of
4 23 years. And you are given credit for time
5 served towards that. Indictment 2007-GS-43-276,
6 criminal assault with intent to commit criminal
7 sexual conduct in the first degree, the Sentence
8 of the Court is that you are committed to the
9 State Department of Corrections for a term of 23
10 years. To run concurrent. Under Indictment
11 2008-43-223 and 2008-43-276 you are given credit
12 for time served on that as well. Under
13 2008-GS- 43-805, criminal sexual conduct in the
14 first degree. The sentence is 23 years. To run
15 concurrent with Indictment 223 and Indictment
16 07-43-276. You are given credit for time served
17 on all three.

18 MS. MCNEW: Thank you, Your Honor.

19 MR. WILLIAMS: Thank you, judge.

20 -----End of Requested Transcript of record---

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CERTIFICATE

State of South Carolina

County of Sumter,

I, Margaret T. Sullivan, Official Court Reporter for the Third Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the above captioned case, relative to appeal, in General Sessions Court on November 16th and 17th 2009, for Sumter County, Sumter, South Carolina.

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

June 29, 2010
Date

Margaret T. Sullivan

Margaret T. Sullivan, Court Reporter
My commission expires October 3, 2011

FORM 5

STATE OF SOUTH CAROLINA)

County of SUMTER)

WAYNE LOUIS COOLEY, #169807)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

RECORDED
IN THE COURT OF COMMON PLEAS
2010 APR 14 PM 12:37

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

APPLICATION FOR

POST-CONVICTION RELIEF

2010-CP-43- 801

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention BROAD RIVER CORRECTIONAL INSTITUTION, COLUMBIA, S.C.
4460 BROAD RIVER ROAD, MARION #285-SCDC#168807
2. Name and location of Court which imposed sentence SUMTER COUNTY COURT OF
GENERAL SESSION, SUMTER SOUTH CAROLINA
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-GS-43-0776-2008-43-805-2008-GS-43-0223
 - (b) CSC 1ST, AWI TO COMMITT CSC 1ST, KIDNAPPING

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) NOVEMBER 17, 2009
 - (b) _____
 - (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty PLEAD GUILTY
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. N/A
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) DID NOT KNOW MY RIGHTS IN THAT RESPECT
 - (b) _____

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

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) _____
- (c) _____

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

- (a) SEE ATTACHED SHEET
- (b) _____
- (c) _____

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

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

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

- (a) the specific nature thereof:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____

(c) the disposition thereof:

- i. N/A
- ii.
- iii.
- 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. UNKNOWN
- ii.
- iii.
- iv.

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

NO

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

(a) which grounds have been presented:

- i. NONE
- ii.
- iii.

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

- i. NONE
- ii.
- iii.

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

- (a) POST-CONVICTION RELIEF IS THE AVENUE TO RAISE THSES ISSUES
- (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?
NO

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. T.D. WILLIAMS, SUMTER COUNTY BAR
SUMTER, SOUTH CAROLINA
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. PLEA
 - ii. _____
 - iii. _____

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

VACATED AND REMANDED

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

NO

STATE OF SOUTH CAROLINA)

County of SUMTER)

VERIFICATION

I, WAYNE LOUIS COOLEY, #168807, 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.

Wayne Louis Cooley
WAYNE LOUIS COOLEY, #168807

SWORN to and subscribed before me this 24
day of January, 2010.

Susan J. Johnson (L.S.)
Notary Public

My Commission Expires March 5, 2018

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

I, WAYNE LOUIS COOLEY, #168807, 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.

Wayne Louis Cooley
Applicant

SWORN or affirmed to and subscribed before me this
7th day of January, 2010.

Susan J. Johnson
Notary Public

My Commission Expires
March 5, 2018

My Commission Expires: _____

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER)	
)	
)	2010-CP-43-0801
)	
Wayne Louis Cooley, #168807,)	
)	
Applicant,)	
)	
v.)	RETURN
)	(Appointment of Counsel Requested)
State of South Carolina,)	
)	
Respondent.)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed April 14, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted for three (3) counts of Kidnapping (2008-GS-43-0223 (Ct. 1), 2007-GS-43-0276 (Ct. 3), and 2007-GS-43-0805 (Ct. 2)), three (3) counts of Criminal Sexual Conduct ("CSC") in the First Degree (2008-GS-43-0223 (Ct. 2), 2007-GS-43-0276 (Ct. 1), and 2007-GS-43-0805 (Ct. 1)), Assault with Intent to Commit CSC (2007-GS-43-0276 (Ct. 2)), and Possession of a Knife During Commission of a Violent Crime (2007-GS-43-0805 (Ct. 3)). Applicant was represented by Todd Williams, IV, Esquire, and Arthur Wilder, Esquire. On November 17, 2009, the Applicant pled guilty to two counts of CSC in the First Degree (2008-GS-43-0223 (Ct. 2) and 2007-GS-43-0805 (Ct. 1) and to one count of Assault with Intent to Commit CSC (2007-GS-43-0276 (Ct. 2).) Applicant was sentenced by the Honorable R. Ferrell Cothran, Jr., to twenty-three

(23) years on each count, all sentences to be served concurrently. Applicant did not appeal his conviction and sentence.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.

Applicant has failed to set forth with specificity the grounds upon which the application is based and facts in support thereof. S.C. Code §17-27-50. Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 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. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. 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 pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985):

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the 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.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

April 11, 2011.

