

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Apr 28 2022

S.C. SUPREME COURT

—————
Certiorari to Cherokee County

Honorable William A. McKinnon, Circuit Court Judge
—————

GERALD L. SANDERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001467
—————

APPENDIX
—————

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
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ATTORNEYS FOR RESPONDENT

ATTORNEY FOR PETITIONER

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STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,) TRANSCRIPT
PLAINTIFF,) OF
vs.) RECORD
GERALD L. SANDERS,) 2019-GS-11-1280
DEFENDANT.)

August 28th, 2019
Gaffney, South Carolina

B E F O R E :

THE HONORABLE R. KEITH KELLY, Judge.

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

MATT KENDALL
ASSISTANT SOLICITOR
Attorney for the State

RICHARD WHELCHER
ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

MICHAEL WATTS
Circuit Court Reporter

Transcribed by Pamela E. Green, Circuit Court Reporter

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I N D E X

(WHEREUPON, there were no exhibits marked during this hearing.)

1 P R O C E E D I N G S

2
3 SOLICITOR KENDALL: Mr. Sanders.

4 THE COURT: Solicitor.

5 SOLICITOR KENDALL: Your Honor, before the Court is
6 Mr. Gerald Landon Sanders on Indictment 2019-1280 true
7 billed from one count of criminal sexual conduct with a
8 minor in the second degree. He's represented in this case
9 by his attorney, Mr. Richard Welchel.10 This indictment supersedes Indictment 2018-904 that was
11 recently sent to the Grand Jury. It alleges almost the
12 exact same conduct. The difference is we moved some dates
13 forward based on what's the -- when the expected date was.14 There's a negotiated sentence in this case, sentence of
15 this case of 16 years.

16 THE CLERK: Please raise your right-hand.

17 (WHEREUPON, the Defendant was placed under oath at this
18 time.)

19 THE COURT: Sir, you're Mr. Gerald Sanders?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Mr. Sanders, you are not in custody, sir.
22 Have you taken any, any medication or any substance
23 that would interfere with your ability to think clearly?

24 THE DEFENDANT: No, sir.

25 THE COURT: Mr. Sanders, in 2019-1280, the State says

1 that you did, in Cherokee County, South Carolina, between
2 the dates of June 15 and December 31 of 2015, engage in a
3 sexual battery with a victim who was 14 years of age or
4 less, but at least 11 years of age, and/or you engaged in
5 sexual battery with a victim at least 14 years of age, but
6 less than 16 years of age, and that you were in a position
7 of familial, custodial, or official authority to coerce the
8 victim to submit or that you were older than the victim in
9 that you engaged in sexual battery with your granddaughter,
10 and I'm gonna use initials here because it's a minor, that
11 would be J.S.G., who was 14 years of age at the time, in
12 violation of State Law. That matter was true billed by the
13 Grand Jury.

14 It's my understanding you're offering to plead as
15 indicted. It is violent by definition. It is most serious
16 by definition. It carries with it up to---

17 SOLICITOR KENDALL: Twenty, sir.

18 THE COURT: ---twenty years. You and your lawyer and
19 the Government have negotiated a sentence of 16 years.

20 Do you understand what I told you?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Mr. Sanders, you have the right to a trial
23 by jury. We are in the jury trial and the jury will be here
24 at 11:00. Your case is next up.

25 Do you want a trial by jury today?

1 THE DEFENDANT: No, sir.

2 THE COURT: Sir, you have the right to remain silent
3 under both the United States Constitution and the South
4 Carolina Constitution.

5 Do you waive that right?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Sir, you have the right to call any witness
8 you choose to testify for you, and you have the right to
9 confront any witness who would testify against you.

10 Do you waive that right?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Sir, how do you offer to plead?

13 THE DEFENDANT: I plead guilty.

14 THE COURT: Do you plead guilty because you are guilty?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Did anyone force you, threaten you, or make
17 you plead guilty?

