

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————  
Certiorari to Lexington County

J. Derham Cole, Circuit Court Judge

—————  
LESTER MURRAY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-000897

—————  
APPENDIX  
—————

SUSAN B. HACKETT  
Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON  
Attorney General

LILLIAN MEADOWS  
Assistant Attorney General  
Rembert Dennis Building  
1000 Assembly Street, Room 519  
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

**RECEIVED**

**Jan 07 2021**

S.C. SUPREME COURT

**INDEX**

INDEX ..... i

GUILTY PLEA HEARING TRANSCRIPT DATED APRIL 12, 2016 .....1

APPLICATION FOR POST-CONVICTION RELIEF .....15

RETURN.....27

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED FEBRUARY 21, 2018.....35

ORDER OF DISMISSAL.....73

INDICTMENTS AND SENTENCE SHEETS.....87

State of South Carolina ) In the Court of General Sessions  
 ) Eleventh Judicial Circuit  
 County of Lexington ) 2015-GS-32-06016; -06017

State of South Carolina, )  
 )  
 Plaintiff, )  
 )  
 Vs. ) Transcript of Record  
 )  
 Lester Murray, )  
 )  
 Defendant. )  
 )  
 \_\_\_\_\_ )

April 12, 2016  
 Lexington, South Carolina

B e f o r e:

The Honorable William Seals, Judge

A p p e a r a n c e s:

Bethany Miles, Esquire  
 Attorney for the Plaintiff

Jason Chehoski, Esquire  
 Attorney for the Defendant

Bonnie H. Kelly, CVR  
 Circuit Court Reporter

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
Case Called/Court Clerk	4
Direct Examination by the Court	4
Recitation of Facts/Ms. Miles	6
Mitigation/Mr. Chehoski	9
Sentence of the Court	12
Certificate Page	13

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
------------	--------------------	-------------	------------

-- NO EXHIBITS ENTERED --

1 COURT CLERK: 2015-GS-32-6017, *State of South Carolina*  
2 *vs. Lester Murray*, indicted for criminal sexual conduct  
3 with a minor, second degree. He is pleading as charged.

4 2015-GS-32-6016, *State vs. Lester Murray*, indicted for  
5 sexual exploitation of a minor, first degree. He is  
6 pleading as charged.

7 He is waiving presentment to the grand jury and  
8 represented by Mr. Chehoski.

9 MR. CHEHOSKI: Your Honor, this is a plea under  
10 *Alford*.

11 COURT CLERK: Raise your right hand, please.

12 LESTER MURRAY, having been first  
13 duly sworn, testifies as follows:

14 DIRECT EXAMINATION BY THE COURT:

15 Q All right. Mr. Murray, you are pleading pursuant to  
16 *North Carolina vs. Alford* to criminal sexual conduct with a  
17 minor, second degree, which carries up to 20 years in jail;  
18 is that correct?

19 A Yes, sir.

20 Q And you are pleading guilty to sexual exploitation of  
21 a minor, first degree, which has a minimum of 3 years and a  
22 maximum of 20 years; is that correct?

23 A Yes, sir.

24 THE COURT: And is that necessary that has to be run  
25 concurrent -- I mean, consecutive?

1 MS. MILES: Consecutive. Yes, sir.

2 MR. CHEHOSKI: Yes, sir.

3 Q You understand that is consecutive?

4 A Yes, sir.

5 Q All right. Were you in the courtroom today when I  
6 went over your rights to a jury trial?

7 A Yes, sir.

8 Q Did you understand those rights?

9 A Yes, sir.

10 Q Do you have any questions about your rights to a jury  
11 trial?

12 A No, sir.

13 Q You want to give up your right to a trial and plead  
14 guilty today?

15 A No, sir.

16 Q You don't want to plead guilty?

17 A I mean, I want to plead guilty.

18 Q All right. You want to give up your right to a trial?

19 A Yes.

20 Q All right. You satisfied with your lawyer?

21 A Yes, sir.

22 Q Has anybody promised you anything at all to get you to  
23 plead today?

24 A No, sir.

25 Q Anybody threatening you in any way to make you plead

1 guilty?

2 A No, sir.

3 Q Are you under the influence of any drugs or alcohol at  
4 this time?

5 A No, sir.

6 Q Are you guilty?

7 A Yes, sir.

8 Q Pursuant to *Alford*?

9 A Yes, sir.

10 Q Have you understood all of my questions?

11 A Yes, sir.

12 Q Have you answered me truthfully?

13 A Yes, sir.

14 Q All right. Thank you.

15 (To Ms. Miles) Yes, ma'am.

16 MS. MILES: May it please the Court ---

17 THE COURT: Sure.

18 MS. MILES: --- Your Honor. Defendant Lester Murray  
19 is charged with one count of criminal solicitation of a  
20 minor, two counts of dissemination of obscene material to a  
21 person under the age of 18, one count of sexual  
22 exploitation of a minor, first degree; and two counts of  
23 criminal sexual conduct with a minor, second degree.

24 The defendant is pleading to sexual exploitation of a  
25 minor and one count of the criminal sexual conduct with a

1 minor, second degree. All of his other charges will be  
2 dismissed pursuant to this plea.

3 Your Honor, I believe his previous record --  
4 everything is in the 80's and 90's, and nothing of this  
5 nature. It's all simple assaults and fraudulent check.

6 I believe the defendant did sign a forfeiture order  
7 for his phone that we were unable to give back to him. I  
8 believe that was passed up.

9 The victim's mom was unable to get off work to be  
10 here, but she did pass up a statement, that I'll pass up  
11 after, at the appropriate time.

12 THE COURT: All right. Let me hear from you.

13 MS. MILES: In April of 2014, 15 year old **Minor**  
14 contact -- or told law enforcement that she had been  
15 sexually assaulted multiple times by Lester Murray, a 15 --  
16 52-year-old man. The victim reported that she had met  
17 Murray online on Meet 24, believing him to be 16 years of  
18 age. The victim states that she told Murray she was 15  
19 years of age.

20 The defendant -- or the victim stated that Murray  
21 arrived at her home and that she left with him because she  
22 was afraid that he may harm her family if she did not  
23 leave.

24 The victim reports that on one occasion Murray forced  
25 her to have oral and vaginal sex with him, that he

1 threatened to hurt her if she left the bedroom without his  
2 permission.

3 She stated on another occasion, he sodomized her. The  
4 victim also disclosed that Murray was physically and  
5 verbally abusive towards her.

6 A few days later, after Murray had left the residence,  
7 she was able to find a phone charger and charge her cell  
8 phone. She states that she then ran from the residence and  
9 called her mother to pick her up.

10 An examination of the defendant's phone showed videos  
11 of the victim naked as well as pictures of the victim's  
12 private areas that the victim has -- had described as the  
13 defendant repeatedly asking her for and threatening her to  
14 send them, and saying that he would get mad at her if she  
15 didn't.

16 Defendant also showed a video of the victim to another  
17 minor female and sent the victim images of his penis.

18 Defendant gave a statement to law enforcement  
19 acknowledging that he did engage in oral, vaginal, and anal  
20 sex with the victim.

21 And I believe that's all from the State, Your Honor,  
22 other than the statement I would like to pass up.

23 THE COURT: All right. You can go ahead and pass that  
24 up.

25 MS. MILES: May I approach?

1 THE COURT: Sure.

2 MS. MILES: The defense has seen this, Your Honor.

3 MR. CHEHOSKI: Yes, Your Honor.

4 (Ms. Miles hands documents to the Court.)

5 THE COURT: Thank you. And I'll find, for the record,  
6 that he is pleading intelligently and with the advice of  
7 competent counsel.

8 MS. MILES: Thank you, Your Honor.

9 THE COURT: All right. Be glad to hear from you.

10 MR. CHEHOSKI: Thank you, Your Honor. This -- these  
11 type cases are always difficult.

12 Mr. Murray stands before you. He's 54 years old.  
13 He's been in custody since April 4 of 2014. That's two  
14 years and eight days by my count.

15 He's a high school graduate of A.C. Flora High School.  
16 He did do three semesters at Midlands Tech, studying  
17 computer science.

18 He's single with no children. He was employed prior  
19 to his being taken into custody, for 20 years, at Grecian  
20 Gardens, as a cook.

21 He did cooperate with police, Your Honor. If we were  
22 to go to trial, we would be challenging the validity of  
23 that statement. Basically, Mr. Murray claims that he was  
24 promised -- he was promised leniency upon giving that  
25 statement.

1           Certainly we've gone over -- we -- during the course  
2 of my representation of Mr. Murray, we've gone over that --  
3 that record a lot over that, and also with all the other  
4 evidence.

5           (Clears throat) Excuse me.

6           While in custody, Mr. Murray wanted me to tell you  
7 that he did complete an anger management course. He has  
8 also found religion and has come to faith as well.

9           Your Honor, if we were to go to trial, the way I read  
10 the discovery, the -- the minor -- the victim minor --  
11 minor victim has given multiple statements. They're not at  
12 all -- not necessarily all that consistent.

13           We think that the -- that she left voluntarily, that  
14 any sexual contact would have been -- would have -- could  
15 be deemed consensual but for the fact that she was under  
16 age; as well as she did stay there -- stay there for -- for  
17 several days, including during periods while Mr. Murray was  
18 still gainfully employed and working.

19           That said, the -- the way I read the statute and the  
20 way the CSC-minor -- any sexual contact, any sexual  
21 battery, regardless of how slight, regardless of whether or  
22 not it's indeed consensual, it's -- it's strict liability.  
23 It's -- that's the way it's written. And with the sexual  
24 exploitation, transporting a minor from one part of the  
25 state for another for that purpose, also fits the statute

1 perfectly.

2 So I don't think at -- at a trial, we really -- at a  
3 trial, I think he would be found guilty.

4 Ms. Miles has graciously dismissed four of his charges  
5 to give him that benefit.

6 We understand there's a mandatory consecutive  
7 provision. We understand that any sentence you give him  
8 he'll have to serve at least 85 percent before he's  
9 eligible for release.

10 I also understand that these -- that the CSC with a  
11 minor is a most serious strike. If he gets another most  
12 serious, he's facing life without parole.

13 Your Honor, given his age, given his minimal prior  
14 record -- he's had no -- in the last 19 years, he's had not  
15 contact with the police. Given the length of time he's  
16 already served in custody, Your Honor, we're respectfully -  
17 - and understand this is a lot to ask for -- but we're ask  
18 -- respectfully asking for a time-served sentence on the  
19 CSC with a minor case and three years on the -- a minimum  
20 three years on the sexual exploitation.

21 And Your Honor, the reason for this request -- and  
22 again, we know it's a big ask -- is based off of what I see  
23 as -- what I -- the way I -- the way -- my interpretation  
24 of the evidence is that **Minor** -- I'm sorry -- the --  
25 the minor victim -- please, forgive me -- I think willingly

1 left and all -- it seems like, based on other witness  
2 statements, everything there was consensual. And for those  
3 reasons and for the two-plus years that he's been in  
4 custody, Your Honor, that's why we request for sentence.

5 THE COURT: All right. Sentence of the Court on each  
6 is 10 years. I'm going to run them consecutive. He's  
7 receive two days and eight days credit.

8 MR. CHEHOSKI: That's two years and eight days, right?

9 THE COURT: Correct.

10  
11 -- END OF TRANSCRIPT OF RECORD --  
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**CERTIFICATE**

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Eleventh Circuit Court for Lexington County, South Carolina, on the 12th day of April, 2016.

