

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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Jul 29 2021

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

R. Scott Sprouse, Presiding Judge

Case No. 2021-000416

Seth Fleury,

Petitioner,

vs.

State of South Carolina,

Respondent.

APPENDIX

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ORIGINAL

B E F O R E:

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

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COURT EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Notebook of Photographs	4	
	All exhibits were retained by Greenville County Clerk of Court's Office.		

(WHEREUPON, Court's Exhibit No. 1 was marked for identification only.)

THE CLERK: Your Honor, in the case of 2018-GS-23-2557, The State vs. Seth Aaron Fleury, indicted for assault and battery of high and aggravated nature, pleading to the same. And there's a permit restraining order. And this is a true bill.

Please raise your right hand.

Seth Fleury, after being duly sworn{,}testified as follows:{F}

THE COURT: Okay, Mr. Bondurant, you represent Mr. Fleury in this matter, sir?

MR. BONDURANT: That's correct, Your Honor.

THE COURT: You had the opportunity to discuss with him his Constitutional rights and the consequences of his plea?

MR. BONDURANT: Yes, sir.

THE COURT: It is your understanding that he understands his rights, wishes to waive the same and plead guilty this morning?

MR. BONDURANT: Yes, sir.

THE COURT: Based on your review of the discovery in this matter and your discussions with Mr. Fleury, do you agree with that decision, sir?

MR. BONDURANT: I do, Your Honor.

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Q Mr. Fleury, good morning, sir.

A Good morning.

Q Mr. Fleury, you have a right to a jury trial for charges that are before the court. If you were to a jury trial, The State would have the burden of proving you guilty beyond a reasonable doubt to a jury of your peers. In that proceeding you would not have the burden of proving yourself innocent. Under the Constitution you have a right to remain silent, that is a right against self-incrimination. Now, what that means is you would not have the burden of proving yourself innocent. As a matter of fact, you wouldn't have the burden of doing or saying or proving anything to the jury. The State has the burden of proving each and every element of the offense beyond a reasonable doubt to a jury of 12 your peers.

Now, do know that in that proceeding you, that is if you elected to have a jury trial, then you could take the stand. And you could testify, you could tell the jury your side of the story. You could present evidence and witnesses. You can make motions to protect your rights and interests. You can present legal defenses. You could cross-examine any of the State's

SETH FLEURY-EXAMINATION BY THE COURT

1 witnesses, including those persons who are accusing you of
2 the crime. You also have a right to have this indictment
3 presented to a grand jury for a true bill, which appears
4 has already been done. So, Mr. Fleury, do you understand
5 those rights, sir?

6 A Yes, sir.

7 Q And understanding those rights, sir, do you wish
8 to waive them?

9 A Yes, sir.

10 Q Sir, you are pleading guilty to assault and
11 battery of a high and aggravated nature, do you understand
12 that you can receive up to 20 years in prison for that
13 offense, sir?

14 A Yes, sir.

15 Q And you understand that that is classified under
16 the law as both a violent and serious offense, sir?

17 A Yes, sir.

18 Q And you understand that because it's violent, it
19 could effect the manner and method whereby you do any
20 potential active period of incarceration and it could
21 effect the calculation of your max out date; do you
22 understand that?

23 A Yes, sir.

24 Q You also realize that because it's classified as
25 serious, it's a strike under the law. So, under the

SETH FLEURY-EXAMINATION BY THE COURT

1 State's three strikes law, if you were at a later date and
2 time to be convicted of two serious offenses or a most
3 serious offense, that you could potentially be subject to
4 a penalty of life without the possibility of parole; do
5 you understand that, sir?

6 A Yes, sir.

7 Q Knowing all of that, sir, how do you wish to
8 plead?

9 A Plead guilty.

10 Q Has anyone forced or threatened or made you
11 plead guilty, sir?

12 A No, sir.

13 Q Are you pleading guilty of your own freewill
14 because you're guilty, sir?

15 A Yes, sir.

16 Q Has anyone promised you anything in exchange for
17 your plea other than a potential recommendation for the
18 sentencing from The State?

19 A No, sir.

20 Q Are you under the influence of any drugs or
21 alcohol today?

22 A No, sir.

23 Q Do you suffer from any mental sickness that
24 would effect your ability to understand and appreciate
25 what we're doing here today?

SETH FLEURY-EXAMINATION BY THE COURT

1 A No, sir.

2 Q Have you had the opportunity to discuss this
3 matter with Mr. Bondurant as much as you need?

4 A Yes, sir.

5 Q Has he answered all your questions, done
6 everything you asked him to do?

7 A Yes, sir.

8 Q Are you satisfied with his services?

9 A Yes, sir.

10 Q Have you understood all of my questions and
11 explanations?

12 A Yes, sir.

13 Q Do you have any questions that you would like to
14 ask me or Mr. Bondurant regarding your rights or this
15 proceeding before we move on?

16 A No, sir.

17 Q All right, you have ten days to appeal the
18 sentence that I hand down in this case.

19 THE COURT: All right, I'll be happy to hear the
20 facts.

21 MS. GARY: Thank you, Your Honor, may it please
22 The Court, Elizabeth Gary on behalf of The State.
23 Your Honor, I'd like to start by handing up what's
24 been marked as Court's Exhibit 1, which Mr. Bondurant
25 has seen. It's a number of photos taken in this

SETH FLEURY-EXAMINATION BY THE COURT

1 case. And the facts are as follows, Your Honor.

2 The Defendant and The Victim, Ms. Kayla Haze,
3 were in a romantic relationship for about 11 months
4 prior to this incident. Kayla was 18, The Defendant
5 was 22. Their relationship was rocky. The Defendant
6 was controlling, jealous and isolated The Victim from
7 family and friends. There were previous incidents of
8 violence that went unreported. The Victim ended the
9 relationship and The Defendant did not accept that
10 the relationship was over. His actions led Ms. Haze
11 to putting him on trespass notice from her home.

12 On October 2, 2017, The Defendant went to The
13 Victim's home in violation of that trespass notice.
14 The Victim called police and Sergeant Penninger with
15 Simpsonville Police Department responded. And
16 Sergeant Penninger is present today. The Defendant
17 was no longer there when Penninger arrived but he
18 spoke to The Defendant on the phone and warned him of
19 the consequences of a future violation.

20 The Victim agreed to meet The Defendant one last
21 time on October 21st, 2017 in the parking lot of
22 Cotton Mill Place condos in Simpsonville which is
23 here in Greenville County. They arrived in separate
24 cars and The Victim got into The Defendant's car to
25 talk. The Defendant had flowers and two cards for

SETH FLEURY-EXAMINATION BY THE COURT

1 The Victim with a message indicating he had not
2 accepted that she had ended the relationship. The
3 Defendant wanted The Victim to leave town with him
4 and she refused, telling him they would never be a
5 couple again.

6 The Defendant became angry and threw the flowers
7 at the victim. She was scared and got into her own
8 car to drive away. The Defendant approached her
9 driver's side door screaming, No, No. He leaned into
10 the door and tried to kiss The Victim who said, No
11 and pulled her head away. When she did, The
12 Defendant bit down on the Victim's bottom lip and
13 tore her bottom lip off. Biting all the way through
14 flesh, muscle and tissue.

15 He then grabbed her out of the car by her hair,
16 threw her onto the ground and left the scene. He
17 never called for medical help for her. A witness in
18 the parking lot who did not see the entire
19 interaction but heard The Victim screaming, Call 911.
20 She immediately identified this Defendant. Her lip
21 was located and she was transported to Greenville
22 Memorial Hospital where she underwent emergency
23 plastic surgery.

24 She has since had multiple surgical procedures
25 and continues to undergo therapy and laser treatment.

SETH FLEURY-EXAMINATION BY THE COURT

1 Her lip was not able to be reattached. She is
2 permanently scared and as Your Honor can see from the
3 first photo I handed up, which was taken of her
4 before the incident, her face is forever changed.

5 Of note to The Court, one of the cards that The
6 Defendant gave to The Victim reads, I believe in
7 kisses that last forever. The Defendant drove to The
8 Victim's house with his mother 30 minutes after the
9 attack. Simpsonville PD was there trying to locate
10 her mother who was out of town. When he arrived he
11 still had blood on his hands. He immediately blamed
12 The Victim saying she pulled away when he tried to
13 quote, Nibble on her lip.

14 The Defendant spent ten days in jail. He made
15 several jail calls, primarily to his mother. A call
16 made on October 25th, 2017, which was reported he
17 said and I quote, She does not have a bottom lip to
18 begin with, end quote. Throughout his jail calls The
19 Defendant exhibited no remorse or sympathy,
20 continuously blaming The Victim, downplaying her
21 injuries and worrying and about his own future.

22 Judge, at trial Dr. Brian Bowland, who is a
23 plastic surgeon who operated on Ms. Haze, would have
24 testified. His expert testimony would have been that
25 as a result of this attack, Ms. Haze only has 30

SETH FLEURY-EXAMINATION BY THE COURT

1 percent range of motion in her mouth. Which will get
2 better, not much better, with therapy. He would have
3 testified that as a result of The Defendant's actions
4 Ms. Haze has a microstomia. Which is a reduction in
5 the size of the mouth opening sever enough to
6 compromise nutrition and quality of life.

7 Dr. Bowland would have characterized it as a very
8 uncommon injury and likened it to a pit bull bite.

9 His expert opinion would have been that this
10 could not have been a nibble made worst by The Victim
11 pulling back as The Defendant has alleged. As that
12 scenario would have resulted in a completely
13 different injury. And while he would not have been
14 able to quantify the amount of force it would take to
15 amputate a lip in this manner, he would have
16 testified to a degree of medical certainty that it
17 necessarily would have had to have been intentional
18 force.

19 And those are the facts that The State
20 would present at trial, Your Honor. And we do have Victim
21 input and officer input as to sentencing at the
22 appropriate time.

23 THE COURT: Okay.

24 Mr. Fleury, you heard those allegation, sir; is
25 that what happened?

SETH FLEURY-EXAMINATION BY THE COURT

1 MR. BONDURANT: Can I comment quickly, Your
2 Honor?

3 THE COURT: Sure.

4 MR. BONDURANT: I think the characterization of
5 some of the relationship things, we would certainly
6 take issue with. But as far as the actual incident
7 itself, as far as the biting her lip, he certainly
8 is here to take responsible for that.

9 THE COURT: Okay, Mr. Fleury, so the substantive
10 issue that I'm concerned with is whether you
11 acknowledge freely and voluntarily that the assault
12 happened?

13 MR. FLEURY: Yes.

14 THE COURT: It did. So you acknowledge that?

15 MR. FLEURY: Yes, sir.

16 THE COURT: Okay. I'll accept the plea, it's
17 been entered freely and voluntarily with the advice
18 of counsel with whom he indicates he's satisfied.
19 And there's a substantial, factual basis for the
20 plea.

21 SENTENCING

22 Ms. Gary, I'll be happy to hear from anyone who
23 needs to address The Court.

24 MS. GARY: Thank you, Your Honor. We'll start
25 with Investigator Keith Morecraft is here from the

SETH FLEURY-EXAMINATION BY THE COURT

1 Simpsonville Police Department.

2 THE COURT: Good morning, sir.

3 INVESTIGATOR MORECRAFT: Good morning, Your
4 Honor. Your Honor, my name is Keith Morecraft, I'm
5 an investigator with the Simpsonville Police
6 Department. I'm making this brief statement on
7 behalf of myself and the other officers who
8 investigated this case. I have been a police officer
9 in South Carolina for 25 years and have spent over 15
10 years in criminal investigations. I've investigated
11 murders, rapes, robberies and stabbings and an
12 assortment of other violent crimes. I've seen some
13 of the most violent things one person can do to
14 another. I say that to explain that I've become
15 callous over the years to the sight, sounds and
16 smells we're exposed to in law enforcement. When I
17 saw what happened to Ms. Haze at the hands of
18 Mr. Fleury in October 2017, it absolutely shocked me.
19 I've never seen such a senseless, ruthless and
20 personal attack on a female in my career.

21 During the investigation that followed the
22 assault, I had the opportunity to meet and speak with
23 both Ms. Haze and Mr. Fleury. As normal course of
24 investigation, I listened to phone calls Mr. Fleury
25 made to family members from jail. At no time

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1 following his arrest did Mr. Fleury show any remorse
2 for Ms. Haze or take any personal responsibility for
3 his actions. Instead of being remorseful and owning
4 his actions, Mr. Fleury placed the blame on Ms. Haze.

5 For the remainder of her life Ms. Haze will have
6 a constant reminder of this assault. Every time
7 Ms. Haze touches her face or walks by a mirror, she
8 will be reminded of Mr. Fleury. I'm sure that the
9 scars left by Mr. Fleury go deep beyond her skin. I
10 respectfully, ask that you consider these facts as
11 you sentence Mr. Fleury today, give Ms. Haze the
12 justice that she deserves.

13 THE COURT: Thank you, sir, I appreciate it.

14 MS. GARY: And, Your Honor, Ms. Kayla Haze and
15 her mom Janie Haze are present and do wish to address
16 Your Honor.

17 JANIE HAZE: Your Honor, my name is Janie Haze,
18 I'm the proud momma of the survivor. Three hundred
19 sixty-one days ago I received the second worst phone
20 call any parent could receive. Your daughter is on
21 the way to the hospital via EMS. She is stable but.
22 October 21st, 2017 flipped our world upside down. I
23 was seven hours away and didn't understand what was
24 going on. I arrived, Kayla was just waking up from
25 surgery. Walking in the hospital room I saw my

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1 daughter stitched up from the left side of her cheek,
2 all the way to the right. Eighty-five percent of her
3 lip was bitten clear off her face. She was no longer
4 able to do simple task such as eating without
5 constant pain. Simple things such as putting a full
6 size fork or spoon in her mouth was not an option.

7 A year later and she is still unable to eat
8 things whole. She has to cut up her food into small
9 portions. Kayla was forced to withdraw from college,
10 she's lost all of her scholarships. It was months
11 before she could return back to work. I continued to
12 lose time off of work to meet all of her doctors
13 appointments. Walking into my daughter's bedroom as
14 she's looking into the mirror with the scars that
15 wrap all the way around her face, with tears funning
16 down is the most heartbreaking thing I've ever
17 witnessed.

18 Daily Kayla fights physically and emotionally.
19 I watch her struggle with getting out of bed every
20 single morning. There have been endless nights of
21 her not being able to sleep due to nightmares and
22 flashbacks of the incident. She struggles with the
23 fear of going places alone. She live in constant
24 fear. Each time she goes in for treatment she's out
25 of work for three to five days as she heals. Each

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1 treatment she leaves the doctor's office with a mask
2 to cover her bloody face.

3 She is facing at least one more surgery to
4 correct the damage done. These monthly visits costs
5 her large amount of lost work. This incident
6 happened at the end of the street with lived on. We
7 were forced to sell our home of 11 years because it
8 was too terrorizing for her to return to the place
9 where the crime happened. Even now this nightmare is
10 nowhere near over. She will continue with more
11 treatments and surgeries. She will never have the
12 huge smile on her face that she once had.

13 Everyone morning when she wakes up, every time
14 she looks at -- takes a picture, every time she looks
15 in the mirror she will be reminded of this terrible
16 day. She will suffer the consequences of his actions
17 for the rest of her life. She will never have full
18 range a motion in her mouth. The scars will forever
19 wrap her face. Kayla has fought for the last year to
20 become a survivor, not a victim. The next girl may
21 not be so lucky. Your Honor, I ask that you punish
22 The Defendant to the fullest allowable by law. Thank
23 you.

24 THE COURT: Thank you, ma'am, I appreciate your
25 being here. And I appreciate you addressing The

SETH FLEURY-EXAMINATION BY THE COURT

1 Court.

2 KAYLA HAZE: Your Honor, I'm Kayla Haze.

3 October 21st, 2017, this was the day a piece of me

4 died. I remember every detail of this very moment.

5 The thoughts that ran through my mind when I opened

6 my camera were very dark. As you can see in those

7 pictures, I took those front view from the pictures.

8 They were very dark which only seemed to worsen.

9 Sitting in a puddle of my own blood with the majority

10 of my lip lying on my let, my whole mouth on fire,

11 confused and terrified, I didn't know how I could

12 ever show my face again. At that point, honestly

13 wishing that those very seconds would just be my

14 last, I wanted to give up for good.

15 I kept replaying what had just happened in my

16 head, from telling Seth I was not going to get back

17 together with him. However, I was there for him to

18 right his wrongs. To getting flowers and cards

19 thrown at the back of my head and quickly get in my

20 car to seeing my legs shake uncontrollably to finally

21 look up seeing him picking everything up. I could

22 not figure out this happened so fast. I couldn't

23 figure out why he was so mad. From putting the items

24 in the passenger seat leading to him trying to kiss

25 me. Of course, as I said before, I wasn't there to

SETH FLEURY-EXAMINATION BY THE COURT

1 get back together with him. I refused and backed up
2 only to feel him latch on to me. Feeling it tear
3 about half way. I then just started screaming at the
4 op of my lungs for help and out of fear for my life.

5 He then yanked me out of my own vehicle and
6 slammed the door in my face so he could take off and
7 run away from what he had just done. He continued to
8 call me once I made it into the ambulance, which felt
9 like a lifetime after having something many women
10 hold precious to them completely mutilated. I just
11 don't understand how you could be filled with such
12 anger. I remember the look of terror on the man's
13 face that just so happened to save my life this day.
14 As well as the sweet elderly lady that had to walk
15 out of her home to see such tragedy occurring but yet
16 was so kind to try to help me and keep me comforted
17 until further help arrived.

18 I remember Officer Randolph coming around the
19 back of the vehicle with Officer Penninger following.
20 I remember Officer Randolph pulling his walkie talkie
21 over the speak into it, saying something along the
22 lines of it being more serious than what he was
23 expecting, my lip being completely severed off and
24 for the EMS to come quick. Then giving me a piece of
25 gauze and trying to assist me to stay calm and find

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1 out the details.

2 I remember being in the ambulance, being told to
3 call my mother. I couldn't bring myself to do it.
4 She was seven hours away on her first vacation she
5 had ever taken without me, how could I ruin it. I
6 then got on the phone with her friend and I remember
7 trying to say he bit me but no one could understand
8 me because my lips couldn't -- physically could not
9 pronounce it. I then blew up into a ball of emotions
10 and gave the phone to the lady behind me, allowing
11 her to explain. I remember just watching out of the
12 back of the window of the EMS, watching the roads and
13 thinking we were never going to make it to the
14 hospital. Again, wishing that these moments would be
15 my last. Still to this day I can't hear or see a
16 ambulance without going into a panic. It brings me
17 right back into this moment.

18 I remember waking up, looking up to my nurse
19 trying to lighten the air around me and making a joke
20 about how at least now I wouldn't have to dress up
21 for Halloween to scare everybody, that I can just go
22 as myself. She chuckled and nodded then proceeded to
23 bring me to get a mask to cover my face so I could
24 leave. That was when it hit me, this was my new
25 reality. What I just woke up from was no joke.

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1 Never a day in my life will I ever wake up living a
2 normal life again.

3 For many months I found myself at blame for what
4 had happened to me. But now I have finally realized
5 that I am not at fault. This happened because I
6 chose not to get back together with someone that I
7 knew didn't deserve me, which he proved once again.
8 I used to be my attacker's property. He manipulated
9 me to the point where I almost lost everything and
10 everyone in my life. The day I walked out of this
11 relationship was one of the best days in my life.
12 Although, that was when he snapped. When he realized
13 he lost all control over me and wasn't gaining it
14 back this day, October 21st, 2017, I truly believe
15 that was what threw him over the edge. He was always
16 great at getting in my head, but this time I no
17 longer allowed it.

18 I grew up in a home with a single mother that
19 always put me before a man so I was very naive when
20 it came to them. I had no idea what abuse was until
21 I physically and emotionally dealt with it first hand
22 from Seth. I was 17 when I began dating Seth Fleury
23 and he was 21. From the very beginning there were
24 many signs that I needed to be long gone but this was
25 my very first serious relationship. Many people

SETH FLEURY-EXAMINATION BY THE COURT

1 asked why I stayed if it was so bad but what they
2 don't know is that it wasn't always bad. We had some
3 very good times because when he was good, he was
4 great. But when he was bad, he became my nightmare.
5 Think about it, some of you may have a daughter or
6 used to be this girl.

7 As a naive 17 year-old girl who is now with her
8 first boyfriend, who is older and this was her first
9 love and the first one that she thought loved her.
10 Of course, she wanted to pursue him no matter what.
11 I always thought that if you just gave up when it got
12 bad, then that truly means you don't love them. But
13 there comes a point where you don't give up but you
14 have to get out because your life may depend on it.
15 What they also don't know is that many times I tried
16 to get out but when I did, it only got worse for me.
17 But finally, I gained the courage to say I was done
18 and stood firm in my decision.

19 Just like his family, many of times I protected
20 Seth. But this time he has done something that there
21 is absolutely no excuse for and he needs to face the
22 consequences before the next girl faces something
23 worse than what I did. We now are present day,
24 October 18th, 2018. This is a day I should be
25 sitting in a college classroom preparing for a test

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1 or out on the field learning new things. But
2 instead, I am at a courthouse having to explain the
3 impact that someone else's actions had on me.

4 When this happened I was about a month and a
5 half into my first year of college. Now, I am a year
6 behind and should have been only about a year away
7 from being done. Due to having to withdraw, I lost
8 all my scholarships, which will now have to come out
9 of mine and my mother's pockets when I plan to go
10 back. I wanted to attend starting back this semester
11 but due to hearing news of another surgery, there was
12 just no way. When this happened, we had to sell the
13 first home my mother had ever purchased. Where the
14 attack took place was right down the street from our
15 front door. I could not even go back to my own home
16 for weeks because I would begin panicking every time
17 I even saw the street.

18 I was not able to drive for about two months due
19 to being on medicine and then being frightened to
20 really venture out much. I sat in my bedroom
21 constantly scrolling through social media, which only
22 led me comparing myself to everyone on my feeds,
23 which only led to my thoughts worsening. I thought
24 there was no use left for me in this world. Being a
25 young girl is already hard because you have so many

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1 expectation of how you should look. So, you can only
2 imagine how my insecurities sky rocketed once I had a
3 flat face with a scar wrapping from cheek to cheek
4 and was now known as the girl that had her lip bitten
5 off.

6 When I gained the courage to go out, I would
7 constantly have heads turning to stare me down. So,
8 I felt like a monster. I could not even walk out of
9 the house without smothering myself in makeup or
10 being in fear that I would see him. This has
11 effected my day-to-day living. It took me many
12 months to finally be able to open my mouth wide
13 enough to put a regular sized small fork or spoon in
14 my mouth. I was having to use little plastic ones
15 that were smaller than the ones that babies use. I
16 could not and still cannot bite off of food. I first
17 have to tear everything in bits.

18 About a month or so after this happened, my mom
19 came home to check on me on her lunch break. I was
20 asleep so she just laid next to me. She began having
21 to shake me to wake me. I was screaming and crying
22 in my sleep because I was having a nightmares that my
23 attacker was coming after me once again. But that
24 wasn't the end of it, I still have them to this day.
25 My biggest fear is that he will get his hands on me

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1 again and next time I will not be here for you to
2 hear my voice. I used to dream of having a big
3 family and having little babies, as most do. As of
4 now, I am completely against this. I no longer want
5 kids because I feel like bringing them into this
6 world would be putting them into danger. If Seth
7 could flip like a switch because I refused a kiss,
8 then imagine what he would do if he ran into me or my
9 family again. I have seen videos and pictures of
10 Seth on the internet showing off his ankle monitor as
11 if it is a joke and having a grand old time. But
12 this is no joke. This is my reality, this is my
13 life, my emotions and everyone else around me that
14 has had to make arrangements to switch things up so I
15 can feel as comforted as possible that he has
16 effected with absolutely no remorse.

17 Before this happened, when I was upset, I would
18 stare into the mirror until I could force a smile on
19 my face. Now, I cannot even do so and I never will
20 be able to again. I was told to not post anything
21 about being happy or what I was doing but, Your
22 Honor, Seth Fleury has taken enough of my happiness.
23 I cannot allow him to keep taking it or I will never
24 live the life that I was meant to. No one
25 understands how everyday is a struggle to get up and

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1 go about my days. But if I sit down and let this
2 defeat me, then he will only get more satisfaction
3 out of what he has done. So, I just ask that the
4 focus today is on what he has done and may end up
5 doing if he does not face the consequences. And not
6 at how far I have come or what I have had to do to
7 overcome what he has done to me.

8 Your Honor, I could honestly keep going on about
9 how much this has changed my life but I am going to
10 leave it at this. I know you will do what you
11 believe is best. Thank you, Your Honor, for hearing
12 my voice. I will continue to stay kind, stay strong
13 and I will rise above this. Kayla Haze, no longer a
14 victim but a survivor. Thank you for hearing me.

15 THE COURT: Yes, ma'am. Ms. Haze, thank you for
16 addressing The Court and I'm sorry this happened to
17 you. I honestly extend my personal condolences. I'm
18 sorry this happened to you. But you obviously are a
19 very strong young lady.

20 KAYLA HAZE: I will not let this defeat me.

21 THE COURT: You won't, I feel strongly about
22 that. I don't want you to -- I know that you said at
23 one point that you questioned your own conduct and
24 your own actions but you're not to blame for this,
25 okay.

SETH FLEURY-EXAMINATION BY THE COURT

1 KAYLA HAZE: Thank you.

2 THE COURT: Thank you for being here today.

3 KAYLA HAZE: Yes, sir, thank you.

4 THE COURT: All right, anything further from The
5 State?

6 MS. GARY: Yes, sir, very briefly. As to
7 sentencing, Judge, Mr. Fleury does have a 2016 public
8 intoxication on his record. There is no greed upon
9 recommendation this morning, Judge. Of course, The
10 State is asking for a permanent restraining order for
11 Ms. Haze. Which I trust has been explained to
12 Mr. Fleury and his family. Judge, Mr. Fleury spent
13 ten days in jail on this charge. He has been out on
14 GPS monitoring with red zones around Ms. Haze for 352
15 days. It would be The State's position that he's not
16 entitled to credit for that time pursuant to South
17 Carolina Code Subsection 24-13-40, which, of course,
18 Your Honor knows affords Your Honor discretion to
19 award credit for time spent on monitored house
20 arrest. I personally confirmed with the home
21 detention folks, he has not been on house arrest.
22 So, we would object to his receiving credit for that
23 time.

24 Your Honor, The State initially offered a 15
25 year incarcerated sentence in this case. We felt

SETH FLEURY-EXAMINATION BY THE COURT

1 that was an appropriate concession from the maximum
2 sentence taking into consideration his age and his
3 lack of record but also taking into consideration his
4 actions and Ms. Haze's injuries. And that is the
5 sentence we would ask Your Honor to impose today.

6 THE COURT: Okay.

7 MS. GARY: Thank you, Judge.

8 THE COURT: All right, Mr. Bondurant, be happy
9 to hear from you, sir.

10 MR. BONDURANT: Mr. Fleury would like to start
11 off.

12 THE COURT: Yes, sir, Mr. Fleury.

13 MR. FLEURY: October 21st, 2017 will be a day I
14 never forget. I -- I just -- I never saw that
15 happening, Your Honor. I never intended on doing
16 anything like that. But -- but it happened. I'm
17 here to own up to my mistakes. I want to apologize
18 to the victim. No one should ever have to go through
19 anything like that. Entirely in their whole entire
20 life. I just -- I also want to apologize to her
21 family. Because I've seen what my family has to go
22 through, I can only imagine what her family has to go
23 through. I hope she can heal and I hope she can
24 concur her dreams and she can move on. That's it,
25 Your Honor.

SETH FLEURY-EXAMINATION BY THE COURT

1 THE COURT: Thank you, Mr. Fleury.

2 MR. BONDURANT: Your Honor, there's some who
3 would like to speak on behalf of Mr. Fleury.

4 THE COURT: Yes, sir.

5 Just please identify yourself before you begin
6 to address The Court so the court reporter can take
7 it down.

8 MS. BANKS: Hi, my name is Amy Banks, I'm Seth's
9 mother.

10 THE COURT: Yes, ma'am, good morning.

11 MS. BANKS: Seth is my first born son. Seth has
12 always been known as fun, loving Seth. Spontaneous,
13 always puts a smile peoples face. Seth has always
14 been involved in church. He went to Standing Springs
15 Baptist in Taylors.

16 (Ms. Banks is crying, unable to understand what
17 she's saying.)

18 I never had a problem with his behavior much
19 less any violent behaviors at all. He grew up in a
20 broken family but his father and I have fought so
21 hard to make sure he had a relationship with both of
22 us. He would just spend any time with either one of
23 us. Scott and I both have worked so hard on that so
24 he would have both parents.

25 Your Honor, he grew up between a split family

SETH FLEURY-EXAMINATION BY THE COURT

1 with five sisters and one brother. Not one time has
2 he shown any aggression towards any of the kids, much
3 less me or anybody. This is not his character, Your
4 Honor. I have known him for 23 years. Out of all my
5 kids, this is not his character. The Seth I know is
6 the Seth that drove four and a half hours to give
7 someone their keys who locked their keys in their car
8 so they wouldn't have to spend money on a locksmith.
9 The Seth I know is the one that went on to numerous
10 mission trips with the church to help others in need.
11 The Seth that I know in middle school was adamant
12 about going to a birthday during his dad's weekend,
13 his dad tried to talk him out of it but was adamant
14 that he go to this birthday party. Upon arriving at
15 the birthday party there was no kids there. After
16 the birthday party, my ex goes and picks Seth up and
17 the mother came out crying because Seth was adamant
18 about going to this birthday party because this kid
19 had special needs. Seth wanted to make sure someone
20 was there for that birthday party. You see that is
21 the character of Seth that I've known growing up. I
22 have never seen this part of Seth at all. Ever. Nor
23 has it been brought to my attention.

24 I am his mother, I love him unconditionally like
25 any parent in this room loves their kids. And I have

SETH FLEURY-EXAMINATION BY THE COURT

1 to say, for the past year, I have run this through my
2 head over and over and over and over. And it's just
3 not his character. He's never -- no fights in high
4 school. No fights at parties. No, you know,
5 sisters. I mean, I just -- I just don't understand
6 it. And the family comes to you today to please have
7 mercy. Because this is not his character. This is
8 one single incident that effects both of these people
9 for the rest of their lives.

10 We have prayed for Kayla daily with my mom
11 praying twice a day for her healing. We will miss
12 her laugh. She has the cutest laugh, Your Honor.
13 They spent the majority of their time at my parent's
14 house. Because when Seth graduated Hillcrest High
15 School in 2013, he moved out of my house and lived
16 with my parents because he wanted his siblings to
17 each have their own bedroom. So, the majority of the
18 time they were at my parents house. And, you know,
19 they were always cooking and doing things. You could
20 hear their laugh, he baby sit her dogs. I mean, we
21 never saw any aggression or any type of violence
22 during that time either when they were in our
23 presence which was 95 percent of time.

24 While Seth was incarcerated with his loving
25 heart that he also has, he was trying to get me to

SETH FLEURY-EXAMINATION BY THE COURT

1 help others in jail by calling people and telling the
2 loved ones that they were okay. By calling, you
3 know, a sister to let the sister know that the man
4 wanted to see his kids for that weekend. I mean,
5 even while he was in jail he was trying to help other
6 people. Seth was in shock when he was in jail. As I
7 was in shock when he was in jail. So, I just take
8 upon you that some of those phone conversations, we
9 were both in shock. We were trying to figure out.
10 Seth didn't know the extent of her injuries while he
11 was in there.

12 That's all I have to say. I'm so sorry. But
13 like I said, this is not Seth's character at all.
14 And I could go on and on about it but that's just a
15 couple of things that come to mind of his character
16 of how he's always reaching out to help other people.

17 THE COURT: Thank you, Ms. Banks, I appreciate
18 your being here. And I appreciate you addressing The
19 Court this morning.

20 MR. COX: Your Honor, my name is Keith Cox, I'm
21 the grandfather of Seth. He lived with us ever since
22 he was 18 years old until now with me and his
23 grandmother. He's always been a loving boy. He's
24 always done what I asked him to do at the house. I
25 got a garage behind my house, a 30x30 garage. Half

SETH FLEURY-EXAMINATION BY THE COURT

1 of it is for my lawn mowers and tillers and stuff
2 like that. The other half I had a chimney put in
3 with a wood stove out there, a television, a couch, a
4 La-Z-Boy. All his friends would come to my house,
5 walk right through my house, go out there in the
6 garage. And one boy that played the guitar, he
7 played the guitar and they would sing. They would
8 watch television, they would eat pizza, they would
9 play games. Kayla was them.