18 THE DEFENDANT: No, sir.

19 THE COURT: Is it truly your decision to plead guilty?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Have you had enough time to speak with Mr.
22 Welch?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Did he share the file and the materials
25 with you?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Did he answer all of your questions?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Has he done everything he can to help you?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Are you satisfied with his services?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Please listen to the solicitor.

9 SOLICITOR KENDALL: Your Honor, on May 3rd of 2018,
10 Yocevia (phonetic) Stokes came to the Blacksburg Police
11 Department with her daughter, G.S.G. . Ms.
12 Stokes stated that her daughter, G.S.G. , had a daughter,
13 Isabella R. . Ms. Stokes stated -- had genetic testing
14 performed on Isabella due to developmental delays.
15 According to Ms. Stokes, genetic testing showed the father
16 of the child might be a close family member to G.S.G. .
17 She then questioned her daughter, and after receiving
18 the results, she indicated that her grandfather, Gerald
19 Sanders, had sexual intercourse with her when she was 14
20 years of age. G.S.G. gave a written statement stating that
21 around June of 2015 she was spending the night at Gerald
22 Sanders' home about two times a month. She states that,
23 near the end of June, she was asleep on the couch when she
24 woke with Mr. Sanders touching her in her thigh.
25 Subsequently -- this occurred in Cherokee County.

1 THE COURT: Yes, sir.

2 SOLICITOR KENDALL: From South Carolina, 2013, public
3 disorderly conduct, pedestrian on a controlled access
4 highway from out-of-state.

5 Contempt of Court from 1983. Shoplifting over \$250.00
6 from 1983.

7 Trafficking in a controlled substance from 2001.

8 Contempt of Court from 1982.

9 Theft of property, 50.00 to \$500.00, from Texas from
10 like 2006.

11 Failing to identify or giving fictitious information
12 from 2006. It's another theft of property from 2006, and a
13 failing to appear that's resulting in guilty from 1988, Your
14 Honor.

15 THE COURT: Sir, did you, did you hear what the
16 solicitor told me?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Is that true?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: The Court accepts your plea as being
21 freely, intelligently, and voluntarily given with the sound
22 advice of an excellent lawyer.

23 Good morning, Mr. Whelchel.

24 MR. WHELCHER: Your Honor, the first thing I would ask
25 the Court to be informed of is that my client has been

1 incarcerated both in the jail and on home detention for 484
2 days as of today on this charge, Your Honor, and credit for
3 all that time served is part of the negotiation in this
4 case.

5 SOLICITOR KENDALL: That's correct, Your Honor.

6 MR. WHELCHER: Your Honor has heard the facts as
7 relayed by the prosecutor, and my client, before I was
8 appointed to represent him, voluntarily gave the State a
9 Buccal swab. There was some problem with that swab. I
10 can't determine what it was. I'm really not concerned about
11 it. But when asked to do it again, he voluntarily gave
12 another swab, Your Honor.

13 When we received the result of the SLED analysis, Your
14 Honor, I gave a copy of that to my client. He contemplated
15 hiring private counsel, and was unable to do that, Your
16 Honor.

17 He takes care of his wife who is here today.

18 Raise your hand.

19 (WHEREUPON, a person in the audience raises their
20 hand.)

21 MR. WHELCHER: And she stood by him through all of
22 this.

23 We even had to have his bond tailored so that he could
24 transport her for medical appointments while he was out, and
25 another judge was kind enough to change to that for us.

1 As the State has told you, this is negotiated of 16
2 years, Your Honor. I believe he knows what he is doing. It
3 is a decision that he made with his family, specifically his
4 wife, and I'll ask that you accept the recommendation or the
5 negotiations in this case, Your Honor.