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

e/Bonnie H. Kelly

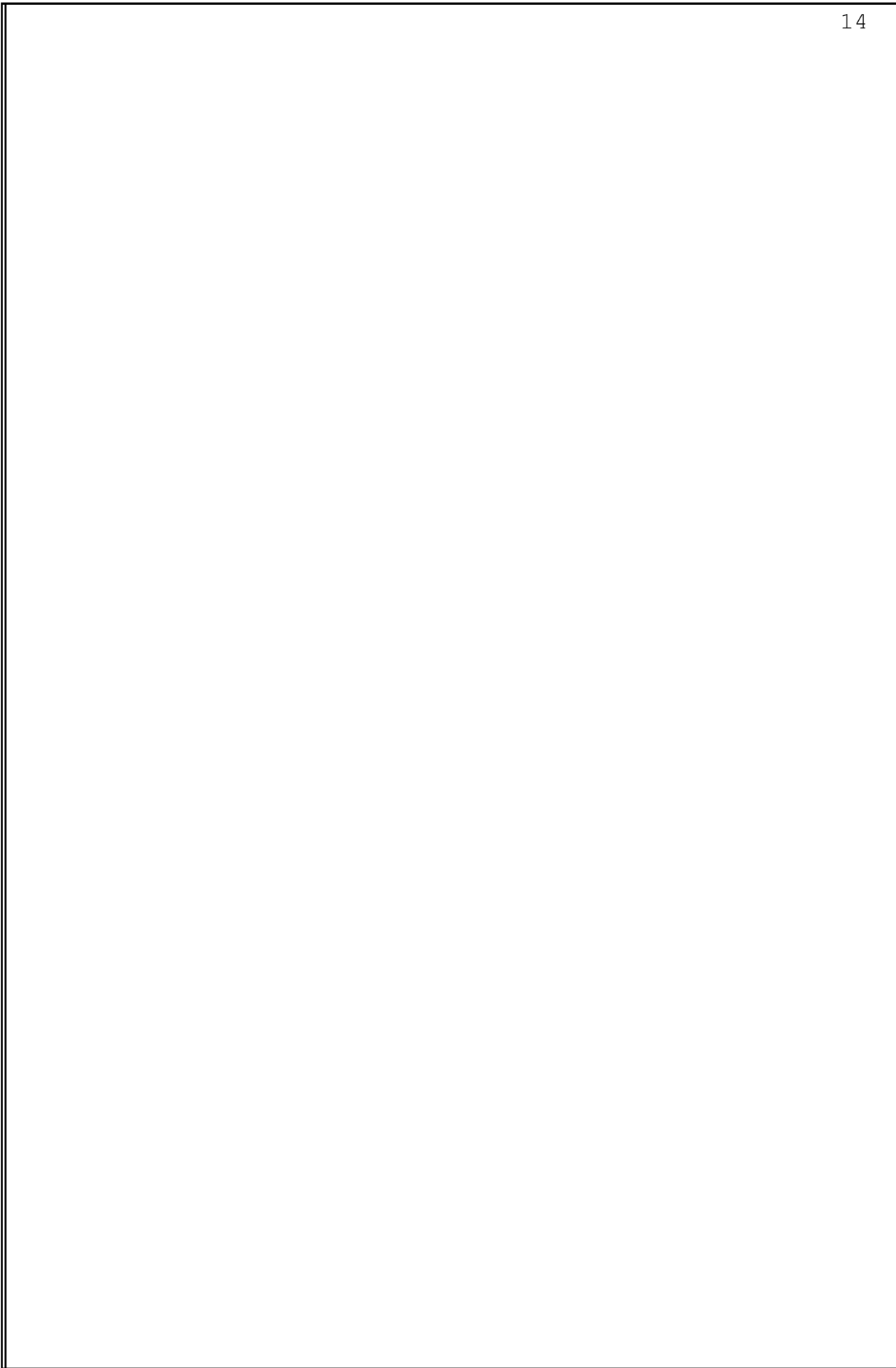
Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

June 8, 2017

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FORM 5

ORIGINAL

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT

Lester Murray, #367761, )  
Full name and prison number (if any) of Applicant. )

2017 CP 3200674

v. )  
State of South Carolina )  
Respondent, )

APPLICATION FOR  
POST-CONVICTION RELIEF

FILED  
2017 MAR -1 AM 10:11  
CLERK OF COURT  
LEXINGTON COUNTY, SC

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 LIEBER CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence LEXINGTON COUNTY COURT OF GENERAL SESSIONS, ELEVENTH JUDICIAL CIRCUIT.
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) 2015-GS-32-6016 Sexual Exploitation of minor 1st degree.
  - (b) 2015-GS-32-6017 CSC with a minor 2nd degree.
  - (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) April 4th., 2016 3-20 yrs consecutive. 10yr term com.
  - (b) April 4th., 2016 0-20 yrs. consecutive 10yr term com.

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*[Handwritten Signature]*

Lex. Co. C.C.C.P., G.S. & F.C.

- (c) \_\_\_\_\_
- 6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty  X
  - (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.  N/A
    - iii.  N/A
  - (b) the result in each such Court to which you appealed:
    - i.  N/A
    - ii.  N/A
    - iii.  N/A
  - (c) the date of each such result:
    - i.  N/A
    - ii.  N/A
    - iii.  N/A
  - (d) if known, citations of any written opinion or orders entered pursuant to such results:
    - i.  N/A
    - ii.  N/A
    - iii.  N/A
- 9. If you answered "no" to (7), state your reasons for not so appealing:
  - (a)  Counsel failed to communicate any appeal options.
  - (b)  N/A
  - (c)  N/A
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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*[Signature]*  
Lex. Co. C.C.C.P., G.S. & F.C.

- (a) "INEFFECTIVE ASSISTANCE OF COUNSEL"
- (b) COUNSEL FAILED TO RAISE LACK OF SUBJECT MATTER.
- (c) COUNSEL FAILED TO RAISE DOUBLE JEOPARDY VIOLATION.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) "SEE ATTACHMENTS".
- (b) ~~N/A~~
- (c) N/A
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.   N/A
- iii.   N/A
- iv.   N/A
- (b) the name and location of the Court in which each was filed:
- i.   N/A
- ii.   N/A
- iii.   N/A
- iv.   N/A
- (c) the disposition thereof:
- i.   N/A
- ii.   N/A
- iii.   N/A

**A TRUE COPY**

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

No.

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

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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) COUNSEL FAILED TO RENDER EFFECTIVE ASSISTANCE.

(b) Former counsels were in conflict of interest.

(c) N/A

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

**A TRUE COPY**

- (a) your arraignment and plea? Yes.
- (b) your trial, if any? No.
- (c) your sentencing? Yes.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No.
- (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. Jason S. Chehoski, Esq. Lexington Public Defender  
407 W. Main St., Lexington, S.C. 29072 803-785-8873
  - ii. N/A
  - iii. Same as above.
- (b) the proceedings at which each such attorney represented you:
- i. Plea & Sentencing.
  - ii. N/A
  - iii. N/A
19. State clearly the relief you seek in filing this application:  
Set-aside conviction and sentence. New trial.
20. Are you now under sentence from any other court that you have not challenged?  
No.


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*John Connor*  
Lex. Co. C.C.C.P., G.S. & F.C.


STATE OF SOUTH CAROLINA )  
 )  
County of LEXINGTON )

VERIFICATION

I, L. M., 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.

Lester Murray, #367761  C

SWORN to and subscribed before me this 17<sup>th</sup>  
day of FEBRUARY 2017.

 (L.S.)  
Notary Public

My Commission Expires: 6-20-26

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

I, **L. M.**, 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.

*[Handwritten Signature]*

*Applicant*

SWORN or affirmed to and subscribed before me this  
17<sup>th</sup> day of February, 2017.

*[Handwritten Signature]*

*Notary Public*

My Commission Expires: 6-20-26

**A TRUE COPY**

*[Handwritten Signature]*


Lex. Co. C.C.C.P., G.S. & F.C.

ATTACHMENT PAGE#8

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

1. Counsel was inadequate because the Petitioner was in serious detrimental reliance of competent assistance.
2. Counsel was inadequate for failing to effectively communicate, or consult with the Petitioner on many of occasions.
3. Counsel abandoned his client because his performance fell below the professional norm of an criminal defense attorney and because of this poor performance the Petitioner was prejudiced.
4. Counsel was ineffective for failure to move for competency hearing.
5. Counsel was inadequate and failed to render effective assistance guaranteed under the sixth amendment.
6. Counsel allowed the defendant's right to the Confrontational Clause under the sixth amendment to be violated.
7. Counsel was ineffective for depriving the Petitioner of his right to receive a fair trial.

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Lex. Co. C.C.C.P., G.S. & F.C.

ATTACHMENT PAGE#9

11. State concisely and in the same order the facts which supports each of the grounds set in (10).
8. Counsel was ineffective for failure to raise lack of subject matter jurisdiction. The Petitioner sat in the County detention center for well over two years without indictment of the grand jury. Petitioner has a letter in writing from attorney as proof. Petitioner's Exhibit-A
9. First counsel Ms. Salley Henry was ineffective for failing to move for speedy trial when requested to do so. Petitioner move for counsel to be relieved.
10. Counsel Jason Chehoski was appointed from the same public defender's office which created an conflict of interest.
11. Counsel was inadequate for failing to withdraw plea agreement because the Petitioner was under duress, coerced into plea involuntarily, unknowingly, and unwillingly. Petitioner did not understand the consequences of his plea and that he was going to receive two 10 year consecutive sentences.
12. Counsel was ineffective for failure to challenge the State to an adversarial testing. The State failed to prove each element of the offenses charged which created an breach of trust between lawyer/client.

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 Lex. Co. C.C.C.P., G.S. & F.C.

ATTACHMENT PAGE#10

11. State concisely and in the same order the facts which supports each of the grounds set out in (10).
13. Counsel was ineffective and deficient for failure to state the defense of diminished capacity.
14. Counsel failed to raise time bar indictment issue.
15. Counsel was inadequate for allowing the duplicity indictments or offenses to go unchallenged.
16. Counsel was ineffective for failure to raise prosecutorial vindictiveness or misconduct. Failure to follow court rules and criminal procedures based upon the statute of limitations.
17. Counsel was inadequate for failure to properly investigate, failure to seek DNA testing, and failed to present defense.

End of Plea Counsel Jason Chehoski's Ineffectiveness!

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Lex. Co. C.C.C.P., G.S. & F.C.

Dated: 9-17-2017, 2017

The Honorable Lisa Comer  
 Clerk of Court, for Lexington County Judicial Center  
 205 East Main St., Suite#128  
 Lexington, S.C. 29072

RE: Lester Murray, #367761, Petitioner,  
 vs. State of South Carolina, Respondent,  
 Post-Conviction Relief Application.

Dear Ms. Comer:

Enclosed please find the Petitioner's application for Post-Conviction Relief to be filed with the Court of Common Pleas.  
 Please file and send back an clocked stamped copy for my records.

Sincerely,

/s/

*Lester Murray*  
 Mr. Lester Murray, #367761

LCI. Wando-~~612~~ AC#162

136 Wilborne Ave.

P.O. Box 205

Ridgeville, S.C. 29472

Pro-Se Petitioner

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*Lisa Comer*  
 Lex. Co. C.C.C.P., G.S. & F.C.

## OFFICE OF THE PUBLIC DEFENDER

**ELIZABETH FULLWOOD**  
Lexington Public Defender  
407 W. Main St.  
Lexington, SC 29072  
Telephone (803) 785-8873  
Fax (803) 785-1443

**Eleventh Judicial Circuit**  
Lexington, Saluda, Edgefield,  
and McCormick Counties

**ROBERT M. MADSEN**  
Circuit Public Defender

**BENNETT E. CASTO**  
Tri-County Public Defender  
Post Office Box 1852  
McCormick, SC 29835  
Telephone (864) 852-9555  
Fax (864) 852-9554

1/13/16

Petitioner's  
Exhibit - A

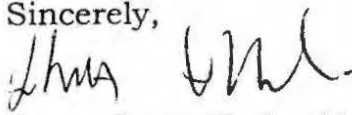
Lester Murray  
Lexington County Detention Center  
F POD 27FP02

Mr. Murray,

In response to our meeting Tuesday, I have checked the Judicial Index and have found that your cases have not yet been indicted. All this means is that they cannot call your case to trial until the Attorney General puts it before the grand jury. After hearing the evidence, if at least twelve of the eighteen members of the grand jury believe there is enough evidence that shows you are probably guilty, that is when they issue the indictment.

Please remember what we spoke about yesterday in regards to your case. I will be reviewing the phone records a little more closely to make sure they can prove the charges related to them. I will come and see you again in the next month so. Please do not hesitate to call me at the office if you have any further questions.

Sincerely,



Jason Scott Chehoski

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
	)	
Lester Murray,	)	C.A. No. 2017-CP-32-0067
	)	
Applicant,	)	
	)	
v.	)	<b>RETURN</b>
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the Post-Conviction Relief (PCR) Application filed March 1, 2017, Respondent would show this Court:

I.