10 His bedroom, he had a television in it. Kayla
11 would come to our house, they would go in his
12 bedroom. The door had to be opened all the time, it
13 could not be shut. The den was right beside of it.
14 We could listen and hear everything they said or done
15 while they were watching television. We never heard
16 anything about aggression or hurting or one thing or
17 another. And I do know that Seth loved Kayla. I
18 don't think he would do anything like that on
19 purpose. He loved that girl. He bought her jewelry,
20 he bought her a cell phone because her momma blocked
21 her cell phone where she couldn't call Seth. Seth
22 bought her a cell phone where she could call him. He
23 bought flowers, he brought candy, he bought stuffed
24 toys, he loved that girl. I just don't think he
25 would do anything at all to hurt her.

SETH FLEURY-EXAMINATION BY THE COURT

1 We love Seth very, very much. And the reason
2 that he went to live with his mother was because he
3 was wearing that monitor on his leg and we lived too
4 close to Kayla and them [verbatim] home. We love
5 him. I've never seen Seth -- he has always tried to
6 help people. He help stopped on the side of the
7 road. Helped people with flat tires. He helped
8 ladies. In high school, he didn't like bullying. He
9 always took up for the kids that got bullied. He was
10 big enough and strong enough to help them out. He
11 was also helping people that was below him. And I
12 just don't see anything that he's done that he done
13 on purpose. I know Seth better than that. Seth has
14 never lied to me. He always been true to me. And I
15 just don't think he done that on purpose because he
16 told me he didn't do it on purpose. I thank The
17 Court to keep that in mind, Your Honor. That's all I
18 got to say for right now.

19 THE COURT: Thank you, Mr. Cox, I appreciate it,
20 sir.

21 THE SISTER: Hi, Your Honor, I am Seth Fleury's
22 little sister. He has never shown and sings of
23 violence or anger. He has always been a fun, caring,
24 outgoing person. Family and friends have always
25 loved his presence because he brings happiness. He

SETH FLEURY-EXAMINATION BY THE COURT

1 hates seeing people upset. He loves to make others
2 happy. He always looks at the bright side of the
3 light. This situation has brought both families
4 great stress and pain. So, with that being said, I
5 don't think -- all will heal and move on. Thank you.

6 THE COURT: Yes, ma'am, thank you for being
7 here, I appreciate it.

8 All right, anyone else?

9 UNIDENTIFIED MALE: Hi, my name is --

10 THE COURT REPORTER: Sir, I can't hear you, I'm
11 sorry.

12 UNIDENTIFIED MALE: I'm -- Mickle, been good
13 friends with Seth for nine years. And every since
14 I've known him, he's always done everything he could
15 possibly do to make everyone's day and time happy.
16 Take them to do whatever they want to do at his own
17 expense, you know, bringing them joy. He always made
18 sure they were happy. I never heard him say anything
19 about hurting anybody. Show any kind of aggression
20 toward anybody in that manner. So, I don't believe
21 he would ever do anything like this on purpose.

22 THE COURT: Okay. Thank you, sir.

23 All right, Mr. Bondurant, anything else?

24 MR. BONDURANT: Thank you, Your Honor. Your
25 Honor, there are -- these first three rows are people

SETH FLEURY-EXAMINATION BY THE COURT

1 here on his behalf. They're family, friends,
2 employers. I also have, Your Honor, at least ten
3 reference letters on his behalf. One from the
4 counselor that he voluntarily sought out on his own
5 after this happened. I'll pass those up to Your
6 Honor.

7 Your Honor, this is obviously extremely sad
8 story for two young people that didn't deserve this
9 and don't deserve this. Their relationship, Your
10 Honor, was one that was typical to a very -- a lot of
11 young relationships, a lot of passion, some jealousy.
12 Probably too much intensity at times. Probably
13 somewhat typical to what a lot of us have experienced
14 as young people and young relationships when you're a
15 teenager or young adult and you sort of look back
16 when you're 25 or 30 and you say, Wow, I took that
17 way too seriously.

18 But it was a -- from everyone I've spoken to
19 Your Honor and as they pointed out, that Seth
20 spent -- they spent the majority of the time,
21 95 percent of the time with Seth and his family. And
22 as you've heard Your Honor, no one has ever seen
23 anything that resembles anything close to this at
24 all. Seth is a loyal, a very loyal person. He's a
25 very generous person. At the same time he's somewhat

SETH FLEURY-EXAMINATION BY THE COURT

1 sensitive, Your Honor. I think they both came into
2 this relationship from broken homes. I think they
3 came with their own weaknesses. But as you've heard,
4 it's been characterized as a fairly normal
5 relationship. From everybody that ever spent time
6 with them for 11 months. They broke up about a month
7 before this happened. And I'd like to address a few
8 important things from the incident itself, Your
9 Honor, to give you a context about what happened.

10 I think it's important that they consensually
11 met that day. Seth takes a little bit issue about
12 how they met and why they met. Seth -- this happened
13 on a Saturday, Your Honor. And the Friday before,
14 Seth signed up for the Navy. He signed up the Navy
15 because he wanted to go out and serve his country.
16 He wanted to make a better life for himself. And
17 somebody at his work texted her and let her know
18 that. So, he got a text asking if he wanted his
19 stuff back. And he said, No, just get rid of it.
20 And she asked to meet with him that night. And they
21 did meet. And everything went well. In fact, she
22 brought pictures of them when they would go on
23 vacations and whatnot and she cried about their
24 relationship together.

25 Then they went their separate ways that night.

SETH FLEURY-EXAMINATION BY THE COURT

1 They both, I think, went out, did a little partying,
2 nothing abnormal. And he woke up about five o'clock
3 in the morning, a text from her wanting to meet
4 again. And so, he met with her at five o'clock that
5 morning. And they met for about 30, 45 minutes and
6 nothing happened. He went home and he said, why
7 don't you go home and get some sleep and then we'll
8 meet up for breakfast. So, this is not someone that
9 was going out of his way to stalk her, to obsess with
10 her in any degree. He had signed up to go to the
11 Navy. He was done.

12 But when he met to meet with her that next
13 morning at eight o'clock, he clearly had some hope
14 that because she had reached out, that they could
15 reunite. And so, he went bought flowers and cards
16 for her. Which I think is an obvious indicator that
17 none of this was ever premeditated. And he brought
18 flowers and cards with the hope that they would
19 reunite. He asked her to go to Charleston because
20 that was one of the places that they would go to get
21 away and have fun. It doesn't make sense if it was
22 premeditated that he would do these things. It was
23 broad daylight. It was in a parking lot in a
24 residence where everybody could see them, big
25 apartment building. It was a mile from her house. I

SETH FLEURY-EXAMINATION BY THE COURT

1 think a few miles from the police station. And so,
2 he went there with every intention that something
3 good could come out of that.

4 Now, I want to be sensitive here, Your Honor,
5 but I think that the context is important here. When
6 he got there and she got in the car with him, he --
7 and he saw that things that weren't going the way
8 that he had hoped, to reunite. He started to get
9 sensitive and frustrated. He felt a bit like he was
10 being toyed with. Because he had been broken up. He
11 clearly decided to go his own way and go to the Navy.
12 He had received texts from her and her new boyfriend
13 that month, taunting him a bit at work. To which he
14 never responded. And so, he was frustrated. He was
15 upset. He didn't understand why she was reaching out
16 again to only turn him away again. And he was
17 frustrated by that.

18 And when she went to get out of the car and go
19 get in the car, he followed her. And he leaned in
20 and he started kissing her. And he said the kissing
21 was consensual. However, at that point, his emotions
22 still running high, he did intentionally decide to
23 bite her. He tells me he did not want to say it
24 today to you because he does not want it to look at
25 all like he's making an excuse for his behavior or

SETH FLEURY-EXAMINATION BY THE COURT

1 that there's any justification for it whatsoever.
2 But I had to understand it personally. I had to
3 understand because it was so out character from
4 everything that's these people have told me,
5 everything that his record shown, everything his
6 employers written, everything his counselor has given
7 me, I had to understand it. And he said, I did want
8 to bite her. I did want to hurt her. I wanted to
9 leave a mark for her boyfriend but I wanted to split
10 her lip. I wanted to bust it, leave a bad mark. And
11 he said when he bit down, she jerked back, scared
12 him, he jerked back and then as we know she was left
13 with a very, very serious injury. And in a split
14 second, both of their lives were changed forever.

15 And unfortunate, as Your Honor knows, that very
16 common in domestic violence cases that biting goes
17 on. And unfortunately for Kayla and for Seth that he
18 bit her in a place that was the most fragile part of
19 the body. Had it been anywhere else on her body, we
20 wouldn't be standing here with her facing serious
21 injury for a very long time. And him being a
22 convicted felon for the rest of his life. But it
23 happened. It happened that way. And he's taken
24 responsibility for that.

25 He also went into shock, Your Honor. I mean, he

SETH FLEURY-EXAMINATION BY THE COURT

1 went into complete shock. As you heard, he's never
2 ever been through anything like this before. Hasn't
3 been anything since and it shocked them. He saw
4 blood and he took off. And he immediately called his
5 mother and said, Oh God, I don't know what happened,
6 I don't know what I just did, what do I do? And she
7 told him you need to go back, you need to go back to
8 the scene. Which he did. He went back right away.

9 And I know there's some issue about his reaction
10 to that but this is a man that's never been in
11 trouble. And he was -- never has hurt anybody like
12 that. And he was in shock. He had also been put on
13 a antidepressant a couple of weeks before that. He
14 suffers from ADD and he was having some depression
15 for the past year. And those drugs are known, some
16 of the common side effects of the drugs the first few
17 weeks, until the physiology of your brain starts to
18 accept the drug, it dampens your emotion in some
19 sense, it makes you a little bit fuzzy.

20 And so, he came back and he was in shock. And
21 if you hear those jail calls, he is -- it's clear
22 that one he did not understand the magnitude of what
23 happened. I think he still thought that her lip was
24 just somewhat cut and separated and that it could be
25 fixed and repaired. The mother even at some point

SETH FLEURY-EXAMINATION BY THE COURT

1 says, I hope she heals. And he tells me he was
2 panicked. He'd never been to jail before. And so,
3 when it did come to light though, Your Honor, that --
4 the consequences of what they were, what have it,
5 from the day I met him, to his counselor, I've told
6 the prosecution this, he's been extremely, extremely
7 remorseful. He's offered to pay. He said, I would
8 send her to the best plastic surgeon from California
9 or wherever, just tell me how much. His therapist
10 has said he's extremely, extremely remorseful.
11 You've heard him. This is not Seth Fleury, what
12 happened.

13 The other -- the other important factors Your
14 Honor that I'd like to point out, he has no prior
15 record. Other than the public intoxication. He's
16 been on GPS for nearly a year without one violation.
17 No history of drug or alcohol abuse. He's got great
18 employment records. You have -- his employers are
19 here. They bumped him up to foreman all the time
20 because of his work ethic. He voluntarily sought
21 counseling on his own, which as Your Honor knows and
22 as I've experienced, is very rare to even get people
23 to comply with mandated counseling but he's done it.
24 If you read that letter, he actually went out of his
25 way when insurance wasn't going through to pay for it

SETH FLEURY-EXAMINATION BY THE COURT

1 on his own. He just said, I'll come in, do whatever,
2 I don't care if insurance covers it or not.

3 Even though I couldn't get this charge reduced.
4 And I couldn't get him an agreeable recommendation,
5 he still wanted to come here today and take
6 responsibility and let Kayla's family move on and get
7 some sort of satisfaction from it. So, Your Honor,
8 he is going to be a convicted felon for the rest of
9 his life. And we just ask that you could just be as
10 lenient as possible. Ask that you consider a very,
11 very long home incarceration sentence. I don't think
12 anything is going to be served by him being in jail.
13 I think he'll be subject at that point to a civil
14 suit as well. I think he'll continue to be the Seth
15 Fleury that everybody here has testified to. But as
16 a convicted felon for the rest of his life. I thank
17 you for your indulgence, Your Honor.

18 THE COURT: Okay.

19 All right, ladies and gentlemen, thank you all
20 for being here today. I do appreciate all of your
21 comments. I do want to say, again, I extend my
22 personal condolences to everybody. Most importantly,
23 young Ms. Haze and your family. I know this is
24 something that is going to take a long time to heal.

25 And I say to, Mr. Fleury's family too, I

SETH FLEURY-EXAMINATION BY THE COURT

1 recognize that y'all are victimized by this as well
2 because y'all didn't do anything to deserve this
3 either. And I'm sorry that you're having to go
4 through it as well. I understand and I believe
5 everything that you've said. And, Mr. Fleury, here
6 to now, in his life has been an exceptionally young
7 man. And I don't doubt one bit that he is a fine
8 young man. The problem is he did something that is
9 just completely dumbfounding and frankly inexcusable.

10 I do want you to know that y'all come before the
11 court and are surely passionate about your positions
12 and I appreciate that. You should be. I want you to
13 understand that in the world that I'm in, I'm
14 dispassionate about my position. That is, I can't be
15 mad, I can't be sympathetic. I have to look at the
16 facts of the case and I have to issue a sentence in
17 keeping with the law, in context with the conduct.

18 This is something, Mr. Fleury, that again,
19 that's just perhaps out of character but absolutely
20 inexcusable. You're going to live with it all of
21 your life but you're going to get to move on as well.
22 And Ms. Haze is certainly going to live with it all
23 of her life. Not only physically but mentally as
24 well. And it's something that, again, I wish could
25 be easily excused but the nature of this crime can't

SETH FLEURY-EXAMINATION BY THE COURT

1 be easily excused.

2 How much time did he spend in jail?

3 MS. GARY: Ten days, Judge.

4 THE COURT: Ten days.

5 Sentence of The Court, Mr. Fleury, is that you
6 be committed to the Department of Corrections for a
7 period of 12 years. Credit for time served for ten
8 days. Good luck to you, sir.

9 MS. GARY: Thank you, Judge.

10 THE COURT: I'll also issue a permanent
11 restraining order.

12 MS. GARY: Thank you, Your Honor.

13 (WHEREUPON, the proceedings were concluded.)

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SETH FLEURY-EXAMINATION BY THE COURT

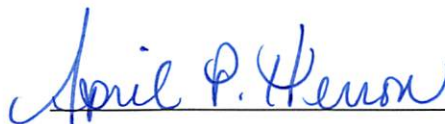
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 18th day of October, 2018.

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

August 23, 2019



APRIL P. HERRON, Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

SETH FLEURY #378010

Plaintiff(s)

vs.

STATE OF SOUTH CAROLINA

Defendant(s)

Submitted By: TOMMY A. THOMAS

Address: P.O. BOX 88

IRMO, SC 29063

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2019-CP-23-03648

ENTERED COMPUTER

SC Bar #: 5536

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Other:

E-mail: jackie@paroleme.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/
Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) _____ | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20____-NI-_____
☐ Notice/ File Med Mal (230)
☐ Other (299) _____ | Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) _____ | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) _____ |
| Inmate Petitions
☒ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) _____ | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) _____ | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured
Settlement Payment Rights
Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers
Compensation Settlement
Approval (780)
☐ Other (799) _____ | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) _____ |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) _____
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in
an Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | |

Submitting Party Signature: _____

Date: June 20, 2019

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FORM 5

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
SETH FLEURY #378010)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2019-CP-23- 03640

APPLICATION FOR

POST-CONVICTION RELIEF

ENTERED COMPUTER

25 JUN 25 PM 4:39
Pawlikowski CJC BUL SC

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution, 990 Wisacky Hwy. Bishopville, SC 29010
2. Name and location of Court which imposed sentence Greenville County General Sessions
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2017A2320400506 - Assault & Battery of a High & Aggravated Nature
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) October 18, 2018 - Twelve (12) years

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty x
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
no
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- 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) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Counsel

(b) Involuntary Guilty Plea

(c) _____

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

(a) _____

(b) _____

(c) _____

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

(a) any petition in a State Court under South Carolina Law? _____

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? Motion for

Reconsideration

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. Requesting the Judge to reconsider his sentence

ii. _____

iii. _____

iv. _____

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

i. Greenville County Court of General Sessions

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. Denied

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. November 14, 2018

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. _____

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) _____

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? _____
 - (c) your sentencing? yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes
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. Charles A. Bondurant, Esq., 16 Wellington Ave., Greenville, SC 29609
 - ii. _____
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Plea, Sentencing and Motion for Reconsideration
 - ii. _____
 - iii. _____
19. State clearly the relief you seek in filing this application:
A new trial
20. Are you now under sentence from any other court that you have not challenged?
no

STATE OF SOUTH CAROLINA

)

VERIFICATION

County of Lee

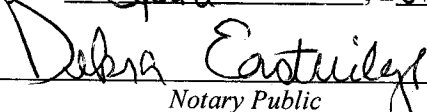
)

)

I, Seth Fleury, 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.



SWORN to and subscribed before me this 14
day of June, 2019.

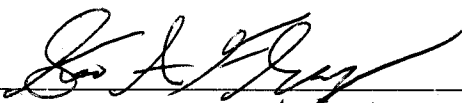
 (L.S.)
Notary Public

My Commission Expires: 3/3/2024

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

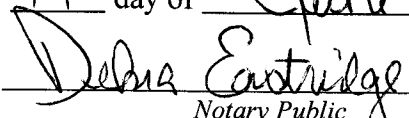
I, Seth Fleury, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (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.



Applicant

SWORN or affirmed to and subscribed before me this
14 day of June, 2019.



Notary Public

My Commission Expires: 3/3/2024

Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

TELEPHONE:
(803) 732-5507
(803) 732-5508

HARRINGTON BUILDING
7588 WOODROW STREET
IRMO, SOUTH CAROLINA 29063

PLEASE REPLY TO:
PO BOX 88
IRMO, SC 29063

FACSIMILE:
(803) 781-4226

June 19, 2019

INMATE LINE
(803) 732-6542

Greenville County Clerk of Court
305 E. North Street
Greenville, SC 29601

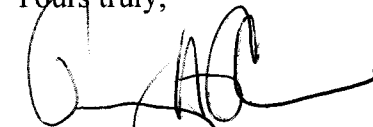
RE: Seth Fleury #378010 v. State

Dear Sir or Madam:

Enclosed please find an original and a copy of an Application for Post Conviction Relief as well as a Coversheet for filing in the above matter.

Kindly return a clocked copy to me in the enclosed envelope. Thank you for your assistance in this matter.

Yours truly,



Tommy A. Thomas,
Attorney at Law

TAT/jem

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNT OF GREENVILLE	)	CASE NO.: 2019-CP-23-3648
	)	
Seth Fleury #378010,	)	
	)	
Applicant,	)	AMENDMENT TO POST-
	)	CONVICTION RELIEF APPLICATION
vs.	)	
	)	
State of South Carolina,	)	ENTERED COMPUTER
	)	
Respondent.	)	
	)	

The Applicant above named in the aforementioned matter, through his Attorney, Tommy A. Thomas, respectfully moves to amend the first Amendment to his Post-Conviction Relief Application, due to Scribner's errors. The Applicant re-alleges those grounds contained in the original Application for Post-Conviction Relief as if fully repeated herein.

That the Applicant would amend his Application as follows:

1. That Trial Counsel was ineffective for ill advising the Applicant regarding his plea. Applicant was told that worst case scenario, that he would get two to three years. He also made comments to the Applicant that he did not see him going to prison. Counsel sent numerous emails to the Applicant's family indicating that he would not receive jail time. That the Applicant based his decision to enter into the plea on these representations.
3. That Trial Counsel was ineffective for not filing a Motion for Reconsideration of sentence, despite the fact that the Applicant received 12 years 85%.
4. That Counsel failed to bring to the attention of the Court false statements the victim said in Court. That she was beaten every day.
5. That there were plea offers that the Applicant was never advised of.

6. That counsel failed to offer in mitigation at the plea that this was a toxic relationship. That the victim was angry because the Applicant had recently joined the Navy and she did not want him to leave.

7. That the Applicant was on antidepressants at that time and was unable to process all of the drama created by the victim. This entered into Applicant's decision regarding the plea.

8. That Counsel indicated that he had spoken with several Judge's and other attorneys and they all indicated the same thing, that the Applicant would not see any jail time.

9. That counsel did not properly prepare the Applicant for the plea.

10. That the Applicant was nervous in the Courtroom because of the number of people there and that the Applicant was not prepared to address the Court.

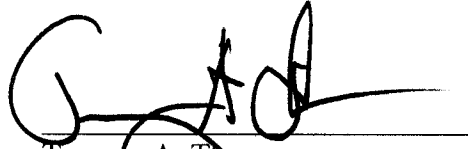
11. That your attorney appeared to be very nervous and after the sentencing, he told Applicant "don't worry about it he would appeal it".

12. That the sentencing Judge did not let everyone speak who wanted to speak on Applicant's behalf.

13. That defense counsel was Facebook friends with the victim and "liked" several of her pictures in 2017.

That Applicant reserves the right to amend the Application as may become necessary.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tommy A. Thomas', written over a horizontal line.

Tommy A. Thomas
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

May 22, 2020

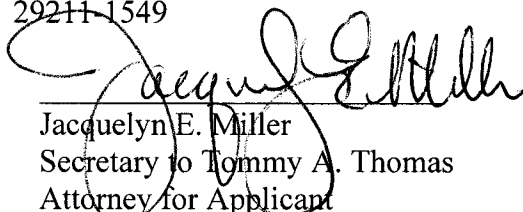
STATE OF SOUTH CAROLINA)
COUNT OF GREENVILLE)
Seth Fleury #378010)
Applicant,)
Vs.)
State of South Carolina,)
Respondent.)

THE COURT OF COMMON PLEAS
CASE NO.: 2019-cp-23-3648

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Applicant hereby certify that I placed in the United States Mail, a copy of an Amendment to Post Conviction Relief Application with postage prepaid and the return address clearly shown on said envelope to Taylor Smith, Esq. of the Attorney General's Office, at:

Taylor Smith, Esq.
Attorney General's Office
P.O. Box 11549
Columbia, SC 29211-1549


Jacquelyn E. Miller
Secretary to Tommy A. Thomas
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Irmo, SC
May 22, 2020

20 MAY 27 AM 10:49
PAUL WICKENS@IRMO.CDC.B/L SC

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Seth Fleury, #378010,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-23-03648

**RETURN AND MOTION
FOR A MORE
DEFINITE STATEMENT**

ENTERED COMPUTER

2020 FEB 10 AM 11:38

Respondent, making its return to the application for post-conviction relief filed by Seth Fleury (Applicant) on June 25, 2019, would respectfully show this Court:

I. Procedural History

Applicant is presently incarcerated according to an order of commitment of the Greenville County Clerk of Court. During its April of 2018 term, the Greenville County Grand Jury indicted Applicant for assault and battery of a high and aggravated nature (2018-GS-23-2557). Applicant was represented in the case by Charles Ashton Bondurant, Esquire, (plea counsel) and Assistant Solicitor Elizabeth Morrow Gary of the Thirteenth Circuit Solicitor's Office prosecuted the case. On October 18, 2018, Applicant appeared before the Honorable Robin B. Stilwell (plea court) and pleaded guilty as indicted. The plea court sentenced Applicant to imprisonment for twelve years with credit for time served, and issued a permanent restraining order. On November 8, 2018, plea counsel filed a motion to reconsider, which was denied by the plea court in an order filed on November 14, 2018. Applicant did not appeal his plea or sentence.

II. Current Application

Respondent interprets the allegations raised by Applicant in his application for post-conviction relief as follows:

1. Ineffective assistance of counsel
2. Involuntary guilty plea

Applicant prays that the PCR court would grant post-conviction relief by granting him a new trial.

Attached to this Return and incorporated by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the transcript from Applicant's plea hearing, and the application for post-conviction relief. Respondent reserves the right to amend this return upon its receipt of any relevant materials.

III. Ineffective Assistance of Counsel

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. See Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that counsel was constitutionally ineffective, he must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result." Strickland, 466 U.S. at 686. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must

overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Petitioner 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, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). The "prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial." Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney. Id. at 690.

"A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not

invariably, foreclosed.” Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). “Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea.” Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing: (1) counsel was deficient and (2) there is a reasonable probability that but for counsel’s errors, the defendant would not have pleaded guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001).

Applicant does not include any specific information in his application with regard to his allegations that plea counsel was constitutionally ineffective and that his guilty plea was not knowingly and voluntarily entered, and Respondent is therefore unable to effectively respond. The undersigned moves later herein for a more definite statement with regard to these unsupported allegation in order that Respondent may fully prepare for an evidentiary hearing in the matter.

IV. Motion for a More Definite Statement

Respondent moves for a more definite statement as to Applicant’s allegations. Applicant alleges that plea counsel rendered the ineffective assistance of counsel, but does not explain how counsel’s conduct was deficient or in what way Applicant suffered prejudice and does not explain the reason his guilty plea was not knowingly and voluntarily entered. Applicant fails to set forth with specificity the facts and circumstances upon his claims are based. The Uniform Post-Conviction Procedure Act requires that Applicant must “specifically set forth the grounds upon

which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the appellant that he was deprived of counsel is insufficient.

Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974).

Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.”

Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of his allegations. Respondent moves to require Applicant to file an additional amended or supplemental application well in advance of any evidentiary hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended or supplemental application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the allegation.

V. Denial of All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VI. Future Amendments and the Discovery Process

Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant is represented by private counsel, that attorney and not the Applicant is the only individual authorized to file amendments to this application for post-conviction relief. See Rule

11, SCRCF. Pro se filings will not be considered at the evidentiary hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent pursuant to Love v. State, Op. No. 27921 (S.C. Sup. Ct. filed October 2, 2019) (Shearhouse Adv. Sh. No. 39 at 14), or, alternatively, Respondent will move for a continuance in the matter. See Love, at 24 (Kittredge, J., dissent) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

VII. Conclusion

WHEREFORE, Respondent requests that the Court order Applicant to provide a more definite statement as to the allegations in his application for post-conviction relief before convening an evidentiary hearing into the allegations, if such a hearing is then warranted.

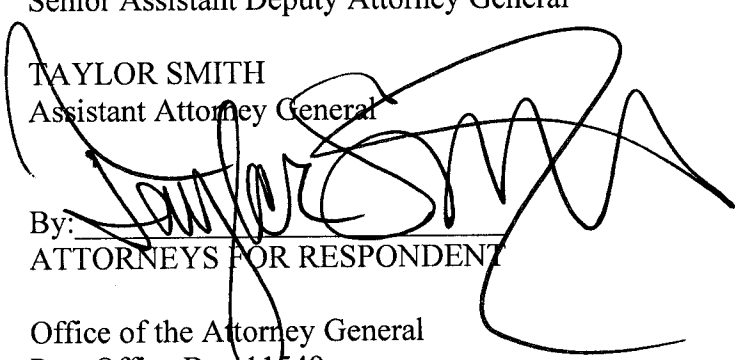
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

TAYLOR SMITH
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

January 24, 2019

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
)
SETH AARON FLEURY, #378010,)
)
Applicant,)
)
vs.)
)
STATE OF SOUTH CAROLINA,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

2019-CP-23-3648

AFFIDAVIT OF SERVICE BY MAIL

FILED-CLERK OF COURT
PAUL J. WILSON
CLERK OF COURT
2020 FEB 10 AM 11:38

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 and Motion for a More Definite Statement** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tommy A. Thomas, Esquire
Post Office Box 88
Irmo, South Carolina 29063

DATED this 224th Day of January, 2020.



Eva Cook, Legal Assistant
For Respondent

FORM 5

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
SETH FLEURY #378010)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2019-CP-23- 03648

APPLICATION FOR

POST-CONVICTION RELIEF

19 JUN 25 PM4:40
Paul Wickensimer COC GUL SC

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution, 990 Wisacky Hwy. Bishopville, SC 29010
2. Name and location of Court which imposed sentence Greenville County General Sessions
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2017A2320400506 - Assault & Battery of a High & Aggravated Nature
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) October 18, 2018 - Twelve (12) years

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty x
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
no
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- 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) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel
 - (b) Involuntary Guilty Plea
 - (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
 - (b) _____
 - (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 - (d) any other petitions, motions or applications in this or any other Court? Motion for Reconsideration
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. Requesting the Judge to reconsider his sentence
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. Greenville County Court of General Sessions
 - ii. _____
 - iii. _____
 - iv. _____
 - (c) the disposition thereof:
 - i. Denied
 - ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. November 14, 2018

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. _____

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) _____

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? _____
 - (c) your sentencing? yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes
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. Charles A. Bondurant, Esq., 16 Wellington Ave., Greenville, SC 29609
 - ii. _____
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Plea, Sentencing and Motion for Reconsideration
 - ii. _____
 - iii. _____
19. State clearly the relief you seek in filing this application:
A new trial
20. Are you now under sentence from any other court that you have not challenged?
no

STATE OF SOUTH CAROLINA

County of Lee

VERIFICATION

I, Seth Fleury, 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.

Seth Fleury

SWORN to and subscribed before me this 14
day of June, 2019.

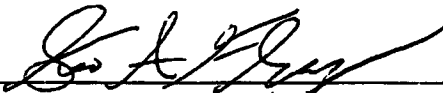
Debra Eastvick (L.S.)
Notary Public

My Commission Expires: 3/3/2024

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

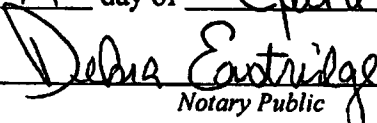
I, Seth Fleury, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (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.



Applicant

SWORN or affirmed to and subscribed before me this
14 day of June, 2019.



Notary Public

My Commission Expires: 3/3/2020

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

SETH FLEURY #378010

Plaintiff(s)

vs.

STATE OF SOUTH CAROLINA

Defendant(s)

Submitted By: TOMMY A. THOMAS

Address: P.O. BOX 88

IRMO, SC 29063

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2019-CP-23-03648

19 JUN 25 PM 4:40
Paul Wickens@COC.GOV.SC

SC Bar #: 5536
Telephone #: 803-732-5507
Fax #: 803-781-4226
Other: _____
E-mail: jackie@paroleme.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts**
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/
Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) _____

- Torts - Professional Malpractice**
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -NI-
☐ Notice/ File Med Mal (230)
☐ Other (299) _____

- Torts - Personal Injury**
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) _____

- Real Property**
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) _____

- Inmate Petitions**
☒ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) _____

- Administrative Law/Relief**
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) _____

- Judgments/Settlements**
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured
Settlement Payment Rights
Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers
Compensation Settlement
Approval (780)
☐ Other (799) _____

- Appeals**
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) _____

- Special/Complex /Other**
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) _____
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in
an Out-of-County Action (660)
☐ Pre-Suit Discovery (670)

Submitting Party Signature: _____

Date: June 20, 2019

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

Seth Aaron Fleury

AKA:

Race: Sex: M Age: 23

DOB: SS#: [REDACTED]

Address: 105 Pine Lane

City, State, Zip: Simpsonville, SC 296812234

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Assault/Assault and Battery of a High and Aggravated Nature

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018GS2302557

A/W#: 2017A2320400506

Date of Offense: 10/21/2017

S.C. Code § 16-03-0600(B)(1)

CDR Code #: 3411

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

TEST: Gary, Elizabeth 100086 SC Bar# Defendant BONDURANT, CHARLES 76132 SC Bar# Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. ☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5 %)	\$	
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ 3.75

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Paul D. Winkelman

Court Reporter:

Henson

SCCA/217 (04/2018)

Presiding Judge

Judge Code: 0158

Sentence Date: 10/18/18

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
NATURE

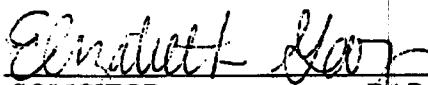
At a Court of General Sessions, convened on
County present upon their oath:

APR 17 2018

the Grand Jurors of Greenville

That SETH AARON FLEURY did in Greenville County, on or about the 21st day of October, 2017, unlawfully injure Kayla Hayes whereby the victim suffered great bodily injury or the act was accomplished by means likely to produce death or great bodily injury. This is in violation of §16-03-0600 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

BAR # 100086

708 SP42/8345

WITNESSES

Adam K Randolph

Simpsonville Police Dept.

10/21/2017

ARREST WARRANT NUMBER
2017A2320400506

ACTION OF GRAND JURY
TRUE BILL

Clay Tuttle
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2018-GS-23-
EMG

002557

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April TERM 2018

THE STATE

vs.

