

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Jennifer McCoy, Circuit Court Judge

Appellate Case No. 2021-001164

Case No. 2019-CP-02-0516

Jerry Lee Shaeffer,

Petitioner,

v.

The State of South Carolina,

Respondent.

APPENDIX

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S.C. SUPREME COURT

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State of South Carolina) In the Court
County of Aiken) Of General Sessions

Indictment Number: 2014GS0200576
2014GS0200577
2014GS0200578
2014GS0200579

State of South Carolina,)
Plaintiff.)
vs.) Transcript of Record
Jerry Lee Shaeffer,)
Defendant.)

May 18, 2015
Aiken, South Carolina

B E F O R E:

The Honorable R. Knox McMahon, Judge.

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

Ashley A. Hammack, Assistant Solicitor
Attorney for the State

Michael D. Routzong, Esquire
Attorney for the Defendant

Brenda J. Sigwald, Circuit Court Reporter
To The Honorable Doyet A. Early III
P.O. Box 206, Jackson, South Carolina 29831

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(REPORTER'S NOTE: There were no exhibits entered during this hearing.)

GUILTY PLEA

1
2 MS. HAMMACK: Jerry Shaeffer.

3 JERRY SHAEFFER, was duly sworn

4 THE COURT: All right. Solicitor?

5 MS. HAMMACK: Thank you, Your Honor. Before you
6 now is Jerry Lee Shaeffer. He's charged in Indictments
7 2014GS02576, 577, 578, and 579, all with criminal sexual
8 conduct with a minor in the second degree.

9 He's before you now, represented by Mr. Michael
10 Routzong of the Aiken County Public Defender's Office and
11 is here to enter a guilty plea to those charges here today.
12 There are no recommendations or negotiations as to
13 sentence.

14 THE COURT: Thank you.

15 Mr. Routzong, you represent Jerry Lee Shaeffer?

16 MR. ROUTZONG: Yes, sir.

17 THE COURT: Have you explained to him the charges
18 in the indictments, the elements of those charges, the
19 possible punishments, his rights, including his right to a
20 jury trial?

21 MR. ROUTZONG: Yes, sir.

22 THE COURT: In your opinion, does he understand
23 those things?

24 MR. ROUTZONG: I do.

25 THE COURT: How does the defendant indicate he

1 wishes to plea to criminal sexual conduct with a minor in
2 the second degree, four counts?

3 MR. ROUTZONG: Guilty, Your Honor.

4 THE COURT: Thank you.

5 You are Jerry Lee Shaeffer?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: You're going to have to speak up so I
8 can hear you, please.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Before I can accept a plea of guilty or
11 pleas of guilty, it is necessary for me to make certain
12 that your pleas are being given freely and voluntarily;
13 therefore, I need to ask you some questions. If you do not
14 understand my questions, please let me know. I'll try to
15 explain them to you. If at any time you wish to talk with
16 your lawyer, please let me know, I will allow you to do so.
17 Do you understand?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: How old are you?

20 THE DEFENDANT: 63.

21 THE COURT: How much education do you have.

22 THE DEFENDANT: Went to about 7th grade. I was in
23 special ed.

24 THE COURT: What type of work did you do before you
25 were incarcerated?

1 THE DEFENDANT: Factory work.

2 THE COURT: Today are you under the influence of
3 any medication, drugs or alcohol?

4 THE DEFENDANT: No, I never do any of that stuff.

5 THE COURT: Are you today aware of any physical,
6 emotional, or nervous problem that keeps you from
7 understanding what you're doing today?

8 THE DEFENDANT: No, sir.

9 THE COURT: You heard your attorney tell me that he
10 has explained to you the charges against you, the elements
11 of those charges, the possible punishments, and your
12 constitutional rights, and that you understand these
13 things; is that correct?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: I've been handed up four indictments.
16 I'm going to go over each of them with you. The first one
17 is 2014GS02500576. It basically reads that you did, in
18 Aiken County, at various times on or between September 1st
19 of 2013 and September 30th, 2013 commit the crime of
20 criminal sexual conduct with a minor in the second degree
21 in that you did commit a sexual battery upon one ■■■
22 ■■■■■■■■, a minor who was 14 years of age at the time of
23 the incident, all in violation of 16-3-655. That is a
24 charge of criminal sexual conduct with a minor in the
25 second degree, for which you could receive a sentence of up

1 to 20 years.

2 Do you understand that charge and that potential
3 punishment?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Speak up for me, please.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: The next indictment, 2014GS0200577,
8 alleges that you did, in Aiken County, at various times on
9 or between August 1st, 2013 and August 31st, 2013 commit
10 the crime of criminal sexual conduct with a minor in the
11 second degree in that you did commit a sexual battery upon
12 [REDACTED], a minor who was 14 years of age at the time,
13 in violation of 16-3-655. Again that is a charge of
14 criminal sexual conduct with a minor in the second degree,
15 for which you could receive a sentence of up to 20 years.

16 Do you understand that charge and that potential
17 punishment?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: The next indictment, 2014GS0200578,
20 alleges that you did in Aiken County on various dates
21 between July 1st, 2013 and July 31st, 2013, commit the
22 crime of criminal sexual conduct with a minor in the second
23 degree in that you did commit a sexual battery upon [REDACTED]
24 [REDACTED] a minor who was 14 years of age at the time, in
25 violation of 16-3-655, for which you could receive a

1 sentence of up to 20 years.

2 Do you understand that charge and that potential
3 punishment?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Then 2014GS0200579, alleges that you
6 did, in Aiken County, between June 1st, 2013, and June
7 30th, 2013, commit the crime of criminal sexual conduct
8 with a minor in the second degree, in that you did commit a
9 sexual battery upon [REDACTED], a minor who was 14 years
10 of age at the time of the incident, for which you could
11 receive -- in violation of 16-3-655, for which you could
12 receive a sentence of up to 20 years.

13 Do you understand that charge and that potential
14 punishment?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: So, Mr. Shaeffer, you have four counts
17 of criminal sexual conduct with a minor in the second
18 degree. As to each count, you could receive a sentence of
19 up to 20 years, which means you could receive a sentence in
20 aggregate of up to 80 years, do you understand those
21 charges and those potential punishments?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now, when you plead guilty, you give up
24 certain very important constitutional rights. Further, let
25 me explain to you, these are violent, most serious

1 offenses, and would be considered strikes under our
2 recidivist statute. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Have you explained that to him, Mr. --

5 MR. ROUTZONG: I have not, Your Honor. I
6 completely neglected to do that. We talked about these
7 other things. If I could just have a moment, I could
8 explain that to him.

9 THE COURT: Yes, please.

10 (There was a pause in the proceedings.)

11 MR. ROUTZONG: I'm sorry, Your Honor, I neglected
12 to mention that to him.

13 THE COURT: All right. Have you explained that to
14 him, Mr. Routzong?

15 MR. ROUTZONG: Yes, sir.

16 THE COURT: And do you understand that these are
17 violent, most serious offenses that constitute a strike
18 under the recidivist statute, Mr. Shaeffer?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you need anymore time to discuss
21 that issue with your attorney?

22 THE DEFENDANT: No, sir.

23 THE COURT: Is that -- speak up for me, please.

24 THE DEFENDANT: No, sir.

25 THE COURT: When you plead guilty, you give up

1 certain very important constitutional rights. First, you
2 give up your right to remain silent, that is your right
3 against self-incrimination, your right to say nothing at
4 all.

5 Second, you give up your right to have a jury
6 trial; that is your right to have a jury decide whether or
7 not you are guilty beyond a reasonable doubt.

8 Third, you give up your right to confront and be
9 confronted by the witnesses against you. That is the right
10 to see, hear, and cross-examine any witnesses that may be
11 called against you during the trial and the right to
12 subpoena and call witnesses in your own behalf.

13 Do you understand these rights?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand that when you plead
16 guilty you give up these very important constitutional
17 rights?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Is that what you want to do?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You understand you will not get a jury
22 trial if you plead guilty?

23 THE DEFENDANT: Yes, sir, I understand.

24 THE COURT: Understanding then the nature of the
25 charges of criminal sexual conduct with a minor, second

1 degree, four counts, for which you could receive a sentence
2 as to each count of up to 20 years, how do you plea to
3 those offenses; guilty or not guilty.

4 THE DEFENDANT: Guilty, Your Honor.

5 THE COURT: Do you understand that when you plead
6 guilty you admit the truth of the charges that have been
7 made against you?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You may have defenses to these charges.
10 I don't know whether you do or not. You understand if you
11 plead guilty, you will waive, or give up, any defenses you
12 may have?

13 (There was a pause in the proceedings.)

14 MR. ROUTZONG: I'm sorry, Your Honor.

15 THE COURT: That's quite all right.

16 Do you understand, Mr. Shaeffer, you may have
17 defenses to these charges, I don't know whether you do or
18 not. Do you understand if you plead guilty, you will waive
19 or give up any defenses you may have?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Did you commit these offenses?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Solicitor, have there been any plea
24 negotiations in the case.

25 MS. HAMMACK: No, Your Honor.

1 THE COURT: Is that correct, Mr. Routzong?

2 MR. ROUTZONG: That's correct, Your Honor.

3 THE COURT: Is that your understanding,

4 Mr. Shaeffer?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you still wish to plead guilty?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Has anyone promised you anything or
9 held out any hope of reward to get you to plead guilty?

10 THE DEFENDANT: No, sir.

11 THE COURT: Has anyone threatened you or used force
12 to get you to plead guilty.

13 THE DEFENDANT: No, sir.

14 THE COURT: Has anyone used any pressure or
15 intimidation to cause you to plead guilty?

16 THE DEFENDANT: No, sir.

17 THE COURT: Have you had enough time to make up
18 your mind as to whether or not you want to plead guilty?

19 THE DEFENDANT: Huh?

20 THE COURT: Have you had enough time to make up
21 your mind as to whether or not you want to plead guilty?

22 THE DEFENDANT: Yes, sir. Yes, sir.

23 THE COURT: Are you pleading guilty of your own
24 free will and accord?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Are you satisfied with the manner in
2 which your lawyer has advised you and represented you?

3 THE DEFENDANT: (Witness nodded head.) Yes, sir.

4 THE COURT: Have you talked with your lawyer as
5 often and for as long as you feel necessary for him to
6 properly represent you?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you need anymore time to talk with
9 your lawyer?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: Have you understood your talks with
12 your lawyer?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Has your lawyer done everything for
15 you, you feel like he could have done or should have done?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Are you totally and completely
18 satisfied with your lawyer's services?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you have any complaints that you
21 want to make about your lawyer, the solicitor, or any
22 officers involved in any of your cases?

23 THE DEFENDANT: No, sir.

24 THE COURT: Have you understood my questions?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Is there anything you would like to ask
2 me about what we've just been over?

3 THE DEFENDANT: No, sir.

4 THE COURT: You understand that you have the right
5 to appeal your guilty pleas and the sentences of the Court
6 and that you or your lawyer must do so within 10 days?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Thank you.

9 Solicitor?

10 MS. HAMMACK: Thank you, Your Honor.

11 On New Year's Eve of 2013 there was a family
12 gathering. The defendant is related to the victim and his
13 family in this case. At that family gathering, the
14 victim's mother was looking at the defendant's cell phone
15 and observed several naked pictures of her son on his cell
16 phone. She talked to her son about it and he disclosed
17 that after the defendant moved down to Aiken County from
18 Ohio in May of 2013, that he did begin molesting the
19 victim.

20 The defendant would keep the victim on the weekends
21 and during that time, he would perform oral sex on the
22 victim, as well as anal intercourse. The victim disclosed
23 that that would be both penile and with various sexual
24 devices and toys.

25 Law enforcement conducted a search warrant of the

1 home. They were able to recover the devices that the
2 victim disclosed that had been used to include but not
3 limited to handcuffs and vibrators and things of the like.

4 In speaking to the defendant, the defendant did
5 confess to law enforcement to engaging in oral sex and anal
6 intercourse with the victim over that time period. The
7 indictments are for each of the months that this behavior
8 occurred at the defendant's home in Aiken County.

9 The victim and his mother are present for the plea
10 today and would like to address the Court at the
11 appropriate time.

12 THE COURT: Any prior criminal history?

13 MS. HAMMACK: He does not, Your Honor.

14 THE COURT: I'll be -- I'll be glad to hear from
15 the victim or the victim's mother or both. Anyone you want
16 me to hear from, I'll be glad to hear from them.

17 MS. HAMMACK: Thank you, Your Honor.

18 THE COURT: All right. Tell me your name, please,
19 ma'am.

20 VICTIM'S MOTHER: My name is Heather [REDACTED].

21 THE COURT: All right. And I'll be glad to hear
22 from you.

23 VICTIM'S MOTHER: Your Honor, I really -- I mean,
24 there really, truly are no words that I can really express
25 to how, how much he has hurt our family and has really put

1 a burden on our family. I've known Mr. Shaeffer all of my
2 life. He's a distant relative to me. And I just, you
3 know, always invited him into our home; always was good to
4 him. And never had no idea that, you know, this was going
5 on.

6 And, I just ask that, you know, that sentencing be,
7 you know, really thought about and that he get what --
8 however much sentence that he, he needs. I just really
9 would like for him to not only get sentencing, but to get
10 help.

11 What he's done is, you know, very sick, very sick,
12 and he's a very deceitful man and he is very manipulative.
13 And I just -- other than that, I just ask that God bless
14 him is all I, all I can ask. I have no room for
15 forgiveness in my heart for him and will never have no
16 forgiveness for him. But I just ask that the Court see to
17 punish him in, you know, whatever manner he needs to be
18 punished.

19 THE COURT: If I was tracking the solicitor's
20 timeline correctly, he moved down here from Ohio in May of
21 2013?

22 VICTIM'S MOTHER: I think it was approximately,
23 maybe March.

24 THE COURT: March of 2013?

25 VICTIM'S MOTHER: Yes, sir.

1 THE COURT: How did he come to move down here?

2 VICTIM'S MOTHER: Well, he -- on his own free will,
3 he decided that he wanted to move down here. On one
4 occasion, he even asked could -- before he moved down here,
5 on one occasion, he even asked could he move in with us.
6 And I told him that he could not move in with us because
7 where we was living, you know, I was renting from somebody
8 and that it was only a one family dwelling, you know, and
9 that the landlord would not allow somebody else to move in
10 with us.

11 And, I mean, we've gone to Ohio on numerous
12 occasions for, you know, family events, and have stayed
13 with him and he has come down here all his life. Him and
14 his mother, when she was living, they would come and stay
15 with us and stay with my father. He'd come and visit once
16 a year at least. And then leading up to the year that he
17 moved down here, he would come and stay two or three times
18 and he would come and stay at our house for two weeks on
19 end, three weeks sometimes.

20 And I had no inclination that this was going on,
21 that he was invading my child like this. And he's robbed
22 my child of his innocence. I mean, this will always be in
23 the back of my child's mind. It will always be in the back
24 of my mind. And it's just something that, you know, it
25 might get pushed off to the side and you don't think about

1 it, but it's always going to be a constant reminder of how
2 he has invaded him.

3 And I just, you know, would like to see that he is
4 sentenced the maximum sentence allowed.

5 THE COURT: Thank you, thank you very much.

6 VICTIM'S MOTHER: Yes, sir, thank you.

7 THE COURT: All right. Solicitor?

8 MS. HAMMACK: Your Honor, I believe the victim
9 wants to address Your Honor.

10 THE COURT: All right. Sir -- I'll be happy to
11 hear from him.

12 All right. Tell me your name, please.

13 THE VICTIM: [REDACTED].

14 THE COURT: I'll be glad to hear from you, Mr.
15 [REDACTED].

16 THE VICTIM: Sir, I just feel that Mr. Shaeffer has
17 torn my family apart and he has just torn me apart also. I
18 just feel that -- I just feel that he could have been a
19 better person and that I did not know that he would be a
20 person that he, that he, the stuff that he did to me. I
21 always thought that Jerry was a very good friend, as in
22 family. I thought he was a very good friend. But at the
23 time, I did not know that he was taking advantage of me.
24 And that's really all I have to say.

25 THE COURT: Thank you. Thank you, Mr. [REDACTED].

1 Anything further, Solicitor?

2 MS. HAMMACK: No, Your Honor.

3 THE COURT: I find there is a substantial factual
4 basis for these guilty pleas. The defendant's decision to
5 enter these pleas of guilty is freely and voluntary,
6 knowingly and intelligently made. He's had the advice and
7 counsel of a very competent attorney with whom he says he's
8 well and totally satisfied. The defendant's pleas of
9 guilty to four counts of criminal sexual conduct with a
10 minor in the second degree are accepted.

11 Mr. Routzong?

12 MR. ROUTZONG: Please the Court, Your Honor.

13 Mr. Shaeffer is 63 years old. And I think you've
14 heard a lot of his biography. One thing you have not heard
15 yet and I think it's interesting what the victims in this
16 case said, in light of what I'm getting ready to tell the
17 Court.

18 About 56 years ago when Mr. Shaeffer was 7 or 8
19 years old, he was molested by his own brother. His brother
20 was 13 years old, he tells me, at the time. His brother
21 had been sexually assaulted before that. And so it
22 continued to kind of reverberate down through the decades,
23 I guess. And I think it's interesting, Your Honor, what
24 all the victims said. They said there's a constant
25 reminder, that it tore them apart. And the young man said

1 that it tore him apart personally.

2 And I think the same thing could be true of
3 Mr. Shaeffer as well. And I'm telling this to the Court
4 only to try to communicate, Your Honor, that this man was a
5 victim at one time and now he has victimized somebody. No
6 one will ever be called to account for the things that
7 happened to him, but he's being held to account, rightfully
8 so, for the things that he perpetrated on that young man.

9 I don't think there's any cure for it, that I know
10 of at least. I'm not smart enough what ought to be done.
11 And I can only wish that young man well. But this is truly
12 a case where somebody was a victim and he victimized
13 somebody.

14 Other than that, Your Honor, I don't really know
15 what else I can tell the Court. And I hope you take that
16 into consideration in your sentencing of him.

17 THE COURT: Anything further?

18 MR. ROUTZONG: No, sir, I don't know if
19 Mr. Shaeffer wants to say anything?

20 THE DEFENDANT: Umm --

21 THE COURT: Speak up for me, please.

22 THE DEFENDANT: Yeah, I loved [REDACTED] for a friend.
23 I did. And I'm sorry for what I done. I'm sorry, [REDACTED].
24 Because I really loved him. But what I've done is wrong,
25 but I've got God now. I've been saved.

1 I hope you guys find God. I hope you guys go to
2 heaven. And that's all I've got to say.

3 MR. ROUTZONG: If I can just say one other thing,
4 Your Honor.

5 THE COURT: Yes, sir, certainly.

6 MR. ROUTZONG: Since I've met Mr. Shaeffer, he's
7 always expressed to me the same sentiments, pretty much,
8 that -- I think he's a profoundly lonely man. He actually
9 was in a relationship with his brother until his brother
10 was 59 years old and I think that kind of --

11 THE COURT: He was -- say that again, now.

12 MR. ROUTZONG: Mr. Shaeffer was in a sexual
13 relationship with his brother until his brother was 59
14 years old. That's when he passed away. I think
15 Mr. Shaeffer would have been about 56 years old. That was
16 -- that was the only sexual partner Mr. Shaeffer tells me
17 he'd ever had. And that's kind of the -- that's kind of
18 what we're dealing with here. And he looked at this young
19 man as a friend and I think he reached out to him,
20 initially, out of a very profound loneliness. That's what
21 he tells me.

22 And I -- it's very hard for me to try to grasp and
23 understand, but I have no reason to disbelieve what he's
24 telling me. And his family members did believe that
25 something had happened to him, they just weren't quite sure

1 what.

2 THE COURT: Thank you.

3 2014GS02 -- well, before I impose sentence, let me
4 say I've taken into account all the facts and circumstances
5 of the case, both the factual allegations, or the factual
6 facts as stated by the State and the statements by the
7 victim's mother and the victim; taken into account Mr.
8 Routzong and the history given as to Mr. Shaeffer and also
9 Mr. Shaeffer's statements to the Court. I've taken into
10 account that he has indicated remorse for his conduct.
11 I've taken into account that he has indicated that he had
12 been molested also as a child, that he was a victim and is
13 now a victimizer.

14 And as to the various types of conduct alleged, I
15 don't consider that those are sex toys. I consider those
16 are sex weapons. There's a wide disparity, a wide gap,
17 between toys and weapons in this type of setting.

18 Obviously, there are various theories of
19 punishment, retribution, perhaps rehabilitation, and other
20 various theories. As far as the conduct inflicted on the
21 victim and the statement of the mother, some wounds never
22 heal. I hope they will in this case.

23 2014GS0200576, Jerry Lee Shaeffer, criminal sexual
24 conduct with a minor in the second degree, the defendant is
25 committed to the state department of corrections for a

1 determinate term of 20 years.

2 2014GS0200577, Jerry Lee Shaeffer, criminal sexual
3 conduct with a minor in the second degree, the defendant is
4 committed to the state department of corrections for a
5 determinate term of 20 years.

6 2014GS0200578, Jerry Lee Shaeffer, criminal sexual
7 conduct with a minor second degree, the defendant is
8 committed to the state department of corrections for a
9 period of 20 years. Those are concurrent.

10 2014GS0200579, Jerry Lee Shaeffer, criminal sexual
11 conduct with a minor second degree, the defendant is commit
12 today the state department of corrections for a determinate
13 term of 20 years. That is consecutive.

14 He is -- he is to be placed on the sex offender
15 registry.

16 No contact with the victim or any member of the
17 victim's family.

18 Thank you. Thank you very much, Solicitor.

19 Thank you, Mr. Routzong.

20 Good luck to you, Mr. Shaeffer.

21 MS. HAMMACK: Thank you, Your Honor.

22 * * * * * END OF TRANSCRIPT * * * * *

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State of South Carolina)
)
County of Aiken) **Certificate of Reporter**

I, Brenda J. Sigwald, Official Court Reporter for the Second 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 in and for the State of South Carolina on the 18th day of May, 2015.

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

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Aiken County, this 9th day of April, 2019.

Brenda J. Sigwald

Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
 JERRY LEE SHAEFFER (#364166))
 Applicant,)
)
 v.)
)
 State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

SECOND JUDICIAL CIRCUIT

Case No.

**APPLICATION FOR
 POST-CONVICTION RELIEF**

As required by Rule 71.1(b), SCRPC, this application is in conformity with Form 5 of the SCRPC Appendix of Forms.

1. Place of Detention: Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 292210.
2. Name and location of Court which imposed sentence: Aiken County Court of General Sessions, 109 Parke Avenue, SE, Aiken, SC 29801.
3. Name(s) of co-defendant(s) (if any): There are no co-defendants.
4. The indictment number(s) upon which and the offenses for which sentence was imposed:
 - (a) 2014-GS-02-000576 (Criminal Sexual Conduct with a Minor, 2nd Degree).
2014A0210200035
 - (b) 2014-GS-02-000577 (Criminal Sexual Conduct with a Minor, 2nd Degree).
2014A0210200036
 - (c) 2014-GS-02-000578 (Criminal Sexual Conduct with a Minor, 2nd Degree).
2014A0210200037
 - (d) 2014-GS-02-000579 (Criminal Sexual Conduct with a Minor, 2nd Degree). ~~BRON~~
2014A0210200038
5. The date upon which the sentence was imposed and the terms of the sentence:
 - (a) May 18, 2015.
 - (b) 20 years for indictment number 2014-GS-02-000576.
 - (c) 20 years for indictment number 2014-GS-02-000577 (concurrent).
 - (d) 20 years for indictment number 2014-GS-02-000578 (concurrent).
 - (e) 20 years for indictment number 2014-GS-02-000579 (concurrent).

6. A finding of guilty was made:
- (a) After a guilty plea before the Honorable Knox R. McMahon.
7. Did you appeal from the judgment of conviction and/or the imposition of the sentence?
- (a) No.
8. If you answered "yes" to number (7), list:
- (a) The name of each Court to which you appealed:
- i. N/A.
- (b) The result in each Court to which you appealed:
- i. N/A.
- (c) The date of each result:
- i. N/A.
- (d) If known, citations of any written opinions or ordered entered pursuant to such result:
- i. N/A.
9. If you answered "no" to number (7), state your reasons for not appealing:
- (a) Applicant was not competent to knowingly, intelligently, and voluntarily plead guilty, and did not knowingly waive his right to appellate review.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Plea Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. See S.C. Code § 17-27-20(A)(1), (4), and (6). Plea Counsel's unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Plea Counsel's errors, Applicant would not have pled guilty. See Hill v. Lockhart, 474

U.S. 52 (1985) (applying the *Strickland v. Washington*, 466 U.S. 668 (1984) standard to guilty plea challenges of ineffective assistance of counsel).

11. State concisely and in the same order the facts which support each of the grounds set out in number (10):
- (a) Plea Counsel's acts or omissions included, but not are not limited to the following allegations:
- (i) Applicant did not voluntarily, knowingly, or intelligently plead guilty. See *Boykin v. Alabama*, 395 U.S. 238 (1969).
- (ii) Plea Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible mitigating evidence in preparation of Applicant's defense. See *Wiggins v. Smith*, 539 U.S. 510 (2003). Specifically, Plea Counsel failed to consult with an expert witness to evaluate whether Applicant was competent to stand trial or had the requisite mental capacity when it was reasonable and necessary in his defense. See also *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008); *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004); *Reeves v. State*, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015).
- (iii) Plea Counsel failed to move for a *Blair* hearing prior to trial to determine Applicant's competency to stand trial. See *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981); *Matthews v. State*, 358 S.C. 456, 596 S.E.2d 49 (2004); S.C. Code §§ 44-23-410 and 430.
- (iv) Plea Counsel failed to present all reasonable and necessary evidence to the judge during the sentencing phase in mitigation of Applicant's potential sentence. Specifically, Plea Counsel failed to call an expert witness to testify regarding Applicant's mental health background and competency to stand trial when it was

reasonable and necessary to present this critical mitigation evidence.

12. Prior to this application, have you filed with respect to this conviction:
- (a) Any petition in a State Court under South Carolina Law? No.
 - (b) Any petition in State or Federal Courts for Federal Habeas Corpus or Post-Conviction Relief? No. Applicant has not previously filed an application for Post-Conviction Relief or Petition for Writ of Habeas Corpus in either state or federal court. Applicant requests a hearing to present evidence in support of equitable tolling of the statute of limitations. See Ferguson v. State, 382 S.C. 615, 619, 677 S.E.2d 600, 602 (2009); Gary v. State, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001); Pelzer v. State, 378 S.C. 516, 520, 662 S.E.2d 618, 620 (Ct. App. 2008).
 - (c) Any petition in the Supreme Court of the United States for certiorari other than petitions, if any, already specified in number (8)? No.
 - (d) Any other petitions motions or applications in this or any other Court? No.
13. If you answered "yes" to any part of number (12), list with respect to each petition, motion, or application:
- (a) The specific nature thereof:
 - i. Not applicable.
 - (b) The name and location of the Court in which each was filed:
 - i. Not applicable.
 - (c) The disposition thereof:
 - i. Not applicable.
 - (d) The date of each such disposition:
 - i. Not applicable.
14. Has any ground set forth in number (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 number (14), identify:

(a) The grounds which have been presented:

i. Not applicable.

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

i. Not applicable.

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

(a) Post-Conviction Relief is the proper forum and remedy for these allegations because the grounds for relief presented in this application are evidence of ineffective assistance of counsel, not preserved for appellate review, or were not appropriate to raise or were not properly raised on Direct Appeal. Applicant requests a hearing to present evidence in support of equitable tolling of the statute of limitations. See *Ferguson v. State*, 382 S.C. 615, 619, 677 S.E.2d 600, 602 (2009); *Gary v. State*, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001); *Pelzer v. State*, 378 S.C. 516, 520, 662 S.E.2d 618, 620 (Ct. App. 2008).

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

(a) Your plea hearing? Yes.

(b) Your trial? No.

(c) Your sentencing? Yes.

(d) Your appeal, if any, from the judgment of conviction and/or imposition of the sentence? No.

(e) Preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? Yes.

18. If you answered "yes" to one or more parts of number (17), list:

(a) The name and address of each attorney who represented you:

(i) Michael D. Routzong, 215 N. Harvin, Room 151, Sumter, SC 29150

(ii) Dayne C. Phillips, 1614 Taylor Street, Ste D., Columbia, SC 29201.

(b) The proceedings at which each attorney represented you:

(i) Michael D. Routzong represented Applicant at the plea hearing.

(ii) Dayne C. Phillips is representing Applicant on this application for Post-Conviction Relief.

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

Applicant seeks Post-Conviction Relief by vacating his convictions and sentences and remanding the indictments for a new trial based on ineffective assistance of counsel. Applicant requests a hearing to present evidence in support of equitable tolling of the statute of limitations. See *Ferguson v. State*, 382 S.C. 615, 619, 677 S.E.2d 600, 602 (2009); *Gary v. State*, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001); *Pelzer v. State*, 378 S.C. 516, 520, 662 S.E.2d 618, 620 (Ct. App. 2008).

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

No. Applicant is not under sentence from any other court.

[Applicant's Verification to Follow]

STATE OF SOUTH CAROLINA)
)
County of Aiken)

VERIFICATION

I, Jerry Shaeffer, 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.

Jerry Shaeffer

SWORN to and subscribed before me this 15th
day of February, 2019.

Lisa Brown-Alston (L.S.)
Notary Public

LISA BROWN-ALSTON
Notary Public, State of South Carolina
My Commission Expires 2/5/2023

My Commission Expires: 2/5/2023

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INMATE SEARCH DETAIL REPORT

SHAEFFER, JERRY LEE (00364166)

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PERSONAL INFORMATION		INMATE SENTENCE AND LOCATION	
SEX:	MALE	SCDC ID:	00364166
RACE:	WHITE	SID:	SC02136553
HEIGHT:	5' 10"	OFFENDER TYPE:	ADULT-STRAIGHT SENTENCE
WEIGHT:	166 lbs.	ADMISSION DATE:	05/29/2015
AGE:	67	LOCATION:	BROAD RIVER
CITIZENSHIP:	CITIZEN - NATIVE BORN	DORM-ROOM-BUNK:	MLT-1096-B
BUILD:	SLIGHT	EWC LEVEL:	3F5
COMPLEXION:	FAIR	EEC LEVEL:	
HAIR COLOR:	GRAY OR PARTIALLY GRAY	PROJECTED RELEASE DATE:	01/08/2048
EYE COLOR:	BLUE	PROJECTED PAROLE ELIGIBILITY:	NOT ELIGIBLE
PICTURE DATE:	05/29/2015	SUP. FURLOUGH ELIGIBILITY:	NOT ELIGIBLE

CURRENT OFFENSES

OFFENSE	SENTENCE TYPE	YRS	MOS	DYS	COUNTY	START DATE	V/NV	CAT	INDICT	STATUS
CRIM SEX COND.W/MINOR(2N	ADULT-STRAIGHT SENTENCE	20	0	0	AIKEN	01/14/2014	V	4	14GS02-00577	ACTIVE
CRIM SEX COND.W/MINOR(2N	ADULT-STRAIGHT SENTENCE	20	0	0	AIKEN	01/14/2014	V	4	14GS02-00576	ACTIVE
CRIM SEX COND.W/MINOR(2N	ADULT-STRAIGHT SENTENCE	20	0	0	AIKEN	01/14/2014	V	4	14GS02-00579	ACTIVE

ESCAPES

NO ESCAPES DURING CURRENT INCARCERATION

DISCIPLINES

DATE	DESCRIPTION
09/12/2018	POSSESSION OF A WEAPON
	DISC. DETENTION FOR 30 DAYS
	LOSS OF TELEPHONE PRIVILEGES FOR 120 DAYS
	LOSS OF VISITATION PRIVILEGES FOR 120 DAYS

MOVEMENT

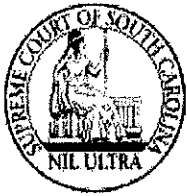
MOVEMENT DATE	TO LOCATION	STATUS	REASON
07/02/2015	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
05/29/2015	KIRKLAND	INCARCERATED	NEW ADMISSION

EARNED WORK CREDITS

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LEVEL
WARDKEEPER ASSISTANT	07/09/2015			3F5

EARNED EDUCATION CREDITS

NO EARNED EDUCATION CREDITS DURING CURRENT INCARCERATION



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The State of South Carolina VS Jerry Lee Shaeffer					
Case Number:	2014A0210200035	Court Agency:	General Sessions	Filed Date:	01/17/2014
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	McMahon, R. Knox	Disposition Judge:	McMahon, R. Knox
Disposition:	Pled Guilty				
Disposition Date:	05/18/2015	Date Received:	01/17/2014	Arrest Date:	01/15/2014
Law Enf. Case:	14-000228	True Bill Date:	04/10/2014	No Bill Date:	
Prosecutor Case:		Indictment Number:	2014GS0200576	Waiver Date:	
Probation Case:					

Case Parties	Charges	Sentencing	Associated Cases	Actions	Financials	Bonds	
Click the <input checked="" type="checkbox"/> icon to show associated parties.							
Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Hammack, Ashley Agnew	PO Drawer 3368 Aiken SC 29802				Solicitor		05/18/2015
<input checked="" type="checkbox"/> Routzong, Michael David	PO Drawer 2247 Aiken SC 29802				Public Defender		02/04/2014
<input checked="" type="checkbox"/> Shaeffer, Jerry Lee	155 Quail Ridge Dr. Jackson SC 29831	White	M	1951	Defendant		05/18/2015
Sigwald, Brenda W.					Court Reporter		05/18/2015
Truesdale, Sgt. Adam	420 Hampton Avenue North East Aiken SC 29801				Officer		01/17/2014

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The State of South Carolina VS Jerry Lee Shaeffer

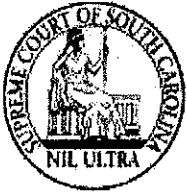
Case Number:	2014A0210200035	Court Agency:	General Sessions	Filed Date:	01/17/2014
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	McMahon, R. Knox	Disposition Judge:	McMahon, R. Knox
Disposition:	Pled Guilty				
Disposition Date:	05/18/2015	Date Received:	01/17/2014	Arrest Date:	01/15/2014
Law Enf. Case:	14-000228	True Bill Date:	04/10/2014	No Bill Date:	
Prosecutor Case:		Indictment Number:	2014GS0200576	Waiver Date:	
Probation Case:					

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[Charges](#)
[Sentencing](#)
[Associated Cases](#)
[Actions](#)
[Financials](#)
[Bonds](#)

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Shaeffer, Jerry Lee	0396-Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.	0396-Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.	05/18/2015

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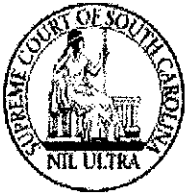
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The State of South Carolina VS Jerry Lee Shaeffer