Applicant Lester Murray is confined in the South Carolina Department of Corrections pursuant to an order of commitment of the Lexington County Clerk of Court. Murray was indicted for criminal sexual conduct with a minor, 2<sup>nd</sup> degree (2015-GS-32-6017) and for sexual exploitation of a minor, 1<sup>st</sup> degree (2015-GS-32-6016). Murray waived presentment to the grand jury. Jason Chehoski, Esquire, represented him on these charges.

On April 12, 2016, Murray pled guilty pursuant to *North Carolina v. Alford*<sup>1</sup> before the Honorable William Seals. Judge Seals sentenced Murray to consecutive terms of ten years for criminal sexual conduct with a minor and ten years for sexual exploitation of a minor. Murray did not appeal his sentences.

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject convictions, Murray's SCDC records, his sentencing transcript,

<sup>1</sup> *North Carolina v. Alford*, 400 U.S. 25 (1970).

and his application for relief. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

In his current application for Post-Conviction Relief, Murray alleges he is being held in custody unlawfully for the following reasons:

- (a) “Ineffective Assistance of Counsel”
- (b) Counsel failed to raise lack of subject matter.
- (c) Counsel failed to raise double jeopardy violation.

In his attachments to his application, Applicant raises numerous additional grounds of ineffective assistance of counsel, including failure to communicate, failure to advocate, failure to withdraw his involuntary guilty plea, and conflict of interest.

## III.

During the plea proceedings, Murray acknowledged he wished to waive his rights to a jury trial to obtain the benefit of a plea. Murray also understood his terms would run consecutively. Murray told the plea court he was satisfied with his attorney, and he was neither promised anything nor threatened to plead. Murray was not under the influence of any drugs or alcohol at the time of the plea and sentencing.

The State informed the court the victim was fifteen years old when she was assaulted multiple times by the fifty-two year old Murray. The victim met Murray online, believing him to be sixteen years old. When Murray arrived at her house, the victim left with him because she was afraid for her safety as well as her family’s. Murray forced the victim to have oral and vaginal sex with him, and he threatened to hurt her if she attempted to leave without his permission. Murray also sodomized the victim, forced the victim to provide him with photographs of her

genitalia, and physically and verbally abused her. After a few days, when Murray left the residence, the victim was able to run away and call her mother to pick her up.

The plea court sentenced Murray to consecutive ten year terms of imprisonment, from which Murray did not appeal.

#### IV.

Respondent submits Murray's allegations of ineffective assistance of plea counsel is without merit. In a PCR action, the applicant bears the burden of proving the allegations in their application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing *Griffin v. Martin*, 278 S.C. 620, 300 S.E.2d 482 (1983)). First, he must demonstrate that his attorney's "representation fell below an objective standard of reasonableness." *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). "Judicial scrutiny of counsel's performance must be highly deferential." *Id.* at 689, 104 S.Ct. at 2065. "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Id.* (Citation omitted).

Even if an inmate proves deficient performance, he must also prove that he was prejudiced by his attorneys' ineffectiveness because "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Strickland*, 466 U.S. at 691. In other

words, he must prove “that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* at 694. It is insufficient to prove “that the errors had some conceivable effect on the outcome of the proceeding.” *Id.* at 693. Instead, “[c]ounsel’s errors must be ‘so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.’ ” *Harrington v. Richter*, 562 U.S. 86, 104 (2011) (quoting *Strickland*, 466 U.S. at 687).

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel’s advice was not “within the range of competence demanded of attorneys in criminal cases.” *Hill v. Lockhart*, 474 U.S. 52, 56 (1985); *Bennett v. State*, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006). Further, to find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. *See Boykin v. Alabama*, 395 U.S. 238, 243-44 (1969). In *Boykin*, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. *Id.* at 243. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one’s accusers. *Id.* Moreover, a criminal defendant entering a guilty plea “must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). A criminal defendant’s knowing and voluntary waiver of statutory or constitutional rights in a guilty plea “must be established by a complete record and may be accomplished by colloquy between court and

defendant, between court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

Respondent submits the record fully supports the knowing and voluntary nature of Murray's plea. However, allegations regarding the voluntariness of the plea in conjunction with his numerous remaining allegations of ineffective assistance of counsel, raise questions of fact that are not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983).

#### V.

Regarding his claim counsel failed to raise "a lack of subject matter," Respondent submits Murray cannot satisfy either requirement of the *Strickland* test. In *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005), the South Carolina Supreme Court explained that subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong. The plea court, as a court of general sessions, had subject matter jurisdiction to accept Murray's guilty pleas and to sentence him to his consecutive terms. *Gentry*, 363 S.C. at 101, 610 S.E.2d at 499; *see also State v. Smalls*, 364 S.C. 343, 346, 613 S.E.2d 754, 756 (2005) (finding the court of general sessions has subject matter jurisdiction to try criminal cases). Murray has not shown how plea counsel was deficient in failing to raise subject matter jurisdiction when the plea court in fact had jurisdiction to hear the case.

#### VI.

Murray also alleges plea counsel failed to raise a double jeopardy claim but he did not set forth with any specificity the grounds upon which this allegation is based. This allegation is so vague that it is impossible for the State to respond. The Uniform Post-Conviction Procedure Act requires that Murray must "specifically set forth the grounds upon which the application is

based." S.C. Code Ann. § 17-27-50. Further, it is incumbent upon Murray to make at least a *prima facie* showing that would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Since Murray has failed to make even a *prima facie* showing that he is entitled to relief, this allegation should be summarily dismissed.

#### VII.

Respondent denies each allegation that is not expressly admitted, qualified or explained. Respondent submits Murray must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. All claims should be made well in advance of the evidentiary hearing. Respondent further submits Murray's appointed attorney, and not Murray, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCF. Respondent will object to *pro se* filings.

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. *See* Rule 15(a), SCRCF.

#### VIII.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON  
Attorney General

DONALD J. ZELENKA  
Deputy Attorney General

MELODY J. BROWN  
Senior Assistant Deputy Attorney General

SUSANNAH R. COLE  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

September 5, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	
	)	2017-CP-32-0067
	)	
Lester Murray,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	


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

Aimee J. Zmroczek, Esquire  
 Post Office Box 11961  
 Columbia, SC 29211

**RETURN ATTACHMENT LIST:**

- (1) Lexington County Clerk of Court Records
- (2) Guilty Plea Transcript
- (3) Probation records
- (4) SCDC records

DATED this 5<sup>th</sup> day of September, 2017.

  
 \_\_\_\_\_  
 Troyeshi Brailey  
 Paralegal to Susannah R. Cole  
 Assistant Attorney General

1 State of South Carolina )  
 2 County of Lexington ) In the Court  
 ) Of Common Pleas  
 3 Lester Murray, ) Case No.: 2017-CP-32-00674  
 )  
 4 Plaintiff, )  
 )  
 5 vs. ) Transcript of Record  
 )  
 6 State of South Carolina, )  
 )  
 7 Defendant. )  
 \_\_\_\_\_ )  
 8

9  
 10 February 21, 2018  
 11 Lexington, South Carolina

12 BEFORE:

13 The Honorable J. Derham Cole, Judge

14  
 15 APPEARANCES:

16 Aimee Zmroczek, Esquire  
 17 Attorney for the Plaintiff

18  
 19 Susannah Cole, Assistant Attorney General  
 20 Attorney for the Defendant

21 ALSO PRESENT:

22 Lester Murray

23  
 24  
 25

1	INDEX		
2			PAGE
3	PCR HEARING		
4	WITNESS		
5	LESTER MURRAY		
6	Direct Examination by Ms. Zmroczek		4
7	Cross Examination by Ms. Cole		14
8	Redirect Examination by Ms. Zmroczek		23
9	JASON CHEHOSKI		
10	Direct Examination by Ms. Cole		25
11	Cross Examination by Ms. Zmroczek		31
12			
13	Certificate of Reporter		37
14			
15	EXHIBITS		
16	NO. DESCRIPTION	ID	EVDS.
17	NONE		
18			
19			
20			
21			
22			
23			
24			
25			

1 Thereupon, the following proceedings were had,

2 THE COURT: All right. This is Murray?

3 MS. COLE: Yes, Your Honor.

4 THE COURT: All right.

5 MS. COLE: This is the case of Lester Murray versus  
6 the State of South Carolina. It's case number  
7 2017-CP-32-00067. It's a Lexington County case. Your  
8 Honor, Mr. Murray was indicted in 2015 for criminal  
9 sexual conduct with a minor second degree and for sexual  
10 exploitation of a minor first degree. He pled guilty  
11 pursuant to North Carolina v. Alford on April 12th, 2016  
12 before Judge Seals. Jason Chehoski represented Mr.  
13 Murray at the plea.

14 Your Honor, the victim in this case was 15 years old  
15 when she was assaulted multiple times by the 52 year old  
16 Mr. Murray. She met him online thinking he was 16 years  
17 old. When he arrived at her house, she left with him  
18 because she was afraid for her safety as well as her  
19 family's. Mr. Murray forced her to have multiple kinds  
20 of sexual conduct with him and he threatened to hurt her  
21 if she attempted to leave without his permission. He  
22 also forced the victim to provide him with photographs of  
23 her genitalia and he physically and verbally abused her.  
24 After a few days when Mr. Murray left the residence, the  
25 victim was able to run away and call her mother to pick

1 her up.

2 Judge Seals sentenced Mr. Murray to consecutive 10  
3 year terms for the two charges. Our understanding is Mr.  
4 Murray now alleges multiple grounds of ineffective  
5 assistance of counsel. He is being represented today by  
6 Ms. Zmroczek and I will now turn it over to her.

7 MS. ZMROCZEK: Thank you. Your Honor, I would call  
8 Mr. Murray.

9 THE COURT: Okay.

10 Thereupon,

11 LESTER MURRAY

12 after having been first duly sworn, testified as follows,

13 THE COURT: Mr. Murray, make sure you speak up  
14 because everybody has to hear you, okay?

15 THE WITNESS: Okay.

16 DIRECT EXAMINATION

17 BY MS. ZMROCZEK:

18 Q. Mr. Murray, make sure that you speak up because  
19 everybody has to hear you, okay?

20 A. Okay.

21 Q. Perfect. Okay. Mr. Murray, how old are you now?

22 A. I'm 56.

23 Q. And where are you presently residing?

24 A. I'm at Lieber Institution.

25 Q. Obviously you filed a PCR in this matter, correct?

1 A. Yes.

2 Q. You recall being -- Do you recall around what month  
3 or year you were arrested?

4 A. It was April the 4th.

5 Q. Of what year?

6 A. 2014.

7 Q. Okay. Of 2014. And you were arrested?

8 A. Yes.

9 Q. And do you recall whether the - who was the  
10 prosecutor in your case? Was it the Attorney General's  
11 Office?

12 A. Well, it wasn't the Attorney General's Office at  
13 first. It got turned over to the Attorney General's Office.

14 Q. So at first it was the Solicitor's Office here in  
15 Lexington?

16 A. Yes.

17 Q. And then it got turned over to the Attorney  
18 General's Office?

19 A. Yes.

20 Q. When you were arrested, were you appointed an  
21 attorney?

22 A. Yes.

23 Q. Who was that attorney?

24 A. The first one was Elizabeth Fullwood.

25 Q. So you first had Ms. Fullwood and then how long was

1 she your attorney?

2 A. About a year and a half.

3 Q. Then who was your next attorney?

4 A. Mr. Jason.

5 Q. Now, I want to just clarify, was it Ms. Fullwood or  
6 was it Sally Henry?

7 A. Oh, my bad. Sally Henry.

8 Q. That's okay. Did you see Ms. Fullwood this  
9 morning?

10 A. No. I just had her on my mind.

11 Q. All right. So Sally Henry originally represented  
12 you, right?

13 A. Yes.

14 Q. She was with the Public Defender's Office?

15 A. Yes, ma'am.

16 Q. She represented you for about a year you said?

17 A. About a year and a half.

18 Q. Okay. How many times -- Why was she not your  
19 attorney anymore?

20 A. Well, she lied to me a lot and, uhm, things that I  
21 asked about, I her to do like, uhm, every ninety days you get  
22 a bond reduction because I really wanted to get out. She  
23 never got it. And I always asked for my - I took a DNA sample  
24 and I never got it. To this day I still can't get it. And,  
25 uhm, it was just different things like that. And then the

1 most thing why I stopped believing her because she lied, she  
2 lied to me and told me that I was, I was indicted by the grand  
3 jury but which I was never indicted.

