

William Leon Burnett  
5519 Woodbine Avenue  
N. Charleston, S.C. 29406  
burnettwilliam22@gmail.com

RECEIVED  
NOV 18 2020  
S.C. SUPREME COURT

November 13, 2020

Mr. Daniel E. Shearouse  
Clerk of Court  
Supreme Court of S.C.  
1231 Gervias Street  
Post Office Box 11330  
Columbia, S.C. 29211-1330

Re: William L. Burnett as Pro Se in Said Case  
Petitioner, William Leon Burnett v. Respondent, Case No: 2018-CP-42-00846

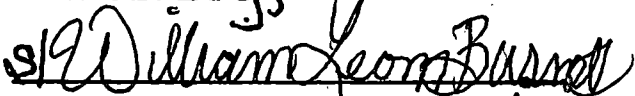
Dear Mr. Shearouse,

Enclosed for filing is the Petition of  
Explanation to Proceed on Appeal (Rule 243(c)) in the above case.

Also enclosed are the following:

- A) Proof of Service of the Petition of Explanation to Proceed  
On Appeal;
- B) A copy of the Order of Dismissal which is to be  
challenged on Appeal when granted to proceed on Appeal;
- C) the transcript from March 1, 2013 Hearing; and
- D) the filing fee of \$100 (when ordered by Court)

This Explanation to Proceed on Appeal is being filed with the Supreme Court because... (See Rule 243(c) as to the applicable reason to Proceed on Appeal.)].

Sincerely,  
  
William Leon Burnett  
5519 Woodbine Avenue  
N. Charleston, S.C. 29406

cc: Ms. Chelsey Marfo  
S.C. Attorney General's Office  
1000 Assembly Street  
Post Office Box 11549  
Columbia, S.C. 29211-1549

RECEIVED

NOV 18 2020

S.C. SUPREME COURT

PETITION OF EXPLANATION  
TO PROCEED ON APPEAL

IN THE STATE OF SOUTH CAROLINA  
THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY  
COURT OF COMMON PLEAS

Jocelyn Newman, Circuit Court Judge

Case No: 2018-CP-42-00846/2020-001310

William Leon Burnett,.....Petitioner,

v.

State of South Carolina,.....Respondent,

EXPLANATION



William Leon Burnett  
Post Office Box 61873  
North Charleston, S. C. 29419

Other Counsel of Record

Ms. Chelsey Marto  
Assistant Deputy Attorney General  
South Carolina Attorney General's Office  
1000 Assembly Street  
Post Office Box 11549  
Columbia, South Carolina 29211-1549

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 Statement of the Case . . . . . 1,2,3,4

## Arguments

- I. The Court of Common Pleas dismissed/didn't rule in Applicant's favor in denying relief. It wasn't because the the case lacked merit; it was that Applicant wasn't a South Carolina Bar Association certified attorney and proceeded as self-representation. . . . . 4,5
- II. The Court of Common Pleas ruled successive and untimely after all relevant facts presented. . . . . 5,6
- III. The Court went amiss in the cognizance of there being a blatant unconstitutional violation of both U.S.C. ~~V~~ & ~~XIV~~ . S.C. Const. Art. I Sec. 12 and Sec. 3. . . . . 6,7

Conclusion . . . . . 7

## Questions Presented.

- I. Did the Applicant meet the State v. Barnes case and why did State compel Applicant to be represented by the same appointed counsel?
- II. Under S.C. Code Ann. 17-27-10, are two simultaneous PCR's barred within the same county?
- III. When a defendant is convicted in a Court of Law under a multiplicitous indictment of two distinct but same elements of the offense are the same, does it call for nullification of conviction when said defendant satisfied the service of his sentence and is released?

## Statement of the case

The Petitioner was charged with CSC M 1<sup>st</sup> Degree on Tuesday, December 21, 2011 after being interrogated by lead detective Joseph Bohon, Badge # 0667 from 9:05 PM to 9:51 PM under duress. (Ref. Transcript of original plea hearing.). That was Warrant No: M75149. That same day a notice of new charge of CSC 1<sup>st</sup> Degree was amended, but never formally charged. Richard H. Whelchel was assigned as my public defender, and Petitioner never saw his attorney, even after two attempts were made by mail, until August 24, 2012 at 5:30 P.M. Mr. Richard Whelchel at that time informed me of the discovery not being completed until further notice and said he'd be back in two months. That was the last time Petitioner heard from him. As stated above in reference to the multiple and successive charges, it was never brought to light during the conversation nor the night before the hearing by James A. Cheeks, Esquire who in turn took the place of Mr. Whelchel. Judge James Mark Hayes, I accepted. On March 1, 2013, a motion filed by counsel William Hodge was convened and heard based on grounds of inadequate and inaccurate information presented at the initial plea. Sentences as a result were reduced to 15 suspended to 7.5 years and 5 years probation run concurrently.

After filing a S.C. Code of Laws Ann. 30-4-30 Freedom of Information Act (FOIA) for after discovered evidence of the medical records and received them on October 1, 2015, Petitioner filed a SCRPC Rule 59(e) for new trial and wrote Circuit Judge R. Keith Kelly to inquire for a hearing. In his letter dated ~~September 26, 2016~~, he said that it was a PCR issue. Following that, Petitioner wrote Honorable Judge James Mark Hayes, II to inquire of hearing and was denied, so Petitioner wrote again, Honorable R. Keith Kelly and asked for his reconsideration to hold a hearing. Judge Kelly once again said he wouldn't grant an evidentiary hearing. So after 3 attempts, Petitioner filed a second PCR on October 3, 2016. Judge Joseph Durham Cole ruled against it and signed it August 15, 2017.

Petitioner filed his third PCR after receiving confirmation on August 5, 2016 that his conviction was *in toto* prosequi in its entirety. S.C. Code of Laws Ann. 17-27-10 bars two PCR's being brought at one time. That is why Petitioner wait until the ruling for 2<sup>nd</sup> PCR to be ruled on and sustained therein. Petitioner asked for ~~vacation of sentence~~ removal of the sex offender registry. In Judge Hayes Letter dated June 2, 2020, he stated that the claim was "legal in nature" and that's why he granted an evidentiary hearing and ordered the Clerk of Court to appoint counsel on

June 2, 2020. There was a communication breakdown between appointed counsel and Petitioner due to the fact Mr. Rickey was co-representing the State and doing little to help his client succeed on his 3RD PCR after discovered evidence. So, a motion to relieve counsel was filed and Judge Newman granted it, and Petitioner presented his case. The hearing itself was from 9:32 AM - 10:22 AM by teleconference. The reason no paper work was presented is because it wasn't held inside and before the Court in person. The district Courts have long held that when a case is dismissed in its entirety, it can be brought back to Court at any given time because it is a major constitutional violation; no matter if it is discovered 1 year later or 20 years later. Thus, because Petitioner wasn't a certified attorney the ruling was in the States favor. State v. Barnes (S.C. 2014) 407 S.C. 27(27), 753 S. Ed. 545. The Petitioner met the standards under Facetta v. California, 422 U.S. 806 (1975).

Argument

Applicants have a Constitution right under 14th Amendment to the United States Constitution and when it is violated because s/he wasn't allowed to be included and participate in the hearing, it becomes

a PCR issue. The current case the Petitioner put in a timely motion. The issue is, is that Judge Newman never objected to any part of the testimony but she didn't acknowledge Petitioner's relief. Petitioner plainly stated that he knew she wasn't in favor and that had it been a certified attorney, the outcome would've been different by all means. See S.C. Code Ann. 40-5-80 and S.C. Code of Laws Ann. 17-3-10. It didn't lack merit because it'd been summarily dismissed without a hearing.

