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S.C. Supreme Court

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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Colleton County

D. Craig Brown, Circuit Court Judge

STANLEY LINDER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE FOURTEENTH JUDICIAL CIRCUIT
) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF COLLETON) CASE NO.: 2008-GS-15-323, 324,
 546, 547, 298, 299

STATE OF SOUTH CAROLINA,)
)
 STATE,)
)
 v.) TRANSCRIPT OF RECORD
)
 STANLEY LINDER,)
)
 DEFENDANT.)

APRIL 1ST, 2009
 COLLETON COUNTY, SOUTH CAROLINA
 BEFORE THE HONORABLE EDGAR W. DICKSON, JUDGE.

APPEARANCES:

MR. SEAN P. THORNTON, ESQUIRE
 DEPUTY SOLICITOR
 FOURTEENTH JUDICIAL CIRCUIT
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NONE.

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1 **THE COURT:** Mr. Thornton, I understand we have a plea
2 in this matter?

3 **DEP. SOL. THORNTON:** We do, Your Honor. I apologize to
4 the Court, we are filling them out and they should be ready
5 for the defendant to sign shortly.

6 **THE COURT:** Okay.

7 **DEP. SOL. THORNTON:** And I informed the Court I would,
8 I have checked the sentencing, the sentences on these will
9 be reflected at the top of the sheet, Your Honor; and on the
10 incest, the Court inquired about that, it is a minimum one
11 year, maximum of ten years, and there will be not less than
12 a \$500 fine, we will be filling that out at the top of the
13 sentencing sheet.

14 **THE COURT:** All right. Thank you, Sir.

15 **THE COURT:** Mr. Thornton, you want to go ahead and call
16 the case?

17 **DEP. SOL. THORNTON:** May it please the Court, Your
18 Honor?

19 **THE COURT:** Yes, sir.

20 **DEP. SOL. THORNTON:** Thank you, Judge. Your Honor,
21 before you is Stanley Linder. Mr. Linder is here. He is
22 represented by Mr. Harris Beach, who is the Public Defender
23 of Colleton County. Mr. Linder is here in six indictments,
24 Your Honor. They are 2008-GS-15-298, 299, both for criminal
25 sexual conduct with a minor under Sixteen, second degree.

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1 Indictment 2008-GS-15-323 and 324, both for criminal sexual
2 conduct, third degree. Indictment 2008-GS-15-546 and 547,
3 both for incest, Your Honor.

4 My indication is that Mr. Linder has agreed to plead
5 guilty. It is straight up, Your Honor, however the State
6 would agree that the sentences should run concurrent, and I
7 would also make it known to the Court that there was an
8 original offer, as I've told Mr. Beach I would let the Court
9 know.

10 The original offer in this case, Judge, was 10 years.
11 Mr. Linder, at the time, decided not to take that offer.
12 That offer was pulled. However, I always like to let the
13 Court know what the status of the case is. This is a
14 straight up plea and the previous offer was 10 years, Your
15 Honor.

16 THE COURT: Thank you, Sir.

17 DEP. SOL. THORNTON: Thank you, Your Honor.

18 THE COURT: I just want to clarify one thing. It is
19 whatever I decide on the straight up plea, all of these
20 sentences are to run concurrent? That is part of the
21 negotiation?

22 DEP. SOL. THORNTON: Yes, sir. That would be part of
23 the negotiations that I've entered into with Mr. Beach that
24 his client not be subjected to consecutive time, since he
25 agreed to plead guilty, we would ask that all of his time

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1 run together.

2 **THE COURT:** All right. And there's been no other
3 discussions with Mr. Beach about the time limit?

4 **DEP. SOL. THORNTON:** No, sir. It would be the State's
5 position, Judge, that because of the incest, it would be a
6 minimum of one and a maximum of 20 years.

7 **THE COURT:** Thank you, Mr. Thornton.

8 **DEP. SOL. THORNTON:** Yes, sir.

9 **THE COURT:** All right. Would the clerk please swear
10 the defendant?

11 **MADAME CLERK:** Please raise your right hand and place
12 your left hand on the Bible.

13 **WHEREUPON,** the defendant, Mr. Stanley Linder, was duly
14 sworn.

15 **THE COURT:** Okay. Mr. Beach?

16 **MR. BEACH:** Yes, Your Honor.

17 **THE COURT:** Before I get started with your client, has
18 Mr. Thornton accurately stated the negotiations so far
19 today?

20 **MR. BEACH:** He has, Your Honor.

21 **THE COURT:** Okay. And y'all have agreed that any
22 sentence that Mr. Linder gets, those charges are to run
23 concurrent?

24 **MR. BEACH:** Yes, sir.

25 **THE COURT:** And we don't have limit on the time?

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1 **MR. BEACH:** No, sir.

2 **THE COURT:** Okay. Mr. Linder?

3 **DEFENDANT:** Yes, sir.

4 **THE COURT:** Good morning. My name is Ed Dickson. I'm
5 the newbie Judge. Yes, sir, I'm here and Judge Buckner is
6 also here to make sure I get everything correct, all the
7 questions answered, all the "T's" crossed.

8 **DEFENDANT:** Yes, sir.

9 **THE COURT:** You've been sitting here with us in the
10 grand jury room while we've been going over these charges,
11 is that correct?

12 **DEFENDANT:** That's correct.

13 **THE COURT:** Okay. You don't have any problems hearing,
14 do you?

15 **DEFENDANT:** Oh, no, no, sir.

16 **THE COURT:** You can hear fine?

17 **DEFENDANT:** Yes, sir.

18 **THE COURT:** Okay. So you can understand the English
19 language?

20 **DEFENDANT:** Yes, sir.

21 **THE COURT:** How old are you?

22 **DEFENDANT:** Fifty-one, almost fifty-two.

23 **THE COURT:** All right. And how much education do you
24 have?

25 **DEFENDANT:** Twelve -- twelfth grade education.

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1 THE COURT: Did you actually graduate?

2 DEFENDANT: No, sir.

3 THE COURT: Okay. And you've been working all your
4 life?

5 DEFENDANT: Yes, sir.

6 THE COURT: What kind of work have you been doing?

7 DEFENDANT: I'm a -- right now, was kind of a truck
8 driver, and I do carpentry work. I rebuild houses, floor and
9 walls and stuff. I do mechanic work and I love to do
10 portrait art, you know, like where you draw people. I've
11 always been pretty good with that.

12 THE COURT: Okay. Now, have you ever been treated for
13 alcohol abuse?

14 DEFENDANT: No, sir.

15 THE COURT: Drug abuse?

16 DEFENDANT: A little bit.

17 THE COURT: Okay. Where did you receive treatment for
18 drug abuse?

19 DEFENDANT: Um, I forgot the name of it. I've been
20 going there ---

21 MR. BEACH: Alcohol and Drug Abuse?

22 DEFENDANT: Yeah. I forgot the name of it. It's over
23 there by Dayco.

24 MR. BEACH: It's called Colleton Count Alcohol and Drug
25 Abuse, Your Honor.

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1 **THE COURT:** Colleton County? Okay. How long have you
2 been treated there?

3 **DEFENDANT:** About a month.

4 **THE COURT:** Oh, just a month?

5 **DEFENDANT:** Yes.

6 **THE COURT:** Prior to this month's treatment, have you
7 ever been treated for alcohol or drug abuse before or for
8 mental illness?

9 **DEFENDANT:** No, sir.

10 **THE COURT:** All right. Now, within the last 24 hours,
11 have you taken any kind of medication?

12 **DEFENDANT:** Taken Tylenol.

13 **THE COURT:** Okay. Now, have you taken any drugs or
14 drank any alcohol within the last 24 hours?

15 **DEFENDANT:** No, sir.

16 **THE COURT:** Okay. Is there anything that you have
17 taken that would affect your ability to understand what we
18 are doing here today?

19 **DEFENDANT:** No, sir.

20 **THE COURT:** Okay. Do you understand why we are here
21 today?

22 **DEFENDANT:** Yes, sir.

23 **THE COURT:** Why are we here?

24 **DEFENDANT:** I'm here for some charges that I did ---

25 **THE COURT:** All right, sir. That's all I want to know.

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1 Mr. Beach?

2 MR. BEACH: Yes, Your Honor.

3 THE COURT: We've got a number of charges facing Mr.
4 Linder. Did you go over all six of these charges with him?

5 MR. BEACH: I have, Your Honor.

6 THE COURT: All right. Mr. Linder, you've been in here
7 while we've gone over these charges.

8 DEFENDANT: Yes, sir.

9 THE COURT: And what you are subject to as far as if
10 you are convicted. Okay? You've got two charges for --
11 he's got two charges for criminal sexual conduct with a
12 minor under Sixteen, second degree, and those charges, he
13 can be convicted up to twenty years. You've explained that
14 to him?

15 MR. BEACH: Yes, sir.

16 THE COURT: And he understands that?

17 MR. BEACH: Yes, sir.

18 THE COURT: He's facing two charges for criminal sexual
19 conduct, third degree, and he's facing charges for up to ten
20 years on those. Did you explain that to him as well?

21 MR. BEACH: Yes, Your Honor.

22 THE COURT: And he has two charges for incest, and he
23 faces a fine of up to \$500 or conviction for up to not less
24 than one year and up to ten years; he understands that?

25 MR. BEACH: I believe he does, Your Honor.

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1 **THE COURT:** All right, Sir. And he has advised you
2 what he wants to do at this time?

3 **MR. BEACH:** Yes, he has.

4 **THE COURT:** And what has he advised you?

5 **MR. BEACH:** He wishes to enter a plea, Your Honor.

6 **THE COURT:** All right, sir. Mr. Linder, you've heard
7 what your attorney has told me?

8 **DEFENDANT:** Yes, sir.

9 **THE COURT:** Has he accurately stated it?

10 **DEFENDANT:** Yes, sir.

11 **THE COURT:** Okay. You understand that if you do plead
12 guilty, you are giving up certain constitutional rights?

13 **DEFENDANT:** Yes.

14 **THE COURT:** You know you have the constitutional right
15 to remain silent?

16 **DEFENDANT:** Yes, sir.

17 **THE COURT:** You understand if I accept your plea that
18 you're going to have to admit that you're guilty?