4 Q. Okay. So then you went in front of the Judge and  
5 requested a different attorney?

6 A. He - he - he, uhm, gave me a pro bono, but a week  
7 later he left the state and took another job and then he gave  
8 me Mr. Jason Chehoski.

9 Q. And Mr. Chehoski was your attorney for the remainder  
10 of your case and through your plea?

11 A. Yes, ma'am.

12 Q. Okay. How many times did you meet with  
13 Mr. Chehoski?

14 A. I would say about a good three or four times.

15 Q. Okay. Were you able to discuss the case with him?

16 A. Yes. Somewhat.

17 Q. You say somewhat and you hesitate. So you filed a  
18 PCR in this action, right?

19 A. (Witness nodding head.)

20 Q. And you listed a bunch of things that you felt like  
21 Mr. Chehoski did incorrectly, right?

22 A. Right.

23 Q. Okay. I want you to tell the Court all of those  
24 things because the Court needs to understand all of the issues  
25 that you are raising that Mr. Chehoski was ineffective and how

1 that prejudiced your case. So what are the things that he did  
2 wrong?

3 A. Number 1, he misled me in a lot of ways.

4 Q. Okay. You have to be specific. So how did he  
5 mislead you?

6 A. Okay. The whole time I wanted this to be a trial,  
7 but he convinced me that I wouldn't win because of the age of  
8 the girl.

9 Q. And so one of the issues that you had was --

10 A. Being deceived.

11 Q. -- the age, right?

12 A. Yeah.

13 Q. And you say being deceived. Who are you saying  
14 deceived you?

15 A. He did.

16 Q. Okay. What did the - what -- How old did you think  
17 that this girl was?

18 A. Well, she told me she was - she told me, uhm,  
19 several, uhm, ages. First she told me 22. Then she told me  
20 23.

21 Q. Okay. But did Mr. Chehoski or Ms. Henry explain to  
22 you that, uhm, that it's a statutory crime that even if they  
23 lie about their age, that doesn't matter. Did they explain  
24 that to you?

25 A. Yeah. Yeah.

1 Q. Okay. And we've discussed that as well, right?

2 A. Yeah.

3 Q. Okay. So, uhm, so, but you said that Mr. Chehoski  
4 misled you because you wanted a trial so what specifically did  
5 he do?

6 A. I asked him to check, to check to make sure I was  
7 right to see if I was indicted by the grand jury. He wrote me  
8 a letter, I have the letter, saying that I was right. I  
9 wasn't indicted by the grand jury, but still at that same time  
10 he was still trying to make me take a plea instead of going to  
11 trial.

12 Q. Okay. And then, so what, were there things that you  
13 asked him to do that he didn't do?

14 A. Yeah. There was other things that I asked him.

15 Q. What was the biggest thing that you said -- Was  
16 there anything regarding -- Did you give a statement to the  
17 police?

18 A. I had a handwritten statement that I made the first  
19 day I, I got incarcerated and Ms. Sally Henry wouldn't take it  
20 but he did.

21 Q. He who, Mr. Chehoski?

22 A. Mr. Chehoski.

23 Q. He took that written statement from you?

24 A. Four pages. It was in pencil.

25 Q. Okay.

1           A.    I, I asked him to put it in my motion.  He didn't,  
2           but he gave it to the prosecutor.

3           Q.    Okay.  And your issue with that four page statement  
4           is, did you --

5           A.    Everything that happened.

6           Q.    Okay.

7           A.    When - when, uhm, she said that I did what I did, I  
8           was at my job both those days and, uhm, Ms. Sally Henry talked  
9           to my boss man to confirm that, but I had other roommates that  
10          were there with her and, uhm, I got, I think I got like two  
11          calls saying that she, the girl was trying to leave or  
12          whatever, and I told them I couldn't come home because I was  
13          busy because I'm a chef, but when I - but when I - when I -  
14          when I came home, I got another phone call, and I was at the  
15          Post Office - the mailbox and they said that they chasing the  
16          girl.  They got a car.  They're behind her and, uhm, if I walk  
17          up to the next, walk up to the corner I should see her, but  
18          she ran dead in - dead into my chest and I asked her what was  
19          going on and she said that, uhm, people at that house making  
20          her do things that she didn't want to do and I asked - I asked  
21          her where she was going.  She said she was going to the church  
22          to meet her mother there.  I walked her to the church.  I  
23          walked her to the church and I came back and asked them what  
24          they did to the girl and none of them didn't give me no - no -  
25          no answer.  They asked about what I did with her.  I said I

1 walked her to the church like she wanted me to. So I went  
2 back to work and, uhm, then later on that night when I got  
3 home, I was getting me a couple cans of beer and I came home  
4 and it was like six or seven cars waiting for me.

5 Q. And that's when you got arrested?

6 A. That's when I got arrested.

7 Q. Okay. Why is it that -- So you had insisted on a  
8 trial. So tell the Judge why you chose to plea under Alford  
9 instead of taking trial?

10 A. I was - I was - I was really convinced and I was  
11 scared of the time that, the time that Ms. Sally was saying  
12 that I can get if I go to trial and saying what Mr. Chehoski  
13 --

14 Q. That's fine. Mr. Chehoski.

15 A. But anyway, I was looking at, at the plea, the plea  
16 bargain that he, that he had for me and, uhm, for the - this  
17 was the plea. They would drop all the other charges except  
18 for two and, uhm, I was supposed to get five years, but some  
19 how when I, when I, when I, when I went to there, he said that  
20 she, she wasn't going for that. So then after that he - I  
21 wasn't gonna, I wasn't gonna take it but, uhm, he said, uhm,  
22 the least they can give me is 10, 10 years. Now, 10 years  
23 sounds better than 55.

24 Q. Right.

25 A. So I took it. But he didn't explain to me that the

1 10 years was gonna go for both of them and they weren't gonna  
2 be together. They - they - they split. They were gonna split  
3 so that was 20 years.

4 Q. Right.

5 A. Had I would had known that I still would have took  
6 it to trial.

7 Q. Okay. So your understanding when you had  
8 discussions, and if I'm stating it incorrectly, let me know,  
9 but your understanding as I heard you say was that your  
10 sentence was gonna be 10 years --

11 A. Yes.

12 Q. -- consecutive?

13 A. Consecutive.

14 Q. Okay.

15 A. I didn't know they was gonna --

16 Q. I mean concurrent, not consecutive. Together.

17 A. Yeah. That's what I was thinking, but he didn't  
18 tell me any of that either.

19 Q. Okay. And you pled under North Carolina versus  
20 Alford, right?

21 A. Yes.

22 Q. Do you understand what that means?

23 A. Not really because he didn't, he didn't tell  
24 anything to me.

25 Q. Okay. Did you understand all the questions when the

1 Judge was asking them to you?

2 A. Uhm, I was, I was understanding, but I didn't get  
3 the meaning of all of them. Everything was going so quick.

4 Q. And did you ask Mr. Chehoski to file any post trial  
5 motions, any motions to reconsider or appeal?

6 A. No. I don't think so.

7 Q. Okay. And how familiar are you -- Have you had a  
8 lot of felony charges?

9 A. This was -- I had one felony charge, but they  
10 dropped it. All the, all the rest is just minors.

11 Q. Okay. So were you familiar with how the system  
12 worked?

13 A. No, ma'am. I had, I had to clue.

14 Q. Is there anything else that you need to tell the  
15 Judge about what your attorney did, about what you think that  
16 your attorney should have done differently that would have  
17 changed the outcome of your case?

18 A. Well, I'm an alcoholic and, uhm, the reason why I  
19 gave that statement is because the detective, the detective  
20 that, uhm, made the statement, I didn't know that it was gonna  
21 be a actual statement. He just told me, uhm, he was gonna  
22 write down some things and if I write down the things that he  
23 wanted to hear, then he wasn't gonna take me to jail. That's  
24 the first thing that was on my mind because I didn't want to  
25 go to jail so the next day I could get me a lawyer. That's

1 the reason why I didn't want to go to jail. So all that I  
2 wrote down was for his benefit really because I didn't want to  
3 go to jail.

4 Q. Right. And you and I have talked about what can  
5 happen in this court, right? You understand that the Judge  
6 can't reduce your sentence or change your sentence, right?

7 A. Yes.

8 Q. You understand that the only thing that he can do if  
9 he decides to grant your PCR is to remand it back to the state  
10 court and you would start the process over?

11 A. Over. Yes.

12 Q. And you and I have talked about that, right?

13 A. Yes.

14 Q. And is that what you're asking the Court to do?

15 A. Yes.

16 Q. Okay. Please answer any of the questions that the  
17 Assistant Attorney General has for you, okay?

18 A. Okay.

19 CROSS EXAMINATION

20 BY MS. COLE:

21 Q. Hi, Mr. Murray.

22 A. How you doing?

23 Q. Can you clarify something I thought I heard you  
24 testify to on direct about your roommates called you when you  
25 were at work. Can you explain that again?

1           A.    Okay.  My - all of us worked at the same restaurant.  
2  All of us.  All four of my roommates and, uhm, when I was at  
3  work, they called me and said that the girl was trying to  
4  leave the house.  And I was like, well, why y'all holding her  
5  up?

6           Q.    Okay.  So do you know why they were calling you?

7           A.    Well, see, they do drugs.  I just, I just drank  
8  beer, but the younger roommates on the other side of the  
9  apartment, they do their thing, plus the other girl that was  
10 there with the girl that I'm accused of, they're best  
11 friends.

12          Q.    Okay.

13          A.    They all were over there doing drugs on that side of  
14 the trailer.

15          Q.    Okay.  She was trying to leave and they called you  
16 --

17          A.    They called me.

18          Q.    -- is that my correct understanding?

19          A.    They called me at my job.

20          Q.    Okay.  Who was chasing her now?  Somebody was  
21 chasing her?

22          A.    Her best friend and the guy that she was with, my  
23 roommate, they were chasing her down with the car.  I was -- I  
24 finally got home about a quarter after three.  I always check  
25 the mailbox.  I got a call again saying, asking me where I

1 was. I said I'm like right here. I see you coming up the  
2 street. He said that's her walking fast in front of the  
3 car.

4 Q. So you met them, you left work to meet them to go  
5 track her down?

6 A. No. I never said that.

7 Q. All right. Well then you tell me.

8 A. I came home on my lunch break.

9 Q. Okay. Got you. And then so you caught up with her  
10 then at some point?

11 A. No. She ran in my chest.

12 Q. Okay.

13 A. She ran directly in my chest. She wasn't - she  
14 wasn't - she wasn't running, but she was walking fast and I  
15 asked her where was she going and she said that her mother  
16 told her to meet her at the church. I forgot the name of the  
17 church but I walked her there.

18 Q. Okay. So she had already called her mother then  
19 before you --

20 A. Right.

21 Q. -- got to her?

22 A. She must have called her while she was - because she  
23 tried to leave the house two times they said, twice.

24 Q. Okay. So she tried to leave multiple times I guess  
25 at that point --

1 A. Right.

2 Q. -- before she was able to?

3 A. Right.

4 Q. Okay.

5 A. And, uhm, she said, I asked her what happened. She  
6 said there was people at the house making her do things she  
7 didn't want to do.

8 Q. Okay.

9 A. And if I don't mind walking her to the church and  
10 that's what I did. I asked my roommates what happened and  
11 they just went back on the other side so I went back to  
12 work.

13 Q. Did you know what the roommates were doing?

14 A. Do I -- Did I -

15 Q. Did you know that the roommates were doing things to  
16 her that she didn't want?

17 A. No. I didn't know that. I didn't know that. I did  
18 not know that.

19 Q. Okay. I wanted to clear that up. If we can back up  
20 a little, but how many times did you meet with Mr. Chehoski  
21 before your plea?