The application wasn't untimely and definitely not successive because it was based on a constitutional violation such that it attained a multiplicitous indictment, with one warrant number and two distinct charges that had same elements of rape but different in that one is CSCM and the other just CSC both 1<sup>st</sup> Degree. Both were of one victim. Technically, charges can have more than one count(s) with same victim or more than one person who engages in the crime can be held to same warrant as defendant 1. Mackey v. State 357 S.C. 666 (S.C. 2004). See also U.S. Chiaradis 684 F.3d 265-274-75 (1<sup>st</sup> Cir. 2012) (indictment charging two counts of Child Pornography for two computers in the same house multiplicitous because Congress intended simultaneous possession of multiple computers containing child pornography to constitute one offense.)

U.S. v. Polouizzi 564 F.3d 142, 154-55 (2<sup>nd</sup> Cir. ~~2019~~ <sup>2009</sup>)

( indictment charging 11 counts of child pornography for 11 files on a single computer multiplicitious because Congress intended simultaneous possession of multiple files containing child pornography to constitute one offense.)

U.S. v. Ehle 640 F.3d 689, 694-97 (6<sup>th</sup> Cir 2011)

(multiplicitious indictment violated double jeopardy clause by punishing same behavior twice.)

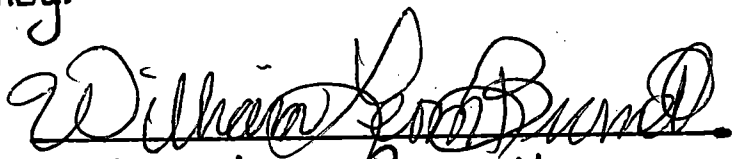
The state lower court didn't want to recognize their own mistake that prejudiced Petitioner in being sent to prison on a nolle prosequi indictment. Either the warrant on the indictment is good or not in favor of the State. There is no Part A/B warrant. This is a cognizable claim under S.C. Code Ann. 17-27-45(B). However, due to a existing and active PCR under Case No. 2016-CP-42-03626, Petitioner is barred from filing two PCR's in the same jurisdiction at the same time. In this particular instance, there definitely exist material facts to vacated and nullify the conviction in the interest of justice, because the judge and prosecutor failed to follow due diligence. Instead the judge failed to properly inquire into the matter according to Rule 501<sup>st</sup> Cannons<sup>2</sup> that is abridged with Rule 502 Judicial Disciplinary Enforcement under the South Carolina Appellate Court Rules (SCACR). The prosecutor in Case No: 2012-BS-42-01465 committed the act of obstruction of justice, because she failed to met the elements of Rule 3.8 Special responsibilities of a prosecutor, which violates Rule 407<sup>th</sup> Professional Conduct, all under Rule 413 Lawyer Disciplinary Enforcement of (SCACR).

With this being said, it violates the Due Process Clause under the 14<sup>th</sup> Amendment to the U. S. Constitution and S. C. Const. Art. I Sec. 3.

### Conclusion

Wherefore, Petitioner ask the Court to move forward with the Appeals proceedings and the granting of Appellate Defense attorney.

November 9, 2020

  
William Leon Burnett  
5519 Woodbine Avenue  
N. Charleston, S.C. 29406  
Mailing Address  
Post Office Box 61873  
N. Charleston, S.C. 29419

PROOF OF SERVICE OF NOTICE TO PROCEED  
ON APPEAL AFTER ACCEPTANCE OF EXPLANATION

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

RECEIVED

NOV 18 2020

S.C. SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY  
COURT OF COMMON PLEAS

Jocelyn Newman, Circuit Court Judge

Case No: 2020-001310

William Leon Burnett,

Petitioner,

v.

State of South Carolina,

Respondent,

PROOF SERVICE

I certify that I have served the NOTICE TO PROCEED ON APPEAL AFTER ACCEPTANCE OF EXPLANATION on Daniel E. Shearouse, Clerk of Court for S.C. Supreme Court, a copy of it in the United States e-filing on November 9, 2020.

November 9, 2020

*William Leon Burnett*

WILLIAM LEON BURNETT

5519 Woodbine Avenue  
N. Charleston, S.C. 29406

Mailing Address:

Post Office Box 61873

N. Charleston, S.C. 29419

I subscribe and sworn before  
me this 13<sup>th</sup> day of November 2020

*D. Kelly Pugh*

Notary Public

My Commission Expires on: 12/1/2026

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

IN THE COURT OF GENERAL SESSIONS

Indictments: 2012-GS-42-1465 - 1466

The State of South Carolina,

vs.

ORDER

William Leon Burnett,  
Defendant.

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2013 MAR -7 PM 3:05  
M. HOPE BLACKLEY

Date of Hearing:

March 1, 2013

Trial Judge:

J. Mark Hayes, II

Attorney for the Plaintiffs:

Hillary Welborn

Attorney for the Defendant:

William A. Hodge

Court Reporter:

March 1, 2013  
Mark Hayes, II  
Hillary Welborn  
William A. Hodge

Defendant pled on October 4, 2012 under *Alford v. North Carolina* to a Criminal Sexual Conduct and received 15 years as well as an Unlawful Neglect charge and received 10 years, both sentences to run concurrently.

Defendant, through counsel, filed a motion to reconsider and the present hearing was conducted. Defendant's representative, William Hodge, asserted that an insufficient presentation of mitigation evidence had been presented to the court at the time of the earlier plea. After hearing from the defendant's present counsel, the court agrees.

One of the main factors not considered by the court at the initial plea was the defendant's mental status. Even though the defendant underwent a mental evaluation for purposes of sentencing, the defendant's mental history is significant. The defendant was a former student at the Charles Lea Center, and according to his mother, has never progressed beyond a 5<sup>th</sup> grade level. Also the defendant has a history of brain trauma which was evidence at the present hearing by simply turning the defendant's head to one side. Even though the defendant worked, as explained by one member of his family, to be a "normal

person" in society, he has significant health issues which include seizures which requires a nerve stimulator and other medications to function properly.

Based on the information presented, the Court it is ordered that the sentence be altered

as follows: The original 15 year sentence on the CSC 1<sup>st</sup> charge and the 10 year sentence on

child neglect shall remain but both shall be suspended to the service of seven and one half

(7½) years followed by 5 years of supervision by the department of probation. The sex

offender registration requirement and the no contact with the victim will remain as part of

this order. Special terms and conditions of supervision are that he must comply with all sex

offender requirements as may be ordered by the probation department. Also Defendant must

be in compliance with all mental health directives his doctors/mental health professionals

may require. Defendant will receive the statutory allowed credit for any time he has served.

IT IS SO ORDERED.

The Honorable J. Mark Hayes, II  
Circuit Court Judge

Spartanburg, South Carolina  
March 7, 2013

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2013 MAR -7 PM 3:05  
M. HOPE BLACKLEY



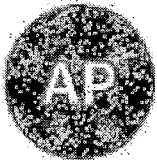
~~you wish on Friday. I would need to know~~  
specifically what you mean that the "transcripts  
declare differently". Bring the transcript if you  
can.

>

> Ashley

> (843) 478-1230 (mobile)

...