Case Number:	2014A0210200035	Court Agency:	General Sessions	Filed Date:	01/17/2014
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	McMahon, R. Knox	Disposition Judge:	McMahon, R. Knox
Disposition:	Pled Guilty				
Disposition Date:	05/18/2015	Date Received:	01/17/2014	Arrest Date:	01/15/2014
Law Enf. Case:	14-000228	True Bill Date:	04/10/2014	No Bill Date:	
Prosecutor Case:		Indictment Number:	2014GS0200576	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

And/Or	Description	Amount	Units	Begin Date	End Date	Completion Date	Consecutive or Concurrent
	20 yrs conc cts no contact with victim or any member of vict family + CC = (\$133.90) Def shall be placed on sex offender reg						



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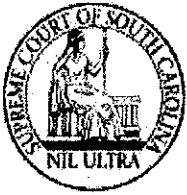
The State of South Carolina VS Jerry Lee Shaeffer

Case Number:	2014A0210200036	Court Agency:	General Sessions	Filed Date:	01/17/2014
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	McMahon, R. Knox	Disposition Judge:	McMahon, R. Knox
Disposition:	Pled Guilty				
Disposition Date:	05/18/2015	Date Received:	01/17/2014	Arrest Date:	01/15/2014
Law Enf. Case:	14-000228	True Bill Date:	04/10/2014	No Bill Date:	
Prosecutor Case:		Indictment Number:	2014GS0200577	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

Click the icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Hammack, Ashley Agnew	PO Drawer 3368 Aiken SC 29802				Solicitor		05/18/2015
<input checked="" type="checkbox"/> Routzong, Michael David	PO Drawer 2247 Aiken SC 29802				Public Defender		02/04/2014
<input checked="" type="checkbox"/> Shaeffer, Jerry Lee	155 Quall Ridge Dr. Jackson SC 29831	White	M	1951	Defendant		05/18/2015
Sigwald, Brenda W.					Court Reporter		05/18/2015
Truesdale, Sgt. Adam	420 Hampton Avenue North East Aiken SC 29801				Officer		01/17/2014



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Case Number:	2014A0210200036	Court Agency:	General Sessions	Filed Date:	01/17/2014
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	McMahon, R. Knox	Disposition Judge:	McMahon, R. Knox
Disposition:	Pled Guilty				
Disposition Date:	05/18/2015	Date Received:	01/17/2014	Arrest Date:	01/15/2014
Law Enf. Case:	14-000228	True Bill Date:	04/10/2014	No Bill Date:	
Prosecutor Case:		Indictment Number:	2014GS0200577	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Shaeffer, Jerry Lee	0396-Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.	0396-Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.	05/18/2015

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Case Number:	2014A0210200036	Court Agency:	General Sessions	Filed Date:	01/17/2014
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	McMahon, R. Knox	Disposition Judge:	McMahon, R. Knox
Disposition:	Pled Guilty				
Disposition Date:	05/18/2015	Date Received:	01/17/2014	Arrest Date:	01/15/2014
Law Enf. Case:	14-000228	True Bill Date:	04/10/2014	No Bill Date:	
Prosecutor Case:		Indictment Number:	2014GS0200577	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

And/Or	Description	Amount	Units	Begin Date	End Date	Completion Date	Consecutive or Concurrent
	20 yrs conc + Cc (\$133.90)						

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The State of South Carolina VS Jerry Lee Shaeffer

Case Number:	2014A0210200037	Court Agency:	General Sessions	Filed Date:	01/17/2014
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	McMahon, R. Knox	Disposition Judge:	McMahon, R. Knox
Disposition:	Pled Guilty				
Disposition Date:	05/18/2015	Date Received:	01/17/2014	Arrest Date:	01/15/2014
Law Enf. Case:	14-000228	True Bill Date:	04/10/2014	No Bill Date:	
Prosecutor Case:		Indictment Number:	2014GS0200578	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

Click the icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Hammack, Ashley Agnew	PO Drawer 3368 Aiken SC 29802				Solicitor		05/18/2015
<input checked="" type="checkbox"/> Routzong, Michael David	PO Drawer 2247 Aiken SC 29802				Public Defender		02/04/2014
<input checked="" type="checkbox"/> Shaeffer, Jerry Lee	155 Quail Ridge Dr. Jackson SC 29831	White	M	1951	Defendant		05/18/2015
Sigwald, Brenda W.					Court Reporter		05/18/2015
Truesdale, Sgt. Adam	420 Hampton Avenue North East Aiken SC 29801				Officer		01/17/2014



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Case Number:	2014A0210200037	Court Agency:	General Sessions	Filed Date:	01/17/2014
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	McMahon, R. Knox	Disposition Judge:	McMahon, R. Knox
Disposition:	Pled Guilty				
Disposition Date:	05/18/2015	Date Received:	01/17/2014	Arrest Date:	01/15/2014
Law Enf. Case:	14-000228	True Bill Date:	04/10/2014	No Bill Date:	
Prosecutor Case:		Indictment Number:	2014GS0200578	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Shaeffer, Jerry Lee	0396-Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.	0396-Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.	05/18/2015

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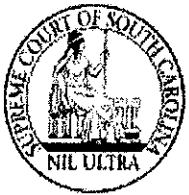
The State of South Carolina VS Jerry Lee Shaeffer

Case Number:	2014A0210200037	Court Agency:	General Sessions	Filed Date:	01/17/2014
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	McMahon, R. Knox	Disposition Judge:	McMahon, R. Knox
Disposition:	Pled GUILTY				
Disposition Date:	05/18/2015	Date Received:	01/17/2014	Arrest Date:	01/15/2014
Law Enf. Case:	14-000228	True Bill Date:	04/10/2014	No Bill Date:	
Prosecutor Case:		Indictment Number:	2014GS0200578	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

And/Or	Description	Amount	Units	Begin Date	End Date	Completion Date	Consecutive or Concurrent
	20 yrs conc + CC= (\$133.90)						

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The State of South Carolina VS Jerry Lee Shaeffer

Case Number:	2014A0210200038	Court Agency:	General Sessions	Filed Date:	01/17/2014
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	McMahon, R. Knox	Disposition Judge:	McMahon, R. Knox
Disposition:	Pled Guilty				
Disposition Date:	05/18/2015	Date Received:	01/17/2014	Arrest Date:	01/15/2014
Law Enf. Case:	14-000228	True Bill Date:	04/10/2014	No Bill Date:	
Prosecutor Case:		Indictment Number:	2014GS0200579	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

Click the icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Hammack, Ashley Agnew	PO Drawer 3368 Aiken SC 29802				Solicitor		05/05/2014
<input checked="" type="checkbox"/> Routzong, Michael David	PO Drawer 2247 Aiken SC 29802				Public Defender		02/04/2014
<input checked="" type="checkbox"/> Shaeffer, Jerry Lee	155 Quall Ridge Dr. Jackson SC 29831	White	M	1951	Defendant		05/18/2015
Sigwald, Brenda W.					Court Reporter		05/18/2015
Truesdale, Sgt. Adam	420 Hampton Avenue North East Aiken SC 29801				Officer		01/17/2014



Aiken County Second Judicial Circuit Public Index



ELECTRONICALLY FILED - 2019 Feb 28 11:57 AM - AIKEN - COMMON PLEAS - CASE#2019CP0200516

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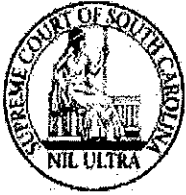
Switch View

The State of South Carolina VS Jerry Lee Shaeffer

Case Number:	2014A0210200038	Court Agency:	General Sessions	Filed Date:	01/17/2014
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	McMahon, R. Knox	Disposition Judge:	McMahon, R. Knox
Disposition:	Pled Guilty				
Disposition Date:	05/18/2015	Date Received:	01/17/2014	Arrest Date:	01/15/2014
Law Enf. Case:	14-000228	True Bill Date:	04/10/2014	No Bill Date:	
Prosecutor Case:		Indictment Number:	2014GS0200579	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Shaeffer, Jerry Lee	0396-Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.	0396-Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.	05/18/2015



Aiken County Second Judicial Circuit Public Index



ELECTRONICALLY FILED - 2019 Feb 28 11:57 AM - AIKEN - COMMON PLEAS - CASE#2019CP0200516

[Aiken County Home Page](#) [South Carolina Judicial Department Home Page](#) [SC.GOV Home Page](#)

Switch View

The State of South Carolina VS Jerry Lee Shaeffer

Case Number:	2014A0210200038	Court Agency:	General Sessions	Filed Date:	01/17/2014
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	McMahon, R. Knox	Disposition Judge:	McMahon, R. Knox
Disposition:	Pled Guilty				
Disposition Date:	05/18/2015	Date Received:	01/17/2014	Arrest Date:	01/15/2014
Law Enf. Case:	14-000228	True Bill Date:	04/10/2014	No Bill Date:	
Prosecutor Case:		Indictment Number:	2014GS0200579	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

And/Or	Description	Amount	Units	Begin Date	End Date	Completion Date	Consecutive or Concurrent
	20 yrs cons + CC (\$133.90)						

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the within and foregoing Application for Post-Conviction Relief by depositing a true and correct copy of the same via first-class mail, postage prepaid, upon all parties as follows:

Alan Wilson, S.C. Attorney General
South Carolina Attorney General's Office
1000 Assembly Street, Room 519
Columbia, SC 29201

The Honorable Robert J. Harte
Aiken County Clerk of Court
P. O. Box 583
Aiken, SC 29802

By:



Toby Whitmire
Law Clerk for Dayne C. Phillips, Esq.

1614 Taylor Street, Suite D.
Columbia, SC 29201
C: (803) 386-1596
F: (803) 380-8035
lawclerk.whitmire@gmail.com

February 22, 2019

2014A0210200035

STATE OF SOUTH CAROLINA

County/ Municipality of

Aiken

THE STATE 14-000228
against

Jerry Lee Shaeffer

Address:

Phone: SSN: [REDACTED]
Sex: M Race: W Height: 5 10 weight: 180

DL State: DL #: [REDACTED]
DOB: [REDACTED]/1951 Agency ORI #: SC0020000

Prosecuting Agency: Aiken County Sheriff
Prosecuting Officer: Sgt. Adam Truesdale - 4876

Offense: Sex / Criminal sexual conduct with minor, or
Attempt - victim 11 to 14 yrs of age inclusive -

Offense Code: 0396
Code/Ordinance Sec: 16-03-0655(B)(1)

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

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Jerry Shaeffer on 1-15-14

[Signature] 5803
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
P O Box 583
109 Park Avenue
Aiken, SC 29802

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Aiken

AFFIDAVIT

Personally appeared before me the affiant Sgt. Adam Truesdale who being duly sworn deposes and says that defendant Jerry Lee Shaeffer did within this county and state on or about 6/1/2013 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Aiken) in the following particulars:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.

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:

Upon information and belief and admission from the defendant, Jerry Lee Shaeffer, between the dates of 09-01-13 and 09-30-13 the defendant did engage in sexual battery with the victim, [REDACTED] who being 14 years of age. This incident took place at the defendant's home located at [REDACTED] Jackson, SC within the County of Aiken and is in violation of section 16-3-655 of the South Carolina Code of Laws as Amended.

Signature of Affiant

Vicky R. Caskey 4392 for A. Truesdale
Affiant's Address 420 Hampton Avenue North East
Aiken, SC 29801-
Affiant's Telephone (803)642-1763

STATE OF SOUTH CAROLINA

County/ Municipality of

Aiken

ARREST WARRANT

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

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

on or about 6/1/2013 defendant Jerry Lee Shaeffer did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Aiken) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.

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

on [Signature] (L.S.)
Judge's Address 435 Wire Road
Aiken, SC 29801-
Judge's Telephone (803)642-2044
Issuing Court: Magistrate Municipal Circuit
Judge Code: 7264

Judge's Address 435 Wire Road
Aiken, SC 29801-
Judge's Telephone (803)642-2044

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

FILED January 17 2014
[Signature]
S.C. C.P. & G.S.

BAIL set by

WITNESSES

Judge W. M. Ober

on 1-15-14

Type and Amount: Denial

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS



STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
)
)
)
Jerry Lee Shaeffer)
)

CHECKLIST

- TRIAL COURT:**
- GENERAL SESSIONS COURT
 - MAGISTRATE COURT
 - MUNICIPAL COURT

CASE NUMBER/CHARGE:

2014A0210200030,31/Sex / Criminal sexual conduct - First degree x2
2014A0210200032,33,34,35,36,37,38/Sex / Criminal sexual conduct with minor, or attempt - victim 11 to 14 yrs of age inclusive - Second degree x7

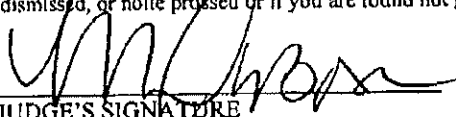
CHECKLIST FOR MAGISTRATE AND MUNICIPAL JUDGES

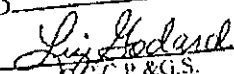
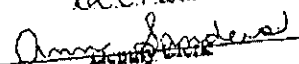
DIRECTIONS: Magistrate and Municipal Court Judges must use this checklist for ALL GENERAL SESSIONS and for ALL MAGISTRATE AND MUNICIPAL COURT CASES IN WHICH BOND HAS BEEN SET BY A JUDGE. The judge shall attach this checklist to the charging document (arrest warrant or uniform traffic ticket) when the defendant first appears before a judge for a bond hearing or first appearance, and complete the appropriate sections. Defendant must be provided a completed copy of this form.

BAIL PROCEEDING/ FIRST APPEARANCE (NON-BAILABLE OFFENSES)

1. Form used at bail proceeding
 - a. Bond Form I (personal recognizance)
 - b. Bond Form II (surety, cash, percentage)
 - c. None (Non-Bailable Offense) **DENIED**
2. For cases in which bond was set, defendant was informed:
 - a. Warrant for arrest will be issued for violation of any condition of bail bond order.
 - b. His right and obligation to be present at trial and that trial will proceed in his absence if he fails to attend.
 - c. Failure to appear in court as required will result in institution of additional criminal charges. Failure to appear in connection with a felony, or while awaiting sentence after conviction, additional charge has penalty of not more than \$5,000 or imprisonment for not more than 5 years, or both. Failure to appear in connection with a charge for a misdemeanor for which the maximum possible sentence is at least one year, additional charge has penalty of not more than \$1,000 or imprisonment for not more than one year, or both. Failure to appear in court as required on any charge not specified above will result in the issuance of a warrant for defendant's arrest, as well as loss of any posted bond.
3. For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days:
 - a. Orally
 - b. In writing [NOTE: Defendant must be informed of right both orally and in writing]
4. Defendant was informed of the right to trial by jury.
5. In all general sessions cases, in all criminal domestic violence cases, and in all magistrate or municipal cases in which a prison sentence is likely to be imposed, defendant was informed of the following:
 - a. Charges against defendant and nature of the charges.
 - b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel.
 - c. Defendant was informed orally and provided a copy of this form advising him of his right to obtain court appointed counsel if indigent (must meet federal poverty guidelines) and instructions on how to obtain court appointed counsel. In order to apply for court appointed counsel, defendant is required to appear before **Public Defender located at 410 Barnwell St., Aiken, South Carolina (803) 642-1732 within 72 hours of your release** for indigency screening. Defendant is responsible for a statutory fee of \$40.00 for indigency screening.
6. In all criminal domestic violence cases and any case where defendant is subject to an Order of Protection or Restraining Order, defendant signed and was provided a document explaining that entering the grounds or property of a domestic violence shelter in which the person's household member resides constitutes an additional misdemeanor charge and, if in possession of a dangerous weapon, an additional felony charge.
7. If the charges that have been brought against you are discharged, dismissed, or nolle prossed or if you are found not guilty, you may have your record expunged.

01-15-14
Bond Hearing Date


JUDGE'S SIGNATURE

FILED _____ 200 _____

C.C.P. & G.S.

Clerk

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
COUNTY OF Aiken)
STATE VS.)
Jerry Lee Shaeffer)
AKA:)
Race: White Sex: M Age: 63)
DOB: [redacted]-1951 SS#: [redacted])
Address: [redacted])
City, State, Zip: Jackson, SC 29831)
DL#: [redacted] SID#: [redacted])

INDICTMENT/CASE#: 2014GS0200576
A/W#: 2014A0210200035
Date of Offense: 6/1/2013 - 9/30/2013
S.C. Code § : 16-03-0655(B)(1)
CDR Code #: 0396

SENTENCE SHEET 0 - 20 years

*CDL Yes [] No [x] CMV Yes [] No [x] Hazmat Yes [] No [x]
In disposition of the said indictment comes now the Defendant who was [] CONVICTED OF or [x] PLEADS
TO: Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.

in violation of § 16-03-0655(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0396
[] NON-VIOLENT [x] VIOLENT [] SERIOUS [x] MOST SERIOUS [] Mandatory GPS(CSC w/minor 1st or Lewd Act) [] §17-25-45

The charge is: [x] As Indicted, [] Lesser Included Offense, [] Defendant Waives Presentation to Grand Jury. (defendant's initials)
The plea is: [x] Without Negotiations or Recommendation, [] Negotiated Sentence, [] Recommendation by the State.

ATTEST: Ashley Agnew 80176 SC Bar# Defendant
Hammack, Ashley Agnew 71861 SC Bar# Attorney for Defendant

WHEREFORE, the Defendant is committed to the [x] State Department of Corrections, [] County Detention Center,
for a determinate term of 20 days/months/years or [] under the Youthful Offender Act not to exceed ___ years
and/or to pay a fine of \$ ___; provided that upon the service of ___ days/months/years and/or payment
of \$ ___; plus costs and assessments as applicable*; the balance is suspended with probation for ___

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.
[] CONCURRENT or [] CONSECUTIVE to sentence on:
[] The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
[] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Table with 3 columns: Description, Rate, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge), § 14-1-211(A)(2) (DUI Surcharge), § 56-5-2995 (DUI Assessment), § 56-1-286 (DUI Breath Test), Proviso 47.9 (Public Def/Prob), § 14-1-212 (Law Enforce. Funding), § 14-1-213 (Drug Court Surcharge), § 50-21-114 (BUI Breath Test Fee), § 56-5-2942(J) (Vehicle Assessment), Proviso 90.5 (SCCA Surcharge), 3% to County (if paid in installments), TOTAL \$ 133.90

\$ ___ paid to Public Defender Fund
Other: NO CONTACT WITH VICTIM OR ANY MEMBER OF VICTIM'S FAMILY

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

Deputy Clerk Angel Miles
Clerk of Court Deputy Clerk
Court Reporter: Brenda Sigwald
SCCA/217 (03/2011)

Presiding Judge
Judge Code:
Sentence Date: 12 May 15

DEFENDANT shall be placed on sex offender registry

ELECTRONICALLY FILED - 2019 Feb 28 11:57 AM - AIKEN - COMMON PLEAS - CASE#2019CP0200516

WITNESSES

Aiken County Sheriff
Sgt. Adam Truesdale

Law Enforcement Case #: 14-000228

AAH

ARREST WARRANT NUMBER

2014A0210200035

FILED April 10 2014

Liz Hedard
C.C.P.&G.S.
Ann Sanders
Deputy Sheriff

ACTION OF GRAND JURY

true bill

[Signature]
Robert Wade
Foreperson of Grand Jury
Date: April 10, 2014

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS0200576

The State of South Carolina
County of Aiken

COURT OF GENERAL SESSIONS

APRIL TERM 2014

THE STATE
vs.

JERRY LEE SHAEFFER

CDR #: 0396

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR IN THE SECOND DEGREE

§ 16-03-0655(2)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A
MINOR IN THE SECOND DEGREE

§ 16-03-0655(2)

At a Court of General Sessions, convened on April 14, 2014, the Grand Jurors of Aiken County present upon their oath:

That JERRY LEE SHAEFFER did in Aiken County at divers times on or between September 1, 2013 and September 30, 2013, commit the crime of Criminal Sexual Conduct With A Minor In The Second Degree, in that the Defendant did commit a sexual battery upon [REDACTED] minor who was fourteen years of age at the time of the incident. All in violation of §16-3-655 of the Code of Laws of South Carolina (1976), as amended.

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

Elizabeth B. Young
J. STROM THURMOND, SOLICITOR

ARREST WARRANT

2014A0210200036

STATE OF SOUTH CAROLINA

County/ Municipality of

Aiken

THE STATE

14-000228

against

Jerry Lee Shaeffer

Address:

Phone: SSN

Sex: M Race: W Height: 5 10 weight: 180

DL State: DL #:

DOB: 1951 Agency ORI #: SC0020000

Prosecuting Agency: Aiken County Sheriff

Prosecuting Officer: Sgt. Adam Truesdale - 4876

Offense: Sex / Criminal sexual conduct with minor, or

Attempt - victim 11 to 14 yrs of age inclusive -

Offense Code: 0396

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

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

The accused

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Jerry Shaeffer

on 1-15-14

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
P O Box 583
109 Park Avenue
Aiken, SC 29802

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
Aiken)

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 514

Personally appeared before me the affiant Sgt. Adam Truesdale who

being duly sworn deposes and says that defendant Jerry Lee Shaeffer

did within this county and state on or about 6/1/2013 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of Aiken)

in the following particulars:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.

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:

Upon information and belief and admission from the defendant, Jerry Lee Shaeffer, between the dates of 08-01-13 and 08-30-13 the defendant did engage in sexual battery with the victim, who being 14 years of age. This incident took place at the defendant's home located at Jackson, SC within the County of Aiken and is in violation of section 16-3-655 of the South Carolina Code of Laws as Amended.

Signature of Affiant

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
Aiken)

Affiant's Address 420 Hampton Avenue North East
Aiken, SC 29801-

Affiant's Telephone (803)642-1763

ARREST WARRANT

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

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

on or about 6/1/2013 defendant Jerry Lee Shaeffer

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

County/ Municipality of Aiken) as set forth below.

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg

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

Sworn to and subscribed before me

on

Signature of Judge (L.S.)

Melanie Dubose

Judge Code: 064

Judge's Address 435 Wire Road

Aiken, SC 29801-

Judge's Telephone (803)642-2044

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

WITNESSES



Judge W. McQueen

on 1-15-14

Type and Amount: Denied

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
)
)
Jerry Lee Shaeffer)
)

CHECKLIST

- TRIAL COURT:
 GENERAL SESSIONS COURT
 MAGISTRATE COURT
 MUNICIPAL COURT

CASE NUMBER/CHARGE:

2014A0210200030,31/Sex / Criminal sexual conduct - First degree x2
2014A0210200032,33,34,35,36,37,38/Sex / Criminal sexual conduct with minor, or attempt - victim 11 to 14 yrs of age inclusive - Second degree x7

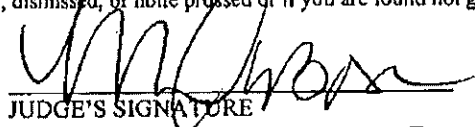
CHECKLIST FOR MAGISTRATE AND MUNICIPAL JUDGES

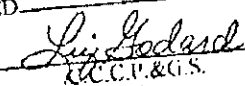
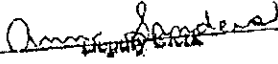
DIRECTIONS: Magistrate and Municipal Court Judges must use this checklist for ALL GENERAL SESSIONS and for ALL MAGISTRATE AND MUNICIPAL COURT CASES IN WHICH BOND HAS BEEN SET BY A JUDGE. The judge shall attach this checklist to the charging document (arrest warrant or uniform traffic ticket) when the defendant first appears before a judge for a bond hearing or first appearance, and complete the appropriate sections. Defendant must be provided a completed copy of this form.

BAIL PROCEEDING/ FIRST APPEARANCE (NON-BAILABLE OFFENSES)

- Form used at bail proceeding
a. Bond Form I (personal recognizance)
b. Bond Form II (surety, cash, percentage)
 c. None (Non-Bailable Offense) **DENIED**
- For cases in which bond was set, defendant was informed:
 a. Warrant for arrest will be issued for violation of any condition of bail bond order.
 b. His right and obligation to be present at trial and that trial will proceed in his absence if he fails to attend.
 c. Failure to appear in court as required will result in institution of additional criminal charges. Failure to appear in connection with a felony, or while awaiting sentence after conviction, additional charge has penalty of not more than \$5,000 or imprisonment for not more than 5 years, or both. Failure to appear in connection with a charge for a misdemeanor for which the maximum possible sentence is at least one year, additional charge has penalty of not more than \$1,000 or imprisonment for not more than one year, or both. Failure to appear in court as required on any charge not specified above will result in the issuance of a warrant for defendant's arrest, as well as loss of any posted bond.
- For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days:
 a. Orally
 b. In writing [NOTE: Defendant must be informed of right both orally and in writing]
- Defendant was informed of the right to trial by jury.
- In all general sessions cases, in all criminal domestic violence cases, and in all magistrate or municipal cases in which a prison sentence is likely to be imposed, defendant was informed of the following:
 a. Charges against defendant and nature of the charges.
 b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel.
 c. Defendant was informed orally and provided a copy of this form advising him of his right to obtain court appointed counsel if indigent (must meet federal poverty guidelines) and instructions on how to obtain court appointed counsel. In order to apply for court appointed counsel, defendant is required to appear before **Public Defender located at 410 Barnwell St., Aiken, South Carolina (803) 642-1732 within 72 hours of your release** for indigency screening. Defendant is responsible for a statutory fee of \$40.00 for indigency screening.
- In all criminal domestic violence cases and any case where defendant is subject to an Order of Protection or Restraining Order, defendant signed and was provided a document explaining that entering the grounds or property of a domestic violence shelter in which the person's household member resides constitutes an additional misdemeanor charge and, if in possession of a dangerous weapon, an additional felony charge.
- If the charges that have been brought against you are discharged, dismissed, or nolle prossed or if you are found not guilty, you may have your record expunged.

01-15-14
Bond Hearing Date


JUDGE'S SIGNATURE

FILED _____ 200 _____

Lij Hodard
C.C.P. & G.S.

Amy Sanders
Clerk of Court

ELECTRONICALLY FILED - 2019 Feb 28 11:57 AM - AIKEN - COMMON PLEAS - CASE#2019CP0200516

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Aiken
STATE VS.

INDICTMENT/CASE#: 2014GS0200577

Jerry Lee Shaeffer

A/W#: 2014A0210200036

AKA:

Date of Offense: 6/1/2013 - 8/31/2013

Race: White Sex: Age: 63

S.C. Code §: 16-03-0655(B)(1)

DOB: 951 SS#:

CDR Code #: 0396

Address:

City, State, Zip: Jackson, SC 29831

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.

in violation of § 16-03-0655(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0396
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45 w/minor 1st or Lewd Act

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

ATTEST: Ashley A. Hammack 80176 - Jerry Shaeffer Attorney for Defendant 71861
Hammack Ashley Agnew SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 20 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

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

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

SPECIAL CONDITIONS:

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

PTUP days/hours Public Service Employment

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$3.90, TOTAL \$153.90

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

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

Clerk of Court/ Deputy Clerk Angel Miles
Court Reporter: Brenda Sigwald
SCCA/217 (03/2011)

Presiding Judge
Judge Code:
Sentence Date: 18 2/27/15

57

WITNESSES

Aiken County Sheriff

Sgt. Adam Truesdale

Law Enforcement Case #: 14-000228

DOCKET NO. 2014GS0200577

The State of South Carolina

County of Aiken

AAH

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

APRIL TERM 2014

2014A0210200036

FILED April 10 2014

[Signature]
S.C.C.P. & G.S.
[Signature]
SHERIFF

THE STATE

VS.

JERRY LEE SHAEFFER

ACTION OF GRAND JURY

true bill

[Signature]

Robert Wade

Foreperson of Grand Jury

Date: April 10, 2014

CDR #: 0396

Indictment for

VERDICT

CRIMINAL SEXUAL CONDUCT WITH A
MINOR IN THE SECOND DEGREE

§ 16-03-0655(2)

Foreperson of Petit Jury

Date:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A
MINOR IN THE SECOND DEGREE

§ 16-03-0655(2)

At a Court of General Sessions, convened on April 14, 2014, the Grand Jurors of Aiken County present upon their oath:

That JERRY LEE SHAEFFER did in Aiken County at divers times on or between August 1, 2013 and August 31, 2013, commit the crime of Criminal Sexual Conduct With A Minor In The Second Degree, in that the Defendant did commit a sexual battery upon [REDACTED] minor who was fourteen years of age at the time of the incident. All in violation of §16-3-655 of the Code of Laws of South Carolina (1976), as amended.

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

Elizabeth B. Young

J. STROM THURMOND, SOLICITOR

ARREST WARRANT

2014A0210200037

STATE OF SOUTH CAROLINA

County/ Municipality of

Aiken

THE STATE

14-000228

against

Jerry Lee Shaeffer

Address: 155 Quail Ridge Dr.

Jackson, SC 29831-

Phone: SSN: [REDACTED]

Sex: M Race: W Height: 5 10 Weight: 180

DL State: DL #:

DOB: [REDACTED] 1951 Agency ORI #: SC0020000

Prosecuting Agency: Aiken County Sheriff

Prosecuting Officer: Sgt. Adam Truesdale - 4876

Offense: Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive -

Offense Code: 0396

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

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

The accused

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Jerry Shaeffer on 1-15-14

[Signature] 5803
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
P O Box 583
109 Park Avenue
Aiken, SC 29802

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Aiken

Personally appeared before me the affiant Sgt. Adam Truesdale who

being duly sworn deposes and says that defendant Jerry Lee Shaeffer

did within this county and state on or about 6/1/2013

violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of Aiken)

in the following particulars:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.

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:

Upon information and belief and admission from the defendant, Jerry Lee Shaeffer, between the dates of 07-01-13 and 07-31-13 the defendant did engage in sexual battery with the victim, [REDACTED] who being 14 years of age. This incident took place at the defendant's home located at [REDACTED] Jackson, SC within the County of Aiken and is in violation of section 16-3-655 of the South Carolina Code of Laws as Amended.

Signature of Affiant

[Signature] 4392 for A. Truesdale

STATE OF SOUTH CAROLINA

County/ Municipality of

Aiken

Affiant's Address 420 Hampton Avenue North East
Aiken, SC 29801-

Affiant's Telephone (803)642-1763

ARREST WARRANT

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

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

on or about 6/1/2013 defendant Jerry Lee Shaeffer

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

County/ Municipality of Aiken) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg

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

Sworn to and subscribed before me

on 1/15/2014

[Signature] (L.S.)

McLanic Dubois

Judge Code: 7264

Judge's Address 435 Wire Road

Aiken, SC 29801-

Judge's Telephone (803)642-2044

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2005
SCCA 518

59

FILED January 17 2014
[Signature]
S.C. CLERK



Judge W. M. Chon

on 1-15-14

Type and Amount: Denial

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

CHECKLIST

Jerry Lee Shaeffer)

TRIAL COURT:

- GENERAL SESSIONS COURT
- MAGISTRATE COURT
- MUNICIPAL COURT

CASE NUMBER/CHARGE:

2014A0210200030,31/Sex / Criminal sexual conduct - First degree x2
2014A0210200032,33,34,35,36,37,38/Sex / Criminal sexual conduct with minor, or attempt - victim 11 to 14 yrs of age inclusive - Second degree x7

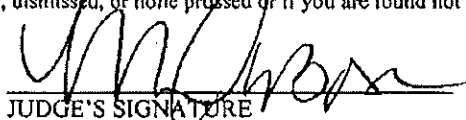
CHECKLIST FOR MAGISTRATE AND MUNICIPAL JUDGES

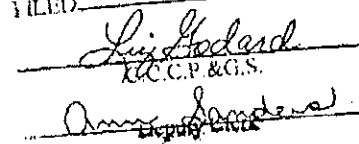
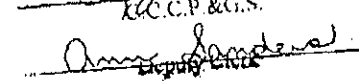
DIRECTIONS: Magistrate and Municipal Court Judges must use this checklist for ALL GENERAL SESSIONS and for ALL MAGISTRATE AND MUNICIPAL COURT CASES IN WHICH BOND HAS BEEN SET BY A JUDGE. The judge shall attach this checklist to the charging document (arrest warrant or uniform traffic ticket) when the defendant first appears before a judge for a bond hearing or first appearance, and complete the appropriate sections. Defendant must be provided a completed copy of this form.

BAIL PROCEEDING/ FIRST APPEARANCE (NON-BAILABLE OFFENSES)

1. Form used at bail proceeding
 - a. Bond Form I (personal recognizance)
 - b. Bond Form II (surety, cash, percentage)
 - c. None (Non-Bailable Offense) **DENIED**
2. For cases in which bond was set, defendant was informed:
 - a. Warrant for arrest will be issued for violation of any condition of bail bond order.
 - b. His right and obligation to be present at trial and that trial will proceed in his absence if he fails to attend.
 - c. Failure to appear in court as required will result in institution of additional criminal charges. Failure to appear in connection with a felony, or while awaiting sentence after conviction, additional charge has penalty of not more than \$5,000 or imprisonment for not more than 5 years, or both. Failure to appear in connection with a charge for a misdemeanor for which the maximum possible sentence is at least one year, additional charge has penalty of not more than \$1,000 or imprisonment for not more than one year, or both. Failure to appear as required on any charge not specified above will result in the issuance of a warrant for defendant's arrest, as well as loss of any posted bond.
3. For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days:
 - a. Orally
 - b. In writing [NOTE: Defendant must be informed of right both orally and in writing]
4. Defendant was informed of the right to trial by jury.
5. In all general sessions cases, in all criminal domestic violence cases, and in all magistrate or municipal cases in which a prison sentence is likely to be imposed, defendant was informed of the following:
 - a. Charges against defendant and nature of the charges.
 - b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel.
 - c. Defendant was informed orally and provided a copy of this form advising him of his right to obtain court appointed counsel if indigent (must meet federal poverty guidelines) and instructions on how to obtain court appointed counsel. In order to apply for court appointed counsel, defendant is required to appear before **Public Defender located at 410 Barnwell St., Aiken, South Carolina (803) 642-1732** within 72 hours of your release for indigency screening. Defendant is responsible for a statutory fee of \$40.00 for indigency screening.
6. In all criminal domestic violence cases and any case where defendant is subject to an Order of Protection or Restraining Order, defendant signed and was provided a document explaining that entering the grounds or property of a domestic violence shelter in which the person's household member resides constitutes an additional misdemeanor charge and, if in possession of a dangerous weapon, an additional felony charge.
7. If the charges that have been brought against you are discharged, dismissed, or nolle prossed or if you are found not guilty, you may have your record expunged.

01-15-14
Bond Hearing Date


JUDGE'S SIGNATURE

FILED _____ 200____

C.C.P. & G.S.