19 **DEFENDANT:** Yes.

20 **THE COURT:** Okay. You have a constitutional right to
21 have a jury trial. Are you willing to give up that right?

22 **DEFENDANT:** Yes.

23 **THE COURT:** If you had a jury trial, you would have the
24 right to present witnesses on your behalf. Do you
25 understand that?

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1 **DEFENDANT:** Yes.

2 **THE COURT:** Do you understand you have the right to
3 cross-examine the evidence put up by the State. Do you
4 understand that?

5 **DEFENDANT:** Yes, sir.

6 **THE COURT:** Are you willing to give up those rights; is
7 that correct?

8 **DEFENDANT:** Yes.

9 **THE COURT:** All right. Now having said that, have you
10 -- do you want a jury trial or do you want to plead guilty?

11 **DEFENDANT:** Plead guilty, Your Honor.

12 **THE COURT:** All right, sir. Now, I'm going to go over
13 the charges and make sure you understand them. In
14 Indictment 2008-GS-15-323, the State v. Stanley Linder, you
15 are indicted for the criminal sexual conduct, third degree.
16 It alleges that in Colleton County on or about December
17 20th, 2007 through January 25th, 2008, you did commit sexual
18 battery upon the victim, MINOR CHILD with knowledge, or
19 reason to have knowledge, that the victim was mentally
20 defective, mentally incapacitated, or physically helpless,
21 where aggravated force or aggravated coercion was not used.
22 To wit, you did sexually assault the victim by penile
23 penetration into the victim's vagina, all in violation of
24 the laws of the State of South Carolina. Do you understand
25 that charge?

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1 **DEFENDANT:** Yes, sir.

2 **THE COURT:** How do you wish to plead on this charge?

3 **DEFENDANT:** Guilty.

4 **THE COURT:** On Indictment number 2008-GS-15-324, the
5 State vs. Stanley Linder, this is criminal sexual conduct,
6 third degree. It alleges that in Colleton County, South
7 Carolina, on or about December 20th, 2007, through January
8 25th, 2008, that the defendant, Stanley Linder, did commit
9 sexual battery upon the victim MINOR CHILD with knowledge
10 or reason to have knowledge that the victim was mentally
11 defective, mentally incapacitated, or physically helpless,
12 where aggravated force or aggravated coercion was not used.
13 To wit, you did sexually assault the victim by penile
14 penetration into the victim's rectal area, all in violation
15 of the laws of the State of South Carolina. Do you
16 understand that charge?

17 **DEFENDANT:** Yes.

18 **THE COURT:** And how do you plead?

19 **DEFENDANT:** Guilty.

20 **THE COURT:** Okay. Mr. Linder, the next indictment that
21 I have is 2008-GS-15-546, the State vs. Stanley Linder.
22 This is a charge of incest. It is alleged that in Colleton
23 County, South Carolina, between the dates of January 1st,
24 2001 and December 31st, 2002, that you, the defendant,
25 Stanley Linder, did have carnal intercourse with your

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1 daughter, MINOR CHILD all in violation with the laws of
2 the State of South Carolina. Do you understand those
3 charges?

4 **DEFENDANT:** Yes, sir.

5 **THE COURT:** How do you wish to plead in that charge?

6 **DEFENDANT:** Guilty.

7 **THE COURT:** The next indictment that I have is
8 indictment number 2008-GS-15-299, State v. Stanley Linder.
9 It is an indictment for criminal sexual conduct with a minor
10 victim, under Sixteen years of age, second degree. That
11 indictment alleges that in Colleton County, South Carolina,
12 between January 1st, 2001 through December 31st, 2002, the
13 defendant, Stanley Linder, did commit a sexual battery upon
14 a minor less than Sixteen years of age. To wit, the
15 defendant did assault the victim, MINOR CHILD date of
16 birth, January 3rd, 1986, by digitally penetrating her vagina
17 and the defendant was older than the victim and was in a
18 position of familial custodial or official authority to
19 coerce the victim to submit, all in violation of the laws of
20 the State of South Carolina. Mr. Linder, do you understand
21 these allegations?

22 **DEFENDANT:** Yes.

23 **THE COURT:** How do you wish to plead?

24 **DEFENDANT:** Can I ask my attorney something?

25 **THE COURT:** You are free to talk to your attorney.

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1 (Sotto voice discussion between Mr. Beach and
2 defendant.)

3 **THE COURT:** All right, sir. Mr. Linder, you've had an
4 opportunity to talk to your attorney. How do you wish to
5 plead?

6 **DEFENDANT:** Guilty.

7 **THE COURT:** We have State v. Stanley Linder,
8 Indictment number 2008-GS-15-298, State v. Stanley Linder.
9 It is for criminal sexual conduct with a minor victim, under
10 Sixteen years of age, second degree. It is alleged in that
11 indictment that in Colleton County, South Carolina, between
12 January 1st, 2001 and December 31st, 2003, the defendant,
13 Stanley Linder, did commit a sexual battery upon a minor who
14 is less than Sixteen years of age. To wit, the defendant
15 did sexually assault the victim, MINOR CHILD date of
16 birth, January 3rd, 1986, by orally penetrating the victim's
17 vagina and the defendant was older than the victim and in an
18 position of familial custodial or official authority to
19 coerce the victim to submit, all in violation of the laws of
20 the State of South Carolina. Do you understand that
21 indictment?

22 **DEFENDANT:** Yes.

23 **THE COURT:** Okay. How do you wish to plead?

24 **DEFENDANT:** I plead guilty.

25 **THE COURT:** All right, sir. The final indictment I

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1 have is Indictment number 2008-GS-15-0547, the State v.
2 Stanley Linder; this is another charge for incest. That
3 indictment alleges that in Colleton County, between the
4 dates of December 20th, 2007 and January the 25th, 2008, the
5 defendant, Stanley Linder, did have carnal intercourse with
6 his daughter, MINOR CHILD in violation of the laws of
7 South Carolina. Do you understand these violations?

8 **DEFENDANT:** Yes.

9 **THE COURT:** How do you wish to plead to those?

10 **DEFENDANT:** Guilty.

11 **THE COURT:** Okay. Now, Mr. Linder, before I go forward
12 on this, the indictment 2008-298, the plea check -- the plea
13 box on the sentence sheet was not checked, so I'm passing
14 that back to you, Mr. Harris.

15 **MR. THORNTON:** My apologies to the Court, Judge.

16 **THE COURT:** That's okay.

17 **MR. THORNTON:** I ask that they go ahead and initial
18 that, check it, and initial it, and I'll initial it as well.

19 **MR. HARRIS:** Which one is this, now?

20 **DEP. SOL. THORNTON:** It's the plea's box. The State
21 will stipulate that that is the fault of Dep. Sol. Thornton
22 and not of Amanda Stilley Hasellden.

23 (OFF THE RECORD BRIEFLY WHILE ALL OF THE PARTIES SIGN
24 AND INITIAL THE APPROPRIATE BOXES.)

25 **DEP. SOL. THORNTON:** Your Honor, the box "pleas" has

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1 been checked. Myself, Mr. Linder, and Mr. Beach have all
2 initialed it, Sir. I would pass that back up to the Court.

3 **THE COURT:** I appreciate it. Thank y'all.

4 Okay, now Mr. Linder, I want to go over a couple more
5 things as we go forward. You understand that the two
6 charges that you're facing for criminal sexual conduct with
7 a minor under Sixteen, second degree, are considered violent
8 offenses and most serious offenses; and what that means is
9 if you come before a court at a later date and are convicted
10 of another serious or most serious crime, you are facing
11 life without parole should that happen.

12 **DEFENDANT:** Oh, no, that ain't gonna happen.

13 **THE COURT:** Yes, sir. Also understand that you need to
14 be aware that in a violent or most serious violation, you
15 have to assume that you're going to serve day for day, every
16 day of your sentence. Okay? Now, I believe you're eligible
17 for parole after 85 percent of that sentence, you're
18 eligible, but you need to assume the fact that you're going
19 to serve day for day with whatever sentence I give you with
20 that charge. Do you understand that?

21 **DEFENDANT:** That's on these charges right here?

22 **THE COURT:** Yes, sir. Those ones that we've gone over.
23 You understand that?

24 **DEFENDANT:** Yes, sir.

25 **THE COURT:** All right, sir. Now, you've told me you

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1 wish to plead -- you've gone over, you've told me you wish
2 to plead guilty to all of the charges, other than the
3 negotiations that we've entered into that you are aware of?

4 **DEFENDANT:** Yes, sir.

5 **THE COURT:** All right. Has anybody promised you
6 anything to plead guilty?

7 **DEFENDANT:** No, sir.

8 **THE COURT:** Has anybody threatened you in any way to
9 plead guilty?

10 **DEFENDANT:** No, sir.

11 **THE COURT:** You're doing this of your own free will?

12 **DEFENDANT:** Yes, sir.

13 **THE COURT:** All right, sir. Do you have any complaints
14 against the police, the Solicitor, the jail, or anybody else
15 in regards to this case?

16 **DEFENDANT:** No, sir.

17 **THE COURT:** Are you satisfied with the services of your
18 attorney, Mr. Beach?

19 **DEFENDANT:** Yes, sir.

20 **THE COURT:** Has he done everything that you've asked
21 him to do?

22 **DEFENDANT:** Yes.

23 **THE COURT:** Have you had ample opportunity to talk to
24 him concerning this matter?

25 **DEFENDANT:** Yes.

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1 **THE COURT:** All right, sir. Has he answered all your
2 questions?

3 **DEFENDANT:** Yes, sir.

4 **THE COURT:** Okay. Have you answered all the questions
5 I've asked you, truthfully?

6 **DEFENDANT:** Yes, sir.

7 **THE COURT:** All right, sir. You understand that you
8 have ten days after this plea to appeal this if you want to,
9 but you would have to file a Notice of Intent to Appeal with
10 this court within ten days.

11 **DEFENDANT:** Okay.

12 **THE COURT:** All right, sir. Mr. Thornton, are you
13 aware -- are there any direct consequences of this plea to
14 which you are aware, other than those that we've mentioned
15 so far?

16 **DEP. SOL. THORNTON:** No, Your Honor, no other direct
17 consequences to the plea the State is aware of, other than
18 those already stated by the Court.