SETH AARON FLEURY

Bondurat
Indictment for

3411

**ASSAULT AND BATTERY OF A HIGH AND
AGGRAVATED NATURE**

VIOLATION § 16-03-0600

**ENTERED
ACCT.**
13H

ARREST WARRANT

2017A2320400506

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

SIMPSONVILLE

THE STATE

against

SETH AARON FLEURY

Address: 105 PINE LN

SIMPSONVILLE SC 29681-2234

Phone: (864) 270-6045 SSN: [REDACTED]

Sex: M Race: W Height: 5-10 Weight: 185

DL State: SC DL#: 102402627

DOB: [REDACTED] Agency ORI#: SC0230500

Prosecuting Agency: SIMPSONVILLE POLICE

Prosecuting Officer: CPL. A. RANDOLPH

Offense: ASSAULT AND BATTERY HIGH AND

AGGRAVATED Offense Code: 3411

Code/Ordinance Sec. 16-03-0600 (B) (1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to law._____
Signature of Judge (L.S.)Date: _____
Date Time

RETURN

A copy of this arrest warrant was delivered to

defendant SETH AARON FLEURY

on 10/21/17

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

SIMPSONVILLE MUNICIPAL COURT

118 NE MAIN STREET

SIMPSONVILLE, SC 29681

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

SIMPSONVILLE

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 018Personally appeared before me the affiant A. RANDOLPH who
being duly sworn deposes and says that defendant SETH AARON FLEURY
did within this county and state on 10/21/2017 to 10/21/2017 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of SIMPSONVILLE)
in the following particulars:

DESCRIPTION OF OFFENSE: 16-03-0600 (B) (1) / ASSAULT AND BATTERY HIGH AND AGGRAVATED

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:THE DEFENDANT, SETH AARON FLEURY, DID BITE THE VICTIM'S (KAYLA HAYES) LOWER LIP WHICH CAUSED THE BODY PART TO BE
REMOVED. THE AMOUNT REMOVED WAS APPROXIMATELY 1.5 - 2 INCHES IN LENGTH AND .5 INCH IN DEPTH. THIS OCCURRED IN THE
VICTIM'S VEHICLE CAUSING GREAT BODILY INJURY TO THE VICTIM'S LOWER FACIAL AREA. THIS OFFENSE OCCURRED IN THE JURISDICTION
OF SIMPSONVILLE, GREENVILLE COUNTY, SOUTH CAROLINA. THIS WAS FOUND THROUGH VICTIM'S VERBAL STATEMENT, AND DEFENDANT'S
VERBAL STATEMENT.

Signature of Affiant

Affiant's Address 405 E. CURTIS ST.
SIMPSONVILLE SC 29681
Affiant's Telephone 864-967-9536

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

SIMPSONVILLE

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that
on 10/21/2017 defendant SETH AARON FLEURY

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

☐ County/ ☒ Municipality of SIMPSONVILLE) as set forth below.

DESCRIPTION OF OFFENSE: ASSAULT / ASSAULT & BATTERY OF A HIGH & AGGRAVATED NATURE

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

Sworn to and subscribed before me

on 10/21/2017 1:55pm
Date Time
Barbara Ferguson
BARBARA FERGUSONJudge Code: 8214

Judge's Address

Judge's Telephone

Issuing Court: ☐ Magistrate ☐ Municipal ☒ Circuit

Case: 05-17-019749

ORIGINAL

ORIGINAL

B E F O R E:

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

TAYLOR Z. SMITH, ESQ.
Attorney for the Respondent

078

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INDEX OF WITNESSES

SETH FLEURY

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CHARLES BONDURANT

Direct By Mr. Smith 46
 Cross By Mr. Thomas 75

» > o < «

Certificate of Reporter 105

APPLICANT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Screen shot of Facebook post	40	40
2	Email	43	43

All exhibits were retained by the
 Greenville County Clerk of Court.

1 (WHEREUPON, the following proceedings were held
2 via WebEx.)

3 COURT REPORTER'S NOTE: Due to remote platform
4 interruption and video/audio interference throughout the
5 hearing, those instances are denoted with [audio
6 distortion] in the transcript.

7 THE COURT: Okay, we have everyone now? I
8 believe we do. Okay, let's go on the record in the
9 case of Seth Fleury vs. State of South Carolina,
10 2019-CP-23-03648. Mr. Thomas represents the
11 Applicant, Mr. Smith represents the State.

12 Mr. Thomas, is the Applicant ready to proceed?

13 MR. THOMAS: Yes, Your Honor, we're ready to
14 proceed.

15 THE COURT: All right, call your first witness.

16 MR. THOMAS: Your Honor, may it please the
17 court, we call Mr. Seth Fleury to the stand.

18 MR. FLEURY: Yes, sir.

19 THE COURT: All right, Mr. Fleury, raise your
20 right hand, please, sir.

21 SETH FLEURY, after being duly sworn, testified
22 as follows:

23 THE COURT: All right, state your full name for
24 the record, please, sir.

25 MR. FLEURY: Seth Aaron Fleury.

SETH FLEURY-DIRECT BY MR. THOMAS

1 THE COURT: All right, Mr. Thomas, your witness.

2 MR. THOMAS: Your Honor, if it please the Court.

3 DIRECT EXAMINATION

4 BY MR. THOMAS:

5 Q Mr. Fleury, you're here for a post-conviction
6 relief?

7 A Yes, sir.

8 Q Okay, speak up. And you understand that you and
9 I have gone over this a number of times and you understand
10 that what you're asking for is a new trial and to have
11 your conviction set aside?

12 A Yes, sir.

13 Q All right, sir. And you're currently serving
14 time for what?

15 A Assault and battery of high and aggravated
16 nature.

17 Q All right. And you received what kind of
18 sentence for that?

19 A Twelve years at 85 percent.

20 Q Okay. And are you parole eligible?

21 A No, sir.

22 Q All right. Mr. Fleury, when do you max out?

23 A 2028, December.

24 Q Okay. And you're how old now?

25 A I'm 25.

SETH FLEURY-DIRECT BY MR. THOMAS

1 Q And you were how old at the time of this
2 incident?

3 A I was 22 -- 23.

4 Q Twenty-three. Okay. Now, you and I have talked
5 about this. You understand that they're certain
6 consequences of post-conviction relief should the Judge
7 grant your petition for PCR; do you understand?

8 A Yes, sir.

9 Q Okay. You understand that you would go back
10 into the position that you were in the beginning and that
11 could have certain exposure as a result?

12 A Yes, sir.

13 Q Okay. And given that information and that
14 knowledge, you wish to go forward today?

15 A Yes, sir.

16 Q Okay. All right. All right, Mr. Fleury, you
17 were arrested when?

18 A I was arrested October of 2017.

19 Q All right, sir. So this was an assault and
20 battery high and aggravated?

21 A Yes, sir.

22 Q Could you tell us just a little bit about these
23 charges and what happened?

24 A I met up with my ex girlfriend to give her
25 flowers and I just joined the Navy. She contacted me

SETH FLEURY-DIRECT BY MR. THOMAS

1 after I hadn't spoken to her in over a month. I went to
2 meet up with her, things escalated. I thought that I
3 could kiss her, it would stop the escalation. And when I
4 went in, I clamped down on her -- the bottom of her lip
5 and when she jerked back, I flinched and [audio
6 distortion] severed her lip. That's what I was charged
7 with.

8 Q All right, sir. Now, did you mean to do this?

9 A No, sir.

10 Q Okay. Was it ever any intentional act on your
11 part?

12 A No, sir.

13 Q Did you go there intending to harm her?

14 A No, sir.

15 Q Okay. All right. So you were arrested and
16 charged, did you make bond or did you remain in the county
17 detention center?

18 A I made bond on ankle monitor.

19 Q All right. How long were you in the detention
20 center?

21 A Ten days.

22 Q Ten days. Okay. So when you were released you
23 had the ability to go and meet with your attorney?

24 A Yes.

25 Q And who was your attorney?

SETH FLEURY-DIRECT BY MR. THOMAS

1 A Charlie Bondurant.

2 Q Okay. And was he retained or was he appointed
3 to represent you?

4 A He was retained. My mom hired him.

5 Q All right. Now, how many times did you meet
6 with your attorney?

7 A About four or five.

8 Q Okay. And during that period of time, you sat
9 down with him, you gave him information about your case?

10 A Yes, sir.

11 Q And did you prepare with him a defense to your
12 case, to your charges?

13 A Not really. It was more of I asked him what my
14 best way of going forward was and he said that my best way
15 was to do an open plea deal. Because the prosecutor
16 wasn't coming down and it just didn't look good. And he
17 saw home incarceration. And he told me that he talked to
18 multiple of his judges and lawyers friends, and he said
19 home incarceration and at the worst, maybe two to three
20 years in prison.

21 Q Okay. All right. We'll get to that. So do you
22 know what the discovery is?

23 A It's all the evidence against me.

24 Q Okay. And did you receive copies of the
25 discovery?

SETH FLEURY-DIRECT BY MR. THOMAS

1 A Yes.

2 Q Did you get a chance to sit down with your
3 attorney and go through that discovery?

4 A Yes.

5 Q Did you understand it?

6 A Yes, sir.

7 Q Okay. All right. And as far as preparing, did
8 you ever prepare the case for trial?

9 A No.

10 Q And why not?

11 A Because it was never brought up that we would go
12 to trial. He said a trial wouldn't look good on me
13 because of the evidence stacked up on me. And that a jury
14 wouldn't believe me.

15 Q Okay. And you, basically, trusted your lawyer;
16 is that correct?

17 A Yes.

18 Q And you relied upon his advice?

19 A Yes.

20 Q Did you know anything about the legal system
21 prior to this?

22 A No, sir, I had no prior record.

23 Q All right. And have you ever been incarcerated
24 before?

25 A No, sir.

SETH FLEURY-DIRECT BY MR. THOMAS

1 Q Is this your first time in prison?

2 A Yes, sir.

3 Q All right. And so in meeting with him, did he
4 ever propose any kind of theory of defense; do you
5 remember that?

6 A No. He told me that just to go in there and
7 don't look at the victim, just apologize and look
8 straightforward and that he would take care of the rest.

9 Q Okay. All right. So, basically, upon his
10 advice, this case was moving from a trial to a plea?

11 A Correct.

12 Q And in the plea, did he talk to you about, what
13 I would call mitigation, about how to present your side of
14 the story?

15 A He told me just to -- just to say that I was
16 sorry and not really. He was more of just kind of
17 coaching me on how to say what I needed to say and how I
18 was just pleading guilty and all that.

19 Q Okay. Now, were you sorry for what happened?

20 A Oh, yes. Most definitely.

21 Q All right. And maybe I'll ask this question
22 before I forget it. I read the transcript again today,
23 just to go back over it. And one of the things I noticed
24 is that there were comments about you not having any
25 remorse and not being sorry for anything that happened; is

SETH FLEURY-DIRECT BY MR. THOMAS

1 that true?

2 A That is not true.

3 Q Okay. Do you feel like your attorney was ready
4 or able to address those concerns about you not being
5 sorry?

6 A He never said anything about it and I don't
7 think he was ready.

8 Q Okay. And was there any advice given to you
9 about making apologies?

10 A No, he just -- no, not at all.

11 Q Okay. So he didn't tell you that you should
12 express your remorse, genuine remorse?

13 A He just told me to say -- just to show a little
14 remorse and not to look at the victim. He said, Don't
15 look at the victim. And I thought that was kind of odd
16 because I really wanted to look at her and apologize to
17 her. But I just looked straight ahead and just owned up
18 to it, pretty much.

19 Q Okay. Now, let's talk about the plea itself.
20 In preparation to entering into this plea, what was your
21 expectations about what was going to happen?

22 A My expectations were I was going to a open plea
23 deal. I was kind of caught offguard about the whole 15
24 years. But he told me that's what prosecutors do, that
25 they go with the high number to try to get [audio

SETH FLEURY-DIRECT BY MR. THOMAS

1 distortion] or whatever. And that he doesn't see no judge
2 in his right mind sentencing me to anything [audio
3 distortion]. The worst case scenario two to three years
4 in prison. And he said that was after talking to multiple
5 of his lawyer friends and judges that he's friends with.
6 So I walked in there with the worst case scenario being
7 two to three years in prison. And I walked out with 12
8 years.

9 Q Okay. Okay. But in regards to him speaking
10 with you, you mentioned something about a 15, is there a
11 15 year plea offer?

12 A That was all three of them was 15 years.

13 Q Fifteen years. Okay. And what did your
14 attorney advise you about in regards to that 15 year plea
15 offer?

16 A He told me that that was ridiculous the first
17 time. Then he told me that they weren't coming down.
18 That's when he said that the best bet is to go into an
19 open plea deal.

20 Q And you understand the severity of this
21 incident?

22 A Yes.

23 Q Okay. And did you discuss that with your
24 attorney, the severity of the injury?

25 A Yes, I did.

SETH FLEURY-DIRECT BY MR. THOMAS

1 Q Okay. Okay. So but based upon his
2 recommendation and based upon what you understood, your
3 expectation was you said house arrest or?

4 A Or incarceration or like the worst case scenario
5 two to three years in prison.

6 Q Okay. And he told you that it a possibility
7 that you could get home incarceration?

8 A Yes. He said that was the most reasonable that
9 he saw me getting was a lengthy home incarceration.

10 Q Okay. All right. So were things different when
11 you went in for the plea?

12 A Yes, it was very -- that day when I walked in
13 there, Charlie was very nervous. And he made a joke about
14 when he was talking about Elizabeth before it went down,
15 he said, What about assault one? And she told him, yeah,
16 right. Pretty much. I don't know what they actually said
17 but he came out and he told me to sign a piece of paper.

18 And I was like, What is this?

19 He said, It's just a legal formality.

20 And what I didn't realize was it was a 85
21 percent. And I didn't even know anything about 85 percent
22 or what I was signing because I trusted him.

23 Q Okay. Did yod ever discuss with him the
24 difference between 85 percent, 65 percent and parole
25 eligibility?

SETH FLEURY-DIRECT BY MR. THOMAS

1 A No.

2 Q Okay. All right. So he didn't make any
3 representations to you about that?

4 A No.

5 Q All right, sir. Now, I did -- I know that from
6 viewing the transcript as well, I know that you had some
7 disagreement with the facts of the case in regards to what
8 you had said that happened and what your prior girlfriend
9 had said had happened; is that correct?

10 A Right.

11 Q Okay. And did you go over those with your
12 attorney?

13 A No because they were -- they were said there in
14 Court. And I don't know I could stop and talk to him.

15 Q Okay. But, I mean, prior to the hearing?

16 A I -- yeah -- no, no they weren't.

17 Q Okay. But he knew what your side of the story
18 was?

19 A Right.

20 Q Okay. And at the hearing there were some
21 comments made about you being controlling and this being a
22 toxic relationship and some other things, were those
23 things true?

24 A No, it wasn't. Because it was mutual. Like,
25 when she wanted to put the trackers on the phone and all

SETH FLEURY-DIRECT BY MR. THOMAS

1 that, that was all her. And there was a lot of false
2 accusations made about me that day. And I even about
3 seven, eight months after being sentenced, she actually
4 turned around and pod cast and admitted that I never beat
5 her every, single day. She tried to say I beat her every,
6 single day. And yeah.

7 Q And do you believe that those false statements
8 painted you in even a worst light than you were already
9 in?

10 A Yes, sir.

11 Q Okay. Do you think it had some sort of impact
12 upon the Judge's decision in regards to the sentence?

13 A Absolutely. I mean, when you sit there, even as
14 a Judge, if you're sitting there and somebody is telling
15 you that they were beaten everyday, I mean, that's going
16 to weigh a lot. And then come to find out, I mean, I know
17 I never beat her everyday, she was at my house, at my
18 grandparents house everyday and nothing like that ever
19 went down. So as a Judge, when you're hearing that and
20 yeah it's definitely going to make a big impact.

21 Q Okay. Okay. Now --

22 If I could beg the Court's indulgence just
23 a second?

24 THE COURT: Yes, sir.

25

SETH FLEURY-DIRECT BY MR. THOMAS

1 BY MR. THOMAS:

2 Q Now, during this period of time, and I think
3 this was brought out at the hearing, you were actually on
4 a anti-depressant?

5 A Yes.

6 Q Why were you on a anti-depressant?

7 A I was on anti-depressant because of my ex
8 girlfriend. Or my girlfriend or ex girlfriend.

9 Q Okay. And it's just because of a -- the
10 difficulty of a relationship?

11 A Right, yes.

12 Q Okay. And you were also going to counseling
13 during this period of time?

14 A Yes.

15 Q Okay. And what type of counseling were you
16 going through?

17 A I was going through a therapist.

18 Q All right. And this was for what?

19 A This is just for everything that went down. And
20 now, like, it was more for the relationship itself, how
21 toxic it was. And I didn't realize how bad everything was
22 until I sat down with a therapist. And I knew something
23 went wrong that day and in my mind I couldn't understand.
24 I was really regretting it, the moment I left her. And I
25 should have never left her there. And it was just fear

SETH FLEURY-DIRECT BY MR. THOMAS

1 and being, honestly being a coward. I'm not going to lie
2 about this, I was a coward so I left. Because nothing
3 like that has ever happened to me before. I mean, I grew
4 up in a small town of USA. Things like this, you know, I
5 would have never thought of anything like this would
6 happen.

7 Q Did you ever think you were capable of something
8 like that?

9 A Absolutely not.

10 Q Okay. Now, when the Judge listened to
11 everything and issued his ruling and a sentence of 12
12 years, what was your response to that?

13 A My heart dropped down to my stomach and I looked
14 over at my lawyer, Mr. Bondurant, and he looked like he
15 just saw a ghost. And he told me he was going to appeal
16 it and not to worry, that it's going to be all right.
17 That's when I looked back on my family and saw all of them
18 crying and that's when I went into custody.

19 Q Okay. Did you also talk about some sort of
20 reconsideration of the sentence?

21 A Yes.

22 Q And was a motion for reconsideration filed?

23 A It was but it was really late.

24 Q So it was not timely filed?

25 A Right.

SETH FLEURY-DIRECT BY MR. THOMAS

1 Q So did the Court ever reconsider the sentence?

2 A No, sir.

3 Q Okay. And that was because it wasn't timely
4 filed?

5 A Right.

6 Q Okay.

7 MR. SMITH: Objection, move to strike, Your
8 Honor. I think [audio distortion].

9 THE COURT: I couldn't understand you,
10 Mr. Smith, say that again.

11 MR. SMITH: I say I move to strike the last
12 answer because I don't think he can testify as to
13 Judge's intention of denying a motion.

14 THE COURT: Okay. All right, I sustain your
15 objection.

16 Okay, go ahead.

17 MR. THOMAS: Thank you, Your Honor.

18 BY MR. THOMAS:

19 Q Now, Seth, let me ask you a couple of things
20 about things that you may have found out after you entered
21 into the plea. And did you find out anything about your
22 attorney and the young lady that was the victim in this
23 case?

24 A Yes. About six, seven months after I'd been
25 incarcerated, I found out that he was liking my victim's

SETH FLEURY-DIRECT BY MR. THOMAS

1 pictures on Facebook.

2 Q Okay. And was this before representation or
3 during representation or after?

4 A The pictures were prior and that was a year
5 before the incident even happened. And so, yes, sir. It
6 was -- I don't know if it was before or after, beginning.
7 Because I didn't find out until six months after I was in
8 prison.

9 Q Okay. So -- but to the best of your knowledge
10 then, counsel had some sort of friendship or
11 relationship -- had some sort of connection with the
12 victim?

13 A I believe so. Because why else would you like
14 somebody's pictures? And even if it was after, why would
15 you like my victim's pictures? It -- either way you look
16 at it, it didn't make any sense.

17 Q Okay. Did you ever have an opportunity to speak
18 to counsel about that?

19 A No. Because I didn't find out until after I was
20 sentenced.

21 Q Okay. Were you told about that during the
22 period of representation?

23 A No, sir.

24 Q Okay. And let me ask you one thing that you and
25 I have talked about and I noticed in the transcript.

SETH FLEURY-DIRECT BY MR. THOMAS

1 Counsel said in his argument to the Court that you
2 intentionally inflicted this injury; is that true?

3 A That is not true. Because I just got done
4 saying I did not intend for this to happen, I did not
5 intend to do this. And then right after I said that he
6 started talking. And that's when he said that right at
7 the end.

8 Q Right. Do you know why he would have said that?

9 A I have no idea.

10 Q Because in the transcript it actually says that
11 in speaking with you. I mean, it says to allege that you
12 had made this admission to him; is that true?

13 A No, I never said that I intentionally meant to
14 bite her lip off.

15 Q Okay. I mean, did you intend to inflict injury
16 to her?

17 A No, not at all.

18 Q Okay. And do you think this had an impact upon
19 sentencing from the Court?

20 A Absolutely.

21 Q Okay. All right. Okay. We've talked about
22 this. The law requires that when you enter into a plea,
23 that you plea freely and voluntarily and knowingly and
24 intelligently, do you remember us talking about that?

25 A Yes, sir.

SETH FLEURY-DIRECT BY MR. THOMAS

1 Q Okay. Do you feel like that you entered into
2 this plea freely, voluntarily, knowingly or intelligently?

3 A No, sir.

4 Q Okay. And why do you feel that way?

5 A Because I didn't know -- I didn't know
6 everything that was going on. I didn't know that -- I
7 trusted Charlie that day. That's why I walked into it
8 because in his mouth -- out of his mouth were, The worst
9 possible scenario two to three years. So I said, Okay.
10 So I walked in there and got 12. So I didn't know
11 anything about the law, I didn't know what was going, I
12 didn't find out about 85 percent until I was already in
13 Kirkland Correctional. And I was so blind to a lot of
14 things because I don't have a prior record. And there's a
15 lot of things I would have done differently.

16 Q All right. And had you known all of that, then
17 you would have, potentially, gone to trial in this case?

18 A Yes. I first, I would have fired Charlie and
19 would have got another attorney. I would have took it to
20 trial.

21 Q Okay. Now, Seth, we talked about this question
22 as well. And I always ask my clients this. You've been
23 waiting a long time for this hearing to come before the
24 court?

25 A Yes.

SETH FLEURY-CROSS BY MR. SMITH

1 Q Is there anything that you believe that I may
2 have left out, that I have forgotten or that you believe
3 is important to bring to the attention of the Court?

4 A No, I think you about covered it.

5 MR. THOMAS: Okay.

6 All right, Your Honor, I have no further
7 questions.

8 THE COURT: Thank you, Mr. Thomas.

9 Mr. Smith, cross-examination?

10 CROSS-EXAMINATION

11 BY MR. SMITH:

12 Q Mr. Fleury, Mr. Bondurant [audio distortion].

13 A I can't hear you, sir.

14 THE COURT REPORTER: Judge, there's a lot of
15 feedback. I can't understand what's being said.

16 THE COURT: Let me get everybody to mute their
17 microphone unless they are speaking, okay? That
18 should take care of the problem, okay.

19 Try it again, Mr. Smith.

20 MR. SMITH: Is that any better?

21 MR. FLEURY: Yeah, I can hear you a little
22 better.

23 BY MR. SMITH:

24 Q Okay. Mr. Fleury, you pled guilty with
25 Mr. Bondurant, he told you that you could be facing up to

SETH FLEURY-CROSS BY MR. SMITH

1 20 years if you plead guilty, didn't he?

2 A Yes, he did. But he also said, he told me not
3 to even worry about that because the worst case scenario,
4 like I said before, would be two to three years. And, I
5 mean, when you trust somebody, you trust your lawyer, you
6 pay for your lawyer. And yeah, he told me that. He said
7 there's a possibility of that, I don't see no Judge in his
8 right mind doing that. So that's my answer.

9 Q Okay. You were aware that Judge Stilwell could
10 have given you whatever sentence he wanted to?

11 A Can you repeat that?

12 Q Weren't you aware that Judge Stilwell could give
13 you whatever sentence he wanted?

14 A I was but like I said before, that never came
15 across my mind. Because if I had a lawyer that knew --
16 that knew what to tell me and was Hey, like, you're
17 looking at a sentence. And like me now, even when I came
18 to prison and I started talking to other inmates and I
19 started realizing what was going on, I was like, okay, I
20 started understanding everything a lot more, you know. So
21 I mean, yeah, I just -- there was no way I would have
22 entered into that.

23 Q Okay. Do you have a copy of the transcript in
24 front of you?

25 A No, I do not.

SETH FLEURY-CROSS BY MR. SMITH

1 Q Okay. Well, I'll ask you this, at your guilty
2 plea hearing, didn't you affirm to Judge Stilwell that you
3 understood that you had [audio distortion].

4 A I did but that was before I found out a lot of
5 information.

6 Q Okay. At that hearing, didn't Judge Stilwell
7 explain to you what rights you have when you went to
8 trial?

9 A Yes, I did but I did not know I could fire him
10 after what he said.

11 Q Okay. Judge Stilwell [audio distortion] you did
12 want to waive those rights and plead guilty?

13 A Can you repeat that, please?

14 Q After Judge Stilwell went through those rights
15 with you, didn't you tell him that you wanted to waive
16 those rights and plead guilty?

17 A Yes, I did.

18 Q And he asked did anyone promise you anything in
19 order to get you to plead guilty other than a possible
20 sentence recommendation from The State [audio distortion]?

21 A Can you repeat that? You're breaking up.

22 Q Okay. At your guilty plea hearing, didn't Judge
23 Stilwell ask you if [audio distortion] in order to get you
24 to plead guilty?

25 A I didn't understand one part -- you're breaking

SETH FLEURY-CROSS BY MR. SMITH

1 up really bad.

2 Q I'm not sure [audio distortion] is feedback
3 because [audio distortion].

4 THE COURT: I believe our problem is with the
5 computer at the Department of Corrections. That's
6 where the echo appears to be coming from. But has to
7 be on since you're asking him questions. So let's
8 try it again. Just you ask the question slowly.

9 And, Mr. Fleury, lean close to the monitor so
10 that you can hear.

11 BY MR. SMITH:

12 Q Okay. Your guilty plea, didn't Judge Stilwell
13 ask you if anybody had promised you anything in order for
14 you to plead guilty?

15 A I can't understand you. I can understand
16 everybody else but him.

17 MR. THOMAS: Your Honor, if I may, is it
18 possible that we could mute Seth then unmute for him
19 to speak?

20 THE COURT: All right, try it again, Mr. Smith.

21 MR. SMITH: Okay. And I can mute myself after
22 each question too, if that would help.

23 THE COURT: Again, I think, like I said, when
24 you're not speaking, mute the computer. Because the
25 echo is coming from the room where Mr. Fleury is.

SETH FLEURY-CROSS BY MR. SMITH

1 So, Mr. Fleury, just leave it on mute and then
2 when you get ready to answer the question, unmute it
3 so that we can hear both his question and your
4 answer.

5 All right, go ahead, Mr. Smith.

6 BY MR. SMITH:

7 Q Okay, I'm going to try it again. Mr. Fleury, at
8 your guilty plea hearing, didn't you affirm to Judge
9 Stilwell that no one had promised you anything in order to
10 get you to plead guilty?

11 A Yes, sir.

12 Q Okay. And you also affirmed to Judge Stilwell
13 that your thinking was not impaired by drugs or alcohol
14 and that you were able to understand clearly what was
15 going on at the hearing?

16 A I did. Because I trusted my lawyer.

17 Q Now, Mr. Fleury, what is being on drugs or
18 alcohol have to do with Mr. Bondurant?

19 A Has nothing do with Mr. Bondurant. What I'm
20 saying is the questions that you're asking me are what the
21 Judge asked me. So I actually trusted Mr. Bondurant. He
22 told me just to go through with everything that the Judge
23 was saying, that everything was going to be all right. So
24 I trusted Mr. Bondurant because that's what he told me to
25 do. He said that the Judge is going to ask you these

SETH FLEURY-CROSS BY MR. SMITH

1 questions, just say yes and just keep moving forward, I'll
2 take care of the rest. So that's what I did because I
3 trusted him.

4 Q Okay. So were you lying when Judge Stilwell
5 asked if you were impaired by drugs or alcohol at your
6 hearing?

7 A I was not lying.

8 Q Okay. Didn't you tell Mr. Bondurant that you
9 meant to bite the victim's lip but that you didn't meant
10 to hurt her as badly as you did?

11 A That question is very, very twofold. Because I
12 did not intentionally meant to bite her lip to the point
13 where it came off. I never meant to, intentionally meant
14 to, bite her lip. I was trying to kiss her and then the
15 kiss went totally wrong.

16 Q So you're saying it was entirely by accident
17 that your teeth touched her lips at all?

18 A It was entirely an accident of the removal of
19 her lip. But yeah, I never intended to bite down on her
20 lip or use my teeth or anything like that.

21 Q You're teeth just accidentally clamped shut?

22 A It was all a flinch, it all happened so fast.
23 It wasn't like I was like, Oh, I'll bite your lip off. In
24 the moment, I went to go kiss her, she pulled back so I
25 went to go grab her lips and when I did she jerked back

SETH FLEURY-CROSS BY MR. SMITH

1 that's when the incident happened.

2 Q Okay. So you did mean to grab her lips with
3 your teeth?

4 A I did mean to grab her lips with my teeth but I
5 did not intend for it to go down the way it went down.

6 Q Okay. So your guilty plea hearing, when you
7 apologized and said you never intended on doing anything
8 like that but you're owning up to your own mistakes, what
9 was your mistake?

10 A My mistake was showing up, number one. The
11 other mistake was trying to trying to stop the argument
12 that we were having. Clearly, I was just trying to kiss
13 her. I thought if I kissed her, it would stop everything.
14 I mean, I'm not a monster. I didn't mean to go in there
15 and hurt that girl like that. If I did, I wouldn't bought
16 her cards and flowers. And I joined the Navy that Friday.
17 I hadn't spoken to Ms. Haze for two -- almost two months.
18 Then when she found out I joined the Navy, that's when she
19 contacted me first. So yeah, I -- that was not -- none of
20 that was going on through my mind at that moment. I had a
21 bright future going before that. None of that -- why
22 would I jeopardize that?

23 Q Well, you testified a few minutes ago that when
24 you were pleading guilty, you were owning up to it. So
25 you're here to tell me what you were owning up to was

SETH FLEURY-CROSS BY MR. SMITH

1 showing up? What did you think you were pleading guilty
2 to?

3 A I pled guilty because that's what my lawyer told
4 me to do. He said that just go in there -- it looks
5 terrible and it does look terrible. I mean, imagine being
6 back here with a bunch of guys who don't like guys who do
7 things like that to girls. I mean, I'm from a little
8 county, I went to a level three prison with murderers and
9 rapists. I had to like plea my case and it sounds
10 terrible, it really does. It's one of those things it
11 sounds worst. And no matter how I try to do it or
12 whatever, even though I am telling the truth, it just
13 looks terrible.

14 Q So let me ask you this, can you explain to me
15 how both it can be at the same time an accident that you
16 bit the victim's lip but also something that you need to
17 own up to?

18 A It was an accident and the reason I own up to it
19 is because I should have never -- I should have never went
20 in for the kiss. I own up to the mistake because yes, it
21 was my teeth and my mouth and everything that did it; but
22 it was not intentionally meant to happen. I did not
23 intend for that to happen. It just happened. It happened
24 so fast.

25 Q Okay. Isn't it true that after Assistant

SETH FLEURY-CROSS BY MR. SMITH

1 Solicitor Gary went over all the State's evidence and
2 allegations against you, Judge Stilwell asked you did you
3 assault the victim and you said yes?

4 A Yes because that's what my lawyer advised me to
5 do, to say. I mean, you're talking about -- we're not on
6 trial for what I did, we're talking about what my lawyer
7 failed to do for me.

8 Q Okay. So are you saying that you were lying
9 when you told Judge Stilwell that you assaulted the
10 victim?

11 A I wasn't lying because I went in for the kiss.
12 And I feel like you're trying to trap me into saying
13 something so I'm not going to answer your question.

14 MR. SMITH: Objection, Your Honor, the witness
15 is refusing to answer the question.

16 THE COURT: Answer the question that's asked.

17 THE WITNESS: Yes, I lied.

18 BY MR. SMITH:

19 Q You testified earlier that you were nervous
20 during your guilty plea hearing, don't you think you would
21 have been nervous if you were testifying at trial too?