6 THE COURT: Mr. Sanders, would you like to speak, sir?

7 THE DEFENDANT: No, sir, Your Honor.

8 SOLICITOR KENDALL: Your Honor, I just -- I don't
9 believe he's been arraigned on this. I don't think it's --
10 he's been provided a copy of it. I don't think we're
11 required to arraign him on it after a guilty plea. That's
12 why---

13 THE COURT: Do you waive arraignment?

14 MR. WHELCHER: I told him yesterday that the State had
15 expanded the indictment based on their newest interviews and
16 he understands that.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you waive arraignment, sir?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. Sir, I will impose the negotiated
21 sentence. I hope you appreciate the work that your lawyer
22 has done. I assure you, and I'm sure he's already told you,
23 that this, this sentence would be much stiffer than it is.
24 He's done a good job for you.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: 2019-1280, negotiated 16 years. Credit for
2 484 days.

3 Best of luck to you.

4 SOLICITOR KENDALL: Your Honor, just for the Court's
5 understanding, it will require registration. I believe this
6 is mandatory by statute.

7 MR. WHELCHER: It is.

8 THE COURT: Just check the box here?

9 SOLICITOR KENDALL: Yes, sir, it, it will require
10 registration, and I, I assume they'll tell him that when
11 he's released. They'll be things he has to do, and he needs
12 to make sure he complies with that.

13 THE COURT: I'm sure he will.

14 SOLICITOR KENDALL: Thank you, Your Honor.

15 MR. WHELCHER: Thank you, Your Honor.

16

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18 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Cherokee County, South Carolina, on the 28th day of August, 2019.

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

July 27th, 2020

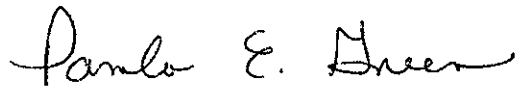
PAMELA E. GREEN, Court Reporter

C E R T I F I C A T E

1
2
3 I, Pamela E. Green, Official Court Reporter for the
4 State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate and complete Transcript of
6 Record of the proceedings had and evidence introduced in the
7 trial of the captioned case, relative to appeal, in the
8 Court of General Sessions for Cherokee County, South
9 Carolina, on the 28th day of August, 2019.

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

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15 July 27th, 2020

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19
20 PAMELA E. GREEN, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of Cherokee)

Gerald L. Sanders #381267)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

20CP-110350

APPLICATION FOR

POST-CONVICTION RELIEF

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2020 MAY 20 AM 11:34

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Broad River Correctional Institution
2. Name and location of Court which imposed sentence Cherokee County, Gaflney, SC
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2019-G.S. 1101280
 - (b) _____

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Aug. 22, 2019
 - (b) 16 years
 - (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) Public Defender did not follow through on the appeal
 - (b) _____

(c) _____

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

(a) Loss of evidence

(b) Could not read or write

(c) Promised suspended sentence with time served and probation by Public Defender

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

(a) Asked to submit additional DNA after loss of first taken samples

(b) Public Defender gave Plea Bargain on day of hearing with no one to read it to me

(c) was informed that if I signed Plea Bargain it is what I would receive

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

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

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

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

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

No

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

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

(a) No appeal was followed through by Public Defender

(b) Same as above

(c) Same as above

(d) see attached

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

(a) your arraignment and plea? Yes

(b) your trial, if any? No

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

No

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

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

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

To be resentenced under the original verbal Plea Bargain of Public Defender with suspended sentence, with time served and probation.

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

No

STATE OF SOUTH CAROLINA)
County of _____)

VERIFICATION

I, Gerald L. Sanders, 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.

Gerald L. Sanders

SWORN to and subscribed before me this 18th day of May, 2020.
Kangra Robinson (L.S.)
Notary Public

My Commission Expires: 8/5/2024

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

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

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Gerald L. Sanders
Applicant

SWORN or affirmed to and subscribed before me this

18th day of May, 2020.

Kaspera Robinson
Notary Public

My Commission Expires: 8/5/2024

BRANDY W. JOHNSON
2020 MAY 20 AM 11:34

Attachment concerning Pg. 3, Question 10, and Pg. 5, Question 16.

10.
(d) Inefficient Assistance of Counsel

16.
(d). Same as response to 10.(c), 11.(b) + (c.)