Ashley Pennington

APennington@charlestoncounty.org ...

To: You burnett.william@outlook.com

Friday, April 12, 2019, 1:03 PM

~~Each different charge has its own warrant  
number.~~

Ashley

(843) 478-1230 (mobile)



probation. I cannot act as your lawyer.

That said, I will discuss the matter with you a little and maybe point you in the right direction if you wish on Friday. I would need to know specifically what you mean that the "transcripts declare differently". Bring the transcript if you can.

Ashley

(843) 478-1230 (mobile)



You

Apr 12, 2019

To Ashley Pennington



~~Is it true that every criminal charge is assigned its own identification # and that, for example, CSCM 1st DEGREE and CSC 1st DEGREE is procedurally barred under same warrant identification #?~~



Reply to All



STATE OF SOUTH CAROLINA )  
 COUNTY OF SPARTANBURG )  
 )  
 William L. Burnett, #352645 )  
 )  
 )  
 Applicant, )  
 )  
 v. )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2018-CP-42-0846

**ORDER**

2019 JUN -2 PM 1:25  
 CLERK OF COURT  
 SPARTANBURG COUNTY  
 111 W. COX

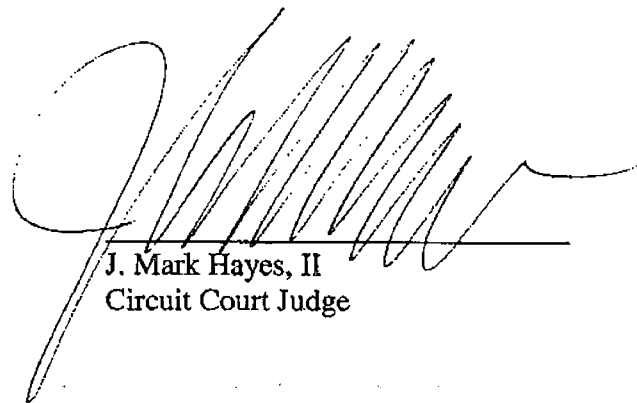
FILED

This is a post-conviction relief matter. This matter comes before the Court at this time at the request of the Spartanburg Clerk of Court's office. On June 15, 2018, a Conditional Order of Discharge was filed with the Clerk of Court's office after having been signed by Judge Keith Kelly. In reviewing the Clerk of Court's file, it appears that normal communication with the applicant may have not been successful. The most recent written communication from Applicant presented to this Court is dated February 25, 2019. This document has a filed date of March 1, 2019. A copy of this communication was not located in the Clerk of Court's file but will be provided to the Clerk for filing with the presentation of this order. In documents filed by applicant, he challenges the requirement that he register as a sex offender. Upon first reading, his arguments appear to be legal in nature. No response from the State is located in the file. Also not located in the file is any order purporting to conclude or finalize the post-conviction relief matter. Nevertheless, the clerk's general designation of the application is "dismissed".

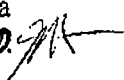
Based upon the request from the Clerk of Court, this Court finds that the better approach for clarifying the present post-conviction relief application is to schedule a hearing on the State's motion to dismiss.

Therefore, it is Ordered that the matter be set for a hearing as set forth herein. The Clerk of Court is further directed to appoint applicant a lawyer from the appropriate list of attorneys subject to appointment.

**IT IS SO ORDERED**



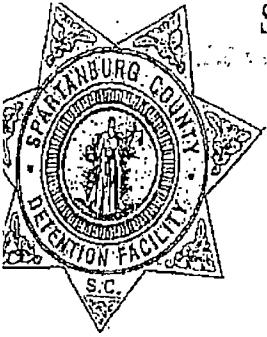
J. Mark Hayes, II  
Circuit Court Judge

Spartanburg, South Carolina  
Date: June 2, 2020 

FILED  
2020 JUN -2 PM 4:25  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMY Y. COX

SPARTANBURG COUNTY DETENTION FACILITY

EXHIBIT D



950 CALIFORNIA AVENUE  
SPARTANBURG, SOUTH CAROLINA-29303-2184

LARRY W. POWERS  
DIRECTOR

TELEPHONE (864) 596-2607  
FAX (864) 596-3421

VICTIM/WITNESS JAIL NOTIFICATION FORM

State v. Burnett, William Ticket/Warrant # M757149 Agency CCSO

Offense CSC 1st Degree

1. Victim's Name

Victim's Mother:  
Burnett, Lisa

2. Victim's Address

3. Victim's Telephone

4. Attempts to Contact of Arrest:

(A) Date 12-21-11 Time 2100

(B) Date \_\_\_\_\_ Time \_\_\_\_\_

(C) Date \_\_\_\_\_ Time \_\_\_\_\_

Comments

Notified victim of (victim's mother) suspects aka of new CSC charge!

5. Attempts to Contact of Release:

(A) Date \_\_\_\_\_ Time \_\_\_\_\_

(B) Date \_\_\_\_\_ Time \_\_\_\_\_

(C) Date \_\_\_\_\_ Time \_\_\_\_\_

Comments

Signature of Jail Official

Date 12-21-11

Printed Name of Official

VICTIM NOTIFICATION FORM

EXHIBIT D

STATE OF SOUTH CAROLINA )

COUNTY OF SPARTANBURG )

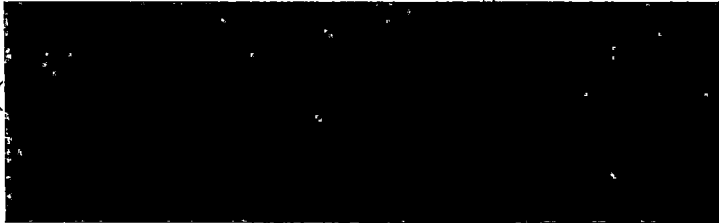
STATE OF SOUTH CAROLINA )

Burnett, William<sup>vs</sup>

Check and complete one of the following:

- A representative of the Spartanburg County Detention Facility, (the facility having custody of the Defendant), acknowledges that a reasonable attempt was made to notify the victim(s) sufficiently in advance of the bond hearing.

Name of Victim(



\_\_\_\_\_  
\_\_\_\_\_

OR

- A representative of the Spartanburg County Detention Facility, (the facility having custody of the Defendant),\* indicates the victim(s) did not wish to be notified of the bond hearing.

Name of Victim(s)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Signature]  
(Representative's Signature)\*

[Signature]  
(Judge's Signature)

\* Or the arresting officer if Defendant is brought directly before the Judge.

SPARTANBURG COUNTY DETENTION FACILITY

EXHIBIT D

950 CALIFORNIA AVENUE  
SPARTANBURG, SOUTH CAROLINA-29303-2184

LARRY W. POWERS  
DIRECTOR



TELEPHONE (864) 596-2607  
FAX (864) 596-3421

VICTIM/WITNESS JAIL NOTIFICATION FORM

State v. Burnett, William Ticket/Warrant # M757149 Agency 0080  
Offense CSC 1st Degree

1. Victim's Name [Redacted] Victim's Mother: Burnett, Lisa  
2. Victim's Address [Redacted]  
3. Victim's Telephone [Redacted]

4. Attempts to Contact of Arrest:

(A) Date 12-21-11 Time 2100

(B) Date \_\_\_\_\_ Time \_\_\_\_\_

(C) Date \_\_\_\_\_ Time \_\_\_\_\_

Comments Notified victim of (victim's mother) suspects of new CSC charge!