22 A No because if I had my trial I'd been telling
23 the truth. I was advised to go in there [audio
24 distortion]. Mr. Bondurant told me to do everything that
25 the Judge [audio distortion]. Said go in there, say yes

SETH FLEURY-REDIRECT BY MR. THOMAS

1 to everything, just own up to it. The reason why I did
2 all these things is because my lawyer told me not -- he
3 told me that going to trial, that it would look terrible.
4 How I just tried to explain it to you. And he said just
5 own up to it, I don't see any Judge giving you any time.
6 Worst case scenario two to three years. That's why I went
7 into it. That is why I went into that plea deal. Was
8 because in my mind, I'm like, okay, worst case scenario is
9 two to three years. And they're saying 15. He told me
10 that they do that. They just do that to scare you.

11 Q Mr. Fleury, do you think it's okay to lie under
12 oath in court when you believe it will give you some
13 benefit?

14 A No, I do not think it's okay.

15 MR. SMITH: I don't have anymore questions, Your
16 Honor. Thank you.

17 THE COURT: Thank you, Mr. Smith.

18 Any redirect, Mr. Thomas?

19 MR. THOMAS: Yes, Your Honor, if I may. Just a
20 couple of questions.

21 REDIRECT EXAMINATION

22 BY MR. THOMAS:

23 Q Seth, let me ask you, and I know that this -- I
24 think what counsel is trying to ask you about is -- let me
25 ask you a couple of questions. Are you taking

SETH FLEURY-REDIRECT BY MR. THOMAS

1 responsibility today for what happened?

2 A I'm not taking responsibility today, I was just
3 wanting to let him know that, like, everything I did that
4 day was what my lawyer told me to do.

5 Q Okay. Let me ask you this, in regards to this
6 incident, there's a difference between an accident and an
7 intentional act; do you understand that?

8 A Right.

9 Q And you do you understand that an accident and
10 an intentional act can sometimes produce the same result?

11 A Right.

12 Q Do you understand that?

13 A Yeah.

14 Q So the result in this case, which she had a
15 severe injury to her lip?

16 A Right.

17 Q Okay. So that is a result of an accident?

18 A I never intended -- everything happened so fast.
19 I wasn't trying, like, none of that was going through my
20 mind. The only thing going through my mind that day was
21 this is the girl I love. This is the girl and this is who
22 I'm trying -- I was madly in love with this girl. Like, I
23 would have done anything for this girl. And I was trying
24 to win her back. Because she contacted me first. I did
25 not go into the kiss saying, in my mind, Oh, I'm going to

SETH FLEURY-REDIRECT BY MR. THOMAS

1 bite down on your lip and rip it off. That was not in my
2 mind. I was just trying to kiss her and everything else
3 went, like, really, really fast.

4 Q So the answer to the question is that you never
5 intended to inflict harm upon her?

6 A I never intended to inflict any harm upon her at
7 all.

8 Q But she was harmed?

9 A But she was harmed.

10 Q And for that you're responsible for that harm,
11 even though it wasn't intentional?

12 A Because it was my mouth, it was me, I was there.

13 Q Right.

14 A It's very confusing, you know. And I'm
15 trying -- I did not intend to bite down on her lip.
16 That's what -- yeah.

17 Q So when the statement was made in the court by
18 your attorney that you intended to inflict this injury,
19 was that true?

20 A That was not true.

21 Q Okay.

22 MR. THOMAS: Thank you, Your Honor.

23 THE COURT: Okay. All right.

24 MR. SMITH: Your Honor, may I just ask a couple
25 more questions?

SETH FLEURY-RECROSS BY MR. SMITH

1 THE COURT: In response to anything new brought
2 up in redirect. Go ahead, we'll just see.

3 MR. SMITH: Okay.

4 RECROSS-EXAMINATION

5 BY MR. SMITH:

6 Q So, Mr. Fleury, what you're saying is you didn't
7 intend to bite her lips, you just meant to grab them with
8 your teeth?

9 A I honestly wasn't, like, thinking about any of
10 when it was all going down. Like, that wasn't, like, that
11 wasn't in mind, like, okay, I'm going to bite down on her
12 lips real quick, that's not how it went. I was going in
13 for the kiss, she was pulling back and I was, like, if I
14 can just kiss her and I went in. And when I went in I
15 tried to grab her teeth -- I mean, grab her lip and pull
16 her towards me and that's when she jerked back. So I did
17 not intend to bite her lip.

18 Q Okay. And when Judge Stilwell asked you did you
19 want to go to trial so that you can challenge The State's
20 case, you said no you wanted to plead guilty; right?

21 A Yes because that's what my lawyer advised me to
22 do.

23 MR. SMITH: No more questions, Judge. Thank
24 you.

25 THE COURT: All right, thank you, Mr. Fleury.

AMY BANKS-DIRECT BY MR. THOMAS

1 All right, Mr.~Thomas.

2 MR. THOMAS: Your Honor, if it please the Court,
3 we would call, if she is available, Amy Banks, who is
4 Mr. Fleury's mom.

5 THE COURT: Okay, is Ms. Banks in? I see her
6 name.

7 MR. THOMAS: Yes, she is, Your Honor.

8 THE COURT: Ms. Banks, can you hear me?

9 THE WITNESS: Yes, I can hear you.

10 THE COURT: Okay. Okay. All right. Well, I
11 can't see you but I can hear you. Raise your right
12 hand.

13 AMY BANKS, after being duly sworn{,}testified as
14 follows:{F}

15 THE COURT: Okay, I can see you now. State your
16 name for the record, please, ma'am.

17 THE WITNESS: Amy Banks.

18 THE COURT: All right, Mr. Thomas, your witness.

19 MR. THOMAS: Your Honor, if it please the Court.

20 DIRECT EXAMINATION

21 BY MR. THOMAS:

22 Q Ms. Banks, your relationship to Seth Fleury is
23 what?

24 A He is my son.

25 Q Okay. You understand that you are here today to

AMY BANKS-DIRECT BY MR. THOMAS

1 tell the truth?

2 A Yes, sir.

3 Q Not to reward anyone with your testimony?

4 A No, sir.

5 Q Okay. And you intend to tell the truth?

6 A Yes, sir, whole truth.

7 Q Okay. Ms. Banks, you were -- you're very close
8 to your son?

9 A (The witness nods.)

10 Q And you were very involved with your son in
11 regards to representation by counsel, working this case up
12 for his plea and actually attended the plea?

13 A Yes, sir, uh-huh.

14 Q Okay. Now, do you have any knowledge about
15 counsel as far as having some sort of a friendship with
16 the young lady in this case?

17 A I didn't know about this until after Seth had
18 been incarcerated. It had got brought to my attention,
19 which I seeked [verbatim] out myself to look at, that as I
20 went into the social media and looked at the prom picture,
21 when you click on a Like, the second one down was our own
22 attorney, Charlie Bondurant. Who had liked her on her
23 social media account prom picture.

24 Q Okay.

25 A And that's when that raised a lot of flags with

AMY BANKS-DIRECT BY MR. THOMAS

1 me. Why would our attorney go into -- and he was the
2 second one. So therefore, that was not prom, which was
3 done back in June, which was almost a year before the
4 trial so -- the plea hearing.

5 Q So was that -- that interaction on Facebook, was
6 that prior to you retaining him?

7 A That was after Seth was already incarcerated. I
8 didn't -- yes, yes, that was before. Because we didn't
9 retain him until October. And the prom was in May or June
10 prior to that.

11 Q Okay. And did counsel, the attorney, did he
12 ever bring that to your attention, that he actually knew
13 the young lady in this case?

14 A No, he never disclosed that he knew Kayla Haze
15 at all.

16 Q Okay. Okay. Would that have given you some
17 concern had you known that?

18 A Yes, it actually answered a lot of questions of
19 why everything was rushed. And why we were only given --
20 the only thing we are told by Mr. Bondurant was, Don't
21 worry about it. I even have a email saying, I see no jail
22 time. I see home incarceration. Is what he told me. He
23 didn't say anything about the two to three years to me.
24 He told me in an email that he does not see any prison
25 time whatsoever. He only saw home incarceration from his

AMY BANKS-DIRECT BY MR. THOMAS

1 fellow friends, coworkers and Judges that he talks to on a
2 regular basis.

3 Q Okay.

4 Your Honor, I apologize, I've only done one
5 of these where we actually had something to introduce. I
6 think these have been provided to counsel and to
7 everybody. Your Honor, there is a document that is -- has
8 Carla [verbatim] Haze senior prom, a picture of that as
9 well as a Like by counsel. And, Your Honor, we would like
10 to introduce this as Applicant's 1 at this time.

11 THE COURT: Okay. All right. I'm seeing -- I
12 don't know if you can see this, is this the document
13 you're referring to?

14 MR. THOMAS: Yes, sir. Yes, sir, that's the
15 one.

16 THE COURT: Okay. That would be Applicant's No.
17 1.

18 Any objection?

19 MR. SMITH: I just ask for clarification, Judge,
20 that includes Applicant's 1, would include both the
21 screen shot of the email and of the Facebook post?

22 MR. THOMAS: Your Honor, this is just the
23 Facebook post.

24 THE COURT: Just this page.

25 MR. SMITH: Judge, I'm not going to object to

AMY BANKS-DIRECT BY MR. THOMAS

1 that, I would just ask that they lay the foundation
2 for the record so it will be clear what that is.

3 THE COURT: All right.

4 Mr. Thomas, get the witness to lay a foundation.

5 MR. THOMAS: Okay, Your Honor.

6 BY MR. THOMAS:

7 Q Ms. Banks, so you were the one, the individual,
8 who found this information?

9 A Yes, I -- actually someone had kind of told me
10 there was some things being said on social media through
11 publically on Facebook. So I went through and looked at
12 it myself. Instead of hearsay, I went and actually did
13 the research myself and that's when I came across that.

14 Q Okay. So you actually found--

15 A I found that myself.

16 Q -- this document that represents the Facebook
17 posting?

18 A Yes, sir.

19 Q And is this -- was this document produced by you
20 either by a screen shot or?

21 A That is a screen shot.

22 Q Okay. And did you actually take the screen shot
23 yourself?

24 A Yes, I do. I actually have it on my phone.

25 Q Okay. And does this adequately and

AMY BANKS-DIRECT BY MR. THOMAS

1 appropriately represent what you were viewing on the
2 computer at that time?

3 A Yes, sir.

4 Q Okay.

5 MR. THOMAS: Your Honor, I'd like to move that
6 as Applicant's 1, please.

7 THE COURT: Any objection?

8 MR. SMITH: No objection.

9 THE COURT: All right. So that would be
10 admitted as Applicant's No. 1 without objection.

11 MR. THOMAS: Thank you, Your Honor.

12 (WHEREUPON, Applicant's Exhibit No. 1 was marked
13 for identification and received into evidence.)

14 BY MR. THOMAS:

15 Q Ms. Banks --

16 Your Honor, I don't know if you -- I was
17 just looking to see in the package of stuff that I sent to
18 the court, if there is a copy of the email?

19 THE COURT: All right. I have a document that
20 has Jackie Miller at the top.

21 MR. THOMAS: From Donald Banks to Jackie Miller,
22 who is my secretary.

23 THE COURT: August 27th, 2020?

24 MR. THOMAS: Yes, sir, yes, sir; that's correct.

25 THE COURT: Okay.

AMY BANKS-DIRECT BY MR. THOMAS

1 MR. THOMAS: Your Honor, this is a document that
2 I'm talking about.

3 BY MR. THOMAS:

4 Q Ms. Banks, I want to draw your attention to, I
5 think this is an email that you forwarded to me, through
6 my secretary, who is Jackie Miller; is that correct?

7 A That's correct.

8 Q Okay.

9 And it says, Hi, I hope you had a good
10 weekend.

11 Okay, that's to me.

12 Down at the bottom it says, Now, while you
13 see I thought and still think that he likely would get
14 very little, if any, prison time. This has been in my
15 experience for ten plus years?

16 A That's correct.

17 Q Okay. And this email was sent to you?

18 A Yes, sir.

19 Q And it was sent from defense counsel?

20 A Yes.

21 Q From Charlie--

22 A Charlie Bondurant, yes.

23 Q Okay. Okay. Now, and you had testified that it
24 was your understanding of the representations to you from
25 Mr. Bondurant, was that he would get -- actually, would

AMY BANKS-DIRECT BY MR. THOMAS

1 not get any jail time?

2 A That's correct. He told us it would be
3 mostly -- he was looking for a lengthy home incarceration.
4 That's why I did not understand why a lengthy home
5 incarceration, when the prosecutor was asking for 15
6 years. To me that did not make any sense.

7 Q Okay. But your interpretation of this email was
8 that -- was that it was reaffirming what counsel was
9 telling you verbally?

10 A Yes, sir.

11 Q And that it reaffirmed your belief that he would
12 get no or very little jail time?

13 A Exactly.

14 Q Okay. And was this information taken into
15 consideration in regards to the plea?

16 A I only heard of one plea and that was that 15
17 years. That was the only plea we ever heard of. We
18 didn't hear of any other pleas. We were just told that
19 she's not budging and other excuses on why she was not
20 budging.

21 Q Okay. But did you believe the information
22 contained in this email at the time in which Seth went to
23 court to enter into a plea?

24 A Yes. Seth was going to enter a plea but then we
25 thought he would not get, you know, what he got. That we

AMY BANKS-DIRECT BY MR. THOMAS

1 were -- that we were told it would be home incarceration -- a
2 lengthy home incarceration is what we were told.

3 Q Okay. So this document that was forwarded to
4 me, is actually the email, a copy of the email that you
5 received from Mr. Bondurant?

6 A Correct.

7 Q And this came directly to you?

8 A Directly to me from Mr. Bondurant.

9 Q Now, this document that was forwarded to me, is
10 that an adequate and appropriate representation of what
11 you received from Mr. Bondurant?

12 A That's exactly what I received from him.

13 Q That's exactly what you received?

14 A Uh-huh.

15 Q All right.

16 Your Honor, if it please the Court, we'd
17 like to move this as Applicant's No. 2.

18 THE COURT: Any objection?

19 MR. SMITH: No objection.

20 THE COURT: All right, so this document would be
21 admitted as Applicant's Exhibit No. 2 without
22 objection.

23 (WHEREUPON, Applicant's Exhibit No. 2 was marked
24 for identification and received into evidence.)

25 MR. THOMAS: Thank you, Your Honor. Your Honor,

AMY BANKS-CROSS BY MR. SMITH

1 I have no further questions.

2 THE COURT: Okay.

3 Mr. Smith, any cross-examination?

4 MR. SMITH: Only a few questions, Judge.

5 CROSS-EXAMINATION

6 BY MR. SMITH:

7 Q The screen shot of the email that's been
8 admitted as Applicant's Exhibit 2, that email address on
9 there as the recipient, is that one that you used? I
10 think it says [audio distortion]--

11 A Donald Banks is my husband. The email is
12 bankszone@gmail.com and that's what we use all for all of
13 our kids correspondences as far as schooling or any kind
14 of, you know, business ordeals, that what we used.

15 Q Okay. Now, I'm going to refer to Applicant's
16 Exhibit 1, the screen shots of the Facebook post. If you
17 look on there, the section that shows that the Facebook
18 profile name Charlie Bondurant Liked it, doesn't have any
19 time or date stamp beside the Like but. . .

20 A No, Facebook does not do that.

21 Q Okay. His name is on the list, though, just
22 with no--

23 A Yes, sir. And from what I'm hearing from
24 Facebook is, if it was the second one, he was the second
25 one that Liked it during that time.

AMY BANKS-CROSS BY MR. SMITH

1 Q But you can't tell that from this picture,
2 right?

3 A No. Well, the way you click on the Likes, it
4 shows everyone, it shows the list down. So he was the
5 second one that Liked it is what I'm hearing from
6 Facebook.

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CHARLES BONDURANT-DIRECT BY MR. SMITH

1 MR. SMITH: Your Honor, no more questions.

2 Thank you.

3 THE COURT: Anything for this witness?

4 MR. THOMAS: No, Your Honor.

5 THE COURT: Okay. Thank you, ma'am.

6 THE WITNESS: Thank you, sir.

7 THE COURT: All right, Mr. Thomas.

8 MR. THOMAS: Your Honor, if it please the Court,
9 I believe that's the Applicant's case.

10 THE COURT: Okay, the Applicant rests?

11 MR. THOMAS: Yes, sir.

12 THE COURT: All right.

13 Mr. Smith.

14 MR. SMITH: Yes, Your Honor, we would call
15 Mr. Bondurant as a witness.

16 THE COURT: All right, Mr. Bondurant, raise your
17 right hand, please.

18 CHARLES BONDURANT, after being duly

19 sworn{,}testified as follows:{F}

20 THE COURT: All right, state your full name for
21 the record, please, sir.

22 THE WITNESS: Charles Ashton Bondurant.

23 THE COURT: All right, Mr. Smith, your witness.

24 DIRECT EXAMINATION

25

CHARLES BONDURANT-DIRECT BY MR. SMITH

1 BY MR. SMITH:

2 Q Okay, Mr. Bondurant, how long have you been
3 practicing law?

4 A Since 2007, so 13, 14 years.

5 Q Okay. How much of the time has been spent in
6 criminal law?

7 A All of it. I was -- seven years I was a
8 prosecutor in Greenville for seven years. And then I have
9 being doing criminal defense since 2014.

10 Q Okay. How did you come to be involved in
11 Mr. Fleury's criminal case?

12 A I can't remember how Amy, his mom, found me.
13 But she called me up once he was arrested and we spoke
14 over the phone several times. And she came in to hire me,
15 I think a few days later.

16 Q Can you give us a brief summary of the facts of
17 the crime as you remember them?

18 A Uh-huh, yeah. So, Seth, as he stated earlier,
19 had been dating her and then had stopped dating her. And
20 then he had joined the Navy like he said. And he was
21 about to go off to the Navy and she contacted him a few
22 days beforehand. And tried to get sort of, you know, what
23 I maintained was toying with his emotions and trying to
24 pull him back sort of in. And so he met up with her, I
25 think the night before this happened. She was

CHARLES BONDURANT-DIRECT BY MR. SMITH

1 intoxicated. He told her to go home and come back in the
2 morning so that they could meet and so she could sober up
3 some. In the meanwhile, you know, it sort of rekindled
4 some feelings for him and he went out and bought some
5 flowers and cards. Met her in a parking lot near her
6 house. And I think he, at one point, asked her to go to
7 back to Charleston -- or to go to Charleston. They use
8 the go there for, you know, when they were together.

9 And then she started saying, I can't do
10 this, I can't do this, all of this. And, you know, he was
11 sort of upset, of course. And so she ran back to the car.
12 He, you know, followed her, went in to kiss her, as he
13 stated, somehow, you know, bit her lip to the point that
14 it came off. And then he sort of backed up, panicked and
15 I think there was a gentleman nearby that saw it, coming
16 rushing over. He got in the car, left. Called his mom on
17 the phone. I think she told him to go back to the scene.
18 At that -- at which point he did. And, of course, he was
19 arrested at that point and taken to jail.

20 Q Okay. How many times did you meet with
21 Mr. Fleury while representing him?

22 A You know, I really enjoyed Seth, I really
23 enjoyed him. I thought he reminded me of myself a bit at
24 that age. And so, I met with him more than I've probably
25 met with any client that I had. I would say maybe like he

CHARLES BONDURANT-DIRECT BY MR. SMITH

1 said, maybe four to five times. But we often talked on
2 the phone as well. Just about the case, about life. You
3 know, I tried to talk to him about, you know, helping him
4 through the situation. I really liked him, I still do. I
5 really care for Seth. And so I tried to -- I tried to
6 talk to him as much as he wanted.

7 Q You mentioned that you talked to him on the
8 phone, did you have any sort of mail or email
9 correspondence with him?

10 A Oh, yeah. We go back and forth, you know, about
11 how things were going in therapy, about preparing for his
12 case, getting statements from his friends, from his
13 employer. You know, I would talk back and forth with his
14 mom some as well. So yeah, we had a lot of that as well.

15 Q Okay. You mentioned earlier too that he was in
16 therapy. Do you know when he started therapy?

17 A When he came in, you know, I suggested that in
18 order to mitigate his case, which I, as a prosecutor, I
19 felt like enough defense attorneys didn't do. And I told
20 him it would be, probably, really beneficial for him to go
21 see a therapist who could then, you know, write a
22 statement on his behalf. And he was great at doing that,
23 I was impressed. Because most people just don't follow up
24 on some of the things that you'd ask them to do to make
25 their case better. And he did it. And I was super

CHARLES BONDURANT-DIRECT BY MR. SMITH

1 impressed by that. In fact, I think we gave a statement
2 from his psychologist. I think she was, actually, trying
3 to come that day. And then she couldn't find the
4 courtroom or whatever, so. So he started -- yeah, he
5 started, I guess, maybe, I think, a few months -- he had a
6 few problems getting in with her. And then it too --
7 after about two or three months, I think he got in with
8 her.

9 Q Okay. So you suggested that he start seeing a
10 therapist as sort of a proactive measure?

11 A Yeah, I really try to encourage people to, you
12 know, find a job or stay employed. He was a great
13 employee. So I knew that wouldn't be a problem, that he
14 could just continue to work. And he just made supervisor
15 and all this sort of thing. And I, you know, I encouraged
16 him to, you know, get therapy or anger management or
17 substance counseling, whatever that is. Whatever they
18 need. Whatever is pertinent. You know, I encouraged him,
19 of course, not to get back in trouble. And to do some
20 community service, if possible. Just anything to show the
21 prosecutor that he's -- this is not the person that he is.
22 Not the person that he was that day.

23 Q Right. Okay. Do you know how frequently you
24 had contact with Mr. Fleury through phone, email or mail?

25 A I mean, these things, you know, they wax and

CHARLES BONDURANT-DIRECT BY MR. SMITH

1 wane. But, you know, I mean, it was -- I thought it was
2 quite often. I mean, like I said, it was more than
3 probably most people that I -- most people that I
4 represent. So, you know, I would say, at least, a couple
5 of times a month, if not more than that.

6 Q During your meetings or discussions with
7 Mr. Fleury, did you go over the nature of the State's
8 allegations against him and the warrant and the
9 indictment?

10 A Of course, yes. So, you know, I make it
11 certainly a point, obviously, to, once I get the evidence,
12 I sit down with them and go over every shred of it.
13 Because having been a prosecutor, I know that, you know,
14 the cops get it wrong a lot of times. Or they just don't,
15 you know, or they don't write things down accurately or
16 they leave stuff out. So I wanted to make that, you know,
17 that everybody, no matter, I mean, from the smallest crime
18 to the largest crime, that they tell me their side of the
19 story and what went on. And they look at every sentence
20 in the police report to tell me if that's accurate or if
21 they disagree with that.

22 Q What sorts of things do you remember receiving
23 in discovery?

24 A The police report. Obviously, there were
25 pictures. There were jail calls. Witness statements.

CHARLES BONDURANT-DIRECT BY MR. SMITH

1 Or, at least, the victim's statement [audio distortion].

2 THE COURT: Say that again.

3 THE WITNESS: I'm sorry?

4 THE COURT: Mr. Bondurant, say that again. You
5 broke up on me, I couldn't hear your answer.

6 THE WITNESS: Okay, sure.

7 BY MR. SMITH:

8 Q So victim's statements?

9 A Yeah, victim's statements. There were body
10 camera videos from police officers. There were jail
11 calls, police report, pictures. I think there may -- I
12 think Ms. Gary may have sent me medical records from the
13 victim from the hospital to show her injuries. In fact, I
14 know she did.

15 Q Okay. And you mentioned you always go over that
16 with clients, that includes Mr. Fleury, you showed him all
17 of that evidence?

18 A That's correct.

19 Q Did he give you any reason to believe that he
20 didn't understand the significance of that evidence and
21 discovery?

22 A No, I don't think so.

23 Q Okay. Did you go over with him the potential
24 range of sentence that goes along with this crime?

25 A I did.

CHARLES BONDURANT-DIRECT BY MR. SMITH

1 Q Okay. Did he give you any reason to understand
2 that he didn't understand that it could be, potentially,
3 20 years?

4 A No.

5 Q Okay. Do you know -- did you know if Mr. Fleury
6 was taking any sort of medication or anti-depressants at
7 the time of representation?

8 A I don't think at the time of representation. He
9 had mentioned that he was taking them at the time of the
10 incident. And that that, you know, had messed with his
11 emotions. Which I certainly understand. And I think I
12 brought that up in the plea hearing. And so, I don't
13 believe his psychologist put him on anymore medication
14 after -- once he started seeing her. But I could be wrong
15 about that but I don't believe that's the case.

16 Q Did you have any reason to think that his, while
17 you were representing him or meeting with him, that his
18 thinking was fuzzy or that he didn't comprehend what was
19 going on?

20 A No, I thought he was -- I thought he was and I
21 still think he's a very intelligent person.

22 Q While you were representing Mr. Fleury, did you
23 meet with any of his other family members too?

24 A Yeah, I met with his mom, Amy, multiple times.
25 The day, just before the plea, we had, I think, it was

CHARLES BONDURANT-DIRECT BY MR. SMITH

1 five or six people, I'm trying to remember who all were
2 there to prepare for the plea hearing. And it was, I
3 think his sister was there. One of his good friends was
4 there. I think maybe his grandfather and grandmother were
5 there. But it was like five or six people.

6 Q Okay. What did Mr. Fleury tell you about what
7 happened in the parking lot?

8 A So, I think, initially, he said it was -- it was
9 a kiss and a nibble, I think. It's not -- I mean, it's
10 uncommon that people will come in, initially, to me and
11 say, sort of try to tell me a certain story. Until they
12 get comfortable with me and start to trust me or whatnot.
13 And, I think, he ultimately told me -- basically, what he
14 said today and what I believe him was that -- well, what
15 he said -- let me take that back. What he said at one
16 point today. Which was that -- that he intended to do it.
17 He was mad but he never intended to that degree
18 whatsoever. Which I believe. And which I advocated for
19 at the plea hearing. And, of course, faced with the
20 substantial amount of evidence of the injuries, I just
21 don't see how we could ever say it was simply a nibble or
22 an accident.

23 Q So he didn't tell you anything like, for
24 example, that he tripped and hit her lip teeth first or
25 anything?

CHARLES BONDURANT-DIRECT BY MR. SMITH

1 A No. I mean -- no, no, he didn't tell me
2 anything like that, no.

3 Q Did he ever tell -- ever tell you that he meant
4 to bite her?

5 A Yeah, I think he, eventually, told me that he
6 did but not to that degree whatsoever. I never push
7 people to plead guilty or to go to trial. It is my policy
8 that when people come in, I tell them -- and I tell this
9 to every, single client. Which is, I'm not going to tell
10 you what to do in your case. Some attorneys will do that.
11 And they'll tell you you have to plea or have to, you
12 know -- and I tell them, Listen, I'm not in your shoes, I
13 can't possibly tell you what to do. All I can tell you is
14 the strength of your case, the strength of your evidence.
15 I can look at your defenses, your constitutional defenses
16 and whatnot. I can tell you what my experience has been
17 in front of juries and what others have experienced. And
18 I can tell you my experience in plea hearings. But you
19 have to decide. I cannot -- I don't want you -- and I say
20 this to every client. I don't want you coming back to me
21 later and saying, Well, you told me to do this. And so
22 I -- it's always been a policy that I refuse to tell -- I
23 have people that will tell me, just tell me what to do in
24 this. And I'll say, I can't do that. And I won't do
25 that.

CHARLES BONDURANT-DIRECT BY MR. SMITH

1 Q So tell me if this sounds right to you. The
2 understanding that you have, based off what he told you,
3 was that he meant to bite her but maybe didn't mean to
4 bite her lip off.

5 A Right. Of course, yes. He was mad, he was mad
6 at her. And, you know, rightfully so. She had toyed with
7 his emotions and messed with him. And she had picked on
8 him a month beforehand. Him and her and another -- a
9 prior boyfriend she had at the time. And he was angry and
10 upset. And, I think, you know, he bit her just to, as you
11 see often in sort of abusive, you know, domestic violence
12 situation, a bite on the arm or shoulder or whatnot. And
13 then when, I think, when he did, she probably jerked back
14 her head like that, like he said and it just made it a lot
15 worst than he ever intended.

16 Q And the things you just said, those are things
17 that you explained in mitigation too for context, right?

18 A I did. I tried my best to.

19 Q What sort of independent investigation or
20 research did you do?

21 A Well, of course, I, you know, reviewed all the
22 evidence. Listened to everything, everything phone call,
23 every jail phone call, you know, watched every video. And
24 I spoke to -- I went and met with Ms. Gary on one occasion
25 to talk to her initially about the case and to see where

CHARLES BONDURANT-DIRECT BY MR. SMITH

1 she stood on it to. And to see -- and to tell Seth's side
2 of the story. I felt as a prosecutor, that enough defense
3 attorneys did not do that. They would never come and meet
4 with the prosecutor, come and meet with me and tell me who
5 that person was. Because this person is a human being and
6 has another story that is much more than what they are on
7 paper. What they say on police report.

8 So, I went and met with her. And we spoke.
9 Probably for an hour or so. And then, I think, if I
10 recall correctly, she went off to maternity leave soon
11 thereafter. And she had already sent me the plea offer
12 for 15 years. And I actually called Judy Munson, her
13 boss, my former boss, I don't know if it's still her boss
14 but it was at the time, to -- because I was flabbergasted
15 [audio distortion]. And so I called Judy to ask her if
16 she thought this was a normal plea offer. And so we
17 talked about that for a little while. And we talked to
18 her and she said, you know, she would just talk to
19 Elizabeth about it or whatnot. And then, you know -- so
20 then I talked to Elizabeth multiple times thereafter about
21 the doctor. She talked about the doctor that she had
22 interviewed regarding the functionality of the victim's
23 mouth.

24 And so, you know, but, you know, it was
25 clear from my discussions with Seth and with the evidence,

CHARLES BONDURANT-DIRECT BY MR. SMITH

1 that there was, you know, there was never going to be a
2 defense, there was never going to be a legitimate defense
3 that could be brought up. Had he told me, listen this was
4 a accident, it was a accident from the beginning, it was
5 always an accident, I'd no problem going forward with
6 that. And going to trial with that. If that's what he
7 maintained. So, you know, there were no, obvious,
8 constitutional issues or defense issues that required any
9 sort of extensive research, you know. And, you know,
10 people come in too, they'll take streaks, you know,
11 they'll say, hey, I'm just here to, you know, for a plea
12 or I did not do it whatsoever. And even when people come
13 in sometimes will say, well, I made a mistake. I'll still
14 say to them, well, let's look at the evidence. You may
15 still have defenses that we can use. To either get the
16 case dismissed or to mitigate your case. So let's look at
17 that before we ever, you know, talk about a plea offer.

18 Q Did you talk with anyone else about what sort of
19 sentence you could expect if Mr. Fleury were to plead
20 guilty?

21 A I did. After I received the plea offer, I
22 thought to myself, I don't -- I don't understand this.
23 Because I, as a prosecutor for seven years, had worked
24 many different types of cases involving repeat offenders,
25 violence, I mean, sex crimes, you name it. And I thought

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1 this was way, way excessive for this kind of case. And so
2 I said I have to -- I've got to call some people about
3 this. Because I don't understand, is my radar that off?
4 So I called two former prosecutors, current criminal
5 defense attorneys and one current prosecutor. Who I
6 worked with at the office in Greenville. And I gave them
7 the whole run down and said this is the case, these are
8 the facts, these are his prior record, this who he is as a
9 person. He's a great person. He's a he great employee.
10 He comes from a good family. What do you think? And
11 nobody, none of them, thought that he would get more, at
12 the most, get more than a couple of years. With very good
13 chance of home incarceration.

14 And so, I thought, well, if that comes from
15 three other professionals with ten plus years experience,
16 maybe I'm not that crazy. Now, I've heard it, obviously,
17 brought up that, you know, I told him that. And I did.
18 However, having done this for so long and knowing that
19 judges don't have to follow recommendations and that it's
20 not a plea agreement, it's not Elizabeth telling me that,
21 okay, we're going to recommend two years. I make it very
22 clear to people that this is just my assessment of what it
23 is. But the Judge can do anything he wants. In fact, the
24 prosecutor is going to be asking for a lot of time. And
25 the Judge can go along with that. But through my

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1 experience and through others, you know, experience,
2 which, I guess, totals 40 plus years of experience, that
3 doesn't seem like a, you know, that seems way, way
4 excessive.