19 **THE COURT:** All right, sir. Mr. Beach, are you aware
20 of any direct consequences of this plea, other than the ones
21 we've mentioned?

22 **MR. BEACH:** No, Your Honor.

23 **THE COURT:** All right, sir. (Brief pause.) Mr. Linder,
24 I'm just looking to make sure if there's anything else I
25 need to ask you. I find that your decision to plead guilty

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1 is freely, voluntarily, intelligently ---

2 (Sotto voice discussion between Judge Buckner and Judge
3 Dickson.)

4 **THE COURT:** Mr. Thornton, would you give me the factual
5 basis, please?

6 **DEP. SOL. THORNTON:** Yes, sir. May it please the
7 Court, Your Honor. And Judge, unless the Court asks me to
8 go into more detail, in a case like this, you've already got
9 the indictments and seen some of the information. I will
10 keep it brief, Your Honor. Your Honor with regard to all of
11 these indictments, they all occurred with the children of
12 Mr. Linder.

13 First, Judge, is the indictments for criminal sexual
14 conduct with a minor, second degree, a victim under Sixteen,
15 which is 2008-GS-15-298 and 299. Your Honor, that deals
16 with MINOR CHILD as the victim in those cases. The
17 allegations are, Judge, that during the years of 2001 and
18 2002, Your Honor, when MINOR was under the age of
19 Sixteen, that the defendant on multiple, two occasions,
20 Judge, digitally and/or orally penetrated her in a sexual
21 battery, Your Honor, which would result, of course, in a
22 criminal sexual conduct with a minor under the age of
23 Sixteen. She was actually, I believe, fourteen and fifteen
24 at the time, Your Honor, which would classify it as a second
25 degree.

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1 With regard to the criminal sexual conduct, third
2 degree, Your Honor. That is indictment 2008-GS-15-323 and
3 324. Those are both against -- the victim in both of those
4 Judge, are MINOR CHILD Your Honor,
5 while of age, is mentally handicapped, Your Honor. We have
6 extensive records. I've got records from the school. She
7 was in Special Ed classes. Her IQ was tested out and I
8 believe it was around 40. She's in the 2nd percentile or
9 below in classes, moderately mentally retarded by DSS. She
10 actually gets assistance from DSS, from the government,
11 because of her mental disability.

12 The allegation is, Your Honor, that on more than one
13 occasion in -- forgive me, Judge. In 2008, that Mr. Davis
14 did vaginally penetrate her with his penis and she did
15 become pregnant, Your Honor. The fetus was aborted
16 accidentally and it was collected, along with blood samples
17 from Mr. Davis, blood samples from MINOR that not only
18 indicated -- we had to send them to Labcorp. Sled does not
19 test the DNA of fetuses, but we had to send it to North
20 Carolina to Labcorp, Your Honor. It was tested. The DNA
21 did come back as Mr. Linder and the paternity test proves
22 that he is not only the father of MINOR but also the
23 father of the fetus that was collected in this case, which
24 would classify it as criminal sexual conduct, third, Your
25 Honor, of taking advantage of someone with a mental handicap

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1 in that fashion.

2 As to 2008-GS-15-546 and 547, one count is for his
3 daughter, MINOR Your Honor, one count is for his
4 daughter, MINOR because of incest. He is the father of
5 both of those young ladies, and under the statute, Your
6 Honor, carnal intercourse with a member of that
7 consanguinity, which is the father/daughter relationship,
8 would classify it as an incest.

9 All of these offenses, Judge, happened here in Colleton
10 County. Unless you need more detail than that, Judge,
11 that's all the factual basis the State has.

12 **THE COURT:** Thank you, Mr. Thornton, I appreciate that.
13 Okay. Mr. Linder, you've heard the factual allegations; is
14 that correct?

15 **DEFENDANT:** Yes, sir.

16 **THE COURT:** All right, sir. I find that your decision
17 to plead guilty is freely, voluntarily, and intelligently
18 made. You've had the advice and counsel of a competent
19 lawyer with whom you tell us you're satisfied. I find that
20 there is a factual basis for the plea, and I will accept
21 your plea. Thank you, sir. Now -- Yes, sir?

22 **DEP. SOL. THORNTON:** I'm sorry, Judge. I apologize. I
23 neglected to give the Court his prior record when I finished
24 with the facts. I do apologize. If the Court would like
25 that now, I will go through that.

1 **THE COURT:** I would.

2 **DEP. SOL. THORNTON:** Yes, sir. Your Honor, he has a
3 1974 safecracking conviction; a 1977 housebreaking
4 conviction, which was four counts; he has a 1983 petty
5 larceny conviction; he has a 1984 financial transaction card
6 conviction, two financial transaction card convictions. He
7 also has a 1984 receiving stolen goods conviction; he has a
8 1985 receiving stolen goods conviction; he has a 1986
9 burglary in the second degree conviction and grand larceny
10 conviction for which he got 10 years at that time -- I'm
11 sorry, 12 years on the burglary, 10 years on the grand
12 larceny. He got out, I would imagine, sometime in the early
13 90's. I'm sorry, Judge, that's just an arrest, that's not a
14 conviction. That would be it, Your Honor, for his record.

15 **THE COURT:** Thank you, sir. I appreciate it. Mr.
16 Beach, let me hear from you in -- anything in mitigation.

17 **MR. BEACH:** Thank you, Your Honor. Your Honor, he is
18 51 years old, soon be 52. This has really been a tragic
19 case that I've been involved with for over a year. He's
20 been in jail over a year awaiting trial. He loves his
21 daughters. He loves the lady he lived with. I don't
22 believe they were ever married, but she bore him these
23 children, and we've talked about this case forever, and the
24 State did make an offer of 10 years a while back and
25 probably would have been accepted, except he had to come to

State of South Carolina v. Stanley Linder
2008-GS-15-323, 324, 546, 547, 298, 299
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23

1 the realization that the family was going to pursue this
2 matter.

3 When he finally came to that realization, we put
4 everything together and everything fell into place, and we
5 were able to figure out that this was the best thing we
6 could do in this particular case.

7 He does have a criminal record, but the last entry was
8 over 20 years ago, and every entry that has been on the
9 record has been a property crime and has not been anything
10 related to sexual activity or any problem like that. He is
11 a very pleasant person to talk to. He is very well-liked at
12 the jail. I don't get a chance to say that to the Court
13 very often. I've had jailers tell me that he is - he sort
14 of keeps a lid on things over there and I've even had other
15 inmates, other clients, tell me the same thing.

16 He broke society's norms. He knows that now and
17 realizes that, and realizes how serious it is. He told me
18 that he loves his daughters and cannot imagine forcing them
19 to come up here to testify in front of the world about what
20 he had done, and he also did not want Brenda, his -- his
21 lady friend to come up and have to do the same thing.

22 As a result, Your Honor, we have entered into this
23 arrangement today. We would ask the Court to accept the
24 concurrent sentences and not to exceed him beyond 10 years.
25 I think that was a very fair offer that was made a while

State of South Carolina v. Stanley Linder
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1 back, and pretty well covers this thing. What went on did
2 not go on over a long period of time. It was more of a
3 sporadic thing. Unfortunately, it resulted in a pregnancy
4 at one time, and that was the biggest problem that resulted.
5 He is sincerely ashamed of what happened and he has been
6 trying to put a good face on it, but I've talked to him
7 enough times to know that he knows what he did was against
8 society's norms, but more importantly, against his children.

9 We would ask the Court to give him a 10-year sentence
10 and let that run concurrently with all the others, allowing
11 him to get out and make something of his life. He'll still
12 be -- he'll be about my age, so he'll be young enough to do
13 things.

14 **THE COURT:** We hope so.

15 **MR. BEACH:** I hope so, Judge.

16 **THE COURT:** Thank you, Mr. Beach.

17 **THE COURT:** Mr. Linder?

18 **DEFENDANT:** Yes, sir.

19 **THE COURT:** You've heard what your attorney said on
20 your behalf.

21 **DEFENDANT:** Yes, sir.

22 **THE COURT:** Do you have anything you would like to say
23 to the Court?

24 **DEFENDANT:** Yes, sir. Well, I've always been a easy-
25 going person and I kind of have a problem, sometimes, with

State of South Carolina v. Stanley Linder
2008-GS-15-323, 324, 546, 547, 298, 299
April 1, 2009 - Colleton County, South Carolina

1 people, from around, from people in my area where I stay.
2 You know, it's a long story and I'll make a long story
3 short, but I try -- I've tried to -- I always helped people
4 all my life and everything, and I'm sorry that this had
5 happened, you know, I mean, I know it will never -- I know
6 it will never, ever happen again, and I ask that y'all have
7 mercy on me and give me a chance to get out and get my life
8 back together. You know, that's all I have to say.

9 **THE COURT:** Thank you, Mr. Linder.

10 **DEFENDANT:** Appreciate it.

11 **THE COURT:** Yes, sir?

12 **DEP. SOL. THORNTON:** Put the State's position on the
13 record, Your Honor?

14 **THE COURT:** Yes, sir.

15 **DEP. SOL. THORNTON:** Your Honor, we appreciate, the
16 State does, the fact that Mr. Linder has decided not to put
17 these children through a trial. However, since that plea
18 offer was made, I've had to bring the children in and
19 they've had to get up, they've had to testify in front of
20 me, they've had to suffer some. The State has gone to a
21 great expense to assemble witnesses, get everything ready.
22 So that deal, the 10-year deal, Judge, is off the table. I
23 did tell Mr. Beach that I would indicate that it was a 10-
24 year deal at that time. The State feels like that something
25 additional to the 10 years would be reasonable in this case,

1 Your Honor, but we will leave that to your discretion.

2 **THE COURT:** Thank you, Sir. I appreciate it.

3 (Sotto voice discussion between Judge Buckner and Judge
4 Dickson.)

5 **DEP. SOL. THORNTON:** I neglected to mention this
6 earlier, but for the record, I believe that Mr. Linder would
7 be entitled for credit, per the statute. We always let them
8 calculate it, Judge. He's been in jail in excess of 300
9 days, but the State does not oppose him being entitled to
10 credit for whatever time he has served, as calculated by the
11 Department of Corrections.