5. Attempts to Contact of Release:

(A) Date \_\_\_\_\_ Time \_\_\_\_\_

(B) Date \_\_\_\_\_ Time \_\_\_\_\_

(C) Date \_\_\_\_\_ Time \_\_\_\_\_

Comments \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Signature]  
Signature of Jail Official

Date 12-21-11

Printed Name of Official \_\_\_\_\_

VICTIM NOTIFICATION FORM

EXHIBIT D

STATE OF SOUTH CAROLINA )

COUNTY OF SPARTANBURG )

STATE OF SOUTH CAROLINA )

Burnett, William<sup>vs</sup>

Check and complete one of the following:

- A representative of the Spartanburg County Detention Facility, (the facility having custody of the Defendant), acknowledges that a reasonable attempt was made to notify the victim(s) sufficiently in advance of the bond hearing.

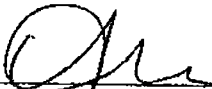
Name of Victim(  )

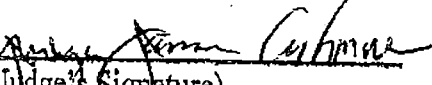
\_\_\_\_\_  
 \_\_\_\_\_

OR

- A representative of the Spartanburg County Detention Facility, (the facility having custody of the Defendant),\* indicates the victim(s) did not wish to be notified of the bond hearing.

Name of Victim(s) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

  
 (Representative's Signature)\*

  
 (Judge's Signature)

\* Or the arresting officer if Defendant is brought directly before the Judge.

EXHIBITE

ARREST WARRANT

12/30/11

M-757149

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Spartanburg

THE STATE against

William Leon Burnett

Address: Boiling Springs, SC 29316-6140

Sex: M - Race: W Height: 5 8 Weight: 210

DL State: SC Agency ORI #: SC0420000

Prosecuting Agency: Spartanburg County Sheriff

Offense: Sex / Criminal sexual conduct with minor or Attempt -victim under 11 yrs of age - First degree

Code/Ordinance Sec: 16-03-0655(A)(1)

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant William Leon Burnett on 12-21-11

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO: General Sessions 180 Magnolia Street P O Box 3483 Spartanburg, SC 29304

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA [X] County/ [ ] Municipality of Spartanburg

AFFIDAVIT

ORIGINAL

Form Approved by S.C. Attorney General Apr 21, 2003 SCCA #18

Personally appeared before me the affiant Joseph Bohon being duly sworn deposes and says that defendant William Leon Burnett did within this county and state on or about 01/01/2007 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Spartanburg) in the following particulars:

DESCRIPTION OF OFFENSE Sex / Criminal sexual conduct with minor or Attempt -victim under 11 yrs of age - First degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That between January 1, 2007 and December 14, 2011 in the city/county of Spartanburg, the defendant did engage in sexual battery by touching the victims private parts to include breast, buttock and vagina with a minor also the defendant had the victim touch the defendants private parts, the victim being less than eleven years old and the defendant being more than thirty years of age.

AFFIANTS BELIEF BASED ON POLICE INVESTIGATION

Signature of Affiant

STATE OF SOUTH CAROLINA [X] County/ [ ] Municipality of Spartanburg

Affiant's Address 8045 Howard Street Spartanburg, SC 29303-

Affiant's Telephone

FILED IN CLERK OF COURT SPARTANBURG COUNTY DEC 29 PM 12:24 HOPE BLANCHLEY

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/1/2007 defendant William Leon Burnett did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Spartanburg) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor or Attempt -victim under 11 yrs of age - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable Sworn to and subscribed before me

on 12/21/2011 Judge's Address Spartanburg County Judicial Center Spartanburg, SC 29306- Signature of Issuing Judge Dwight Smith (L.S.)

Judge's Telephone (864)596-2564 Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

Judge Code: 7151

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ARREST WARRANT

12/30/11

M-757149

STATE OF SOUTH CAROLINA

County/ Municipality of

Spartanburg

THE STATE against

William Leon Burnett

Address:

Boiling Springs, SC 29316-6140

Phone: SSN: Sex: M Race: W Height: 5 8 Weight: 210

DL State: SC DL #: DOB: Agency ORI #: SC0420000

Prosecuting Agency: Spartanburg County Sheriff Prosecuting Officer: Joseph Bohon - 0667

Offense: Sex / Criminal sexual conduct with minor or Attempt -victim under 11 yrs of age - First degree

Offense Code: 0385 Code/Ordinance Sec: 16-03-0655(A)(1)

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant William Leon Burnett on 12-21-11

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions 180 Magnolia Street P O Box 3483 Spartanburg, SC 29304

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Spartanburg

Personally appeared before me the affiant Joseph Bohon who

being duly sworn deposes and says that defendant William Leon Burnett did within this county and state on or about 01/01/2007 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of Spartanburg) in the following particulars:

DESCRIPTION OF OFFENSE Sex / Criminal sexual conduct with minor or Attempt -victim under 11 yrs of age - First degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That between January 1, 2007 and December 14, 2011 in the city/county of Spartanburg, the defendant did engage in sexual battery by touching the victims private parts to include breast, buttock and vagina with a minor also the defendant had the victim touch the defendants private parts, the victim being less than eleven years old and the defendant being more than three years older.

AFFIANTS BELIEF BASED ON POLICE INVESTIGATION

JAN 04 2012

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Spartanburg

Affiant's Address 8045 Howard Street Spartanburg, SC 29303-

Affiant's Telephone

FILED IN COURT OF SPARTANBURG COUNTY HOPE BLACKLEY 2011 DEC 29 PM 12: 24

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/1/2007 defendant William Leon Burnett

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of Spartanburg

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor or Attempt -victim under 11 yrs of age - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable Sworn to and subscribed before me

on 12/21/2011

Signature of Issuing Judge Dwight Smith (L.S.)

Judge Code: 7151

Judge's Address Spartanburg County Judicial Center Spartanburg, SC 29306-

Judge's Telephone (864)596-2564

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

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# Spartanburg County

EXHIBIT F

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



Phone (864) 596-2591  
Fax (864) 596-2259

M. Hope Blackley  
Clerk of Court

Gail Moffitt  
Assistant Clerk of Court

August 5, 2016

William Leon Burnett #352645  
Colleton A13  
1057 Revolutionary Trail  
PO Box 1151  
Fairfax, SC 29827-7127

RE: Motion for New Trial ~~(2012GS1201465)~~

Dear Mr. Burnett.

We are in receipt of your Motion for a new trial. Please be advised that case ~~2012GS1201465~~  
~~was dismissed on October 4, 2012.~~ Enclosed you will find the case history report to support this  
information. If we can be of further assistance to you please let us know.