5 And I don't remember how many times I
6 walked back to my office so disappointed about the
7 sentence that was given out. When I dealt with people
8 that were multiple repeat offenders, had terrible criminal
9 histories that created havoc in the life of their spouses
10 or children. And they'll come back and they would get
11 way, way less than 12 years or 15 years. I mean, two
12 years -- I mean, if I got somebody to get seven years or
13 something, then that was like a victory party for a
14 violent attack on somebody. So I truly believed and I
15 still believed that he shouldn't have gotten anything more
16 than a couple two or three years. At the maximum.

17 Q So you agreed with those other opinions then
18 that were consistent what you thought, the likelihood that
19 he would get a significant sentence was very low?

20 A I did.

21 Q After you looked at all this with Mr. Fleury,
22 did he ever tell you that he was seriously considering
23 going to trial?

24 A No, no he didn't. And I always tell people,
25 again, you sure? If you want to go to trial, we'll go to

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1 trial. This is my experience of what happens if you go to
2 trial. You have -- the evidence is awful against you and
3 my professional judgment is that you'll lose. And that
4 that Judge may hammer you for going to trial on an
5 extremely, extremely weak case. But it's your decision,
6 ultimately. My job is to be your voice and to do what you
7 want me to do.

8 Q You testified you shared that conclusion that
9 you thought he would not get that much prison time, you
10 shared that with Mr. Fleury and his family, right?

11 A That's right, Uh-huh.

12 Q Okay. Did you explain to them how you reached
13 that conclusion?

14 A I did. Again, based on everything that my
15 experience, his lack of a prior record. The fact that
16 this was, you know, other than the injury itself, I didn't
17 think it was an aggravated crime in the sense that he
18 wasn't stalking her, you know, it wasn't a burglary
19 attempt. It wasn't a kidnapping. It literally was a ten
20 second incident. Ten seconds. Of a mistake. And he was
21 a good -- he was a great employee. He had 20 people or so
22 there on his behalf telling what a good person he was.
23 And setting up the context of how he had never been
24 violent towards her. That he had always spent time with
25 her at his house, his grandparents house. And that nobody

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1 had ever seen anything like that. Even remotely close to
2 that. In fact, the opposite. He was -- he would give the
3 shirt off his back. And I thought with all those things,
4 despite her injury, because I'd seen, like I said, many
5 cases where injuries are terrible, awful and a long
6 lasting and repeat offenders and they don't get anything
7 close to that. And so that was my -- how I came up with
8 my professional opinion.

9 Q Okay. So Mr. Fleury agreed that he would be
10 pleading guilty at some point?

11 A That's right.

12 Q Did he ask you to see if he could get a better
13 plea offer or?

14 A Well, he didn't have to ask. Because I was
15 trying to do the best I could. The only thing I could get
16 her -- and it disappointed me but the only thing I could
17 get her to agree to was to allow for an opened plea deal.
18 Where I argued for what I want, she argues for what she
19 wants. She did not want to come off 15. And she
20 certainly wasn't going to reduce the charge to -- I asked
21 for, you know, to reduce it to a ten year charge and she
22 was not. She was ready to go to trial.

23 Q Okay. So there were two plea offers, correct me
24 if I'm wrong, the first was for a 15 year recommendation.
25 And the second one he, ultimately accepted, was the open

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1 plea deal with The State asking for 15 and you arguing for
2 something lower; is that right?

3 A That's right.

4 Q Were there any other plea offers?

5 A No, no other plea offers.

6 Q Okay. Did you share both of those with
7 Mr. Fleury?

8 A I did.

9 Q He rejected the first offer?

10 A Yes. Well, he didn't have to reject it because
11 I went back and got in, you know, I wasn't going to let
12 him plea to 15. Because I thought, and I told him this
13 multiple times, I think if you go to trial and you're
14 found guilty, you're going to get, you know, not much
15 worse than 15 years, maybe even less. So you should not
16 plead to 15 years.

17 Q Okay. So you explained to him that Judge
18 Stilwell would not be bound by either the 15 year
19 recommendation from The State or your request for a
20 lenient sentence?

21 A I always have to explain that.

22 Q Did he give you any reason to think that he
23 didn't understand that and believed instead that Judge
24 Stilwell's hands would be tied?

25 A No.

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1 Q I'm going to refer to what has been admitted as
2 Applicant's Exhibit 1, which is a screen shot of a email.
3 Are you familiar with what I'm referring to?

4 A Yes, I am.

5 Q Do you recognize that email--

6 A I do.

7 Q -- dated December 12, 2018.

8 A I do, yes.

9 Q Okay. Is that a email from you to Seth's
10 mother's email account?

11 A That's right.

12 Q Okay. That was an email you sent to her before
13 he pleaded guilty, wasn't it?

14 A I believe that was afterwards.

15 Q Okay.

16 A I went back and looked at the chain after I
17 received the evidence and she had sent me, I think she did
18 this multiple times, pleas or sentences or convictions
19 around the world that were in the news of cases that
20 involved much more violent events, with much lesser
21 sentences than 12 years. Again, and that's when I
22 responded to her, this is just proof showing to you why I
23 thought and still think that he would never get anything
24 close to that.

25 Q Okay. Would it be fair to say that your

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1 statement in the email in Exhibit 1 was not an exception
2 to your advice to Mr. Fleury, it was indicative of your
3 advice that you thought he would get a light sentence?

4 A That's right. Again, I think it was after. I
5 don't believe that was anyway considered as part of his --
6 whether to plead or not but even if it was, it was the
7 exact same thing I had been telling them.

8 Q And that's the same thing you're saying today,
9 that that was your professional opinion?

10 A That's correct, uh-huh.

11 Q You mentioned earlier about meeting with
12 Mr. Fleury's family, what exactly did you do to prepare
13 Mr. Fleury and his family for the guilty plea hearing?

14 A Well, so we brought them in and we went in the
15 conference room. He had already had him right his
16 statement. So then the other people had -- some of them,
17 I think, had given me their statement before then, I think
18 maybe one or two hadn't really written anything out. But
19 they were very good at giving me statements. So I
20 probably had 10 or 15 statements on his behalf. And so we
21 went over, you know, the same thing I normally do when I
22 prepare for somebody. Although, it's rare that you have a
23 plea of this magnitude. That, you know, how the process
24 would go, what -- who should speak because judges
25 sometimes don't like it if, you know, get the whole peanut

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1 gallery to speak. So we try to narrow it down to three or
2 four. Just talked about demeanor, what's proper demeanor
3 in court, what's not to, you know, look at the other side,
4 don't get perturbed if they say something that's offensive
5 or upsetting. And, you know, just trying to -- you know,
6 part of my job, what I see my job a lot of, is telling a
7 story in the most convincing and succinct way so we would
8 listen to what they had to say. You know, I would sort of
9 tell them, maybe focus on a little more on this, less on
10 that. Don't, you know, don't let it get sort of Jerry
11 Springerish. And, you know, then just the whole process.

12 And if I recall correctly, I went through
13 my spill to, what I was going to say, because I like to do
14 that to see if I have gotten anything wrong or if there's
15 something that somebody wanted to add in there that they
16 thought was important. And because oftentimes I sort of
17 get in my head what, you know, what I think the most
18 important part is and then other people say, well, I
19 really want you to add x, y, z or whatnot. So we spent a
20 fair amount of time in there going over those things.

21 Q Did you feel that you and Mr. Fleury were
22 prepared for the hearing?

23 A Oh yeah, definitely.

24 Q Did Mr. Fleury seem nervous to you at his
25 hearing?

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1 A Yeah, he did, which is normal. I mean, who's
2 not going to be nervous in that kind of situation? And
3 he's a supersensitive guy, sweet guy. And I would fully
4 expect if he wasn't nervous, it would be worrisome. But
5 he, you know, he was nervous. But I thought he could
6 handle it because he, like I said, he's a smart, you know,
7 sensitive guy.

8 Q Did you tell Mr. Fleury to lie to Judge Stilwell
9 just to get the hearing over with, if he asked questions,
10 for example, is your thinking impaired right now or do you
11 admit to committing this crime? Did you tell him just to
12 say yes even if it's not true?

13 A No. I mean, I don't know what the point of that
14 would be. If he wanted to pull out that day, that would
15 have been fine with me. I mean, I was happy to do
16 whatever he wanted me to do.

17 MR. SMITH: Judge, can I have just a moment? I
18 need to plug in my computer right now before the
19 battery dies. I'm sorry about that.

20 THE COURT: Yes, sir, that's fine.

21 MR. SMITH: Be back in 30 seconds.

22 (WHEREUPON, a short break was taken.)

23 MR. SMITH: Thank you.

24 THE COURT: Okay, go ahead.

25

CHARLES BONDURANT-DIRECT BY MR. SMITH

1 BY MR. SMITH:

2 Q Mr. Bondurant, the victim spoke at the hearing
3 about the rocky relationship she and Mr. Fleury had;
4 didn't she?

5 A She did.

6 Q Do you recall her saying that he beat her
7 everyday?

8 A I do, yeah.

9 Q Now, when you spoke at the guilty plea hearing,
10 you talked about their relationship too, didn't you? That
11 it was contentious and they had some jealousy issues?

12 A I did, yes.

13 Q And those family members that participated in
14 that conference meeting the day before the guilty plea
15 hearing, they spoke on his behalf too at the guilty plea
16 hearing; didn't they?

17 A They did, yes.

18 Q And you made the statement on Page 34 of the
19 transcript that the first three rows in the courtroom were
20 full of people that were there for him, right?

21 A That's correct, uh-huh.

22 Q Okay. Do you recall if there was anyone present
23 who wanted to speak who was denied that opportunity?

24 A No, I don't recall. I think some people had
25 decided not to speak. I think maybe they got nervous or

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1 whatnot. But no, I don't recall anybody not having the
2 chance. Judge Stilwell was really wonderful in letting
3 everybody say what they needed to say.

4 Q Okay. And you handed up a hand full of letters
5 to him too, didn't you?

6 A Yes, a lot letters from his friends, his
7 employer, his psychologist.

8 Q Ultimately, although the 12 year sentence was
9 higher than you expected, it was still below The State's
10 15 year recommendation; wasn't it?

11 A That's correct.

12 Q What was the argument you made in your notion to
13 reconsider?

14 A I went through, took me several days, and, I
15 think, it was mentioned that it was untimely, that's not
16 true. I actually had permission from Judge Stilwell and
17 the prosecutor to have additional time. Which the Judge
18 granted. Judge Stilwell granted. Because I wanted to --
19 I really wanted to dig in and send a meaty motion of
20 reconsideration. Which was five pages long. Which was,
21 you know, I've never done that for anyone. And I
22 certainly didn't ask for any payment for that. I was
23 distraught at the sentence. And so I went through each --
24 I went through multiple sentences from the past six
25 months, painstakingly I went through the public index and

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1 found multiple sentences of people that I thought had
2 committed crimes and with prior records that got much less
3 time than Seth got.

4 I also found an appellate case where a guy
5 had -- was out on bond for another case, kidnapped his
6 wife, tortured her for a week and got about the same thing
7 that Seth got. And so, I sort of made the argument that
8 it was an emotional bond hearing -- I'm sorry, a plea
9 hearing. That, you know, she had 25 people there on her
10 behalf with t-shirts on all and these sorts of things.
11 And that it was just outside the norm of what a sentence
12 should be for this kind of case and for somebody with
13 Seth's background. And so, that was, you know, that was
14 that gist of what I remember. I have not reviewed it
15 lately.

16 Q Did Judge Stilwell deny that motion?

17 A He did.

18 Q Okay. Do you remember him giving any specific
19 reasons for that decision?

20 A It was very short. It was like a couple of
21 sentences of -- said, I have considered your motion and I
22 deny it, something to that effect. No, there was no
23 extensive discussion.

24 Q Okay. I want to talk now about Applicant's
25 Exhibit 2, a screen shot. Are you familiar -- you

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1 understand what I'm talking about with that?

2 A Right, the Facebook shot, Uh-huh.

3 Q Yeah. Is -- there's a Facebook profile in that
4 screen shot that says Charlie Bondurant. Is that your
5 Facebook profile?

6 A It is, yes.

7 Q Okay. It shows that, would you agree, that it
8 shows that your profile Liked one of the victim's posts?

9 A That's right, Uh-huh.

10 Q Do you know the date of that post?

11 A After I saw it, it shocked me that that was
12 there. I don't certainly recall ever doing that. But
13 once I got the evidence of that, I went looked and logged
14 on to my Facebook account. And I didn't know you can do
15 because I don't spend much time on Facebook anymore. But
16 you can go to an activity log. It will tell you exactly
17 when you did each of these things. And apparently, I
18 liked this picture 10 days after the plea hearing. So it
19 was somewhere around October 18th, 2018. I think it was
20 an accident. I have no idea why that would have been a
21 weird picture for me to Like because it was of her and
22 Seth at the prom. And I know that after the plea hearing,
23 I regularly went on to her Facebook account because I was
24 so flabbergasted by the sentence, I wanted to see what
25 other people had to say about it. So I wanted to see -- I

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1 read -- I mean, this thing went viral. I mean, it was
2 reported in newspapers around the world. I found it in
3 newspapers in Australia, New Zealand, the Middle East, you
4 know, London, whatnot.

5 And so, I would often go read the comments
6 to say, does everyone think this is right? Oftentimes,
7 with the feeling to argue with them that they just didn't
8 know -- a lot of people would say, you know, he should
9 have gone away for life, etcetera, etcetera. Which would,
10 you know, upset me. And so, I would go to see what she
11 had to say, what her, you know -- but I never knew her, I
12 didn't know of -- I've never known her, I've never spoken
13 with her. I never knew of her until Seth. And I
14 certainly, you know, I don't know why that Like was there,
15 honestly. I don't know if I was scrolling through her
16 stuff and accidentally hit it. But it would be a weird
17 picture.

18 You know, sometimes as a defense attorney,
19 I think that you, you know, you want to say you're sorry
20 to the other side, you know, you want to say, I'm sorry
21 you had to go through this. That's sort of a human
22 instinct of sympathy. Because it is a tragic case all the
23 way around. And, you know, sometimes you may say to a
24 family, I'm sorry this happened to you. But no way would
25 that ever affect what I thought, what I did for Seth.

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1 Because I really cared for Seth. I still care for Seth.

2 And I really think that he got a raw deal in this.

3 Q Okay. And that sentiment about being sorry that
4 you know, she was so badly hurt, that was not very
5 different from the one that Seth expressed at the guilty
6 plea hearing, is it?

7 A I'm sorry, you broke up right in the middle
8 there.

9 Q Okay. I'm saying that sentiment that you felt
10 sorry for the victim's injury, that wasn't very different
11 from what Seth expressed in court at the guilty plea
12 hearing; right?

13 A Right. I mean, I think any time you see, you
14 know, she was, obviously, badly wounded. It was told to
15 us that she was not going to have anymore function -- she
16 was going to have 30 percent function in her mouth the
17 rest of her life. So naturally, it's humanistic, I think,
18 is to feel sorry that that happened to her.

19 Q Did Mr. Fleury or any member of his family ever
20 point out to you anything that the victim was posting
21 online or on Facebook?

22 A Yeah, I think her mom one time -- I'm sorry, his
23 mom posted -- she had posted something about Seth that she
24 didn't like. And, you know, she wanted to know if we
25 could do anything about it. But I think she took it down

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1 soon thereafter. So there was, you know, it was a mute
2 point at that point. And she would send me some pictures,
3 like before and after pictures, to show me what she looked
4 like before the incident and what she looked like
5 afterwards.

6 Q Did the feeling that you have for feeling sorry
7 for the extent of the victim's injuries, did that in any
8 way impede your ability to represent Mr. Fleury?

9 A No, never. If anything, I was accused of being
10 too -- believed too much in my client. I believe -- I
11 remember I called one of the prosecutors after the plea
12 hearing, who was in the courtroom. And I said -- or
13 texted him, I think. And I said, Does that seem normal to
14 you? Does that seem like a normal sentence to you?

15 And he said, I think you just really
16 believe in your client.

17 Q Okay. After Mr. Fleury's guilty plea hearing,
18 did you tell him that you were going to file a notice of
19 appeal?

20 A No. What I said was, I think at the very moment
21 that happened, I used the word, Appeal. I said, Don't
22 worry, we'll appeal it. Because I didn't have time to
23 explain to him what a motion for reconsideration was. But
24 then I went and saw him the next day and explained to him
25 that we would be filing the motion because there was no

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1 grounds for an appeal. But we could file a lengthy motion
2 to reconsideration.

3 Q Okay. Did he ask you to file a notice of
4 appeal?

5 A No.

6 Q Did he give you any reason to think that he
7 wanted you to appeal some issue?

8 A No.

9 Q If he had asked you to appeal, would you have
10 done that?

11 A Certainly.

12 Q Okay.

13 MR. SMITH: Thank you, I have no more questions.

14 THE COURT: All right, Mr.~Thomas.

15 MR. THOMAS: Yes, sir, may it please the court?

16 THE COURT: Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. THOMAS:

19 Q Counsel, appreciate your being here today. In
20 listening to your testimony, it does appear to me that you
21 did work hard for your client. And kind of going through
22 what you said, you were talking about when you were giving
23 your kind of summary of what happened and according to the
24 plea, I notice you did point out some inconsistencies with
25 the story that she was presenting to the court. But you

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1 didn't go into, really, any detail about any of those
2 inconsistencies. Especially, about like the one that he
3 beat me everyday. Was there a purpose in that?

4 A I don't recall exactly what I said. But I
5 believe I said to Judge Stilwell, Judge, there is no
6 evidence of him ever being abusive towards her. We have
7 everyone here who is saying that all they did was spend
8 time at her house -- at his house, his grandparents house.

9 Q Right.

10 A So, you know, obviously, as you know, you walk a
11 fine line in the courtroom there. Because you don't want
12 to get into cross-examining or arguing with the victim,
13 who is sitting there, you know, and upset the Judge
14 thoroughly. But present enough evidence that that
15 couldn't possibly be the case, what she was saying.

16 Q Right. And so really, you did not know of --
17 well, personally, you didn't know of any evidence through
18 your client of any kind on abusive relationship between
19 the two of them?

20 A No.

21 Q Okay. And listening to this and also I kind of
22 struggled in preparing this case about these words. You
23 know, intentional, accidental and those kinds of things in
24 regards to this injury. I guess, the prosecution could
25 present the argument that this abusive relationship

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1 culminated in this intentional act of actually biting
2 through the lip?

3 A Was that question?

4 Q Yeah, I'm sorry. I mean, could that, I mean,
5 you think that, I mean, you could follow this pattern of
6 this abusive relationship --

7 A Oh, I see.

8 Q -- which resulted in this injury being
9 intentional?

10 A Uh-huh. I never felt that Elizabeth was pushing
11 that. I think when they -- I think I may have said at
12 some point, we may disagree with a few sort of the
13 background history of what they told about that.

14 Q Right.

15 A But I never felt like Elizabeth was trying to
16 tell that kind of story.

17 Q Okay. And kind of, I guess, jump to this while
18 we're talking about it, the statement that you made in
19 court during the plea about this being intentional, I
20 really didn't understand why you made that comment if your
21 client had told you that he never intended to inflict this
22 injury?

23 A Uh-huh. Well, again, I think he told me that he
24 intended to bite her but never to this degree, which is
25 what I was, you know, which is what I argued. And, you

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1 know, ultimately, he was there to admit to an intentional
2 act of violence. Had that not been the case, you know, we
3 wouldn't be up there pleading. I don't know how you plead
4 to a 20 year offense that you maintain and always
5 maintained that it was an accident, so. I believe and
6 still believe that he -- what he told me was that he
7 intentionally did it but never to that -- never in any
8 imagination would think that it would arrive to that point
9 or that kind of injury.

10 Q Right. And, I guess, in thinking it through
11 myself and going through the transcript and looking at it,
12 maybe it is a degree of force that was applied rather than
13 an intentional act of biting the lip off?

14 A I'm not sure how you separate the two.
15 Elizabeth spoke to -- when she spoke to the doctor, the
16 doctor told her that it was equivalent to a pit bull bite.

17 Q Right, right, right.

18 A And so, I mean, I don't know how you do that
19 unintentionally.

20 Q I mean--

21 A Again, I don't think with the intent to rip the
22 lip off. But with the intent to cause injury which,
23 ultimately, did cause severe and significant and life
24 alternating injuries.

25 Q Right. My concern, with looking at this and

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1 reading this, and maybe I'm just missing it, is that it
2 appears to be that The State laid down a foundation of
3 abuse. Possibly even extreme abuse. And that -- which
4 ran directly to his character. I think at one point in
5 time he was described as a monster. Who then,
6 intentionally, bit her with such force as it removed the
7 bottom portion of her lip. And then when you made the
8 comment that this was an intentional act, it seems to me
9 to kind of complete that stage for the court to give her
10 [verbatim] a higher sentence than what you had
11 anticipated. And I think it was to me, I'm sorry the
12 lengthy question, it was -- it really kind of worked
13 against any type of mitigation that you may have prepared
14 for the Court?

15 A I just didn't get that sense. I think the way
16 we -- I think that's taking it out of context. If you
17 just see the word, Intended to do that, I could see how
18 you could come to that conclusion. But I painstakingly
19 went through the fact that there was no evidence that he
20 was ever abusive. That there was no evidence that he set
21 this up, this encounter up, that it was her that reached
22 out to him. And her that did this. It was a ten second
23 bite. This was not a abusive relationship, as you
24 typically see, when people start to harass and stalk and
25 call and then go to their house and then, you know, follow

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1 them to work and etcetera, etcetera. I mean, I've seen --
2 I was in the domestic violence unit for six years. And,
3 you know, I know domestic violence when I see it, this was
4 not that.

5 And so, you know, I think you have to
6 though, you know, I think, the crux of a good argument is
7 also admitting where your weaknesses are. And if we were
8 to get up there and tell this whole story and say, well
9 but there was no intent whatsoever to do any sort of harm,
10 then the Judge would say, one, you're not taking
11 responsibility for this, accountability. Or two, I'm not
12 taking the plea if you maintain that this was an accident
13 the whole time. And so, I thought we went through the
14 context and having so many people there on his behalf to
15 say that they never seen that. And, I think, judges are
16 also wise enough, they've been doing this long enough to
17 know that without convictions, without any convictions or
18 without any hard evidence, that they're not going --
19 they're not going to consider that as an aspect of the
20 case. Not most judges that I've dealt with.

21 Q Right. It just seems to me that it's extremely
22 confusing. And, of course, maybe hindsight is 20/20, it's
23 extremely confusing to go back and look at the transcript
24 with the admission of the intent. And then we talked --
25 you talked a little bit about in your direct testimony

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1 about this whole case kind of going viral. Didn't that
2 issue that he admitted that it was intentional kind of
3 take off in some of these reports?

4 A I don't know. I don't know why things go viral
5 other than, I think -- I would say the viral aspect, in
6 my, you know, non-professional, social media opinion is
7 the gruesome nature of the injuries.

8 Q Okay.

9 MR. SMITH: Your Honor, I object to that too. I
10 don't think media interpretation of events is
11 dispositive. That's the extent of my objection.

12 THE COURT: Well, he asked the question, then
13 there was an answer to the question. So let's move
14 on to something else.

15 MR. THOMAS: All right, Your Honor, I will.

16 Thank you.

17 BY MR. THOMAS:

18 Q Now, in regards to remorse, the -- you talked
19 about receiving in discovery the jail calls.

20 A Uh-huh.

21 Q And in looking at the plea, the transcript of
22 the plea, they mention the jail calls; is that correct?

23 A I think so, yes.

24 Q Okay. Okay. And then they talk about in
25 mentioning those jail calls at the plea, that there was no

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1 remorse shown?

2 A That's correct.

3 Q Okay. So you were aware going into the plea
4 that there was a concern about remorse?

5 A Yes, sir.

6 Q Okay. And how did you address that remorse in
7 front of the court and with the plea?

8 A If recall correctly, I pointed out to Judge
9 Stilwell that he was very nervous, that he was under
10 shock. He had no prior record and that he was in jail and
11 in a state of shock. And that's not abnormal. Then I
12 went on to talk about, again, if recall, I have not
13 reviewed it.

14 Q Right.

15 A How he went to a psychologist and that he
16 offered -- he had offered to pay her medical bills,
17 whatever they be. And he told me this multiple times and
18 I believe I mentioned it, that he was going to pay any
19 amount of money to have her mouth fixed. The best -- he
20 would say the best plastic surgery in California if he has
21 to fly her out there and get that. And so -- and so, I
22 thought it was clear that he was remorseful and that
23 that's very understandable that he would be in a state of
24 shock right after it happened.

25 Q Did you ever tell him not to say that he was

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1 sorry for this?

2 A No. Not to say sorry?

3 Q That he was sorry.

4 A No, that would be counterproductive.

5 Q Because he had indicated to me that you had
6 advised him not to admit or to say that he was sorry.

7 A No, of course, I would want him to say he was
8 sorry. I would want him to get up there and say I'm
9 sorry, Judge, and I'm sorry, to be here. I think judges
10 want to hear genuine remorse. I was a little worried
11 after his statement because he was so nervous that I think
12 it came across as a little cold. So I really went out of
13 my way to explain who he was and what a good person he was
14 so the Judge would understand. And I think I may have
15 said that if I'm not mistaken, that -- that, Judge he's
16 nervous, he's never been in a position like this before.
17 Because I knew him. I had spoken with him so many times,
18 I knew how remorseful he was.

19 Q Right. So going into the plea, it was your
20 thought that he would get some home incarceration or maybe
21 one to two years at the most?

22 A That's what I thought.

23 Q Okay. So it would not be unreasonable to say
24 that that's what you told him?

25 A I did tell him that.

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1 Q Okay.

2 A That in my professional opinion.

3 Q Right. And that it would not be unreasonable to
4 think that that's exactly what you told the family or his
5 mom?

6 A That's right.

7 Q Okay. So it would not be unreasonable for him
8 to think going into the plea that he was going to receive
9 what you thought, which was home incarceration or one to
10 two years at the most?

11 A That's right.

12 Q Okay. And would it be fair to say that this
13 plea was kind of based upon, for him, based upon the
14 understanding that his exposure was one to two years at
15 the most?

16 A You know, I don't think so. I mean, I don't
17 know what other -- he had no other choice. I mean, I gave
18 him the choice. But was he going to go to trial? I mean,
19 it wasn't certainly going to get any better from that
20 point going on. I certainly told him that. Again, with
21 giving him the option to do what he wants to do. But I am
22 very -- I am very quick to say, this is my opinion,
23 however, you know, the Judge can do what they want to do
24 in this case. Or you can try to go to trial. My
25 professional opinion on that. Two, is it's not getting

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1 any better from here on out. This is your -- this is your
2 best opportunity at this point.

3 Q Okay. So, if we go, you know, and kind of
4 analyze it now, he was offered the 15 year plea?

5 A Uh-huh.

6 Q And that was what you said was what you thought,
7 even at trial, was the top of what he could potentially
8 get. Even though it carried 20 years?

9 A Yeah. I mean, I told him that it was rare that
10 I saw a judge give the maximum sentence unless, you know,
11 it was just a terrible, terrible, terrible crime, you
12 know. But even then, I had seen rarely just maximum
13 sentences unless it was like a five year sentence. You
14 know, only carried five years. So I thought, you know, if
15 you go to trial, you know, you get found guilty, you still
16 may get 15 years or you may get less, nobody knows. How
17 the Judge, you know, takes it that day.

18 Q So in analyzing this between a plea and a trial,
19 and a plea he got 12, if the plea offer was 15 years,
20 we're talking about a spread of three years.

21 A Uh-huh.

22 Q Based upon his testimony, he said that had he
23 known that he was not going to get home incarceration or
24 one to two years, he would have taken it to trial. So it
25 really wouldn't be out of reason for him to make a

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1 decision to take it to trial based upon your analysis of
2 15 years at the most and he got 12?

3 A That's hindsight, though. I mean, he had the
4 possibility of getting one day of probation. I mean, you
5 know, in theory.

6 Q Right.

7 A So could have been ten, could have been eight,
8 could have been six. I mean, you go in knowing that you
9 don't know what it's going to be. You're going to beg and
10 hope for the best.

11 Q No and none of us do know. But I'm just saying
12 that it wouldn't be, giving the situation of what
13 happened, it wouldn't have been unreasonable for him to
14 have made the decision to take this case to trial had he
15 known his liability and exposure was greater than one to
16 two years?

17 A I think it's very unreasonable. It was very
18 unreasonable to go and say I'm going to go to trial and,
19 you know, where I'm 98 percent chance going to be found
20 guilty, and then very big possibility that I'm going to
21 get 15 plus years. Or I can hope that the Judge sees who
22 I am, see I'm a good person and this was a, you know, one
23 ten second incident, and, you know. I mean, that's
24 statistically a much better chance, much better odds than
25 going to trial on something that you're going to lose on.

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1 Q Right. Okay. Now, you talked about the motion
2 for reconsideration. So Seth was incorrect, you did
3 file -- you got an extension of time to be able to file
4 the motion for reconsideration?

5 A That's right.

6 Q Okay. All right. And you said you did, in
7 fact, find in discovery crimes that carried -- that you
8 felt like were more severe that carried -- that they got
9 less time than what Seth got?

10 A That's correct.

11 Q Okay. And you presented that to Judge Stilwell?

12 A Yes, sir.

13 Q Okay. But Stilwell declined to grant the
14 reconsideration?

15 A That's correct.

16 Q Okay. Did you talk to Seth about that? Was he
17 kind of in that loop?

18 A I talked to -- I think I had to talk to his mom
19 because he was, obviously, in jail at that point. So, of
20 course, I try to make it my policy that my clients always
21 know what's going on in their cases. And I update them
22 frequently.

23 Q Okay. All right.

24 Your Honor, if I could beg the Court's
25 indulgence just for a second.

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1 THE COURT: Yes, sir.

2 BY MR. THOMAS:

3 Q Now, this plea offer, I was a little bit
4 confused. Was it an open plea or 15 year cap?

5 A Open plea.

6 Q Open plea?

7 A Uh-huh.

8 Q Okay. So his exposure was 20?

9 A Uh-huh.

10 Q Okay. All right. Did you talk to him about it
11 being 85 percent, 65 percent or anything like that?

12 A I recall always doing that when I take them the
13 sentencing sheet. I would go through, you know, what each
14 line, what violent, what serious means and what that
15 carries and the percentages.

16 Q Okay. So he would have been aware that he would
17 have been 85 percent?

18 A It's my recollection, yes.

19 Q Okay. Now, the Facebook page, you said that you
20 did respond to her prom pictures but you think that it was
21 after the fact that he had already pled?

22 A Yeah, I know it was. Because I went and looked
23 at it today, the activity log.

24 Q Okay. All right. Well, the original post was
25 April 23rd of 2017?

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1 A Uh-huh.

2 Q Okay. And do you -- did you know her prior to
3 this?

4 A Never. I never knew her. Still don't. I still
5 don't know her other than through what I've learned in
6 this case.

7 Q Okay. And so you're saying that you could have
8 pressed a Like on this page by accident?

9 A Yeah, I guess. I don't know, again, doesn't
10 make any sense to me why I would do that particular
11 picture. Even if I was trying to say, hey, I'm sorry this
12 happened to you. But I don't know why I would do it with
13 a picture of them. I can understand if she was saying
14 something like, now I can start to heal or something like
15 that, maybe. Maybe something like that. But I don't know
16 why that particular picture. But like I said, I was going
17 through her media -- social media page often to see what
18 the responses were.

19 Q Okay. And when you were looking at her Facebook
20 pages, did you ever see any comments about the fact that
21 Seth's lawyer had admitted that he intentionally bit me?

22 A Right, I did see that.

23 Q You did see that?

24 A Yes, okay.

25 Q Okay. So this thing about the intent kind of

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1 comes back almost to haunt him?

2 A I guess. I don't think so. I mean, I think a
3 victim wants to hear -- you know, when she heard or
4 probably read in his statement or whatnot or saw it in the
5 evidence that he said it was a little nibble and an
6 accident, I mean, I think it's pretty normal that she
7 wanted to have him here, that he admitted in court that it
8 was intentional. Although, again, not to that degree.

9 Q Let me ask you about this too, I noticed that
10 when you're looking at her Facebook pages, did you see any
11 of comments from the investigator in there?

12 A I did. Well, I don't know if I saw that then
13 but now I saw it recently when I went back and looked at
14 this thing. About the -- yeah, about the investigator
15 saying that this was one of the worst crimes or something
16 like that that he's ever seen.

17 Q Okay. Any of that could have influenced the
18 Court's decision in the plea? I mean, is that something
19 that you should have, maybe, looked into?