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

COURT OF GENERAL SESSIONS

Wayne Cooley,)

PLAINTIFF,)

TRANSCRIPT OF RECORD
C/A #: 2010-CP-43-0801

v.)

State of South Carolina)

DEFENDANT.)
_____)

Friday, March 23, 2012
Sumter County Courthouse
Sumter, South Carolina

BEFORE:

HONORABLE R. JEFFREY YOUNG, PRESIDING

APPEARANCES:

Assistant Attorney General Mary Williams
Attorney for State of South Carolina

Richard T. Jones, Esquire
Attorney for Wayne Cooley

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

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EXHIBITS

(There were no Exhibits marked during this Hearing)

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1 Ms. Williams: May it please the court?

2 The Court: Yes, ma'am.

3 Ms. Williams: Wayne Cooley. Mr. Cooley was charged,
4 he had three different incidents for which he was
5 charged. He had a total of three counts of kidnaping,
6 three counts of criminal sexual conduct in the first
7 degree, Assault with the intent to commit criminal sexual
8 conduct, possession of a knife during a violent crime.
9 He was represented --- Tod Williams and Arthur Wilder
10 represented him. During the trial on one of those cases
11 he entered a guilty plea. He pled to two counts of
12 criminal sexual conduct in the first degree, one count of
13 assault with intent to commit CSC and he received a
14 negotiated sentence of twenty-three (23) years. He filed
15 this application alleging ineffective assistance of
16 counsel. He is represented today by Mr. Jones.

17 The Court: Mr. Jones.

18 Mr. Jones: Yes, Your Honor. Your Honor, we would
19 call Mr. Cooley to the stand.

20 The Court: Okay.

21 Bailiff: Place your left hand on the Bible, raise
22 your right hand.

23 (Witness complies)

24 Bailiff: State your name, please?

25 Witness: My name is Wayne Cooley.

1 Bailiff: Do you solemnly swear or affirm the
2 testimony you give this Court will be the truth, the
3 whole truth and nothing but the truth so help you God?

4 Witness: Yes, sir.

5 Bailiff: Have a seat up here, sir.

6 (Witness complies)

7 Bailiff: State your full name and spell your last
8 name for the record.

9 Witness: Wayne Cooley, C-O-O-L-E-Y.

10 The Court: Mr. Jones you may proceed.

11 Mr. Jones: Thank you, Your Honor.

12 Wayne Cooley - Examination by Mr. Jones:

13 Q: Mr. Cooley, you and I met this morning before
14 we began this case, didn't we?

15 A: Yes, sir.

16 Q: And in addition to that I explained to you at
17 that time that if in deed the judge should decide to give
18 you a new trial that you could face all of the charges
19 that have been leveled against you, you understand that,
20 don't you?

21 A: Yes, sir.

22 Q: And you understand that right now you have
23 concurrent sentences but that you could get consecutive
24 sentences?

25 A: Yes, sir.

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1 Q: And you understand that this is three counts of
2 criminal sexual conduct and other matters?

3 A: Yes, sir.

4 Q: And you understand each of those could have as
5 much as thirty years a piece?

6 A: Yes, sir.

7 Q: Okay. And you want to proceed with this?

8 A: Yes, sir.

9 Q: I have thoroughly discussed that with you this
10 morning haven't I?

11 A: Yes, sir.

12 Q: Beyond that Mr. Cooley, I met with you over at
13 Broad River Correctional Institute on April the 15th of
14 2011, didn't I?

15 A: Yes, sir.

16 Q: And when I met with you I discussed all the
17 issues in this case, didn't we?

18 A: Yes, sir.

19 Q: In fact, we talked about the application that
20 you had filed for Post Conviction Relief?

21 A: Yes, sir.

22 Q: Are you satisfied that we reviewed all of the
23 issues raised in that?

24 A: Yes, sir.

25 Q: Okay. You and I met for some period of time

1 and I acquainted myself with the facts and circumstances
2 of the case in chief but also the complaints you had
3 against Mr. Williams, correct?

4 A: That's right.

5 Q: Okay. Do you want to proceed today with this
6 PCR?

7 A: Yes, sir.

8 Q: Okay. Let me ask you some questions here. You
9 had Mr. Tod Williams, I believe, was the lawyer who
10 represented you, is that correct?

11 A: That's correct, sir.

12 Q: Okay. Now, tell the Court what you believe
13 that Mr. Tod Williams did or did not do that he should
14 have done to make him and render him ineffective counsel.

15 A: One, Mr. Tod Williams he did not represent me
16 to his fullest. Tod Williams was mad at me because I
17 wrote to the Disciplinary Counsel Board on him and I
18 explained to them what was going on while I was in the
19 county jail. That he wouldn't do the right thing while I
20 was in the county jail. So, he came to see me just one
21 time. All the other times he just wrote letters to me
22 asking me do I want to plea all the time. So, I keep
23 telling him I don't want to plea I want to go to trial.
24 So, once we went through all that and him and Arthur
25 Wilder they came down and they know that I had conflict

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1 of interest and he also wrote a letter to me, two letters
2 to me letting me know that a conflict of interest I had
3 raised and everything so they was trying to talk me out
4 of the conflict of interest. So with the trial they
5 never bring that issue up in front of the judge of the
6 conflict of interest. The victim go on the stand they
7 never did ask or object to the victims statements or did
8 not cross examination the victim.