12 **THE COURT:** And I've put that on there. Thank you,
13 sir.

14 **DEP. SOL. THORNTON:** Yes, sir.

15 **THE COURT:** Mr. Linder, on Indictment 2008-GS-15-299 is
16 the charge for criminal sexual conduct with a minor, second
17 degree, a violent and a most serious offense. You are
18 facing the maximum of up to 20 years. I am sentencing you
19 to 11 years in the State Department of Corrections.

20 On Indictment 2008-GS-15-298, also criminal sexual
21 conduct with a minor, second degree, also violent and most
22 serious. You are facing a maximum of imprisonment of up to
23 20 years. I am sentencing you to 11 years in the State
24 Department of Corrections.

25 On Indictment 2008-GS-15-547, this is incest, you are

State of South Carolina v. Stanley Linder
2008-GS-15-323, 324, 546, 547, 298, 299
April 1, 2009 – Colleton County, South Carolina

27

1 facing a fine of not more than \$500, and imprisonment of not
2 less than a year and not more than 10 years, sentencing you
3 to imprisonment in the State Department of Corrections,
4 for 10 years.

5 With Indictment number 2008-GS-15-546, again, charges
6 of incest, same maximum penalties. I'm sentencing you to be
7 committed to the State Department of Corrections for a term
8 of 10 years.

9 With Indictment number 2008-324, criminal sexual
10 conduct, facing a maximum charge of not more than 10 years.
11 I am sentencing you to the State Department of Corrections
12 for a term of 10 years.

13 With Indictment number 2008-GS-15-323, criminal sexual
14 conduct, third degree, you are facing the maximum penalty of
15 10 years, I am sentencing you to the State Department of
16 Corrections for a term of 10 years. All of these will be
17 concurrent and you do get credit for time served.

18 **MR. BEACH:** Thank you, Judge.

19 **THE COURT:** Good luck, Mr. Linder. I hope you will be
20 able to get your life in order.

21 **DEP. SOL. THORNTON:** Thank you, Judge.

22

23

24

25

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF *Colleton County*)
)
)
 Full name and prison number (if any) of Applicant.)
Stanley Linder #137337)
 v.)
)
 State of South Carolina)
)

IN THE COURT OF COMMON PLEAS
09-CP-15-830

APPLICATION FOR
 POST-CONVICTION RELIEF

2009 SEP 15
 PM 4:20

INSTRUCTIONS - READ CAREFULLY

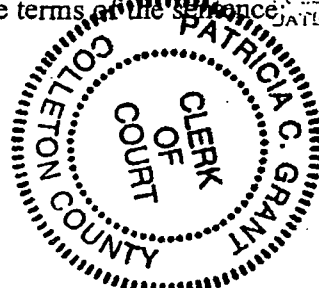
In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer 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 Evans Correctional Inst, 610 Hwy 9 West
Bennettsville, S.C. 29512
2. Name and location of Court which imposed sentence Colleton County General Session Court
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) 08-GS-15-0298, 08-GS-15-0299,
08-GS-15-323, 08-GS-15-324;
 (b) 08-GS-15-0540, 08-GS-15-0547
 (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) April, 01, 2004
 (b) April Term of Court

CERTIFIED TRUE COPIES OF RECORDS
Patricia C. Grant
 CLERK OF COURT, COMMON PLEAS COURT
 COLLETON COUNTY, SOUTH CAROLINA
 DATE: 9/22/05



Revised 3/2003

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

NO

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. N/A

ii. |

iii. |

(b) the result in each such Court to which you appealed:

i. |

ii. |

iii. |

(c) the date of each such result:

i. |

ii. |

iii. |

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. |

ii. |

iii. |

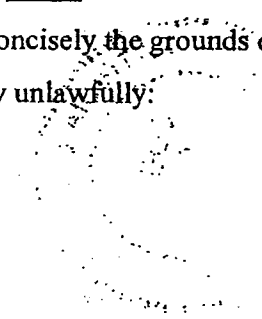
9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____ I have request to my attorney to appeal on my behalf

(b) _____ and he refused to do so.

(c) _____

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



- (a) INEFFECTIVE ASSISTANCE of Counsel,
- (b) Respondent is in Violation of S.C. Constitution Article 1,
- (c) SEC. 11. Presentment or Indictment,

11. State concisely and in the same order the facts which support each of the grounds set out in (10): He Failed (my Attorney) Failed to move to have Indictments served.

- (a) My Attorney Failed to File Motion Discovery on my behalf, After I requested numerous of times
- (b) Please See Attachment.
- (c)

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

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

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

(a) the specific nature thereof:

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

(b) the name and location of the Court in which each was filed:

- i. |
- ii. |
- iii. |
- iv. |

(c) the disposition thereof:

- i. |
- ii. |
- iii. |

11. - Attachment to Continue from No. 11. -

State Concisely and in the same order the facts which support each of the grounds set out in (10);

(A) Plaintiff, Discovered New Evidence about his Indictments from the South Carolina's Post Conviction Relief Manual Second Edition by Ashley A. McMahan, Esquire Published by the South Carolina Bar Copyright

© 2008.

South Carolina's Constitutional Article 1,
Declaration of Rights Section 11.

Presentment OR Indictment.

No Person may be held to Answer for any Crime the Jurisdiction over which is not within the magistrate's Court, unless on a Presentment OR Indictment of a Grand Jury of the County where the Crime has been Committed, Except in Cases Arising in the land OR Naval Forces OR in The militia when in Actual Service in time of war OR Public danger.

The General Assembly may Provide for the waiver of an Indictment by the accused. Nothing Contained in this Constitution is deemed to limit OR Prohibit the establishment by the General Assembly of a State Grand Jury with the authority to Return Indictments Irrespectively of the County where the Crime has been Committed and that other Authority, including Procedure, as the General Assembly may Provide.

Please Continue Next Page ---

(B) In Post-Conviction Relief, An Applicant wishing to raise Challenges to the sufficiency of an indictment must do so in the context of Ineffective Assistance of Counsel, basically Alleging that his trial Counsel Failed to Properly move to ~~Quashed~~ the ~~Evidence~~ Indictments in accordance with S.C. Code ANN. § 17-19-90 (2003).

(C) Ineffective Assistance of Counsel is Maliciously Intentent, I Incarcerated without A TRUE BILL of Rights:
 My Attorney only came to consult with me (4) Four times within over (12) Twelve months Period, because I would not Plead guilty he said I will sat in Jail As I Live with nasty Insects, BlackWidows, Rodents and small snakes, Attorney did not Protect my Rights, He helped and let the State do what ever; They wanted,
 I was not trialed in the Court room like everyone eles, Why was I escorted through the Court Room full of People into A Small Room in the Courthouse? Where I were Threatening to be sentenced to (65) sixty Five Years other than (10) ten Years IF I would have a Jury Trial.

As I Foundout afterward my Investigator for the Public Defenders is a "Cop", who came to the Jail and threaten me that I should and better Plead guilty or I wont have NO future at all! They (my attorney & so call investigator), Promise me I had a no Win situation.

They (The solicitor and my attorney) ran a "D.N.A." To assure I am the fetus's father; After (8) eight months my attorney came see me for the second time and told me "the -D.N.A- is Negative! He said But they (solicitor) are going to Run it again, WHY?

Then My Attorney ask me to Plea to (1) one year to Incest, that it will give me time served. I did not want to ~~see~~ but to Get out of that infested Jail, I've signed the Plea. But when I got to the Courthouse, My Attorney said they, (solicitor) run the test (DNA)

Continue from (C)

Again and he (my attorney) said the DNA Came Positive, 99.99%,
I Complaint to my attorney "Mr. Harris Beach", I never understand
Why They had to redue MY D.N.A. A Second time? That's
Inappropriate for Professionals, Attorney would not Comment,

Now D.N.A. is or has been fabricated, I replied to my
attorney, His words, "They can do that," then Attorney really
began to Manifest:

Prejudice:

B:gotray:

Stereotype Certain litigates, After being held in the County
Detention Center for over a year, It was obvious to the
Catastrophe of my attorney's behavior, He rather devour
Some of his Clients than to Perspectively Represent.

I never get a COPY of my Motion Discovery, Attorney Claim
he have it, but would never Present it, along with video &
statements, I would like to add, In the middle of a Jury
Trial of 5/20/08, I was given a (2) second Preliminary
Hearing in General Sessions Court, After Mr. Beach (Attorney)
ask arresting agent does she have any evidence on me?
under oath The detective replied NO! NO to all of his questions,
And End the Hearing with, "NO further Questions, your Honor."

Again, Attorney failed to Quashed Indictments of accused,
Your Honor, I've requested for all materials I deserved to have
From: 06/2008, Till 08/24/09, I am being deprived my Rights
To have what is Right, IN this case.

Attorney had told me, This is Colleton County, They do what
They want to: And he is showing it.

"I must do, eighty Five Percent (85%) of my time before I am eligible for Parole
is what the Sentencing Judge
Said."

Did he legally Sentence Me?

Your Honor: In the Name of Jesus
Can you help me,

Thank you
and I appreciate your Time

After being Fully Advised AS to my legal
Rights, I hereby Waive Presentment
To The Grand Jury.

I,

Here by Appear IN my own PROPER
Person And Plead Guilty to the within
Indictments OR to

Defendant:

Witness:

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

Note: This FORM was COPY From:
South Carolinas Post-Conviction Relief
Manual Second Edition Appendix (C)
Page No. 63, By Ashley A. McMahan,
ESQUIRE Published by The South Carolina
Bar COPY Right (C) 2008

(D)

iv. _____
(d) the date of each such disposition:

i. _____
ii. _____
iii. _____
iv. _____

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

i. _____
ii. _____
iii. _____
iv. _____

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

NO

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

(a) which grounds have been presented:

i. N/A
ii. _____
iii. _____

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

i. _____
ii. _____
iii. _____

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

(a) _____
(b) _____
(c) _____
Please see Attachment to (10):

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? 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. Harris Beach
- ii. 115 Benson St.
- iii. Walterboro, S.C. 29488

(b) the proceedings at which each such attorney represented you:

- i. 2/ Preliminary Hearings
- ii. 2/ Plea arrangements
- iii. sentencing

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

 S.C. State Law State that an indictment is not significant
will result in the rescinding of the indictment, and that's what I am
requesting.