20 A On that, I don't know, I didn't, like I said, I
21 didn't see those comments beforehand. And I think if I
22 would have seen that, I would have been prepared. For him
23 saying that in court when he didn't say that.

24 Q [audio distortion].

25 A It shows up. And I was dumbfounded by that

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1 statement. Because I thought here's a seasoned
2 investigator who's probably seen murders and rapes and
3 whatnot and he thinks this is one of the worst crimes he's
4 ever seen against a woman. I thought that was
5 dumbfounding. But again, I, you know, in court, I
6 couldn't cross-examine him and throw him under the bus. I
7 mean, that's pretty much a no, no to do with the judges,
8 I'm sure.

9 Q I don't know the answer to this but I'll ask
10 you, any reason to believe or any information that you
11 have about these comments, these supported comments on the
12 victim's page, that there was any kind of relationship
13 between the investigator and this young lady?

14 A That's a good question, I don't know. I just
15 know that she, you know, obviously, went very vocal with
16 this. Which is evident from today. Which I didn't even
17 know this until I started looking into this lie thing.
18 You know, like she's published a book. And, apparently,
19 done all these things with it. And so, I don't know if
20 she was just so vocal with it that that attracted a lot of
21 attention. But I don't have any evidence that there was
22 some sort of inappropriate relationship or whatnot between
23 the two of them.

24 Q And we all hope or are concerned about that she
25 has a good recovery. I guess my question and my concern

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1 is just that with these things, whether or not the proper
2 mitigating story was presented to the court?

3 A I don't know what other mitigating story could
4 have presented.

5 Q Okay.

6 A I mean, he had -- he was an exceptional client.
7 An exceptional -- and he did everything I asked him to do.
8 And the fact that he had 25 people there, he had gone to
9 see a therapist, was working [audio distortion] while out
10 cooperated fully with everything. I thought he was an
11 exceptional client.

12 MR. THOMAS: Your Honor, I have no further
13 questions.

14 THE COURT: Thank you, Mr.~Thomas.

15 Any redirect questions, Mr. Smith?

16 MR. SMITH: No, Judge, I think that's it, thank
17 you.

18 THE COURT: Thank you, Mr. Bondurant.

19 All right, Mr. Smith, call your next witness.

20 MR. SMITH: Judge, I had originally intended to
21 call Ms. Gary as a witness but I don't think I will
22 now because I think we've covered all of that that I
23 was going to ask her.

24 THE COURT: Okay.

25 Do you have any objection to Ms. Gary being

1 excused?

2 MR. THOMAS: No objection, Your Honor.

3 THE COURT: Okay, Ms. Gary, thank you for
4 coming, you are excused.

5 MS. GARY: Thank you, Judge.

6 THE COURT: All right, anything further from The
7 State?

8 MR. SMITH: No Judge, that's The State's case.

9 THE COURT: All right, Mr.~Thomas, is there any
10 reply?

11 MR. THOMAS: No, Your Honor, we have nothing
12 further.

13 THE COURT: All right, well this is what we'll
14 do at this point.

15 Mr. Thomas, you have the burden of proof so I'm
16 going to give you the last argument. But I want to
17 hear a summation from each attorney, a brief
18 summation of your position.

19 MR. THOMAS: Sure.

20 THE COURT: So Mr. Smith -- well, Mr. Smith's
21 disappeared. There he is. There he is.

22 Okay, Mr. Smith, you give me The State's
23 position, then I'll turn it over to Mr.~Thomas.

24 MR. SMITH: Thank you, Judge. I'm going to try
25 to cover the issues as they came up. I'll be very

1 brief about this. First issue I think we had was
2 whether or not Mr. Bondurant was ineffective for
3 advising Mr. Fleury that he would probably get, you
4 know, home incarceration, up to three years if he
5 pleaded guilty. The State's position on that is that
6 his advice was reasonable under the circumstances.
7 He didn't make any promises, he informed Mr. Fleury
8 of the sentencing range, Mr. Fleury admitted that he
9 was aware of the range. And that even though they
10 believed that it would be low, that it could go up to
11 20. That was something that he opined under oath at
12 the guilty plea hearing.

13 So, I guess, it comes down to whether
14 Mr. Bondurant's advice on that was reasonable. The
15 State's position is it was. He reviewed all the
16 evidence, took into account the fact that The State's
17 medical expert was going to testify that the force
18 needed for this bite was that of a pit bull and that
19 the injuries were not really tearing injuries
20 sustained from pulling but from biting. And just the
21 nature of the injuries. The victim, there was a lot
22 of statements made at the guilty plea hearing about
23 the extent of the victim's injuries. I think that
24 probably had more of an affect to Judge Stilwell than
25 anything.

1 But Mr. Bondurant also consulted with other
2 people in the criminal defense field to get their
3 opinion on it. And we would say that his judgment
4 was reasonable in the end. Judge Stilwell did give a
5 higher sentence than that but it was still lower than
6 The State's sentencing recommendation of 15 years.
7 So this one of those situations where Mr. Fleury knew
8 what he could get and they were hoping for something
9 less and it just turns out it didn't happen the way
10 he wanted. And that's a risk you take. A risk he
11 was informed of. And he went into that knowing and
12 voluntary.

13 We also have another issue where there's a big
14 credibility problem. He's admitted here today that
15 he lied under oath to Judge Stilwell at the guilty
16 plea hearing. You know, he's basically saying he
17 admitted to the crime only because he thought he was
18 going to get a good deal. Number one, that's a
19 credibility issue. And number two, I think that that
20 also raises an indication that he may be willing to
21 lie under oath if he thinks it will gain him a
22 beneficial outcome in court.

23 Anyway, there's also the problem of I don't
24 think it's reasonable to believe that he would have
25 insisted on going to trial if he didn't think he was

1 getting two to three years. The nature of the
2 evidence and testimony from Mr. Bondurant shows that
3 he never really had a trial -- Mr. Fleury never
4 really had a desire for trial. The nature of the
5 evidence was pretty conclusive. It was only a matter
6 of what sort of sentence would he get. So I don't
7 think it's reasonable to believe that this was the
8 only reason he pleaded guilty. I think that was
9 because that he thought that this was a slam dunk
10 case, so to speak, from the State's point of view.
11 And he was worried about potential sentencing
12 outcomes at trial.

13 Another issue would be, I think it's pretty
14 conclusive that Mr. Bondurant filed a motion to
15 reconsideration that evidenced today, that showed
16 that it was timely filed. In that he reiterated his
17 arguments that he thought the sentence imposed was
18 too extreme. And he did a thorough job in that
19 motion. I know that's included in your package so I
20 would direct your attention to that too. I looked in
21 the transcript, I cannot find where the victim ever
22 says that Mr. Fleury beat her everyday. There
23 certainly were statements that she made that he was
24 maybe mentally abusive towards her. But I couldn't
25 find anything that says she was beaten everyday.

1 And, I think, even if she did make those statements,
2 Mr. Bondurant extensively went over the fact that
3 they had a, sort of a rocky relationship, and they
4 both have problems with one another. So I think he
5 did enough in his statement to mitigate that.

6 I mean, it's one of those situations where if,
7 you know, if Mr. Fleury is going to take issue with
8 everything, he needs to go to trial. He can't plead
9 guilty and also have a trial at the guilty plea
10 hearing. He waived his right to cross-examine her
11 when he pled guilty.

12 I think there's no evidence that there was any
13 plea offer that was not explained to Mr. Fleury by
14 Mr. Bondurant. There were, essentially, two plea
15 offers and Mr. Fleury took the second one. There's
16 another allegation that's been raised about whether
17 he didn't do enough to explain that their
18 relationship was toxic. If you read the transcript,
19 I think he did that. And mentioned that Mr. Fleury
20 was joining the Navy.

21 The evidence shows that he went to great lengths
22 to prepare Mr. Fleury for the guilty plea hearing and
23 Mr. Fleury's family. I would call this above and
24 beyond preparation for a guilty plea hearing. You
25 know, Mr. Fleury may have been nervous at the

1 hearing. I think it would be a no brainer that he
2 would be nervous. He was facing up to 20 years in
3 prison. And I think it's unreasonable to believe
4 that he wouldn't have been as nervous if he had been
5 at trial. So I don't think his nervousness has
6 anything to do with it. But not material to whether
7 he pled guilty or not.

8 I think Mr. Bondurant adequately explains why he
9 Liked a Facebook picture. His testimony was that he
10 probably did it accidentally and doesn't remember
11 Liking it. It occurred after the guilty plea
12 hearing. At which point he was scouring the internet
13 and social media for references to this. I think
14 that would probably be pretty common with a defense
15 attorney in this situation. It got national and
16 international press coverage. So there was a lot to
17 read out there about this. And his testimony was
18 that he had no relationship with her. He was just
19 looking on line and maybe bumped the Like button, so.

20 I think the evidence shows that Mr. Fleury
21 knowingly and voluntarily waived his right to an
22 appeal, he didn't request one. And he discussed
23 it -- Mr. Bondurant said they discussed it and Seth
24 did not request one. Everyone who wanted to was
25 given a chance to speak at the guilty plea hearing on

1 Mr. Fleury's behalf. There's some testimony today
2 about the investigator making a statement at the plea
3 hearing. I don't think it would be any surprise that
4 any investigating officer would take the victim's
5 side in a case like this. You know, maybe he made
6 some strong statements on her behalf. But, you know,
7 if you want to contest The State's case you got to go
8 to trial.

9 Another issue is whether Mr. Fleury
10 intentionally bit the victim's lip off. I think
11 there's definitely enough here to find that he
12 knowingly and voluntarily pled guilty. He affirmed
13 as much to Judge Stilwell. He agreed with The
14 State's recitation of the facts. He did take issue
15 with one part of that in the guilty plea hearing,
16 Mr. Bondurant dealt with that on the record. So I
17 think if it's an issue of he's saying, no, I never
18 intentionally bit her lip, there was opportunity for
19 him to correct that at the guilty plea hearing. And
20 Judge Stilwell asked him directly, Do you agree that
21 you assaulted her?

22 And he said, Yes.

23 I think that that's conclusive from the evidence
24 The State has. And I think it's, like they said and
25 Mr. Bondurant said, it would be stretched [audio

1 distortion] to believe that, you know, he didn't --
2 there was no intentionality to the bite. You know,
3 it's not clear that he actually meant to bite her lip
4 off. But, you know, I think the evidence shows that
5 he meant to bite her and the effect was that her lip
6 was bitten off. All of that still fits within the
7 elements of the crime.

8 I think before, Your Honor, I questioned
9 Mr. Fleury about it today, I think his testimony on
10 that point is incredible and very difficult to
11 believe that he -- but he still even today said that
12 he meant to grab her lip with his teeth. So he's
13 just drive -- defining an unbelievable distinction
14 between grabbing someone's teeth [verbatim] with his
15 lip and biting. So that's The State case, Your
16 Honor.

17 THE COURT: Okay, thank you, Mr. Smith.

18 All right, Mr.~Thomas.

19 MR. THOMAS: Your Honor, if it please to Court.
20 In listening to the summary of The State, I think
21 this is a simple case with a lot of complications.
22 Really what the issue is before the Court is whether
23 or not the plea was entered into freely and
24 voluntarily given. And also counsel's performance in
25 mitigation or obligation of mitigation in making sure

1 these issues are properly presented to the court.
2 The -- you know, there's testimony in here and
3 counsel is pointing them out about, you know, pit
4 bull bite, abusive history, you know, the intentional
5 admission by counsel. And the investigator, you
6 know, he said that that caught him completely
7 unexpected and was unprepared.

8 I mean, all of these things just kind of
9 developed into a story, I think, that is really not
10 addressed. That does dress the client up, as what
11 was mentioned in the plea hearing, as a monster. I
12 don't think that was the case at all. And I don't
13 think that there was adequate preparation and
14 representation in regards to this mitigation of these
15 things that were said about him. You know and this
16 thing about intent and I think that maybe Mr. Smith
17 did say in his closing something that it's probably
18 pretty close to what we're all talking about here
19 today. And that is maybe he intended to, and I hate
20 to use the word bite, but I think to attach to her
21 lower lip but he never intended for the injury that
22 she suffered.

23 And, you know, we kind of dance around all of
24 that. And I think the problem is the big paint brush
25 in that we say, okay, he intended to bite her lower

1 lip off. And that's a completely different
2 situation. And I don't think that that was ever
3 really clarified for the court. You know, this thing
4 gets rolling. And, you know, he's abusive, have a
5 toxic relationship. I mean, it's throughout the
6 transcript and then all of a sudden, boom, he meets
7 her, he goes over there with the intent to do the
8 harm that he did to this young lady. And I think
9 that that is kind of a break down of counsel in
10 regards to being able to properly mitigate for what
11 happened. And it does, it allows this paint brush to
12 show him to be a monster.

13 You know and the other thing is, really, you
14 know, like the Facebook page, I mean, why? I mean,
15 that's just sort of strange. I can't figure that
16 out. And, you know, there is testimony about this
17 thing going national and international press
18 coverage. And, you know, and it goes. I mean, he
19 did admit, counsel admitted, that he saw on her
20 Facebook page that, you know, that she says and his
21 attorney admitted in court, that he intentionally did
22 this to me. So I just think that as far as the plea
23 is concerned, I don't think it was freely and
24 voluntarily, knowingly and intelligently given. And
25 I don't think that the expectation of what he was

1 going to receive, ever, was that he could get 15 to
2 20 years.

3 You know, the thing to him was always home
4 incarceration. I'm not sure he could have ever
5 received home incarceration for this crime. And
6 second, was that, at most, one to two years. So I
7 think he went into the courtroom with the expectation
8 that that's what he was going to receive. That's
9 what he based his plea on was this expectation. And
10 I think that it just was not realistic given the fact
11 and the lack of the mitigation that was presented to
12 the court. So I do think that there was a problem
13 with the plea. And I just think that counsel was
14 ineffective for not just proper representation. And
15 I think there was prejudice. I think as a result,
16 after Judge Stilwell saw all of this, that he got the
17 12 year sentence.

18 And the analysis that we all do with our clients
19 is exposure. What am I looking at in the plea?
20 What's the offer that I'm going to get from The State
21 versus what can I get at trial if I am found guilty?
22 And in the analysis in this case, those lines get
23 close. Because we're talking about well, you know,
24 there was a plea offer of 15, the case carries 20.
25 If he goes to trial, maybe he could convince the

1 court -- the jury, that this was not -- he didn't
2 mean to do this and some mitigation to it and they
3 may have found him not guilty. But the time that he
4 got, would have, could have gotten, is close to what
5 he actually got.

6 So I don't think it's unrealistic, as The State
7 says, for Mr. Fleury to have made that decision had
8 he known all of this other stuff, could have elected
9 to go to trial. So I think that is a possibility.
10 But I would ask the Court to consider this and also
11 to find that there was ineffective assistance of
12 counsel.

13 THE COURT: Thank you, Mr. Thomas.

14 MR. THOMAS: Yes, sir, thank you.

15 MR. SMITH: Your Honor, can I just make one more
16 statement just for the record? I think based off of
17 what Mr.~Thomas has said here that the case of, I
18 believe, it's Alabama v. Boykin, would be instructive
19 explaining that what a defendant has to know in order
20 for his guilty plea to be free and voluntary. And I
21 think this case meets all of those. So I haven't
22 cited to that case yet but I would do it now for the
23 record.

24 THE COURT: Okay. Thank you. All right,
25 gentlemen, I will consider the case submitted. I'm

1 going to go and read the materials that have been
2 provided to the court. I'm going to take it under
3 advisement. And I will have my law clerk email you a
4 decision. So thank you.

5 MR. THOMAS: Thank you, Your Honor.

6 MR. SMITH: Thank you, Your Honor.

7 THE COURT: Everyone have a good weekend.

8 MR. THOMAS: Yes, sir, thank you for your time.

9 MR. SMITH: Thank you, Your Honor.

10 (WHEREUPON, the proceedings were concluded.)
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CERTIFICATE OF REPORTER

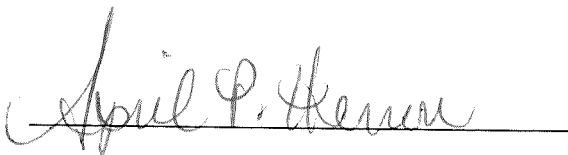
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for
the Thirteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
Common Pleas for Greenville County, South Carolina, on the
DT day of MO , 20 .

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

June 23, 2021



APRIL P. HERRON, Court Reporter

SCHUMER AND OTHERS CALL FOR 'IMMEDIATE' REMOVAL OF TRUMP

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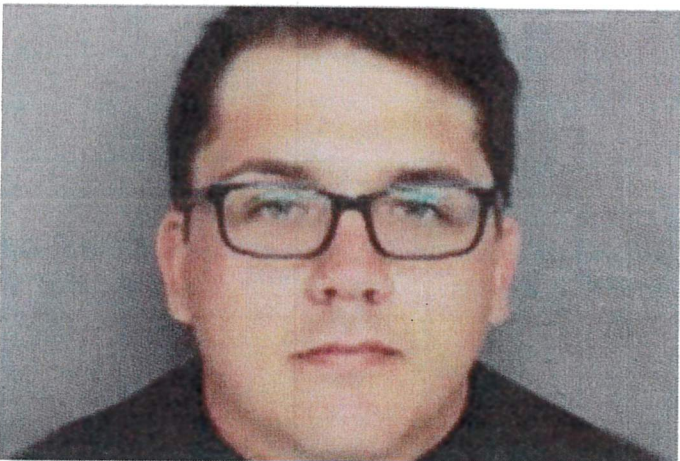
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MORE INFO

U.S. NEWS

South Carolina man gets 12 years for biting off ex-girlfriend's lip

By MEGAN CERULLO
OCT 20, 2018 AT 2:00 PM



South Carolinian Seth Aaron Fleury pleaded guilty Thursday to assault and battery of a high and aggravated nature. (GREENVILLE COUNTY DETENTION CENTER)

A 23-year-old man was sentenced to 12 years in prison for biting off a part of his ex-girlfriend's lip.

South Carolinian Seth Aaron Fleury pleaded guilty Thursday to assault and battery of a high and aggravated nature. He will serve at least 85% of the 12 year sentence before he becomes eligible for parole, according to a release from state solicitor W. Walter Wilkins.

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- Model Joselyn Cano, known as 'Mexican Kim Kardashian,' reportedly dead after botched butt lift surgery

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Fleury met his former girlfriend Kayla Hayes on October 21, 2017, to discuss their relationship. Fleury became angry when Hayes was clear that she didn't want to resume dating him.

He leaned in for a kiss, and as Hayes pulled away, Fleury chomped down on her bottom lip with such force that part of her lip was amputated. He then left the scene, according to the release.

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What Is This?

Christopher & Banks Cat Mom Watch, Brown



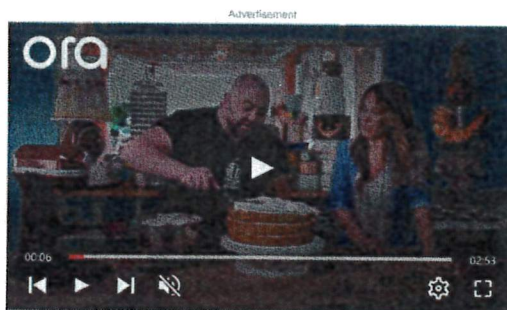
The "purr-fect" accessory for feline fanciers, this stylish watch features "Cat Mom" on the face, as well as rhinestone markers for a splash of shine. 9"...

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Hayes underwent an unsuccessful procedure in an attempt to have her lip reattached.

She has permanent, serious, scarring and a limited range of motion in her mouth as a result.



Fleury's attorney said he intentionally bit his ex, according to a Facebook post she wrote.

"I had to listen to his attorney say that when he attacked me, it was intentional. Saying that he claimed 'he was going to leave his mark for me next boyfriend,'" Hayes wrote.

She recalled the attack — which took place nearly a year ago.

MOST READ

D.C. police identify four people who died during Capitol siege



Capitol Police officer on administrative leave after fatal shooting of Ashli Babbitt, Air Force veteran, during U.S. Capitol riots

Schumer leads bipartisan push for 'immediate' removal of Trump after Capitol chaos

"This was the day that a piece of me died...Sitting in a puddle of my own blood with the majority of my lip laying on my leg, my whole mouth on fire, confused and terrified, I didn't know how I could ever show my face again. At that point, honestly wishing that those very seconds would just be my last- I wanted to give up for good."

She said she grappled with her new reality post surgery.

"What I just woke up from was no joke. Never a day in my life will I ever wake up living my 'normal' life again," she said.

Wilkins hopes her attacker's sentence sends a message about domestic violence.

"This case demonstrates the unique circumstances under which domestic violence occurs, and how quickly these situations can escalate into violence," he said. "Hopefully this prison sentence will make it clear to both this defendant and other abusers that domestic violence in any fashion will not be tolerated."



Megan Cerullo
Reporter

CONTACT  

Megan Cerullo is a national breaking news reporter for the Daily News.

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Kayla Hayes October 18, 2018 at 4:47 PM

Today I sat in a court room surrounded by the ones I love most, facing someone that I once believed loved me. Someone who claimed would always protect me and keep me safe, but yet was my worst nightmare.

I had to listen to his attorney say That when he attacked me, it was intentional. Saying that he claimed he was going to leave his mark on me for my next boyfriend.

But today, October 18th, 2018 I have finally gotten a bit of closure. Thank you to everyone who prayed and kept me in their thoughts.

Be careful who you are with and who you trust, evil is in the face of all types.

October 21st, 2017

This was the day that a piece of me died.

I remember every detail of this very... [More](#)

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Kayla Hayes October 18, 2018 at 4:47 PM · 🌐

Today I sat in a court room surrounded by the ones I love most, facing someone that I once believed loved me. Someone who claimed would always protect me and keep me safe, but yet was my worst nightmare.

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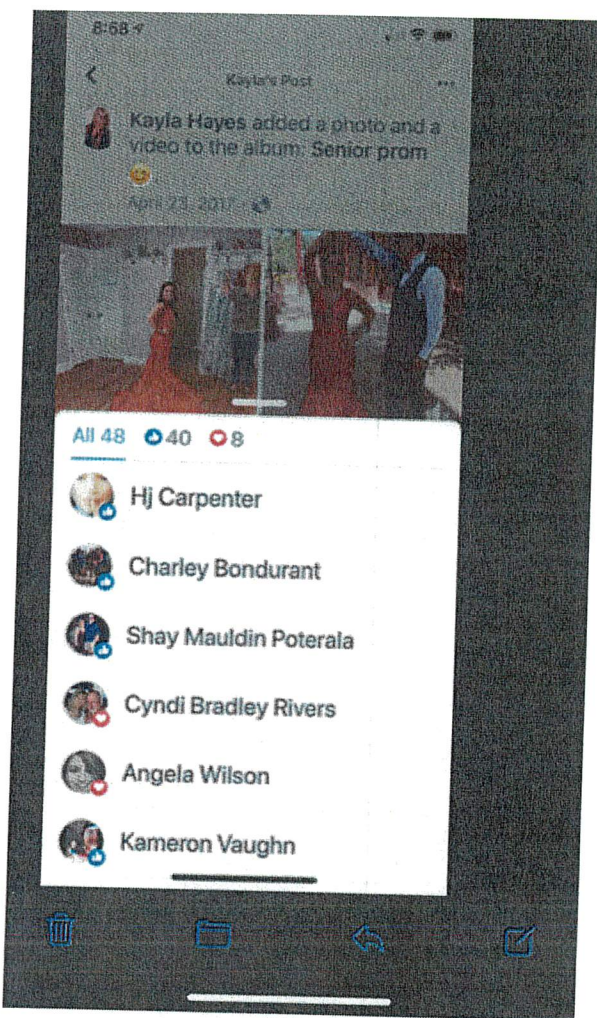
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Caroline Merritt Gillespie

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Emma Smith



Cyndi Bradley Rivers



Regan Albus



Charley Bondurant

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Angela Wilson You're so BEAUTIFUL! Miss you sw

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Priscilla Cee Why do you still have pictures and vide

Like · Reply · 1y



Gary Edwards replied · 1 Reply



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Other Albums

Jackie Miller

From: Donald Banks <bankszone@gmail.com>
Sent: Thursday, August 27, 2020 10:18 AM
To: Jackie Miller
Subject: Fwd: Seth Fleury
Attachments: PastedGraphic-2.tiff

Hi,

Hope your having a good week. Can you please put this in Seth's file for Tommy. Its Charley stating no prison time below:

Thank you for all you do.

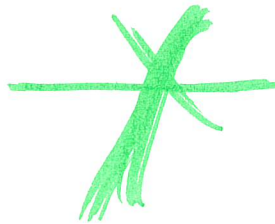
Amy Banks

----- Forwarded message -----

From: **Charley Bondurant** <charles@bondurantlegal.com>
Date: Wed, Sep 12, 2018 at 1:27 PM
Subject: Re: Seth Fleury
To: Donald Banks <bankszone@gmail.com>

Now why you see I thought (and still think) that he likely would get very little if any prison time. This has been my experience for 10+ years.

Charles A. Bondurant, Esq.
Bondurant Legal LLC
16 Wellington Ave.
Greenville, SC 29609
Ph: (864) 214-5483
F: (864) 670-5020
www.bondurantlegal.com



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) IN THE COURT OF COMMON PLEAS
) FOR THE THIRTEENTH JUDICIAL CIRCUIT

Case No. 2019-CP-23-03648

ORDER OF DISMISSAL

V.

ENTERED COMPUT

Respondent.

FILED-CLERK OF COURT
PAUL B. WICKENSMAIER
GREENVILLE CO. SC
7

PROCEDURAL HISTORY

Applicant is presently incarcerated in the South Carolina Department of Corrections. During its April of 2018 term, the Greenville County Grand Jury indicted Applicant for assault and battery of a high and aggravated nature (2018-GS-23-2557). Applicant was represented in the case by plea counsel, and Assistant Solicitor Elizabeth Morrow Gary of the Thirteenth Circuit Solicitor's Office prosecuted the case. On October 18, 2018, Applicant appeared before the Honorable Robin B. Stilwell and pleaded guilty as indicted. At Applicant's guilty plea hearing, Assistant Solicitor Gary presented the following recitation of facts that the State would seek to prove if Applicant proceeded to trial:

[Applicant] and ... Ms. Kayla Haze [("the victim")], were in a romantic relationship for about 11 months prior to this incident. [The victim] was 18, [Applicant] was 22. Their relationship was rocky. [Applicant] was controlling, jealous and isolated [the victim] from family and friends. There were previous incidents of violence that went unreported. [The victim] ended the relationship and [Applicant] did not accept that the relationship was over. His actions led [the victim] to putting him on trespass notice from her home.

...

[The victim] agreed to meet [Applicant] one last time on October 21st, 2017 in the parking lot of Cotton Mill Place condos in Simpsonville which is here in Greenville County. They arrived in separate cars and [the victim] got into [Applicant's] car to talk. [Applicant] had flowers and two cards for [her] with a message indicating he had not accepted that she had ended the relationship. [Applicant] wanted [her] to leave town with him and she refused, telling him they would never be a couple again.

[Applicant] became angry and threw the flowers at the victim. She was scared and got into her own car to drive away. [Applicant] approached her driver's side door screaming, No, No. He leaned into the door and tried to kiss [the victim] who said, No and pulled her head away. When she did, [Applicant] bit down on [her] bottom lip and tore her bottom lip off. Biting all the way through flesh, muscle and tissue.

He then grabbed her out of the car by her hair, threw her onto the ground and left the scene. He never called for medical help for her.

Plea Tran. 8-9. Assistant Solicitor Gary went on to provide details about the extent of the victim's

injuries and ongoing medical treatment; Applicant's statement to police in which he blamed the victim for pulling away from his kiss; Applicant's making light of the victim's injury on a recorded jail phone call by saying that the victim did not have much of a bottom lip anyway; and the anticipated testimony from the victim's plastic surgeon that the force needed to cause the injury would have been like the force exerted during a pit bull's bite, that the extent of the victim's injury could not have been caused by the victim's pulling away from Applicant's kiss, and that it was his opinion to a reasonable degree of medical certainty that the force needed to cause the victim's injury could not have been exerted unintentionally. Plea Tran. 9-11. Judge Stilwell sentenced Applicant to imprisonment for twelve years with credit for time served, and issued a permanent restraining order. On November 8, 2018, plea counsel filed a motion to reconsider, and Judge Stilwell denied the motion in an order filed on November 14, 2018.

Applicant did not appeal his conviction or sentence.

CURRENT PROCEEDING

In his application for post-conviction relief, filed through counsel, on June 25, 2019, Applicant alleges that he is entitled to post-conviction relief upon multiple grounds, which are: (1) plea counsel was constitutionally ineffective for advising Applicant that, if Applicant pleaded guilty, the worst possible outcome that Applicant could expect would be for him to be sentenced to imprisonment for two or three years and that plea counsel had spoken with other judges and attorneys who all believed that Applicant's sentence would not include time in prison, and that Applicant based his decision to plead guilty upon this advice; (2) plea counsel was constitutionally ineffective for not moving for the reconsideration of the sentence; (3) plea counsel was constitutionally ineffective for not bringing to Judge Stilwell's attention that the victim's statements during the guilty plea hearing that she was beaten daily were false; (4) plea counsel was

constitutionally ineffective for not advising Applicant of all plea offers extended to him by the State; (5) plea counsel was constitutionally ineffective for failing to offer in mitigation that the relationship between the victim and Applicant was toxic and that the victim was angry that Applicant was leaving to join the United States Navy; (6) plea counsel was constitutionally ineffective for not properly preparing Applicant for the guilty plea hearing, a fact which was made worse by the presence of many in the courtroom and Applicant's nervousness; (7) plea counsel was friends with the victim on Facebook and "liked" a post of hers that contained photographs; (8) Applicant's decision to plead guilty was affected by his being on antidepressants at the time and his inability to process the drama that the victim created; (9) Applicant did not knowingly and voluntarily waive his right to direct appellate review of his conviction and sentence and was told by plea counsel after the guilty plea hearing not to worry because plea counsel would appeal; and (10) Judge Stilwell did not let everyone speak on Applicant's behalf who wanted to do so at the guilty plea hearing. In addition to these, Applicant also argued at the hearing before this Court that he is entitled to post-conviction relief based upon his claims that: (1) Applicant did not knowingly and voluntarily plead guilty because he did not intend to bite off the victim's lip and (2) one of the law enforcement investigators posted supportive comments on the victim's Facebook page. This Court finds that Applicant abandoned and waived all other claims.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Before this Court are: the records of the Greenville County Clerk of Court regarding Applicant's conviction and sentence; the motion for reconsideration filed by plea counsel and Judge Stilwell's order denying the motion; Applicant's records from the South Carolina Department of Corrections; the parties' filings in this matter; and the exhibits admitted into evidence at the evidentiary hearing. Set forth below are the

relevant findings of facts and conclusions of law with regards to the claims that Applicant advanced at the evidentiary, as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Summary of the testimony presented at the evidentiary hearing.

Applicant testified on his own behalf at the evidentiary hearing. He testified that he was in the parking lot that became the crime scene because he was meeting with the victim, his former girlfriend. He testified he had just joined the United States Navy and believed that the victim wanted to meet him in the parking lot in order for them to reconcile. He testified that he did not mean to bite the victim, but only meant to “clamp” down on her lip. He testified that his biting her was not an intentional act and he did not mean to hurt her at all.

Applicant testified that his mother, Amy Banks, hired plea counsel. He testified that he met with plea counsel on four or five occasions. He testified that he told plea counsel about his case but felt that plea counsel did not prepare a defense. He testified that plea counsel told him that his best option was to plead guilty because his possible sentencing range would be from home incarceration up to two to three years in prison. He testified that plea counsel obtained copies of discovery for him and that they went through discovery together such that Applicant understood everything that had been turned over by the State. He testified that plea counsel did not prepare for trial because plea counsel told him that it would not look good for Applicant to go to trial. He testified that he relied upon plea counsel’s advice because he did not personally have any experience with the criminal justice system.

Applicant testified that plea counsel did not come up with a defense theory but advised Applicant to look forward. He testified that plea counsel told him to apologize at the guilty plea hearing and coached him on how to say it. He testified that he is sorry about what happened to the victim. He testified that plea counsel did not give him any advice about making an apology. He testified that plea counsel told him to show remorse but not to look at the victim during the guilty

plea hearing. He testified that he has owned up to what he did. He testified that he thought he was pleading guilty to an open plea deal and was caught off guard when the assistant solicitor made a sentencing recommendation at the guilty plea hearing. He testified that he first heard about the State's making a fifteen-year recommendation when Assistant Solicitor Gary made the recommendation to Judge Stilwell at the guilty plea hearing.