9 Q: Anything else that you notice or any other
10 complaints that you had against Mr. Williams?

11 A: That's just about all.

12 Q: Okay. Let me ask you some questions along those
13 lines, okay. As I understand you, you've said that Mr.
14 Williams said that he had a conflict, correct?

15 A: Correct.

16 Q: And the reason that he had a conflict is you
17 turned him into the Office of Disciplinary Counsel?

18 A: That's correct.

19 Q: Now, you said that Mr. Williams wasn't doing
20 you right. Tell the Court specifically why did you turn
21 him into the Office of Disciplinary Counsel?

22 A: He didn't really had time to come down to the
23 county jail to discuss this case with me or to go over
24 the case. The only time he could have did that was when
25 we were getting ready to go to trial. That was it.

1 Q: Okay. So you actually met with him face to
2 face though before the trial begin, didn't you?

3 A: Yes, sir.

4 Q: In fact, this trial I think went for some four
5 days, didn't it?

6 A: It went November 16 to November 17.

7 Q: Oh, okay. So, it was about two days worth of
8 trial?

9 A: Yes, sir.

10 Q: And actually you made a guilty plea on these
11 charges after you were in trial some two days?

12 A: Yes, sir.

13 Q: Now, Mr. Wilder was also there throughout the
14 trial, wasn't he?

15 A: Yes, sir.

16 Q: Okay.

17 A: He assisted T Williams.

18 Q: Now, I believe you said that one of your
19 grounds you said that Mr. Williams didn't do a good cross
20 examination?

21 A: Yes, sir.

22 Q: Okay. Let me ask you. What did you mean that
23 he didn't do a good cross examination?

24 A: He let the victim got up on the stand and use
25 her statement and he did not object to or statement ---

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1 did not cross examine her (sirens going off) ...

2 Q: How old was this alleged victim at the time of
3 the alleged incident, how old was she?

4 A: Seventeen.

5 Q: So, she was testifying at about that age,
6 seventeen years old?

7 A: Yes.

8 Q: And when the alleged incident happened, the
9 criminal sexual conduct happened, she was seventeen years
10 old?

11 A: No, she was seventeen when I went on trial she
12 was seventeen years old.

13 Q: Okay. Alright. I believe your defense in the
14 case was what?

15 A: Not guilty.

16 Q: I know that. My question probably wasn't clear
17 Mr. Cooley. You were not guilty but did you raise a
18 defense that it was consensual?

19 A: Yes.

20 Q: Was that defense raised by Mr. Williams?

21 A: No. He did not raise it. He was at the county
22 jail at the time, one time, and he said Mr. Cooley we
23 don't see that, the physical evidence that they have and
24 if we carry it to trial he say that's the only thing we
25 can fight for is consensual sex. But he didn't.

1 Q: I believe one of the complaints you had was
2 that there was no weapon involved, correct?

3 A: Yes. Also, when she got up on the stand and
4 say her statement she admitted that there was a weapon
5 involved. There never did been a weapon involved and
6 they didn't object to that.

7 Q: But that's what she said?

8 A: That's what she said.

9 Q: Now, I believe you said that you didn't
10 understand what you plead guilty to, is that correct?

11 A: That's correct.

12 Q: Now, there was actually a transcript of that
13 guilty plea wasn't there?

14 A: Yes, sir.

15 Q: Now, in that transcript you are asked, did the
16 court ask you whether you understood?

17 A: Yes, sir. They asked me, but at the time my
18 mind wasn't really together, you know, because I was
19 just. I wanted to go to trial, to go through a trial but
20 also at that time, Arthur Wilder and Tod Williams which
21 they was kind of rushing my mind you know telling me you
22 need to plea, I'm not going to tell you nothing wrong.
23 I'm like why do y'all do this to me now, you know, the
24 eve of trial and all of a sudden y'all want to back out
25 from the trial. Now, so I ain't had no other choice but

1 to take the plea. They was kind of rushing so I just
2 took the plea.

3 Q: You had two lawyers, not just one, but two
4 lawyers?

5 A: I had two lawyers.

6 Q: You had Mr. Wilder, correct?

7 A: That's right.

8 Q: And also Mr. Williams?

9 A: Mr. Wilder was the assistant.

10 Q: And they were there during the trial?

11 A: Yes, sir.

12 Q: Okay. I believe you were sentenced to twenty-
13 three (23) years, is that correct?

14 A: That's correct.

15 Q: And you could have been sentenced up to thirty
16 (30) years on these, right?

17 A: That's right.

18 Q: Now, the two other criminal sexual conduct
19 charges which you were convicted, where they dealing with
20 this same seventeen year old girl?

21 A: No, sir. There's two different.

22 Q: And you pled guilty to all of those?

23 A: I pled guilty to all those he was threatening I
24 was going to get a life sentence if I don't plea this and
25 that. So, I just went and took the plea.

1 Q: How about the DNA match up, do you remember
2 anything about that?

3 A: Yes, sir. I remember that it did match up, you
4 know, but also it was consensual because also in my
5 statement, the statement that she said it herself that I
6 took my clothes off and laid down and she get on top of
7 me. Let me get on top of you, let me ride you for a
8 moment, so that's just telling you that it was
9 consensual.