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MAY 20 2020

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BRANDY W. HOBBS

(8)

LEGAL MAIL

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

Gerald L. Sanders, #381267,
Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2020-CP-11-0350

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

NOW COMES Respondent, moving for a more definite statement and making its return to the post-conviction relief (hereafter "PCR") application filed on May 20, 2020 by Gerald Sanders (hereafter "Applicant"). Respondent respectfully offers the following in support of its return:

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2020 SEP 28 PM 12:10
BRADY W. MCBEE

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Cherokee County Clerk of Court. During its August 2019 term, the Cherokee County Grand Jury indicted Applicant for Second Degree Criminal Sexual Conduct with a Minor (2019-GS-11-01280). Applicant was represented by Richard Whelchel, Esquire. Assistant Solicitor Matt Kendall of the Seventh Circuit Solicitor's Office prosecuted the case. On August 28, 2019, Applicant appeared before the R. Keith Kelly, circuit court judge, and pled guilty to a negotiated sentence of sixteen years imprisonment.¹ Judge Kelly sentenced Applicant to sixteen years' imprisonment. Applicant did not pursue a direct appeal.

¹ Applicant was also indicted for another count of Second Degree Criminal Sexual Conduct with a Minor (218-GS-11-00904). This was dismissed pursuant to the plea negotiations.

II. Statement of Facts

On May 3, 2018, Yocevia Stokes, went to the police department with her daughter, G.S.G. (Tr. 6). G.S.G.'s daughter, Isabella R. had genetic testing due to developmental delays, which showed that the father may have been a close family member to G.S.G.. (Tr. 6). Stokes questioned G.S.G., who indicated that her grandfather, Applicant, had sex with her when she was fourteen. (Tr. 6). G.S.G. stated that in June 2015, she was spending the night at Applicant's house when she awoke from sleeping on the couch to Applicant touching her thigh. (Tr. 6). About a month later, she awoke again to finding her pants and underwear removed. (Tr. 7). G.S.G. stated Applicant put his fingers in her vagina. (Tr. 7). G.S.G. did not tell anyone because she did not want to make him angry. (Tr. 7). G.S.G. stated Applicant showed her pornography. (Tr. 7).

On October 15, 2015, G.S.G. was exiting the bathroom while at Applicant's house. (Tr. 7). While exiting, Applicant removed her pants, made her lie on the couch, removed his pants and sexual penetrated her with his penis. (Tr. 7). It lasted about five minutes and he ejaculated inside her. (Tr. 7). This behavior continued regularly into November. (Tr. 7). Upon receiving results of the paternity test, DNA samples were taken and the results ultimately showed that Applicant was most likely the father. (Tr. 7).

III. Current Action before the Court

In his *pro se* PCR application, Applicant alleges he is detained unlawfully for the following reasons (excerpts verbatim):

1. "Loss of evidence."²
 - a. "Asked to submit additional DNA after loss of first taken samples."

² This is interpreted as an ineffective assistance of counsel claim for failure to investigate and failure to assert a defense concerning loss of evidence.

2. "Could not read or write."³
 - a. "Public defender gave plea bargain on day of hearing with no one to read it to me."
3. "Promised suspended sentence with time served and probation by Public Defender."
 - a. "Was unaware that if I signed plea bargain it is what I would receive."

Attached to and incorporated herein are Applicant's Cherokee County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and the current PCR application. Respondent reserves the right to amend this Return upon receipt of additional relevant information.

IV. Argument

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "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, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing

³ This is interpreted as a failure to properly advise on consequences of the plea negotiations, resulting in the plea being involuntarily entered and, thus, invalid.

professional norms.” *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRCPC (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is

easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Invalid Plea

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

For a plea to be valid, the applicant must have been aware of the nature and crucial elements of the offense the maximum and minimum penalties, and the rights he is waiving by accepting the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000). A plea is not knowing or voluntary if a defendant "lacks knowledge of material evidence in the prosecution's possession." *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999).