20. Are you now under sentence from any other court that you have not challenged?
 |
NO

STATE OF SOUTH CAROLINA)
)
County of)

VERIFICATION

I, _____, 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.

Stanley L. ...

SWORN to and subscribed before me this 11
day of SEPTEMBER, 2009

[Signature] (L.S.)
Notary Public

My Commission Expires: 07-13-2019

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

I, _____, 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.

Stanley Linds
Applicant

SWORN or affirmed to and subscribed before me this
11 day of SEPTEMBER, 2009.

CA Carol Bunker
Notary Public

My Commission Expires: 07-13-2019

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON)	
)	
)	2009-CP-15-830
Stanley D. Linder, #137337,)	
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed September 17, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. The Applicant was indicted at the June 2008 term of the Colleton County Grand Jury for two counts of incest (2008-GS-15-546, 547), two counts of criminal sexual conduct (CSC) – 3rd degree (2008-GS-15-323, 324), and two counts of CSC with a minor – 2nd degree (2008-GS-15-298, 299). Harris Beach, Esquire, represented the Applicant. On April 1, 2009, the Applicant pled guilty as indicted. The Honorable Edgar W. Dickson sentenced him to confinement for eleven (11) years for each count of CSC with a minor – 2nd degree and ten (10) years for each other offense. The sentences were to run concurrently. The Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Colleton County Clerk of Court regarding the subject convictions and the guilty plea transcript.

II.

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

1. Ineffective assistance of counsel in that counsel
 - a. Failed to move to have the indictments quashed.
 - b. Failed to file discovery motion.
 - c. Only met with Applicant four (4) times in twelve (12) months.

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland).

Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent denies each allegation that is not expressly admitted, qualified, or explained.

V.

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

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

2/19, 2010.

STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

STANLEY D. LINDER, 137337,)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

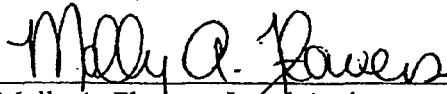
2009-CP-15-830

AFFIDAVIT OF SERVICE BY MAIL

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

Monique W. Tracy-Bennett, Esquire
717 Old Trolley Rd., #6-277
Summerville, SC 29485

DATED this 19th day of February, 2010.


 Molly A. Flowers, Legal Assistant
 For Respondent

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM COLLETON COUNTY
Court of Common Pleas.

Honorable D. Craig Brown, Circuit Judge

CASE NUMBER 2009-CP-15-830.

Stanley Linder, #137337,Appellant,

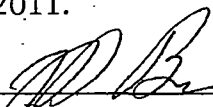
v.

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

NOTICE OF APPEAL (PCR).

Stanley Linder hereby appeals to the Supreme Court for the State of South Carolina from the Order of the Honorable D. Craig Brown, dated 9 May 2011, denying Post-Conviction Relief. Appellant received written notice of entry of the Amended order on 25 July 2011.

Tue, Aug 2, 2011.



J.D. Bryan
P.O. Box 1111
209 East Washington Street.
Walterboro, S.C. 29488
(843) 549-9455

Other counsel of record are:

Matthew J. Friedman,
Assistant Attorney General
Rembert C. Dennis Building
PO Box 11549
Columbia, SC 29211
Attorney for the Respondent.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM COLLETON COUNTY
Court of Common Pleas.

Honorable D. Craig Brown, Circuit Judge

CASE NUMBER 2009-CP-15-830.

Stanley Linder, #137337,Appellant,


v.

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

Proof of Service.

I certify that I have served the Notice of Appeal on the above-named Respondent, by depositing a copy thereof in the United States Mail, postage prepaid, to its attorney of record, Matthew J. Friedman, Assistant Attorney General, Rembert C. Dennis Building, PO Box 11549, Columbia, SC 29211, on Tue, Aug 2, 2011,.

Tue, Aug 2, 2011



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STATE OF SOUTH CAROLINA)	
)	COURT OF COMMON PLEAS
COUNTY OF COLLETON)	09-CP-15-00830

STANLEY LINDER,)	
)	
PLAINTIFF,)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
)	(ORIGINAL)
THE STATE OF SOUTH)	
CAROLINA ,)	
)	
DEFENDANT.)	

APRIL 21, 2011
WALTERBORO, SOUTH CAROLINA

B E F O R E:

THE HONORABLE D. CRAIG BROWN, JUDGE.

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

J. D. BRYAN, ESQ.,
Attorney for the Plaintiff.

MATTHEW J. FRIEDMAN, ESQ.,
Attorney for The State.

VIVIAN H. CROSS
OFFICIAL COURT REPORTER

I-N-D-E-X
APRIL 21, 2011
 (STANLEY LINDER V. STATE OF SOUTH CAROLINA)
 (PCR HEARING)
 (09-CP-15-00830)

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(CASE NO.: 09-CP-15-0830)

(APRIL 21, 2011 - 12:24 P.M.)

1
2
3
4 THE COURT: Mr. Bryan, you ready to proceed?

5 MR. BRYAN: I'm ready, Your Honor. Um -- I'll call
6 Stanley Linder to the stand.

7 THE COURT: Mr. Linder, if you'd come around and place
8 your -- raise your right hand?

9 (WHEREUPON, STANLEY LINDER WAS DULY SWORN AND TESTIFIED
10 AS FOLLOWS:)

11 THE COURT: All right, sir, if you'd be seated, state
12 your name for the record spelling your last please.

13 MR. LINDER: Uh -- my name is Stanley Linder. And,
14 uh -- state my name and?

15 THE COURT: Spell your last name for us please.

16 MR. LINDER: Oh; L-I-N-D-E-R, Linder.

17 THE COURT: All right Mr. Bryan.

18 STANLEY LINDER, DIRECT EXAMINATION BY MR. BRYAN:

19 Q Mr. Linder, how -- how long did -- have you been
20 sentenced to prison for?

21 A I really don't know. Um -- the Judge was saying ten
22 years, and you was saying eleven years and I -- I -- I never
23 knowed how much time I -- I had.

24 Q It -- it's a long time though, isn't it?

25 A Yes, sir.

1 Q Um -- in your proceedings before you at the present,
2 were you represented by a lawyer? (Sic)

3 A Yes, sir.

4 Q And who was he?

5 A Mr. Harris Beach.

6 Q And, uh, how many times did Mr. Beach come to visit you
7 in the County Jail?

8 A Four times.

9 Q And how long were you in the County Jail?

10 A Almost eleven months.

11 Q Now, uh, how far is the County Jail from the Public
12 Defender's Office?

13 A It was right across the street.

14 Q Um -- did you do these crimes?

15 A No, sir.

16 Q Did your Public Defender file discovery?

17 A No, sir.

18 Q Did you see any discovery?

19 A No, sir.

20 Q Did you want a trial?

21 A Yes, sir.

22 Q Did you get a trial?

23 A No, sir.

24 Q Why didn't you get a trial?

25 A Because, uh, then my lawyer had told me and his

1 investigator had told me that if I get a trial, um, they got
2 all the witness (sic) out there and the girls out there who I
3 supposed to have messed with and -- and they would get up and
4 testify against me and they gonna automatically find me
5 guilty and I won't have no future and -- and I would get from
6 thirty years to life.

7 And, um, I was a good person; that -- that they had word
8 from the people over to the jail that I was a good person
9 over there and helped things down. And, um, they don't want
10 to see me go to trial and, you know, mess my life up like
11 that.

12 Plea to ten years and I'd have a future; and if I don't,
13 then I won't have no future.

14 Q Now, when you went to Court, were you in the Courtroom
15 or were you in another room in the Courthouse?

16 A I was in another room.

17 Q Why weren't you in the Courtroom?

18 A That's what I wanted to know.

19 Q What was the agreement? What -- what did you think the
20 agreement initially was?

21 A The agreement -- okay; after the D-N-A had came back --
22 they had run a D-N-A on me---

23 Q Uh-huh?

24 A ---and the D-N-A had came back negative. And Mr. Beach
25 came over and told me that they know I was innocent but they

1 just want me to do some time in jail because they believe
2 that I messed with my daughter or stepdaughter or something
3 like that. And, um -- and they wanted me to plead to, uh,
4 one year for incest.

5 And being that the jail was so filthy and -- and the
6 spiders and all this stuff in there and there aren't no
7 radios or T-V or newspaper or anything over there and, uh,
8 I'm a working man -- I drive truck -- and I wanted to get out
9 there and work to keep my stuff from getting -- you know, no
10 people taking my stuff back.

11 And I say, well, I'm gonna sign. I signed the paper for
12 the one year, you know, and -- but they took it back and give
13 me the charges back. And I don't know -- I think I asked
14 Mr. Beach why did they do that? But he say, this is Colleton
15 County, they got their own law and they do what they want
16 to do.

17 Q Now, on the day of your trial, did they tell you that
18 the girls were out there?

19 A No, sir; they -- they wasn't even there.

20 Q All right; was any -- did anybody tell you that the
21 girls were at the Courthouse?

22 A Yes, they -- he told me that.

23 Q Who's he?

24 A Uh -- Mr. Beach.

25 Q So Mr. Beach told you the girls were there and---

1 A He told me the girls were there.

2 Q ---ready to testify?

3 A And ready to testify.

4 Q And what'd you find out afterwards?

5 A Um -- after I pleaded guilty and the, uh, ten or eleven
6 years, I went back to the County Jail and I made a phone call
7 home and, um, the girls spoke to me. And I asked them why
8 was they there to raise their hand and tell the truth -- I
9 mean, under oath, you know -- um, that I did something like
10 that to them?

11 And, um, she say they never been there; they been home
12 all day. They never been nowhere; they were at the house all
13 day.

14 And they said, you shouldn't have plead guilty to that
15 because we didn't tell them that and, you know, that, uh,
16 well, you shouldn't-a never plead guilty to that.