Clerk

STATE OF SOUTH CAROLINA

COUNTY OF Aiken
STATE VS. Jerry Lee Shaeffer

AKA:
Race: Sex: M Age: 63
DOB: SS:
Address:
City, State, Zip: Jackson, SC 29831
DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS0200578
A/W#: 2014A0210200037
Date of Offense: 6/1/2013 - 7/31/2013
S.C. Code § : 16-03-0655(B)(1)
CDR Code #: 0396

SENTENCE SHEET 0-20 years

in violation of § 16-03-0655(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0396
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

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

ATTEST:
Shamond D. Rankin, Ashley Agnew SC Bar# 90176
Jerry Lee Shaeffer, Defendant Attorney for Defendant SC Bar# 71861

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 20 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.
CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ca, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$ 133.90

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

Clerk of Court/ Deputy Clerk: Shamond D. Rankin
Court Reporter: Brenda Sigwald
SCCA/217 (03/2011)

Presiding Judge: [Signature]
Judge Code:
Sentence Date: 18 May 15

ELECTRONICALLY FILED - 2019 Feb 28 11:57 AM - AIKEN - COMMON PLEAS - CASE#2019CP0200578

WITNESSES

Aiken County Sheriff

Sgt. Adam Truesdale

Law Enforcement Case #: 14-000228

AAH

ARREST WARRANT NUMBER

2014A0210200037

FILED April 10 2014
Liz Hodard
C.C.P. & G.S.
Adam Truesdale

ACTION OF GRAND JURY

true bill



Robert Wade

Foreperson of Grand Jury

Date: April 10, 2014

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS0200578

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

APRIL TERM 2014

THE STATE

vs.

JERRY LEE SHAEFFER

CDR #: 0396

Indictment for

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

§ 16-03-0655(2)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A
MINOR IN THE SECOND DEGREE

§ 16-03-0655(2)

At a Court of General Sessions, convened on April 14, 2014, the Grand Jurors of Aiken County present upon their oath:

That JERRY LEE SHAEFFER did in Aiken County at divers times on or between July 1, 2013 and July 31, 2013, commit the crime of Criminal Sexual Conduct With A Minor In The Second Degree, in that the Defendant did commit a sexual battery upon [REDACTED] minor who was fourteen years of age at the time of the incident. All in violation of §16-3-655 of the Code of Laws of South Carolina (1976), as amended.

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

Elizabeth B. Young

J. STROM THURMOND, SOLICITOR

2014A0210200038

STATE OF SOUTH CAROLINA

County/ Municipality of

Aiken

THE STATE 14-000228
against

Jerry Lee Shaeffer

Address:

Phone: SSN:

Sex: M Race: W Height: 5 10 Weight: 180

DL State: DL #:

DOB: /1951 Agency ORI #: SC0020000

Prosecuting Agency: Aiken County Sheriff

Prosecuting Officer: Sgt. Adam Truesdale - 4876

Offense: Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive -

Offense Code: 0396

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

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

The accused

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Jerry Shaeffer on 1-15-14

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
P O Box 583
109 Park Avenue
Aiken, SC 29802

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Aiken

Personally appeared before me the affiant Sgt. Adam Truesdale who

being duly sworn deposes and says that defendant Jerry Lee Shaeffer

did within this county and state on or about 6/1/2013 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of Aiken)

in the following particulars:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.

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:

Upon information and belief and admission from the defendant, Jerry Lee Shaeffer, between the dates of 06-01-13 and 06-31-13 the defendant did engage in sexual battery with the victim, who being 14 years of age. This incident took place at the defendant's home located at Jackson, SC within the County of Aiken and is in violation of section 16-3-655 of the South Carolina Code of Laws as Amended.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Aiken

Affiant's Address 420 Hampton Avenue North East
Aiken, SC 29801-

Affiant's Telephone (803)642-1763

ARREST WARRANT

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

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

on or about 6/1/2013 defendant Jerry Lee Shaeffer

did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Aiken) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.

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

Sworn to and subscribed before me

on 1/15/2014

Signature of Issuing Judge (L.S.)

Melanie Dubose

Judge Code: 7264

Judge's Address 435 Wire Road
Aiken, SC 29801-

Judge's Telephone (803)642-2044

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

FILED January 17 2014
Sgt. Adam Truesdale
Aiken, SC
Aiken County Sheriff's Office



67

Judge Y.M. Ober

on 1-15-14

Type and Amount: Denied

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

CHECKLIST

Jerry Lee Shaeffer)

- TRIAL COURT:
- GENERAL SESSIONS COURT
 - MAGISTRATE COURT
 - MUNICIPAL COURT

CASE NUMBER/CHARGE:

2014A0210200030,31/Sex / Criminal sexual conduct - First degree x2
2014A0210200032,33,34,35,36,37,38/Sex / Criminal sexual conduct with minor, or attempt - victim 11 to 14 yrs of age inclusive - Second degree x7

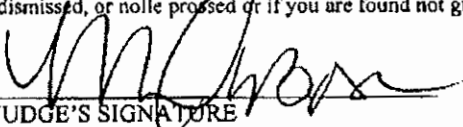
CHECKLIST FOR MAGISTRATE AND MUNICIPAL JUDGES

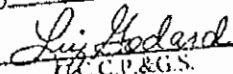
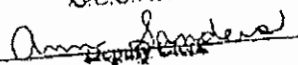
DIRECTIONS: Magistrate and Municipal Court Judges must use this checklist for ALL GENERAL SESSIONS and for ALL MAGISTRATE AND MUNICIPAL COURT CASES IN WHICH BOND HAS BEEN SET BY A JUDGE. The judge shall attach this checklist to the charging document (arrest warrant or uniform traffic ticket) when the defendant first appears before a judge for a bond hearing or first appearance, and complete the appropriate sections. Defendant must be provided a completed copy of this form.

BAIL PROCEEDING/ FIRST APPEARANCE (NON-BAILABLE OFFENSES)

1. Form used at bail proceeding
 - a. Bond Form I (personal recognizance)
 - b. Bond Form II (surety, cash, percentage)
 - c. None (Non-Bailable Offense) **DENIED**
2. For cases in which bond was set, defendant was informed:
 - a. Warrant for arrest will be issued for violation of any condition of bail bond order.
 - b. His right and obligation to be present at trial and that trial will proceed in his absence if he fails to attend.
 - c. Failure to appear in court as required will result in institution of additional criminal charges. Failure to appear in connection with a felony, or while awaiting sentence after conviction, additional charge has penalty of not more than \$5,000 or imprisonment for not more than 5 years, or both. Failure to appear in connection with a charge for a misdemeanor for which the maximum possible sentence is at least one year, additional charge has penalty of not more than \$1,000 or imprisonment for not more than one year, or both. Failure to appear in court as required on any charge not specified above will result in the issuance of a warrant for defendant's arrest, as well as loss of any posted bond.
3. For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days:
 - a. Orally
 - b. In writing [NOTE: Defendant must be informed of right both orally and in writing]
4. Defendant was informed of the right to trial by jury.
5. In all general sessions cases, in all criminal domestic violence cases, and in all magistrate or municipal cases in which a prison sentence is likely to be imposed, defendant was informed of the following:
 - a. Charges against defendant and nature of the charges.
 - b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel.
 - c. Defendant was informed orally and provided a copy of this form advising him of his right to obtain court appointed counsel if indigent (must meet federal poverty guidelines) and instructions on how to obtain court appointed counsel. In order to apply for court appointed counsel, defendant is required to appear before **Public Defender located at 410 Barnwell St., Aiken, South Carolina (803) 642-1732 within 72 hours of your release** for indigency screening. Defendant is responsible for a statutory fee of \$40.00 for indigency screening.
6. In all criminal domestic violence cases and any case where defendant is subject to an Order of Protection or Restraining Order, defendant signed and was provided a document explaining that entering the grounds or property of a domestic violence shelter in which the person's household member resides constitutes an additional misdemeanor charge and, if in possession of a dangerous weapon, an additional felony charge.
7. If the charges that have been brought against you are discharged, dismissed, or nolle prossed or if you are found not guilty, you may have your record expunged.

01-15-14
Bond Hearing Date


JUDGE'S SIGNATURE

FILED _____ 200____

Clerk

Deputy Clerk

ELECTRONICALLY FILED - 2019 Feb 28 11:57 AM - AIKEN - COMMON PLEAS - CASE#2019CP0200516

ELECTRONICALLY FILED - 2019 Feb 28 11:57 AM - AIKEN - COMMON PLEAS - CASE#2019CP0200516

STATE OF SOUTH CAROLINA)
 COUNTY OF Aiken)
 STATE VS.)
 Jerry Lee Shaeffer)
 AKA:)
 Race: [redacted] Sex: M Age: 63)
 DOB: [redacted] 951 SS [redacted])
 Address: [redacted])
 City, State, Zip: Jackson, SC 29831)
 DL#: [redacted] SID#: [redacted])

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS0200579
 A/W#: 2014A0210200038
 Date of Offense: 6/1/2013 - 6/30/2013
 S.C. Code § : 16-03-0655(B)(1)
 CDR Code #: 0396

SENTENCE SHEET 0 - 20 years

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
 TO: Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.

in violation of § 16-03-0655(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0396
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The 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.

ATTEST: Ashley Agnew 80176 SC Bar# Jerry Shaeffer 71816 SC Bar#
 Hammack, Ashley Agnew Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 20 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____
 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 47.9 (Public Def/Prob)	\$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	\$
Proviso 90.5 (SCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

_____ days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____
 Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Shannon D. Rosenkrantz
 Court Reporter: Brenda Sigwald
 SCCA/217 (03/2011)

Presiding Judge _____
 Judge Code: _____
 Sentence Date: 18 Feb 2019

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WITNESSES

Aiken County Sheriff

Sgt. Adam Truesdale

Law Enforcement Case #: 14-000228

AAH

ARREST WARRANT NUMBER

2014A0210200038

FILED April 10 2014

Liz Godard
S.C.C.P. & G.S.

Adam Truesdale
Sgt.

ACTION OF GRAND JURY

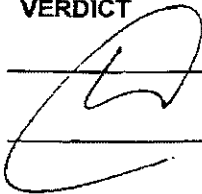
true bill



Robert Wade

Foreperson of Grand Jury
Date: April 10, 2014

VERDICT



Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS0200579

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

APRIL TERM 2014

THE STATE

vs.

JERRY LEE SHAEFFER

CDR #: 0396

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR IN THE SECOND DEGREE

§ 16-03-0655(2)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A
MINOR IN THE SECOND DEGREE

§ 16-03-0655(2)

At a Court of General Sessions, convened on April 14, 2014, the Grand Jurors of Aiken County present upon their oath:

That JERRY LEE SHAEFFER did in Aiken County at divers times on or between June 1, 2013 and June 30, 2013, commit the crime of Criminal Sexual Conduct With A Minor In The Second Degree, in that the Defendant did commit a sexual battery upon [REDACTED] a minor who was fourteen years of age at the time of the incident. All in violation of §16-3-655 of the Code of Laws of South Carolina (1976), as amended.

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

Elizabeth B. Young
J. STROM THURMOND, SOLICITOR

ELECTRONICALLY FILED - 2019 Feb 28 11:57 AM - AIKEN - COMMON PLEAS - CASE#2019CP0200516

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

JERRY LEE SHAEFFER, (#364166))

Plaintiff(s))

vs.)

STATE OF SOUTH CAROLINA)

Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

-CP -

APPLICATION FOR POST-CONVICTION RELIEF

Submitted By: Dayne C. Phillips, Esq.
Address: 1614 Taylor Street, Ste. D.,
Columbia, SC 29201

SC Bar #: 77712
Telephone #: (803) 807-0234
Fax #: (803) 380-8035
Other: 803-272-4503
E-mail: dayne@pricebenowitz.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: Dayne Phillips

Date: February 22, 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.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Jerry Lee Shaeffer, SCDC #364166,
Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Case No. 2019-CP-02-0516

**RETURN AND PARTIAL
MOTION TO DISMISS**

Respondent, making its return and partial motion to dismiss the application for post-conviction relief on February 28, 2019 on behalf of Applicant Jerry Lee Shaeffer by retained counsel Dayne C. Phillips, the State of South Carolina (Respondent) would respectfully show this Court:

I. Procedural History

Applicant is present confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. During its April 2014 term, the Aiken County Grand Jury indicted Applicant for four counts of second-degree criminal sexual conduct with a minor (2014-GS-02-00576, -0577, -0578, 0579). Assistant Public Defender Michael D. Routzong of the Second Circuit Public Defender's Office represented him. Assistant Solicitor Ashley A. Hammack of the Second Circuit Solicitor's Office prosecuted the case.

On May 18, 2015, Applicant proceeded appeared before the Honorable R. Knox McMahan, circuit court judge, and pled guilty as indicted to all four counts. There was no negotiation or recommendation as to sentence. Judge McMahan sentenced Applicant to imprisonment for twenty years for each offense, with three of the sentences to be served concurrently and the final sentence for indictment 2014-GS-02-0579 to be served consecutively.

Applicant did not appeal his conviction or his sentence.

II. Summary of Facts Giving Rise to the Convictions

During the plea proceeding, the prosecutor gave the following factual recitation in support of the pleas:

On New Year's Eve of 2013 there was a family gathering. The defendant is related to the victim and his family in this case. At that family gathering, the victim's mother was looking at the defendant's cell phone and observed several naked pictures of her son on his cell phone. She talked to her son about it and he disclosed that after the defendant moved down to Aiken County from Ohio in May of 2013, that he did begin molesting the victim.

The defendant would keep the victim on the weekends and during that time, he would perform oral sex on the victim, as well as anal intercourse. The victim disclosed that that would be both penile and with various sexual devices and toys. Law enforcement conducted a search warrant of the home. They were able to recover the devices that the victim disclosed that had been used to include but not limited to handcuffs and vibrators and things of the like.

In speaking to the defendant, the defendant did confess to law enforcement to engaging in oral sex and anal intercourse with the victim over that time period. The indictments are for each of the months that this behavior occurred at the defendant's home in Aiken County.

(Tr. p. 13-14). During his plea, Applicant admitted he was guilty of the indicted conduct and later apologized to the victim and acknowledged his behavior was wrong.

III. Allegations Raised and Relief Requested

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

1. Ineffective Assistance of Counsel
 - a. "Applicant did not knowingly, intelligently, or voluntarily plead guilty"
 - b. "Plea counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible mitigating evidence in preparation of Applicant's defense. Specifically, Plea counsel failed to consult with an expert witness to evaluate whether Applicant was competent to stand trial or had the requisite mental capacity when it was reasonable and necessary in his defense."

- c. "Plea counsel failed to move for a Blair hearing prior to trial to determine Applicant's competency to stand trial."
- d. "Plea counsel failed to present all reasonable and necessary evidence to the judge during the sentencing phase in mitigation of Applicant's potential sentence. Specifically, plea counsel failed to call and expert witness to testify regarding Applicant; mental health background and competency to stand trial when it was reasonable and necessary to present this critical mitigation evidence."

In response to question nine as to why he did not pursue a direct appeal, Applicant indicated, "Applicant was not competent to knowingly, intelligently, and voluntarily plead guilty, and did not knowingly waive his right to appellate review." Based on the response to question nine, it is unclear whether Applicant is seeking belated appellate review of his guilty plea pursuant to White v. State, 263 S.C. 110, 119, 108 S.E.2d 35, 39 (1974), as Applicant fails to state this as an enumerated ground for relief in his application. Respondent requests Applicant, through his counsel, clarify whether he intends to proceed forward on this allegation, but out of an abundance of caution, Respondent is interpreting Applicant's response to question nine as an allegation that plea counsel was ineffective for failing to advise him of his right to file an appeal.

Attached and incorporated herein are the records of the Aiken County Clerk of Court, the plea transcript, Applicant's records from the South Carolina Department of Corrections, and the records from this post-conviction relief action. Respondent reserves the right to amend this Return upon receipt of any relevant information.

III. Allegations of Ineffective Assistance of Counsel Should be Barred by the Statute of Limitations

Respondent submits this application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the Act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes this Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

Applicant pled guilty and was sentenced on May 18, 2015, and he did not pursue a direct appeal. Therefore, an application for post-conviction relief must have been filed on or before May 19, 2016, to comply with the statute of limitations as set forth in Section 17-27-45. This application was filed on February 28, 2019, after the requisite filing period had expired. Therefore, the application should be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

Our courts have held that “statutes of limitations are not simply technicalities, but are fundamental to a well-ordered judicial system.” Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). Moates explained:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. One purpose of a statute of limitations is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.

Another purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation.

Id. Statutes of limitations should be followed as strict rules in order to set a hard deadline to ensure an organized legal system.

However, in rare circumstances, the statute of limitations will be equitably tolled to allow a petitioner the opportunity to exercise his or her rights when they were denied the chance to do so. This doctrine has been specifically extended into the context of post-conviction relief cases, as well. Equitable tolling has been deemed available where (1) extraordinary circumstances prevented the plaintiff from filing despite his or her due diligence; (2) the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass; and (3) the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim. Pelzer v. State, 378 S.C. 516, 521, 662 S.E.2d 618, 619-20 (Ct. App. 2008). Pelzer explains that the court typically applies the extraordinary circumstances doctrine when the plaintiff has been actively misled by another party. "It has been held that equitable tolling applies principally if the plaintiff is actively misled by the defendant about the cause of action or is prevented in some extraordinary way from asserting his or her rights." Id. However, the equitable tolling doctrine does not require wrongful conduct on the part of the State, such as fraud or misrepresentation. Id.

Pelzer explained the doctrine should be limited to very exclusive circumstances. "[E]quitable tolling, which allows a plaintiff to initiate an action beyond the statute of limitations deadline, is typically available only if the claimant was prevented in some extraordinary way from exercising his or her rights, or, in other words, if the relevant facts present sufficiently rare and exceptional circumstances that would warrant application of the doctrine." Pelzer, 378 S.C.

at 521, 662 S.E.2d at 620. Pelzer cited to an opinion from the Fourth Circuit Court of Appeals in denying equitable tolling to a party as “particularly illuminating:”

[A]ny invocation of equity to relieve the strict application of a statute of limitations must be guarded and infrequent, lest circumstances of individualized hardship supplant the rules of clearly drafted statutes. To apply equity generously would loose the rule of law to whims about the adequacy of excuses, divergent responses to claims of hardship, and subjective notions of fair accommodation. We believe, therefore, that any resort to equity must be reserved for those rare instances where—due to circumstances external to the party's own conduct—it would be unconscionable to enforce the limitation period against the party and gross injustice would result.

Pelzer, at 378 S.C. 522-23, 662 S.E.2d at 621 (citing Harris v. Hutchinson, 209 F.3d 325, 330 (4th Cir.2000) (holding habeas petitioner's missing filing deadline due to erroneous advice from counsel not extraordinary circumstance requiring equitable tolling)).

In Pelzer, a post-conviction relief applicant notarized and mailed his application before the statute of limitations expired, but mailed it to the Office of Appellate Defense instead of to the county Clerk of Court for filing. 378 S.C. at 518, 662 S.E.2d at 619. The Office of Appellate Defense forwarded it to the Clerk, but it was not received by the Clerk until after the statute of limitations had expired. Id. at 518-19, 662 S.E.2d at 619. The circuit court dismissed the application as untimely. The Court of Appeals affirmed, finding that mailing did not constitute filing and “the narrow window by which Pelzer's application missed the statute of limitations [could not] be considered as so exceptional a circumstance as to warrant equitable tolling.” Id. at 522, 662 S.E.2d at 621.

Our appellate courts have also chosen not to extend the doctrine of equitable tolling to situations where the applicant claimed he was ignorant of the statute of limitations because he was incarcerated in another state. See Learnon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005) (holding incarceration in another state does not toll the running of the statute of limitations).

However, our courts have held that the statute of limitations should be equitably tolled for the filing of a post-conviction relief application in limited circumstances. See Ferguson v. State, 382 S.C. 615, 677 S.E.2d 600 (2009) (finding the statute of limitations should be equitably tolled when a mentally incompetent PCR applicant was prevented from timely filing by his mental incompetency, and the applicant should proceed with his PCR action only if the application was filed within one year of the applicant regaining competency); Mose v. State, 420 S.C. 500, 803 S.E.2d 718 (2017) (allowing equitable tolling where the applicant notarized and relinquished control of his application to prison authorities for mailing seventeen days prior to the filing deadline, but due to circumstances outside applicant's control, the application was not filed until three days past the deadline). Equitable tolling has also been allowed where "extraordinary circumstances prevented the plaintiff from filing despite his or her diligence" and where "the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim." Pelzer, 378 S.C. at 521, 662 S.E.2d at 621.

In his application, Applicant states the statute of limitations should be equitably tolled. However, he fails to present any evidence (or even ground) to assert why he is entitled to equitable tolling. Accordingly, without more information, it is impossible for Respondent to fully respond to Applicant's assertion that he is entitled to equitable tolling of the statute of limitations. Respondent requests that Applicant, through his counsel, amend his application to provide specific grounds on which he claims he is entitled to equitable tolling so that Respondent may respond accordingly.

IV. Allegation that Applicant is Entitled to Belated Appellate Review Pursuant to White v. State¹

While not listed as an enumerated allegation for relief, Applicant alleges in response to question nine in his application that he was denied his right to a direct appeal based on ineffective assistance of plea counsel. The one-year limitations period in which to file a petition for post-conviction relief does not apply where the defendant alleges he was denied a direct appeal due to ineffective assistance of counsel. Wilson v. State, 348 S.C. 215, 218, 559 S.E.2d 581, 582-83 (2002).

Applicant claims he was denied effective assistance of counsel because his plea counsel did not appeal his conviction. The decision of the South Carolina Supreme Court, in White v. State, holds even though the post-conviction relief court finds the applicant had never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. However, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory 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.

Respondent submits Applicant cannot meet his burden showing he is entitled to a belated appeal pursuant to White. However, because this allegation probably raises questions of fact not conclusively refuted by the record, Respondent requests an evidentiary hearing solely on this issue. Should Applicant prevail on his allegation counsel was ineffective for failing to file an appeal and establish he did not timely file this current application due to the ineffective assistance of counsel, Respondent requests an evidentiary hearing to address the remaining

¹ 263 S.C. 110, 119, 108 S.E.2d 35, 39 (1974).

issues raised in the application for post-conviction relief. See Toney v. State, Op. No. 2019-MO-006 (S.C. filed February 6, 2019) (where an applicant for post-conviction relief has established he did not knowingly and voluntarily waive his right to a direct appeal, the applicant is entitled to a full evidentiary hearing on the merits of his application).

Should this Court find Applicant was denied his right to a direct appeal, Respondent submits Applicant's remaining allegations of ineffective assistance of counsel are without merit. In a post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "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 v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, the 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, 286 S.C. at 442, 334 S.E.2d at 814. "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). The 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 the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. Respondent contends Applicant cannot meet his burden; however, the allegations of ineffective assistance of counsel probably raise questions of fact the record does not conclusively refute. Accordingly, should this Court find Applicant was denied his right to a direct appeal, Respondent requests an evidentiary hearing to fully resolve this issue and will file an amended return to address the merits of his underlying claims. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. Denial of All Other Claims

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

VI. Conclusion

WHEREFORE, Respondent requests an evidentiary hearing be held solely on the claim of ineffective assistance of plea counsel in failing to file an appeal should Applicant amend his application to include this ground as listed in response to question nine as to why an appeal was not filed on his behalf. Should this Court find Applicant has failed to establish he did not knowingly and voluntarily waive his right to appeal, Respondent further requests all other allegations raised or potentially raised in Applicant's application be dismissed as barred by the statute of limitations. In the alternative, should this Court find Applicant did not knowingly and voluntarily waive his right to a direct appeal and that was the cause for his delay in filing his application for post-conviction relief, Respondent requests an evidentiary hearing be held on Applicant's allegations of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

June 5, 2019

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
)
)
)
 JERRY LEE SHAEFFER, #364166,)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS


2019-CP-00516

AFFIDAVIT OF SERVICE BY MAIL

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

Dayne C. Phillips, Esquire
Price Benowitz, LLP.
1614 Taylor Street, Suite D
Columbia, South Carolina 29201

DATED this the 5th day of June 2019.


 Kaitlyn S. Slice, Legal Assistant
 For Respondent

Plaintiff(s))

vs.)

Defendant(s))

CIVIL ACTION COVERSHEET

2019 - CP - 02 - 0516

AMENDED APPLICATION FOR POST-CONVICTION RELIEF

Submitted By: Dayne C. Phillips, Esq.
Address: 1614 Taylor Street, Ste. D.,
Columbia, SC 29201

SC Bar #: 77712
Telephone #: (803) 807-0234
Fax #: (803) 380-8035
Other: 803-272-4503
E-mail: dayne@pricebenowitz.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)

COPY ORIGINAL FILED

Date: JUN 28 2019 12:15 June 25, 2019

AIKEN COUNTY CLERK OF COURT

Submitting Party Signature: Dayne Phillips

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.

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
JERRY LEE SHAEFFER (#364166))
Applicant,)
)
v.)
)
State of South Carolina)
_____)

IN THE COURT OF COMMON PLEAS

SECOND JUDICIAL CIRCUIT

Case No. 2019-CP-02-0516

AMENDED APPLICATION FOR
POST-CONVICTION RELIEF

As required by Rule 71.1(b), SCRCP, this application is in conformity with Form 5 of the SCRCP Appendix of Forms.

1. Place of Detention: South Carolina Department of Corrections; Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 292210.
2. Name and location of Court which imposed sentence: Aiken County Court of General Sessions, 109 Parke Avenue, SE, Aiken, SC 29801.
3. Name(s) of co-defendant(s) (if any): There are no co-defendants.
4. The indictment number(s) upon which and the offenses for which sentence was imposed:
 - (a) 2014-GS-02-000576 (Criminal Sexual Conduct with a Minor, 2nd Degree).
 - (b) 2014-GS-02-000577 (Criminal Sexual Conduct with a Minor, 2nd Degree).
 - (c) 2014-GS-02-000578 (Criminal Sexual Conduct with a Minor, 2nd Degree).
 - (d) 2014-GS-02-000579 (Criminal Sexual Conduct with a Minor, 2nd Degree).
5. The date upon which the sentence was imposed and the terms of the sentence:
 - (a) May 18, 2015.
 - (b) 20 years for indictment number 2014-GS-02-000576.
 - (c) 20 years for indictment number 2014-GS-02-000577 (concurrent).
 - (d) 20 years for indictment number 2014-GS-02-000578 (concurrent).
 - (e) 20 years for indictment number 2014-GS-02-000579 (concurrent).

COPY
ORIGINAL FILED
JUN 28 2019 CMP
RLS
AIKEN COUNTY
CLERK OF COURT

6. A finding of guilty was made:
- (a) After a guilty plea before the Honorable Knox R. McMahon.
7. Did you appeal from the judgment of conviction and/or the imposition of the sentence?
- (a) No.
8. If you answered “yes” to number (7), list:
- (a) The name of each Court to which you appealed:
- i. Not applicable.
- (b) The result in each Court to which you appealed:
- i. Not applicable.
- (c) The date of each result:
- i. Not applicable.
- (d) If known, citations of any written opinions or ordered entered pursuant to such result:
- i. Not applicable.
9. If you answered “no” to number (7), state your reasons for not appealing:
- (a) **Applicant did not knowingly, intelligently, and voluntarily plead guilty because he was not competent. Therefore, Applicant could not have knowingly waived his right to appellate review of his involuntary guilty plea. Applicant acknowledges that the issue of whether he knowingly, intelligently, and voluntarily pled guilty is not preserved for appellate review because it was never raised by Plea Counsel at the hearing.**
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Plea Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and

Article I, Sections 3 and 14 of the South Carolina Constitution. See S.C. Code § 17-27-20(A)(1), (4), and (6). Specifically, Plea Counsel's unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Plea Counsel's errors, Applicant would not have pled guilty. See *Hill v. Lockhart*, 474 U.S. 52 (1985) (applying the *Strickland v. Washington*, 466 U.S. 668 (1984) standard to guilty plea challenges of ineffective assistance of counsel).

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

(a) Plea Counsel's acts or omissions of ineffective assistance of counsel include but are not limited to the following allegations:

(i) Applicant did not voluntarily, knowingly, or intelligently plead guilty. See *Boykin v. Alabama*, 395 U.S. 238 (1969).

(ii) Plea Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible mitigating evidence in preparation of Applicant's defense. See *Wiggins v. Smith*, 539 U.S. 510 (2003). **Specifically, Plea Counsel failed to obtain all necessary records and speak with witnesses regarding Applicant's mental health history to assist in determining competency and capacity to conform (criminal responsibility).**

(iii) Plea Counsel failed to consult with an expert witness to evaluate whether Applicant was competent to stand trial or had the requisite mental capacity when it was reasonable and necessary to do so in Applicant's defense. See also *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008); *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004); *Reeves v. State*, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015). **Geoffrey R. McKee, PhD, ABPP, conducted a forensic**

psychological Competency to Stand Trial evaluation of Applicant on December 7, 2018. Dr. McKee provided the following finding in his report dated December 9, 2018: “It is my opinion, based on my clinical interview and psychological testing described within this report, that Mr. Shaeffer *does not currently* have a sufficient factual and rational understanding of the proceedings against him and is not now capable of assisting his attorney in his defense due to Mild to Moderate Intellectual Disability.” (emphasis in original).

- (iv) Plea Counsel failed to file an Order for Competency to Stand Trial Evaluation.
- (v) Plea Counsel failed to file an Order for Criminal Responsibility and Capacity to Conform Evaluation.
- (vi) Plea Counsel failed to call an expert witness to testify regarding Applicant’s mental health history (competency to stand trial, criminal responsibility, and mitigation) when it was reasonable and necessary to present this critical defense and mitigation evidence.
- (vii) Plea Counsel failed to move for a Blair hearing for the Plea Court determine Applicant’s competency. See State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981); Matthews v. State, 358 S.C. 456, 596 S.E.2d 49 (2004); S.C. Code §§ 44-23-410 and 430.
- (viii) Plea Counsel failed to present all reasonable and necessary evidence to the judge during the sentencing phase in mitigation of Applicant’s potential sentence.

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

- (a) Any petition in a State Court under South Carolina Law? No.
- (b) Any petition in State or Federal Courts for Federal Habeas Corpus or Post-Conviction Relief? No. Applicant has not previously filed an application for Post-Conviction Relief or Petition for Writ of Habeas Corpus in either state or federal court. Applicant

requests a hearing to present evidence in support of equitable tolling of the statute of limitations and his claims of ineffective assistance of counsel based on the report of Geoffrey R. McKee, PhD, ABPP dated December 9, 2018. See *Ferguson v. State*, 382 S.C. 615, 619, 677 S.E.2d 600, 602 (2009); *Gary v. State*, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001); *Pelzer v. State*, 378 S.C. 516, 520, 662 S.E.2d 618, 620 (Ct. App. 2008).

- (c) Any petition in the Supreme Court of the United States for certiorari other than petitions, if any, already specified in number (8)? No.
- (d) Any other petitions motions or applications in this or any other Court? No.
13. If you answered “yes” to any part of number (12), list with respect to each petition, motion, or application:
- (a) The specific nature thereof:
- i. Not applicable.
- (b) The name and location of the Court in which each was filed:
- i. Not applicable.
- (c) The disposition thereof:
- i. Not applicable.
- (d) The date of each such disposition:
- i. Not applicable.
14. Has any ground set forth in number (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 number (14), identify:
- (a) The grounds which have been presented:
- i. Not applicable.

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

i. Not applicable.

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

(a) Post-Conviction Relief is the proper forum and remedy for these allegations because the grounds for relief presented in this application are evidence of ineffective assistance of counsel, not preserved for appellate review, and/or were not appropriate to raise or were not properly raised on Direct Appeal. Applicant requests a hearing to present evidence in support of equitable tolling of the statute of limitations and his claims of ineffective assistance of counsel based on the report of Geoffrey R. McKee, PhD, ABPP dated December 9, 2018. See Ferguson v. State, 382 S.C. 615, 619, 677 S.E.2d 600, 602 (2009); Gary v. State, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001); Pelzer v. State, 378 S.C. 516, 520, 662 S.E.2d 618, 620 (Ct. App. 2008).

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

(a) Your plea hearing? Yes.

(b) Your trial? No.

(c) Your sentencing? Yes.

(d) Your appeal, if any, from the judgment of conviction and/or imposition of the sentence? No.

(e) Preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? Yes.

18. If you answered “yes” to one or more parts of number (17), list:

(a) The name and address of each attorney who represented you:

(i) Michael D. Routzong, 215 N. Harvin, Room 151, Sumter, SC 29150

(ii) Dayne C. Phillips, 1614 Taylor Street, Ste D., Columbia, SC 29201.

(b) The proceedings at which each attorney represented you:

- (i) Michael D. Routzong represented Applicant at the plea hearing.
- (ii) Dayne C. Phillips is representing Applicant on this application for Post-Conviction Relief.

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

Applicant seeks Post-Conviction Relief by vacating his convictions and sentences and remanding the indictments for a new trial based on ineffective assistance of counsel. Applicant requests a hearing to present evidence in support of equitable tolling of the statute of limitations and his claims of ineffective assistance of counsel based on the report of Geoffrey R. McKee, PhD, ABPP dated December 9, 2018. See *Ferguson v. State*, 382 S.C. 615, 619, 677 S.E.2d 600, 602 (2009); *Gary v. State*, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001); *Pelzer v. State*, 378 S.C. 516, 520, 662 S.E.2d 618, 620 (Ct. App. 2008).

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

No. Applicant is not under sentence from any other court.