Sincerely,  
*Tanya Camp*  
Court Supervisor

2017 AUG -7 PM 8:45  
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG  
STATE VS.

IN THE COURT OF GENERAL SESSIONS

Computer

William Leon Burnett  
AKA:  
Race: WHITE Sex: M Age:   
DOB:   
Address: 1206 Loken Springs School Road  
City, State, Zip: Chesnee, SC 29323  
DL#: SID#:

INDICTMENT/CASE#: 2012GS4201465  
A/W#: M757149  
Date of Offense: 1/1/2007  
S.C. Code §: 16-3-653(A)  
CDR Code #: 0385

SENTENCE SHEET

ALFOND VS UC - IN COURT

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No   
In disposition of the said indictment comes now the Defendant who was  
TO: Sex / Criminal sexual conduct - First degree (0-30 years)

CONVICTED OF or  PLEADS Count 2

in violation of § 16-3-652 of the S.C. Code of Laws, bearing CDR Code # 0160  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC)  §17-25-45  
w/minor 1st or 2nd Act)

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury,  Negotiated Sentence,  Recommendation by the State.  
The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: Hillary C. Wallon, 28366, Defendant  
WELBORN, HILLARY C. SC Bar# Defendant  
Hillary C. Wallon, 28366, Attorney for Defendant  
SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
for a determinate term of 15 days/months/years or  under the Youthful Offender Act not to exceed years  
and/or to pay a fine of \$ ; provided that upon the service of days/months/years and/or payment  
of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for

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

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

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-35-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered  
Total: \$ plus 20% fee: \$  
Payment Terms:  
 Set by SCDPPPS

PTUP  
days/hours Public Service Employment  
Obtain GED   
Attend Voc. Rehab. or Job Corp.  
May serve W/E beginning  
Substance Abuse Counseling   
Random Drug/Alcohol Testing   
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning  
\$ paid to Public Defender Fund

Recipient:

*Fine:	\$
§ 14-1-286 (Assessments 107.5%)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 56-1-286 (DUI Breath Test)	\$25 \$
Proviso 47.9 (Public Def/Prob)	\$300 \$
§ 14-1-212 (Law Enforce. Funding)	\$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150 \$
§ 30-21-114 (BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
Proviso 90.5 (SCCJA Surcharge)	\$5 \$ 5.00
3% to County (if paid in installments)	\$ 3.90
TOTAL	\$ 133.90

Other: Sex Offender Registration  
No contact with victim  
 Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: A Roemhild  
Court Reporter: P. Green  
SCCA217 (03/2011)

Presiding Judge:   
Judge Code: 2132  
Sentence Date: 10/4/12

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF SPARTANBURG ) 7<sup>th</sup> JUDICIAL CIRCUIT

William Leon Burnett,  
Applicant,

) Case No: 2018-CP-42-00846

) MOTION TO RELIEVE  
) COUNSEL

v.

State of South Carolina,  
Respondent,

---

The Applicant request and petitions the Court of Common Pleas for removal of appointed counsel on the grounds herein:

- 1: It's a Conflict of interest as said attorney was appointed to represent me November 2015 under the same case with different elements being alleged;
- 2: There were dissensions with this attorney over legal issue thereby permitting a breakdown of communication;  
and
- 3: The Appellate Court Rule 407 "Professional Conduct" inclusively concludes the Rule 1.8 Conflict of Interest - Current Clients (b) and Rule 1.9 Duties To Former Clients (b)(1)(2)(3) supports

Applicant's argument. Furthermore, Applicant's constitutional rights are being violated in compliance with his 14<sup>th</sup> Amendment of the United States Constitution and State v. Barnes (S.C. 2014).

For the aforesaid, Applicant request his MOTION to be granted and sustained in and of itself.

Respectfully Requested  
and Submitted,

William Leon Burnett  
WILLIAM LEON BURNETT  
Applicant  
Post Office Box 61873  
North Charleston, South Carolina  
29419

cc: Ms. Chelsey Marto  
Ms. Amy W. Cox

Sworn and prescribed before  
me this 23 day June 2020

D. Ashley Payne  
Notary Public

My Commission Expires: December 1, 2026

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STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

IN THE COURT OF GENERAL SESSIONS

The State, )  
-vs- )  
William Leon Burnett, )  
Defendant. )

TRANSCRIPT OF RECORD  
2012-GS-42-1465,-1466

March 1, 2013  
Spartanburg, South Carolina

B E F O R E :

HONORABLE J. MARK HAYES, II, JUDGE

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

HILLARY C. WELBORN, ESQUIRE  
Attorney for the State

WILLIAM A. HODGE, ESQUIRE  
Attorney for the Defendant

Margaret A. Woods  
Circuit Court Reporter

ORIGINAL

1 THE COURT: Yes, ma'am.

2 MS. WELBORN: Your Honor, this is a motion for  
3 reconsideration for William Burnett, he pled before Your Honor  
4 on, uh, October 4th 2012, he was indicted for criminal sexual  
5 conduct with a minor in first degree and child neglect. The  
6 State allowed the defendant to plead to criminal sexual  
7 conduct in the first degree with a cap of 15 years to run that  
8 concurrent with the neglect, Your Honor sentenced him to 15  
9 years. This is William Hodge, Your Honor.

10 THE COURT: That's his lawyer?

11 MS. WELBORN: Yes, sir.

12 THE COURT: Mr. Hodge, I'd be more than happy to hear  
13 from ya.

14 MR. HODGE: Good mornin', Judge. Uh, Judge, I wasn't  
15 present at the the guilty plea, I actually did not represent  
16 Mr. Burnett at the time of his, of his plea under Alford, uh,  
17 and there's a fairly good reason for that, Judge. Uh,  
18 Mr. Burnett is actually my brother-in-law so this has been a  
19 very difficult situation for me to be in, uh, and has been  
20 tough decisions made all around. I felt at the time that he  
21 was goin' through this and the time that the case was pending,  
22 uh, that it was appropriate for me to kind of step back, be  
23 more of a family and advise him as a family, advise him as a  
24 friend, uh, and and take that route, uh, however, Judge, I I  
25 have realized since, uh, all this and after speaking with him

1 on numerous occasions that that may have been the wrong  
2 approach for me to take and I, and I take full blame for that  
3 'cause it was my decision to make.

4 Uh, at the time a the plea, he was represented by the  
5 Public Defender's Office, uh, and, Judge, just to kinda give  
6 you a little bit a background and and how, why I'm involved  
7 now, uh, ~~he sent me multiple letters and correspondence, uh,~~  
8 ~~regarding the Public Defender's Office, uh, essentially the~~  
9 ~~lack thereof. Uh, he had met with his attorney one time over~~  
10 ~~the course of this entire pending case, uh, and it was six~~  
11 ~~months before he ever came up for, uh, his init -- his actual~~  
12 ~~guilty plea, he then met with an attorney, uh, the day before~~  
13 ~~he came in front of Your Honor and pled under Alford, uh, but~~  
14 ~~first time it was actually a different attorney, uh, first~~  
15 ~~time he had ever met him was October 3rd, came in, kinda went~~  
16 ~~over what the State's offer was, what the cap was and said the~~  
17 ~~meeting lasted just a few minutes, uh, and then they left it~~  
18 ~~at that, he said, I'll come back tomorrow, we'll talk some~~  
19 ~~more. Uh, next mornin' he was ushered to court, had no idea~~  
20 ~~that that was gonna be the case, uh, and actually he wrote me~~  
21 ~~a letter on the third, I have a letter dated on 3rd, uh, that~~  
22 ~~I received saying, I met with Mr. Cheeks today, he kind of~~  
23 ~~advised me a what the plea was, I'm not sure what to do, ya~~  
24 ~~know, next time ya get a chance we'll talk, that kinda deal.~~  
25 Uh, well that chance never came, we got a call the next day

1 saying that he had, uh, accepted the the Alford plea, had pled  
2 under Alford after meeting with his attorney in the holding  
3 cell for a a very brief amount of time that morning, uh, and so  
4 that's why we're here and and based on all that and based on  
5 what I felt was a very short amount of time for such a big  
6 decision, uh, is why I stepped in, Your Honor.