17 Q Did he move to -- did Mr. Beach move to quash your
18 Indictments?

19 A No, sir; I asked him, uh -- okay, we had a preliminary
20 hearing---

21 Q Uh-huh?

22 A ---um, we had two.

23 Q Uh-huh?

24 A And, uh, the second one was -- I think was the really --
25 the biggest one. It was in, uh, in the Courthouse---

1 Q Uh-huh?

2 A ---when General Sessions Court.

3 Q Uh-huh?

4 A I think it was an Armed Robbery case they were, uh, were
5 going on.

6 Q Uh-huh?

7 A And, uh, he took me over to the -- over to the
8 Courthouse for the Bond Reduction where I had the papers and
9 stuff there and, uh, they didn't give me a Bond Reduction,
10 they give me a Preliminary Hearing.

11 And I thought that was wrong because they have days that
12 they do Preliminary Hearings.

13 Q Uh-huh?

14 A But this was a General Sessions Court going on and they
15 give me the -- a -- a Preliminary Hearing after they sent the
16 Jury out---

17 Q Uh-huh?

18 A ---and give me a Preliminary Hearing. And, uh, I feel
19 that that was wrong.

20 And that's where I had to remind Mr. Beach that hey,
21 well I mean, I thought I came over here to get a Bond
22 Reduction.

23 Q Uh-huh?

24 A And that's when he talked to the Judge a- -- about
25 giving me a Bond Reduction, you know, because I'm a citizen

1 of Colleton County all my life. You know, I want to get out
2 to be with my Mom and them so... You know, Mom's a elder --
3 elderly lady.

4 And, uh, the Judge asked how long was I locked up. And,
5 uh, they told the Judge -- Mr. Beach and the Solicitor --
6 told the Judge I was locked up May the 20th. And the
7 Judge said, well -- at that time it was almost June -- and,
8 uh, the Judge said well, he -- he haven't been locked
9 up thirty-eight -- thirty days yet so, uh, I think he can
10 make Bond.

11 And I say, Mr. Beach, I says, he got it wrong. I say, I
12 mean I been lock up months and now it's almost June. He say,
13 well I'll come over to the jail and talk to you.

14 I say you need a Motion for -- you know, the case to be
15 dismissed. But he did not; he say, I'll be over there to
16 talk to you.

17 What I want to add, when he put the, uh, arresting
18 officer on the stand---

19 Q Uh-huh?

20 A ---and he asked her, uh, do you have any evidence on my
21 client? Like that -- and the lady said, no, she don't have
22 no evidence.

23 You mean you don't have a video or a recorder --
24 anything that link my client to this case? And the lady said
25 no, she don't have no evidence.

1 So I say, Mr. Beach, put a Motion for the case should be
2 dismissed. And he say, well, I be over there to the County
3 Jail to talk to you. But, I never saw him there.

4 Q Is there anything else you'd like to tell The Court?

5 A There's so much. Uh -- well I just have some -- a
6 couple documents right there that you sent me that he did not
7 file for a Motion of Discovery.

8 And I have, uh -- the other attorney that I had,
9 Ms., uh -- uh, Bennett -- Ms. Tracy Bennett -- she came up
10 and saw me and bring down all of my paperwork, uh, through,
11 uh -- my file---

12 Q Uh-huh.

13 A ---from the Public Defender's Office and, uh, I have --
14 she told me to read through this stuff very carefully and it
15 was very important stuff in there.

16 Q Uh-huh.

17 A And I did; and after I read through the transcript two
18 times, I found out that I have pages missing in the
19 transcript.

20 Q Uh-huh.

21 A From page sixteen and page twenty---

22 Q Uh-huh.

23 A ---and the Court Reporter page is missing in my
24 transcript. I never -- I never find that. So I don't know,
25 I mean I want to know why those pages are missing.

1 Q I -- I don't know.

2 MR. BRYAN: Uh -- no further questions of this witness,
3 Your Honor.

4 THE COURT: Mr. Friedman?

5 MR. FRIEDMAN: Thank you, Your Honor.

6 STANLEY LINDER, CROSS-EXAMINATION BY MR. FRIEDMAN:

7 Q Mr. Linder, you plead guilty, is that right?

8 A Yes, sir.

9 Q Uh -- do you recall -- do you recall telling the, uh,
10 plea Judge that you understood the nature of the charges and
11 the possible punishment?

12 A Well, I had to because if I wouldn't he said he
13 wouldn't -- the Judge would not take the plea and he'd give
14 me a jury trial and I'd get found guilty and I'd get thirty
15 years or life if I -- if I would, you know, go.

16 Because he came to the County Jail and went over what
17 the Judge gonna ask you. And he say you gonna have to say,
18 you know -- he tell me what I need to say or he could -- the
19 Judge would not take any plea.

20 Q Uh -- you also told The Court that you understood your
21 Constitutional Rights including your right to a jury trial?
22 Do you remember that?

23 A I had to do that from -- from what my lawyer told me.

24 Q All right. You told The Court that no one had
25 threatened you or promised you anything to get you to

1 plead guilty?

2 A Yeah, he -- he went over the case with me; what the
3 Judge gonna ask me and he told me what to say.

4 Q Um -- do you remember telling The Court that you were
5 satisfied with your attorney?

6 A Same thing.

7 Q Uh -- you also told The Court that you were pleading
8 guilty of your own free will; is that right?

9 A I had to.

10 Q Uh -- do you remember that the Solicitor gave a
11 recitation of the facts? Put it on the record all the
12 allegations against you? Do you remember that?

13 A Not really.

14 Q Solicitor Thornton put all the allegations on the -- on
15 the record and The Court asked you if you agreed with
16 everything that he said? Do you remember that?

17 A I remember that, but I remember also the, uh --
18 Mr. Thornton told the Judge that Mr. Davis was the one that
19 did the crime. He said it wasn't me. I mean, it's in my
20 transcript what -- that's what my other attorney told me
21 what -- that's what one of the pages was saying. That
22 Mr. Davis was the one that done the crime.

23 And after they took samples and sent it to a D-N-A it
24 came back me. So how in the world can it come back me if
25 Mr. Davis done it?

1 Q You remember addressing The Court, um, and saying that
2 you were sorry that this happened? You addressed The Court
3 during your plea hearing?

4 A I remember that.

5 Q All right; do you understand that if you're successful
6 at this P-C-R hearing today that, um, all these charges are
7 back on the table and there's no guarantee about what your
8 sentence would be if you go to trial or plead guilty?

9 A Yes.

10 Q You could possibly get more time than you have now?

11 A Yes.

12 Q Okay.

13 MR. FRIEDMAN: I have nothing further, Your Honor.

14 THE COURT: Mr. Bryan?

15 MR. BRYAN: No more questions for Mr. Linder.

16 THE COURT: All right, sir, you may step down; thank
17 you.

18 MR. LINDER: Okay; thank you, sir.

19 (WHEREUPON, WITNESS STEPPED DOWN.)

20 THE COURT: Do you have any other witnesses Mr. Bryan?

21 MR. BRYAN: Not -- not of -- no; no, Your Honor.

22 THE COURT: All right; Mr. Friedman?

23 MR. FRIEDMAN: Thank you, Your Honor; The State would
24 call Harris Beach to the stand.

25 THE COURT: Mr. Beach, if you'd come around?

1 (WHEREUPON, WITNESS CAME FORWARD.)

2 THE COURT: And I'll just remind you, I've already
3 placed you under oath once but I remind you you're still
4 under oath; okay?

5 MR. BEACH: Thank you, Your Honor.

6 HARRIS BEACH, DIRECT EXAMINATION BY MR. FRIEDMAN:

7 Q Mr. Beach, were you appointed or retained on this case?

8 A Appointed.

9 Q Now, the Applicant testified that he met with you four
10 times in eleven months. Do you remember how many times you
11 met with him?

12 A I believe I met with him about six times.

13 Q Do you recall if you discussed the elements of the
14 charges and what The State was required to prove?

15 A Yes, sir; I did.

16 Q Did you discuss potential defenses with him?

17 A Yes, sir.

18 Q Um -- do you recall if you made any Rule 5, uh,
19 discovery requests in this case?

20 A We made, uh -- in- -- initially, uh, we filed for
21 discovery and, uh, filed a -- a Rule 5 Motion.

22 Q Did you obtain those materials?

23 A Yes, sir.

24 Q Did you review them with the Applicant?

25 A Yes, sir.

1 Q Did you see any problems with any of the Indictments in
2 this case?

3 A No, sir; we reviewed all the Indictments and didn't find
4 any problem with them.

5 Q Could you briefly characterize The State's evidence in
6 this case?

7 A The, uh, State, uh, filed, um, a, um, Motion, uh -- The
8 State had Indictments also, and, uh, they filed the standard,
9 uh, Motions. Uh -- we did not find any, uh, application --
10 uh, we didn't find any problems with their -- with their
11 applications. (Sic)

12 Q Do you recall if the victims in this case were the
13 Applicant's, uh, children?

14 A The Applicant, uh, was, uh -- uh -- was the father of
15 the, uh, children.

16 Q Did you have any discussions about, um, if those victims
17 would have to testify at trial if he decided to go to trial?

18 A The, uh, Applicant's, uh, were, uh, the, uh...

19 (After long pause) I'm sorry; the, uh -- the
20 Applicant's, uh, were, uh, related to the, um, uh, the
21 Defendant. (Sic)

22 Q Were there ever any plea offers in this case?

23 A Uh -- yes, there -- there were plea offers. Um...

24 (After long pause) Yes, there -- there were, uh, plea
25 offers.

1 Q Do you recall -- do you recall what those offers were?

2 A The offers, uh, were, um...

3 (After long pause) I'm -- I'm sorry; uh, the -- the
4 offers were, uh -- uh, to, uh, plead, um, and, um, they were
5 to plead guilty, uh, and, um...