Geoffrey R. McKee, PhD, ABPP
Forensic Psychological Services
1728 Main Street, Suite 110
Columbia, SC 29201
(803) 251-3499

Curriculum Vitae Summary as of 2017

- Boardcertified in Forensic Psychology, American Board of Professional Psychology (ABPP)
- Clinical Professor, Department of Neuropsychiatry, U. of South Carolina School of Medicine (pro bono). 2007 Chairman's Award for Outstanding Contributions to Forensic Psychiatry Training Program
- Clinical Professor, Department of Psychiatry, Medical University of South Carolina (Pro bono)
- Private practice in criminal and domestic Forensic Psychology since 1976; licensed psychologist in AZ (197280), ND (198185), MN (198485), NC (199699; 2011-2012), and SC since 1985
- Chief Psychologist, Division of Forensic Evaluation Services, SCDMH 1998-2011.
- SCDMH member to Multidisciplinary Team of SC Sexually Violent Predator Act 1998-2011
- Chief Psychologist, Forensic Psychiatry Division, Hall Psychiatric Institute, 1986-98. Director of Training, Forensic Psychology Rotation, APA approved clinical psychology internship
- Consultations/evaluations to state and county child protection services agencies on issues of child sexual assault (victims and perpetrators) in AZ, ND, and SC since 1976
- Child custody and parenting capacity evaluations and expert testimony for Family Courts in AZ, ND, and SC since 1976
- Forensic psychological evaluations in over 500 murder cases at state and federal level including gang-related homicides as well as other major felonies.
 - Retained by defense or prosecution for evaluation, consultation, and/or expert testimony in state and federal courts in over 200 criminal and 30 death penalty trials or appeals in SC, AZ, ND, IN, NC, CA, KY, GA, MS, OR, & TX.
 - Expert testimony before the SC Supreme Court twice.
- Founder & President, ISA Metrics, LLC. Visual technology products to aid forensic mental health sciences services
- Past President, American Academy of Forensic Psychology, 1992-94
- Invited Continuing Legal Education lectures to State Bar, Family Court judges, and public defenders associations in VA, WI, and SC and law students in SC and NY.
- Former Consulting Faculty, National Advocacy Center, US Department of Justice
- Former Consulting Faculty, National Advocacy Center, National District Attorneys Association
- Author, Why Mothers Kill: A Forensic Psychologist's Casebook (2006; Oxford University Press). www.whymotherskill.com
- Publications in peerreviewed journals and book chapters on maternal filicide, juveniles' trial competency, homicidal and violent adolescents, MMPI/MMPI2 profiles of adult criminal defendants/sex offenders, and criminal forensic psychology practice.
- Peer-reviewed research presentations/workshops on homicide, violent crimes, and sex offenders
- Case analyst/commentator on "Wicked Attractions" television series, 2009-final episode (2012)

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the within and foregoing Amended Application for Post-Conviction Relief by depositing a true and correct copy of the same via first-class mail, postage prepaid, upon all parties as follows:

Megan Jameson, Assistant Attorney General
South Carolina Attorney General's Office
1000 Assembly Street, Room 519
Columbia, SC 29201

The Honorable Robert J. Harte
Aiken County Clerk of Court
P. O. Box 583
Aiken, SC 29802

By: Courtney Powers
Courtney Powers
Paralegal for Dayne C. Phillips, Esq.

1614 Taylor Street, Suite D.
Columbia, SC 29201
C: (803) 216-5561
F: (803) 380-8035
courtney@pricebenowitz.com

June 25, 2019

**C O P Y
ORIGINAL FILED**

**JUN 28 2019 CMP
12:15**

**AIKEN COUNTY
CLERK OF COURT**

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
Jerry Lee Shaeffer (#364166))
)
 Applicant,)
)
 v.)
)
 State of South Carolina)
 _____)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
 Case No. **2019-CP-02-0516**
SECOND AMENDED APPLICATION
FOR POST-CONVICTION RELIEF

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JUL 13 2020
AIKEN COUNTY
COURT OF COURT

As required by Rule 71.1(b), SCRPC, this application is in conformity with Form 5 of the SCRPC Appendix of Forms.

1. **Place of Detention:** Applicant is detained in the South Carolina Department of Corrections at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210.
2. **Name and location of Court which imposed sentence:** Aiken County Court of General Sessions, 109 Parke Avenue, SE, Aiken, SC 29801.
3. **Name(s) of co-defendant(s) (if any):** There are no co-defendants.
4. **The indictment number(s) upon which and the offenses for which sentence was imposed:**
 - (a) 2014-GS-02-000576 (Criminal Sexual Conduct with a Minor, 2nd Degree).
 - (b) 2014-GS-02-000577 (Criminal Sexual Conduct with a Minor, 2nd Degree).
 - (c) 2014-GS-02-000578 (Criminal Sexual Conduct with a Minor, 2nd Degree).
 - (d) 2014-GS-02-000579 (Criminal Sexual Conduct with a Minor, 2nd Degree).
5. **The date upon which the sentence was imposed and the terms of the sentence:**
 - (a) May 18, 2015 – 20 years for indictment number 2014-GS-02-000576.
 - (b) May 18, 2015 – 20 years for indictment number 2014-GS-02-000577 (concurrent).
 - (c) May 18, 2015 – 20 years for indictment number 2014-GS-02-000578 (concurrent).
 - (d) May 18, 2015 – 20 years for indictment number 2014-GS-02-000579 (concurrent).

6. **A finding of guilty was made after:**

(a) A guilty plea before the Honorable Knox R. McMahon.

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

(a) No.

8. **If you answered “yes” to number (7), list:**

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

i. Not applicable.

(b) **The result in each Court to which you appealed:**

i. Not applicable.

(c) **The date of each result:**

i. Not applicable.

(d) **If known, citations of any written opinions or ordered entered pursuant to such result:**

i. Not applicable.

9. **If you answered “no” to number (7), state your reasons for not appealing:**

(a) Applicant did not knowingly, intelligently, and voluntarily plead guilty because he was not competent to stand trial. Therefore, Applicant could not have knowingly waived his right to direct appellate review of his involuntary guilty plea. However, Applicant acknowledges that the issue of whether he knowingly, intelligently, and voluntarily pled guilty is not preserved for appellate review because it was never raised by Plea Counsel or ruled on by the Plea Court at the hearing.

[Intentionally Left Blank]

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

- (a) Plea Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. See S.C. Code § 17-27-20(A)(1), (4), and (6). Plea Counsel's unreasonably deficient performance fell below an objective standard of reasonableness "under prevailing professional norms" and prejudiced Applicant because there is a reasonable probability that, but for Plea Counsel's errors, Applicant would not have pled guilty and went to trial. See *Hill v. Lockhart*, 474 U.S. 52 (1985) (applying the *Strickland v. Washington*, 466 U.S. 668 (1984) standard to guilty plea challenges of ineffective assistance of counsel).

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

- (a) Plea Counsel's acts or omissions of ineffective assistance of counsel include but are not limited to the following allegations:
- (i) Applicant did not voluntarily, knowingly, or intelligently plead guilty based on Plea Counsel's failure to request a competency to stand trial and criminal responsibility evaluations and a *Blair* hearing prior to the plea hearing. See *Boykin v. Alabama*, 395 U.S. 238 (1969); *Monahan v. State*, 365 S.C. 130, 133, 616 S.E.2d 422, 423 (2005) (noting the issue of whether an individual is criminally responsible for a crime due to a mental health condition is separate from the issue of whether an individual is competent to stand trial); *Id.* ("The test for criminal responsibility relates to the time of the alleged offense, while competency to stand trial relates to the time the defendant is before the court for trial.").

- (ii) Plea Counsel failed to move for the Chief Administrative Judge or presiding judge to sign Orders for Competency to Stand Trial and Criminal Responsibility and Capacity to Conform Evaluations based on Applicant's mental health history and records when it was reasonable and necessary to do so in Applicant's defense. See *State v. Blair*, 275 S.C. 529, 533, 273 S.E.2d 536, 538 (1981) (finding evidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion as to his competency to stand trial are all relevant in determining whether a defendant is entitled to a hearing on his competency to stand trial); S.C. Code §§ 44-23-410–430; *Matthews v. State*, 358 S.C. 456, 596 S.E.2d 49 (2004); *State v. Burgess*, 356 S.C. 572, 575, 590 S.E.2d 42, 44 (Ct. App. 2003) (“The question of whether to order a competency examination falls within the discretion of the trial [court] whose decision will not be overturned on appeal absent a clear showing of an abuse of that discretion.”); see also S.C. Code Ann. § 17-24-20(A) (2014) (“A defendant is guilty but mentally ill if, at the time of . . . the offense, he had the capacity to distinguish right from wrong or to recognize his act as being wrong . . . , but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law.”).
- (iii) Plea Counsel failed to have Applicant evaluated by an independent qualified medical professional to conduct a forensic psychological competency to stand trial and criminal responsibility evaluations, or to determine whether Applicant had the requisite mental capacity prior to the plea hearing based on Applicant's mental health history when it was reasonable and necessary to do so in Applicant's defense. See *Jeter v. State*, 308 S.C. 230, 417 S.E.2d 594 (1992); *McKnight v. State*, 378

S.C. 33, 46, 661 S.E.2d 354, 360 (2008); *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004); *Reeves v. State*, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015).

- a. Geoffrey R. McKee, PhD, ABPP, conducted a forensic psychological Competency to Stand Trial evaluation of Applicant on December 7, 2018. Dr. McKee provided the following finding in his report dated December 9, 2018: “It is my opinion, based on my clinical interview and psychological testing described within this report, that Mr. Shaeffer *does not currently* have a sufficient factual and rational understanding of the proceedings against him and is not now capable of assisting his attorney in his defense due to Mild to Moderate Intellectual Disability.” (emphasis in original).
- (iv) Plea Counsel failed to move for a *Blair* hearing prior to the plea hearing for the Plea Court to determine Applicant’s competency to stand trial based on Applicant’s mental health history and records. See *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981); *Matthews v. State*, 358 S.C. 456, 596 S.E.2d 49 (2004); S.C. Code §§ 44-23-410 and 430.
- (v) Plea Counsel failed to call an expert witness to testify regarding Applicant’s mental health history during the sentencing phase of the plea hearing (competency to stand trial, criminal responsibility, and mitigation) when it was reasonable and necessary to present this critical defense and mitigation evidence.
- (vi) Plea Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible mitigating evidence in preparation of Applicant’s defense. See *Wiggins v. Smith*, 539 U.S. 510 (2003). Specifically, Plea

Counsel failed to obtain all necessary records and speak with witnesses regarding Applicant's mental health history to assist in determining competency and capacity to conform (criminal responsibility).

(vii) Plea Counsel failed to present all reasonable and necessary evidence to the judge during the sentencing phase in mitigation of Applicant's potential sentence.

(viii) Plea Counsel failed to review all potential defenses prior to Applicant's guilty plea. See *Rolen v. State*, 384 S.C. 409, 683 S.E.2d 471 (2009) (citing *Hill v. Lockhart*, 474 U.S. 52, 57-59 (1985) and finding "[a] defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial."); See *Ray v. State*, 303 S.C. 374, 401 S.E.2d 151 (1991) (finding defendant's guilty plea was not intelligently and voluntarily made in light of the erroneous advice given by plea counsel).

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

(a) **Any petition in a State Court under South Carolina Law?** No.

(b) **Any petition in State or Federal Courts for Federal Habeas Corpus or Post-Conviction Relief?** No. Applicant has not previously filed an application for Post-Conviction Relief or Petition for Writ of Habeas Corpus in either state or federal court. Applicant requests a hearing to present evidence in support of equitable tolling of the statute of limitations and his claims of ineffective assistance of counsel based on the report of Geoffrey R. McKee, PhD, ABPP dated December 9, 2018. See S.C. Code §

17-27-70(b) and (c) (Court procedure on receipt of application); see generally Ferguson v. State, 382 S.C. 615, 619, 677 S.E.2d 600, 602 (2009) (finding the statute of limitations will be tolled where the applicant demonstrates the failure to timely file a PCR application was due to mental incompetency.); Gary v. State, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001); Pelzer v. State, 378 S.C. 516, 521, 662 S.E.2d 618, 620-621 (Ct. App. 2008) (summarizing the doctrine of equitable tolling: “The time requirements in lawsuits between private litigants are customarily subject to equitable tolling if such tolling is necessary to prevent unfairness to a diligent plaintiff. However, equitable tolling, which allows a plaintiff to initiate an action beyond the statute of limitations deadline, is typically available only if the claimant was prevented in some extraordinary way from exercising his or her rights, or, in other words, if the relevant facts present sufficiently rare and exceptional circumstances that would warrant application of the doctrine.”).

(c) Any petition in the Supreme Court of the United States for certiorari other than petitions, if any, already specified in number (8)? No.

(d) Any other petitions motions or applications in this or any other Court? No.

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

(a) The specific nature thereof:

i. Not applicable.

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

i. Not applicable.

(c) The disposition thereof:

i. Not applicable.

(d) The date of each such disposition:

i. Not applicable.

14. **Has any ground set forth in number (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 number (14), identify:**

(a) The grounds which have been presented:

i. Not applicable.

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

i. Not applicable.

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

(a) Post-Conviction Relief is the proper forum and remedy for these allegations because the grounds for relief presented in this application are evidence of ineffective assistance of counsel, not preserved for appellate review, and/or were not appropriate to raise or were not properly raised on Direct Appeal. Applicant requests a hearing to present evidence in support of equitable tolling of the statute of limitations and his claims of ineffective assistance of counsel based on the report of Geoffrey R. McKee, PhD, ABPP dated December 9, 2018. See generally *Ferguson v. State*, 382 S.C. 615, 619, 677 S.E.2d 600, 602 (2009); *Gary v. State*, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001); *Pelzer v. State*, 378 S.C. 516, 520, 662 S.E.2d 618, 620 (Ct. App. 2008).

i. *Cf. Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (noting the following standard of review in determining when summary dismissal is appropriate: “Summary dismissal of a PCR application without a hearing is appropriate only when (1) it is apparent on the face of the application that there is no need for a hearing to develop any facts and (2) the applicant is not entitled

to relief When considering the State's motion for summary dismissal of an application, where no evidentiary hearing has been held, the circuit court must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant. Similarly, when reviewing the propriety of a dismissal, this Court must view the facts in the same fashion.

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

(a) Your plea hearing? Yes.

(b) Your trial? No.

(c) Your sentencing? Yes.

(d) Your appeal, if any, from the judgment of conviction and/or imposition of the sentence? No.

(e) Preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? Yes.

18. If you answered "yes" to one or more parts of number (17), list:

(a) The name and address of each attorney who represented you:

(i) Michael D. Routzong, 215 N. Harvin, Room 151, Sumter, SC 29150

(ii) Dayne C. Phillips, 1614 Taylor Street, Ste D., Columbia, SC 29201.

(b) The proceedings at which each attorney represented you:

(i) Michael D. Routzong represented Applicant at the plea hearing.

(ii) Dayne C. Phillips is representing Applicant on this application for Post-Conviction Relief.

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

Applicant seeks Post-Conviction Relief by vacating his convictions and sentences and remanding the indictments for a new trial based on ineffective assistance of counsel.

Applicant requests a hearing to present evidence in support of equitable tolling of the

statute of limitations and his claims of ineffective assistance of counsel based on the report of Geoffrey R. McKee, PhD, ABPP dated December 9, 2018. See generally Ferguson v. State, 382 S.C. 615, 619, 677 S.E.2d 600, 602 (2009); Gary v. State, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001); Pelzer v. State, 378 S.C. 516, 520, 662 S.E.2d 618, 620 (Ct. App. 2008).

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

No. Applicant is not under sentence from any other court.

July 10, 2020

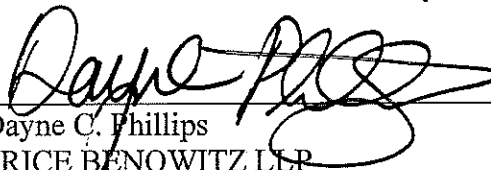
[Verification Page to Follow]

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
Jerry Lee Shaeffer (#364166))
)
Applicant,)
)
v.)
)
State of South Carolina)
_____)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
Case No. **2019-CP-02-0516**

VERIFICATION

I, **Dayne C. Phillips, Esq.**, on behalf of my client, **Jerry Shaeffer**, 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 attached in this application; and that the matters and allegations therein set forth are true.



Dayne C. Phillips
PRICE BENOWITZ LLP
1614 Taylor Street, Suite D.
Columbia, SC 29201
O: 803-272-4503
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July 10, 2020

SWORN to and subscribed before me this 10th
day of July, 2020.

Courtney Powers (L.S.)
Notary Public

My Commission Expires: May 2, 2027

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the within and foregoing Second Amended Application for Post-Conviction Relief by depositing a true and correct copy of the same via first-class mail, postage prepaid, upon all parties as follows:

Brianna Schill, Assistant Attorney General
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

The Honorable Robert J. Harte
Aiken County Clerk of Court
P. O. Box 583
Aiken, SC 29802

By: Courtney Powers
Courtney Powers
Paralegal to Dayne C. Phillips, Esq.

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July 10, 2020

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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF AIKEN

-----x

JERRY LEE SHAEFFER,)

Applicant,)

vs.)

STATE OF SOUTH CAROLINA,)

Respondent.)

Transcript of Record
2019-CP-02-0516

-----x

June 4, 2021
Virtual Courtroom

POST-CONVICTION RELIEF HEARING

B E F O R E:

The Honorable Jennifer B. McCoy, Presiding Judge

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

Dayne C. Phillips, Esq.
Attorney for the Applicant

Lindsey A. McCallister, Esq.
Attorney for the State

Transcribed by Bobbi Fisher, RPR, for DCRP,

Digital Courtroom Project (BIS)

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE</u>
GEOFFREY McKEE	
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Redirect Examination by Mr. Phillips	29
MICHAEL ROUTZONG	
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E X H I B I T S

(Exhibits on file in the Clerk's Office.)

<u>EXHIBIT</u>	<u>ID.</u>	<u>ADM.</u>
AP-1 McKee C.V.	11	11
AP-2 McKee Report	21	21

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	(DCRP only) Indicates word(s) is not known due to audio recording quality

1 maybe I'm not seeing everyone. Is Michael Routzong listed in
2 the attendees?

3 THE COURT: We can bring him over. That's just something
4 you need to tell me from the beginning. Otherwise, we
5 wouldn't know.

6 MS. McCALLISTER: Okay. I'm sorry. I can't see -- I
7 don't see him.

8 THE COURT: I know, but if you're expecting somebody, you
9 just need to tell us. We'll bring him over. No problem.
10 Anybody else?

11 MS. McCALLISTER: No, ma'am. That was the only person.

12 THE COURT: All right. Well, go ahead and give me some
13 procedural history.

14 MS. McCALLISTER: Yes, ma'am. Okay. This is Jerry Lee
15 Shaeffer versus the State of South Carolina, 2019-CP-02-0516.
16 Mr. Shaeffer was indicted in April 2014 by the Aiken County
17 Grand Jury for four counts of second degree criminal sexual
18 conduct with a minor. He was represented by Michael Routzong
19 of the Second Circuit Public Defender's Office. Assistant
20 Solicitor Ashley Hammack of the Second Circuit was involved
21 and prosecuted the case.

22 On May 18, 2015, Mr. Shaeffer appeared before Judge
23 Malcolm McMahon and pleaded guilty of indictments to all four
24 counts. That was without negotiation or reservation. Judge
25 McMahon sentenced Applicant to 20 years' imprisonment for each

1 count. He structured the sentence so that three of the
2 sentences were to be served concurrently, and the final
3 sentence was to be served consecutively. So it's an aggregate
4 sentence of 40 years. Mr. Shaeffer did not appeal his
5 conviction or sentence, Your Honor.

6 He -- sorry; I'm having so many technical difficulties
7 this morning. My screen that I was reading from has gone
8 blank, so please excuse me just one second. I'm pulling this
9 out from the paper file.

10 Your Honor, he filed this application for post-conviction
11 relief on February 28th, 2019. The State made its return, and
12 in that return, made a motion to dismiss based on the
13 expiration of the statute of limitations. Mr. Shaeffer has
14 argued that the statute should be tolled pursuant to
15 circumvent (ph) due to his incapacity. And so the State's
16 position is that the first issue that needs to be resolved
17 this morning is the State's motion to dismiss based on the
18 expiration of the statute of limitations.

19 And I can go into a little bit more detail about that, or
20 I can let Mr. Phillips speak about that, but the witnesses are
21 here, Your Honor. Mr. Zuckerman (ph), he and Mr. Routzong, I
22 think, are both needed on the issue of the competency.

23 However, the substantive issues raised in the PCR application
24 are, you know, substantially the same issues that we'll likely
25 cover in the motion to dismiss. If Your Honor rules that the

1 statute has tolled and we go forth, then maybe, you know, a
2 few additional questions, but it's substantially the same
3 ground.

4 THE COURT: Okay. I'll let everybody question all their
5 witnesses for the record. I'm not going to make a ruling and
6 then cut people's legs out from underneath them since
7 everybody is here and ready.

8 All right. So you kind of got cut off. You started to
9 tell me about his appeal and then your screen went blank and
10 then you jumped into the PCR. So what happened to the appeal?

11 MS. McCALLISTER: I'm sorry, Your Honor. He did not
12 file -- he did not appeal his conviction or sentence in terms
13 of the plea. He just filed this application in February 2019.

14 THE COURT: Okay. So he has not appealed his sentence
15 yet.

16 MS. McCALLISTER: No, ma'am.

17 THE COURT: Okay. All right. Well, let me hear from
18 Mr. Phillips now. Switching over to you, Mr. Phillips, you're
19 going to tell me a little bit about what your plan to argue
20 and then call your first witness.

21 MR. PHILLIPS: Thank you, Your Honor. If you want, I can
22 address solely the tolling issue first or I can address the
23 merits as well as far as the issues that we'd be presenting
24 here at the hearing.

25 THE COURT: I mean, go ahead and do both. It matters not

1 up to me in what order. However you want to do it.

2 MR. PHILLIPS: Thank you, Your Honor.

3 Well, the Applicant moves for an equitable tolling of the
4 statute of limitations for the PCR court to consider its
5 claims of ineffective assistance of counsel based on a
6 subsequent report done or evaluation done by Dr. Geoffrey
7 McKee on December 9th of 2018. We're arguing that *Ferguson v.*
8 *State*, 382 S.C. 615, it's a 2009 Supreme Court case, stating
9 that, when a person's health -- his mental capacity is an
10 extraordinary circumstance sufficient to toll the statute of
11 limitations in which to file PCR.

12 With the evaluation that was conducted by Dr. McKee,
13 we're of the opinion that statute of limitations tolling is an
14 extraordinary circumstance in this case and is sufficient to
15 toll the statute of limitations because Mr. Shaeffer meets
16 that definition provided under the capacity that's listed in
17 *Ferguson v. State*. And we'll address the merits after this
18 hearing, Your Honor.

19 THE COURT: You may call your first witness then.

20 MR. PHILLIPS: Yes, Your Honor. The Applicant calls
21 Geoffrey McKee.

22 THE COURT: Dr. McKee, if you could raise your right hand
23 for me.

24 DR. GEOFFREY MCKEE,

25 the witness, after having been duly sworn, was examined and

1 testified to as follows:

2 THE COURT: All right. Thank you so much. Please state
3 your name for the record and spell your last.

4 THE WITNESS: My name is Geoffrey R. McKee. First name
5 is spelled G-e-o-f-f-r-e-y. Last name is McKee, M-c-K-e-e.

6 THE COURT: All right. Thank you so much.

7 Mr. Phillips, go ahead.

8 MR. PHILLIPS: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. PHILLIPS:

11 **Q** Dr. McKee, if you could, explain to the Court a little
12 bit of your background and history.

13 **A** I received my Ph.D. in psychology from the University of
14 Missouri in Columbia in 1969, and then taught in Northern
15 Arizona University in Flagstaff, Arizona, from 1970 to 1976,
16 wherein I became the chief psychologist for the local
17 community mental health center.

18 Subsequent to that, I have practiced in the field of
19 forensic psychology since 1976, earning the diplomate in
20 forensic psychology, American Board of Professional
21 Psychology.

22 I then came to South Carolina in 1985 as chief
23 psychologist for the Forensic Psychiatry Service of the State
24 of South Carolina and also had an affiliate appointment with
25 the medical school. I entered the Department of

1 Neuropsychiatry Behavioral Sciences as a co-founder of the
2 Forensic Psychiatry Training Program, a fifth-year residency
3 program for psychiatrists who have -- who had been -- finished
4 residencies in either adult or adolescent and child
5 psychology.

6 For 27 years, I was the chief psychologist of -- for the
7 Department of Mental Health, and, in that capacity, for
8 approximately 15-plus years, I was chief psychologist in the
9 Forensic Evaluation Service conducting competency to stand
10 trial and criminal responsibility evaluations for the courts
11 in South Carolina.

12 I subsequently was asked to join the sexually violent
13 predator treatment program, evaluation process, which I did,
14 until I retired from the Department of Mental Health in 2011.

15 From 1986 forward, I have had a part-time practice in
16 forensic psychology, principally in criminal forensic
17 psychology but also, for approximately 35 years, in domestic
18 psychology as well.

19 Since 2016, my practice has been restricted solely to
20 criminal forensic psychology, doing second opinions on
21 competency and criminal responsibility as well as evaluations
22 or aid in sentencing for persons charged with felonies,
23 including murder and criminal sexual assault.

24 **Q** Dr. McKee, in the course of your career, how many
25 evaluations have you done?

1 **A** Somewhere around 3,000, I would imagine. 3500.

2 Something like that. It rounds out around a hundred a year.

3 **Q** And how many times have you testified in South Carolina
4 state court?

5 **A** In South Carolina state courts, I have probably testified
6 somewhere around 200, 250 times.

7 **Q** How many times have you been qualified as an expert in
8 forensic psychology in South Carolina state court?

9 **A** Well, every time I have testified.

10 **Q** Is there any other background information regarding your
11 education, training, or licensure or teaching experience that
12 you think is necessary to provide the Court?

13 **A** Well, I have done quite a bit of research in the area of
14 competency to stand trial. Early on in 1986 through about
15 1994, when I was part of the Hall Psychiatric Institute where
16 the Forensic Psychiatry Service was, I was the lead or sole
17 author on a number of publications on competency to stand
18 trial, in particular competency to stand trial in juvenile
19 respondents but also adult defendants and defendants with low
20 IQs.

21 **MR. PHILLIPS:** Your Honor, I emailed to you, in addition
22 to the case law, Mr. -- or Dr. McKee's C.V. If we could, I
23 don't necessarily have to share my screen to show it to
24 Dr. McKee, but I think we -- you know, as far as the steps --
25 if the State doesn't -- at this time we --

1 THE COURT: I'm going to ask (inaudible). We can jump
2 through a few hoops.

3 Any opposition to Dr. McKee offering expert testimony in
4 the area specifically of competency? Is that correct,
5 Mr. Phillips? Do you want a little bit more specific than
6 that?

7 MR. PHILLIPS: Yes, Your Honor. We would move to qualify
8 Dr. McKee as an expert in forensic psychology.

9 THE COURT: Okay.

10 MR. PHILLIPS: And, essentially, criminal responsibility,
11 competency to stand trial.

12 THE COURT: Any opposition from the State to his
13 testimony being offered for that purpose today?

14 MS. McCALLISTER: No, ma'am.

15 THE COURT: All right. Without opposition, he'll be
16 deemed expert in that area. He can go ahead and provide
17 testimony, please. Go ahead, Mr. Phillips.

18 MR. PHILLIPS: Thank you, Your Honor. And just for a
19 matter of the record as well, we would move Dr. McKee's C.V.
20 into evidence.

21 THE COURT: It will be marked Applicant 1. We just need
22 to make sure that you email that to the court reporter, most
23 importantly. That's the...

24 (Applicant Exhibit No. 1, McKee C.V., was marked for
25 identification and received into evidence.)

1 MR. PHILLIPS: And as far as -- if she could just shoot
2 me a message here, I'll make sure I'll email everything over.
3 I just need to get her email address.

4 THE COURT: Okay. It should be LDavis@sccourts.org.
5 Okay. Go ahead.

6 MR. PHILLIPS: Thank you, Your Honor.

7 THE COURT: Sorry. It's LF. L as in "lima," F as in
8 "Frank," Davis@sccourts.org. All right. Go ahead.

9 MR. PHILLIPS: Perfect. Thank you, Your Honor.

10 BY MR. PHILLIPS:

11 **Q** Dr. McKee, in this matter, were you in a position to
12 review Jerry Shaeffer as far as a competency evaluation?

13 **A** I did. I was contacted by you in November of 2018, and
14 on December 7th, 2018, I conducted a competency to stand trial
15 evaluation of Mr. Shaeffer.

16 **Q** And how long did you meet with him?

17 **A** Approximately an hour and 20 minutes.

18 **Q** And what questions did you ask him during that time
19 period of the evaluation?

20 **A** Well, I initially collected a personal history from him,
21 asking him questions in a number of different areas: His
22 educational and vocational history, his personal and initial
23 family history, his alcohol and drug history, his prior
24 criminal history, his medical and mental health history, and
25 his interpersonal and marital history.

1 I then administered a variety of different well --
2 thoroughly researched, widely used methods to assess
3 intellectual functioning and literacy and the issue of
4 competency to stand trial. And as I say, all of that took
5 approximately an hour and 20 minutes.

6 **Q** And what was the relevant history that you found during
7 your examination of Mr. Shaeffer?

8 **A** Well, the relevant history was that Mr. Shaeffer, early
9 on in his academic career, if you will, had been in special
10 education programs beginning in elementary school. That's
11 significant because it indicates that, at a very young age,
12 school personnel are identifying someone as needing additional
13 help for reading, arithmetic, comprehension, things of that
14 sort.

15 He finished, I believe, some six or seven grades, and
16 then, as a teenager, he went out in the world of work, if you
17 will, and held a series of low-wage very menial and repetitive
18 kinds of tasks which, again, suggested, among other things,
19 lower intellectual functioning.

20 And so those sorts of historical facts, if you will,
21 suggested to me that there might be some evidence of low
22 intellectual functioning, although, that's a matter of
23 empirical testing but at least it was significantly
24 sub-average intellectual functioning.

25 **Q** As to the psychological testing, what was your findings

1 after conducting that examination?

2 **A** Well, since 1999, the most widely used test for
3 intelligence is the Wechsler Abbreviated Scale of
4 Intelligence, abbreviated as the WAIS. And that has two
5 subtests that are directly relevant to the issues of
6 competency to stand trial, and those are basic vocabulary and
7 does this individual have a fund of words that would reflect
8 his level of cognitive function. That's called the vocabulary
9 subtests.

10 The other tests -- sub-tests of the WAIS addresses a
11 level of abstract reasoning, and we know from decades of
12 research that the higher the abstract reading -- excuse me --
13 abstract reasoning of a respondent, the higher the IQ likely
14 is. And the similarity subtest is administered by asking the
15 subject to indicate in what way two different things are
16 aligned.

17 For example, in what way are grapes and strawberries
18 aligned? Well, if the individual says they're not aligned,
19 that's a zero response. If they say, Well, you can eat them
20 both, that's a one-point response. But if they say fruit,
21 that's a two-point and the highest score that you can get on a
22 particular item. And the fruits indicate a category which is
23 much more abstract.

24 When I administered this test to Mr. Shaeffer, his
25 scores, both on the vocabulary subtest and on the similarities

1 subtest, fell within the lowest 1 percent of the population.
2 The lowest 1 percent of the population with respect to
3 intelligence correlates to a diagnosis of intellectual
4 disability or what we used to call mental retardation. And so
5 that was an indication of low functioning.

6 The second thing that I did -- shall I just continue
7 or --

8 MR. PHILLIPS: Yes, as far as if Your Honor wishes, I
9 think just for expediency.

10 THE COURT: That's fine. Yeah, I mean, you know, I don't
11 need you to get real specific. I want you to put on the
12 record what you feel like you need to put on the record to
13 protect your client, Mr. Phillips, but -- is his report also
14 going to be made an exhibit today?

15 MR. PHILLIPS: Yes.

16 THE COURT: I mean, obviously, you know, I have got a
17 copy of that as well, so, you know, feel free to hit the high
18 points and move on. We do have, you know -- we don't have all
19 day; I have several other proceedings that I have got to do
20 today as well so, you know -- and we have to give, obviously,
21 the State an opportunity. So let's just start and move it
22 along, if you don't mind.

23 MR. PHILLIPS: I understand, Your Honor.

24 BY MR. PHILLIPS:

25 Q Dr. McKee, as far as his IQ, if you could, explain your

1 findings specifically for the Court.

2 **A** Well, in terms of intellectual functioning on the basis
3 of his scores on the WAIS, his score fell in the lowest
4 1 percent, which is correlated with our diagnosis of
5 mild/moderate intellectual disability. That was also
6 corroborated by his lowest 1 percent score on the wide range
7 achievement reading subtest, suggesting that he has not been
8 able to acquire sufficient reading abilities. So that posed a
9 high -- hand in hand.

10 When you have somebody who presents with low intellectual
11 functioning or really any kind of psychiatric diagnosis in a
12 forensic setting, the competing diagnostic question is one of
13 malingering, which is does the person want the examiner to
14 think that she or he has very low intellectual functioning or
15 has psychiatric problems, hallucinations, delusions, and so
16 forth.

17 And the way in which I assess malingering in
18 intellectually disabled individuals is to administer the
19 information and orientation scale of the Wechsler memory
20 scale, third edition. These are items that deal with simple,
21 overlearned, frequently repeated experiences in one's life,
22 such as, what is your full name, how old are you, when were
23 you born, where were you born, what was your mother's first
24 name, who is the President of the United States, who is the
25 person before that president, and so forth. What month is it,

1 what year is it, and so forth.

2 Persons who try and malinge intellectual disability, in
3 my experience -- and I have used this scale for decades now --
4 will end up having scores of four or five out of the total
5 score of 14. Mr. Shaeffer, when I administered the score --
6 that particular scale, had a score of 12 out of 14, suggesting
7 that he did have long-term memory of very common events in his
8 life, and he was able to recall them easily. Had he had a
9 very, very low score on that information and orientation
10 scale, I would have had some concerns about malingering, but
11 the results were I did not believe that he was malingering,
12 both intellectual functioning, and that his diagnosis was most
13 probably mild to moderate intellectual disability.

14 **Q** And what do you estimate Mr. Shaeffer's IQ to be?

15 **A** Somewhere around 60. Maybe as high as 65. But certainly
16 below 70, which is commonly seen as a red line of some sort,
17 kind of fuzzy, but a line separating intellectually disabled
18 from higher IQ people.

19 **Q** Now, as far as your assessment on the competency to stand
20 trial, what was your findings regarding his factual
21 understanding of the proceeding?

22 **A** Well, as I indicated on my report on page 3, in terms of
23 factual understanding, he was able to approximate the type of
24 charge that was against him. He did not specify the number of
25 counts. He did not specify any more than sexual charge with a

1 minor. Had told me, he said, was almost 15 years old. And he
2 was -- had the factual understanding that he was sentenced to
3 40 years in prison.

4 But the factual understanding also involves what -- who
5 are the important parties in a trial, including the solicitor
6 and the public defender -- excuse me, the defense attorney,
7 the witnesses, the judge, and so forth, and he did not know
8 who the defendant was in his case. He thought it might be the
9 kid who was the victim. He was unable to place the location
10 of the solicitor or testifying witness in a drawing that I
11 used of a courtroom. He knew that his private attorney was a
12 public defender but he knew -- you know, he had no idea of who
13 he would ask if he wanted more information about the court.

14 So in the factual understanding prong, he showed a number
15 of deficits. In the rational understanding, which is it's --
16 has to do with controlling his behavior in court and
17 understanding probation and sentences and so forth, he, again,
18 showed deficits. He was unable to say what he wanted the
19 judge to know about him in court if he were asked. He's
20 unable to explain why talking to a solicitor without his
21 attorney present would be damaging to himself and to his case.