22 A. About three or four times.

23 Q. Do you recall going over the statements, reviewing  
24 the discovery, everything the State had against you? Do you  
25 recall talking to him about what the case, the State's case

1 was against you?

2 A. Uhm, not really. He was talking about the, uhm,  
3 same plea that, uhm, Ms. Sally Henry was trying to give me and  
4 I told him no, I don't want that.

5 Q. Okay. So tell me again what your defenses were.  
6 How you were defending yourself. What you told him.

7 A. I was innocent. I mean, it's point blank. I'm  
8 innocent. I - I - I wasn't even at that house when that  
9 happened.

10 Q. Okay. But did you have sexual relations with --

11 A. No. No. No.

12 Q. Not at all?

13 A. No. I asked her, I asked her that night. She came  
14 over on the 1st of April. I asked her that night, I told her,  
15 I asked her, she said stop rushing her. So she went back on  
16 the other side of the trailer with her best friend and, uhm,  
17 the guy, my roommate that she was with. Now, she said the  
18 next morning that she tried to wake me up and I wouldn't get  
19 up, but then after that she asked me was it all right if she  
20 could stay the whole weekend. I mean, she was gonna sleep on  
21 the other side with her best friend.

22 Q. Did she send you the naked pictures on your phone?

23 A. She sent me the naked pictures. She sent me the  
24 pictures. I never sent her any pictures. And this Meet24  
25 thing, I never heard of it.

1 Q. Meet24?

2 A. Yes. Some kind of web site. Meet24.

3 Q. I've never heard of it either. I didn't know.

4 Okay. So did you tell your attorney to talk to your  
5 roommates, that they could back you up? Did you give him the  
6 names?

7 A. I asked him to do that. I asked Ms. Sally to do  
8 that. Didn't happen.

9 Q. Okay. Do you remember your plea Judge? I mean,  
10 excuse me. Do you remember the plea? What happened at the  
11 plea hearing?

12 A. Do I remember --

13 Q. Do you remember that day? I mean, can you recall it  
14 now?

15 A. Do I remember like it was yesterday? Yes. I wrote  
16 in my statement, if you had that statement, that statement is  
17 what happened day by day.

18 Q. Okay. Do you remember the Judge explaining to you  
19 what an Alford plea was and what that meant? Or a no contest  
20 plea. Do you recall him describing that?

21 A. No. I never heard anything, any of that.

22 Q. Okay. Do you recall him telling you you could get  
23 up to 20 years in jail for both crimes?

24 A. Well, I had multiple, uhm, charges. Uhm, I think --  
25 No. No. No. He didn't tell me anything like that, not even

1 my lawyers.

2 Q. Okay. Do you recall telling the Court that you  
3 understood that you could go to trial but you were waiving  
4 that right?

5 A. Yeah. I remember telling him that. Now, he asked  
6 me that part. Yeah. Right. Right.

7 Q. But you remember that conversation, that exchange  
8 with the Judge?

9 A. Yes. He asked me.

10 Q. Do you recall him asking you if you were satisfied  
11 with Mr. Chehoski?

12 A. Yeah. I mean, but me and Mr. Chehoski was pulled  
13 over to the side and we talked and, uhm, he explained it to me  
14 that the Judge is gonna ask you did anybody ask you, you know,  
15 certain, uhm, pleas, whatever, a bargain to always say no and  
16 so I say no. I mean, I told the Judge that. No. But that  
17 was the bargain. He said Judge couldn't give me no more than  
18 10 years.

19 Q. Do you recall, were you on any medications, any drug  
20 use, any alcohol use that day?

21 A. The day that it happened?

22 Q. The day of the plea. No. The day of the plea.

23 A. Oh, no. No. No. No. I'm incarcerated.

24 Q. So there was nothing impairing your mind that day?

25 A. No, ma'am.

1 Q. You had no trouble understanding what was going  
2 on?

3 A. No, ma'am.

4 Q. Do you remember the Solicitor telling the Court, the  
5 plea Judge what happened with this 15 year old girl?

6 A. Yeah. Uhm, but like I just came in here, I heard  
7 what the Solicitor was saying but none of that was true. None  
8 of that was true.

9 Q. But you didn't stop and say hold on a minute.  
10 That's not what happened? You didn't stop the proceedings?

11 A. No. I didn't say it. I might have, I might have  
12 said something to my lawyer but, uhm --

13 Q. You didn't say anything to the Court?

14 A. No.

15 Q. Okay. Do you recall the Solicitor telling the Court  
16 that the victim, that you had the naked pictures of the victim  
17 on your cell phone that they found?

18 A. I mean, and that's another thing. The pictures that  
19 was on the cell phone was not the pictures of that particular  
20 girl.

21 Q. So that was a different victim?

22 A. That wasn't the girl at all. That wasn't the girl  
23 at all. My lawyer showed it to me. That wasn't the girl at  
24 all.

25 Q. Your lawyer showed them to you, but it was on your

1 phone, right?

2 A. No. He showed me big copies of it.

3 Q. Okay. So the copies. So you're saying the copies  
4 he showed you were not the same photos on the phone --

5 A. No.

6 Q. -- or they were the same photos but it was a  
7 different person?

8 A. Not the same girl.

9 Q. Not the same girl?

10 A. Not the same girl.

11 Q. Do you recall your lawyer trying to speak on your  
12 behalf and saying about your education and your work  
13 history?

14 A. Yeah. Yeah. Yeah. I mean, I graduated from high  
15 school, went to college and became - I went to school to be a  
16 culinary chef. Yeah. He said all that.

17 Q. That's right. That you worked for two different, I  
18 believe, restaurants; is that right?

19 A. Yeah.

20 Q. Do you remember him explaining your cooperation with  
21 the police?

22 A. Yes.

23 Q. And telling the Court that you had completed, I  
24 believe, anger management counseling?

25 A. Anger management. I completed about three different

1 classes. Yeah.

2 Q. I'm not sure if this Mr. Chehoski's words or this is  
3 kind of a common expression rather, but that you found  
4 religion; that you had become a religious man?

5 A. Yeah. I found religion.

6 Q. You remember that though. And so now you're saying,  
7 but you pled because you felt like that was the best choice  
8 for you at the time?

9 A. I pled because I was, I was under the impression I  
10 got deceived that I couldn't win because the girl was a minor  
11 and the State was gonna take her word over mine. The State  
12 was gonna protect her.

13 MS. COLE: I understand. I have no further  
14 questions. Thank you.

15 MS. ZMROCZEK: Just briefly, Your Honor. Your  
16 Honor, may I approach?

17 THE COURT: Yes.

18 REDIRECT EXAMINATION

19 BY MS. ZMROCZEK:

20 Q. You were talking about a letter that you wrote to  
21 your attorney, right?

22 A. Mm-hmm.

23 Q. Does that refresh your recollection?

24 A. Is it four pages? I don't have my glasses.

25 Q. It's two pages.

1 A. No. I had four pages.

2 Q. So you had written a four page letter?

3 A. I wrote a four page letter on the same kind of paper  
4 but in pencil.

5 Q. Okay. And you were telling your attorney that you  
6 felt like that there were a lot of problems with the case,  
7 right?

8 A. Right.

9 Q. But you pled based on his advice?

10 A. I pled based on his advice and, uhm, everybody that  
11 wrote statements against me, and if - and if - and if you read  
12 the statements, you can, you can clearly see that they trying  
13 to get their self out of trouble and put it on me.

14 Q. That was my next question. Maybe that was a little  
15 unclear. Were other people arrested as well?

16 A. No one. No one.

17 Q. Okay. So the people that were in your house were  
18 never arrested?

19 A. No. None.

20 Q. But they were the ones who wrote statements on  
21 you?

22 A. They were the ones who wrote statements on me.

23 Q. And you told your attorneys that you felt like they  
24 were obviously those were self-serving statements?

25 A. Yeah.

1 Q. They were just trying to get you in trouble and not  
2 them?

3 A. They was trying to get theirselves out of trouble  
4 and get me in the hot seat.

5 MS. ZMROCZEK: Thank you. I have no further  
6 questions, Your Honor.

7 THE COURT: Step down.

8 MS. ZMROCZEK: We have no further witnesses.

9 THE COURT: All right.

10 MS. COLE: Your Honor, the State calls Mr. Chehoski.  
11 Thereupon,

12 JASON CHEHOSKI  
13 after having been first duly sworn, testified as follows,

14 DIRECT EXAMINATION

15 BY MS. COLE:

16 Q. Mr. Chehoski, if you could state your name for the  
17 record.

18 A. Jason Chehoski.

19 Q. Where are you currently working?

20 A. Lexington County Public Defender's Office.

21 Q. What did you do before you were with Lexington  
22 County?

23 A. I was in private practice.

24 Q. Turning to Mr. Murray's case, let's talk about the  
25 indictment quickly. Do you recall the circumstances of the

1 indictment and whether it was presented to the grand jury?

2 A. I don't believe it was.

3 Q. Do you recall if he waived presentment?

4 A. Yes.

5 Q. Did you bring your file with you today?

6 A. Yes. I did.

7 Q. Have you had an opportunity to review the file?

8 A. Yes. I have.

9 Q. Are you fairly aware of his allegations of  
10 ineffective assistance of counsel?

11 A. Yes. I am.

12 Q. Can you explain for the Court what this case was  
13 about?

14 A. This case was about a run away teenager and Mr.  
15 Murray and a roommate and his roommate picking up a juvenile  
16 along with a friend of hers who was either 16 or 17 years old  
17 and taking them from Richland County to Lexington County where  
18 they stayed for a few nights and during that time there was  
19 allegations of sexual intercourse between the juvenile and Mr.  
20 Murray.

21 Q. What was, if you can summarize what the State's  
22 case, what they had against Mr. Murray?

23 A. The State had numerous witness statements. They had  
24 I guess all the data from Mr. Murray's phone detailing the  
25 conversations and text messages and phone calls between Mr.

1 Murray and the juvenile and Mr. Murray gave a full and  
2 detailed statement as to what happened between them.

3 Q. So in this statement he acknowledged sexual  
4 relationship or sexual activity between --

5 A. Yes. Multiple kinds of sexual contact.

6 Q. Certainly the photos were explicit photos?

7 A. Yes. They were.

8 Q. Do you recall if there were any Miranda issues with  
9 his statement, if that would have been a possible --

10 A. No. The statement had the Miranda Warnings on it,  
11 every question that was part of it was initialed by Mr.  
12 Murray.

13 Q. And you were appointed to represent Mr. Murray?

14 A. Yes.

15 Q. How many times did you have an opportunity to talk  
16 to him about this case?

17 A. According to my notes I saw him on three  
18 occasions.

19 Q. Do you remember how old the victim was?

20 A. The victim was 15.

21 Q. And Mr. Murray was?

22 A. 52 at the time.

23 Q. 52. Did you go over all of the State's case with  
24 Mr. Murray and discuss the discovery with him?

25 A. Yes. At my meeting with him in January of 2016 I

1 brought a copy of the discovery for Mr. Murray to go over. He  
2 declined it at that time but went over all the witness  
3 statements and the police reports.

4 Q. Did he understand the nature of the -- sorry. Did  
5 you explain to him the nature of the age limits --

6 A. Yes.

7 Q. -- and what that meant for his case?

8 A. I explained it was a statutory offense and that  
9 consent would not be a defense and mistake of age would not be  
10 a defense. Also explained that there were, that the sexual  
11 exploitation of a minor charge carried three to 20 years and  
12 it was a mandatory consecutive to any other charge or any  
13 other sentence as well.

14 Q. So you did tell him it could run consecutively?

15 A. Yes. I did.

16 Q. Or that it would run consecutively. Was there any  
17 thought, serious thought of taking this case to trial?

18 A. Yes.

19 Q. And so you would have gone to trial?

20 A. Yes.

21 Q. Tell me about the plea discussions with the  
22 Solicitor.

23 A. Again, I was hired and began working for the  
24 Lexington Public Defender's Office in October of 2015. My  
25 first meeting with Mr. Murray was early November of 2015. I

1 remember that he was one of the last - when finally catching  
2 up on the case that I inherited, he was one of the last people  
3 I was able to make contact with. At that first meeting it was  
4 really more just kind of touching base, introducing myself.  
5 The second meeting was really kind of to dig into the case and  
6 go over what the offer was in addition to I think he had two  
7 counts of criminal sexual conduct with a minor, multiple  
8 counts of dissemination of obscene material, the sexual  
9 exploitation of a minor, and I think there was also a criminal  
10 solicitation of a minor as well. There were a number of  
11 charges. The offer was to plead to the one count of criminal  
12 sexual conduct with a minor second degree and one count of  
13 sexual exploitation of a minor first degree and all other  
14 charges would be dismissed.