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. at 34,

528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). “[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874 (quoting *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). Further, “guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea.” *Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

The plea hearing transcript reflects that Applicant entered his plea freely, voluntarily, knowingly, and intelligently. Applicant stated he was not on any medication or substance interfering with his ability to think clearly. (Tr. 3). Applicant stated he understood that he was pleading to a violent and most serious crime, that it carries up to twenty years in prison, and that he was pleading to a negotiated sentence of sixteen years. (Tr. 4). Applicant then waived his right to a jury trial, to remain silent, and to call and confront witnesses. (Tr. 4-5). Applicant stated he was pleading because he was guilty and that no one threatened or otherwise forced him into pleading. (Tr. 5). Applicant stated he had enough time to speak with Counsel, Counsel shared all materials with Applicant, Counsel answered all his questions, did everything he could to help him, and that Applicant was satisfied with Counsel’s services. (Tr. 5-6). When the plea judge asked if the Solicitor’s statement of facts were true, Applicant conceded that they were. (Tr. 8). Thus, based upon everything laid out above, Applicant entered the plea freely, knowingly, intelligently, and voluntarily and, thus, Applicant has waived all non-jurisdictional defects and defenses and cannot reassert them now.

Applicant alleges the plea was invalid because no one read the plea bargain to him and he

was under the impression that he would have a suspended sentence with time served and probation instead of a sixteen year sentence. However, the plea hearing transcript makes clear that Applicant freely, voluntarily, knowingly, and intelligently pled to a negotiated sentence of sixteen years' imprisonment. (Tr. 4). Thus, even if these allegations were true, any inadequacy on Counsel's part was remedied through the plea colloquy. Consequently, Respondent contends the allegations are presumably without merit. However, because Applicant fails to state exactly what Counsel did that was deficient or how the deficiency impacted his decision to plead, a more definite statement is needed for Respondent to definitively determine whether or not the allegations have merit.

Failure to Investigate

Applicant alleges Counsel was ineffective for failure to investigate the evidence. *Strickland* makes clear that Defense counsel "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S. at 691. When highlighting failure to investigate as a ground for a larger ineffective assistance of counsel claim, judicial determination of this claim's validity is evaluated for "reasonableness [under] all the circumstances" with "a heavy measure of deference to counsel's judgments" applied. *Id.* That said, counsel is required to, at minimum, "interview potential witnesses and make an independent investigation of the facts and circumstances of the case", *Ard v. Catoe*, 372 S.C. 318, 331-32, 642 S.E.2d 590, 597 (2007) (quoting *Troedel v. Wainwright*, 667 F.Supp. 1456, 1461 (S.D.Fla.1986), *aff'd*, 828 F.2d 670 (11th Cir.1987)), including aggressively re-examining all the government's forensic evidence and conducting analyses of all other available forensic evidence." *Id.* (quoting *American Bar Association Guidelines For The Appointment And Performance Of Defense Counsel In Death Penalty Cases*, reprinted in 31 Hofstra L.Rev. 913,

1015 (2003) (emphasis added)).

Counsel is not obligated to “investigate lines of defense that he has chosen not to employ at trial.” *Strickland*, 466 U.S. at 682 (quoting *Washington v. Strickland*, 693 F.2d 1243, 1255 (5th Cir. 1982)). Further, “[w]hen counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough*, 540 U.S. at 5 (citing *Strickland*, 466 U.S. at 690).

Regarding failure to investigate and present evidence allegations, Applicant is required to present evidence or witnesses he alleges Counsel did not properly investigate. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Additionally, whether Applicant was prejudiced by Counsel’s failure to investigate is contingent on whether the evidence presented would have led Counsel to change his recommendation regarding the plea. *Stalk v. State*, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009).

Applicant claims Counsel was ineffective for failing to investigate the loss of DNA evidence. However, he does not state what Counsel could have done differently, how Counsel’s actions fell below the standard of reasonableness, how further investigation would have impacted his decision to plead, or what information would have been unearthed through further investigation. Thus, a more definite statement is needed for Respondent to ascertain whether or not this allegation has merit.