7 Uh, the first guilty plea not only was, uh, we we call  
8 him Leon, Judge, but, uh, not only was Mr. Burnett not  
9 notified until the morning of, uh, but his family was never  
10 notified, they didn't find out till they received a phone call  
11 that afternoon saying that he had been sentenced to 15 years,  
12 uh, my wife included did not receive that phone call until  
13 that evening. Uh, we had no idea that this was comin', did  
14 not expect it, had I expected I at least woulda made some  
15 contact and made sure that that we were all on the same  
16 playing field. Uh, Judge, I say all that and I understand  
17 this is not a PCR hearing and I'm I'm really not trying to use  
18 it for that but I wanted to just kind of explain why I'm  
19 involved and how I came to your, uh, came to this motion  
20 today.

21 Uh, Judge, as far as as him making a decision to plea  
22 guilty, I actually considered filing a a motion to withdraw  
23 the guilty plea but after speaking with the solicitor's  
24 office, uh, and I believe I spoke with, uh, Derrick Bulsa, uh,  
25 and Ms. Hillary, uh, it it was my understanding that they were

1 I'm gonna oppose any motion and because he pled under Alford I  
2 felt that that my motion would be denied so instead of wasting  
3 the Court's time and going that route I just went ahead and  
4 filed a motion to reconsider, uh, to be heard in front of Your  
5 Honor.

6 Uh, there are multiple issues that I have found just  
7 at reviewing his discovery in this brief time that I've had, uh,  
8 that that could have led this case down a different path, uh,  
9 now I'm not saying that the Alford plea, you know, like I say,  
10 I'm not here to withdraw the Alford plea, I'm not here to  
11 argue PCR but there are certain issues that I felt coulda been  
12 brought up, possibly could have used as mitigation, uh, and so  
13 those things are things that concern me, uh, inconsistencies  
14 in the victim's statement, things of that nature, Judge, uh,  
15 and and if if you wanted more specific I could but I don't  
16 wanna, again, I know this is not PCR hearing.

17 Uh, Judge, I basically just wanted to come in today and  
18 and present to you Leon as as, uh, who we know him as, not as  
19 someone who had, who pled guilty to what he's or pled under  
20 Alford what he's charged with, uh, and, Judge, I'm not even  
21 sure that he fully understood what the offer exactly meant,  
22 uh, and and that's another concern that I have but, again,  
23 that's something for another day, uh, but, Judge, his his mom  
24 is here in the courtroom, uh, today along with, uh, an  
25 elementary school teacher that, uh, taught him special ed for

1 five years at Boilin' Springs elementary. Uh, the teacher's  
2 name is Ms. Sylvia Cooley, his mom is Othea (phonetic) Bunch.  
3 Uh, my wife would've been here, Judge, but she actually had  
4 some some medical issues this morning, she's unable --  
5 unavailable but she did, uh, at least what we'd say that she  
6 she obviously fully supports her brother. Uh, he does have a  
7 lotta family support, Judge, and this, like I said, this has  
8 been a very tough time for all of us bein' put in this  
9 position. Uh, this is not somewhere that we're accustomed to  
10 seeing anyone in our family, including Leon, uh, and I think,  
11 uh, his mom will attest to to the demeanor of of his normal  
12 personality.

13 Uh, Judge, Leon is a, is a member of his church, he sings  
14 in the choir at his church, has been a member for, uh, s ---

15 THE DEFENDANT: 2009.

16 MR. HODGE: --- since 2009 of the same church, uh, he did  
17 receive his diploma from high school, Judge, even though he  
18 was told that he never would. Uh, Leon suffers from, uh,  
19 brain trauma that occurred when he was in a car accident, uh,  
20 as a, as an infant, uh, he was actually in his mother's lap  
21 when the car crash occurred, uh, and they they didn't think he  
22 was gonna survive, Judge, and when he did survive they didn't  
23 think he'd ever walk and when he did walk they didn't think  
24 he'd ever talk. His whole life has been about limitations and  
25 he has found ways to to overcome those limitations. Uh, he he

1 was told at a very young age that he would never read and  
2 write, he would never go to normal school and he graduated  
3 from Boilin' Springs High School with a degree. Uh, he went  
4 on to to do trade work, uh, he went on to masonry school, uh,  
5 Judge, he's been to so many technical colleges and and and  
6 went through so many different programs tryin' better himself,  
7 tryin' to more educate himself, tryin' to get a job and,  
8 Judge, I hate to say it but tryin' to be a normal person,  
9 tryin' to fit in with society as a normal person, uh, and I  
10 feel like that that that says a lot to to his character and  
11 and says a lot to his willpower.

12 Judge, this this incident, these accusations are very out  
13 of character. Uh, I believe, you know, that Your Honor heard  
14 at the first hearing and I'm sure they will be happy to to  
15 read it again but he does have a, uh, a short prior record,  
16 two of 'em are are and I believe two of 'em are criminal  
17 domestic violences, Judge. Uh, the last time he informs me  
18 that it was portrayed as a criminal domestic third, uh, and  
19 it's actually it was pled down to a first, Judge, and it was  
20 with the same woman who is the mother of this victim, uh, he  
21 was with her for a number of years, they got married, uh, and  
22 he essentially, uh, you know, they had some issues, uh, Judge,  
23 and I'm not gonna sit here and deny that, uh, but this this is  
24 is a whole different ball game, Judge, and this is somethin'  
25 that that he has never exhibited any sort of, uh, behavior

1 like this before, I don't believe that, Judge, and this is  
2 just comin' from me, I'm not sure that that he exhibited it  
3 this time, I'm just not, I'm not convinced by looking at what  
4 I've seen and by hearing what he's told me that that he made  
5 the right decision in pleading to Alford, uh, but, again,  
6 Judge, I I keep gettin' sidetracked with that. Uh, Your  
7 Honor, I believe his mom would like to speak, uh, if if you'll  
8 hear her, uh, and she is gonna address some a the medical  
9 concerns, uh, that that kinda, that that really affect him and  
10 has affected him his entire life, Judge, if you'll give her a  
11 moment, is that okay?

12 THE COURT: Yes, sir. Did, uh, do you have a a copy of  
13 the motion you filed ---

14 MR. HODGE: Yes.

15 THE COURT: --- 'cause I do not.

16 MR. HODGE: I did.

17 (Whereupon, counsel handed the document to the Court.)

18 THE COURT: Thank you.

19 MR. HODGE: Yes, sir.

20 THE COURT: Okay. Uh, alright, did you say you did have  
21 someone that wished to address the Court?

22 MR. HODGE: Yes, sir, his mother is here and would like  
23 to address the Court.

24 THE COURT: Ma'am, just come right up here (indicating)  
25 and you can stand beside Mr. Hodge and I just need to let you

1 know we are making a recording of everything that happens here  
2 so when ya speak, please speak up loud enough so that both the  
3 court reporter and I can hear you and if you would just start  
4 by givin' us your full name.