15 Q. Were the other charges dismissed as part of this  
16 agreement?

17 A. Yes. They were.

18 Q. Given the State's case, the statements, his  
19 statement, the photos, the text, did you feel it was in his  
20 best interest to plead guilty?

21 A. Yes. I did.

22 Q. And you discussed the pros and cons of going to  
23 trial with him?

24 A. Yes. I did. And also made sure that he understood  
25 that it was ultimately his decision.

1 Q. On the day of the plea did you have an opportunity  
2 to talk to him before you went before the Judge?

3 A. Yes. Before any plea there's paperwork that needs  
4 to be signed. I go over my client's rights with him, make  
5 sure again that he understands, with this being an Alford plea  
6 I also made sure he understood what that meant as well and  
7 then also made sure that every single detail of mitigation  
8 that we can use in front of the Court, we make sure I have  
9 every single detail down and so that my client is, all the  
10 positive attributes of his life are made known to the Court.

11 Q. Do you remember what you were able to tell the Court  
12 about to mitigate essentially?

13 A. Yes. And I have reviewed the record as well.

14 Q. Can you just give me a few examples?

15 A. Well, he has, I remember that he worked for the same  
16 restaurant. I think it's Grecian Gardens for about 20 years  
17 in addition to being a high school graduate and having gone  
18 to, taking classes I think at Midlands Tech for computer  
19 science. Also went into the kind of the nature of the case,  
20 how these kind of cases are always difficult as well as what  
21 our defense would have been had we gone to trial. I was not  
22 certain that Mr. Murray was going to plea when he was brought  
23 to court. The discussions that I had had with the Attorney  
24 General handling the case was this was gonna be a last, a  
25 final deadline, either acceptance of the offer now or it be



1 Q. Okay. And then so you were given his case load in  
2 effect?

3 A. Correct.

4 Q. Did you investigate his claim that Ms. Henry had  
5 said that there was a question about whether or not he had  
6 been indicted, right?

7 A. Yes. There was that question. I looked on the  
8 judicial index. I did not see any indictment or true billed  
9 date on the judicial index and wrote him the letters  
10 indicating my findings.

11 Q. So you did write him a letter saying that he had not  
12 been indicted, correct?

13 A. That's correct.

14 Q. Then you - when you get the file, you all - when you  
15 do an intake in the Public Defender's Office, you send  
16 somebody out to speak with all the appointed clients?

17 A. That's correct.

18 Q. And they write all of that information down,  
19 right?

20 A. Yes.

21 Q. In your file it shows that when they did that, that  
22 he told whoever took that information that he was actually at  
23 work on the dates of the indictment; is that correct?

24 A. I would have to check my file.

25 Q. If it will make it easier for you (proffering.)

1 A. Thank you.

2 Q. You're welcome.

3 A. Okay.

4 Q. Does that refresh your recollection?

5 A. Yes. That's what was done when he was screened.

6 Q. So when he was screened, what was the Public  
7 Defender's understanding of the crimes?

8 A. Again, it looks like the same, what the charges  
9 were. Again, this was in April 2014 and a year and a half  
10 before I was hired on so I don't want to speculate too much.

11 Q. Right. Right. But he had told whoever did the  
12 intake that he was at work on the certain dates, right?

13 A. Right. According to that form.

14 Q. Okay. And then you actually in your file every time  
15 you meet with a client you would write down notes reflecting  
16 on your meetings, correct?

17 A. Right. My practice is whenever I do any contact  
18 with either my client or the prosecuting attorney or any  
19 research or investigation is done, then I notate that in my  
20 file.

21 Q. And you recall getting a letter from him outlining  
22 what he thought his defense was, right?

23 A. Yes.

24 Q. Did the problem seem to stem from the statutory age  
25 issue?

1           A.     That's one problem and, of course, the other problem  
2     was the detailed confession as well was a big problem for me  
3     as well.

4           Q.     And I wanted to clear something up. I think you  
5     said 13, but she was actually 15, right?

6           A.     If I said 13, then I was mistaken. It was 15.  
7     Yes.

8           Q.     Was there any forensic evidence to support her  
9     claim?

10          A.     No. Nothing outside of the phones.

11          Q.     Nothing outside of the phones?

12          A.     Right.

13          Q.     And those were incoming pictures?

14          A.     Correct.

15          Q.     From her?

16          A.     Right. Well, supposedly. Yes.

17          Q.     Or from someone?

18          A.     Yes.

19          Q.     In fact, when you showed him the pictures, did he  
20     tell you that that wasn't her?

21          A.     I believe so.

22          Q.     Had you gone to trial, is that something that you  
23     would have detailed and investigated further?

24          A.     Yes. I would have. In addition, I believe that one  
25     of the witnesses had given multiple and possibly inconsistent

1 statements as well.

2 Q. There were several different witness statements from  
3 a small group of witnesses; is that correct?

4 A. Correct.

5 Q. And she was a runaway?

6 A. Yes.

7 Q. And, in fact, I think right before you note that he  
8 pled when you went to go talk to him at the jail prior to him  
9 pleading, he said he wanted a trial, correct?

10 A. Yes.

11 Q. So you were prepared to reject that offer if need  
12 be?

13 A. If he was absolutely certain on having a trial, we  
14 would not have gone forward with a plea on the 12th.

15 Q. You read through the transcript of the plea?

16 A. Yes. I have.

17 Q. Judge Seals did not on the record explain an Alford  
18 plea, did he?

19 A. Upon reading it he did not go into what the details  
20 of an Alford plea was. That's correct.

21 Q. And you had testified earlier that y'all had  
22 discussed that prior?

23 A. Right immediately before the plea when what we call  
24 getting him signed up, signing the sentencing sheet and going,  
25 when I go over his rights, ordinarily I always ask are you

1 pleading guilty because you're guilty, but because of the  
2 details of an Alford plea I made sure that I explained to him  
3 what that meant and made sure that - I would not have gone  
4 forward if I wasn't comfortable if I had felt that he had  
5 understood.

6 Q. But there was no check list or anything that he  
7 signed for that?

8 A. No. It was all verbal.

9 MS. ZMROCZEK: Okay. That was all verbal. I have  
10 no further questions, Your Honor.

11 MS. COLE: Nothing. No redirect, Your Honor.

12 THE COURT: Step down.

13 MS. COLE: No more witnesses from the State.

14 THE COURT: Anything else in reference to Mr.  
15 Murray's application?

16 MS. ZMROCZEK: Nothing further, Your Honor.

17 THE COURT: All right. Court is in recess until  
18 2:00. I'll issue an order.

19 WHEREUPON, THE HEARING WAS CONCLUDED.  
20  
21  
22  
23  
24  
25

## 1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON )

4

5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,  
6 and Official Circuit Court Reporter for the Eleventh Judicial  
7 Circuit in and for the State of South Carolina, do hereby  
8 certify that I reported the proceedings in the before  
9 captioned case in the Court of General Sessions in and for the  
10 State of South Carolina on the 21st day of February, 2018.

11 I FURTHER CERTIFY that the forgoing 36 pages  
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel  
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at  
16 Lexington County, this 19th day of September, 2020.

17

18

19 By:s/Steven E. LeBlanc

20

---

21 Steven E. LeBlanc, Sr., R.P.R.  
22 Eleventh Circuit Court Reporter  
23 State of South Carolina.

24

25

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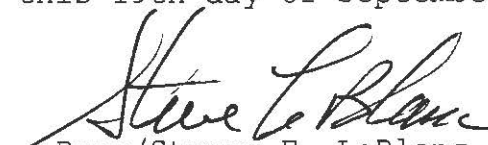
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By: s/Steven E. LeBlanc

19

20

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Steven E. LeBlanc, Sr., R.P.R.  
Eleventh Circuit Court Reporter  
State of South Carolina.

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**FILED**

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
 2020 MAY 20 ) PM 2: 13  
 )  
 COUNTY OF LEXINGTON ) ELEVENTH JUDICIAL CIRCUIT  
 )  
 ) LISA M. COMER  
 ) CLERK OF COURT  
 ) LEXINGTON SC  
 )  
 Lester Murray, ) C.A. No. 2017-CP-32-00674  
 )  
 ) Applicant, )  
 )  
 ) v. ) **ORDER OF DISMISSAL**  
 )  
 ) State of South Carolina, )  
 )  
 ) Respondent. )  
 )  
 \_\_\_\_\_ )

This matter comes to the Court by way of an application for post-conviction relief (PCR) filed March 1, 2017. Respondent made its return on September 5, 2017. An evidentiary hearing was convened February 21, 2018. Applicant was present and represented by Aimee J. Zmroczek, Esquire. Assistant Attorney General Susannah Cole of the South Carolina Attorney General's Office represented Respondent. Applicant and plea counsel Jason Chehoski, Esquire, testified. The Court had before it records from the Lexington County Clerk of Court, the South Carolina Department of Corrections (SCDC), and Applicant's plea transcript.

Following review of testimony presented at the hearing and all other evidence, this Court finds Applicant received constitutionally effective assistance of counsel at all stages of his plea, and relief must be denied.

**PROCEDURAL HISTORY**

Applicant Lester Murray is confined in the South Carolina Department of Corrections pursuant to an order of commitment of the Lexington County Clerk of Court. Murray was indicted for criminal sexual conduct with a minor, 2<sup>nd</sup> degree (2015-GS-32-6017) and for sexual

exploitation of a minor, 1<sup>st</sup> degree (2015-GS-32-6016). Murray waived presentment to the grand jury. Jason Chehoski, Esquire, represented him on these charges.

On April 12, 2016, Murray pled <sup>✓</sup>guilty pursuant to *North Carolina v. Alford*<sup>1</sup> before the Honorable William Seals. Judge Seals sentenced Murray to consecutive terms of ten years for criminal sexual conduct with a minor and ten years for sexual exploitation of a minor. Murray did not appeal his sentences.

On March 1, 2017, Applicant initiated this action by filing a PCR application. In his application, Murray alleged he is being held in custody unlawfully for the following reasons:

- (a) "Ineffective Assistance of Counsel"
- (b) Counsel failed to raise lack of subject matter.
- (c) Counsel failed to raise double jeopardy violation.

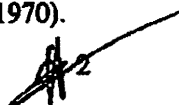
In his attachments to his application, Applicant raises numerous additional grounds of ineffective assistance of counsel, including: 1) failure to communicate, 2) failure to advocate, 3) failure to move for a competency hearing, 4) failure to protect Murray from a Confrontation Clause violation, 5) failure to withdraw his involuntary guilty plea, 6) failure to argue subject matter jurisdiction (faulty indictment), 8) failure to move to reconsider the sentence, 9) failure to argue diminished capacity, 10) failure to argue prosecutorial misconduct, 11) failure to investigate, 12) depriving Murray of his right to a fair trial, and 13) conflict of interest. At the hearing, Applicant proceeded on only some of the grounds of ineffective assistance of counsel raised in the application.

#### Summary of the Plea Hearing Testimony

During the plea proceedings, Murray acknowledged he wished to waive his rights to a jury trial to obtain the benefit of a plea. Murray also understood his terms would run

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<sup>1</sup> *North Carolina v. Alford*, 400 U.S. 25 (1970).



consecutively. Murray told the plea court he was satisfied with his attorney, and he was neither promised anything nor threatened to plead. Murray affirmed he was not under the influence of any drugs or alcohol at the time of the plea and sentencing.

The State informed the court the victim was fifteen years old when she was assaulted multiple times by the fifty-two year old Murray. The victim met Murray online, believing him to be sixteen years old. When Murray arrived at her house, the victim left with him because she was afraid for her and her family's safety. Murray forced the victim to have oral and vaginal sex with him, and he threatened to hurt her if she attempted to leave without his permission. Murray also sodomized the victim, forced the victim to provide him with photographs of her genitalia, and physically and verbally abused her. After a few days, when Murray left the residence, the victim was able to run away and call her mother to pick her up.