Failure to Assert a Defense

Applicant claims Counsel was ineffective for failing to assert a defense concerning the loss of evidence. He did not, however, state what defense could have been raised or how he was prejudiced by the alleged deficiency. However, Applicant waived his right to assert a defense by entering his plea and, thus, cannot reassert this claim now. Still, a more definite statement is

needed for Applicant to ascertain whether or not the allegation has merit.

The ineffective assistance of counsel allegations probably raise questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (“Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.”).

V. Motion for a More Definite Statement

Respondent moves for a more definite statement regarding Applicant’s allegations. Applicant alleges that plea counsel was constitutionally ineffective for failure to render Applicant aware of the conditions of the plea bargain or how long the sentence would be and for failure to investigate and assert a defense concerning the loss of DNA evidence. However, he does not explain exactly what Counsel did that constituted ineffective assistance of counsel. Applicant fails to set forth with specificity any facts and circumstances upon the claim is based. The Uniform Post-Conviction Procedure Act requires that applicants must “specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In a PCR application, it is incumbent upon applicants to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure

Act. The bare assertion by the appellant that he was deprived of counsel is insufficient.

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

Furthermore, Rule 8(a), SCRCF, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Respondent moves pursuant to Rule 12(e), SCRCF, to require Applicant to provide a more definite statement of his claims. Respondent moves to require Applicant to file an additional amended application well in advance of any evidentiary hearing concerning this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the allegation.

VI. Other Allegations Denied

Each and every other allegation in Applicant’s PCR application not explicitly admitted, qualified, or explain in this Return is hereby denied by the Respondent.

VII. Assertion of Rights to Notice of Amendments, Experts

Applicant should raise any claims he intends to raise at the PCR evidentiary hearing well in advance of the hearing. Here, Applicant’s court-appointed attorney is the only individual authorized to file amendments to this application, given his representative capacity, Rule 11(a), SCRCF and *pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing is a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) (“Since there is no right to ‘hybrid representation’ that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.”).

Respondent reserves the right to request that any amendments withheld until the last

minute be stricken because of undue prejudice to Respondent or, in the alternative, continue the matter to permit adequate time to investigate and address the claims. *See Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017) (“In most PCR cases . . . we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases.”); *Love v. State*, 428 S.C. 231, 242, 834 S.E.2d 196, 201 (2019) (“When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record.”); *see also* Rules 15(a)-(b), SCRPC (explaining how to amend a pleading). Pursuant to Section 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless the Court grants leave upon good cause shown. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits withheld until the last minute resulting in undue prejudice to Respondent.

VIII. Conclusion

WHEREFORE, Respondent requests that the Court require Applicant to provide a more definite statement and then hold an evidentiary hearing regarding Applicant's allegations.

Respectfully submitted,

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Chief Deputy Attorney General

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September 24, 2020

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHEROKEE)
)
)
 GERALD L. SANDERS, #381267,)
)
) Applicant,)
)
) vs)
)
 STATE OF SOUTH CAROLINA,)
)
) Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

2020-CP-11-0350

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

Rodney W. Richey, Esquire
Richey & Richey, PA
Post Office Box 10916
Greenville, South Carolina 29603

FILED IN OFFICE OF
 CLERK OF COURT
 CHEROKEE COUNTY, S.C.
 2020 SEP 28 PM 12: 10
 BRANDY W. MCBEE

DATED this 24th Day of September, 2020.



 Eva Cook, Legal Assistant
 For Respondent

State of South Carolina)	
)	
County of Spartanburg)	
Gerald Sanders,)	2020-CP-11-0350
)	
Applicant,)	
)	
v.)	Transcript
)	
The State of SC,)	of
)	
Defendant.)	Post-conviction
)	Relief Hearing
)	
)	
)	
)	
)	
)	
)	

Date: September 15, 2021

Time: 1:36 p.m.