10 Q: And that was in her statement?

11 A: That's in her statement.

12 Q: And you pled guilty after she read her
13 statement.

14 A: I plead guilty because they were telling me to
15 take this plea here.

16 Mr. Jones: Your Honor, I have no further questions.

17 The Court: Thank you. Ms. Williams, do you have any
18 questions of this witness?

19 Wayne Cooley - Cross Examination by Ms. Williams:

20 Q: Mr. Cooley, you also informed the judge that
21 you had no complaints at all about your attorneys, isn't
22 that correct?

23 A: I did say that at that time because I didn't
24 know what I was doing at the time.

25 Q: Okay. And they also informed you that this was

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1 a most serious crime that you could get life without
2 parole if you were convicted of more than one?

3 A: Yes.

4 Q: So, you understood you really could get life.
5 They weren't just threatening you with that, that was
6 something that you could face as a result?

7 A: I could face that but they were saying I could
8 get that or not.

9 Q: And you were aware of DNA evidence in two of
10 these cases?

11 A: Yes, I knew about the DNA.

12 Q: Okay. So, they had met with you and shared
13 some of that evidence with you at some point?

14 A: Yes, they had.

15 Q: Had they shared with you the victims statements
16 prior to trial?

17 A: I had the victim's statement.

18 Q: So you did get to speak with Mr. Williams and
19 Mr. Wilder a fairly good bit about this?

20 A: Only time I talked to them they had want me to
21 plea.

22 Q: You said you only spoke with Mr. Williams once,
23 is that correct?

24 A: Mr. Williams?

25 Q: Yes.

1 A: I spoke with him one time at the county and the
2 rest of time it was letters.

3 Q: And he was pressuring you to plea through
4 letters, is that ...

5 A: That's correct.

6 Q: And you told the judge this plea was free and
7 voluntary and nobody made you any promises or any
8 threats, right?

9 A: I said, no, sir. I said I plead voluntary and
10 freely, I said no sir.

11 Q: And you said nobody has promised you anything
12 or threatened you and you said no. He said you're doing
13 this of your own free will and accord. Yes, sir, right?

14 A: If that's what you got.

15 Q: That wasn't true?

16 A: I mean, that's what it said in the transcript
17 because I didn't want to plea, I had to plea because my
18 lawyer then was telling me this and that so I had to go
19 ahead on and take it.

20 Q: You just plead because you didn't want to get a
21 life sentence, is that right correct?

22 A: I mean, that's correct. They was threatening
23 me with a life sentence.

24 Q: Thank you, Mr. Cooley.

25 Ms. Williams: No further questions.

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1 The Court: Mr. Jones?

2 Mr. Jones: No questions, Your Honor.

3 The Court: Thank you, sir. You may step down.

4 (Witness complies)

5 The Court: Mr. Jones, call your next witness.

6 Mr. Jones: I have no further witnesses, Your Honor.

7 The Court: Ms. Williams.

8 Ms. Williams: Your Honor, the state will call Mr.

9 Wilder.

10 Bailiff: State your name, please.

11 Witness: Arthur Harrison Wilder, Jr.

12 Bailiff: Do you solemnly swear or affirm the
13 testimony you give this court will be the truth, the
14 whole truth and nothing but the truth so help you God?

15 Witness: I do.

16 Bailiff: Thank you. Step around here.

17 (Witness complies)

18 Bailiff: State your full name and spell your last
19 name for the record.

20 Witness: My name is Arthur Harrison Wilder, W-I-L-D-
21 E-R.

22 Arthur H. Wilder - Examination by Ms. Williams:

23 Q: Mr. Wilder, can you tell me briefly about your
24 legal experience and criminal defense work?

25 A: I was licensed to practice law in November of

1 1976. Served as the city judge for the City of Sumter.
2 Went to work for the Public Defenders Office thereafter
3 and for many years was an assistant public defender when
4 T Davis was the Chief Public Defender. He quit and
5 because the Chief Public Defender of Sumter County.
6 Eventually was appointed to be the Chairman of the South
7 Carolina Indigent Defense Commission.

8 Q: Is it in your role as a public defender that
9 you came in contact with Mr. Cooley?

10 A: Well, I haven't finished with my
11 qualifications.

12 Q: I'm sorry.

13 A: In 1998, I was appointed to be the Solicitor
14 for the Third Circuit by Governor Beasley and then after
15 that was over I went back to work with the public
16 defenders office again being the Chief Public Defender of
17 Sumter County. Jack Howle became the Chief Circuit
18 defender. Last August I retired.

19 The Court: Except for today.

20 Mr. Wilder: Except for today and any post conviction
21 relief proceedings that I may be invited to attend.

22 Q: Was it when you were a public defender more
23 recently that you were involved in Mr. Cooley's case?

24 A: I did have a occasion to be assigned to Mr.
25 Cooley's case. When he originally applied for a public

1 defender on these serious charges he was assigned and
2 represented by Wade Kolb. Tim Murphy had the case for a
3 period of time and then Tod Williams was appointed. And
4 Mr. Cooley was correct at some point he sent a letter to
5 the office of disciplinary counsel complaining about Mr.
6 Williams.

7 At that point Mr. Williams decided that he may have
8 a conflict and attempt to withdraw from the case. The
9 chief circuit public defender, Mr. Howle, decided that it
10 was not a conflict and out of an abundance of precaution
11 wanted me to assist Mr. Williams in Mr. Cooley's
12 representation. So, at that point I was also assigned to
13 Mr. Cooley's case. I made some notes of going to see Mr.
14 Cooley with Mr. Williams at the jail. I can tell you
15 when that occurred.