#### **Summary of the PCR Evidentiary Hearing Testimony**

At the evidentiary hearing, Murray testified he was arrested on April 4, 2014, and then the case was turned over to the Attorney General's Office. Murray was first appointed representation by public defender Sally Henry, Esquire. Murray claimed Ms. Henry lied to him. Murray said he asked for DNA testing on the victim, but it was not performed. Murray also claimed he was not indicted by the grand jury. Jason Chehoski, Esquire, was later appointed to represent Murray. Applicant met with Chehoski two or three times and "somewhat" discussed the case with him.

Murray said he was misled by the victim about her age. He claimed the victim told him she was twenty-two or twenty-three years old. Murray also testified he told Counsel he was not indicted, but Counsel advised him to accept a plea. Murray said he wrote a statement containing his version of events and asked Counsel to give it to the prosecutor. Murray said he was working

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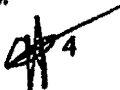
at his job when his roommates called him to let him know the victim was trying to run away. Murray said it was his roommates who were making the girl perform acts she did not want to perform, and she had attempted to leave many times. Murray claimed he did not engage in sexual relations with the victim, and he was unaware of what his roommates were trying to do to her. Murray did acknowledge he asked the victim for sex and she told him to "stop rushing" her. Murray claimed he left work during his lunch break and tried to find the girl. He said as he was looking for the girl, she ran into him. Murray then walked the girl to a church, where she met her mother, whom she had already called to meet her. Murray claimed he returned to work, and when he came home from work later that evening, the police were waiting to arrest him. Murray also claimed the pictures on his phone were not of the victim, but of another girl.

Murray said Counsel did not advise him his sentences would run consecutively, and he did not understand what it meant to plead under *Alford*. Murray said he did not know how the system worked, and he believed he would receive five years for both charges. However, Murray also acknowledged he was told he could receive ten years, and ten years "sounded better than fifty-five" years' imprisonment, so he decided to accept the plea. Murray said he did not ask Counsel to file a motion to reconsider the sentence.

Plea Counsel Jason Chehoski testified he works for the Lexington County Public Defender's Office and was in private practice before that position. Counsel said the State found photographs on Murray's phone of the victim, as well as statements from Murray and the victim. Counsel testified Murray gave a detailed confession, which appeared to be freely given to law enforcement, and he saw no *Miranda*<sup>2</sup> issues by which he could challenge the statement. Counsel said the victim was fifteen years old and Murray was fifty-two years old. Counsel testified he

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<sup>2</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

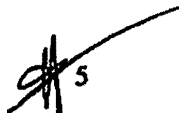
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explained to Murray that the victim's consent was not a defense, given her age. Counsel said he explained to Murray that sexual exploitation of a minor carried a consecutive term of three to twenty years' incarceration. Counsel said he would have taken the case to trial if Murray had requested it, but Counsel did advise Murray to accept the plea. However, Counsel said it was Murray's decision to accept the offer. Counsel testified he advised Murray of his rights to a trial and explained an *Alford* plea. Counsel said Murray was coherent and articulate in their meetings.

Counsel also said that during the plea hearing, he attempted to mitigate Murray's potential sentence with his employment history and education. Chehoski also testified he did not recall Murray asking him to file a motion to reconsider the sentence after he was sentenced.

#### INEFFECTIVE ASSISTANCE OF COUNSEL

In a PCR action, the applicant bears the burden of proving the allegations in their application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing *Griffin v. Martin*, 278 S.C. 620, 300 S.E.2d 482 (1983)). First, the Applicant must demonstrate that his attorney's "representation fell below an objective standard of reasonableness." *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). "Judicial scrutiny of counsel's performance must be highly deferential." *Id.* at 689. "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Id.* (Citation omitted).



78

Even if an inmate proves deficient performance, he must also prove that he was prejudiced by his attorneys' ineffectiveness because "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Strickland*, at 691. Unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694. It is insufficient to prove "that the errors had some conceivable effect on the outcome of the proceeding." *Id.* at 693. Instead, "[c]ounsel's errors must be 'so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.'" *Harrington v. Richter*, 562 U.S. 86, 104 (2011) (quoting *Strickland*, at 687).

Moreover, a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, and an inmate's right to contest the validity of such a plea is usually foreclosed. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63 (1977)). Representations of the defendant, counsel, and the solicitor, as well as any findings made by the plea judge, "constitute a formidable barrier in any subsequent collateral proceedings." *Blackledge*, 431 U.S. at 73-74.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety, including the transcript of the *Alford* plea hearing, the Lexington County Clerk of Court records, Applicant's South Carolina Department of Corrections records, and the PCR application. The Court further had the opportunity to observe the witnesses presented at the evidentiary hearing, closely pass upon their credibility, and weigh their testimony accordingly. Pursuant to S.C. Code Ann. §17-27-80, the Court makes the following findings of fact and conclusions of law based upon all of the probative evidence presented.

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Applicant made numerous claims of ineffective assistance of counsel in his application, but offered testimony on only some of those grounds at the evidentiary hearing. Applicant's claims appear to fall generally into four allegations: failure to recognize a conflict of interest, failure to raise subject matter jurisdiction arguments, failure to investigate and advocate for Applicant based on his assertion he was innocent, and failure to file a motion to withdraw his guilty plea or reconsider the sentence. As a matter of general impression, this Court finds Counsel's testimony is credible and persuasive on all matters, while also finding Applicant's testimony and assertions lack credibility. These credibility findings have been applied to the Court's findings set forth below.

*Failure to recognize a conflict of interest.*

Applicant testified his first appointed counsel, public defender Sally Henry, refused to ask for DNA testing, failed to obtain a bond reduction, and lied about his indictment by the grand jury. Applicant claims Counsel Chehoski's appointment was a conflict of interest because he also worked for the public defender's office.

"An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's." *Staggs v. State*, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007). The Court has further stated that a conflict of interest occurs when "a defense attorney places himself in a situation inherently conducive to divided loyalties." *Lomax v. State*, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008). Until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for a claim of ineffective assistance of counsel. See *Langford v. State*, 310 S.C. 357, 359, 426 S.E.2d 793, 795 (1993) (citing *Cuyler v. Sullivan*, 446 U.S. 335, 350 (1980); see also *Burger v. Kemp*, 483 U.S. 776, 783 (1987)). A defendant need not demonstrate prejudice if there is an actual conflict of

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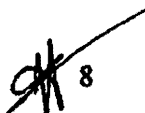
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interest.” *State v. Gregory*, 364 S.C. 150, 153, 612 S.E.2d 449, 450 (2005). The Supreme Court of the United States also recognized that in certain circumstances “prejudice is presumed” because prejudice “is so likely that case-by-case inquiry . . . is not worth the cost.” *Nance v. Ozmint*, 367 S.C. 547, 551-52, 626 S.E.2d 878, 880 (2006) (citing *Strickland v. Washington*, 466 U.S. 668, 692 and *U.S. v. Cronin*, 466 U.S. 648, 658 (1984)).

Here, the Court finds Counsel was not ineffective for failing to recognize a conflict of interested in representing Applicant simply because he also worked for the Lexington County Public Defender’s Office. In Counsel’s capacity as the public defender of Lexington County, he necessarily represents the clients to whom he is appointed, even if the client is dissatisfied with previous counsel from the same office. That dissatisfaction, however, creates no actual conflict. Notably, there was no testimony Counsel’s representation of Applicant was at all affected by previous counsel’s actions. This Court finds Counsel did not have an actual conflict of interest, and, thus, finds no deficiency in his representation. Applicant has also failed to show any resulting prejudice from the alleged conflict. This allegation must be denied and dismissed.

*Failure to raise subject matter jurisdiction arguments.*

Applicant alleges Counsel was ineffective for failing to argue the court lacked subject matter jurisdiction to accept his plea because he was never indicted by the grand jury. This Court finds this allegation is meritless. The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. *See State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). Further, it is clear from the face of Applicant’s indictments he waived presentment to the grand jury.

 8


Applicant's signature indicating his intention to waive presentment is on the indictments for both crimes.

An applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. However, "circuit courts obviously have subject matter jurisdiction to try criminal matters." *Gentry, supra*, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Applicant failed to present evidence his case is of some class over which the circuit court does not have the authority to preside. Applicant's conviction involved a criminal charge in Lexington County. Thus, the circuit court had subject matter jurisdiction.

Accordingly, Applicant has failed to prove Counsel was deficient in any way for failing to raise this claim, nor can he show prejudice from Counsel's failure to argue the circuit court lacked jurisdiction. . Further, Applicant cannot claim Counsel was ineffective for failing to argue subject matter jurisdiction when he voluntarily waived presentment as part of his plea arrangement. Therefore, this Court dismisses this allegation.

*Failure to investigate and advocate for Applicant.*

Applicant alleged he was he was not guilty of the crimes charged because he did not engage in any sexual activity with the victim. However, this testimony appears to be a departure from his claims to Counsel the victim consented to the encounter and the victim told Applicant she was twenty-two. Applicant also claimed the explicit pictures on his cell phone were not of the victim, but of another female. Applicant alleges Counsel failed to obtain DNA testing of the victim and neglected to talk to his roommates to confirm his version of the story. However, Applicant also testified Counsel did submit to the prosecutor his four page written statement detailing his version of events. Counsel testified Applicant's statement was damaging, as were



the pictures on Applicant's phone, and Counsel had to explain to Applicant the victim's consent would not be a viable defense under the statute.

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." *Walker v. State*, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012), overruled on other grounds by *Walker v. State*, 407 S.C. 400, 756 S.E.2d 744 (2014). In the instant case, Applicant claims his roommates would have confirmed his story. However, in order to prevail on a claim of ineffectiveness based on Counsel's failure to call a favorable witness, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). Applicant's speculation the witness' testimony would have been favorable cannot, by itself, satisfy his burden of showing prejudice. *Glover v. State*, 318 S.C. 396, 498-99, 458 S.E.2d 538, 540 (1995). Similarly, Applicant cannot show DNA testing would have exonerated him, nor did he present testimony from another female affirming she was the subject of the explicit images on Applicant's phone.

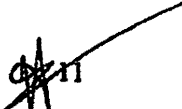
This Court finds Applicant has failed to prove Counsel was deficient or failed to render reasonably effective assistance under prevailing professional norms by failing to investigate his claims. Applicant failed to show how further investigation by Counsel would have benefited him at trial. Applicant's assertion Counsel should have investigated further is purely speculative. Applicant did not present what Counsel would have found if he had hired an investigator done further investigation. "Failure to conduct an independent investigation does not constitute



ineffective assistance of Counsel when the allegation is supported only by mere speculation as to the result.” *Moorehead v. State*, 329 S.C. 329, 496 S.E.2d 415 (1998). This Court finds Applicant failed to prove he was prejudiced by any lack of investigation by Counsel.

Further, as to any claim Counsel failed to advocate for Applicant by asserting his Confrontation Clause rights, this Court notes Applicant waived those rights when he elected to plead guilty. “[I]n South Carolina, a guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights.” *State v. Rice*, 401 S.C. 330, 331–32, 737 S.E.2d 485, 485–86 (2013) (citing *Hyman v. State*, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). “ ‘A guilty plea represents a break in the chain of events which has preceded it in the criminal process.’ ” *Id.* at 332, 737 S.E.2d at 486 (quoting *Tollett v. Henderson*, 411 U.S. 258, 267 (1973)). By entering a guilty plea, “[a]n accused [ ] waives the right to trial and the incidents thereof and the constitutional guarantees with respect to criminal prosecutions.” *Rivers v. Strickland*, 264 S.C. 121, 124, 213 S.E.2d 97, 98 (1975) (citation omitted). “A plea of guilty is an admission or a confession of guilt, and [is] as conclusive as a verdict of a jury; it admits all material fact averments of the accusation, leaving no issue for the jury, except in those instances where the extent of the punishment is to be imposed or found by the jury.” *State v. Fuller*, 254 S.C. 260, 266, 174 S.E.2d 774, 777 (1970) (citations omitted); see *North Carolina v. Alford*, 400 U.S. 25, 37 (1970) (noting guilty pleas constitute a waiver of trial and an express admission of guilt upon which a sentence may be imposed).