Location: Spartanburg County Courthouse

180 Magnolia Street, Spartanburg, SC 29306

Reported by
Amber Payne, CVR

APPEARANCES

Presiding: The Honorable William A. McKinnon

For the Applicant: Rodney Richey, Esq.
Richey and Richey
Injury Attorneys
33 Market Point Drive
Greenville, SC 29607

For the Defendant: Chelsey Marto, Esq.
South Carolina Attorney
General's Office
1000 Assembly St., Room 519
Columbia, SC 29201

Also Present: Richard Whelchel, Esq.

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EXHIBITS

There were no exhibits marked during this hearing.

1 PROCEEDINGS

2 THE COURT: Yes, ma'am. Ms. Marto?

3 MS. MARTO: Your Honor, may it please the
4 Court. We're here today in the case of Gerald
5 Sanders. Docket Number 2020-CP-11-0350.

6 I don't know if you want me to delve into
7 the procedural history at this point, but Mr.
8 Richey has informed me that as of this morning
9 they're seeking a continuance request. I will
10 say I've been in contact with Mr. Richey
11 throughout this entire process and this is the
12 first I'm hearing about it. From my
13 understanding, the basis would be that he
14 wants another DNA test. I've spoken with the
15 victims. And --

16 THE COURT: What sort of case is it if you
17 wouldn't --

18 MS. MARTO: It's a child sexual abuse case,
19 Your Honor.

20 THE COURT: Okay. And you say another DNA
21 test. Was -- was there DNA evidence in the
22 case?

23 MS. MARTO: Your Honor, there were two DNA
24 tests taken before the plea, as well as from
25 my understanding a genetic testing case. He's

1 claiming that the third one would exonerate
2 him from my conversations with counsel. He
3 claims was --

4 THE APPLICANT: It was --

5 MR. RICHEY: Shush. Don't talk -- don't talk,
6 please.

7 MS. MARTO: -- about the second one prior to
8 the plea, as well, which didn't. And so it
9 would be our position that not only because of
10 this it would be the State's position that
11 this is likely just a stallation (as spoken)
12 tactic and not an issue of Mr. Richey being
13 prepared that the victims are already here and
14 the witness has been subpoenaed to appear, we
15 would request continuing this --

16 THE COURT: How long was -- how long ago was
17 this hearing set?

18 MS. MARTO: This hearing was set, oh, six
19 weeks ago/eight weeks ago. I've been talking
20 with Mr. Richey about the case for at least
21 six months.

22 THE COURT: Okay. Mr. Richey.

23 MR. RICHEY: Okay. One moment, Your Honor.

24 Judge, I'll -- I'll tell you my client,
25 Mr. Sanders, I talked to him about this case

1 pretty extensively, and I had received a
2 letter from him saying that he was going to
3 withdraw the case, but this morning when I
4 talked to him about the withdrawal, he was
5 under the impression that he would -- could go
6 and get his stuff together and come back. And
7 I told him --

8 THE COURT: That he could sort of withdraw
9 without prejudice and refile it?

10 MR. RICHEY: No, no. I -- no. He's going to
11 withdraw -- well, that's what his intention
12 was.

13 THE COURT: Right.

14 MR. RICHEY: My intention was that when I read
15 the thing, I thought he was going to
16 withdrawal the case, but then when I was going
17 over the withdrawal information, then it was
18 withdrawal without prejudice and I told him,
19 "You know if you withdraw it, you're out,
20 okay?"

21 The essential thing about this, Your
22 Honor, is -- and the reason why we in this --
23 when I talked to him, I told him I -- I don't
24 believe I can get him another DNA test, that
25 he would have to go on a DNA statute or -- and

1 try that, but at this preceding --

2 THE COURT: Mr. Richey, is -- is -- is he
3 wanting a -- a different sample tested that
4 was never tested, or he is wanting a retest of
5 a sample that's already been tested?