5 MS. BUNCH: My name, excuse me, my name is Othelia Jolly  
6 Bunch ---

7 THE COURT: Yes, ma'am.

8 MS. BUNCH: --- and I'm the mother of William Bunch, <sup>Burnett NO7</sup> uh,  
9 thank you for allowing me to speak today. I'd just like to  
10 provide you with some background on his medical condition, uh,  
11 and when he was 5-weeks-old, he had a car accident, he had  
12 severe brain damage, uh, and and as Mr. Hodge has stated here  
13 today that he's overcome several hurdles, several  
14 obstacles. Uh, he did go to school at Charles Lea Center and  
15 they had a meeting with us, told us he would never be able to  
16 do, go be, learn beyond a fifth grade level, he would be able  
17 to function but that was it; however, at every obstacle Leon  
18 came to, we encouraged him to do his best and to work to his  
19 potential and he did, he did because he wanted to be normal,  
20 he wanted to go to a normal school and his determination to do  
21 the things that he needed to do to get to that point was just  
22 unbelievable.

23 Uh, now Leon has had seizures ever since the car  
24 accident, he has been on many medications and, uh, he now has  
25 a vegas nerve stimulator implanted in his chest, uh, the life

1 a that VNS is is coming to an end and he's gonna have to have  
2 a new one to help control the seizures. Uh, we've we've had a  
3 problem since he's been incarcerated with him not getting his  
4 medication like he should which causes the seizures and when  
5 he he has had a mal and he has grand mal, uh, he has more  
6 petit mal and a normal person looking at him would not know he  
7 was having it, uh, he just, it just, it's kind of a staring,  
8 everything stops with him. Uh, while he was at Kirkland he  
9 fell down a flight of stairs and had to be physically carried  
10 to the infirmary because it had knocked him out. When he came  
11 to didn't realize that what had happened because when he has  
12 these seizures he has no recollection of what has happened,  
13 what happened immediately before the seizure happened, uh, and  
14 he gets very lethargic afterwards and and sleeps for a long  
15 time but, uh, he was knocked out when he fell and and it was  
16 beca -- and when he got back to his cell his cellmates was  
17 tellin' him, you know, what he was doin' before he fell down  
18 the stairs and he realized that he had had a seizure and so  
19 that he had a seizure top a steps, fell down the steps and and  
20 I'm really concerned that he's gonna get hurt. He has a, uh,  
21 bony protrusion on the side of his head and if he's hit just  
22 right there (indicating), it could be a matter of life and  
23 death and, uh, I just thought that, you know, the Court needed  
24 to know about his medical condition and the fact that he does  
25 need his meds and he's missed his medicine I know since he's

1 been at Leiber, uh, he's told me that he's missed it three or  
2 four times, ---

3 THE DEFENDANT: Um-hum, ---

4 MS. BUNCH: --- he missed it, ---

5 THE DEFENDANT: --- missed.

6 MR. HODGE: Shh.

7 MS. BUNCH: --- he missed it a lot here when he was at  
8 Spartanburg and I called, uh, the medical office there and  
9 talked to them about it, explained how important it was that  
10 he had this medication because when he has the grand mal  
11 seizures he convulses, his body bruises, he, uh, will bite his  
12 tongue uncontrollably, uh, everything just, it, I mean, they  
13 would have had to, if he had a grand mal they would have had  
14 to take him to the emergency room. Uh, he is on medication  
15 every day, I'm sorry, uh, uh, I just want to be assured that  
16 they'll take, you know, um, pay attention to his healthcare, I  
17 mean, I know they have a lotta people to pay attention to but  
18 like I say if he's not given his medicine the way it's  
19 supposed to be given, if he continues to have these seizures,  
20 uh, it could be a possibility of life or death.

21 Uh, I I would also like to say that, uh, Leon, like I  
22 say, he's always been a determined young man, he he went to  
23 school, uh, he studied very hard, he wanted to graduate, he  
24 got that diploma, he wanted to better himself and go on to  
25 technical college and he, in fact, he was still in technical

1 college when he was arrested and, uh, he was almost done but,  
2 uh, he's not a bad person, I don't believe my son did this. I  
3 didn't believe it then that when he was accused of it, I don't  
4 believe it now. We taught Leon right from wrong, he loved  
5 those children, I know he did. He wanted them to go to school  
6 so that they could be productive members of society, he wanted  
7 the best for those children. He took those children in and  
8 loved both of them, uh, I don't think he would intentionally  
9 hurt either child. All he wanted was good for them and, uh,  
10 he had, he'd started going, uh, he had given his life to to  
11 God and he'd been goin' to church and tryin' to live a Godly  
12 life and the kids went to church, you know, the wife would go  
13 when she wasn't working and they were, he was trying very  
14 hard. He has an unwavering faith and has ever since, you  
15 know, he gave his life over but especially since he was  
16 incarcerated he, uh, he has such a loving attitude and such a  
17 good attitude that, uh, you know, he's just turned it over to  
18 God whatever happens and, uh, and I truly, uh, I truly believe  
19 that he did not do this. Uh, I just wanna thank you for your  
20 time for listening to me today and, uh, for your consideration  
21 in, uh, the things that, especially his health issues and, uh,  
22 I just wanna thank you for lettin' me speak.

23 THE COURT: Certainly, ma'am, thank you.

24 MR. HODGE: Judge, she is the only person that that I,  
25 uh, that I have asked to speak today, uh, and and I knew that

1 I would be fairly lengthy, uh, and I apologize for for being  
2 so but, uh, Your Honor, there's just, there are certain things  
3 again that that I have questions, uh, that really, uh, you  
4 know, cause a lot of, a lot of second guessing on my part,  
5 Judge, and, uh, I'm here today after you've heard everything  
6 and and I hope have have at least been given, uh, some sort of  
7 incite into, uh, the type a person that that Leon is and and  
8 the the good things, uh, that have been shared today. Uh,  
9 Judge, I understand that what what he's charged with and what  
10 he, what he pled to are very serious charges, he understands  
11 that and we're not trying to diminish, uh, I'm not trying to  
12 diminish these accusations, I'm not trying to diminish the  
13 seriousness of why we're here, uh, but, Judge, I I I do  
14 question a lotta things in this case and and I will just ask  
15 that based on everything you've heard, uh, and based on, based  
16 on what I've said, what mom has said and kinda medical history  
17 that you would consider a lesser sentence, Judge. I don't  
18 have a number, I don't have anything in mind, uh, I know that  
19 the cap was 15, uh, but it it was a 0 to 15 range, Judge, and  
20 I would just ask that you consider anything less than 15.  
21 Thank you.

22 THE COURT: Thank you.

23 MS. WELBORN: Your Honor, I would like to respond ---

24 THE COURT: Um-hum.

25 MS. WELBORN: --- frankly to first of all, just to, just

1 to kind of, uh, remind Your Honor about the plea the defendant  
2 did have a mental health evaluation, it came back competent to  
3 stand trial and was found criminally responsible, the State  
4 made both of those an exhibit at the time of the plea. I  
5 certainly can't speak to how many times he met with Mr. Cheek  
6 or what he told Mr. Cheek, I can tell Your Honor that  
7 Mr. Cheek approached me on at least two separate occasions and  
8 said that the defendant wanted to plead guilty and at that  
9 time these mental evaluations were still pending, I told  
10 Mr. Cheek we were still waiting for that, but he did, he did  
11 let me know that he did want to plead guilty. I was in the  
12 jail room right before the plea and I actually did hear the  
13 defendant tell Mr. Cheek that he wanted to plead guilty to  
14 these charges. Furthermore, Your Honor, the defendant and  
15 Mr. Cheek did make the Court aware of the defendant's medical  
16 condition at the plea as well as the device that was placed in  
17 his chest and I do have the facts, Your Honor, if you'd like  
18 to hear those.