Applicant testified that plea counsel had told him that he had discussed the possible sentencing outcomes with plea counsel's friends, and that plea counsel and his friends believed that the State's fifteen-year offer was the only offer that Applicant would get. He testified that plea counsel told him at first that taking the State's fifteen-year offer was ridiculous, and that plea counsel said later that Applicant's entering an open plea was the best option that would be available to Applicant. He testified that his expectation was that his sentence would be anything from home incarceration to three years in prison. He testified that plea counsel told him that home incarceration was the most likely sentence. He testified that plea counsel was nervous at the guilty plea hearing. He testified that he signed a sentencing sheet showing that he would have to serve at least 85% of his sentence in prison because plea counsel told him to do so. He testified that plea counsel did not give him any information about the difference between a 65% and an 85% sentence.

Applicant testified that he disagreed with the victim's allegations. He testified that he told plea counsel about his side of the story. He testified that the victim commented during the guilty plea hearing that Applicant was toxic and said that he believed that the relationship was toxic mutually. He testified that the victim admitted months after the guilty plea hearing on a podcast that Applicant did not beat her daily; he believes that the victim's comments during the guilty plea hearing colored Judge Stilwell's perception of Applicant. He testified that he was on an anti-

depressant because of the victim and had a difficult relationship. He testified that he had to go to a therapist because of everything that happened to him. He testified that he left the scene after biting the victim's lip because he was a coward and nothing so traumatic had ever happened to him before. He testified that his heart dropped when he heard the sentence issued by Judge Stilwell and plea counsel told him that he would appeal it.

Applicant testified that he learned after the case ended that plea counsel "liked" one of the victim's Facebook posts that published a photograph of the victim at prom. He testified that plea counsel must have had some sort of relationship with the victim that he did not tell Applicant about while representing him.

Applicant testified that it was not true that he meant to injure the victim and he does not know why plea counsel told Judge Stilwell during the guilty plea hearing that Applicant meant to hurt her. He testified that he did not knowingly and voluntarily plead guilty because he trusted plea counsel and did not know what was going on. He testified that he was shocked at his sentence because he did not have a prior criminal record. He testified that he would have fired plea counsel and gone to trial with a different lawyer if he had known that his sentence would be so high.

Applicant was cross-examined before this Court. Applicant agreed that he was told that he could be facing up to twenty years in prison if he pleaded guilty but testified that he was told not to worry about that and was assured that such would not happen. Applicant agreed that he was aware that Judge Stilwell could impose any sentence that he wanted but testified that he trusted plea counsel and did not know to think otherwise. Applicant agreed that he affirmed at the guilty plea hearing that he understood that he could be sentenced to imprisonment for as much as twenty years and testified that he understood his rights but did not know that he could fire plea counsel. Applicant agreed that he affirmed at the guilty plea hearing that he wanted to waive his trial rights

and plead guilty. Applicant agreed that he affirmed at his guilty plea hearing that no one had promised him anything in order to get him to plead guilty and that his thinking was not impaired by drugs or alcohol but said that he made those affirmations because he trusted plea counsel. When asked what trusting plea counsel has to do with Applicant's making those affirmations, Applicant testified that plea counsel told him to agree with everything asked of him by Judge Stilwell and he trusted plea counsel's advice.

Applicant denied that he was lying when making the affirmations during the guilty plea hearing because he did not intentionally mean to bite the victim's lip, but was only trying to kiss her. Applicant testified that it was entirely an accident that he bit the victim's lip. When asked if it was an accident that Applicant's teeth clamped shut on the victim's lip, Applicant testified that when the victim backed up from him during the kiss, he did intend to grab her lips with his teeth but did not intend for it to "go down the way it went down." When questioned about his testimony before this Court that he wanted to own up to his own mistakes and asked what exactly his mistake was, Applicant answered that his mistake was showing up at the parking lot, and testified that he did not mean to go there to hurt the victim and that the fact that he had flowers and a card for the victim when he showed up is evidence of that. Applicant testified that he and Applicant had not spoken for two months leading up to the incident until the victim discovered that he had joined the Navy. When asked if he had pleaded guilty to "showing up," Applicant answered that he was pleading guilty on plea counsel's advice. When asked how it was possible that what happened was an accident but that Applicant still feels the need to own up to it, Applicant answered that it was an accident and that he was owning up to the mistake of kissing the victim and that it happened quickly. Applicant agreed that he affirmed to Judge Stilwell at the guilty plea hearing, after hearing the State's recitation of facts, that he wanted to plead guilty to assaulting the victim but testified

that he affirmed because plea counsel told him to do so. Applicant denied that he was lying when he affirmed his guilt to Judge Stilwell, and explained that he was not lying because he did go in for a kiss. Applicant then refused to answer the question about whether he was lying to Judge Stilwell and, when instructed to answer by this Court, testified that he did indeed lie to Judge Stilwell at the guilty plea hearing.

Applicant denied that he would have been nervous had his case gone to trial and explained that he would have been telling the truth at trial and not just affirming everything as plea counsel told him to do at the guilty plea hearing. He testified that plea counsel told him that it would look terrible if Applicant proceeded to trial and that the worst case scenario for Applicant if he pleaded guilty was two or three years in prison, and that is why he pleaded guilty. Applicant denied that he believes that it is acceptable for him to lie under oath as long as he is doing so in order to gain some personal benefit.

On re-direct, Applicant testified that he wants to take responsibility for what happened and that everything he did at his guilty plea hearing was because of plea counsel. He testified that he did not intend to injure the victim, that he was in love with the victim, and that he never had it in his mind to hurt the victim's lip. He testified that he did not intend to harm the victim, but she was nevertheless harmed. He testified that plea counsel's statement at the guilty plea hearing that Applicant intended to hurt the victim was not true.

Applicant was questioned on re-cross. When asked if he intended to clamp down on the victim's lip, Applicant answered that he intended to grab the victim's lip and pull her towards him, but she jerked backwards as he was doing so. He agreed that he told plea counsel that he wanted to plead guilty but said that he was doing so on the advice of plea counsel.

Amy Banks testified before this Court. She testified that she is Applicant's mother. She testified that she had no knowledge until after Applicant was already in prison that plea counsel had "liked" the victim's prom photos, which were posted on Facebook. She testified that the photos were "liked" before she hired plea counsel. She testified that plea counsel never disclosed his relationship with the victim and that, once she discovered the Facebook "like," she realized that the relationship between the victim and plea counsel explained why plea counsel was rushing her and Applicant. A screenshot of the victim's Facebook post was admitted into evidence as Applicant's Exhibit One. Banks testified that Applicant's Exhibit One showed that the Facebook post contained the victim's prom pics from her senior year in high school. She testified that plea counsel's account had "liked" the post.

Banks testified that she was told in an email from plea counsel that plea counsel saw home incarceration only as the sentence for Applicant. A screenshot of the email was admitted into evidence as Applicant's Exhibit Two. Banks testified that the email in Applicant's Exhibit Two shows that plea counsel's email states that plea counsel thinks that Applicant would get little to no prison time if he pleaded guilty. She testified that plea counsel told Applicant that he would get a lengthy home incarceration sentence and she did not understand why the prosecutor was requesting a fifteen-year sentence. She testified that the email from plea counsel reaffirmed her belief that Applicant would get little or no jail time. She testified that the only plea offer she heard about from plea counsel was one for fifteen years and that the assistant solicitor was not budging. She testified that she knew that Applicant was entering a guilty plea but explained that she and Applicant were told that Applicant would receive a lengthy home incarceration sentence.

Banks was cross-examined at the hearing. She testified that the email in Applicant's Exhibit Two was sent to her and that the recipient email account was one that she and her husband

use jointly. She testified that she was told by others that, since plea counsel's Facebook profile shows up as the second in the list of accounts that liked Applicant's Exhibit One, plea counsel's was the second account to have liked the post. When asked if the time at which the like happened can be discerned from Applicant's Exhibit One, she testified that that was not possible.

Respondent called plea counsel as a witness. Plea counsel testified that he has been practicing law for thirteen years, with all of that time being spent in the field of criminal law. He testified that Banks hired him shortly after Applicant was arrested. He summarized the facts of the crime and testified that he met with Applicant on four or five occasions, more than he has met with any other client who was pleading guilty. He testified that he spoke with Applicant about the case by phone frequently and that they discussed many topics on those calls because he cared for Applicant and was willing to talk to him as much as Applicant wanted. He testified that he has mail and email correspondence saved showing his preparation for the case with Applicant, his getting statements, and his asking about Applicant's therapy. He testified that he suggested that Applicant start going to therapy in mitigation because he felt it would be beneficial if Applicant had a supportive statement for Judge Stilwell from the therapist. He testified that Applicant was good about following through with his suggestions. He testified that Applicant began seeing a therapist as a proactive measure. He testified that he suggested that Applicant do anything possible to prove that Applicant's actions on the day of the crime were not indicative of Applicant's character.

Plea counsel testified that he made a point to go over "every shred" of allegations in the indictments with Applicant and that he always ensures that he gets a client's side of the story. He testified about the different items that he received in discovery and stated that he went over all of the discovery with Applicant. He testified that Applicant did not give him any reason to believe

that he did not understand the significance of the State's evidence. He agreed that he went over the potential sentences with Applicant. He testified that he did not think that Applicant was taking antidepressants at the time of representation, only at the time of the crime. He did not believe that the therapist that Applicant began seeing at plea counsel's suggestion prescribed any additional medication.

Plea counsel testified that he met with Banks on multiple occasions. He testified that he met with Banks and five or six other members of Applicant's family just before the guilty plea hearing in order to prepare them. He believes that those with whom he met probably included Applicant's sister, friend, and grandfather.

Plea counsel testified that Applicant told him that the incident was caused by a kiss and a nibble. He testified that it is not uncommon for his clients to have an initial story at the beginning and then to change it once they begin to trust him. He testified that Applicant eventually told him that Applicant intended to bite the victim because he was angry, but that he did not intend to injure the victim to such an extent. He testified that he does not push any client to plead guilty or to proceed to trial, but he tells every client that he will not tell him or her what to do. He agreed that Applicant told him that he meant to bite the victim's lip, but that Applicant maintained that he did not mean to bite the lip off. He testified that he felt that he had explained this position in mitigation during the guilty plea hearing.

Plea counsel testified that he reviewed all of the evidence in discovery, including listening to every phone call and watching every video, and that he spoke to and met Assistant Solicitor Gary in order to present a picture of Applicant's side of the story. He testified that he recalled that the assistant solicitor went out on maternity leave shortly after their meeting, and that she had already given him the fifteen-year plea offer. He testified that he called Assistant Solicitor Gary's

supervisor because he was surprised at the strictness of the plea offer. He testified that he talked with Assistant Solicitor Gary multiple times thereafter about the severity of the injury and the functionality of the victim's mouth. He testified that it was clear that, in light of the State's evidence, he would never have a legitimate defense to present if the case went to trial. He testified that, if Applicant had maintained that the incident was an accident, he would have had no problem with taking the case to trial over that issue. He testified that there were no obvious defense issues that required extensive legal research.

Plea counsel testified that he thought that the State's fifteen-year plea offer was excessive. He testified that he called two former prosecutors and one current prosecutor, explained the case to them, and sought their advice.¹ He testified that none of them thought that Applicant would be sentenced to imprisonment and that they believed there was a good chance that Applicant would be sentenced to home incarceration. He testified that he told Applicant what he thought; although he made it clear to Applicant that this was his assessment only because Judge Stilwell could impose any sentence and Assistant Solicitor Gary would be asking for a lengthy prison sentence. He testified that he still believes that Applicant's sentence was excessive and that the sentence disappoints him. He testified that he believes that Applicant should have received two or three years in prison at the most.

Plea counsel testified that Applicant never told him that he was considering taking the case to trial. Plea counsel testified that he told Applicant that his professional judgment was that Applicant would be convicted if he went to trial, but he left the decision to Applicant. He testified that Applicant decided to plead guilty. He testified that the only other plea offer that he could get

¹ Plea counsel testified that he was a former prosecutor himself, and believed the State's fifteen-year offer was not good for his client based upon his own experience working as an assistant solicitor.

from Assistant Solicitor Gary was an open plea deal because she did not want to reduce the State's recommendation to ten years and was ready to begin trial. He testified that the State only ever extended two plea offers: the first was the fifteen-year sentencing recommendation and the second was an open plea with both parties asking for their preferred sentence. He testified that he shared the details of these two offers to Applicant and that Applicant rejected the first offer upon plea counsel's advice. He testified that he had no reason to believe that Applicant did not understand his explanations about the details of the plea offers.

Plea counsel agreed that Applicant's Exhibit One was an email sent from him to Banks. He testified that he believes that the email was sent after Applicant had pleaded guilty. He testified that Banks emailed him referring to other cases around the world in which offenders who had committed more serious crimes than Applicant got more favorable sentences. He testified that his response was to tell Banks that he agreed with her position and that he had based his advice to Applicant upon his expectation for a more favorable sentence.

Plea counsel testified that he prepared Applicant and Applicant's family members for the guilty plea hearing. He testified that he discussed with them what would happen at the hearing and which of them should speak on Applicant's behalf, and that they narrowed the list of speakers down to three or four names. He testified that he taught them proper courtroom demeanor. He testified that he went through what he and Applicant would say at the hearing. He testified that he felt that they all were prepared for the hearing. He agreed that Applicant appeared to be nervous at the hearing, but he felt that such feelings were normal. He testified that some of the people who attended the guilty plea hearing on Applicant's behalf decided not to speak, but that everyone who wanted to speak was given the opportunity. He testified that he gave to Judge Stilwell all of the letters submitted on Applicant's behalf by Applicant's friends, employers, and therapist. Plea

counsel denied that he told Applicant to lie to Judge Stilwell at the guilty plea hearing. He testified that the victim spoke about the rocky relationship she and Applicant had. He testified that he spoke at the guilty plea hearing that the two had jealousy issues.

Plea counsel testified that it took multiple days for him to draft his motion to reconsider, that it was five pages long, and that he drafted and filed the motion voluntarily because he was distraught at the sentence. He testified that he went through the Public Index and found examples wherein people were given much less time than Applicant for similar or more serious crimes. He testified that he made the point in his motion that the hearing had been emotionally charged and that the sentence imposed was outside the norm of what a sentence should be for a crime like Applicant's.

Plea counsel agreed that his Facebook profile was the one shown in Applicant's Exhibit One. He testified that he was shocked that he had liked the post and did not know that he had done so. He testified that he verified through his Facebook activity log before the hearing in this matter began that he had liked the post about ten days after Applicant's guilty plea hearing. He testified that he believes that he accidentally liked the post and agreed that it would have been strange for him to have liked the post intentionally. He testified that he went to the victim's Facebook profile regularly in the aftermath of the guilty plea hearing to see what she and others were saying because he was shocked at the sentence and the case generated national attention. He testified that he was reading through the comments on the victim's page to see what members of the public thought of the case and the sentence. He testified that he did not know the victim before or during his representation of Applicant. He testified that he had no knowledge of her until he began representing Applicant. He testified that defense attorneys sometimes want to apologize to victims but in no way would that sentiment ever affect the way that he represented Applicant. He agreed

that his sentiment for the victim was not much different with what he and Applicant said during the guilty plea hearing. He testified that, if anything, others accused him of being too accepting of Applicant's version of events.

Plea counsel testified that he did not tell Applicant that he would file a notice of appeal. He testified that he told Applicant after the guilty plea hearing that Applicant should not worry because plea counsel was going to file a notice of appeal, and that he later clarified to Applicant—on the following day—that he had been referring to a motion for reconsideration of the sentence. He testified that Applicant did not ask him to file a notice of appeal. He testified that Applicant did not give him any reason to think that he wanted to file a notice of appeal and that plea counsel did not think that there were any issues of merit to take up on appeal. He testified that he would have filed a notice of appeal if Applicant had asked him to do so.

Plea counsel was cross-examined during the hearing. He testified that there were inconsistencies in the victim's side of the story and that he told Judge Stilwell that there was no evidence that Applicant was abusive towards the victim. He testified that he was not aware of any evidence that Applicant and the victim had an abusive relationship. He testified that he did not feel that the victim was insinuating that the abusive relationship caused the injury.

Plea counsel testified that Applicant told him that he intended to bite the victim's lip but just not to such a degree. He testified that Applicant was pleading guilty to an intentional act. He testified that he does not know how one could unintentionally bite another's lip with the force exerted in a pit bull's bite. He testified that he did not believe that Applicant had the intent to rip off the victim's lip, but that Applicant did have the intent to cause injury to the victim. He testified that the State laid a foundation of abuse that characterized Applicant as a monster who intentionally bit off the victim's lip. He testified that Judge Stilwell would not have been able to find that there

existed a substantial factual basis for the entry of the guilty plea or allowed Applicant to plead guilty if Applicant had maintained that he had no intention to harm the victim whatsoever.

Plea counsel testified that he addressed at the guilty plea hearing the fact that Applicant had made damaging statements on the recorded jail phone calls by pointing out that Applicant was nervous, had been in shock about the incident, and had no prior criminal record. He testified that Applicant went to a psychiatrist in order to get treatment after the incident and that Applicant offered to pay whatever amount was required in order for the victim to get treatment from the best plastic surgeons. He testified that he believed that it was clear that Applicant was remorseful. He denied that he told Applicant not to apologize. He testified that he was worried after Applicant made his statement at the guilty plea hearing because the statement came off as cold, possibly due to Applicant's nervousness.

Plea counsel agreed that, going in to the plea hearing, his professional opinion was that Applicant would get home incarceration or one or two years in prison. He admitted that he told Applicant's family members that same thing. He testified that he gave Applicant the choice as to whether or not to plead guilty and that Judge Stilwell had the discretion to sentence however he saw fit. He testified that Applicant could be sentenced to prison for more than fifteen years if he were found guilty at trial. He testified that he believed it would have been unreasonable for Applicant to go to trial because it is better to plead guilty and show who you really are in mitigation than to go to trial on a case that you know you will lose. Plea counsel testified that he discussed the sentencing sheet with Applicant and informed Applicant that he would be required to serve at least 85% of his sentence.

Plea counsel testified that he had seen supportive comments made by the law enforcement investigator on the victim's Facebook page and compared them to the officer's statement made at

the guilty plea hearing. He testified that he had not seen any comments made on social media by the investigator in advance of the guilty plea hearing. He testified that he was dumbfounded by the investigator's statement that Applicant's had been the most heinous crime he had ever seen. He testified that he knew of no personal relationship between the investigator and the victim. He testified that many were attentive to the case because the victim was so vocal on social media about the case and her injuries.

Applicant has failed to prove that plea counsel was constitutionally ineffective for advising Applicant that, if Applicant pleaded guilty, the worst possible outcome that Applicant could expect would be for him to be sentenced to imprisonment for two or three years.

Applicant claims that plea counsel was constitutionally ineffective for misadvising him on the possible outcome of the guilty plea hearing by telling him that the sentence would be two to three years in prison at the most and that but for this deficient advice, Applicant would not have pleaded guilty.

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that counsel was constitutionally ineffective, he must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result." Strickland, at 686. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel's performance was deficient. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, at 117, 386 S.E.2d at 625 (quoting Strickland, at 690). The proper measure of performance is whether the attorney provided representation within

the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced 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 plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing: (1) counsel was deficient and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). The "prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial." Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, at 670. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant

to prove “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Id. at 697. Therefore, the function of the post-conviction relief court is to determine if “in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney. Id. at 690.

“A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (S.C. Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). “Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea.” Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”). The South Carolina Supreme Court has instructed that:

The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.

State v. Inman, 395 S.C. 539, 556, 720 S.E.2d 31, 40 (2011) (internal quotations and citations omitted). “[A] guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights.” Jamison, at 468, 765 S.E.2d at 129 (citations omitted).

This Court finds that Applicant has failed to prove that there was any deficiency in plea counsel’s advice to Applicant about the maximum possible penalty to which Applicant would be exposed by pleading guilty. The Due Process Clause of the United States Constitution requires

that a defendant enter a guilty plea voluntarily, knowingly, and intelligently. Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citing Boykin v. Alabama, 395 U.S. 238 (1969)). The defendant must be aware of, among other things, the maximum possible penalty that could be imposed. Id. (citations omitted). Plea counsel credibly testified that he informed Applicant of the sentencing range for the underlying charge and, though he told Applicant that his professional opinion was that Applicant would likely receive a maximum sentence of imprisonment for three years, he told Applicant that the sentence actually imposed would be left to Judge Stilwell's discretion because Applicant would be entering a guilty plea without the benefit of a sentencing recommendation from the State or a negotiated sentence. Applicant did not dispute before this Court that he was aware of the range of sentences that Judge Stilwell could impose if he pleaded guilty, but testified instead that his expectation, based upon plea counsel's advice, was that the maximum sentence he should realistically expect would be imprisonment for a few years. Applicant testified at the evidentiary hearing that he affirmed at the guilty plea hearing that he understood the maximum possible penalty to which he would be exposed if he pleaded guilty but also testified that he made that affirmation at plea counsel's direction. This Court finds that Applicant's testimony on this point is not credible. Applicant has given this Court no compelling reason to allow him to disavow the affirmation that he made to Judge Stilwell at the guilty plea hearing about his understanding of the possible sentencing range, even if it is clear that Applicant is motivated to disavow the affirmation now because he did not receive as lenient a sentence at the guilty plea hearing as he had hoped. The assistant solicitor requested at the guilty plea hearing that Judge Stilwell impose a fifteen-year sentence, which served as further indication to Applicant that it was possible that by pleading guilty he would be imprisoned for more than three years. The evidence before this court establishes that Applicant was aware of the fact that the sentence

imposed by Judge Stilwell could exceed three years' imprisonment, despite his hope, based upon plea counsel's advice, that it would not.

A colloquy with a guilty plea court can cure an alleged deficiency in advice given to a defendant by his lawyer. Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011) (citations omitted) (concluding that any alleged deficiency in plea counsel's advice to Holden was cured by the plea court's colloquy), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). At the guilty plea hearing, Applicant affirmed to Judge Stilwell that he understood that he could be sentenced to as much as twenty years in prison if he pleaded guilty to the underlying crime. Plea Tran. 5. Applicant affirmed that no one had promised anything to him in order to get him to plead guilty other than a "potential" sentencing recommendation from the State. Plea Tran. 6. This Court finds that, even if plea counsel had misadvised or failed to advise Applicant of the maximum penalty to which Applicant would be exposed if he pleaded guilty, Judge Stilwell's colloquy would have cured such an error.

This Court finds that Applicant has failed to prove that plea counsel's advice to Applicant that Applicant's sentence likely would consist of three years in prison at the most was deficient. Applicant testified that plea counsel told him that the sentence imposed upon him would likely fall between a lengthy period of home incarceration and three years in prison. Banks' testimony confirmed that this was her expectation, too, based upon plea counsel's advice. Plea counsel's testimony was that he told both Applicant and Banks that, in his professional judgment, the sentence imposed upon Applicant would likely fall between a lengthy period of home incarceration and three years in prison. There is no dispute between the three witnesses that this was plea

counsel's advice to Applicant about the expected outcome of the guilty plea hearing.² But Applicant has not proven that plea counsel's estimation that the sentence imposed likely would not exceed three years' imprisonment was unreasonable "under prevailing professional norms." Cherry, at 117, 386 S.E.2d at 625. In formulating his advice to Applicant about what sentence was likely to be imposed, plea counsel, himself a former assistant solicitor, sought the advice of other lawyers practicing in the field of criminal law. Plea counsel credibly testified that he did not merely rely upon the opinions of those other lawyers, but used them to confirm his own independent judgment about the likelihood of a lenient sentence. Plea counsel shared with Applicant his opinion and explained how he came to that conclusion. Applicant's Exhibit Two shows that both plea counsel and Banks were aware of other criminal cases in which punishments were imposed that were more lenient than Applicant's for crimes that plea counsel and Banks felt were similar or less heinous than Applicant's. Plea counsel expressed his position that the sentence imposed was too strict when he cited in his motion for reconsideration multiple cases with descriptions of the crimes involved and the sentences imposed. Even though Judge Stilwell did not follow plea counsel's request, plea counsel was able to convince Judge Stilwell to deviate downward from the assistant solicitor's request for a fifteen-year sentence. A defense attorney's advice about the likelihood of

² Plea counsel asked Judge Stilwell at the guilty plea hearing to "consider a very, very long home incarceration sentence." Plea Tran. 42. Plea counsel's advice to Applicant that a home incarceration sentence was possible was not correct. The home detention program is not available to those convicted of crimes defined by statute as violent crimes. State v. Pogue, 430 S.C. 384, 387, 844 S.E.2d 397, 398 (S.C. Ct. App. 2020). Assault and battery of a high and aggravated nature is a violent crime. S.C. Code Ann. § 16-1-60. Applicant pleaded guilty to assault and battery of a high and aggravated nature; therefore, Judge Stilwell could not have sentenced Applicant to home incarceration. However, since Applicant takes issue with the maximum sentence that plea counsel told Applicant to expect and not with the minimum, there is no need for the Court to consider this issue. Applicant's testimony at the hearing expressed his dismay at the difference between the twelve-year sentence actually imposed and his expectation of a worst possible outcome of a two- or three-year sentence, and did not concern the unavailability of home incarceration. Applicant has waived the issue.

an event is not rendered deficient merely because the event did not come to pass; what matters is the reasonableness of the advice. There is a strong presumption that plea counsel's advice to Applicant was adequate and that plea counsel used reasonable professional judgment when making significant decisions during the representation, and Applicant has failed to overcome this presumption with respect to his argument about plea counsel's sentencing advice. Butler, at 442, 334 S.E.2d at 814.

This Court finds that Applicant has failed to prove that there is a reasonable likelihood that he would have proceeded to trial instead of pleading guilty but for plea counsel's allegedly deficient advice regarding the maximum penalty that could be imposed. Plea counsel credibly testified that because Applicant told him that he intended to bite and to hurt the victim and because the State's evidence was so damning, he believed that there would not be a legitimate defense available to Applicant if he went to trial rather than pleading guilty. Plea counsel and Applicant both agreed before this Court that plea counsel went over all of that evidence with Applicant. Plea counsel credibly testified that he told Applicant that he believed that Applicant would be convicted if he went to trial and that Applicant decided to plead guilty of his own accord. Plea counsel credibly testified that he told Applicant that it was better to plead guilty and try to mitigate the sentence than to go to trial on a case that would obviously result in a conviction. Plea counsel credibly testified that Applicant never said that he wanted to go to trial. Applicant testified that he pleaded guilty solely because he had the expectation that he would receive a lenient sentence if he pleaded guilty, but that testimony is not credible because plea counsel's more credible testimony indicates that Applicant agreed that he would likely be convicted if he went to trial, leaving him with little option but to seek a favorable sentence. Plea counsel testified that Applicant followed his advice to seek out therapy so that they could make the case at the eventual guilty plea hearing

that Applicant was trying to work through his problems and so that they could present a positive statement on Applicant's behalf from the therapist to the plea court. Plea counsel testified further that Applicant was responsive to his advice about taking proactive measures that could be used in mitigation at a guilty plea hearing. This demonstrates that Applicant was seriously considering pleading guilty rather than proceeding to trial from early on in the representation.

This Court finds that Applicant has failed to prove that plea counsel was constitutionally ineffective for advising Applicant that, if Applicant pleaded guilty, the worst possible outcome that Applicant could expect would be for him to be sentenced to imprisonment for two or three years because Applicant has failed to prove that plea counsel's advice on that point was deficient, because any deficiency in plea counsel's advice would have been cured by Judge Stilwell's colloquy, and because Applicant has failed to prove any prejudice resulting from the alleged deficiency. This Court denies this claim and dismissed it with prejudice.

Applicant has failed to prove that plea counsel was constitutionally ineffective for not moving for the reconsideration of the sentence.

Applicant claims that plea counsel was constitutionally ineffective because he did not move for the reconsideration of Applicant's twelve-year sentence. This Court finds that Applicant has failed to prove that plea counsel did not move for the reconsideration of the sentence. In fact, Respondent has proven that plea counsel did so move. The records filed with the Greenville County Clerk of Court in the underlying case show that plea counsel filed a motion to reconsider on November 8, 2018, and that Judge Stilwell denied the motion in an order filed on November 14, 2018. Plea counsel testified before this Court that he filed the motion and that he took much care in drafting it. Any testimony from Applicant or Banks to the contrary was ill-informed. As a factual matter, Applicant's assertion that the motion was not filed is flatly disproven by the evidence. This Court finds that Applicant has failed to prove that plea counsel was constitutionally ineffective for

not moving for the reconsideration of the sentence because plea counsel did so move, meaning that Applicant has not proven any deficiency in plea counsel's performance. The claim is denied and dismissed with prejudice.

Applicant has failed to prove that plea counsel was constitutionally ineffective for not bringing to Judge Stilwell's attention that the victim's statements during the guilty plea hearing that she was beaten daily were false.

Applicant alleges that the victim said during her statement during the guilty plea hearing that Applicant beat her daily. Plea counsel agreed that the victim made the comment during the guilty plea hearing and testified that he tried to mitigate by saying that there was no evidence that Applicant abused the victim and the difficulties in Applicant's and the victim's relationship were caused by both of them rather than being attributable to Applicant alone. This Court finds that Applicant has failed to prove that the victim said as much during the guilty plea hearing. This Court has reviewed the transcript of the guilty plea hearing and can find no such statements from the victim. Since the victim did not make the statement, plea counsel could not have objected to it. This Court finds that Applicant has failed to prove any deficiency in plea counsel's performance. The claim is denied and dismissed with prejudice.

Applicant has failed to prove that plea counsel was constitutionally ineffective for not informing Applicant of all plea offers extended by the State.

Applicant alleges that there may have been plea offers extended to him by the State other than the two that he discussed in his testimony before this Court. "[A] defendant has the right to effective assistance of counsel during the plea bargaining process." Bell v. State, 410 S.C. 436, 440-41, 765 S.E.2d 4, 6 (S.C. Ct. App. 2014) (quoting Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009), abrogated on other grounds by Smalls, 422 S.C. 174, 810 S.E.2d 836. A defense attorney "has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." Id. (quoting Missouri v. Frye, 566 U.S. 134

(2012)). Plea counsel credibly testified that the assistant solicitor extended only two plea offers to Applicant and that Applicant rejected the first and accepted the second. Neither Applicant nor his mother had any evidence that an offer other than these two was extended to Applicant by the State; instead they speculated that another was extended or, perhaps more accurately put, they wondered if another had been extended. This Court finds that Applicant has failed to prove that there was any plea offer extended to him by the State of which plea counsel did not inform him. The evidence before this Court establishes that plea counsel was diligent in trying to secure a more favorable plea offer for Applicant and was disappointed that none was forthcoming. This claim is denied and dismissed with prejudice.

Applicant has failed to prove that plea counsel was constitutionally ineffective for not offering in mitigation that the relationship between the victim and Applicant was toxic and that the victim was angry that Applicant was leaving to join the United States Navy.

Applicant claims that plea counsel was constitutionally ineffective for not offering in mitigation that the relationship between the victim and Applicant was toxic and that the victim was angry that Applicant was leaving the area in order to join the Navy. Applicant testified before this Court that the victim commented during the guilty plea hearing that he was toxic and testified that he believed instead that the relationship was toxic mutually. Applicant testified that his romantic relationship with the victim ended months before the incident in the parking lot, and that he showed up to meet her at her request and with flowers in hand. He testified that she had only re-established contact with him once she found out that he was joining the Navy. Applicant argues that the State characterized Applicant as some sort of monster and that he was prejudiced when plea counsel did not address that characterization. Plea counsel testified at the evidentiary hearing that he told Judge Stilwell that there was no evidence that Applicant was abusive towards the victim. Plea counsel was not aware of any evidence that the relationship between the victim and Applicant was abusive but he did not feel that the victim was insinuating at the guilty plea hearing that Applicant's biting

her was the latest link in a chain of instances of Applicant's physically abusing the victim.