22 And then, lastly, the third prong, on ability to assist,
23 he was unable to explain plea bargaining. It's a somewhat
24 abstract component of court, but he did not know what that
25 was. He didn't know whether he could be forced to accept a

1 plea bargain. He didn't know why telling his lawyer
2 everything about his case was going to help him and his
3 attorney's defense in the case.

4 I also had concerns that if he did decide to testify -- I
5 didn't advise him to testify; I never give any kind of advice
6 to persons that I'm evaluating -- but I had serious concerns
7 that, if he was called to testify, that he would have great
8 difficulty understanding the questions put toward him, not
9 only in terms of the questions on direct but, in particular,
10 questions on cross-examination.

11 So for all of these deficits and the diagnosis of mild to
12 moderate intellectual disability, I concluded that, at least
13 at the time when I saw him in December 2018, it was my opinion
14 that he lacked capacity to have a factual or rational
15 understanding of the proceedings against him and lacked the
16 capacity to assist his attorney in his defense due to
17 extremely low intellectual disability.

18 **Q** And so the last part, Dr. McKee, that's based on your
19 training and experience? That's your expert opinion?

20 **A** That is my expert opinion based on my training and
21 experience, yes.

22 **Q** And with that, going back, you said as of the date of
23 that evaluation, can you opine as to whether that would have
24 been isolated as a more recent event or something that would
25 have been present at the time -- obviously, you didn't

1 evaluate him at the time he had his plea hearing, but if you
2 could opine as to his intellectual disability, the onset, how
3 this would have applied back in May 18th of 2015, as best you
4 can as far as the research within a degree of your peers would
5 agree.

6 **A** Intellectual disability is a chronic and fairly
7 unchanging disorder that starts in childhood prior to age 18
8 and persists throughout the lifetime of an individual. And so
9 it would be my opinion that, because the principal diagnosis
10 in Mr. Shaeffer's case is intellectual disability at mild to
11 moderate level, it is likely that, earlier in his life, during
12 his -- the proceedings in 2014, he likely had intellectual
13 disability. He had intellectual disability when I saw him,
14 and he likely has it now.

15 It's not something that is changeable, that it's --
16 intellectual disability is not something that can be treated
17 or made to be higher in some particular way as it is with
18 other kinds of disorders that can be treated with medication,
19 for example; certainly schizophrenia and anti-psychotic
20 medications and restore someone to competency. But in cases
21 where you have very low intellectual functioning, it's a
22 persistent and unchanging mental disorder that produces really
23 lifelong incapacity.

24 **Q** Thank you, Dr. McKee.

25 Based on your training and experience, is it your expert

1 opinion that there's a reasonable probability that he was
2 incompetent at the time of his plea?

3 **A** Yes. It's likely that he was incompetent at the time of
4 his plea.

5 **Q** And based on your training and experience, is it your
6 expert opinion that he does not have the sufficient capability
7 to consult with his lawyer with a reasonable degree of
8 rational understanding and did not have a rational as well as
9 factual understanding of the proceedings against him?

10 **A** That is my opinion, yes.

11 **Q** Based on your training and experience, is it your expert
12 opinion that it would have been prudent for a defense attorney
13 to request what you know as or we know as a *Blair* hearing, a
14 competency hearing on the record with the plea judge prior to
15 proceeding?

16 **A** Yes. Based on what I found, had I been asked, I would
17 have recommended doing the evaluation to address the issues I
18 have discussed in my testimony.

19 MR. PHILLIPS: Your Honor, at this time, we would move
20 Dr. McKee's report into evidence as Applicant's Exhibit 2.

21 THE COURT: All right. Any objection to that being
22 admitted?

23 MS. McCALLISTER: No, Your Honor.

24 THE COURT: Okay. It will be marked as Applicant's No.
25 2. Once again, you'll need to email it to the court reporter

1 as well so it can be made part of the record today. Okay?

2 MR. PHILLIPS: Thank you, Your Honor.

3 (Applicant Exhibit No. 2, McKee Report, was marked for
4 identification and received into evidence.)

5 MR. PHILLIPS: Applicant has no further questions.

6 THE COURT: All right. Cross-examination by the State.

7 MS. McCALLISTER: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MS. McCALLISTER:

10 **Q** Dr. McKee, you have testified that this mild to moderate
11 intellectual disability is something that likely has existed
12 throughout Mr. Shaeffer's life. And you testified that it's
13 not necessarily treatable, but the things that you're talking
14 about such as his factual understanding of his case or, you
15 know, court procedures, did you attempt to do any sort of
16 education with him on those issues to see, you know, what he
17 was able to understand with education?

18 **A** Well, I asked him the questions and got his replies. I
19 did not give him specific education, for example, to say,
20 Well, what you should say in this kind of a situation is X or
21 Y.

22 The restoration of competence on the basis of the factual
23 understanding is very common. What's difficult to do,
24 especially with persons with intellectual disability, is the
25 rational understanding and the capacity for abstract reasoning

1 simply does not exist.

2 **Q** Okay. So if I'm understanding your testimony, with this
3 mild to moderate intellectual disability, you're not arguing
4 that -- that he's unable to be educated on topics or on
5 certain issues. He could go to school. He could -- he has
6 the capacity to learn.

7 **A** Well, he has some capacity to learn. Had I been asked to
8 do the evaluation back in, say, 2014, before his trial, I
9 would have likely concluded the same thing, that he was
10 currently incompetent to stand trial.

11 **Q** Okay. You're saying you likely would have concluded, but
12 you didn't actually speak to him in that time frame, did you?

13 **A** No, I did not. But competency evaluations, by statute,
14 if a person is deemed in the -- in the opinion of the expert,
15 the examiner, that the defendant is not presently competent,
16 then statutes mandate an opinion on whether they are
17 restorable, whether they're likely to be restored within a
18 period of 90 days or unlikely to be restored.

19 And had I seen Mr. Shaeffer back in 2014, I may well have
20 concluded that it would be worthwhile to try to educate him
21 up, if you will, to some level of competence and then have him
22 re-examined to see to what extent he had retained that
23 information.

24 **Q** Okay.

25 **A** My impression is -- oh, go ahead. Sorry.

1 Q So what I'm hearing you say is that, in fact, it is
2 possible to educate him sufficiently on the factual -- you
3 know, factual issues and factual understanding. It's possible
4 that he could have been sufficiently educated to the point
5 that his competence was restored or that he was competent.

6 A Well, I'm saying it's unlikely that he could. He could
7 go through some restoration, but one of the things that I
8 would do and have done routinely in cases where the defendant
9 is, in my opinion, incompetent, on the day of the *Blair*
10 hearing, had there been one, I would have re-examined him to
11 see the extent to which he had retained what he had learned.

12 Q Okay. And so you couldn't do that in this case because
13 your only examination of him was in December of 2018; correct?

14 A That's correct.

15 Q Okay. And so you don't know what education he received
16 from his -- through his attorney, talking with his attorney
17 about what was happening, and you don't -- you didn't evaluate
18 him on the day to know, on the day of his plea and, you know,
19 through -- up until -- any point up until -- any point up
20 until -- can you pinpoint an exact point between, you know,
21 the date of the plea and December of 2018 when -- assuming he
22 was competent on the day of the plea that he lost his
23 competency? I mean, can you say how long, if you're able to
24 educate him to make him competent, how long does that last?

25 A Well --

1 THE COURT: I'm sorry; that question was -- how about we
2 take that back. You need to kind of work on that question a
3 little bit. Go ahead.

4 MS. McCALLISTER: (Inaudible), Judge.

5 BY MS. McCALLISTER:

6 Q What I'm trying to ask is, you know, you have testified
7 that it's your opinion that maybe it was unlikely for him to
8 have been educated enough to be competent but it is possible.
9 So -- and you have testified that you don't know what
10 education he received through his conversations with his
11 attorney in preparation to enter the plea that might have
12 listed his factual understanding. You're saying that --

13 A That's correct.

14 Q Correct? That's correct?

15 A Yeah, that's correct. Yeah.

16 Q Okay. And you're saying that, had you been asked or
17 retained -- I guess retained or asked to consult on this case
18 back in 2015 or 2014, that you would have evaluated him, if he
19 was not competent, try to do some education, and then, on the
20 day of the hearing, you would have re-evaluated him to see if
21 competence had been restored? Am I understanding your --
22 stating what your procedure is?

23 A That's correct, yeah, whether whatever he had learned had
24 been retained.

25 Q Okay. And so, for the sake of argument, say he has been

1 sufficiently educated such that competence was restored, can
2 you give us, you know, any sort of length of time that the
3 restoration of competence lacked? Can you say for certain
4 when he became incompetent?

5 **A** Well, I can't give you a specific date. All I can say is
6 that it's been my experience over -- as a clinical forensic
7 psychologist, examiner, and researcher in the areas of
8 incompetency to stand trial and low IQ, that persons with very
9 low intelligence do not retain what they may have learned in a
10 restoration program or it can be a week -- they can't retain
11 it more than a week.

12 So it -- what I am sure of is that, when I saw him in
13 December of 2018, whatever he had learned before, he had not
14 retained at that point, and that's why I said that he does not
15 currently have sufficient factual and rational understanding
16 of the proceedings against him.

17 **Q** Okay. And so you can't say with certainty whether he had
18 sufficient factual and rational understanding starting on the
19 date of the plea and running for, you know, a year after. Can
20 you say that for certain?

21 **A** Well, no, not for certain. But opinions -- my
22 understanding is that the standard for opinions is more likely
23 than not. And when I -- I say it's unlikely that he had that
24 capacity, that's a standard I'm using based on what I have
25 found in my own examination of him that it was more likely

1 than not that he was not competent to stand trial.

2 **Q** Okay. And you're basing that on your interview with him
3 in December 2018 and what he told you in that interview and
4 the tests that you administered; is that right?

5 **A** That's correct.

6 **Q** Did you review any records from any time period previous
7 to December of 2018? Did you look at medical records or
8 mental health records or anything like that?

9 **A** I did not.

10 **Q** Okay. Did you look at his school records?

11 **A** I did not.

12 **Q** Okay. And he had -- he told you -- I believe you
13 testified that he was able to work. As a result, he worked
14 for a year; correct? Held jobs?

15 **A** He held jobs, yes.

16 **Q** Okay. And so you testified that he has, you know, low
17 reading comprehension and low vocabulary scores, but he -- did
18 that affect or do you have an opinion or did you make an
19 opinion on whether that affects, you know, the concept
20 explained to him orally or the ability to, you know, learn
21 orally instead of by reading?

22 **A** Well, the -- the vocabulary and similarity subtests are
23 orally administered instruments. And so his low performance
24 on those scores would reflect that he did not have the
25 capacity to understand orally presented material rather than

1 written material.

2 **Q** Okay. And you talked about -- as part of that, I think
3 that you talked about, you know, that he wasn't able to look
4 at a drawing of the courtroom and, you know, place the
5 solicitor in the correct place or place the witness in the
6 correct place in the courtroom drawing. The fact that he
7 can't place the solicitor on a courtroom drawing, does that
8 mean that he doesn't understand what a solicitor is and what
9 it means to be prosecuted or tried?

10 **A** No.

11 **Q** Okay. You testified that he did understand what the
12 charges were and --

13 **MR. PHILLIPS:** Your Honor, I'd like for the doctor to be
14 able to finish his answer.

15 **MS. McCALLISTER:** I'm sorry, I --

16 **THE WITNESS:** I had. I had finished my answer.

17 **THE COURT:** Sometimes it's hard to tell on here. Go
18 ahead.

19 **BY MS. McCALLISTER:**

20 **Q** And you testified that he did have an understanding of
21 what the charges were against him were, the factual basis of
22 the charges?

23 **A** Yes.

24 **Q** Okay. And he understood that he had pled guilty of a
25 sentence of 40 years?

1 **A** Yes.

2 MS. McCALLISTER: Okay. I think that's all, Your Honor.
3 If I may just have a little look through my notes here.

4 I think that covers everything for now, Your Honor, at
5 least on the issue of the tolling.

6 THE COURT: Okay. Let's move on. Does Applicant have
7 any other questions for Dr. McKee at this time?

8 MR. PHILLIPS: Very briefly, Your Honor.

9 THE COURT: All right.

10 REDIRECT EXAMINATION

11 BY MR. PHILLIPS:

12 **Q** The discussion regarding the education, to be clear,
13 based on your training and experience, it's your expert
14 opinion that it would have been unlikely, with education, that
15 he would have been able to be restored -- his competency
16 would have been restored; is that accurate to say, Dr. McKee?

17 **A** That's accurate, yes.

18 **Q** And with education, it's one generally where someone is
19 put in inpatient treatment for 60 days at the Department of
20 Mental Health. Is that the normal procedure?

21 **A** Yes. It is normal procedure as far as I know. I haven't
22 been doing -- you know, I haven't been with the Department of
23 Mental Health for ten-plus years now, but that's historically
24 what would have been done.

25 **Q** To be more specific, would it be in, in a medical

1 professional like yourself, a psychologist, or a psychiatrist
2 that would do the education process or an attorney? Which one
3 would obviously be in a better position to basically assess
4 mental health and to assure, as far as the education process,
5 that it's done properly?

6 **A** It would be a psychologist or psychiatrist trained in
7 forensics psychiatry or forensic psychology.

8 MR. PHILLIPS: Thank you, Your Honor. No further
9 questions.

10 THE COURT: Any recross from the State?

11 MS. McCALLISTER: No, Your Honor.

12 THE COURT: Any objection to Dr. McKee being released for
13 the remainder of today's proceeding?

14 MS. McCALLISTER: Yes, Your Honor. I mean, I think -- if
15 I -- maybe I mis --

16 THE COURT: That's fine. (Inaudible) the hearing, I
17 know. All right. Well, I'm not going to rule on the statute
18 of limitations issue right now, so we're going to have to just
19 roll on.

20 THE WITNESS: May I be excused then, Your Honor?

21 THE COURT: No, you can't. No, I guess -- I'm not sure
22 why, but they need to ask you some more questions. I have no
23 idea why they're not ready to release you. But, at any rate,
24 we'll move right on to it.

25 Mr. Phillips, do you have any other witnesses you'd like

1 to call at this time?

2 MR. PHILLIPS: At this time, no, Your Honor. I would
3 like to renew the arguments. I have no further questions of
4 Dr. McKee.

5 THE COURT: Okay. I'll allow you to argue shortly.
6 If the State would call its first witness.

7 MS. McCALLISTER: Thank you, Your Honor. We call Michael
8 Routzong. I don't see him as a panelist on my --

9 THE COURT: He must have logged off. Let's get him back
10 over. Routzong. Michael Routzong.

11 All right. Mr. Routzong, unmute and start video.

12 While you're doing that, we'll take about a two-minute
13 break. I have got somebody here I need to sign something for.
14 Thanks. We'll be at ease for about two minutes.

15 MR. PHILLIPS: Thank you, Your Honor.

16 (A brief recess was taken from 10:36 a.m. to 10:49 a.m.)

17 THE COURT: All right. Good morning.

18 THE WITNESS: Good morning, Your Honor.

19 THE COURT: All right. I believe the State is going to
20 begin by calling you as their first witness.

21 Is that right, Ms. McCallister?

22 MS. McCALLISTER: Yes, Your Honor.

23 THE COURT: All right. So I'll go ahead and swear you
24 in, sir. I'll ask you to raise your right hand, please.

25 ///

1 MICHAEL ROUTZONG,
2 the witness, after having been duly sworn, was examined and
3 testified to as follows:

4 THE COURT: Please state your full name and spell your
5 last.

6 THE WITNESS: Michael David Routzong. R-o-u-t-z-o-n-g.

7 THE COURT: Thank you so much, Mr. Routzong.

8 MS. McCALLISTER: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MS. McCALLISTER:

11 Q Mr. Routzong, you represented Mr. Shaeffer in this action
12 that we're here on today; correct?

13 A That is correct.

14 Q And did you represent him -- how long did you represent
15 him for? What was the length of your representation?

16 A From the time he was incarcerated until the plea that I
17 got appointed, I don't have access to my defender data because
18 the internet went down.

19 Q Okay. So approximately a year? Two years?

20 A It looks like it was about a year. It might be a little
21 bit longer. My recollection is probably is little bit longer
22 than a year.

23 Q Okay. And during the course of your representation of
24 him, did you -- you met with him to talk about the case and
25 talk about the charges; correct?

1 **A** Yes, ma'am.

2 **Q** Approximately how many times would you estimate that you
3 met with him?

4 **A** Several. I have notes. It looks like it was several
5 times. Probably the first one was in March of 2014. And then
6 there were several occasions after that --

7 **Q** Okay.

8 **A** -- I talked with him.

9 **Q** Okay. And did you also communicate with him by phone or
10 mail?

11 **A** Yes, ma'am, both. I didn't -- our office actually
12 probably communicated with him by mail in my name, but I spoke
13 to him on the phone, yes, ma'am.

14 **Q** Okay. And you heard the testimony here today of
15 Dr. McKee; correct? Were you able to hear that?

16 **A** I heard a substantial amount of it, up to the point where
17 you began your cross-examination of him, and I think my
18 connection dropped.

19 **Q** Okay. So you heard -- did you hear the proffered or
20 received testimony that he believed that it is likely that
21 Mr. Shaeffer was not competent at the time of the plea?

22 **A** I did.

23 **Q** Okay. And in your interaction with Mr. Shaeffer, in your
24 conversations with him, was he able to discuss his case with
25 you?

1 **A** Yes, ma'am.

2 **Q** Was he able to discuss the facts of the case?

3 **A** Yes, ma'am.

4 **Q** Was he able to ask you questions or respond in an
5 intelligent manner to your discussion?

6 MS. JAMES: Your Honor, I'm going to have to object to
7 leading.

8 THE COURT: Rephrase the question.

9 BY MS. McCALLISTER:

10 **Q** You testified that he was able to discuss the case with
11 you; correct? Did he ask you questions about his case?

12 **A** I don't specifically have any notes in reference to the
13 questions he -- that he asked me. My recollection is, if we
14 had a conversation, I would call it a fairly normal
15 conversation between the defense attorney and his client.

16 **Q** Okay. Did you explain to him the elements of the charges
17 that he was facing?

18 **A** Yes, ma'am. I do have a specific note. It's not very
19 detailed. I have the note from March of 2015 that says we
20 discussed his plea and possible outcomes. The other notes I
21 think mostly were my -- my recording of what he told me.
22 Probably not anything that I told him. But I don't really
23 have any specific notes. I can say my normal procedure would
24 be to, at some point, go over the elements of the charges.
25 And, clearly, he knew -- I felt he knew that -- why he was

1 incarcerated.

2 Q Okay. And did you explain to him -- well, let me back
3 up.

4 How did his decision to plead guilty come about?

5 A I -- I don't recall whether or not we were on the verge
6 of having a trial. I think in a case like this, my normal --
7 my normal procedure would be to -- of course you try to get
8 somebody out on bond, and as a defense attorney, I think the
9 case tends to get better the longer you wait. I probably --
10 what I probably did with Mr. Shaeffer was wait until the issue
11 was forced, when I became aware that they were probably going
12 to be a trial at some point in time in the near future. I
13 don't think the plea offers were ever going to get any better.
14 I don't know that we actually ever had a plea offer. It was
15 probably straight up and no recommendation from the State.
16 That was probably a normal offer from the Second Judicial
17 Circuit Solicitor's Office on a case like this.

18 Q Okay. I guess what I'm trying to get at is, did you talk
19 to him about the fact that he had a choice --

20 MR. PHILLIPS: Objection. Leading.

21 THE COURT: I'm going to allow it and just allow her get
22 through the testimony. Overruled.

23 Go ahead.

24 BY MS. McCALLISTER:

25 Q Did you talk to him about the fact that he had a choice

1 if he was pleading guilty and proceeding to trial?

2 **A** I do not have any specific notes that I can lay my hand
3 on. I can say my recollection is somewhat vague because
4 there's -- this has been a few years ago and many clients ago,
5 but my normal procedure would, of course, be to say, "Hey, you
6 can go to trial."

7 I don't recall Mr. Shaeffer ever wanting to go to trial.
8 I think Mr. Shaeffer did not want to go to trial. That was
9 the -- that is the memory that I have of Mr. Shaeffer and my
10 conversations on that topic.

11 **Q** Okay. And these conversations that you had about the
12 charges and, you know, how you were going to resolve them,
13 either plea or a trial, did Mr. Shaeffer appear to understand
14 those conversations with you?

15 **A** I -- I never -- I did not have -- I do not have any
16 recollection of ever having any problems communicating with
17 Mr. Shaeffer about the charges or the possible outcomes. As a
18 defense attorney, I try to keep a close eye on such matters.

19 I did have some indication -- my memory was somewhat
20 refreshed this morning from a report that -- or an evaluation
21 I had done, it looks like, in 2015, and I don't think that the
22 report was specifically about whether or not he was competent.
23 It was more or less kind of a psychological or psychiatric
24 evaluation that was done then. And the report said that he
25 was low functioning. But it doesn't say he was incompetent

1 anywhere in the report. But I don't know that that was an
2 issue that they were trying to take up. I think they kind of
3 separated those two issues.

4 But, you know, in the conversation with Mr. Shaeffer, I
5 felt like he knew he was in trouble, he knew I was there to
6 help him, he knew what law enforcement was supposed to do in
7 terms of enforcing law. I knew that he had retired from -- I
8 think it was Lordstown up in Ohio; that would have been
9 General Motors, is my recollection at least. And so, clearly,
10 he was able to keep a job at least long enough to retire from
11 General Motors.

12 He lived by himself. He told me what happened. I think
13 he offered a defense to law enforcement. At least initially,
14 one of his defenses was, when he was confronted by the
15 pictures of the victim in his phone, he said to the person
16 that was confronting him, "Well, I didn't take those. The
17 young man took it of himself."

18 And I have a note here in front of me that says -- that
19 was written by Mr. Shaeffer that said -- he says, "I felt like
20 I was a big brother to [REDACTED]." That was the victim in
21 the case. "I wanted to have fun, love, but a bad thing
22 happened" --

23 MR. PHILLIPS: Your Honor, hearsay. The document is not
24 admitted into evidence.

25 MS. McCALLISTER: Well, Your Honor, (inaudible) a file

1 and it goes to the allegation, so --

2 MR. PHILLIPS: Well, I don't have (inaudible).

3 THE COURT: His defense is actually in the record on the
4 police transcript, so I don't know if you just want to refer
5 to that. It might be easier. I mean, I don't have a problem
6 with that. I think if you refer -- I have reviewed the
7 transcript of the plea, and most of this is addressed in his
8 mitigation. Go ahead. Maybe he's (inaudible), but I'd be
9 happy to hear it.

10 BY MS. McCALLISTER:

11 Q Mr. Routzong, let me just ask you a different question.
12 In your discussions and your conversations with Mr. Shaeffer
13 at the time, did he appear to understand what the role of the
14 judge was?

15 A I had -- the most accurate way I can answer it -- that
16 question is I never had any concerns about Mr. Shaeffer in any
17 aspect of his understanding about the charges, my role, the
18 State's role. And I don't know that I ever asked him --
19 because I didn't really -- I don't really ask that question
20 until I have concerns about whether or not they're competent.

21 So the best way I can answer that, because I didn't have
22 any concerns about his competency, I didn't ask that specific
23 question.

24 Q Okay. And have you -- have you dealt with clients before
25 who you did have concerns about their competency or their

1 ability to understand what was happening?

2 **A** Yes, ma'am.

3 **Q** Okay. And if you thought that Mr. Shaeffer was not
4 competent to stand trial or there was some questions about his
5 competency, what would you have done?

6 **A** I would have gotten an evaluation ordered from our judge.

7 **Q** Okay. And have you done that in other cases, made that
8 request?

9 **A** Yes, ma'am.

10 **Q** Okay. Have you dealt with clients who maybe have some
11 issues and complication or functioning that don't necessarily
12 rise to the level of incapacity?

13 **A** Yes, ma'am.

14 **Q** Okay. And is that something that you would have looked
15 for or assessed in your conversations and interactions with
16 your client?

17 **A** Yes, ma'am.

18 **Q** And were you looking for those sort of flags or signs in
19 your conversations and interactions with Mr. Shaeffer in this
20 case?

21 **A** With every defendant, if I feel like there's something
22 that becomes an issue, then I tend to investigate it further
23 by asking specific questions. I didn't have those concerns
24 with Mr. Shaeffer.

25 **Q** Okay. On the day of Mr. Shaeffer's plea, did you feel

1 that he was competent to enter a plea?

2 **A** Yes, ma'am.

3 **Q** Okay. Did you -- did you instruct him on how to answer
4 the judge when he went into the courtroom? Did you tell him
5 how to answer questions?

6 **A** I don't recall any kind of instructions like that. I
7 would have gone over his rights that he was waiving and would
8 have gotten a response that he understood that before we went
9 in.

10 **Q** Okay. So you would discussed with him his rights that he
11 was waiving, the charges, the possible sentences; is that
12 correct?

13 **A** Yes, ma'am. We had that discussion.

14 **Q** Okay. And did he appear to understand that without
15 complication?

16 **A** I would not have gone forward if I didn't feel like he
17 understood. I would have -- I would not have gone forward.

18 **Q** Okay. Was he speaking coherently that day?

19 **A** I'd have to answer the same question, the fact that --
20 the question the same way. If there were any issues about
21 coherency or competency or not understanding, I would not have
22 gone forward. It's hard for me to honestly tell the Court
23 that I can remember specifically the -- the conversation with
24 Mr. Shaeffer prior to going in. But I wouldn't have gone
25 forward if I had any concerns.

1 Q Okay. And so he never -- he never indicated to you that
2 he didn't understand what was happening or why he was here?

3 A I never -- I do not -- I would not have -- I would have
4 addressed it if I had had those concerns. I did not have any
5 of those concerns. I felt like we had had conversations about
6 his case, and I never had any feeling that he didn't fully
7 understand what was going on.

8 MS. McCALLISTER: Okay. I think that's all the questions
9 I have for Mr. Routzong.

10 THE COURT: All right. Cross-examination?

11 MR. PHILLIPS: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. PHILLIPS:

14 Q Good morning, Mr. Routzong. How are you?

15 A Good morning, sir. I'm fine so far.

16 Q Yes, sir.

17 So with your dealings with Mr. Shaeffer, did you ever
18 come to learn that he had taken special education courses
19 growing up?

20 A I did. I have the report. We did an evaluation, and it
21 specifically says in the report he was enrolled in special
22 education classes from elementary school until 8th grade.

23 Q Now, that report is not a competency to stand trial
24 evaluation. I want to be clear. Is that right?

25 A That's correct.

1 Q That evaluation's main focus is on sexual recidivism,
2 sexual -- sexual risk assessment type evaluation?

3 A Yes, sir. I believe that was my purpose in getting it.

4 Q But nothing to do with his competency or criminal -- or
5 criminal capacity, any of that?

6 A No, sir. I'd have to answer that as correct.

7 Q Now, knowing with the special education courses, going to
8 the specific, did you ever have any conversations with him
9 regarding what your role is as defense attorney, what the
10 prosecutor role is as the solicitor, what the judge's role is?
11 Did you ever go into that process of trying to explain the
12 different roles to see if he truly understood what you said or
13 was merely parroting back or answering in the affirmative in
14 basic conversation regarding his case?

15 A I have no recollection of asking him those specific
16 questions, and I don't see any notes that I ever asked him
17 those specific questions.

18 Q And so as far as the general procedure of the Court and
19 the role with the adversary system, you don't have any notes
20 or recollection as to whether you went into that whole
21 procedure and the role of each individual party?

22 A I have no -- I have no recollection or notes regarding
23 that. So I would have to say I don't believe I -- I don't
24 believe I ever asked him those specific questions. If I did,
25 I don't have any notes on it.

1 Q And, as you say that, on direct, you never moved to have
2 an order for a competency evaluation in this case?

3 A That is correct.

4 Q And you never moved, prior to the plea hearing, to have
5 an on-the-record *Blair* hearing with the plea judge?

6 A That's correct.

7 Q When you had that person conduct that evaluation, did you
8 discuss having the competency to stand trial evaluation with
9 that prior evaluation that you said you had done? Was that
10 ever a conversation that you had with that evaluator?

11 A I don't believe I ever had such conversation.

12 Q Did you ever seek to obtain any of the mental health
13 records or school records of Mr. Shaeffer?

14 A No, sir.

15 Q In discussing with him his potential defenses, his
16 constitutional right to a jury trial, his right for
17 confrontation, his right to present a defense, his right to
18 not present a defense and to remain silent and essentially the
19 overall procedure of trial rights, when you reviewed that with
20 him, did you ask him (inaudible) to explain whether he would
21 have understood that, or did you just advise him of those
22 rights?

23 A I don't have any specific recollection of that
24 conversation nor do I have any notes. I can say with every
25 client, without exception, I have always explained their

1 rights. And I take great pains to do that. And I assure
2 myself that they understand that, in my opinion.

3 **Q** Absolutely. And I certainly don't dispute that you would
4 have advised him of his rights, but did you have any
5 conversation with him to understand whether his responses to
6 your advice of those rights -- the advisement of his
7 constitutional rights, whether he truly understood what you
8 were explaining to him? Similar to the questions that we had
9 as far as his actual understanding of the parties and the
10 procedure, as far as the constitutional rights were concerned,
11 did you ever have that act or that colloquy with him that
12 would be -- for you to be able to feel satisfied that he
13 understood, you know, his understanding of the proceedings and
14 his constitutional rights, or was it you just advising him of
15 his rights?

16 **A** I would have to answer that question like this: I have
17 no recollection of any conversation with Mr. Shaeffer about
18 those topics. And if I understand your question correctly,
19 what you're asking me is that -- pretty much that did I go
20 into a detailed explanation and have him repeat to me his
21 understanding of what I just said? And I would dare say I did
22 not do that. I have no recollection nor do I have any notes
23 of that. That would not be normal for me, unless somebody
24 looked at me very -- in a very perplexed way and then I would
25 probably say, "Do you understand?"

1 I always ask people do they understand, but I would have
2 to say, up to that point in time, I didn't really have any
3 concerns about his competency. I had conversations with him.
4 So I would probably have to say that I wouldn't have done that
5 because I would have felt that he did understand.

6 **Q** And you were aware, though, again, that he had special
7 education classes, that he would have had possibly an
8 intellectual disability and low IQ?

9 **A** Yes, sir. I don't know that we -- I had a -- I don't
10 think, in my report, I had an IQ -- opinion on his IQ, but
11 they clearly said that he was -- he was low --

12 MR. PHILLIPS: Objection to hearsay.

13 THE COURT: It's fine. Overruled. Go ahead.

14 BY MR. PHILLIPS:

15 **Q** It's favorable, you said, so you were notified that he
16 was low functioning.

17 **A** Yes, sir, that would be -- I think that would be -- I
18 don't know that that's the quote, but I would -- that would be
19 a way I would give the case to the Court, that if that was my
20 understanding at the time.

21 **Q** So, prior to the plea, you knew he had special education
22 courses -- attended special education courses that your
23 evaluation that was mainly focused on sexual recidivism and
24 sexual risk assessment, that act -- evaluator commented on
25 that, that he was of, you know, potentially low understanding

1 or, you know, his competency level was definitely was
2 certainly at issue. Based on that, you never felt it was
3 necessary to even request a competency to stand trial
4 evaluation?

5 **A** I -- just to correct the record, I don't think the report
6 says anything about his competency, but it does say there are
7 issues there. I did say probably with a great percentage of
8 our clients that that can be an issue, that they're low
9 functioning.

10 So the answer to your question is: I don't think the
11 report addresses the issue of competency, but it does address
12 the issue that there are problems with his -- with his -- it
13 referred to IQ, and I would have to say his intellect or his
14 ability to function more completely, I'll put it that way.

15 **Q** Well, and knowing that prior to the plea hearing, you
16 didn't request competency to stand trial order or bring it to
17 the attention of the plea court for them to conduct an
18 on-the-record *Blair* hearing?

19 **A** No, sir, I did not.

20 MR. PHILLIPS: No further questions, Your Honor.

21 THE COURT: Redirect?

22 MS. McCALLISTER: Yes, Your Honor.

23 REDIRECT EXAMINATION

24 BY MS. McCALLISTER:

25 **Q** Okay. This -- this report that you just testified about

1 indicated to you that he potentially had some issues in his
2 ability to function and that he was in special education
3 classes. And I believe I just heard you say that you -- that
4 that's a fairly normal report or the types of clients that you
5 deal with; correct?

6 **A** Yes, ma'am. I think a good way of putting it maybe would
7 be that -- well, what Mr. Shaeffer told these folks -- and he
8 used the word "slow," and I think that would probably be a
9 good way to characterize it. I never doubted that he was
10 competent. I had evidence that he was slow. A lot of folks
11 are slow and -- that we deal with.

12 **Q** Okay. So knowing that he was quote/unquote "slow," you
13 have that in your mind, and so these conversations that you
14 had with him about the case and about the plea, were you able
15 to sort of tailor those conversations knowing that
16 Mr. Shaeffer may have some sort of intellectual issues?

17 MR. PHILLIPS: Objection. Leading.

18 THE COURT: Overruled.

19 You can answer.

20 **A** My recollection of our conversations, that I would call
21 them pretty much normal. Mr. Shaeffer's from Ohio. I'm from
22 Ohio. We talked about Ohio. We talked about his job. He
23 talked about his family. I spoke to his family. They would
24 have -- he told me how to get in touch -- well, I think his
25 family actually called me. We talked about the events of this

1 particular incident. I can say that I didn't have any
2 concerns that I was -- that Mr. Shaeffer was -- was -- he
3 indicating to me in an odd or bizarre way. It felt like a
4 normal conversation.

5 **Q** And in your experience as an attorney, since everyone who
6 is maybe slow or have an intellectual disability, are those
7 people always incompetent as well?

8 **A** Clearly not because a lot of folks that we're dealing
9 with, I think most of them probably don't make it past the
10 11th grade or maybe even 9th grade, and a lot of times,
11 they're not functioning at a level to even complete high
12 school, but they know what they're doing and they know what
13 they're not supposed to do.

14 I didn't have any concerns about Mr. Shaeffer in that
15 regard.

16 **Q** Okay. And in your defenses with him about the case, in
17 your opinion, did he know that what he had done was wrong?

18 **A** I had some evidence that he did know because, for a
19 couple of reasons, he presented a defense to the mother of the
20 victim by saying it wasn't him, that the victim took the
21 picture of himself. And also, when the search warrant was
22 served, I think he said to the police, "I knew you were
23 coming."

24 So, you know, he knows that -- he knew what he -- he
25 knew -- he knew this was wrong and he knew that the police

1 were coming and he tried to disguise the fact that the
2 pictures were in his phone, but he gave a defense as to that
3 it wasn't him, it was somebody else. So you wouldn't do that
4 if you didn't think that it was --

5 MR. PHILLIPS: Speculation.

6 BY MS. McCALLISTER:

7 Q And I think you may it clear that -- that you testified
8 that, if you had learned that he didn't understand, you know,
9 the plea process or have the ability to plead knowingly or
10 intelligently, voluntarily, you would have had him evaluated?