6 MR. BEACH: (After long pause) I'm sorry, Your Honor,
7 I -- I'm -- I'm -- I apologize. Uh -- um, um...

8 A We -- they -- they -- the offers were to plead, um,
9 guilty, uh, and, uh...

10 Q If you can't find it, it's okay; I'll move on.

11 MR. BEACH: I'm sorry, Your Honor.

12 THE COURT: Are you okay, Mr. Beach?

13 MR. BEACH: I, uh -- I'm sorry, Your Honor.

14 THE COURT: Are you okay?

15 MR. BEACH: Yes---

16 THE COURT: Okay.

17 MR. BEACH: ---yes, sir.

18 Q The Applicant ended up, uh, pleading in a direct nature
19 in negotiation; is that what you remember?

20 A That's correct; Your Honor.

21 Q Did you explain to him the possible sentencing ranges
22 for these offenses?

23 A Yes, sir; I did.

24 Q Whose decision was it to plead guilty?

25 A His decision, Your Honor.

1 Q Do you recall if you ever told him that, uh, if he went
2 to trial he'd get thirty years to life?

3 A No.

4 Q Did he ever indicate that he wanted to go to trial?

5 A No.

6 MR. FRIEDMAN: I have nothing further, Your Honor.

7 THE COURT: Mr. Bryan?

8 MR. BRYAN: Uh, just a couple of things, Your Honor.

9 HARRIS BEACH, CROSS-EXAMINATION BY MR. BRYAN:

10 Q Uh -- Mr. Beach, did you move to quash the Indictments?

11 A No, I did not.

12 Q Uh -- (after pause) I'm gonna show you a letter. Do you
13 recognize your signature, Mr. Beach?

14 A Yes, I do.

15 Q Um -- did you write that letter?

16 A I believe I did.

17 Q What's it say?

18 A It, uh, said, Dear Mr. Linder, uh, I am in, uh, receipt
19 of, uh, your...

20 MR. BEACH: Excuse me, Your Honor, I've, uh, I...

21 A Uh -- I am in receipt of, uh, your...

22 (After pause) I am in receipt of your, um, letter...

23 MR. BRYAN: (After pause) Well, I can just move to
24 introduce and let the letter---

25 THE COURT: Let me see the letter, Mr. Beach.

1 MR. BEACH: Yes, sir; I'm sorry.

2 (WHEREUPON, LETTER HANDED TO THE COURT.)

3 THE COURT: All right, let's take about a five-minute
4 break, all right?

5 MR. BRYAN: Yes, sir.

6 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
7 CONFERENCE, OFF THE RECORD.)

8 (WHEREUPON, COURT RESUMED.)

9 (WHEREUPON, COURT RECESSED AT 12:47 P.M.)

10 (WHEREUPON, COURT RESUMED AT 12:49 P.M.)

11 (WHEREUPON, APPLICANT'S EXHIBIT NUMBER 1 WAS MARKED FOR
12 IDENTIFICATION.)

13 MR. BRYAN: The Applicant would move to introduce this
14 letter.

15 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
16 CONFERENCE, OFF THE RECORD.)

17 (WHEREUPON, COURT RESUMED.)

18 MR. BRYAN: And I've already shown it to---

19 MR. FRIEDMAN: I have no objection, Your Honor.

20 THE COURT: Mr. Beach, you ready to continue?

21 MR. BEACH: Yes, sir.

22 THE COURT: All right, let me see the letter again,
23 Mr. Bryan, please.

24 (WHEREUPON, LETTER HANDED TO THE COURT.)

25 THE COURT: Okay.

1 (WHEREUPON, APPLICANT'S EXHIBIT NUMBER 1 WAS ADMITTED
2 INTO EVIDENCE.)

3 MR. BRYAN: Um, I guess -- The Court's already seen that
4 so it's into evidence; right?

5 THE COURT: (Nod.)

6 MR. BRYAN: Okay.

7 THE COURT: Yes, sir; it's admitted without objection.

8 MR. BRYAN: And we'd move, um -- basically we're --
9 we're done, Your Honor.

10 THE COURT: All right, anything else Mr. Friedman?

11 MR. FRIEDMAN: No, Your Honor.

12 THE COURT: All right Mr. Beach, you may step down;
13 thank you.

14 MR. BEACH: Thank you, Your Honor.

15 THE COURT: All right, anything further Mr. Bryan?

16 MR. BRYAN: I would like a little bit of argument, Your
17 Honor.

18 THE COURT: All right; yes, sir.

19 MR. BRYAN: We uh -- I think once you look at all the
20 evidence, the transcript, hear the testimony of what happened
21 on this date, it's just -- just a tragic misunderstanding.

22 This man's in prison for what he should -- well, and he
23 wouldn't be if he had had a constitutionally proficient level
24 of Counsel representing him during the course of all these
25 proceedings.

1 He is in jail, unable to interview witnesses, unable to
2 do this, unable to do that because he's locked up. He's got
3 a Public Defender right across the street; comes to visit him
4 four time a year according to my client, six times a year
5 according to the Public Defender whose credibility may be
6 questioned because he testified today that he filed Brady's
7 Rule 5 Motions and here's the letter he sent to my client
8 saying that no motions were filed in this case, Your Honor.

9 And I think once you look in -- look at the evidence and
10 the context that everything -- the cumulative effect of all
11 these errors leads to but one conclusion; that -- that my
12 client, when he went through these proceedings and then he
13 went to that guilty plea did not receive effective assistance
14 of Counsel as guaranteed by the United States Constitution.

15 And for this reason and that he would have gone to trial
16 had he known better and that for these reasons his conviction
17 should be set aside.

18 Thank you, Your Honor.

19 **THE COURT:** Thank you, Mr. Bryan. Mr. Friedman?

20 **MR. FRIEDMAN:** Briefly, Your Honor. The State would
21 submit that the Applicant failed to meet his burden showing
22 ineffective assistance of Counsel.

23 Um, Counsel testified that they met six times prior to
24 the guilty plea. Uh -- he testified that he didn't see any
25 problems with the Indictments so there's no need to quash the

1 Indictments.

2 Um -- and he testified that -- that he filed for
3 discovery and reviewed all the evidence, uh, with the
4 Applicant.

5 Uh -- and the record reflects that the plea was entered
6 freely and voluntarily.

7 And, we would ask The Court to, uh, deny and dismiss the
8 Application.

9 THE COURT: All right; thank you. I'll look at it a
10 little bit more in depth and I'll let you know what my
11 decision is.

12 MR. FRIEDMAN: Thank you, Your Honor.

13 THE COURT: Thank you.

14 MR. BRYAN: Thank you, Your Honor.

15 (WHEREUPON, HEARING ENDED AT 12:52 P.M.)

16 *****END OF REQUESTED TRANSCRIPT*****

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STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED VIVIAN H. CROSS, OFFICIAL COURT REPORTER FOR THE NINTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THOSE PROCEEDINGS AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF COMMON PLEAS FOR COLLETON COUNTY, SOUTH CAROLINA, ON THE 21ST DAY OF APRIL 2011.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

FEBRUARY 15, 2012

Vivian H Cross
VIVIAN H. CROSS
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA)
 COUNTY OF COLLETON)
 Stanley Linder, #137337,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 2009-CP-15-830

ORDER OF DISMISSAL

PATRICIA C. GRANT
 COLLETON COUNTY
 COMMON PLEAS
 MAY 13 AM 10:23

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 17, 2009. The Respondent made its Return on February 19, 2010. An evidentiary hearing into the matter was convened on April 21, 2011 at the Colleton County Courthouse. The Applicant was present at the hearing and was represented by J.D. Bryan, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

Applicant testified on his own behalf at the PCR hearing. Applicant's plea counsel, Harris Beach, Esquire, also testified at the hearing. This Court had before it the records of the Colleton County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, the PCR application, Respondent's Return thereto, and a letter from counsel to Applicant.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. The Applicant was indicted at the June 2008 term of the Colleton County Grand Jury for two counts of incest (2008-GS-15-546, 547), two counts of criminal sexual conduct (CSC) - 3rd degree (2008-GS-15-323,

324), and two counts of CSC with a minor – 2nd degree (2008-C.S-15-298, 299). Harris Beach, Esquire, represented the Applicant. On April 1, 2009, the Applicant pled guilty as indicted. The Honorable Edgar W. Dickson sentenced him to confinement for eleven (11) years for each count of CSC with a minor – 2nd degree and ten (10) years for each other offense. The sentences were to run concurrently. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel in that counsel
 - a. Failed to move to have the indictments quashed.
 - b. Failed to file discovery motion.
 - c. Only met with Applicant four (4) times in twelve (12) months.

At the hearing, Applicant alleged ineffective assistance of counsel for failure to quash the indictments. Applicant also alleged that counsel and the investigator told him that he would get thirty (30) years to life if he went to trial.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Applicant testified that he only met with counsel four times during the 11 months he was in jail. He asserted that counsel failed to file a discovery motion. He contended that he wanted

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T-102 P.035/041 F-000

to go to trial, but counsel and his investigator told him he would get thirty (30) years to life at trial. Applicant testified that counsel failed to move to quash the indictments. He asserted that the witnesses were not there on the day of trial, but counsel told him that the victims were there.

Plea counsel testified that he met with Applicant about six times prior to the plea hearing. He testified that there were no problems with the indictments. Counsel testified that he filed for discovery and reviewed the materials with Applicant. He testified that he did not tell Applicant that he would get thirty (30) years to life if he went to trial. Counsel asserted that it was Applicant's decision to plead guilty after counsel informed him of the consequences of the plea and the sentencing ranges for the offenses.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry, 386 S.E.2d 624.

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel.

First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." *Id.* at 625 (citing *Strickland*, 466 U.S. 668). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 625. When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. *Boykin v. Alabama*, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); *Dover v. State*, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. *Anderson v. State*, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing *Harres v. Leeke*, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. *Roscoe*, 345 S.C. at 20, 546 S.E.2d at 419 (citations omitted).

This Court finds that counsel's testimony was credible. This Court finds that counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to

prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof.

The record reflects that Applicant understood the nature of the charges and the possible punishments. At the plea hearing, he indicated that he was satisfied with counsel and that no one threatened him or promised him anything to get him to plead guilty. He told the court that he was pleading guilty of his own free will. He also agreed with the State's version of the facts and apologized to the Court. This Court finds that Applicant's plea was entered voluntarily and intelligently with a full understanding of the consequences. This Court finds that it was Applicant's decision to plead guilty.