19 THE COURT: (Nodded in the affirmative.)

20 MS. WELBORN: On December 9th 2011 the defendant struck  
21 the victim with a switch. On December 10th 2011 the defendant  
22 struck him with his belt. The victim's grandfather reported  
23 the abuse to police after he saw the extensive bruises. The  
24 victim told officer that the defendant makes her stay up until  
25 1 a.m. studying on a regular basis and when she falls asleep

1 he will spank her. She sad when the defendant spans her he  
2 makes her pull pants and underwear down and put her hands on  
3 the wall, she said he told here if she told anyone he would  
4 take Christmas away. While officers were investigating the  
5 neglect charges the victim also disclosed that the defendant  
6 has kissed her on the mouth and stuck his tongue down her  
7 throat. She said the defendant started feeling on her chest,  
8 in between her legs both inside and outside clothing starting  
9 in 2007 when she was 7-years-old. She stated that when she  
10 was 10-years-old he started touching between her legs and  
11 began performing oral sex on her on a regular basis. She said  
12 that he kissed her and sucked on her breasts and made her  
13 touch his penis and buttocks. She said the sexual abuse  
14 started in 2007 and continued until she was 12-years-old. The  
15 defendant defendant is the victim's stepfather. The defendant  
16 was Mirandized and confessed to touching the victim  
17 inappropriately about five times over the past four years;  
18 however, he stated that the victim was the one coming up to  
19 him, that she was initiating it by kissing him and putting her  
20 hand down her pants. He stated that he would ask her to stop  
21 but she would refuse and would promise not to tell anyone. He  
22 said the victim also grabbed his arm and made him touch her  
23 breasts, in between her legs. He said he feels sorry for her  
24 so he was trying to show her affection and that he needed help  
25 for what he was, for what he has done.

1 Your Honor, I did, uh, notify the victim's mother of the  
2 plea, she chose not to attend but asked me to call her after  
3 the plea and let her know what the sentence was. His prior  
4 record is a 1998 CDV; 1999 CDV second; another CDV in 2000;  
5 2009 CDV third and 2010 financial identity fraud.

6 Your Honor, I would like to mention also I did meet with  
7 the child and discussed this with her and she did disclose the  
8 the exact same information to me in our meeting.

9 THE COURT: Alright, thank you. Thank you.

10 MR. HODGE: Judge, that did, I mean, I didn't know that  
11 was gonna be read or go into detail about that, uh, but I I I  
12 would like to say first of all the mental evaluation did come  
13 back and and we've gone over that. Uh, I talked to him about  
14 that and understood that that did come back as mentally  
15 competent and criminally responsible, Judge, but I also  
16 understand that that is, uh, the bear minimum and I believe  
17 his IQ came back at a 60 which was five points above the  
18 required, uh, to be mentally ill, uh, mentally handicapped,  
19 Judge, that also, uh, he exhibited very awkward behavior while  
20 he was there, uh, it it's, I have letters that he has written  
21 me, Judge, where things are are worded and said that that a  
22 person who is one hundred percent mentally competent such as  
23 you and I would not say or do, uh, and that's just the, that's  
24 just the facts, Judge, I'm not tryin' to say he's not mentally  
25 competent, I never made that argument and I I'm challenging

1 their their finding.

2 Uh, as far as the facts of the case go, uh, that the  
3 victim did give a statement, she did report back in '07, I  
4 believe she had made a comment to a family member when  
5 approached by the mother, uh, who still has contact, uh, with  
6 Leon and has told him and me she doesn't believe, uh, that  
7 this this happened, she has told family members that, uh, her,  
8 she kinda goes back and forth, Judge, but, uh, the victim  
9 reported it then turned around and told her mom that she made  
10 it up so that she could go live with a friend 'cause she  
11 wanted him outta the house. Uh, she has changed her version  
12 of what happened three different occasions as far as how  
13 severe it was, she has maximized and minimized I guess you  
14 could say, uh, the actual acts themselves. In one statement I  
15 believe she says that there was oral sex, in another statement  
16 she says that that he never touched her, she never touched him  
17 or he touched her, I mean, Judge, there are various  
18 inconsistencies throughout her statements, um, and, again, I  
19 didn't wanna get into that but just to, just to kinda clarify  
20 some things, um, and, Judge, also, he did not plead guilty, he  
21 pled under *Alford*, uh, Judge, which means he took the benefit  
22 of the deal, uh, which I think weighs heavily on on the fact  
23 that the solicitor was in the jail room during Mr. Cheek's  
24 conversation with my client, um, and and I wasn't there so I  
25 can't attest to what was said but he tells me that it was a

1 now or never situation, Judge, that it was take it now or we  
2 go to trial on CSC and you're lookin' at a minimum 25 years.  
3 Now someone who is strong mentally and someone who who, you  
4 know, understands everything that's goin' on would probly say,  
5 Well, you know, let's roll the dice, but I've seen people who  
6 aren't mentally handicapped just freeze up in that moment and  
7 take that deal, uh, I'm not saying that is what happened,  
8 that's what he says happened, Judge, I wasn't there, uh, but,  
9 again, that just goes to show that there's a lotta questions  
10 that I have regarding this case and a lot of questions I have  
11 as to how he even ended up in this position, uh, but, again, I  
12 wanted to present to you a more positive side of him 'cause I  
13 don't believe that it was pro -- appropriately done first time  
14 around, uh, as far as the good things that Leon has done: the  
15 the the fact that he's tried to hold down a job his entire  
16 life and and, you know, just those things, Judge, and so that  
17 was what I really wanted to focus on today, I apologize for  
18 gettin' sidetracked.

19 MS. WELBORN: Your Honor, and I would like to respond  
20 br -- very briefly. Uh, I did, maybe he misunderstood what I  
21 was saying, I was not present, I just wanna clarify that I was  
22 not present during the entire conversation between Mr. Cheek  
23 and the defendant, I happened to be in the jail room right  
24 before we were bringing people in to plead guilty and they  
25 were saying, Who all wants to come in and plead guilty, and at

1 that time the defendant said that he wanted to plead guilty,  
2 that was the extent of what I heard. I just wanted to clarify  
3 that I was not present during the entire conversation between  
4 Mr. Cheeks and the defendant and also did wanna add for the  
5 record that the meeting with the defendant was at the  
6 defendant's request, was not at Mr. Cheek's request but was at  
7 the defendant's request that he had to talk with Mr. Cheek.

8 THE COURT: Okay, I will let you know.

9 MR. HODGE: Thank you, Judge, I appreciate it.

10 MS. WELBORN: Thank Your Honor.

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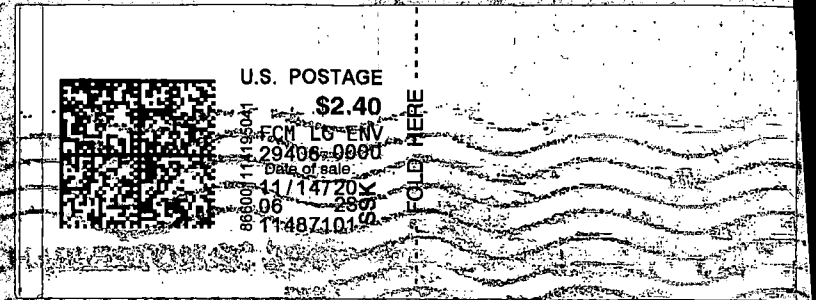
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