At the guilty plea hearing, plea counsel admitted that Applicant meant to bite the victim's lip but said that that act of aggression was out of character for him. Plea Tran. 38-39. The victim said that Applicant was manipulative towards her and that he was the first person ever to have abused her mentally and physically. Plea Tran. 20. The victim told Judge Stilwell that her greatest fear was that Applicant would get his hands on her again and kill her. Plea Tran. 23. Banks spoke about Applicant's good character traits and said that his actions in the parking lot were out of character for him. Plea Tran. 28-31. Applicant's grandfather spoke in mitigation at the guilty plea hearing and said that he had never observed any aggression or violence on Applicant's part towards the victim. Plea Tran. 31-32. Applicant's friend told Judge Stilwell that he had never heard Applicant discuss his wanting to hurt someone and had never seen any aggression from Applicant. Plea Tran. 34. Plea counsel noted that the first three rows of seats in the courtroom at the guilty plea hearing were occupied for people who were there to support Applicant and handed up at least letters to Judge Stilwell from people who wanted to submit statements in support of Applicant. Plea Tran. 34-35. Plea counsel acknowledged that the relationship between the victim and Applicant was rocky and that Applicant informed the victim shortly before the incident that he was heading off to join the Navy. Plea Tran. 35-38. The mitigation that plea counsel and Applicant's friends and family presented to Judge Stilwell—presented under plea counsel's guidance—was enough that Judge Stilwell recognized that Applicant's actions in the parking lot were probably inconsistent with his character. Plea Tran. 43. Perhaps that is why the sentence that Judge Stilwell imposed was less than the State's suggested sentence of fifteen years. Applicant has failed to prove that plea counsel's mitigation was deficient with regard to the issues of the allegedly mutually dysfunctional nature of the relationship between the victim and Applicant and Applicant's

informing the victim shortly before the incident that he was joining the Navy. Applicant has not shown that plea counsel did something that he should not have done and has not shown that plea counsel failed to do something that he should have done.

This Court finds that Applicant has failed to prove that there is a reasonable likelihood that the outcome would have been different absent the alleged deficiency in plea counsel's mitigation. Applicant has failed to prove that his sentence would have been lighter even if plea counsel had repeated his statements about the allegedly mutually dysfunctional nature of the relationship between the victim and Applicant and Applicant's informing the victim shortly before the incident that he was joining the Navy, or rephrased them somehow in another way. In light of the aforementioned mitigation that plea counsel did at the guilty plea hearing, and that Applicant's friends and family members did with plea counsel's help, Applicant has failed to show that any reiteration or rephrasing on plea counsel's part would have made any difference. Judge Stilwell considered quite a bit of information in mitigation, and another bit of repetitive mitigation likely would have been of no consequence. By pleading guilty, Applicant waived his trial rights, which included his ability to challenge the State's evidence and to cross-examine the victim. Plea Tran.

4. If Applicant wanted plea counsel to try his case, he should have gone to trial instead of pleading guilty in hope for a favorable sentence.

This Court finds that Applicant has failed to prove that plea counsel was constitutionally ineffective with respect to his mitigation because Applicant has failed to prove any deficiency in plea counsel's performance and any resulting prejudice. The claim is denied and dismissed with prejudice.

RS

Applicant has failed to prove that plea counsel was constitutionally ineffective for inadequately preparing Applicant for the guilty plea hearing, a fact which was allegedly made worse by the presence of many in the courtroom and Applicant's nervousness.

Applicant claims that plea counsel was constitutionally ineffective for not adequately preparing him for the guilty plea hearing, and that the deficiency was compounded by the presence of many people in the courtroom during the hearing and Applicant's nervousness. Applicant testified at the evidentiary hearing that he met with plea counsel on four or five occasions, a fact with which plea counsel agreed. Applicant testified that he told plea counsel about his case but felt that plea counsel did not prepare a defense. Applicant and plea counsel agreed that plea counsel reviewed all of the discovery with Applicant. Applicant testified that plea counsel told him to apologize at the guilty plea hearing and coached him on how to say it. He testified that plea counsel did not give him any advice about making an apology. He testified that plea counsel told him to show remorse but not to look at the victim during the guilty plea hearing. He testified that he thought he was pleading guilty to an open plea deal and was caught off guard when the assistant solicitor made a sentencing recommendation at the guilty plea hearing. Applicant testified that he was nervous at his guilty plea hearing and denied that he would have been nervous had his case gone to trial.

This Court finds that Applicant has failed to prove that plea counsel inadequately prepared him for the guilty plea hearing. Applicant testified before this Court that plea counsel did little to prepare him for the hearing, but also gave contradictory testimony that indicates that plea counsel did prepare Applicant for the hearing: plea counsel reviewed the State's evidence with him, plea counsel discussed with him what Applicant should say at the plea hearing and in what manner Applicant should say it, plea counsel advised Applicant to begin attending therapy sessions in an effort to build a case that Applicant merited leniency from the sentencing court, and plea counsel discussed with Applicant the terms of the guilty plea. Not only did plea counsel meet with

Applicant on four or five occasions, but they also discussed the case by phone on multiple occasions. This Court has already made a finding that Applicant's testimony that his affirmations to Judge Stilwell were lies made upon the instruction of plea counsel lacks credibility. Without departing from that finding, it is of note that, if this Court were to take Applicant at his word on that point, the Court would have to accept the testimony as an admission that plea counsel did prepare Applicant for the guilty plea hearing, after a fashion. It is easy enough to believe that Applicant was nervous at his guilty plea hearing, but there is no constitutional guarantee that criminal defendants will be afforded court hearings free of any sense of nervousness; besides, there is no credible reason to think that Applicant would not have been equally nervous at trial. The apparent outpouring of support for both the victim and Applicant at the guilty plea hearing was probably unavoidable and would have been a feature of trial, had Applicant decided not to waive his right to one by pleading guilty. Based upon plea counsel's credible testimony, this Court concludes that plea counsel met with Applicant and those who wished to attend the guilty plea hearing on Applicant's behalf in order to practice the statements that they intended to give to Judge Stilwell and so that plea counsel could give feedback to them. Plea counsel also submitted letters of support to Judge Stilwell, letters from Applicant's friends, employers, and therapist. That level of preparation on plea counsel's part was more than adequate in a constitutional sense; indeed, plea counsel testified that he put more work into preparing Applicant and Applicant's case for the guilty plea hearing than he had with any of his previous clients.

This Court finds that Applicant has failed to prove that there is a reasonable likelihood that the outcome would have been different absent the alleged deficiency in plea counsel's performance. Applicant did not present any evidence that Judge Stilwell's sentence was higher than Applicant's expectation due to any lack of preparation on plea counsel's part. In fact, likely

due to the work that plea counsel did in preparing Applicant and Applicant's family members for the guilty plea hearing, in submitting letters of support to Judge Stilwell on Applicant's behalf, and in making a mitigating statement on Applicant's behalf, Judge Stilwell acknowledged that it was very possible that Applicant's biting off the victim's lip was out of character for him. Applicant has merely speculated that he would have been less nervous had he gone to trial or been more prepared for the guilty plea hearing, but that speculation does not serve as proof of prejudice.

This Court finds that Applicant has failed to prove that plea counsel was constitutionally ineffective with respect to his preparing Applicant for the guilty plea hearing because he has failed to prove any deficiency in plea counsel's performance and any resulting prejudice. The claim is denied and dismissed with prejudice.

Applicant has failed to prove that he is entitled to post-conviction relief because plea counsel allegedly was friends with the victim on Facebook and "liked" a post of hers containing photographs.

Applicant claims that plea counsel had a personal relationship with the victim prior to plea counsel's representation of Applicant, that plea counsel did not disclose that fact when he began representing Applicant, and that plea counsel's loyalties may have been divided. Banks testified that she learned through others that plea counsel's Facebook profile had "liked"³ one of the victim's posts on the social media website that included photographs of Applicant and the victim from the victim's high school prom. She believed that this indicated that there was some (undisclosed) relationship between plea counsel and the victim, which may have caused plea

³ A Facebook user, when signed into his Facebook profile, can click the "like" button below another's post on the social media site. Clicking the button, commonly referred to as "liking" a post, causes the post to appear in the instant stream of updates visible to the user's friends' profiles. Anyone with the privacy permissions to view the original post or the user's Facebook page will be able to see that the user "liked" the content. Molly D. McPartland, An Analysis of Facebook "Likes" and Other Nonverbal Internet Communication Under the Federal Rules of Evidence, 99 IOWA L. REV. 445, 448-49 (2013).

counsel to divide his loyalties. Banks believed that plea counsel's profile had liked the victim's post in the past because his Facebook profile was the second listed under the post.

This Court finds that Applicant has failed to prove that plea counsel had a conflict of interest between Applicant and the victim. A conflict of interest occurs:

[W]hen a defense attorney places himself in a situation inherently conducive to divided loyalties If a defense attorney owes duties to a party whose interests are adverse to those of the defendant, than an actual conflict exists. The interests of the other client and the defendant are sufficiently adverse if it is shown that the attorney owes a duty to the defendant to take some action that could be detrimental to his other client.

Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809, 811 (1984) (citing Zuck v. State of Alabama, 588 F.2d 436 (5th Cir. 1979)). The mere possibility that trial counsel had a conflict of interest is insufficient to impugn Applicant's conviction. State v. Gregory, 364 S.C. 150, 152-53, 612 S.E.2d 449, 450 (2005) (citing Langford v. State, 310 S.C. 357, 426 S.E.2d 793 (1993)). The Supreme Court has instructed that:

In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance [A] defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief.... But until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance.

Id. at 437-37, 315 S.E.2d at 810-11 (citing Cuyler v. Sullivan, 446 U.S. 335 (1980)). Applicant has not demonstrated that plea counsel owed any duty to the victim. Although Applicant and his mother were alarmed that plea counsel's Facebook profile had liked one of the victim's older posts, no relationship between the victim and plea counsel existed. Plea counsel credibly testified that he did not know the victim or any of her family members before representing Applicant, and that he became aware of her only because she was Applicant's victim. Plea counsel credibly testified that he had viewed some of the victim's social media posts before the guilty plea hearing because

Applicant's mother brought the posts to his attention and took issue with them. Plea counsel testified that the victim was active on social media, which contributed to the public's awareness of Applicant's crime. Plea counsel credibly testified that his review of his Facebook profile's activity log showed that he did like the victim's post ten days after Applicant's guilty plea hearing. Plea counsel had no memory of liking the post and could think of no reason that he would have done so intentionally; instead, he believed that he had been looking at the victim's posts and liked the relevant post on accident. Plea counsel credibly testified that he was so shocked at the outcome of the guilty plea hearing that he scoured social media posts and comments, including the victim's, and news sources about the case. He hoped to get insight into what members of the public thought of the sentence. Applicant and Banks discovered the like on the victim's post and speculated that some undisclosed relationship must have existed between the victim and plea counsel, but plea counsel adequately explained that no relationship existed and that his liking the victim's post was almost certainly unintentional. In light of plea counsel's testimony, this Court finds that the like was accidentally done by plea counsel and was harmless, brought about by plea counsel's natural and understandable curiosity about the public's reaction to the sentence. Applicant's Exhibit Two, which shows an email exchange between plea counsel and Banks that took place after the guilty plea hearing, shows that both plea counsel and Banks were shocked at the sentence, reinforcing the genuineness of plea counsel's explanation for the like. Applicant has provided no evidence that the zealotness of plea counsel's advocacy was affected by the post-hearing like.

This Court finds that Applicant has failed to prove that plea counsel owed any duty to the victim, that plea counsel had any relationship to the victim that pre-dated plea counsel's representation of Applicant, and that plea counsel's like on the victim's social media post was anything more than a harmless, innocent mistake; thus, Applicant has failed to prove that plea

counsel had a conflict of interest. The claim is denied and dismissed with prejudice.

Applicant has failed to prove that his guilty plea was involuntarily and unknowingly entered due to Applicant's allegedly being on antidepressants at the time and his inability to process the drama that the victim created.

Applicant claims that the entry of his guilty plea was rendered unknowing and involuntary due to his being on antidepressants at the time of his guilty plea hearing. The Due Process Clause requires that a defendant enter a guilty plea voluntarily, knowingly, and intelligently. Pittman, at 599, 524 S.E.2d at 624 (citation omitted). The defendant must be aware of the right to confront his accusers, the privilege against his self-incrimination, the right to be tried by a jury, the nature and crucial elements of the offense for which he is being accused, the maximum and minimum possible penalties, and the nature of any constitutional rights being waived by the entry of a guilty plea. Id. (citations omitted). It is not required that a court direct a defendant's attention to "each and every constitutional right and obtain a separate waiver for each." State v. Lambert, 266 S.C. 574, 578-79, 225 S.E.2d 340, 342 (1976) (citing Wade v. Coiner, 468 F.2d 1059 (4th Cir. 1972)). While the focus of a court's inquiry into a defendant's competency is that defendant's mental capacity, making the question for the court there whether the defendant "has the *ability* to understand the proceedings," a court inquires into the knowing and voluntary nature of the entry of a defendant's guilty plea in order "to determine whether the defendant actually *does* understand the significance and consequences of a particular decision and whether the decision is uncoerced." Garren v. State, 423 S.C. 1, 15, 813 S.E.2d 704, 711 (2018) (quotations and citations omitted) (emphasis in original). "Common sense, backed by ample case law, suggests that medication can in some circumstances affect a defendant's mental state to a degree that undermines the defendant's ability to enter a voluntary plea. The critical question is whether the drugs—if they have a capacity to impair the defendant's ability to plead—have done so on this occasion." Id. at 15, 813 S.E.2d at 712-12 (quotations and citations omitted) (citing a holding that a plea court should, once it learns

that a defendant has taken medication recently, inquire into which drugs the defendant has taken, how recently the drugs have been taken, the quantity of the drugs taken, and, as far as is possible, the purpose and consequences of the drugs that have been taken). An applicant for post-conviction relief who claims that the influence of medication upon him rendered the entry of his guilty plea unknowing and involuntary “must show that his mental faculties were so impaired by drugs when he pleaded that he was incapable of full understanding and appreciation of the charges against him, of comprehending his constitutional rights, and of realizing the consequences of his plea.” *Id.* at 15, 813 S.E.2d at 712 (quoting United States v. Truglio, 493 F.2d 574 (4th Cir. 1974)). The applicant is required to prove by a preponderance of the evidence that he was not competent at the time of his guilty plea hearing and bears the burden of proof. *Id.* at 16, 813 S.E.2d at 712 (quotation omitted). The post-conviction relief court has to “consider objective data about the nature and effect of the medication the defendant had taken and evaluate whether such medication had the capability to produce a sufficient effect on his mental faculties to render him incompetent to enter a guilty plea.” *Id.* at 15, 813 S.E.2d at 712 (quotation omitted). “The dispositive feature of this inquiry is whether the medication is in fact causing such an impairment.” *Id.* at 15-16, 813 S.E.2d at 712 (quotation omitted).

This Court finds that Applicant has failed to prove that he was taking any medication at the time of the guilty plea hearing. First, although Applicant testified before this Court that he had been taking antidepressants, his testimony did not establish that he was taking prescribed antidepressants at the time of his guilty plea hearing. Applicant testified that he had been taking anti-depressants because of the victim, but it was not clear whether he meant that he had been taking anti-depressants at the time of his crime or taking them in the aftermath of that event. Applicant’s testimony may be evidence that Applicant has taken antidepressants, but it does not

serve as evidence of the timing of his taking the medication. Second, plea counsel credibly testified that he did not think that Applicant was taking antidepressants while plea counsel was representing Applicant, which would undermine any finding that Applicant was actually taking a medication at the time of his guilty plea hearing. Finally, at the guilty plea hearing, while under oath, Applicant denied that he was under the influence of drugs or alcohol during the hearing and denied that he “suffer[ed] from any mental sickness that would affect [his] ability to understand and appreciate what [they were] doing” in court that day. Plea Tran. 6-7. Applicant tried to disavow before this Court the affirmations that he made to Judge Stilwell by claiming that his affirmations were lies told at plea counsel’s direction. Plea counsel denied that he instructed Applicant to lie to Judge Stilwell at the guilty plea hearing. This Court has found elsewhere in this order that Applicant’s testimony that his affirmations were counselled lies is not credible, and does not depart from that finding here. Even if this Court had not found Applicant’s testimony on this point to lack credibility, it would be hesitant to let Applicant set aside sworn affirmations made during his guilty plea hearing. See Moorehead v. State, 329 S.C. 329, 333, 496 S.E.2d 415, 417 (citing Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997)) (finding that the lower court’s grant of post-conviction relief to Moorehead was not supported by Moorehead’s testimony that he affirmed to the guilty plea court that he understood the possible sentence for his crime and the nature of the plea agreement because his defense attorney allegedly advised him that the questions were meaningless).

This Court finds that Applicant has failed to prove that, even if he was taking medication at the time of his guilty plea hearing, the medication impaired his mental faculties to such an extent that “he was incapable of full understanding and appreciation of the charges against him, of comprehending his constitutional rights, and of realizing the consequences of his plea.” Garren, at

15, 813 S.E.2d at 712. Applicant testified before this Court that he was taking antidepressants. Applicant did not provide this Court with evidence as to what antidepressant he was on at the time of the guilty plea hearing, the amount of time between when he took the antidepressant and when his guilty plea hearing began, the dose of the antidepressant that he took, or the purpose and consequences of the antidepressant. Applicant did not provide this Court with any evidence about the “nature and effect of the medication” or any evidence that this Court could use to “evaluate whether such medication had the capability to produce a sufficient effect on his mental faculties to render him incompetent to enter a guilty plea. *Id.* Applicant presented no objective evidence about the medication that he claims to have been taking at the time of his guilty plea hearing and the potential that that medication had to affect Applicant’s ability to comprehend the nature of the proceedings. Applicant has not proven that he was taking any medication that had the “capacity to impair [Applicant’s] ability to plead” guilty. *Id.* at 15, 813 S.E.2d at 71-12.

This Court finds that Applicant has not only failed to present objective data about his antidepressant’s effect upon him, but has failed also to provide credible evidence that some medication he was on at the time of his guilty plea hearing did in fact impair his ability to plead guilty. Applicant testified that he did not know what was going on at the guilty plea hearing. On cross-examination, Applicant admitted that he affirmed at his guilty plea hearing that his thinking was not impaired by drugs or alcohol but said that his affirmations to Judge Stilwell were lies he told at plea counsel’s direction.⁴ Even if this Court accepted that testimony about lying at plea counsel’s direction as credible, Applicant’s making those affirmations falsely would have been

⁴ The South Carolina Supreme Court noted recently that some courts find it dispositive when a defendant affirms to a plea court while under oath that the defendant was not under the influence of drugs or alcohol. *Garren*, 423 S.C. at 16, 813 S.E.2d at 712, n.2 (citing *U.S. v. Rivera*, 191 Fed.Appx. 309 (5th Cir. 2006)).

evidence of Applicant's ability to plead guilty. Rather than indicating that Applicant lacked understanding of the proceedings, Applicant's waiving all of his rights and affirming that his thinking was not impaired at the time of the guilty plea hearing reveals an opportunistic sense of dishonesty. Applicant testified repeatedly that he was expecting to be sentenced to two or three years' imprisonment at the most, and was pleading guilty in his hopes of realizing that outcome. Rather than being evidence of an impaired mind, Applicant's testimony would—if true—indicate that Applicant was willing to wield lies as an instrument in his pursuit of a favorable sentence. Plea counsel credibly testified that Applicant gave him no reason to question Applicant's ability to comprehend the evidence of Applicant's guilt or the substance of plea counsel's advice. On the contrary, plea counsel remembered that Applicant was engaged in their conversations and was intelligent. Applicant went on to make a statement at his guilty plea hearing and to make other affirmations to Judge Stilwell, and Applicant testified before this Court that he was "floored" when Judge Stilwell sentenced him to twelve years' imprisonment, that the assistant solicitor's request at the guilty plea hearing for a fifteen-year sentence was unexpected, and that he was upset to hear some of the victim's remarks to Judge Stilwell; all of these things indicate that Applicant was aware at the guilty plea hearing and understood what was happening. There is nothing in the transcript of the guilty plea hearing that suggests that Applicant "was under the influence of drugs or otherwise dispossessed of his mental faculties at the time the guilty plea was entered." *Id.* at 16, 813 S.E.2d at 712.

Applicant claims that the entry of his guilty plea was also rendered unknowing and involuntary because he was unable to process the drama that the victim created. Applicant testified before this Court that his relationship with the victim was "toxic." Plea counsel agreed that it appeared that the relationship was rocky and shared his opinion that the victim did instigate—

perhaps intentionally—some feelings of anxiety in Applicant. Even if it were true that the victim added drama to Applicant's life, it would not justify or excuse his biting her lip off. And neither does the presence of drama in Applicant's life render the entry of his guilty plea involuntary or unknowing. If Applicant's expectation was that he would bite off the victim's lip, throw her down to the ground by her hair, and abandon her in a parking lot, and that he would then experience a drama-free life during the State's prosecution of him, he was destined to be disappointed. The constitution does not guarantee a drama-free guilty plea hearing, and Applicant has supplied no evidence that requires this Court to find that his ability to plead guilty was impaired by any drama in his relationship with the victim or in his life generally as a result of his crime.

This Court "must exercise caution" since Applicant is asking it to set aside his entry of a guilty plea. Garren, at 12, 813 S.E.2d at 712. After considering the evidence before it, this Court finds that Applicant has failed to prove that his guilty plea was not entered voluntarily or knowingly, despite his allegations that he was on antidepressants at the time of the guilty plea hearing and was unable to process drama created by the victim. This claim is denied and dismissed with prejudice.

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Applicant has failed to prove that he did not knowingly and voluntarily waive his right to direct appellate review of his conviction and sentence.

Applicant claims that he did not knowingly and voluntarily waive his right to direct appellate review of his conviction and sentence. He testified that plea counsel told him at the end of his guilty plea hearing that he would file a notice of appeal and that plea counsel failed to do so. Plea counsel credibly testified that he did tell Applicant at the end of the guilty plea hearing not to worry because plea counsel would appeal, and that he clarified in his conversation with Applicant on the following day that he had actually meant that he would file a motion for reconsideration. He explained that he mistakenly said “appeal” instead of “motion” to Applicant at the end of the guilty plea hearing. Plea counsel testified that Applicant never asked him to file a notice of appeal.

In White v. State, 263 S.C. 110, 119, 108 S.E.2d 35, 39 (1974), the Supreme Court held that, even though a post-conviction relief court may find that an applicant did not voluntarily and intelligently abandon his right to a direct appeal, the PCR court does not have jurisdiction to grant a belated appeal. However, when an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected. Id. at 119, 108 S.E.2d at 39-40. Applicant seeks this relief.

Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470 (2000). When counsel has consulted with the defendant regarding the right to appeal, “Counsel performs in a professionally unreasonable manner only by failing to follow the defendant’s express instructions with respect to an appeal.” Id. at 478

(underlining added). In order to establish that he was prejudiced by counsel's failure to file an appeal, an applicant must show he would have appealed absent counsel's deficient performance. See Id. at 484. "Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver." Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981).

This Court finds that plea consulted with Applicant about Applicant's right to appeal his conviction and sentence. Although it was unfortunate that plea counsel told Applicant at the end of the guilty plea hearing that he would appeal, plea counsel credibly explained that he mistakenly said that he would file an appeal when he meant that he would file a motion for reconsideration. Plea counsel also credibly testified that he cleared up the matter with Applicant when they discussed the issue the following day. This shows that plea counsel consulted with Applicant about Applicant's right to appeal. Even if plea counsel's advice was somehow inadequate, Judge Stilwell informed Applicant of the right to appeal at the guilty plea hearing. Plea Tran. 7. A colloquy with the guilty plea court can cure an alleged deficiency in the advice that a defendant's criminal defense attorney gave to the defendant. Holden, at 575, 713 S.E.2d at 616 (concluding that any alleged deficiency in plea counsel's advice to Holden was cured by the plea court's colloquy). Judge Stilwell's advisement of the right would have cured any deficiency in plea counsel's advice.

This Court also finds that, despite that conversation between Applicant and plea counsel and Judge Stilwell's notifying Applicant that the appeal had to be initiated within ten days of sentencing, Applicant did not request that plea counsel file a notice of appeal. Applicant did not provide any testimony that he wanted to appeal or that he asked plea counsel to file a notice of appeal. Plea counsel credibly testified that Applicant did not ask him to file a notice of appeal. There was, therefore, no requirement that plea counsel file a notice of appeal.

Applicant has failed to prove that he did not knowingly and voluntarily waive the right to direct appellate review of his conviction and sentence. This Court denies the claim and dismisses it with prejudice.

Applicant has failed to prove that is entitled to post-conviction relief based upon his claim that Judge Stilwell did not let everyone speak on Applicant's behalf at the guilty plea hearing who wanted to do so.

Applicant claims in his application that Judge Stilwell erred by not giving to everyone who wanted to do so the opportunity to speak on Applicant's behalf at the guilty plea hearing. As an initial matter, this Court finds that this claim is not properly before this Court because it is a claim that is not cognizable in a post-conviction relief action. Post-conviction relief is not a substitute for remedies incident to the proceedings in the trial court or on direct appeal. S.C. Code Ann. § 17-27-20(B). "Allegations of trial court error are not cognizable on PCR." Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citation omitted). An applicant can allege constitutional violations in a PCR action unless he could have raised the issue on direct appeal. Gibson v. State, 329 S.C. 37, 41, 495 S.E.2d 426, 428 (1998) (citing Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975) (affirming the PCR court's denial of relief because the applicant could have argued on direct appeal that the trial court erred in admonishing applicant's defense attorney and that the State improperly commented on the applicant's failure to call his wife as a witness at trial); S.C. Code Ann. § 17-27-20(b) (1976)); but see Fortune v. State, 428 S.C. 545, 837 S.E.2d 37, 44 (2019) (instructing that, in some instances, an applicant may argue a claim for post-conviction relief based on constitutional violations other than a violation of his Sixth Amendment right to counsel due to the ineffective assistance of counsel; recognizing Fortune was entitled to a new trial because the State made improper statements during its closing arguments at trial). Applicant's claim could have been raised on direct appeal. He could have argued before our appellate courts that Judge Stilwell erred by not giving to everyone who wanted to do so the opportunity to speak on

Applicant's behalf at the guilty plea hearing. Therefore, Applicant's claim of error on Judge Stilwell's part cannot be resolved by this Court in this PCR action.

Notwithstanding the fact that Applicant is prohibited from raising the claim now, this Court finds that Applicant has failed to prove that Judge Stilwell's conduct with regard to Applicant's supporters was in error. Applicant provided no evidence that there was anyone at his guilty plea hearing who wanted to speak in support of him who was denied the opportunity to do so. Applicant's failure to present any evidence in support of the claim constitutes an absolute failure on Applicant's part to meet his burden of proof, and a waiver of the claim. On the contrary, plea counsel credibly testified that he met with some of Applicant's supporters, including friends and family members, in advance of the guilty plea hearing in order to prepare them. Plea counsel testified that there were many attendees at the guilty plea hearing who were there in support of Applicant and that they took up multiple rows of seats in the courtroom, and that he handed up at least ten letters of support from others who were either not present or did not wish to speak in open court. Plea counsel remembered that Judge Stilwell was courteous to all of those attending the guilty plea hearing, and made sure to allow time to speak for any who wanted it.

This Court finds that this claim is not properly before the Court because Applicant waived it by not raising the claim on direct appeal, that Applicant has waived the claim by failing to present any evidence in support of it, and that Applicant's claim fails on the merits. The claim is denied and dismissed with prejudice.

Applicant has failed to prove that his alleged lack of intent to bite off the victim's lip rendered the entry of his guilty plea involuntary and unknowing.

Applicant claims that his guilty plea was not knowingly and voluntarily entered because he did not intend to bite the victim. A defendant's guilty plea must be entered voluntarily, knowingly, and intelligently. Pittman, at 599, 524 S.E.2d at 624 (citation omitted). The defendant

must be aware of the right to confront his accusers, the privilege against his self-incrimination, the right to be tried by a jury, the nature and crucial elements of the offense for which he is being accused, the maximum and minimum possible penalties, and the nature of any constitutional rights being waived by the entry of a guilty plea. Id. (citations omitted). It is not required that a court direct a defendant's attention to "each and every constitutional right and obtain a separate waiver for each." Lambert, at 578-79, 225 S.E.2d at 342. At the guilty plea hearing, plea counsel told Judge Stilwell that Applicant intended to hurt the victim by biting her lip and that Applicant wanted to leave a mark for the victim's next boyfriend to see, but that that behavior was out of character for Applicant. Plea Tran. 38-39. Plea counsel told Judge Stilwell that it is common in domestic violence cases for a partner to bite the other, but that it was unfortunate in this case because Applicant happened to bite the victim on her lip, which is a fragile part of the body, and which contributed to the severity of the victim's injuries. Plea Tran. 39. Plea counsel told Judge Stilwell that he was telling all of that to Judge Stilwell at Applicant's request because Applicant did not want to appear as if he was trying to provide an excuse for his actions. Plea Tran. 38.

Applicant testified before this Court that he did not tell plea counsel that he meant to hurt or bite the victim, that he told plea counsel that the bite was an accident, and that he did not authorize plea counsel to make that statement to Judge Stilwell. Plea counsel testified before this Court that Applicant did tell him that he meant to bite the victim and that Applicant was not willing to admit that to plea counsel at first. Plea counsel testified that it has been normal for his clients to admit to him more of their involvement in a crime gradually over the course of his representation of them. Plea counsel agreed that Applicant's statements to him could be summarized by saying that Applicant intended to bite the victim but did not mean to harm her to such a degree. Plea counsel testified that it was clear that Applicant was in court before Judge Stilwell in order to plead

guilty to an intentional act and that no court would have accepted the entry of the guilty plea if Applicant wanted to plead guilty while also maintaining that he accidentally bit the victim's lip. Plea counsel also pointed out that the State's expert witness was prepared to testify, should Applicant have proceeded to trial, that the force with which Applicant bit down on the victim's lip was equivalent to the force exerted in a pit bull's bite. Plea counsel said that he does not understand how Applicant could have maintained that the bite was accidental in light of that evidence.

This Court finds that Applicant's testimony that he did not tell plea counsel that he meant to bite the victim is not credible. Applicant testified before this Court that he pleaded guilty only because he was following plea counsel's advice that pleading guilty was his best option and that his sentence would be relatively light. He testified extensively about his alleged lack of intent to inflict any harm on the victim. While being questioned about his intent, Applicant was unable to explain how his teeth accidentally clamped onto the victim's lip with force sufficient to sever a portion of the victim's lip from the rest of her body. Applicant explained that he meant only to grab the victim's lip with his teeth, and also that he meant only to clamp or grab her lip. In argument at the conclusion of the hearing, Applicant's counsel allowed that perhaps Applicant intended to "attach" to the victim's lip, but not necessarily to remove it. This Court finds no credibility in those explanations. Plea counsel credibly testified that Applicant eventually admitted to him that he meant to bite the victim, despite telling him initially that it was an accident.

Applicant testified at the hearing before this Court that he wanted to admit his mistake, but when asked what it was that he was admitting that he had done that was wrong, he said that his mistake was in meeting with the victim. Of course, Applicant did not plead guilty to meeting the victim, he pleaded guilty to assault and battery of a high and aggravated nature for biting off the victim's lip. When asked at the guilty plea hearing if he was guilty of assault, Applicant affirmed

to Judge Stilwell that he was guilty. Plea Tran. 12. Applicant has failed to prove to this Court that he should be allowed to depart from the admission of guilt that he made at his guilty plea hearing.

This Court finds that Applicant has failed to prove that the entry of his guilty plea was rendered involuntary or unknowing based upon Applicant's alleged lack of intent. This claim is denied and dismissed with prejudice.

Applicant has failed to prove that his guilty plea was not entered knowingly and voluntarily due to some comment by a law enforcement officer on the victim's Facebook page.

Applicant did not present any evidence in support of his claim that the entry of his guilty plea was rendered involuntary or unknowing due to actions of the law enforcement officers. This Court finds that Applicant has failed to meet the burden imposed upon him by not presenting any evidence or argument as to this claim and that he has therefore waived the claim. The claim is denied and dismissed with prejudice.

CONCLUSION

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

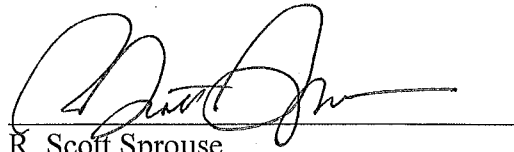
This Court notes that Applicant must file and serve a notice of appeal, through counsel, within thirty days from the receipt of this order to secure the appropriate appellate review. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to the assistance of appellate counsel in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that, if the applicant wishes to seek appellate review, he must serve

and file a notice of appeal. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 8 day of April, 2021.


R. Scott Sprouse
Presiding Judge

Waltham, South Carolina