As noted earlier, Applicant presented no evidence at the evidentiary hearing of any viable defense he could have presented at trial had Counsel investigated his case more thoroughly or advocated more vehemently for Applicant’s Constitutional rights. This Court finds Applicant failed to prove Counsel was either deficient in his investigation and advocacy or that he was

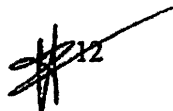
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prejudiced by Counsel's representation such that there was a reasonable probability Applicant would have insisted on going to trial rather than plead guilty. Accordingly, this Court denies and dismisses this allegation.

*Failure to file post-trial motions.*

Applicant alleged Counsel failed to file a motion to withdraw his involuntary guilty plea or reconsider his sentence. Applicant claimed he would not have pleaded guilty if he had known he would receive consecutive ten year sentences, yet the plea transcript reveals the court cautioned Applicant that criminal sexual conduct with a minor carried up to twenty years in jail and sexual exploitation of a minor carried up to an additional twenty years. (Plea Tr. p. 4.) Applicant said he understood. The court further asked Applicant if he understood the sentences would run consecutively, and Applicant answered affirmatively. (Plea Tr. p. 5.) Further, the plea court transcript reveals no indication Applicant expressed any desire to withdraw his plea. At the evidentiary hearing, Counsel credibly testified he did not recall Applicant asking him to file any post-sentencing motions and that Applicant seemed to understand the proceedings and was coherent and articulate. In contrast, Applicant testified he did not understand what was happening at the plea hearing, although he offered no basis as to why he did not understand the plea court's questions. Applicant provided no credible testimony as to why he should be allowed to depart from the truth of the statements made at the plea hearing. Moreover, Applicant provided no credible testimony at the PCR hearing that he actually asked Counsel to withdraw his plea or move to reconsider his sentence.

Even if Applicant had requested Counsel file post sentencing motions, and Counsel refused, Applicant cannot show he was prejudiced in any way by Counsel's failure to do so. The only requirements for a plea to be accepted are that the defendant "understand the nature and

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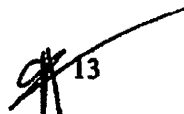
crucial elements of the charges, the consequences of the plea, and the constitutional rights he is waiving, and that the record reflect a factual basis for the plea.” *Rollison v. State*, 346 S.C. 506, 511, 522 S.E.2d 290, 292 (2001). Once a defendant has entered a guilty plea, he is not entitled to withdraw it as a matter of right. *State v. Thomason*, 355 S.C. 278, 285, 584 S.E.2d 143, 146 (2003); *Riddle v. State*, 278 S.C. 148, 292 S.E.2d 795 (1982). In this instance, a defendant’s withdrawal of guilty plea is “left in the sound discretion of the circuit court.” *Thomason*, 355 S.C. at 283. Moreover, “[a]n accused is not permitted to speculate on the supposed clemency of the judge and enter a plea of guilty with the right to retract it if he finds that his expectation was not realized.” *State v. Cantrell*, 250 S.C. 376, 380, 158 S.E.2d 189, 191-192 (1967). Applicant’s argument that Counsel was ineffective in failing to withdraw the guilty plea is based on a mere allegation of prejudice in that he received a harsher sentence than expected. This Court notes that the plea judge sentenced Applicant to far less than he could receive under the statutory scheme. This Court finds Applicant has not shown his post sentencing motions would have been granted. Thus, Applicant cannot meet his burden to show prejudice from Counsel’s failure to make post-sentencing motions. This Court denies and dismisses this allegation.

#### *All Other Allegations*

As to any and all allegations that were raised in the application and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

#### **CONCLUSION**

Based upon the evidence presented at the evidentiary hearing held in this matter, the argument of Counsel, and consideration of the applicable statutory and case law, this court finds that Counsel provided reasonably effective assistance under prevailing professional norms but, if

 13

86


Counsel did err, there is no reasonable probability that, but for any professional error committed by Counsel, the result of the proceeding would have been different or that the applicant would not have pled guilty and insisted on going to trial. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate Counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

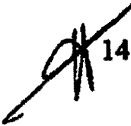
**IT IS THEREFORE ORDERED THAT:**

1. The Application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant is remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 14 day of May, 2020

  
 \_\_\_\_\_  
 J. DEGHAM COLE  
 Presiding Judge  
 Eleventh Judicial Circuit

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

 14

**WITNESSES**

Shawn Spivey, Lexington County Sheriff's Office

**The State of South Carolina**

County of Lexington

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

*Lester Murray*  
Defendant

**COURT OF GENERAL SESSIONS**

2015 TERM

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

**ARREST WARRANT NUMBER**

2014-A-32-10200988

THE STATE

vs.

*Lester Murray*  
Defendant

LESTER MURRAY  
[REDACTED]

Witness: *[Signature]*  
C.C.P. PLS. AND G.S.

**ACTION OF GRAND JURY**

Foreperson of Grand Jury  
Date:

**VERDICT**

Indictment for

**SEXUAL EXPLOITATION OF A MINOR  
FIRST DEGREE**

S.C. CODE §16-15-395(A)  
CDR Code: 0379

Foreperson of Petit Jury  
Date:  
*[Signature]*

**TRUE COPY**

Lex: Co: C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA )  
 )  
 )  
COUNTY OF LEXINGTON )

**INDICTMENT**

**SEXUAL EXPLOITATION OF A MINOR,  
FIRST DEGREE**

At a Court of General Sessions, convened on \_\_\_\_\_, 2015, the  
Grand Jurors of Lexington County present upon their oath:

That Lester Murray, between the dates of May 12, 2013 and April 4, 2014, did willfully and knowingly commit the crime of Sexual Exploitation of a Minor, First Degree. To wit: Lester Murray did knowingly use, employ, induce, coerce, encourage or facilitate a minor to engage in or assist others to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity, as defined by Section 16-15-375(5) of the South Carolina Code of Laws. This incident occurred within the County of Lexington, State of South Carolina, and is in direct violation of Section 16-15-395(A) of the South Carolina Code of Laws (1976), as amended.

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

OFFICE OF THE ATTORNEY GENERAL



ALAN WILSON (BBM)  
ATTORNEY GENERAL



3-20 consecutive

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Lexington

STATE

VS.

INDICTMENT/CASE#: 2015-GS-32 - 6016

Lester Murray

AW#: 2014-A-32-10200988

AKA:

Date of Offense: May 12, 2013-April 4, 2014

Race: B Sex: M Age: 53

S.C. Code §: 16-15-395(A)

DOB: [redacted] SS#: [redacted]

CDR Code #: 0379

[redacted] Circle

City, State, Zip: West Columbia, SC 29169

SENTENCE SHEET

DL#

\* SID#

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

CONVICTED OF or  PLEADS

In disposition of the said indictment comes now the Defendant who was TO: Sexual Exploitation of a Minor, First Degree

In violation of § 16-15-395(A) of the S.C. Code of Laws, bearing CDR Code # 0379

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

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

ATTEST: Sethany R. Miles 78212 Assistant Attorney General SC Bar # Lester Murray Defendant [Signature] Attorney for Defendant SC Bar # 69250

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center, for a determinate term of 10 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: 2015-GS-32-6 017  
 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. 2 years 8 days

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

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

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP         
Total: \$        plus 20% fee: \$               days/hours Public Service Employment

Payment Terms:        Obtain GED   
 Set by SCDPPPS Attend Voc. Rehab. Or Job Corp.       

Recipient:        May serve W/E beginning Substance Abuse Counseling

\*Fine: \$        Random Drug/Alcohol Testing   
§14-1-206 (Assessments 107.5%) \$        Fine may be pd. in equal consecutive weekly/monthly  
§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100 pmts. of \$        Beginning         
§14-1-211 (A)(2)(DUI Surcharge) \$100 \$        \$        Paid to Public Defender Fund  
§56-5-2995 (DUI Assessment) \$12 \$         
§56-1-286 (DUI Breath Test) \$25 \$       

Proviso 47.9 (Public Def/Prob) \$500 \$         
§14-1-212 (Law Enforce. Funding) \$25 \$ 25  
§14-1-213 (Drug Court Surcharge) \$150 \$         
§50-21-114 (BUI Breath Test Fee) \$50 \$         
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$         
Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5

3% to County (if paid in installments) \$         
TOTAL \$ 130

A TRUE COPY Clerk of Court/Deputy Clerk [Signature] Judge Code: 2107  
Court Reporter [Signature] Sentence Date 1-12-16

**WITNESSES**

Shawn Spivey, Lexington County Sheriff's Office

**The State of South Carolina**  
**County of Lexington**

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

*Lester Murray*  
Defendant

**COURT OF GENERAL SESSIONS**

**2015 TERM**

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

**ARREST WARRANT NUMBER**

2014-A-32-10200564

**THE STATE**

**vs.**

*Lester Murray*  
Defendant

**LESTER MURRAY**  
**D.O.B. [REDACTED]**

Witness: *John Arl*  
C.C.C. PLS. AND G.S.

**ACTION OF GRAND JURY**

Foreperson of Grand Jury  
Date:

**VERDICT**

**Indictment for**

**CRIMINAL SEXUAL CONDUCT WITH A  
MINOR IN THE SECOND DEGREE**

**S.C. CODE §16-3-655(B)(2)**  
**CDR Code: 0397**

**A TRUE COPY**  
Foreperson of Petit Jury  
Date: *[Signature]*  
Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA )  
 )  
 )  
COUNTY OF LEXINGTON )

INDICTMENT

CRIMINAL SEXUAL CONDUCT  
WITH A MINOR IN THE SECOND DEGREE

At a Court of General Sessions, convened on \_\_\_\_\_, 2015, the  
Grand Jurors of Lexington County present upon their oath:

That Lester Murray, did in Lexington County, on or about April 4, 2014, willfully  
and knowingly commit the crime of Criminal Sexual Conduct with a Minor in the Second  
Degree To wit: Lester Murray, a person over the age of eighteen and older than the  
victim, did engage in sexual battery with a minor **Minor** who was at least fourteen (14)  
years of age but less than sixteen (16) years of age. This is in direct violation of Section  
16-3-655(B)(2) of the South Carolina Code of Laws (1976), as amended.

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

OFFICE OF THE ATTORNEY GENERAL

Alan Wilson  
ALAN WILSON (BBM)  
ATTORNEY GENERAL

LEXINGTON COUNTY, SOUTH CAROLINA  
CLERK OF COURT  
JULY 17 2015

STATE OF SOUTH CAROLINA )  
 COUNTY OF )  
Lexington )  
 STATE )  
 VS. )  
Lester Murray )  
 AKA: )  
 Race: B Sex: M Age: 53 )  
 DOB: [REDACTED] SS#: [REDACTED] )  
 Address: [REDACTED] )  
 City, State, Zip: West Columbia, SC 29169 )  
 DL# [REDACTED] \* SID# [REDACTED] )

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015-GS-32-6017  
 A/W#: 2014-A-32-10200564  
 Date of Offense: April 4, 2014  
 S.C. Code §: 16-3-655(B)(2)  
 CDR Code #: 0397

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was TO: Criminal Sexual Conduct with a Minor, Second Degree

CONVICTED OF or  PLEADS

In violation of § 16-3-655(B)(2) of the S.C. Code of Laws, bearing CDR Code # 0397  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  §17-25-45 (CSC w/minor 1<sup>st</sup> or Lewd Act)

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

ATTEST: Bethany B. Miles 78212 Lester Murray [Signature]  
 Assistant Attorney General SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center, for a determinate term of 10 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. 2 years 8 days  
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment

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

Obtain GED

Set by SCDPPPS

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

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

May serve W/E beginning  
 Substance Abuse Counseling

*Fine:	\$	_____
§14-1-206 (Assessments 107.5%)	\$	_____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100</u>
§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)	\$500	\$ _____
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)	\$	\$ _____
TOTAL	\$	\$ <u>130</u>

Random Drug/Alcohol Testing   
 Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_  
 \$ \_\_\_\_\_ Paid to Public Defender Fund

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

Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge [Signature]  
 Judge Code: 215-1  
 Sentence Date 4-12-14

A TRUE COPY

Clerk of Court/Deputy Clerk [Signature]  
 Court Reporter [Signature]