16 On May 22 of 2009, Mr. Williams and I visited Mr.
17 Cooley at the correctional facility and we discussed his
18 various cases. It was kind of important for me to figure
19 out whether or not Mr. Cooley could testify on his own
20 behalf. At that time we had already received discovery
21 indicating that two of the DNA tests had come back
22 positive on two of the cases against him. So, it was
23 going to be obvious that the state could prove that he
24 obviously had had sex with two of the victims. On the
25 third victim there was a positive i.d as I recall. So,

1 it looked as though there was going to be plenty of
2 evidence to establish they actually had sex. So, we did
3 discuss whether or not the sex was consensual or whether
4 it was involuntary with respect to the victims. We also
5 discussed various avenues in light of ways to try to
6 suppress the evidence that had been gathered. And we
7 talked about whether or not both witnesses would have
8 been available to call at his trial.

9 He was incorrect when he says that all we wanted him
10 to do was plead guilty. We were trying to find out what
11 kind of trial we might be able to have for Mr. Cooley and
12 on that occasion when we visited him in jail we were to
13 full preparation for trial in this case. In fact, Mr.
14 Williams and I cruised around Sumter and went to the
15 locations where the alleged attacks had taken place and
16 photography some things that we thought might be
17 important to raise a defense. We investigated each one
18 of the factual scenarios and tried to identified
19 witnesses who had been with the victims on earlier points
20 in time during each day that the attacks occurred.

21 We did discover with respect to the first victim
22 that they actually went to trial on that she had a
23 boyfriend so the State was quite dismayed when we
24 produced the boyfriend on our witness list which gave
25 rise to the offer, I believe, to whatever he was facing

1 down to twenty-three years. At that point, after we had
2 already heard the testimony of the victim and there was a
3 break in the trial we had an opportunity to discuss with
4 Mr. Cooley if he elected to accept the offer of a
5 negotiated sentence of twenty three years and credit for
6 time served Mr. Harry Conner was offering at that time if
7 it was his decision. We gave him, of course, our best
8 advice and did advise him that he would be facing a life
9 sentence without parole if he were convicted at any point
10 in time of more than one of these indictments he was
11 facing.

12 Q: So Mr. Williams did raise the issue of the
13 conflict and it was determined that there was one
14 sufficient to relieve him from the case?

15 A: That is correct. That was an internal decision
16 by the circuit defender's office. Mr. Cooley, when I
17 talked to him was okay with that provided I assisted Mr.
18 Williams in his representation, which I did.

19 Q: Do you recall whether any cross examination was
20 done of this victim or did it reach that point?

21 A: I do not see a transcript of what happened. I
22 would refer to any transcript if one was ever made. My
23 recollection is that after we heard her testimony on
24 direct that we arrived at the point that the state
25 offered twenty-three years which Mr. Cooley wanted to

1 accept. Not that Mr. Williams was unwillingly to cross
2 examine the victim but that it did not reach the point of
3 trial when it was time for him to do so before Mr. Cooley
4 decided to take the plea offer.

5 Ms. Williams: All right. I believe that's all I
6 have. Thank you Mr. Wilder.

7 The Court: Mr. Jones.

8 Mr. Jones: Thank you, Your Honor.

9 Mr. Wilder - Cross Examination by Mr. Jones:

10 Q: So the guilty plea was done just before the
11 cross examination of the victim?

12 A: That's my recollection.

13 Q: When you talked to Mr. Cooley about the life
14 sentence, I mean, life without parole was that a factor
15 that he had before him when he decided if he wanted to
16 plea guilty or not?

17 A: It certainly was. I believe you may have also
18 mentioned that to him in your discussion. I would say
19 that the conflict of interest issue there is an
20 electronic file down stairs in the public defenders
21 office that detailed Mr. Williams response to the Office
22 of Disciplinary Counsel and in it Mr. Williams details
23 many different letters that he had with the
24 correspondence of Mr. Cooley that he had on many
25 occasions and his jail visits with Mr. Cooley and those

1 are a matter of the record on in the file downstairs.
2 It's actually on page 198 of that record if you want to
3 go look at it.

4 Q: You're familiar with the file because you worked
5 on the case, is that correct?

6 A: Well, I saw Mr. Williams file. I am familiar
7 with the file because I reviewed it this morning in
8 preparation for my testimony here. However, I did not
9 keep an independent file myself because Mr. Williams was
10 the lead counsel.

11 Q: What I mean is because you were co-counsel,
12 you were sharing information with Mr. Williams throughout
13 the case?

14 A: Absolutely.

15 Q: Did you ascertain whether you thought Mr.
16 Cooley had a grasp of the discussion and what the impact
17 of it was?

18 A: I think he understood completely his rights.
19 What he was giving up when he pled guilty. He seem to be
20 very coherent, I didn't believe him to be not
21 understanding. He had communication with the court when
22 he answered the questions on the record.

23 Q: Mr. Cooley has said today that he felt
24 threatened if he didn't give in to the guilty plea. What
25 would be your response to that?

1 A: I would say that it was quite right to feel
2 threatened by multiple life sentences and that that was a
3 very reasonable thing for him to be afraid of under the
4 circumstances. And it looked like to me that after the
5 young lady's testimony that she gave to the court he was
6 quite right to be concerned about that possible scenario
7 and we did arrive at some type of negotiated sentence.