11 A Yes, ma'am.

12 Q Okay. And so, based on the totality of your interaction
13 with him, did you believe that he pled guilty freely and
14 voluntarily, with a full understanding of what it meant to do
15 that?

16 A I would have -- I would not have allowed him to go
17 forward if I didn't feel that. I had no interest in
18 Mr. Shaeffer going to prison for a long time or doing anything
19 that would -- that I know would be unhelpful. If he had not
20 felt -- if I had felt that he was incompetent or didn't
21 understand, I would not have let him go forward.

22 MS. McCALLISTER: Okay. I think that's all I have, Your
23 Honor.

24 MR. PHILLIPS: Very brief, Your Honor.

25 ///

RECROSS-EXAMINATION

1
2 BY MR. PHILLIPS:

3 Q Mr. Routzong, and you said you had no notes about the
4 questions you were asking him?

5 A Yes, sir.

6 Q And you didn't have any other specific notes about your
7 conversations with him?

8 A I have notes -- I have specific notes. I think
9 (inaudible) you're asking what I understand you to be asking
10 about in terms of his competency or did I go over the various
11 roles of people during a plea or in the court. I just asked
12 him -- I have specific notes about the incident.

13 Q But no notes about the things you just mentioned.

14 A No, sir. I don't have any specific notes that I can lay
15 my hands on. I actually have a printout of the defender data,
16 which I looked at and reviewed a second ago. Defender data is
17 our public defender computer system, and I have had misplaced
18 them somewhere.

19 But I reviewed them before I testified, and I didn't see
20 anything in there. It was just mostly that we talked about
21 the case. We make notes like that.

22 So I can say that I don't see any specific notes where I
23 asked those kinds of questions to Mr. Shaeffer.

24 Q And it was your testimony on direct that, essentially,
25 you don't remember any specific conversations based on the age

1 of the case. You just know that it was your general rule that
2 you wouldn't have allowed him to proceed. You don't have a
3 specific memory of these conversations, but --

4 **A** I think that's fair to say. That would really be
5 stretching my ability to say that I could remember
6 specifically.

7 **Q** But the one thing you did say on cross-examination is
8 that you know that you did have the conversation with him
9 regarding his understanding of his constitutional rights?

10 THE COURT: I'm not going to allow you to rehash the
11 grounds and go to testify as to what he just testified to. So
12 strike that. Ask another question. You aren't just going to
13 rehash the testimony you have already gone over.

14 MR. PHILLIPS: I don't have any further questions, Your
15 Honor.

16 THE COURT: Okay. Thank you so much.

17 Mr. Routzong, the Court has a couple of questions for
18 you. Forgive me if they were already asked.

19 EXAMINATION ON BEHALF OF THE COURT

20 THE COURT: How long have you been a defense attorney?
21 How long have you been an attorney?

22 THE WITNESS: Since 2005. I graduated in 2004, and --

23 THE COURT: Okay.

24 THE WITNESS: -- took the bar exam -- it might have been
25 2004, actually.

1 THE COURT: How long have you been practicing criminal
2 defense law?

3 THE WITNESS: Since that time, Your Honor.

4 THE COURT: How many clients, if you had to guess, do you
5 think you represented over your period of about 16 years?

6 THE WITNESS: Oh, my goodness. I can't -- I really don't
7 know the answer to that, Your Honor. I would say hundreds.

8 THE COURT: At least -- in the hundreds. All right. How
9 many have you had evaluated for competency?

10 THE WITNESS: I don't know specifically but several.

11 THE COURT: Okay.

12 THE WITNESS: I would say maybe a couple of times a year
13 or maybe once a year you run into that.

14 THE COURT: Okay. All right. I don't have any other
15 questions of this witness.

16 Any objection of him being excused?

17 MR. PHILLIPS: No, Your Honor.

18 THE COURT: All right. Any objection from the State?

19 MS. McCALLISTER: No, Your Honor.

20 THE COURT: All right. You're free to leave,
21 Mr. Routzong. Thank you for joining us today.

22 Any other witnesses the State wishes to call at this
23 time?

24 MS. McCALLISTER: No, Your Honor. I would release
25 Dr. McKee. He's free to go as well, at least from my opinion.

1 THE COURT: Okay. Dr. McKee, you're free to leave as
2 well, sir. You can (inaudible) needed to. Thank you very
3 much.

4 DR. MCKEE: Thank you, Your Honor.

5 THE COURT: Uh-huh.

6 All right. I'm happy to hear points of argument. I'll
7 hear from the State first.

8 CLOSING ARGUMENT

9 MS. MCCALLISTER: Thanks, Your Honor. I guess I'll
10 just -- I know you picked up -- you have to rule on the
11 tolling issue, but this will address that issue today because
12 it is -- it would be dispositive, I guess.

13 The case -- and I believe Mr. Phillips has sent it to you
14 or at least sent it, is Ferguson v. State. It's 32 S.C. 615,
15 2009. It sort of sets forth the procedure here. Basically,
16 it says, you know, that the issues that the Court has to
17 determine is whether Mr. Shaeffer's mental incapacity
18 prevented him from filing his application within, you know,
19 the one year following (inaudible) and that -- if you
20 determine that that, you know, incompetence prevented him from
21 requesting it, you should determine the duration and whether,
22 you know, the application was filed within a year of his
23 regaining competency, I guess if he has regained competency.

24 And it's the State's position that -- that Mr. Shaeffer
25 was competent at the time of -- at the time that he entered

1 his plea. I think Mr. Routzong made it very clear. He's the
2 one who interacted with Mr. Shaeffer at the time. Dr. McKee
3 did not interact with him. He did not evaluate him at the
4 time.

5 He has made it very clear -- Mr. Routzong made it very
6 clear, I think from his experience, which is, you know, at
7 that point, ten years of experience both with representing
8 criminal defendants in these cases, that he had no indication
9 that Mr. Shaeffer was not competent.

10 And, you know, I believe there's case law that, you know,
11 the issue of his -- you know, his mental capacity is a set of
12 factors to consider, but it's not a dispositive factor. And
13 just because someone has, you know, a lower IQ or maybe is a
14 little bit lower functioning, that does not mean that they're
15 not competent to stand trial. Everyone who has a low IQ is
16 not incompetent.

17 And the record reflects that he was competent. He was
18 able to talk about the facts of his case. He had -- you know,
19 he did and said things that indicated he had an understanding
20 that this was wrong. He was able to talk with Mr. Routzong
21 about, you know, potentially having a defense.

22 And as the plea court, you know, conducted a detailed
23 colloquy with Mr. Shaeffer on the day of the plea. You know,
24 he told -- he was asked and he told the plea court, you know,
25 that he understood his conversation with his counsel regarding

1 the Applicant's -- the possible punishment and his
2 constitutional rights; that he understood the charges he was
3 facing. He understood his constitutional rights and wanted to
4 give them up.

5 You know, he told the Court that he understand the
6 conversation with his lawyer. He understood the judge's
7 questions. He didn't need any more time to talk to his
8 lawyer. You know, and the plea court specifically asked him
9 if he had any, you know, condition that would prevent him from
10 understanding what he was doing, and he said no.

11 So I think the record reflects that, A, that he was
12 competent at the time he entered his plea, and so, you know,
13 the issue is immediately he becomes incompetent. Dr. McKee
14 says he's incompetent as of December of 2018. He can't say
15 for certain that he was incompetent on the day of the plea
16 because he didn't evaluate him then, and he can't say for
17 certain when the incompetence might have started.

18 And I understand his testimony, you know, it's a lifelong
19 thing, but counsel testified that even people with
20 intellectual disabilities can be restored competence and that
21 they do have the ability to learn and to understand some
22 things. And I don't think that the Applicant has met his
23 burden of proof to show that the statute should be tolled,
24 first of all, because he's not provided any evidence as to,
25 you know -- the incapacity on the date of the plea or when the

1 incapacity started.

2 And then, you know, as far as the issues about
3 Mr. Routzong's representation, I think he has made it pretty
4 clear that he has experience with this. You know, he knows --
5 he knows the procedures. He knows, you know, this issue with
6 competency is something that he should look for and he knows
7 the procedures to follow if he feels like, you know, his
8 clients are, you know, kind of need that, and that he was
9 there (inaudible). He never felt that there was anything, you
10 know, unusual in this case; that he was able to have normal
11 conversations with Mr. Shaeffer; and that he felt Mr. Shaeffer
12 understood those conversations, never said anything strange,
13 and, you know, understood what he was doing. You know, if he
14 had had a reason to ask for anything, he would have done it,
15 but he didn't have a reason to.

16 And I think there is one case that I would cite, State v.
17 Davis, 309 S.C. 362. It's a 1992 case. In that case, Davis
18 was determined, I guess, in the parlance of the time to be
19 mentally retarded. He was deemed competent to stand trial.
20 So the factors to consider are not dispositive, and, you know,
21 so there's conflicting evidence here as to whether he was
22 competent at the time, and I believe that was the same in
23 Davis as well. We would cite to that case on that issue and
24 to Ferguson as well.

25 There's another case of United States -- or Supreme Court

1 case 536 U.S. 304, and it says that, quote, "Those mentally
2 retarded persons who need no longer (inaudible) for criminal
3 responsibility should be tried and punished when they commit
4 crimes." And I think Mr. Routzong testified very clearly he
5 felt like, you know, Mr. Shaeffer clearly, you know,
6 understood what he had done was wrong and, you know, that it
7 was likely to subject him to criminal liability or criminal
8 responsibility.

9 So I think that's the State's argument, Your Honor.

10 THE COURT: Okay. And that's, obviously, your argument
11 over tolling the statute of limitations.

12 I'll hear from the Petitioner on that issue.

13 CLOSING ARGUMENT ON BEHALF OF THE PETITIONER

14 MR. PHILLIPS: Thank you, Your Honor. The Applicant
15 moves for an equitable tolling of the statute of limitations
16 pursuant to -- of the statute of limitations set forth in
17 South Carolina Code Section 1727-45(a) for the PCR court to
18 consider the claims of ineffective assistance of counsel based
19 on the testimony and report that's provided in evidence of
20 Geoffrey McKee, the evaluation that occurred on December 9th
21 of 2018.

22 In order to apply equitable tolling of the statute of
23 limitations, the Court must conduct a -- or determine
24 extraordinary circumstances exist. Pursuant to *Ferguson v.*
25 *State*, which I have provided to Your Honor in an email before

1 this proceeding, this -- essentially, the Supreme Court held
2 that mental incapacity is an extraordinary circumstance
3 sufficient to toll the statute of limitations in which to file
4 a PCR. And specifically in the testimony that we have today,
5 you had Dr. McKee, who conducted the evaluation of
6 Mr. Shaeffer. He found Mr. Shaeffer was in the lowest
7 1 percent of the -- under the WAIS scale and found that he was
8 mild to moderate intellectual disability, and he was in the
9 lowest 1 percent of the WART on the reading comprehension,
10 essentially; found no evidence of malingering, estimated IQ of
11 60 to 65, I believe, in a 40 but approximately 55. Notes that
12 he had special education.

13 Specifically, his testimony is that this intellectual
14 disability is not a temporal-type issue or temporal-type
15 diagnosis. It is an exist- -- I believe what I wrote here in
16 my notes -- exists over a lifetime.

17 Specifically based on his training and experience as an
18 expert, he found that -- make sure I say it correctly -- it
19 was based on his training and experience. It is his expert
20 opinion, based on his clinical interview and psychological
21 testing within the report that Mr. Shaeffer did not currently
22 have a sufficient factual and rational understanding of the
23 proceedings against him and is not now capable of assisting of
24 his attorney in his defense due to mild or moderate
25 intellectual disability.

1 And he went through the factual understanding, the
2 rational understanding, and the ability to assist the attorney
3 as far as those prongs in his evaluation.

4 In going specifically to the State's cross-examination of
5 Dr. McKee, Dr. McKee said it was his expert opinion that it
6 was unlikely that Mr. Shaeffer would have been competent at
7 the time of his plea hearing. Again, our argument, if we're
8 so -- focused solely on the tolling, before I go too far into
9 the merits, Dr. McKee's report -- it is the Applicant's
10 position that Dr. McKee's report is sufficient to satisfy that
11 burden of standard of extraordinary circumstance that he had a
12 mental incapacity and that the statute -- the statute of
13 limitations should be tolled.

14 And, Your Honor, I don't want to go into the merits if
15 we're going to bifurcate this, unless you want me to go ahead
16 and keep arguing.

17 THE COURT: Well, here's the issue that now has to go in
18 my mind is, you know -- you know, if this goes forward, if I
19 don't grant your motion, you know, I'm assuming the State is
20 going to want to get their own expert. Is that not -- maybe
21 that's an incorrect assumption. I mean, I don't know how you
22 go forward.

23 MR. PHILLIPS: In my opinion, Your Honor, would be that
24 the State has had an adequate opportunity to try to get this
25 conducted since --

1 THE COURT: Well, what was the understanding of how this
2 was going to be -- I mean, maybe I'm wrong. What was y'all's
3 understanding of how this was going to hash out? Did y'all
4 think it through all the way?

5 MR. PHILLIPS: My position, as far as the Applicant, is
6 that we were going to present expert testimony as to
7 competency, and we're ready to argue and cross-examine on the
8 merits and present the arguments on tolling and the merits.

9 THE COURT: Let me ask Ms. McCallister.

10 MS. McCALLISTER: Yes. Your Honor, I mean, it was
11 originally set on the roster as a hearing on the motion to
12 dismiss. The issues, obviously, are very, you know,
13 interrelated. So, you know, our understanding was that, you
14 know, and I had talked to --

15 THE COURT: Thank you. I think you answered my question.
16 What's on my docket exactly? Is it the motion to dismiss?

17 MS. McCALLISTER: Yeah --

18 THE COURT: Or the PCR matter? Go ahead. Sorry.

19 MS. McCALLISTER: I'm sorry. It was on there as a motion
20 to dismiss, and Mr. Phillips and I did talk about the fact
21 that, you know, there are basically interrelated issues and
22 that, you know, really our presentations are pretty much the
23 same on the merits and the tolling issue, but I do think that
24 the Court needs to make a ruling, you know, on the tolling
25 issue before we go into -- before we get into the merits. And

1 I do ask that the Court, you know, to specifically decide that
2 issue before --

3 THE COURT: We're going to just do that today, because,
4 frankly, the time allotted and all that -- I mean, I don't
5 have time -- I will rule on this equitable tolling issue and
6 that issue alone today. Okay?

7 MR. PHILLIPS: Your Honor --

8 THE COURT: Because that's what's on my docket. And it
9 says motion to dismiss and equitable tolling. Go ahead.

10 MR. PHILLIPS: And would you retain jurisdiction since we
11 have had testimony?

12 THE COURT: No. Nope. You'll be much better off if I
13 don't, because, otherwise, if it's going to be so long until
14 I -- I mean, it will be much faster, let's put it that way, if
15 I do not. And there's no reason for me to, frankly.

16 MR. PHILLIPS: We would have to get a transcript of the
17 testimony.

18 THE COURT: Sure. That's no problem.

19 Okay. Well, what else do I need to hear regarding the
20 motion to dismiss and any other arguments not already
21 presented before we close out today's hearing?

22 MR. PHILLIPS: Yes, Your Honor, give me one second.

23 THE COURT: And there might be not be anything else.

24 MR. PHILLIPS: Your Honor -- Your Honor, I did want to
25 bring your attention, while we're continuing to argue, to the

1 case of *Matthews v. State*. That's 358 S.C. 456. That's a
2 2004 South Carolina Supreme Court case I have provided to Your
3 Honor --

4 THE COURT: Mm-hmm.

5 MR. PHILLIPS: -- prior to the hearing this morning.
6 Specifically to show prejudice in the context of counsel's --
7 well, I'm going to be into the merits again. I mean,
8 specifically, trying to show, as far as the Ferguson standard,
9 we believe that Dr. McKee's testimony and the report that's in
10 evidence as Applicant's Exhibit No. 2 satisfies that standard
11 to show that he has a mental incapacity. It's an
12 extraordinary circumstance that was sufficient to toll the
13 statute of limitations in this case.

14 THE COURT: Okay. I'm going to ask both of you to draft
15 proposed orders for me in this case. This is one that I think
16 warrants it. I don't always do that because I don't like to
17 put any burden on attorneys that they don't need, but this is
18 one that I think warrants it. I'll allow you to attach any
19 case law that you want to support your position, and I'm going
20 to ask that you submit those in the next two weeks. If you
21 need longer, just let us know. That's not a problem for me.
22 (Inaudible) so let's say in the next two weeks.

23 MR. PHILLIPS: I have already asked -- I have a double
24 homicide scheduled the week of June (inaudible).

25 THE COURT: Oh, okay. That's no problem. 30 days? Or

1 what do you need? 45 days?

2 MR. PHILLIPS: Please. As much -- because with that
3 murder trial --

4 THE COURT: I gotcha. Why don't we start with 45 days
5 and we'll go from there. I'll have my secretary tick my
6 calendar for 45 days from now. Okay?

7 MR. PHILLIPS: Thank you.

8 MS. McCALLISTER: And, Your Honor, not to argue, is that
9 just on the tolling issue?

10 THE COURT: Just on the tolling issue.

11 MS. McCALLISTER: Okay. Thanks.

12 MR. PHILLIPS: And, Your Honor, as far as funding for the
13 transcript, I would hate to have to submit an order with
14 SCCID. I don't believe that we got -- I'd have to try to make
15 a motion to declare Mr. Shaeffer indigent for defense to --

16 MS. McCALLISTER: Well, Your Honor --

17 MR. PHILLIPS: -- pay for it.

18 MS. McCALLISTER: -- I mean, I think Mr. Phillips is
19 retained.

20 MR. PHILLIPS: Exactly. And he doesn't have the funds
21 to, one, pay Dr. McKee to testify again. And so as far as
22 the --

23 THE COURT: I think that's got to go -- that would be
24 probably a Judge Newman ask. He's the chief administrative
25 judge for the Second Circuit. I think that's who you need to

1 go for those purposes. Okay?

2 All right. Everybody looks so happy; it's been a
3 successful morning. No, I appreciate everybody's preparedness
4 today, and I look forward to reviewing your proposed orders in
5 the next 45 days. If any additional extension is needed, just
6 let me know.

7 MR. PHILLIPS: Thank you, Your Honor.

8 THE COURT: Okay. Thank you-all.

9 MS. McCALLISTER: Thank you, Your Honor.

10 (At 11:39 a.m., the above hearing concluded.)

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1 CERTIFICATE OF TRANSCRIBER

2 CASE/NO.: Jerry Lee Shaeffer vs. State of SC

3 DATE OF PROCEEDING: June 4, 2021

4

5 I, Bobbi J. Fisher, do hereby certify that the
6 foregoing transcript is a true and correct record of the
7 recorded proceedings; **that said proceedings were transcribed**
8 **to the best of my ability from the audio recording and**
9 **supporting information**, and that I am neither counsel for,
10 related to, nor employed by any of the parties to this case,
11 and I have no interest, financial or otherwise, in its
12 outcome.

13



14

15 _____
16 Bobbi J. Fisher, RPR

17 NCRA Registered Professional Reporter (RPR)

18 Prepared: December 28, 2021

19

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Geoffrey R. McKee, PhD, ABPP
Forensic Psychological Services
1728 Main Street, Suite 110
Columbia, SC 29201
(803) 251-3499

Curriculum Vitae Summary as of 2018

- Board-certified in Forensic Psychology, American Board of Professional Psychology (ABPP)
- Clinical Professor, Department of Neuropsychiatry and Behavioral Science, U. of South Carolina School of Medicine (pro bono). 2007 Chairman's Award for Outstanding Contributions to Forensic Psychiatry Training Program
- Clinical Professor, Department of Psychiatry and Behavioral Science, Medical University of South Carolina (Pro bono)
- Private practice in criminal and domestic Forensic Psychology since 1976; licensed psychologist in AZ (1972-80), ND (1981-85), MN (1984-85), NC (1996-99; 2011-2012), and SC since 1985
- Chief Psychologist, Division of Forensic Evaluation Services, SCDMH 1998-2011.
- SCDMH member to Multidisciplinary Team of SC Sexually Violent Predator Act 1998-2011
- Chief Psychologist, Forensic Psychiatry Division, Hall Psychiatric Institute, 1986-98. Director of Training, Forensic Psychology Rotation, APA-approved clinical psychology internship
- Consultations/evaluations to state and county child protection services agencies on issues of child sexual assault (victims and perpetrators) in AZ, ND, and SC since 1976
- Child custody and parenting capacity evaluations and expert testimony for Family Courts in AZ, ND, and SC since 1976
- Forensic psychological evaluations in over 500 murder cases at state and federal level including gang- related homicides as well as other major felonies.
- Retained by defense or prosecution for evaluation, consultation, and expert testimony in state & federal courts in over 200 criminal and 30 death penalty trials or appeals in SC, AZ, ND, IN, NC, CA, KY, TX, and MS.
- Expert testimony before the SC Supreme Court twice.
- Past President, American Academy of Forensic Psychology, 1992-94
- Founder & President, ISA Metrics, LLC. Visual technology products to aid forensic mental health sciences investigations and training
- Invited Continuing Legal Education lectures to State Bar, Family Court judges, and public defenders associations in VA, WI, and SC and law students in SC and NY.
- Former Consulting Faculty, National Advocacy Center, US Department of Justice
- Former Consulting Faculty, National Advocacy Center, National District Attorneys Association
- Author, Why Mothers Kill: A Forensic Psychologist's Casebook (2006; Oxford University Press). www.whymotherskill.com
- Publications in peer-reviewed journals and book chapters on maternal filicide, juveniles' trial competency, homicidal and violent adolescents, MMPI/MMPI-2 profiles of adult criminal defendants/sex offenders, and criminal forensic psychology practice.
- Peer-reviewed research presentations/workshops on homicide, violent crimes, and sex offenders
- Case analyst/commentator on "Wicked Attractions" television series, 2009-2012 (last episode)

Geoffrey R. McKee, PhD, ABPP
Forensic Psychological Services
1728 Main Street, Suite 110
Columbia, SC 29201
(803) 251-3499

9 December 2018

Dayne Phillips, Esq.
1641 Taylor St., Suite D
Columbia, SC 29201

Dear Mr. Phillips:

Pursuant to your request, below is a summary of my forensic psychological Competency to Stand Trial (CST) evaluation of **Jerry Shaeffer**, a 67 year old male, completed on 12/7/18. At the time of the evaluation, Mr. Shaeffer was an inmate at the Broad River Correctional Institution (BRCI) in Columbia, SC. On 12/7/18 in addition to completing an extended interview of his personal history, I administered to him the Wechsler Adult Scale of Intelligence Vocabulary (WASI-V) and Similarities (WASI-S) subscales in addition to the Reading subtest of the Wide Range Achievement Test-3rd Edition (WRAT-3), the Information and Orientation scale (I&O) of the Wechsler Memory Scale-3rd Edition, and the Competency to Stand Trial Assessment Instrument (CAI). His performance on the WRAT-3 indicated that he is illiterate and thus was unable to competently complete psychological testing requiring at least a 4th grade reading comprehension level.

Mental Status Examination: During the interview, Mr. Shaeffer was alert, oriented, cooperative, and coherent. He smiled shyly and was anxiously compliant. There was no evidence of psychotic symptoms (e.g., delusions) and he denied ever experiencing auditory or visual hallucinations. He stated that he was not currently taking any psychiatric medication for depression, anxiety, or other non-psychotic symptoms. His judgment and reasoning are very simplistic and concrete consistent with his history of special education in elementary and middle school grades and his WASI scores described further below. He stated that he has never attempted suicide nor planned on hurting anyone else. He denied ever engaging in self-mutilation (e.g., cutting his forearms, wrists, or legs).

Relevant History: Mr. Shaeffer stated that as a child and teenager he lived with his parents and his 4-years older brother and 5-years older sister. He stated that his father drove a truck and his mother worked in a shoe factory. He stated that his brother molested him from the time he was 8 years old until his brother died when he (brother) was 59 years old. He stated that when he was a child, his father would often hit his mother and his brother. He stated that was placed in special education classes when he was in elementary school "because I was a slow learner." When asked how his teachers would describe him, he replied "that I was a slow learner and retarded, I don't know."

When asked what he'd hoped to do as an adult, he replied "go to Africa and see the elephants." He stated that he left school in the 7th grade. He reported he has held paid jobs doing simple highly-repetitive tasks (e.g., washing uniforms; disassembling shoes, drilling holes in a template) consistent with someone with limited intellect. He stated that he had a driver's license since he was 16 years old "but I couldn't read the big words in the book (driver's license manual)." He reported a history of adult cannabis abuse but he denied using alcohol or other drugs. He denied having a head injury, or being hit or sexually assaulted in prison in the past 5 years.

Psychological Testing:

On the Information & Orientation scale (I&O), his score of 12 (14 maximum) indicated that it was unlikely that he was faking cognitive/intellectual deficits: he was able to recall: his date and location of birth; his name and his mother's first name; the current president's name (but not his immediate predecessor); the current day of week, month, and year; and the name and location of his present incarceration. His score of 12 was well above the I&O score (~4 or 5) I've recorded with prior defendants or inmates who've tried to malingering/fake mental retardation.

On the WASI-Vocabulary subtest, his score of 15 (80 maximum score) fell in the lowest 1%: approximately 99% of men his age would have higher WASI-V scores. On the WASI-Similarities subtest his score of 4 (48 maximum) also fell within the lowest 1%. His extremely low WASI-Similarities score is especially indicative of very impaired abstract reasoning and understanding of concepts as it asks the individual to explain why two common objects (e.g., horse and cow) are alike while the WASI-Vocabulary is somewhat related to actual school experience/learning. The combined scores fell in the lowest 1% corresponding to an estimate IQ of approximately 55, in the lower Mild to Moderate range of Intellectual Disability (formerly entitled Mental Retardation).

On the Wide Range Achievement Test-3rd Edition (WRAT-3) Reading subtest, Mr. Shaeffer was able to correctly identify 14 of 15 letters (Kindergarten-level performance) and 10 of 42 words (equivalent to a 2nd grade reading level). Combined, his WRAT-3 test performance fell within the lowest 1%, equivalent to a 1st grade reading level.

Competency to Stand Trial Assessment Instrument (CAI):

The CAI assesses a defendant's/inmate's understanding of the current or past legal proceedings against him or her, by asking questions and obtaining answers/explanations regarding numerous court-related concepts and elements consistent with the United States Supreme Court's opinion in *Dusky v. U.S.*, 362 U.S. 402 (1960) and subsequent cases. Decades of research has suggested that assessment of Competency to Stand Trial (CST) should focus on three areas as described below: the individual's Factual Understanding and Rational Understanding of the charges against him/her and Ability to Assist the Attorney in his or her defense. The CAI is the most widely-used method of evaluating an individual's CST.

Mr. Shaeffer's results regarding the charges and proceedings that led to his incarceration are described below:

--Factual Understanding: He stated his charge was “Sexual charge with a Minor, a kid; he was almost 15; his sister found his picture on my phone. I got 40 years.” He was unable to define the roles of the solicitor, a witness, the jury, or the role of the judge in sentencing. He did not know who was the defendant in his case (“the kid?”). He was unable to place the location of solicitor or testifying witness on a drawing of a courtroom. He knew his prior attorney was a “Public Defender” but did not know who he’d ask if he had questions about court.

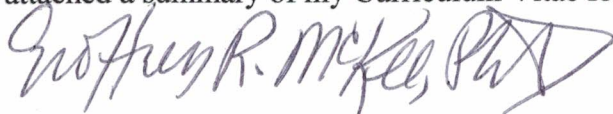
--Rational Understanding: He understood the necessity to control his behavior in court. He was unable to articulate what he’d wanted the judge to know about him at his prior plea hearing. He was unable to describe the rules of probation/parole but defined a Violation of Parole as “when you do something bad.” He was unable to explain why talking to solicitor without his attorney could jeopardize his case.

--Ability to Assist Attorney: He was unable to explain plea bargaining “I don’t think I did that” and did not know whether he could be forced to accept a plea bargain he did not like. He did not know why telling his lawyer everything he knew about his case was important. He thought his prior attorney was helping him: “I thought so. He kept telling me I’d get 10 years.” It is unlikely, given his very low intellect and reasoning ability, that he would be able to understand or anticipate cross-examination questions if he had decided to testify at trial.

OPINION:

It is my opinion, based on my clinical interview and psychological testing described within this report, that Mr. Shaeffer *does not currently* have a sufficient factual & rational understanding of the proceedings against him and is not now capable of assisting his attorney in his defense due to Mild to Moderate Intellectual Disability.

I have attached a summary of my Curriculum Vitae for your and the Court’s review.



Geoffrey R. McKee, PhD, ABPP
 Board Certified in Forensic Psychology
 Clinical Professor, University of South Carolina School of Medicine
 &
 Clinical Professor, Medical University of South Carolina

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Dayne Phillips <dayne@pricebenowitz.com>

PCR: Jerry Shaeffer

Dayne Phillips <dayne@pricebenowitz.com>

Fri, Jun 4, 2021 at 9:21 AM

To: "McCoy, Jennifer Law Clerk (English Maull)" <jmccoyle@sccourts.org>

Cc: "McCoy, Jennifer B. Secretary (Kathryn B. Stone)" <jmccoysc@sccourts.org>, "McCoy, Jennifer B." <jmccoysj@sccourts.org>, Lindsey McCallister <lmccallister@scag.gov>, William Ray <WilliamRay@scag.gov>, Courtney Powers <courtney@pricebenowitz.com>

Bcc: "Clio Maildrop Jerry.Shaeffer.2019.02.00003" <800ca9c17+matter1167892579@maildrop.clio.com>, "Clio Maildrop Jerry.Shaeffer.2018.08.00001" <800ca9c17+matter1149191374@maildrop.clio.com>

Good morning, Mr. Grooms:

I represent Mr. Jerry Shaeffer. He is scheduled for a PCR hearing this morning before Judge McCoy. Since we are proceeding with a virtual hearing, I have attached the documents that I will be referencing during the hearing. The State has filed a Motion to Dismiss, and I am arguing to toll the statute of limitations.

Please let me know if you or Judge McCoy has any questions or concerns.

Thank you,



PRICE BENOWITZ LLP

Dayne Phillips

Attorney at Law

Criminal Defense | Appeals |
Professional License Defense

1614 Taylor Street, Suite D, Columbia, SC 29201

Cell: [803.807.0234](tel:803.807.0234) Paralegal: [803-216-5561](tel:803-216-5561)Office: [803.272.4503](tel:803.272.4503) Fax: [803.380.8035](tel:803.380.8035)[Email](#) | [Map](#) | SCCriminalLaws.comLicensed in SC | PriceBenowitz.comParalegal: Courtney Powers [Email](#)

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Ferguson v State (1).doc
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 **CV - Dr. McKee.pdf**
776K

 **Dr. McKee Eval - Shaeffer.pdf**
2225K

 **2nd Amended PCR App. - Shaeffer.pdf**
345K

 **Return & Patial Motion to Dismiss - Shaeffer.pdf**
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 **SHAEFFER Jerry- Redacted GP Transcript (01939549xD2C78).pdf**
106K

180



Dayne Phillips <dayne@pricebenowitz.com>

Jerry Shaeffer: PCR Exhibits

Dayne Phillips <dayne@pricebenowitz.com>

Fri, Jun 4, 2021 at 10:41 AM

To: lfdavis@sccourt.org

Cc: Lindsey McCallister <lmccallister@scag.gov>, Courtney Powers <courtney@pricebenowitz.com>, "McCoy, Jennifer Law Clerk (English Maul)" <jmccoylc@sccourts.org>

Bcc: "Clio Maildrop Jerry.Shaeffer.2019.02.00003" <800ca9c17+matter1167892579@maildrop.clio.com>, "Clio Maildrop Jerry.Shaeffer.2018.08.00001" <800ca9c17+matter1149191374@maildrop.clio.com>

Ms. Davis:

Please see the attached Applicant's Exhibits #1 and #2. When you have a moment, please confirm receipt.

Thank you,



PRICE BENOWITZ LLP

Dayne Phillips

Attorney at Law

Criminal Defense | Appeals |
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Cell: [803.807.0234](tel:803.807.0234) Paralegal: [803-216-5561](tel:803-216-5561)Office: [803.272.4503](tel:803.272.4503) Fax: [803.380.8035](tel:803.380.8035)[Email](#) | [Map](#) | SCCriminalLaws.comLicensed in SC | PriceBenowitz.comParalegal: Courtney Powers [Email](#)
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2 attachments
**CV - Dr. McKee.pdf**

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**Dr. McKee Eval - Shaeffer.pdf**

2225K



Dayne Phillips <dayne@pricebenowitz.com>

Jerry Shaeffer: PCR Exhibits

McCoy, Jennifer Law Clerk (Joseph Grooms) <jmccoyle@sccourts.org>

Fri, Jun 4, 2021 at 10:49 AM

To: Dayne Phillips <dayne@pricebenowitz.com>, "lfdavis@sccourt.org" <lfdavis@sccourt.org>

Cc: Lindsey McCallister <lmccallister@scag.gov>, Courtney Powers <courtney@pricebenowitz.com>

Received. Thank you.

J. Hayden Grooms

Law Clerk

The Honorable Jennifer B. McCoy

100 Broad Street, Suite 348

Charleston, SC 29401

Phone: (843) 958-5064

From: Dayne Phillips <dayne@pricebenowitz.com>**Sent:** Friday, June 4, 2021 10:41 AM**To:** lfdavis@sccourt.org**Cc:** Lindsey McCallister <lmccallister@scag.gov>; Courtney Powers <courtney@pricebenowitz.com>; McCoy, Jennifer Law Clerk (Joseph Grooms) <jmccoyle@sccourts.org>**Subject:** Jerry Shaeffer: PCR Exhibits

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Ms. Davis:

Please see the attached Applicant's Exhibits #1 and #2. When you have a moment, please confirm receipt.