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with Applicant, reviewed the discovery with him, conducted a proper investigation, and was thoroughly competent in his representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that counsel was not ineffective for failing to move to quash the indictments. Counsel testified that there were no problems with the indictments. This Court finds that Applicant fully understood the nature of the charges against him. "[A]n indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily

understood." State v. Tumbleston, 376 S.C. 90, 98, 654 S.E.2d 849, 853 (S.C. Ct. App. 2007) (citations omitted). Here, the indictments outline the nature of the offenses in plain language. The Applicant was on notice of the charges against him. Counsel and Applicant sufficiently discussed the elements of each charge, and counsel believed that Applicant understood the nature of the offenses.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in his representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by plea counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, including unlawful sentence and prosecutorial misconduct, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and

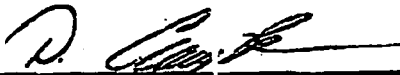
sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 9th day of July, 2011.



 D. Craig Brown
 Presiding Judge
 14th Judicial Circuit

Florence, South Carolina.

STATE OF SOUTH CAROLINA)
 COUNTY OF COLLETON) IN THE COURT OF (Select one.)
) COMMON PLEAS FAMILY COURT
) 14TH JUDICIAL CIRCUIT
 STANLEY LINDER #137337,) CASE NO.: 2009-CP-15-830
 Plaintiff(s),) APPOINTMENT OF COUNSEL OR GAL
 -vs-) (Select one.)
 STATE OF SOUTH CAROLINA,) ORDER
 Defendant(s).) AMENDED ORDER.

TYPE OF CASE/PROCEEDING: (Check one.)

- | | | |
|--|--|--|
| <input checked="" type="checkbox"/> Post-Conviction Relief (PCR)/habeas case | <input type="checkbox"/> Adoption | <input type="checkbox"/> Juvenile |
| <input type="checkbox"/> SVP case | <input type="checkbox"/> Custody and/or Visitation | <input type="checkbox"/> Abuse and Neglect |
| <input type="checkbox"/> Minor Name Change | <input type="checkbox"/> Other: | |

It appears that STANLEY LINDER, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on: _____
- counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- court appointed counsel has obtained _____, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- Other:

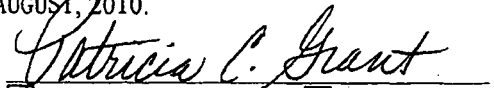
Therefore, it is ordered that JOHN D BRYAN, P O BOX 1111, WALTERBORO SC 29488,

counsel lead counsel (if capital PCR case) guardian ad litem
 hereby is appointed as (Select one.)
 for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that _____, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED THIS 13TH DAY OF AUGUST, 2010.


 Circuit Judge Clerk of Court

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.secid.sc.gov and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

WITNESSES

A. Stallings, CCSO ✓

ARREST WARRANT NUMBER -

71429

March 21, 2008

ACTION OF GRAND JURY

True Bill

Jacqueline Callender

Foreperson of Grand Jury

Date: *6/12/2008*

INDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008-GS-15-0298

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

June, Term 2008

THE STATE

vs.

Stanley Linder

Indictment for

Sex / Criminal sexual conduct with minor -
victim under 16 years of age- Second Degree

SC Code: 16-03-0655(B)(2)

CDR Code:0397

COLLETON COUNTY
2008 JUN 13 AM 8:18

Stanley Linder

STATE OF SOUTH CAROLINA)
)
COUNTY OF Colleton)

INDICTMENT

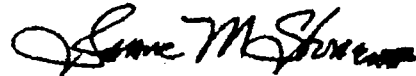
2008-GS-15-0298

At a Court of General Sessions, convened on June 12th, 2008, the Grand Jurors of Colleton County present upon their oath:

Sex / Criminal sexual conduct with minor – victim under 16 years of age - Second Degree

That in Colleton County, South Carolina, between January 1, 2001 and December 31, 2002, the Defendant, Stanley Linder, did commit a sexual battery upon a minor who was less than sixteen (16) years of age, to wit: Defendant did sexually assault the victim, MINOR CHILD date of birth January 3, 1986, by orally penetrating the Victim's vagina, and the Defendant was older than the victim and was in position of familial, custodial, or official authority to coerce the victim to submit; in violation of Section 16-3-655(2), S.C. 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.



Isaac M. Stone
Solicitor

WITNESSES

A. Stallings, CCSO ✓

ARREST WARRANT NUMBER

71430

March 21, 2008

ACTION OF GRAND JURY

True Bill

Jaqueline Callender

Foreperson of Grand Jury
Date: *6/12/2008*

INDICT

Foreperson of Petit Jury
Date:

INDICT

DOCKET NO. 2008-GS-15-0299

The State of South Carolina

County of Colleton

FILED
2008 JUN 13 AM 8:10

COURT OF GENERAL SESSIONS

June, Term 2008

THE STATE

vs.

Stanley Linder

Indictment for

Sex / Criminal sexual conduct with minor -
victim under 16 years of age- Second Degree

SC Code: 16-03-0655(B)(2)
CDR Code:0397

Jaqueline Callender

STATE OF SOUTH CAROLINA)
)
COUNTY OF Colleton)

INDICTMENT

2008-GS-15-0299

At a Court of General Sessions, convened on June 12th, 2008, the Grand Jurors of Colleton County present upon their oath:

Sex / Criminal sexual conduct with minor - victim under 16 years of age- Second Degree

That in Colleton County, South Carolina, between January 1, 2001 through December 31, 2002, the Defendant, Stanley Linder, did commit a sexual battery upon a minor less than sixteen (16) years of age, to wit: Defendant did sexually assault the victim, MINOR CHILD date of birth January 3, 1986, by digitally penetrating her vagina, and the Defendant was older than the victim or was in position of familial, custodial, or official authority to coerce the victim to submit; in violation of Section 16-3-655(2), S.C. 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.



Isaac M. Stone
Solicitor

WITNESSES

A. Stallings, CCSO ✓

DOCKET NO. 2008-GS-15-0323

The State of South Carolina
County of Colleton

2008 JUN 13 AM 8:18
GENERAL SESSIONS

COURT OF GENERAL SESSIONS

June, Term 2008

ARREST WARRANT NUMBER

71561

March 27, 2008

ACTION OF GRAND JURY

TRU Bill

Jacqueline Callender

Foreperson of Grand Jury

Date: *6/12/2008*

THE STATE

vs.

Stanley Linder

VERDICT

Indictment for

Sex / Criminal sexual conduct - Third degree

SC Code: 16-03-0654

CDR Code: 0162

Foreperson of Petit Jury

Date:

INDICT

Handwritten signature/initials

WITNESSES

A. Stallings, CCSO ✓

ARREST WARRANT NUMBER

J 1562

March 27, 2008

ACTION OF GRAND JURY

TRUE BILL

Jacqueline Callender

Foreperson of Grand Jury
Date: 06/12/08

INDICT

Foreperson of Petit Jury
Date:

INDICT

DOCKET NO. 2008-GS-15-0324

The State of South Carolina
County of COLLETON

COLLETON COUNTY
2008 JUN 13 AM 8:18

COURT OF GENERAL SESSIONS

June, Term 2008

THE STATE

vs.

Stanley Linder

Indictment for

Sex / Criminal sexual conduct - Third degree

SC Code: 16-03-0654
CDR Code:0162

Handwritten signature/initials

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

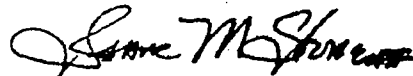
INDICTMENT
2008-GS-15-0324

At a Court of General Sessions, convened on June 12th, 2008, the Grand Jurors of Colleton County present upon their oath:

Sex / Criminal sexual conduct - Third degree

That in Colleton County, South Carolina, on or about December 20, 2007 through January 25, 2008, the Defendant, Stanley Linder, did commit a sexual battery upon the victim, MINOR CHILD with knowledge or reason to have knowledge that the victim was mentally defective, mentally incapacitated or physically helpless where aggravated force or aggravated coercion was not used, to wit: Defendant did sexually assault the victim by penile penetration into the victim's rectal area; all in violation of Section 16-03-654, Code of Laws of South Carolina, (1976, as amended).

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



Isaac M. Stone
Solicitor

WITNESSES

A. Stallings, CCSO ✓

ARREST WARRANT NUMBER

DL-0480

0,0

ACTION OF GRAND JURY

TRUE BILL

Angeline Callender

Foreperson of Grand Jury
Date: 06/12/08

INDICT

Foreperson of Petit Jury
Date:

INDICT

DOCKET NO. 2008-GS-15-0546

The State of South Carolina

County of Colleton

2008 JUN 13 AM 8:25

COURT OF GENERAL SESSIONS

June, Term 2008

THE STATE

vs.

Stanley Linder

Indictment for

Sex / Incest

SC Code: 16-15-0020
CDR Code:0090

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STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

INDICTMENT

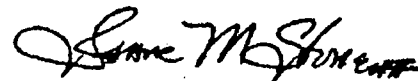
2008-GS-15-0546

At a Court of General Sessions, convened on June 12, 2008, the Grand Jurors of Colleton County present upon their oath:

Sex / Incest

That in Colleton County, South Carolina, between the dates of January 1, 2001 and December 31, 2002, the Defendant, Stanley Linder, did have carnal intercourse with his daughter, MINOR CHILD in violation of Section 16-15-0020, S.C. 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.



Isaac M. Stone
Solicitor

WITNESSES

A. Stallings, CCSO ✓

ARREST WARRANT NUMBER

CC-0481

ACTION OF GRAND JURY

True Bill

Jacqueline Callender

Foreperson of Grand Jury

Date: *6/12/2008*

INDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008-GS-15-0547

The State of South Carolina

County of Colleton

2008 JUN 13 AM 8:25

COURT OF GENERAL SESSIONS

June, Term 2008

THE STATE

VS.

Stanley Linder

Indictment for

Sex / Incest

SC Code: 16-15-0020

CDR Code:0090

Stanley Linder

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

INDICTMENT

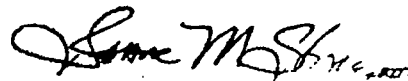
2008-GS-15-0547

At a Court of General Sessions, convened on June 12, 2008, the Grand Jurors of Colleton County present upon their oath:

Sex / Incest

That in Colleton County, South Carolina, between the dates of December 20, 2007 and January 25, 2008, the Defendant, Stanley Linder, did have carnal intercourse with his daughter, MINOR CHILD in violation of Section 16-15-0020, S.C. 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.



Isaac M. Stone
Solicitor