8 In fact, it was at his insistence that we
9 negotiated so that it couldn't be more than twenty-three
10 worked out. He was very insistent that he not receive
11 something that we hadn't discussed before he came in the
12 courtroom. I thought that was reasonable under the
13 circumstances. One of these victims was in a wheelchair,
14 very young, another one had been threatened with their
15 life at knife point and their throat was cut. These were
16 very serious charges that had been made against Mr.
17 Cooley and Mr. Conner was very determined to give as much
18 time, reasonable time to plea under the circumstances.

19 Mr. Jones: Your Honor, may I have an opportunity to
20 confer with my client?

21 The Court: You may.

22 Mr. Jones: Thank you.

23 (Mr. Jones confers with Mr. Cooley)

24 Q: Mr. Wilder, do you remember any conversation
25 relative to the lesser included offense, guilty plea by

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1 Mr. Cooley to a lesser included offense?

2 A: I don't remember --- it could have been that we
3 tried to get some other kind of plea but as I say the
4 state was very consistent upon agreeing to --- and there
5 was a write up in the paper shortly after this plea was
6 entered that the state had not done nearly enough insofar
7 as Mr. Cooley was concerned. I think some of the
8 reporting afterwards was quite frankly inaccurate but it
9 appeared from the paper that Mr. Conner hadn't done his
10 job to the extent the victims wanted and so they were
11 complaining to the press that Mr. Cooley didn't get
12 enough time.

13 Q: When you were involved in the negotiations was
14 Mr. Cooley a part and partial to the negotiations you and
15 Mr. Williams were talking with him throughout the
16 negotiations?

17 A: I think that you will find that the plea sheets
18 reflect Mr. Williams signature as a witness on the plea
19 sheets and so I'm not confident that I was with Mr.
20 Williams at all times when he was talking with Mr. Cooley
21 because normally I would expect that my name would be
22 there also if I had been with him at the moment he signed
23 the plea. However, I was present in the courtroom when
24 all the proceedings went on.

25 Q: As I understand the twenty-three year sentence

1 that you got is a negotiated plea, is that correct?

2 A: It was a negotiated sentence.

3 Q: And Mr. Cooley knew about that?

4 A: Absolutely.

5 Q: And that runs concurrent, all three of those
6 ran concurrent?

7 A: All three of them would run concurrent.

8 Q: Okay. And he could have gotten as much as
9 thirty years on one of the charges, is that correct?

10 A: On just one.

11 Mr. Jones: Your Honor, may I confer with my client
12 once again?

13 The Court: You may.

14 (Mr. Jones confers with Mr. Cooley)

15 Mr. Jones: Your Honor, may I approach the witness?

16 The Court: You may.

17 Q: Mr. Wilder, I hand up a copy of the transcript
18 dated November 17, 2009 and I am looking at page 3
19 beginning on line 1 and it goes line one through three.
20 Would you please review that and give me what you recall
21 about that entry there, please.

22 A: On Page 3 line 1.

23 Q: Yes. One through 3, excuse me.

24 A: Let's see who is talking here. This is Mr.

25 Conner. We're accepting his plea on count one, criminal

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1 sexual conduct in the first degree, the other two charges
2 will be dismissed pursuant to this plea.

3 Q: So is that what happened?

4 A: Well those are the other two charges on that
5 indictment.

6 Q: I understand.

7 A: He pled guilty to two other indictments. One
8 was criminal sexual conduct in the first degree and the
9 other one was, I believe, assault with intent to commit
10 CSC.

11 Q: Okay. So, that was on that indictment that the
12 other two were dismissed?

13 A: That is correct.

14 Q: Okay.

15 Mr. Jones: Thank you, Your Honor.

16 The Court: Yes, sir.

17 Mr. Jones: Excuse me ...

18 The Court: Do you need to confer with your client?

19 Mr. Jones: Please. Thank you, Your Honor.

20 The Court: Yes, sir.

21 (Mr. Jones confers with Mr. Cooley)

22 Mr. Jones: Your Honor, I have conferred with Mr.
23 Cooley yet again, in fact, while he and I were conferring
24 we reviewed some of the correspondence that he has sent
25 as well and I thank you for allowing us, you've waited on

1 us and given us time. I thank you for that. After
2 conferring with my client he has indicated that he has no
3 further questions that he would like for me to ask on his
4 behalf. With that, Your Honor, we have no further
5 questions on cross examination.

6 The Court: Do you have any redirect?

7 Ms. Williams: No redirect, Your Honor.

8 The Court: Mr. Wilder you may step down.

9 Ms. Williams: That will be the State's case.

10 The Court: Any objection to Mr. Wilder being excused
11 from the balance of this morning?

12 Ms. Williams: No, Your Honor.

13 The Court: Thank you. I will take this matter under
14 advisement and let the attorneys know of my decision.

15 Mr. Jones: Thank you, Your Honor.

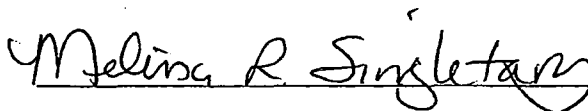
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CERTIFICATE

This is to certify that the hearing in the matter of Wayne Cooley vs. State of South Carolina, consisting of Twenty-Six (26) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 22th day of October, 2012.