Thank you,

Dayne Phillips
Attorney at Law

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182

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|                             |   |                                     |
|-----------------------------|---|-------------------------------------|
| THE STATE OF SOUTH CAROLINA | ) | IN THE COURT OF <b>COMMON PLEAS</b> |
|                             | ) |                                     |
| COUNTY OF <b>AIKEN</b>      | ) | <b>SECOND JUDICIAL CIRCUIT</b>      |
|                             | ) |                                     |
| <b>Jerry Lee Shaeffer,</b>  | ) | Case No.: <b>2019-CP-02-0516</b>    |
|                             | ) |                                     |
| Applicant,                  | ) | <b>ORDER</b>                        |
|                             | ) |                                     |
| v.                          | ) | <b>DENYING RESPONDENT'S</b>         |
|                             | ) | <b>MOTION TO DISMISS AND</b>        |
| State of South Carolina,    | ) |                                     |
|                             | ) | <b>GRANTING TOLLING OF THE</b>      |
| Respondent.                 | ) | <b>STATUTE OF LIMITATIONS</b>       |
|                             | ) |                                     |

---

This matter comes before the Court on Respondent's Return and Partial Motion to Dismiss. Specifically, Respondent moved to dismiss this action for post-conviction relief (PCR), arguing Applicant's PCR application should be summarily dismissed for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act ("UPCPA"). See S.C. Code § 17-27-45(A). Counsel for the Applicant previously requested equitable tolling of the statute of limitations provided in the UPCPA based on Applicant's mental incompetency. See *Ferguson v. State*, 382 S.C. 615, 619, 677 S.E.2d 600, 602 (2009) (finding the statute of limitations will be tolled where the applicant demonstrates the failure to timely file a PCR application was due to mental incompetency.).<sup>1</sup>

On June 4, 2021, Applicant appeared virtually before the Court for a hearing on Respondent's Motion to Dismiss. Dayne Phillips represented Applicant, and Assistant

---

<sup>1</sup> *Pelzer v. State*, 378 S.C. 516, 521, 662 S.E.2d 618, 620-621 (Ct. App. 2008) (summarizing the doctrine of equitable tolling: "The time requirements in lawsuits between private litigants are customarily subject to equitable tolling if such tolling is necessary to prevent unfairness to a diligent plaintiff. However, equitable tolling, which allows a plaintiff to initiate an action beyond the statute of limitations deadline, is typically available only if the claimant was prevented in some extraordinary way from exercising his or her rights, or, in other words, if the relevant facts present sufficiently rare and exceptional circumstances that would warrant application of the doctrine."); *Gary v. State*, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001).

Attorney General Lindsey McCallister appeared on behalf of the State. Assistant Public Defender Michael Routzong, and Dr. Geoffrey R. McKee, PhD, ABPP, testified at the hearing. Public Defender Routzong testified as to his representation of Applicant, and Dr. McKee testified regarding Applicant's mental health status and Competency to Stand Trial evaluation.

### **PROCEDURAL HISTORY**

On April 10, 2014, the Aiken County Grand Jury issued indictments against Applicant for four counts of Criminal Sexual Conduct with a Minor, 2nd Degree.

On May 18, 2015, Applicant appeared before the Honorable R. Knox McMahan and pled guilty as charged. The Plea Court sentenced Applicant to twenty (20) years imprisonment for each conviction and ordered that three of the sentences run concurrently with the fourth sentence being served consecutively.

Applicant did not appeal his conviction or sentence.

On February 28, 2019, Applicant filed an application requesting post-conviction relief, alleging ineffective assistance of counsel. The State filed its Return and Partial Motion to Dismiss on June 7, 2019. Applicant subsequently filed Amended PCR Applications on June 28, 2019, and July 13, 2020.

On June 4, 2021, Applicant appeared virtually before the Court for a hearing on Respondent's Motion to Dismiss. Dayne Phillips represented Applicant, and Assistant Attorney General Lindsey McCallister appeared on behalf of the State. Applicant's former counsel, Assistant Public Defender Michael Routzong, and Dr. Geoffrey R. McKee, PhD, ABPP, testified at the hearing.

## HEARING

Geoffrey R. McKee, PhD, ABPP, testified at the hearing after being qualified as an expert witness in forensic psychology. Dr. McKee testified that he met with Applicant and conducted a Mental Status Examination and Competency to Stand Trial Evaluation on December 7, 2018. Dr. McKee's Curriculum Vitae and forensic psychological Competency to Stand Trial evaluation was entered into evidence. Notably, Dr. McKee provided the following opinion in his evaluation: "It is my opinion, based on my clinical interview and psychological testing described within this report, that Mr. Shaeffer *does not currently* have a sufficient factual and rational understanding of the proceedings against him and is not now capable of assisting his attorney in his defense due to Mild to Moderate Intellectual Disability." (emphasis in original).

Dr. McKee also testified at the hearing that Applicant has a Mild to Moderate Intellectual Disability and had attended special education classes in school. Dr. McKee also testified that Applicant scored in the lowest one percentile for the Wechsler Adult Scale of Intelligence Vocabulary (WASI) and Wide Range Achievement Test (WRAT) assessments. Dr. McKee further testified that Applicant had an estimated IQ of 60, his intellectual disability most likely existed during the entirety of his lifetime, and was not malingering during the examination.

On cross-examination, Dr. McKee testified that it is unlikely for Applicant's competency to be "restored", but Applicant could be provided education regarding the legal system and procedure with inpatient treatment. Dr. McKee further noted during redirect examination that there is a difference between the education provided by an attorney and medical professional. Notably, Dr. McKee reiterated and confirmed his prior

finding that Applicant does not currently have a sufficient factual and rational understanding of the proceedings against him and is not now capable of assisting his attorney in his defense due to Mild to Moderate Intellectual Disability.

Plea Counsel testified at the hearing that he knew Applicant had attended special education classes but never had Applicant evaluated to determine whether he was Competent to Stand Trial. Plea Counsel knew Applicant was “slow” but did not conduct any specific colloquy with Applicant to see if Applicant understood their conversations. Plea Counsel maintained that he had no recollection of having an issue communicating with Applicant. Notably, Plea Counsel admitted that his recollection of his conversations with Applicant was vague and that he had no specific notes regarding Applicant’s understanding of his rights, discovery, or legal proceedings.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

For good cause shown, this Court finds it is necessary to toll the statute of limitations in this matter based on Applicant’s demonstration that the failure to timely file this PCR action was due to his mental incompetency. *See Ferguson v. State*, 382 S.C. 615, 619, 677 S.E.2d 600, 602 (2009) (finding the statute of limitations will be tolled where the applicant demonstrates the failure to timely file a PCR application was due to mental incompetency).

**IT IS ORDERED** that Respondent’s Motion to Dismiss is denied; therefore, the tolling of the statute of limitations to file this PCR action is granted.

**IT IS FURTHER ORDERED** that an evidentiary hearing on the merits of Applicant’s PCR application is necessary for the proper resolution of this matter.

**[Signature page to Follow]**

IT IS SO ORDERED.

\_\_\_\_\_  
The Honorable Jennifer B. McCoy  
Presiding Judge, Second Judicial Circuit

\_\_\_\_\_,2021

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

|                              |   |                                 |
|------------------------------|---|---------------------------------|
| STATE OF SOUTH CAROLINA      | ) | IN THE COURT OF COMMON PLEAS    |
| COUNTY OF AIKEN              | ) | FOR THE SECOND JUDICIAL CIRCUIT |
| <br>                         | ) |                                 |
| Jerry Lee Shaeffer, #364166, | ) | C.A. No. 2019-CP-02-00516       |
|                              | ) |                                 |
| Applicant,                   | ) |                                 |
|                              | ) | <b>ORDER OF DISMISSAL</b>       |
| v.                           | ) |                                 |
|                              | ) |                                 |
| State of South Carolina,     | ) |                                 |
|                              | ) |                                 |
| Respondent.                  | ) |                                 |
| _____                        | ) |                                 |

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Jerry Lee Shaeffer (Applicant) on February 28, 2019, and amended on June 25, 2019, and July 10, 2020. Respondent made its Return on June 5, 2019, requesting the application be dismissed as untimely pursuant to section 17-27-45 of the South Carolina Code of Laws. Applicant requested a hearing to present evidence in support of his request for equitable tolling. A hearing on Respondent’s motion to dismiss and whether Applicant was entitled to equitable tolling on the one-year statute of limitations pursuant to Ferguson v. State<sup>1</sup> convened on June 4, 2021, via Cisco WebEx Meetings in accordance with the Chief Justice’s administrative memorandum, *Court Operations*, dated September 14, 2020.<sup>2</sup>

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<sup>1</sup> 382 S.C. 615, 620, 677 S.E.2d 600, 602 (2009) (“[T]he proper remedy is... a hearing as to whether [Applicant’s] mental incapacity prevented such an application in the one year following his... guilty plea. If the PCR court finds mental incompetence prevented his filing a PCR application, the court should determine the duration of the incompetence, and whether the application was filed within one year of... regaining competency.”)

<sup>2</sup> See S.C. Sup. Ct. Memorandum dated September 14, 2020 (“Judges . . . have discretion to determine whether it is appropriate to conduct a hearing using remote communication technology. *Consent of the parties or counsel is not required.* Please use WebEx, the conferencing platform supported by the Judicial Branch.” (emphasis added)). Nonetheless, this Court questioned

Dayne C. Phillips, Esquire, represented Applicant. Assistant Deputy Attorney General Lindsey A. McCallister represented Respondent. Respondent renewed its motion to dismiss based on the failure to comply with the statute of limitations set forth in section 17-27-45, and joined Applicant's request that the Court hear evidence to determine if Applicant was entitled to equitable tolling pursuant to Ferguson.

Applicant presented Dr. Geoffrey R. McKee as an expert in forensic psychology to testify as to Applicant's competency. Respondent called Applicant's plea counsel, Michael Routzong. At the close of all the evidence and after hearing arguments from counsel, the Court requested proposed orders from both sides.

After a review of the record and all evidence and testimony presented, this Court finds Applicant has failed to meet his requisite burden of proof for equitable tolling of the statute of limitations pursuant to section 17-27-45 and grants the State's motion to dismiss this application with prejudice.

### **PROCEDURAL HISTORY**

Applicant is present confined in the South Carolina Department of Corrections. During its April 2014 term, the Aiken County Grand Jury indicted Applicant for four counts of second-degree criminal sexual conduct with a minor (2014-GS-02-00576, -0577, -0578, 0579). Assistant Public Defender Michael D. Routzong of the Second Circuit Public Defender's Office represented him.

---

Applicant at the beginning of the hearing, and Applicant indicated his consent to the use of the WebEx platform.

Assistant Solicitor Ashley A. Hammack of the Second Circuit Solicitor's Office prosecuted the case.

On May 18, 2015, Applicant appeared before the Honorable R. Knox McMahan and pleaded guilty as indicted to all four counts, without no negotiation or recommendation as to the sentence. Judge McMahan sentenced Applicant to imprisonment for twenty years for each offense, with three of the sentences to be served concurrently and the final sentence for indictment 2014-GS-02-0579 to be served consecutively.

Applicant did not appeal his conviction or his sentence.

#### **SUMMARY OF FACTS TO SUPPORT GUILTY PLEA**

During the plea proceeding, the prosecutor gave the following factual recitation in support of the pleas:

On New Year's Eve of 2013 there was a family gathering. The defendant is related to the victim and his family in this case. At that family gathering, the victim's mother was looking at the defendant's cell phone and observed several naked pictures of her son on his cell phone. She talked to her son about it and he disclosed that after the defendant moved down to Aiken County from Ohio in May of 2013, that he did begin molesting the victim.

The defendant would keep the victim on the weekends and during that time, he would perform oral sex on the victim, as well as anal intercourse. The victim disclosed that that would be both penile and with various sexual devices and toys. Law enforcement conducted a search warrant of the home. They were able to recover the devices that the victim disclosed that had been used to include but not limited to handcuffs and vibrators and things of the like.

In speaking to the defendant, the defendant did confess to law enforcement to engaging in oral sex and anal intercourse with the victim over that time period. The indictments are for each of the months that this behavior occurred at the defendant's home in Aiken County.

(Tr. p. 13-14). During his plea, Applicant admitted he was guilty of the indicted conduct and later apologized to the victim and acknowledged his behavior was wrong.

### **ALLEGATIONS FOR POST-CONVICTION RELIEF**

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

1. Ineffective Assistance of Counsel
  - a. “Applicant did not knowingly, intelligently, or voluntarily plead guilty”
  - b. “Plea counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible mitigating evidence in preparation of Applicant’s defense. Specifically, Plea counsel failed to consult with an expert witness to evaluate whether Applicant was competent to stand trial or had the requisite mental capacity when it was reasonable and necessary in his defense.”
  - c. “Plea counsel failed to move for a Blair hearing prior to trial to determine Applicant’s competency to stand trial.”
  - d. “Plea counsel failed to present all reasonable and necessary evidence to the judge during the sentencing phase in mitigation of Applicant’s potential sentence. Specifically, plea counsel failed to call and expert witness to testify regarding Applicant; mental health background and competency to stand trial when it was reasonable and necessary to present this critical mitigation evidence.”

In response to question nine as to why he did not pursue a direct appeal, Applicant indicated, “Applicant was not competent to knowingly, intelligently, and voluntarily plead guilty, and did not knowingly waive his right to appellate review.”

In his amended application, Applicant further alleges:

1. Applicant did not knowingly, intelligently, and voluntarily plead guilty because he was not competent to stand trial. Therefore, Applicant could not have knowingly waived his right to direct appellate review of his involuntary guilty plea. However, Applicant acknowledges that the issue of whether he knowingly, intelligently, and voluntarily pled guilty is not preserved for appellate review because it was never raised by Plea Counsel or ruled on by the Plea Court at the hearing.
2. Plea Counsel denied Applicant’s right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I,

Section 3 of the South Carolina Constitution. . . . Plea Counsel’s unreasonable deficient performance fell below an objective standard of reasonableness “under prevailing professional norms” and prejudiced Applicant because there is a reasonable probability that, but for Plea Counsel’s errors, Applicant would not have pled guilty and went to trial. . . .

- a. Applicant did not knowingly, intelligently, and voluntarily pled guilty based on Plea Counsel’s failure to request a competency to stand trial and criminal responsibility evaluations and a Blair hearing prior to the plea hearing. . . .
- b. Plea Counsel failed to move for the Chief Administrative Judge or presiding judge to sign Orders for Competency to Stand Trial and Criminal Responsibility and Capacity to Conform Evaluations based on Applicant’s mental health history and records when it was reasonable and necessary to do so in Applicant’s defense. . . .
- c. Plea Counsel failed to have Applicant evaluated by an independent qualified medical professional to conduct a forensic physiological competency to stand trial and criminal responsibility evaluations, or to determine whether Applicant had the requisite mental capacity prior to the plea hearing based on Applicant’s mental health history when it was reasonable and necessary to do so in Applicant’s defense.
  - i. Geoffrey R. McKee... conducted a forensic psychological Competency to Stand Trial Evaluation of Applicant on December 7, 2018. Dr. McKee provided the following finding in his report dated December 9, 2018: “It is my opinion, based on my clinical review and psychological testing described in this report, that Mr. Shaeffer *does not currently* have a sufficient factual and rational understanding of the proceedings against him and is not now capable of assisting his attorney in his defense due to Mild to Moderate Intellectual Disability.” (emphasis in original).
- d. Plea Counsel failed to move for a Blair hearing prior to the plea hearing for the Plea Court to determine Applicant’s competency to stand trial based on Applicant’s mental health history and records. . . .
- e. Plea Counsel failed to call an expert witness to testify regarding Applicant’s mental health history during the sentencing phase of the plea hearing (competency to stand trial, criminal responsibility, and mitigation) when it was reasonable and necessary to present this critical defense and mitigation evidence.
- f. Plea Counsel failed to conduct a reasonable investigation to develop all available, relevant, and admissible mitigating evidence in preparation of Applicant’s defense. . . . Specifically, Plea Counsel failed to obtain all necessary records and speak with witnesses regarding Applicant’s mental health history to assist in determining competency and capacity to conform (criminal responsibility).
- g. Plea Counsel failed to present all reasonable and necessary evidence to the judge

- during the sentencing phase in mitigation of Applicant's potential sentence.
- h. Plea Counsel failed to review all potential defenses prior to Applicant's guilty plea. . . .

### **SUMMARY OF TESTIMONY**

At the hearing, Applicant presented Dr. Geoffrey McKee as an expert in forensic psychology. Dr. McKee testified he has practiced in forensic psychology since 1976. McKee testified he has practiced in South Carolina since 1985. He stated he is the cofounder of the forensic psychology program at the Medical University of South Carolina. McKee further testified he was the chief psychologist at the South Carolina Department of Mental Health for twenty-seven years and for fifteen years was chief psychologist in the forensic psychology unit. He testified he was asked to join the sexually violent predator program and worked there until 2011. He stated he has conducted 3500 evaluations and has testified in South Carolina state court 200-250 times and has been qualified as an expert every time he testified.

McKee testified he conducted a competency evaluation of Applicant on December 7, 2018.<sup>3</sup> He testified he met with Applicant for an hour and twenty minutes, and asked Applicant about Applicant's educational history, family history, drug and alcohol history, criminal history, mental health history, and personal history. McKee further testified he used methods to assess mental functioning and literacy to determine competency to stand trial.

McKee testified he felt it was particularly relevant that Applicant was in special education programs beginning in elementary school, which he explained indicated that school personnel

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<sup>3</sup> McKee's reported was entered into evidence as Applicant's Exhibit 2.

identified him as a person who needed extra help in school at a young age. McKee testified Applicant reported he finished six or seven grades before leaving school, after which he held a series of menial labor jobs. McKee opined this also suggests lower intellectual functioning.

McKee testified he administer the Wexler abbreviated scale of intelligence test to Applicant, which is used to assess competency to stand trial. McKee explained the test looks at basic vocabulary and level of abstract reasoning. According to McKee, the higher the abstract reasoning score, the higher the subject's IQ likely is. McKee testified regarding the similarity subtest which is administered by asking the subject to indicate in which way two different things are alike. McKee stated when this test was administered to Applicant, his scores were in the lowest 1% of the population. McKee testified Applicant had a low score on a reading subtest which shows he has a difficulty reading.

McKee further testified he evaluated Applicant for evidence of malingering and found none. McKee concluded, based on Applicant's scores on the Wexler test, Applicant has mild-to-moderate intellectual disability. McKee opined Applicant's IQ is around 60-65, and stated below 70 is the red line for mental disability.

McKee also testified regarding his findings as to competence to stand trial. McKee stated Applicant was able to approximate the type of charge against him, though he did not specify the number of counts or any more than a "sexual charge with a minor." McKee reported Applicant had a factual understanding that he had been sentenced to forty years in prison. McKee also testified Applicant did not know who the defendant was, he was unable to place the location of the solicitor and witness in a drawing of a courtroom, Applicant did not know who his attorney was

other than a public defender, and Applicant did not know who to ask if he needed more information. McKee testified Applicant also showed deficits in rational understanding, noting Applicant was unable to say what he wanted the judge to know about him if he were asked. McKee stated Applicant was unable to understand why talking to solicitor without his public defender would be bad. McKee further stated Applicant could not understand the concept of plea bargaining and did not know if he could be forced to plead guilty. McKee stated he had concerns that if Applicant decided to testify that he would have great difficulty understanding the questions directed towards him, specifically on cross-examination.

McKee concluded that in December 2018, Applicant lacked the capacity to assist his attorney and lacked an understanding of the proceedings against him. McKee further testified intellectual disability begins in childhood and persists through adulthood. McKee stated he believes that because Applicant's principal conflict is intellectual disability, he likely had this disability at the time of his plea and it likely still persists. McKee testified intellectual disability is permanent and generally is not "treatable" in the same way as other mental illnesses.

Finally, McKee testified there is a reasonable probability that Applicant was incompetent at the time of his plea. McKee stated he believes that Applicant does not have the ability to converse with his lawyer and have a reasonable understanding of the proceedings. McKee further stated he believes it would have been prudent to request a Blair hearing prior to Applicant's plea.

On cross-examination, McKee testified Applicant has some capacity to learn. McKee stated if he had examined Applicant in 2014 and found him incompetent, McKee would have tried to educate Applicant to see if competence could be restored. McKee stated that while he believes

it is unlikely that competence would have been restored, it is possible. McKee explained if there had been a Blair hearing, he would have tested Applicant at the hearing to see if he retained any information. McKee testified he could not provide a specific date when Applicant would have become incompetent, but based on his experience, it is his expert opinion that it is unlikely Applicant's competence could have been restored.

McKee testified he based his analysis and testimony on his evaluation from 2018. McKee testified he did not look at any prior information or school records.

McKee agreed Applicant was able to maintain a job for a number of years. McKee further agreed that while Applicant was unable to place a solicitor in the right place on a drawing of a courtroom drawing, that did not limit his ability to understand what a solicitor is. McKee testified Applicant understood the charges against him and the factual basis for the charges, and Applicant understood that he had pleaded guilty and been sentenced to forty years' imprisonment.

Following McKee's testimony, Respondent presented the testimony of plea counsel. Counsel testified he handled Applicant's case from the time of incarceration until Applicant pleaded guilty. Counsel testified Applicant was able to discuss the case with him, including the particular facts of the case, and Applicant responded to their discussions in an intelligent manner. Counsel testified, overall, his conversations with Applicant were normal, and he believed Applicant understood the charges and the possible outcomes.

Counsel further testified that while he thought there were psychological issues with Applicant, he never thought Applicant had an issue with competency. Counsel testified he has been practicing as an attorney since 2005, and in that time he has handled hundreds of cases.

Counsel stated competency is a fairly common issue, and he has had at least one case per year in which he had a client evaluated for competency. Counsel acknowledged he was aware of Applicant's history in special education, but he did not seek any further mental health issues or pursue a competency evaluation.

Counsel stated Applicant knew he was in legal trouble, knew Counsel was there to help him, and knew that the police were looking to uphold the law. Counsel also testified Applicant even offered a defense - when confronted with the pictures, Applicant said the victim took them himself. Counsel explained people who are "slow" or have limited mental ability are not necessarily incompetent to stand trial. Counsel stated that simply because a person is not functioning at a level to complete high school, they can still understand what they are doing and understand the role of their attorney. Counsel testified, in his opinion, he felt Applicant knew that he was wrong, particularly based on Applicant's conversation with victim's mother wherein Applicant placed blame for photos on the victim and Applicant's knowledge the police were coming to serve a search warrant on him. Counsel also noted Applicant was able to hold a job at a General Motors facility for many years, until he retired to South Carolina from Ohio.

Counsel testified he never had any concerns about Applicant's ability to understand the charges, Counsel's role as his lawyer, or the State's role in the legal process. Counsel also testified it was his general practice to look for issues with mental competency in his clients, and he would investigate further if there were any concerns in his mind. However, he stated he did not do so in this case because he felt Applicant was competent to enter a plea.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses, evaluated their credibility, and weighed the testimony and evidence accordingly in its discussion below. This Court finds the combined record from the criminal case and the testimony and evidence presented the hearing establishes Applicant failed to prove he is entitled to equitable tolling to excuse his failure comply with the statute of limitations, and therefore, the State's motion to dismiss should be granted. Set forth below are the relevant findings of fact and conclusion of law as required by section 17-27-80 of the South Carolina Code of Laws.

Generally, an application for post-conviction relief must be filed "within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later." S.C. Code Ann. § 17-27-45(A). However, "[w]here a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period to ensure fundamental practicality and fairness." Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009). One of those recognized situations is when an applicant asserts he was unable to comply with the statute of limitations due to mental incapacity. In such a case, the South Carolina Supreme Court has held

the proper remedy is... a hearing as to whether [Applicant's] mental incapacity prevented such an application in the one year following his... guilty plea. If the PCR court finds mental incompetence prevented his filing a PCR application, the court should determine the duration of the incompetence, and whether the application was filed within one year of [Applicant] regaining competency.

Ferguson v. State, 382 S.C. 615, 620, 677 S.E.2d 600, 602 (2009).

Here, Applicant argues he is entitled to equitable tolling because he is incompetent due to mild-to-moderate intellectual disability, which he alleges would likely have been present at the time of trial and continues today. In support of this contention, Applicant presented the testimony of Dr. McKee, along with McKee's report of the evaluation he performed in December 2018.

This Court finds, however, this is insufficient to meet Applicant's burden of proving his incapacity prevented him from timely filing a post-conviction relief application within one year of his guilty plea as required by section 17-27-45 of the South Carolina Code. This Court finds persuasive Counsel's credible testimony regarding his interactions with Applicant at the time of the plea. Counsel is an experienced practitioner of criminal defense, and he credibly testified he had no indication Applicant was incompetent during the course of his representation. Counsel testified, in particular, that Applicant was able to discuss the facts of the case with him and even offered a possible defense – that the victim had taken the pictures himself. Counsel further testified Applicant had a clear understanding that his conduct was wrong, and he believed Applicant knew what he was doing in entering the guilty plea. Also of significance is the fact that the plea court specifically asked Applicant if he knew of any issues which would prevent him from understanding the plea process; Applicant coherently answered the plea court's questions without prompting or help from Counsel; and Applicant told the plea court he understood the questions asked of him. Tr. pp. 5, 13, 24-25.

Finally, while Dr. McKee testified, in his opinion, Applicant was likely incompetent at the time of the plea, Dr. McKee did not evaluate Applicant at that time, and he conceded he could not

provide a date on which Applicant's incompetency began. Additionally, Dr. McKee McKee testified he based his analysis and testimony on his evaluation from 2018. McKee testified he did not look at any of Applicant's prior mental health information or school records. McKee further agreed Applicant understood the charges against him and the factual basis for the charges, and Applicant understood that he had pleaded guilty and been sentenced to forty years' imprisonment.

This Court therefore finds Applicant has failed to establish he is entitled to equitable tolling due to an incompetency that prevented him from timely filing this application. "[A] defendant's low IQ alone does not determine whether he is competent to stand trial, or to enter a guilty plea." Commonwealth v. Cano, 87 Mass. App. Ct. 238, 242, 28 N.E.3d 491, 495 (2015). Rather, the test is "whether the defendant has the sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational, as well as a factual, understanding of the proceedings against him." State v. Bell, 293 S.C. 391, 395-96, 360 S.E.2d 706, 708 (1987) (citing Dusky v. United States, 362 U.S. 402 (1960)).

As discussed above, Counsel's testimony combined with the record of the plea hearing establish Applicant had a reasonable degree of understanding at the time of the plea, and clearly understood the proceedings against him. See, e.g., Atkins v. Virginia, 536 U.S. 304, 306 (2002) ("Those mentally retarded persons who meet the law's requirements for criminal responsibility should be tried and punished when they commit crimes."); see also State v. Davis, 309 S.C. 326, 338, 422 S.E.2d 133, 141 (1992) (affirming the circuit court judge's determination that Davis, who was mentally retarded, was competent to stand trial where the circuit court judge considered the testimony of conflicting experts before making his competency finding), overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999). Moreover, the Court is not

bound solely by an expert witness's determination and may properly consider other testimony. "The very nature of the inquiry as to a defendant's competency to stand trial demands that a court not be bound strictly by the views of experts." Bell, 293 S.C. 396, 360 S.E.2d at 708 (finding trial judge's determination of competency, defense counsel's testimony and its own observations of the defendant's behavior, in addition to expert testimony, was supported by the evidence).

The Court does not question Dr. McKee's finding that Applicant was incompetent in December 2018. However, it is ultimately not dispositive to the issue before this Court—whether Applicant was prevented from timely filing his application for post-conviction relief due to incompetency in the proscribed period for filing as set forth in Section 17-27-45. It is Applicant's burden to prove he was incompetent during the time in which the statute of limitations was running and that incompetency prevented him from timely filing an application for post-conviction relief. This Court finds Applicant has failed to meet this burden. Significantly, even Dr. McKee acknowledged Applicant understood the charges against him, the factual basis for the charges, that he had pleaded guilty and been sentenced to forty years.

This Court finds Applicant failed to prove when Applicant's incompetency started. Further, even if Applicant first became incompetent in December 2018, the statute of limitations in this case expired on May 15, 2016, and Applicant did not file this application until February 28, 2019, almost three years beyond the filing deadline.

### **CONCLUSION**

Based on all the foregoing, this Court finds and concludes Applicant has not established any mental incapacity prevented him from complying with the one-year statute of limitations.

Therefore, the State's motion to dismiss this application for post-conviction relief with prejudice is granted.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR (providing the appropriate procedure to perfect an appeal). Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Further, Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for the appropriate procedures for appealing a judgment in a PCR action.

**IT IS THEREFORE ORDERED:**

1. the Application for Post-Conviction Relief is dismissed with prejudice;  
and
2. Applicant shall be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED.**

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JENNIFER B. MCCOY  
Presiding Judge  
Second Judicial Circuit

\_\_\_\_\_, 2021



Dayne Phillips &lt;dayne@pricebenowitz.com&gt;

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**PCR: Jerry Shaeffer**


---

Dayne Phillips &lt;dayne@pricebenowitz.com&gt;

Mon, Jul 26, 2021 at 10:51 AM

To: "McCoy, Jennifer B." &lt;jmccoyj@sccourts.org&gt;

Cc: Lindsey McCallister &lt;LMcCallister@scag.gov&gt;, "McCoy, Jennifer Law Clerk (Joseph Grooms)" &lt;jmccoyle@sccourts.org&gt;, "McCoy, Jennifer B. Secretary (Kathryn B. Stone)" &lt;jmccoysc@sccourts.org&gt;, Courtney Powers &lt;courtney@pricebenowitz.com&gt;

Bcc: "Clio Maildrop Jerry.Shaeffer.2019.02.00003" &lt;800ca9c17+matter1167892579@maildrop.clio.com&gt;, "Clio Maildrop Jerry.Shaeffer.2018.08.00001" &lt;800ca9c17+matter1149191374@maildrop.clio.com&gt;

Good morning, Judge McCoy:

I hope you had a good weekend. For your review and consideration, I have attached the Proposed Order in Jerry Shaeffer's PCR action.

Please let me know if you have any questions or concerns.

Thank you,



## Dayne Phillips

Attorney at Law

Criminal Defense | Appeals |  
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Dayne Phillips &lt;dayne@pricebenowitz.com&gt;

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**PCR: Jerry Shaeffer**


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Dayne Phillips &lt;dayne@pricebenowitz.com&gt;

Mon, Jul 26, 2021 at 1:28 PM

To: "McCoy, Jennifer B." &lt;jmccoyj@sccourts.org&gt;

Cc: Lindsey McCallister &lt;LMcCallister@scag.gov&gt;, "McCoy, Jennifer Law Clerk (Joseph Grooms)" &lt;jmccoyle@sccourts.org&gt;, "McCoy, Jennifer B. Secretary (Kathryn B. Stone)" &lt;jmccoysc@sccourts.org&gt;, Courtney Powers &lt;courtney@pricebenowitz.com&gt;

Bcc: "Clio Maildrop Jerry.Shaeffer.2019.02.00003" &lt;800ca9c17+matter1167892579@maildrop.clio.com&gt;, "Clio Maildrop Jerry.Shaeffer.2018.08.00001" &lt;800ca9c17+matter1149191374@maildrop.clio.com&gt;

Judge McCoy:

I sincerely apologize for the additional email. However, I noticed that I had inadvertently attached a draft copy and not my final Proposed Order.

Please see the updated Proposed Order for your review in Jerry Shaeffer's PCR action.

Thank you,



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### Attorney at Law

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Dayne Phillips &lt;dayne@pricebenowitz.com&gt;

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**PCR: Jerry Shaeffer**

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**Lindsey McCallister** <LMcCallister@scag.gov>

Mon, Jul 26, 2021 at 9:59 PM

To: Dayne Phillips &lt;dayne@pricebenowitz.com&gt;, "McCoy, Jennifer B." &lt;jmccoyj@sccourts.org&gt;

Cc: "McCoy, Jennifer Law Clerk (Joseph Grooms)" &lt;jmccoyle@sccourts.org&gt;, "McCoy, Jennifer B. Secretary (Kathryn B. Stone)" &lt;jmccoysc@sccourts.org&gt;, Courtney Powers &lt;courtney@pricebenowitz.com&gt;

Good evening,

Attached is the State's proposed order. If anything else is needed from the State, please let me know.

Lindsey

**From:** Dayne Phillips <dayne@pricebenowitz.com>**Sent:** Monday, July 26, 2021 1:28 PM**To:** McCoy, Jennifer B. <jmccoyj@sccourts.org>**Cc:** Lindsey McCallister <LMcCallister@scag.gov>; McCoy, Jennifer Law Clerk (Joseph Grooms) <jmccoyle@sccourts.org>; McCoy, Jennifer B. Secretary (Kathryn B. Stone) <jmccoysc@sccourts.org>; Courtney Powers <courtney@pricebenowitz.com>**Subject:** Re: PCR: Jerry Shaeffer

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On Mon, Jul 26, 2021 at 10:51 AM Dayne Phillips <[dayne@pricebenowitz.com](mailto:dayne@pricebenowitz.com)> wrote:

Good morning, Judge McCoy:

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Please let me know if you have any questions or concerns.

Thank you,

**Dayne Phillips**  
Attorney at Law

Criminal Defense | Appeals |

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On Sat, Jul 17, 2021 at 12:21 AM Dayne Phillips <[dayne@pricebenowitz.com](mailto:dayne@pricebenowitz.com)> wrote:

Thank you, Judge McCoy!

All the best,

**Dayne Phillips**  
Attorney at Law

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Paralegal: Courtney Powers [Email](#)

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 **SHAEFFER Jerry Lee - proposed OOD (02654680xD2C78).docx**  
49K

STATE OF SOUTH CAROLINA )  
 COUNTY OF AIKEN )  
 Jerry Lee Shaeffer, #364166, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE SECOND JUDICIAL CIRCUIT

C.A. No. 2019-CP-02-00516

**ORDER OF DISMISSAL**

FILED 9-7 2021 9:21  
 SP  
 \_\_\_\_\_  
 Robert J. Harte  
 C.C.P. & G.S.  
 \_\_\_\_\_  
 Shadell Parks  
 Deputy Clerk

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Jerry Lee Shaeffer (Applicant) on February 28, 2019, and amended on June 25, 2019, and July 10, 2020. Respondent made its Return on June 5, 2019, requesting the application be dismissed as untimely pursuant to section 17-27-45 of the South Carolina Code of Laws. Applicant requested a hearing to present evidence in support of his request for equitable tolling. A hearing on Respondent’s motion to dismiss and whether Applicant was entitled to equitable tolling on the one-year statute of limitations pursuant to Ferguson v. State<sup>1</sup> convened on June 4, 2021, via Cisco WebEx Meetings in accordance with the Chief Justice’s administrative memorandum, *Court Operations*, dated September 14, 2020.<sup>2</sup>

STATE OF SOUTH CAROLINA  
 COUNTY OF AIKEN  
 I, Robert J. Harte, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

SEP 07 2021

\_\_\_\_\_ SP  
 Robert J. Harte  
 C.C.P. & G., Aiken County, S.C.  
 \_\_\_\_\_  
 Shadell Parks  
 Deputy Clerk

<sup>1</sup> 382 S.C. 615, 620, 677 S.E.2d 600, 602 (2009) (“[T]he proper remedy is... a hearing as to whether [Applicant’s] mental incapacity prevented such an application in the one year following his... guilty plea. If the PCR court finds mental incompetence prevented his filing a PCR application, the court should determine the duration of the incompetence, and whether the application was filed within one year of... regaining competency.”)