Melissa R. Singletary
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: 3-5-2014

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED

2012 MAY 18 PM 12:27 IN THE COURT OF COMMON PLEAS

Wayne Cooley, #168807,

JANE L. CAMPBELL 2010-CP-43-0801
CLERK OF COURT
SUMTER COUNTY, S.C.

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Mary S. Williams
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 14, 2010. An evidentiary hearing into the matter was convened on March 23, 2012, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Richard C. Jones, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Arthur Wilder, Esquire ("Wilder"). This Court had before it the records of the Sumter County Clerk of Court, the guilty plea transcript, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The records before this Court indicate that The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted for three (3) counts of Kidnapping (2008-GS-43-0223 (Ct. 1), 2007-GS-43-0276 (Ct. 3), and 2007-GS-43-0805 (Ct. 2)), three (3) counts of Criminal Sexual

Conduct ("CSC") in the First Degree (2008-GS-43-0223 (Ct. 2), 2007-GS-43-0276 (Ct. 1), and 2007-GS-43-0805 (Ct. 1)), Assault with Intent to Commit CSC (2007-GS-43-0276 (Ct. 2)), and Possession of a Knife During Commission of a Violent Crime (2007-GS-43-0805 (Ct. 3)). Applicant was represented by Todd Williams, IV, Esquire, ("Williams") and Arthur Wilder, Esquire ("Wilder"). On November 17, 2009, the Applicant pled guilty to two counts of CSC in the First Degree (2008-GS-43-0223 (Ct. 2) and 2007-GS-43-0805 (Ct. 1) and to one count of Assault with Intent to Commit CSC (2007-GS-43-0276 (Ct. 2.) Applicant was sentenced by the Honorable R. Ferrell Cothran, Jr., to twenty-three (23) years on each count, all sentences to be served concurrently. Applicant did not appeal his conviction and sentence.

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

1. Ineffective assistance of counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80.

Ineffective Assistance of Counsel

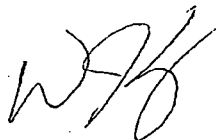
The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence."



Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland, supra). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland). 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 pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203



(1985).

Life Sentence

Applicant stated that he felt threatened when his attorneys told him he faced a potential life sentence. Applicant faced charges arising from three separate incidents, resulting in three charges of Criminal Sexual Conduct in the First Degree and Kidnapping. Applicant proceeded to a trial on the first case. During that trial, the plea offer which Applicant accepted was made. Wilder explained that because Applicant was charged in each case with most serious offenses, Applicant could in fact face a life sentence if convicted of any two of the three incidents pursuant to S.C. Code §17-25-45. Wilder added that the 23-year sentence was discussed prior to the plea because Applicant did not want to enter a plea without knowing what sentence he would receive. As evidenced by the plea transcript and Wilder's testimony, Applicant faced strong evidence of guilt in each of the three cases. Counsel was not deficient in informing Applicant of the possible sentence he faced if convicted of the charges arising out of all three separate incidents; Counsel in fact should inform a defendant of the possible sentences he faces. Applicant's desire to plead guilty to avoid a life sentence does not render his plea involuntary. Wicker v. State, 310 S.C. 8, 425 S.E.2d 25 (1992) (pleading guilty to preclude exposure to the death penalty does not, in and of itself, render an otherwise valid guilty plea defective).

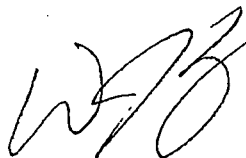
Preparation/Investigation

Applicant testified that Williams only met with him one time and wrote letters otherwise. Applicant stated that his attorneys always asked if he wanted to plead guilty. Applicant stated that Williams did not have time to discuss the case and only came to see him when getting ready to go to

trial. Applicant stated generally that he felt Williams did not represent him to his fullest ability because Applicant filed a complaint with the Office of Disciplinary Counsel ("ODC"). No evidence was produced as to the specific nature of Applicant's complaint, and Applicant produced no specific instances of negative conduct by Williams as a result of Applicant's complaint. Wilder explained that Williams did seek to be relieved but the office determined there was no conflict of interest. Out of an abundance of caution, Wilder joined Williams in representing Applicant. Wilder stated that they prepared the cases for trial. Wilder and Williams both visited Applicant at the jail. Wilder recalled visiting the incident locations and taking photographs as well as efforts to identify and locate witnesses who had been with the victims on the days in question. Wilder also recalled discussing the defense of consent and avenues for suppression of evidence. The defense also intended to call the victim's boyfriend in the first trial. Wilder stated that the plea offer was made after the State learned of this.

Based on the testimony and review of the plea transcript, I find that Applicant has failed to carry his burden of proving that Counsel's investigation and preparation for trial were unreasonable under professional norms. Moreover, Applicant has failed to show what additional preparation or investigation would have yielded. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (no prejudice where claim of failure to investigate is supported only by mere speculation as to the result).

Applicant entered his guilty plea after the victim's testimony. Applicant stated that Counsel failed to cross-examine the victim. Counsel's recollection was that the plea offer was made and accepted during a break after direct examination but before cross-examination began. Therefore, Applicant chose to enter his plea prior to any opportunity to cross-examine the victim. In any event,



Applicant has failed to demonstrate that cross-examination would have affected his decision to plead guilty.

Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

CONCLUSION

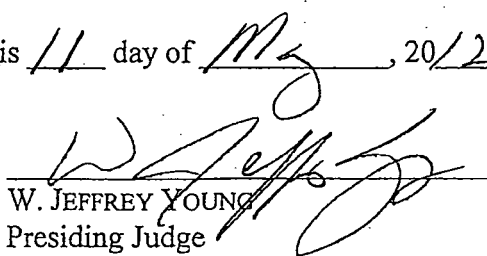
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.


This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 11 day of May, 2012


W. JEFFREY YOUNG
Presiding Judge
Third Judicial Circuit

 Sumter, South Carolina.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

INDICTMENT FOR
 CRIMINAL SEXUAL CONDUCT (1st Degree),
 ASSAULT WITH INTENT TO COMMIT CSC
 (1st Degree) AND KIDNAPPING

At a Court of General Sessions, convened on April 5, 2007, the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE – CRIMINAL SEXUAL CONDUCT (1st Degree)

That WAYNE LOUIS COOLEY did in Sumter County on or about May 15, 2006, violate Section 16-3-652 of the Code of Laws of South Carolina (1976), as amended, in that the said WAYNE LOUIS COOLEY did engage in a sexual battery against Vera Ballard while using aggravated force to accomplish the sexual battery and/or under circumstances where Vera Ballard was also the victim of forcible confinement or kidnapping.

COUNT TWO – ASSAULT WITH INTENT TO COMMIT CSC (1st Degree)

That WAYNE LOUIS COOLEY did in Sumter County on or about May 15, 2006, violate Sections 16-3-652 and 16-3-656 of the Code of Laws of South Carolina (1976), as amended, in that the said WAYNE LOUIS COOLEY did commit an assault upon Vera Ballard with the intent to commit criminal sexual conduct in the first degree, to-wit: the said WAYNE LOUIS COOLEY did attempt to engage in sexual battery with Vera Ballard while using aggravated force and/or under circumstances where Vera Ballard was also the victim of forcible confinement or kidnapping.

COUNT THREE – KIDNAPPING

That WAYNE LOUIS COOLEY did in Sumter County on or about May 15, 2006, violate Section 16-3-910 of the Code of Laws of South Carolina (1976), as amended, in that he did unlawfully seize, confine, kidnap, abduct or carry away another, to-wit: Vera Ballard, by removing her from her wheelchair and confining her on the ground, all without the authority of law.

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



 SOLICITOR

WITNESSES

SUMTER PD

Johnson

ARREST WARRANT NUMBER

J300211

D/A: 9/15/06

ACTION OF GRAND JURY

True Bill

T Chandle Speeth

Foreperson of Grand Jury.

Date: *4/15/07*

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-43-*276*

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

APRIL TERM 2007

THE STATE

vs.

WAYNE LOUIS COOLEY

Indictment for

CRIMINAL SEXUAL CONDUCT
(1st Degree), ASSAULT WITH INTENT
TO COMMIT CSC (1st Degree) AND
KIDNAPPING

C. KELLY JACKSON, SOLICITOR

SCSO

Inv. D. Florence

ARREST WARRANT NUMBER
J290477; J290478

D/A: 07/09/07

ACTION OF GRAND JURY
Tina Bill

William Sanders
Foreperson of Grand Jury
Date: 2/21/08

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2008-GS-43- 223
The State of South Carolina
County of SUMTER

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2008

THE STATE
vs.
WAYNE L. COOLEY

Indictment for
KIDNAPPING, CRIMINAL SEXUAL
CONDUCT IN THE FIRST DEGREE

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)	INDICTMENT FOR
)	
COUNTY OF SUMTER)	CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, KIDNAPPING, POSSESSION OF KNIFE DURING COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on July 17, 2008, the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE – CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE

That WAYNE L. COOLEY did in Sumter County on or about February 12, 2007, violate Section 16-3-652 of the Code of Laws of South Carolina (1976), as amended, in that the said WAYNE L. COOLEY did engage in, or attempt to engage in, a sexual battery in and upon ^{Victim} by using aggravated force and aggravated coercion upon her and assaulting her with the intent to engage sexual battery with the said ^{Victim}

COUNT TWO – KIDNAPPING

That WAYNE L. COOLEY did in Sumter County on or about February 12, 2007, violate Section 16-3-910 of the Code of Laws of South Carolina (1976), as amended, in that he did unlawfully seize, confine, abduct, and carry away, without the authority of law, and by the use of force ^{Victim}

COUNT THREE – POSSESSION OF KNIFE DURING COMMISSION OF VIOLENT CRIME

That WAYNE L. COOLEY did in Sumter County on or about February 12, 2007, was in possession of and did visibly display a knife during the commission of a violent crime, to-wit: kidnapping and sexual battery of ^{Victim} in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

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

P. Kelly Jackson

 SOLICITOR

WITNESSES
SCSO
Inv. D. Florence

ARREST WARRANT NUMBER
J290086; J290085; J290087
D/A: 06/28/07

ACTION OF GRAND JURY
True Bill
William Bamber
Foreperson of Grand Jury
Date: 7/17/08

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2008-GS-43- 805
The State of South Carolina
County of SUMTER

COURT OF GENERAL SESSIONS
JULY TERM 2008

THE STATE
vs.
WAYNE L. COOLEY

Indictment for
CRIMINAL SEXUAL CONDUCT IN THE
FIRST DEGREE, KIDNAPPING,
POSSESSION OF KNIFE DURING
COMMISSION OF A VIOLENT CRIME
C. KELLY JACKSON, SOLICITOR