<sup>2</sup> See S.C. Sup. Ct. Memorandum dated September 14, 2020 (“Judges . . . have discretion to determine whether it is appropriate to conduct a hearing using remote communication technology. *Consent of the parties or counsel is not required.* Please use WebEx, the conferencing platform supported by the Judicial Branch.” (emphasis added)). Nonetheless, this Court questioned

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Dayne C. Phillips, Esquire, represented Applicant. Assistant Deputy Attorney General Lindsey A. McCallister represented Respondent. Respondent renewed its motion to dismiss based on the failure to comply with the statute of limitations set forth in section 17-27-45, and joined Applicant's request that the Court hear evidence to determine if Applicant was entitled to equitable tolling pursuant to Ferguson.

Applicant presented Dr. Geoffrey R. McKee as an expert in forensic psychology to testify as to Applicant's competency. Respondent called Applicant's plea counsel, Michael Routzong. At the close of all the evidence and after hearing arguments from counsel, the Court requested proposed orders from both sides.

After a review of the record and all evidence and testimony presented, this Court finds Applicant has failed to meet his requisite burden of proof for equitable tolling of the statute of limitations pursuant to section 17-27-45 and grants the State's motion to dismiss this application with prejudice.

#### **PROCEDURAL HISTORY**

Applicant is present confined in the South Carolina Department of Corrections. During its April 2014 term, the Aiken County Grand Jury indicted Applicant for four counts of second-degree criminal sexual conduct with a minor (2014-GS-02-00576, -0577, -0578, 0579). Assistant Public Defender Michael D. Routzong of the Second Circuit Public Defender's Office represented him. Assistant Solicitor Ashley A. Hammack of the Second Circuit Solicitor's Office prosecuted the case.

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Applicant at the beginning of the hearing, and Applicant indicated his consent to the use of the WebEx platform.

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On May 18, 2015, Applicant appeared before the Honorable R. Knox McMahan and pleaded guilty as indicted to all four counts, without no negotiation or recommendation as to the sentence. Judge McMahan sentenced Applicant to imprisonment for twenty years for each offense, with three of the sentences to be served concurrently and the final sentence for indictment 2014-GS-02-0579 to be served consecutively.

Applicant did not appeal his conviction or his sentence.

### SUMMARY OF FACTS TO SUPPORT GUILTY PLEA

During the plea proceeding, the prosecutor gave the following factual recitation in support of the pleas:

On New Year's Eve of 2013 there was a family gathering. The defendant is related to the victim and his family in this case. At that family gathering, the victim's mother was looking at the defendant's cell phone and observed several naked pictures of her son on his cell phone. She talked to her son about it and he disclosed that after the defendant moved down to Aiken County from Ohio in May of 2013, that he did begin molesting the victim.

The defendant would keep the victim on the weekends and during that time, he would perform oral sex on the victim, as well as anal intercourse. The victim disclosed that that would be both penile and with various sexual devices and toys. Law enforcement conducted a search warrant of the home. They were able to recover the devices that the victim disclosed that had been used to include but not limited to handcuffs and vibrators and things of the like.

In speaking to the defendant, the defendant did confess to law enforcement to engaging in oral sex and anal intercourse with the victim over that time period. The indictments are for each of the months that this behavior occurred at the defendant's home in Aiken County.

(Tr. p. 13-14). During his plea, Applicant admitted he was guilty of the indicted conduct and later apologized to the victim and acknowledged his behavior was wrong.

### ALLEGATIONS FOR POST-CONVICTION RELIEF

In his original application for post-conviction relief, Applicant alleges he is being held in

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custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
  - a. "Applicant did not knowingly, intelligently, or voluntarily plead guilty"
  - b. "Plea counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible mitigating evidence in preparation of Applicant's defense. Specifically, Plea counsel failed to consult with an expert witness to evaluate whether Applicant was competent to stand trial or had the requisite mental capacity when it was reasonable and necessary in his defense."
  - c. "Plea counsel failed to move for a Blair hearing prior to trial to determine Applicant's competency to stand trial."
  - d. "Plea counsel failed to present all reasonable and necessary evidence to the judge during the sentencing phase in mitigation of Applicant's potential sentence. Specifically, plea counsel failed to call and expert witness to testify regarding Applicant; mental health background and competency to stand trial when it was reasonable and necessary to present this critical mitigation evidence."

In response to question nine as to why he did not pursue a direct appeal, Applicant indicated, "Applicant was not competent to knowingly, intelligently, and voluntarily plead guilty, and did not knowingly waive his right to appellate review."

In his amended application, Applicant further alleges:

1. Applicant did not knowingly, intelligently, and voluntarily plead guilty because he was not competent to stand trial. Therefore, Applicant could not have knowingly waived his right to direct appellate review of his involuntary guilty plea. However, Applicant acknowledges that the issue of whether he knowingly, intelligently, and voluntarily pled guilty is not preserved for appellate review because it was never raised by Plea Counsel or ruled on by the Plea Court at the hearing.
2. Plea Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 3 of the South Carolina Constitution. . . . Plea Counsel's unreasonable deficient performance fell below an objective standard of reasonableness "under prevailing professional norms" and prejudiced Applicant because there is a reasonable probability that, but for Plea Counsel's errors, Applicant would not have pled guilty and went to trial. . . .
  - a. Applicant did not knowingly, intelligently, and voluntarily pled guilty based on Plea Counsel's failure to request a competency to stand trial and criminal responsibility evaluations and a Blair hearing prior to the plea hearing. . . .

- b. Plea Counsel failed to move for the Chief Administrative Judge or presiding judge to sign Orders for Competency to Stand Trial and Criminal Responsibility and Capacity to Conform Evaluations based on Applicant's mental health history and records when it was reasonable and necessary to do so in Applicant's defense. . . .
- c. Plea Counsel failed to have Applicant evaluated by an independent qualified medical professional to conduct a forensic physiological competency to stand trial and criminal responsibility evaluations, or to determine whether Applicant had the requisite mental capacity prior to the plea hearing based on Applicant's mental health history when it was reasonable and necessary to do so in Applicant's defense.
- i. Geoffrey R. McKee... conducted a forensic psychological Competency to Stand Trial Evaluation of Applicant on December 7, 2018. Dr. McKee provided the following finding in his report dated December 9, 2018: "It is my opinion, based on my clinical review and psychological testing described in this report, that Mr. Shaeffer *does not currently* have a sufficient factual and rational understanding of the proceedings against him and is not now capable of assisting his attorney in his defense due to Mild to Moderate Intellectual Disability." (emphasis in original).
- d. Plea Counsel failed to move for a Blair hearing prior to the plea hearing for the Plea Court to determine Applicant's competency to stand trial based on Applicant's mental health history and records. . . .
- e. Plea Counsel failed to call an expert witness to testify regarding Applicant's mental health history during the sentencing phase of the plea hearing (competency to stand trial, criminal responsibility, and mitigation) when it was reasonable and necessary to present this critical defense and mitigation evidence.
- f. Plea Counsel failed to conduct a reasonable investigation to develop all available, relevant, and admissible mitigating evidence in preparation of Applicant's defense. . . . Specifically, Plea Counsel failed to obtain all necessary records and speak with witnesses regarding Applicant's mental health history to assist in determining competency and capacity to conform (criminal responsibility).
- g. Plea Counsel failed to present all reasonable and necessary evidence to the judge during the sentencing phase in mitigation of Applicant's potential sentence.
- h. Plea Counsel failed to review all potential defenses prior to Applicant's guilty plea. . . .

### SUMMARY OF TESTIMONY

At the hearing, Applicant presented Dr. Geoffrey McKee as an expert in forensic psychology. Dr. McKee testified he has practiced in forensic psychology since 1976. McKee testified he has practiced in South Carolina since 1985. He stated he is the cofounder of the forensic

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psychology program at the Medical University of South Carolina. McKee further testified he was the chief psychologist at the South Carolina Department of Mental Health for twenty-seven years and for fifteen years was chief psychologist in the forensic psychology unit. He testified he was asked to join the sexually violent predator program and worked there until 2011. He stated he has conducted 3500 evaluations and has testified in South Carolina state court 200-250 times and has been qualified as an expert every time he testified.

McKee testified he conducted a competency evaluation of Applicant on December 7, 2018.<sup>3</sup> He testified he met with Applicant for an hour and twenty minutes, and asked Applicant about Applicant's educational history, family history, drug and alcohol history, criminal history, mental health history, and personal history. McKee further testified he used methods to assess mental functioning and literacy to determine competency to stand trial.

McKee testified he felt it was particularly relevant that Applicant was in special education programs beginning in elementary school, which he explained indicated that school personnel identified him as a person who needed extra help in school at a young age. McKee testified Applicant reported he finished six or seven grades before leaving school, after which he held a series of menial labor jobs. McKee opined this also suggests lower intellectual functioning.

McKee testified he administer the Wexler abbreviated scale of intelligence test to Applicant, which is used to assess competency to stand trial. McKee explained the test looks at basic vocabulary and level of abstract reasoning. According to McKee, the higher the abstract reasoning score, the higher the subject's IQ likely is. McKee testified regarding the similarity

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<sup>3</sup> McKee's reported was entered into evidence as Applicant's Exhibit 2.

subtest which is administered by asking the subject to indicate in which way two different things are alike. McKee stated when this test was administered to Applicant, his scores were in the lowest 1% of the population. McKee testified Applicant had a low score on a reading subtest which shows he has a difficulty reading.

McKee further testified he evaluated Applicant for evidence of malingering and found none. McKee concluded, based on Applicant's scores on the Wexler test, Applicant has mild-to-moderate intellectual disability. McKee opined Applicant's IQ is around 60-65, and stated below 70 is the red line for mental disability.

McKee also testified regarding his findings as to competence to stand trial. McKee stated Applicant was able to approximate the type of charge against him, though he did not specify the number of counts or any more than a "sexual charge with a minor." McKee reported Applicant had a factual understanding that he had been sentenced to forty years in prison. McKee also testified Applicant did not know who the defendant was, he was unable to place the location of the solicitor and witness in a drawing of a courtroom, Applicant did not know who his attorney was other than a public defender, and Applicant did not know who to ask if he needed more information. McKee testified Applicant also showed deficits in rational understanding, noting Applicant was unable to say what he wanted the judge to know about him if he were asked. McKee stated Applicant was unable to understand why talking to solicitor without his public defender would be bad. McKee further stated Applicant could not understand the concept of plea bargaining and did not know if he could be forced to plead guilty. McKee stated he had concerns that if Applicant decided to testify that he would have great difficulty understanding the questions directed towards him, specifically on cross-examination.

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McKee concluded that in December 2018, Applicant lacked the capacity to assist his attorney and lacked an understanding of the proceedings against him. McKee further testified intellectual disability begins in childhood and persists through adulthood. McKee stated he believes that because Applicant's principal conflict is intellectual disability, he likely had this disability at the time of his plea and it likely still persists. McKee testified intellectual disability is permanent and generally is not "treatable" in the same way as other mental illnesses.

Finally, McKee testified there is a reasonable probability that Applicant was incompetent at the time of his plea. McKee stated he believes that Applicant does not have the ability to converse with his lawyer and have a reasonable understanding of the proceedings. McKee further stated he believes it would have been prudent to request a Blair hearing prior to Applicant's plea.

On cross-examination, McKee testified Applicant has some capacity to learn. McKee stated if he had examined Applicant in 2014 and found him incompetent, McKee would have tried to educate Applicant to see if competence could be restored. McKee stated that while he believes it is unlikely that competence would have been restored, it is possible. McKee explained if there had been a Blair hearing, he would have tested Applicant at the hearing to see if he retained any information. McKee testified he could not provide a specific date when Applicant would have become incompetent, but based on his experience, it is his expert opinion that it is unlikely Applicant's competence could have been restored.

McKee testified he based his analysis and testimony on his evaluation from 2018. McKee testified he did not look at any prior information or school records.

McKee agreed Applicant was able to maintain a job for a number of years. McKee further agreed that while Applicant was unable to place a solicitor in the right place on a drawing of a

courtroom drawing, that did not limit his ability to understand what a solicitor is. McKee testified Applicant understood the charges against him and the factual basis for the charges, and Applicant understood that he had pleaded guilty and been sentenced to forty years' imprisonment.

Following McKee's testimony, Respondent presented the testimony of plea counsel. Counsel testified he handled Applicant's case from the time of incarceration until Applicant pleaded guilty. Counsel testified Applicant was able to discuss the case with him, including the particular facts of the case, and Applicant responded to their discussions in an intelligent manner. Counsel testified, overall, his conversations with Applicant were normal, and he believed Applicant understood the charges and the possible outcomes.

Counsel further testified that while he thought there were psychological issues with Applicant, he never thought Applicant had an issue with competency. Counsel testified he has been practicing as an attorney since 2005, and in that time he has handled hundreds of cases. Counsel stated competency is a fairly common issue, and he has had at least one case per year in which he had a client evaluated for competency. Counsel acknowledged he was aware of Applicant's history in special education, but he did not seek any further mental health issues or pursue a competency evaluation.

Counsel stated Applicant knew he was in legal trouble, knew Counsel was there to help him, and knew that the police were looking to uphold the law. Counsel also testified Applicant even offered a defense - when confronted with the pictures, Applicant said the victim took them himself. Counsel explained people who are "slow" or have limited mental ability are not necessarily incompetent to stand trial. Counsel stated that simply because a person is not functioning at a level to complete high school, they can still understand what they are doing and

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understand the role of their attorney. Counsel testified, in his opinion, he felt Applicant knew that he was wrong, particularly based on Applicant's conversation with victim's mother wherein Applicant placed blame for photos on the victim and Applicant's knowledge the police were coming to serve a search warrant on him. Counsel also noted Applicant was able to hold a job at a General Motors facility for many years, until he retired to South Carolina from Ohio.

Counsel testified he never had any concerns about Applicant's ability to understand the charges, Counsel's role as his lawyer, or the State's role in the legal process. Counsel also testified it was his general practice to look for issues with mental competency in his clients, and he would investigate further if there were any concerns in his mind. However, he stated he did not do so in this case because he felt Applicant was competent to enter a plea.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses, evaluated their credibility, and weighed the testimony and evidence accordingly in its discussion below. This Court finds the combined record from the criminal case and the testimony and evidence presented the hearing establishes Applicant failed to prove he is entitled to equitable tolling to excuse his failure comply with the statute of limitations, and therefore, the State's motion to dismiss should be granted. Set forth below are the relevant findings of fact and conclusion of law as required by section 17-27-80 of the South Carolina Code of Laws.

Generally, an application for post-conviction relief must be filed "within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later." S.C. Code

Ann. § 17-27-45(A). However, “[w]here a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period to ensure fundamental practicality and fairness.” Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009). One of those recognized situations is when an applicant asserts he was unable to comply with the statute of limitations due to mental incapacity. In such a case, the South Carolina Supreme Court has held

the proper remedy is... a hearing as to whether [Applicant’s] mental incapacity prevented such an application in the one year following his... guilty plea. If the PCR court finds mental incompetence prevented his filing a PCR application, the court should determine the duration of the incompetence, and whether the application was filed within one year of [Applicant] regaining competency.

Ferguson v. State, 382 S.C. 615, 620, 677 S.E.2d 600, 602 (2009).

Here, Applicant argues he is entitled to equitable tolling because he is incompetent due to mild-to-moderate intellectual disability, which he alleges would likely have been present at the time of trial and continues today. In support of this contention, Applicant presented the testimony of Dr. McKee, along with McKee’s report of the evaluation he performed in December 2018.

This Court finds, however, this is insufficient to meet Applicant’s burden of proving his incapacity prevented him from timely filing a post-conviction relief application within one year of his guilty plea as required by section 17-27-45 of the South Carolina Code. This Court finds persuasive Counsel’s credible testimony regarding his interactions with Applicant at the time of the plea. Counsel is an experienced practitioner of criminal defense, and he credibly testified he had no indication Applicant was incompetent during the course of his representation. Counsel testified, in particular, that Applicant was able to discuss the facts of the case with him and even offered a possible defense – that the victim

had taken the pictures himself. Counsel further testified Applicant had a clear understanding that his conduct was wrong, and he believed Applicant knew what he was doing in entering the guilty plea. Also of significance is the fact that the plea court specifically asked Applicant if he knew of any issues which would prevent him from understanding the plea process; Applicant coherently answered the plea court's questions without prompting or help from Counsel; and Applicant told the plea court he understood the questions asked of him. Tr. pp. 5, 13, 24-25.

Finally, while Dr. McKee testified, in his opinion, Applicant was likely incompetent at the time of the plea, Dr. McKee did not evaluate Applicant at that time, and he conceded he could not provide a date on which Applicant's incompetency began. Additionally, Dr. McKee McKee testified he based his analysis and testimony on his evaluation from 2018. McKee testified he did not look at any of Applicant's prior mental health information or school records. McKee further agreed Applicant understood the charges against him and the factual basis for the charges, and Applicant understood that he had pleaded guilty and been sentenced to forty years' imprisonment.

This Court therefore finds Applicant has failed to establish he is entitled to equitable tolling due to an incompetency that prevented him from timely filing this application. "[A] defendant's low IQ alone does not determine whether he is competent to stand trial, or to enter a guilty plea." Commonwealth v. Cano, 87 Mass. App. Ct. 238, 242, 28 N.E.3d 491, 495 (2015). Rather, the test is "whether the defendant has the sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational, as well as a factual, understanding of the proceedings against him." State v. Bell, 293 S.C. 391, 395-96, 360 S.E.2d 706, 708 (1987) (citing Dusky v. United States, 362 U.S. 402 (1960)).

As discussed above, Counsel's testimony combined with the record of the plea hearing establish Applicant had a reasonable degree of understanding at the time of the plea, and clearly understood the proceedings against him. See, e.g., Atkins v. Virginia, 536 U.S. 304, 306 (2002) ("Those mentally retarded persons who meet the law's requirements for criminal responsibility should be tried and punished when they commit crimes."); see also State v. Davis, 309 S.C. 326, 338, 422 S.E.2d 133, 141 (1992) (affirming the circuit court judge's determination that Davis, who was mentally retarded, was competent to stand trial where the circuit court judge considered the testimony of conflicting experts before making his competency finding), overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999). Moreover, the Court is not bound solely by an expert witness's determination and may properly consider other testimony. "The very nature of the inquiry as to a defendant's competency to stand trial demands that a court not be bound strictly by the views of experts." Bell, 293 S.C. 396, 360 S.E.2d at 708 (finding trial judge's determination of competency, defense counsel's testimony and its own observations of the defendant's behavior, in addition to expert testimony, was supported by the evidence).

The Court does not question Dr. McKee's finding that Applicant was incompetent in December 2018. However, it is ultimately not dispositive to the issue before this Court—whether Applicant was prevented from timely filing his application for post-conviction relief due to incompetency in the proscribed period for filing as set forth in Section 17-27-45. It is Applicant's burden to prove he was incompetent during the time in which the statute of limitations was running and that incompetency prevented him from timely filing an application for post-conviction relief. This Court finds Applicant has failed to meet this burden. Significantly, even Dr. McKee acknowledged Applicant understood the charges against him, the factual basis for the charges, that he had pleaded guilty and been sentenced to forty years.

JBM/13

This Court finds Applicant failed to prove when Applicant's incompetency started. Further, even if Applicant first became incompetent in December 2018, the statute of limitations in this case expired on May 15, 2016, and Applicant did not file this application until February 28, 2019, almost three years beyond the filing deadline.

### CONCLUSION

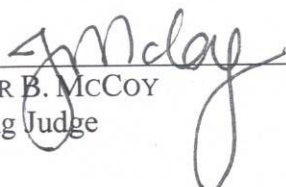
Based on all the foregoing, this Court finds and concludes Applicant has not established any mental incapacity prevented him from complying with the one-year statute of limitations. Therefore, the State's motion to dismiss this application for post-conviction relief with prejudice is granted.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR (providing the appropriate procedure to perfect an appeal). Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Further, Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for the appropriate procedures for appealing a judgment in a PCR action.

#### **IT IS THEREFORE ORDERED:**

1. the Application for Post-Conviction Relief is dismissed with prejudice;  
and
2. Applicant shall be remanded to the custody of the Respondent.

#### **AND IT IS SO ORDERED.**

  
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 JENNIFER B. MCCOY  
 Presiding Judge

JBM/14

Second Judicial Circuit

Aug. 24, 2021

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THE STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )  
 )  
**Jerry Lee Shaeffer,** )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF **COMMON PLEAS**  
**SECOND JUDICIAL CIRCUIT**  
 Case No.: **2019-CP-02-0516**

**MOTION TO ALTER OR AMEND  
 PURSUANT TO RULE 59(E), SCRPC**

COPY 1:17  
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 AIKEN COUNTY  
 CLERK OF COURT

**TO: The Honorable Jennifer B. McCoy**

The Applicant, by and through the undersigned Counsel, moves this Court to alter or amend the Order of Dismissal filed on September 7, 2021, in the above-captioned case pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. Rule 59(e), SCRE; U.S. Const. amends. V, VI, XIV; S.C. Const. art. I, §§ 3 and 14; S.C. Code § 17-27-20(A)(1), (4), and (6). In support of this motion, Applicant submits the following arguments and does not abandon or waive any previous arguments or issues raised in the prior pleadings, proposed orders, and evidentiary hearing in this PCR action:

- (1) Applicant incorporates by reference Applicant’s Proposed Order Denying Respondents Motion to Dismiss and Granting Tolling of the Statute of Limitations as if fully set forth verbatim into this motion. Notably, the facts and arguments contained in that memorandum necessitate the granting the tolling of the statute of limitations and an evidentiary hearing on the merits of Applicant’s PCR action.
- (2) Respectfully, although the Court allowed the parties to submit Proposed Orders, the procedure followed by this Court denied Applicant an opportunity to have the PCR tolling issue adjudicated by an independent judicial officer in violation of the

separation of powers doctrine. See S.C. Art. I, § 8. Specifically, the Court did not provide the State with any basis for denying Applicant's claims other than delegating the responsibility of drafting a proposed order of dismissal to the parties. The Court adopted the State's adversarial proposed Order of Dismissal despite that this independent judicial function cannot be delegated to an executive agency without providing specific instructions and rationale for omitting findings of fact and/or denying each claim. See generally *Marlar v. State*, 375 S.C. 407, 408, 653 S.E.2d 266 (2007) (holding, "Pursuant to S.C. Code Ann. § 17-27-80 . . . , the PCR judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented.").

- (3) The Order of Dismissal fails to properly address Applicant's claim that it is reasonable and necessary to toll the statute of limitations in this matter based on Applicant's demonstration that his failure to timely file the PCR action was due to mental incompetency. See *Ferguson v. State*, 382 S.C. 615, 619, 677 S.E.2d 600, 602 (2009) (finding the statute of limitations will be tolled where the applicant demonstrates the failure to timely file a PCR application was due to mental incompetency); *Pelzer v. State*, 378 S.C. 516, 521, 662 S.E.2d 618, 620-621 (Ct. App. 2008) (summarizing the doctrine of equitable tolling: "The time requirements in lawsuits between private litigants are customarily subject to equitable tolling if such tolling is necessary to prevent unfairness to a diligent plaintiff. However, equitable tolling, which allows a plaintiff to initiate an action beyond the statute of limitations deadline, is typically available only if the claimant was prevented in some extraordinary way from exercising his or her rights, or, in other words, if the relevant

facts present sufficiently rare and exceptional circumstances that would warrant application of the doctrine.”); *Gary v. State*, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001).

- (4) The Order of Dismissal fails to properly address Dr. Geoffrey McKee’s evaluation, testimony, findings, and opinions regarding his assessment of Applicant as an expert in forensic psychology. Specifically, the Order of Dismissal incorrectly finds that Dr. McKee’s expert opinion is insufficient to meet Applicant’s burden of proving “his incapacity prevented him from timely filing a post-conviction relief application within one year of his guilty plea as required by section 17-25-45 of the South Carolina Code.” Notably, the Order of Dismissal admits the following:
- a. Dr. McKee is an expert in forensic psychology.
  - b. Dr. McKee conducted a competency evaluation of Applicant.
  - c. Dr. McKee noted Applicant was in special education programs beginning in elementary school.
  - d. Dr. McKee conducted intelligence tests of Applicant and found Applicant’s “scores were in the lowest 1% of the population.”
  - e. Dr. McKee also found that Applicant had a difficulty reading.
  - f. Dr. McKee “evaluated Applicant for evidence of malingering and found none.”
  - g. Based on the Wexler test, “Applicant has mild-to-moderate intellectual disability” and “Applicant’s IQ is around 60-65, and stated below 70 is the red line for mental disability.”
  - h. Applicant “showed deficits in rational understanding”, “could not understand

the concept of plea bargaining”, and “had concerns that if Applicant decided to testify that he would have great difficulty understanding the questions directed towards him, specifically on cross-examination.”

- i. Dr. “McKee conducted that in December 2018, Applicant lacked the capacity to assist his attorney and lacked the understanding of the proceedings against him.”
  - j. Dr. “McKee further testified intellectual disability begins in childhood and persists through adulthood.”
  - k. Dr. McKee believes that Applicant “likely had this disability at the time of his plea and it likely still persists.”
  - l. Dr. “McKee testified there is a reasonable probability that Applicant was incompetent at the time of his plea.”
  - m. Dr. “McKee further stated he believes it would have been prudent to request a *Blair* hearing prior to Applicant’s plea.
  - n. “The Court does not question Dr. McKee’s finding that Applicant was incompetent in December 2018.”
- (5) The Order of Dismissal fails to properly address Applicant’s Proposed Order Denying Respondents Motion to Dismiss, and Granting Tolling of the Statute of Limitations also included the following:
- a. On cross-examination, Dr. McKee testified that it is unlikely for Applicant’s competency to be “restored”, but Applicant could be provided education regarding the legal system and procedure with inpatient treatment.
  - b. Dr. McKee further noted during redirect examination that there is a

difference between the education provided by an attorney and medical professional.

- c. Notably, Dr. McKee reiterated and confirmed his prior finding that Applicant does not currently have a sufficient factual and rational understanding of the proceedings against him and is not now capable of assisting his attorney in his defense due to Mild to Moderate Intellectual Disability.

- (6) The Order of Dismissal fails to properly address Plea Counsel's entire testimony regarding his interactions with Applicant. Specifically, Applicant's Proposed Order provided the following relevant testimony from the hearing:

- a. Plea Counsel testified that he knew Applicant had attended special education classes but never had Applicant evaluated to determine whether he was Competent to Stand Trial.
- b. Plea Counsel knew Applicant was "slow" but did not conduct any specific colloquy with Applicant to see if Applicant understood their conversations.
- c. Plea Counsel maintained that he had no recollection of having an issue communicating with Applicant.
- d. Notably, Plea Counsel admitted that his recollection of his conversations with Applicant was vague and that he had no specific notes regarding Applicant's understanding of his rights, discovery, or legal proceedings.

- (7) Therefore, this Court should reconsider its Order of Dismissal (filed on September 7, 2021), withdraw that order, enter an Order Denying Respondents Motion to Dismiss and Granting Tolling of the Statute of Limitations, and order a hearing on the merits of the PCR action.

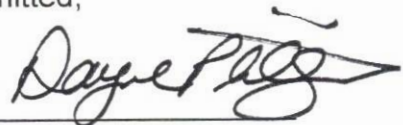
**CONCLUSION**

Based on the foregoing reasons, the undersigned Counsel respectfully requests this Court reconsider the Order of Dismissal because equitable tolling of the statute of limitations provided in the UPCPA is reasonable and necessary due to Applicant's mental incompetency. See *Ferguson v. State*, 382 S.C. 615, 619, 677 S.E.2d 600, 602 (2009) (finding the statute of limitations will be tolled where the applicant demonstrates the failure to timely file a PCR application was due to mental incompetency. See Rule 59(e), SCRCP; U.S. Const. amends. V, VI, XIV; S.C. Const. art. I, §§ 3 and 14; S.C. Code § 17-27-20(A)(1), (4), and (6).

**IT IS SO MOVED.**

Respectfully submitted,

s/ Dayne Phillips



**Dayne C. Phillips, Esq.**

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**ATTORNEY FOR THE APPLICANT**

**September 17, 2021**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served the within and foregoing **Motion to Alter or Amend Pursuant to Rule 59(e), SCRPC**, by depositing a true and correct copy of the same via first-class mail, postage prepaid, upon all parties as follows:

**The Honorable Robert J. Harte**  
Aiken County Clerk of Court  
P. O. Box 583  
Aiken, SC 29802

**Lindsey McCallister, Esq.**  
SC Attorney General's Office  
P.O. Box 11549  
Columbia, SC 29211

**The Honorable Jennifer B. McCoy**  
100 Broad Street, Suite 348  
Charleston, SC 29401

By: Courtney Powers  
**Courtney Powers**  
*Paralegal for Dayne C. Phillips, Esq.*

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(803) 216-5561  
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CLERK OF COURT

**September 17, 2021**

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Dayne Phillips &lt;dayne@pricebenowitz.com&gt;

## Jerry Shaeffer: Motion to Alter or Amend Judgment

Dayne Phillips &lt;dayne@pricebenowitz.com&gt;

Fri, Sep 17, 2021 at 11:37 AM

To: "McCoy, Jennifer Law Clerk (English Maull)" &lt;jmccoyle@sccourts.org&gt;

Cc: "McCoy, Jennifer B. Secretary (Kathryn B. Stone)" <jmccoysc@sccourts.org>, "McCoy, Jennifer B." <jmccoysj@sccourts.org>,  
Lindsey McCallister <lmccallister@scag.gov>, Courtney Powers <courtney@pricebenowitz.com>Bcc: "Clio Maildrop Jerry.Shaeffer.2019.02.00003" <800ca9c17+matter1167892579@maildrop.clio.com>, "Clio Maildrop  
Jerry.Shaeffer.2018.08.00001" <800ca9c17+matter1149191374@maildrop.clio.com>

Good morning, Ms. Tuten:

I hope you are doing well. For Judge McCoy's review and consideration, I have attached the Motion to Alter or Amend in Jerry Shaeffer's PCR action in Aiken County. I have also copied opposing counsel Lindsay McCallister.

Please let me know if you have any questions.

Have a good weekend,

### Dayne Phillips

Attorney at Law

Criminal Defense | Appeals |  
Professional License Defense

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Licensed in SC | [PriceBenowitz.com](http://PriceBenowitz.com)

Paralegal: Courtney Powers [Email](#)



[Attorney Profile](#) | [Case Results](#) | [Social Media](#) | [Videos](#) | [Podcasts](#)

Dayne Phillips Attorney at Law in Google Maps.

[VIEW IN GOOGLE MAPS](#)

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**Rule 59(e) Motion to Alter or Amend - Shaeffer.pdf**

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )  
 )  
 Jerry Lee Shaeffer, )  
 Applicant, )  
 )  
 vs. )  
 )  
 State of South Carolina, )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

SECOND JUDICIAL CIRCUIT

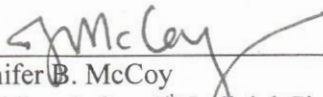
CASE NO.: 2019-CP-02-0516

**ORDER DENYING APPLICANT'S MOTION  
 TO ALTER OR AMEND ORDER OF  
 DISMISSAL FILED SEPTEMBER 7, 2021**

Applicant Jerry Lee Shaeffer filed an application for post-conviction relief which was ultimately denied in an Order of Dismissal filed on September 7, 2021. Applicant filed a Motion to Alter or Amend the September 7, 2021 Order pursuant to Rule 59(E), SCRPC on September 17, 2021. Upon review of the record, this Court respectfully DENIES Applicant's Motion to Alter or Amend.


AND IT IS ORDERED.

Aiken County, South Carolina  
 Dated: September 30, 2021

  
 \_\_\_\_\_  
 Jennifer B. McCoy  
 Presiding Judge, 9<sup>th</sup> Judicial Circuit

STATE OF SOUTH CAROLINA  
 COUNTY OF AIKEN  
 I, Robert J. Harte, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

OCT 05 2021

  
 \_\_\_\_\_  
 C.C.C.P. & G.S., Aiken County, S.C.  
 Charla Griffi Plouffe  
 Deputy Clerk

FILED 10.05 20 21  
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 Robert J. Harte CHP  
 C.C.C.P. & G.S.  
 Charla Griffi Plouffe  
 Deputy Clerk

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

The Honorable Jennifer McCoy, Circuit Court Judge

Case No. 2019-CP-02-0516

Jerry Lee Shaeffer,

Petitioner,

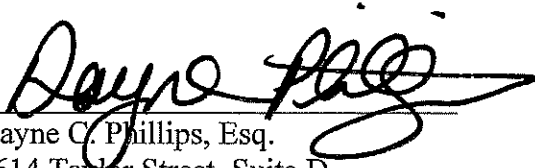
v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Petitioner Jerry Lee Shaeffer appeals the Honorable Jennifer McCoy’s Order Denying his Application for Post-Conviction Relief filed on **September 7, 2021**, and the Court’s Order Denying Applicant’s Motion to Alter or Amend Judgment (Rule 59(e), SCRCP) filed on **October 5, 2021**. The undersigned Counsel received notice of the filed Order denying Applicant’s Motion to Alter or Amend on **October 8, 2021**.



Dayne C. Phillips, Esq.  
1614 Taylor Street, Suite D.  
Columbia, SC 29201

ATTORNEY FOR PETITIONER

October 13, 2021

**Other Counsel of Record:**

Lindsey McCallister, Assistant Attorney General  
South Carolina Attorney General’s Office  
1000 Assembly Street, Room 519  
Columbia, SC 29201

**cc:**

Robert Harte, Aiken County Clerk of Court  
Jerry Lee Shaeffer

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AIKEN COUNTY  
CLERK OF COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

The Honorable Jennifer McCoy, Circuit Court Judge

Case No. 2019-CP-02-0516

Jerry Lee Shaeffer,

Petitioner,

v.

State of South Carolina,

Respondent.

**PROOF OF SERVICE**

I certify that I have served the Notice of Appeal on Assistant Attorney General Lindsey McCallister, and the Honorable Robert Harte, by depositing a copy in the United States Mail, postage prepaid, on **October 13, 2021**, addressed to the following parties:

Lindsey McCallister, Esquire, South Carolina Attorney General's Office  
1000 Assembly Street, Room 519, Columbia, SC 29201

The Honorable Robert J. Harte, Aiken County Clerk of Court  
P. O. Box 583, Aiken, SC 29802

*Courtney Powers*

Courtney Powers  
Paralegal for Dayne Phillips, Esq.  
1614 Taylor Street, Suite D.  
Columbia, SC 29201

**October 13, 2021**

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AIKEN COUNTY  
CLERK OF COURT