6 MR. RICHEY: He -- he wants -- he wants a
7 retest -- he wants a retest period. That's
8 his whole thing. "I want a retest" --

9 THE COURT: So this is not new evidence. This
10 is -- he wants old evidence retested?

11 MR. RICHEY: He wants -- he wants old evidence
12 and he wants to submit another sample.

13 THE COURT: Is that -- he wants -- okay.

14 MR. RICHEY: Yes. Because he has some issues
15 -- let me go back. Originally, in this case,
16 he gave a sample. That sample was lost,
17 destroyed, however you want to say it. They
18 didn't have it. And is -- he believes that
19 that sample was a negative sample. I can't
20 get that sample back. We can't. But he
21 believes that was a negative sample, and that
22 that exonerated him, but I -- I -- I've
23 discussed with him, I can't get that sample
24 back, so he is not -- he wants another test
25 done.

1 Now, he understands they've already had
2 one test done; that was the test that was used
3 at the plea and all this stuff because it was
4 a guilty plea in the case. And so that's --
5 that's -- that's why he wants to continue so
6 he can get another test.

7 THE COURT: Did -- was it an Alford plea or
8 did he admit his guilt to the plea?

9 MR. RICHEY: He admitted his guilt at the
10 plea. I don't -- it's not -- it's not an
11 Alford plea, I don't believe, Your Honor.

12 MS. MARTO: It would also be a negotiated
13 plea --

14 MR. RICHEY: Yeah.

15 MS. MARTO: -- as well --

16 MR. RICHEY: -- negotiated.

17 MS. MARTO: -- Your Honor.

18 MR. RICHEY: It would -- but it was not a
19 Alford plea.

20 THE COURT: Mr. Richey, I -- if you're
21 comfortable, I'd like to hear from your client
22 directly. I'm not going to ask him about the
23 facts of the case, but I -- I do want to ask
24 him about this request for a DNA testing.

25 MR. RICHEY: Yes, sir.

1 THE BAILIFF: Stand up for the Judge.

2 MR. SANDERS: Okay.

3 THE COURT: Mr. Sanders, tell me what --

4 MR. RICHEY: One moment, Judge. Do you want
5 to swear him or no?

6 THE COURT: Yeah. Let's go ahead. That's
7 probably better, yeah.

8 (WHEREUPON, the applicant was sworn.)

9 THE COURT: Mr. Sanders, I understand you want
10 an additional DNA test done?

11 THE APPLICANT: Yes, sir. The first test I --
12 I -- I gave was -- once my lawyer thought I --
13 I couldn't afford another lawyer; I couldn't
14 afford to pay a lawyer, that test come up
15 missing.

16 THE COURT: Okay.

17 THE APPLICANT: That original test, and then
18 the second test I -- I took -- the judge said
19 I could go to any law enforcement and get it
20 done. Well, they wouldn't let me go -- I was
21 living in Gaffney. They wouldn't let me go to
22 Gaffney Police Department. They stopped me --
23 they told me to go to Blacksburg Police
24 Department where the original one was lost, so
25 I -- I'm -- I wanted another test because of

1 those two -- two things. First one's lost,
2 and then they wouldn't let me take the -- the
3 sample in Gaffney, and so I wanted to -- they
4 made me go back to Blacksburg.

5 THE COURT: Okay. Well, Mr. Sanders, but you
6 pled guilty to this charge.

7 THE APPLICANT: I -- I -- I feel -- I -- I
8 pleaded guilty because of my -- my attorney --
9 my -- okay. I cannot read or write. I -- I
10 know my name when it's write (as spoken) and
11 my attorney know this. He didn't let me read
12 the -- read the pleas. He didn't let my wife
13 read the pleas. If -- if he had -- I came
14 here in court when you can see where he took
15 me to the side and put glasses on my face for
16 me to sign this plea that I -- I don't know
17 nothing about. And told me that he would --
18 he needed more time to looking at this and
19 that he would be with me today on my PCR if I
20 go ahead and plead guilty on it, then he'll
21 come back and help me out.

22 THE COURT: Mr. Sanders, why have you waited
23 to the day of your PCR hearing to say you want
24 another DNA test done?

25 THE APPLICANT: We just talked about it last

1 week.

2 MR. RICHEY: Judge, he -- he has written me
3 and talked about this DNA test, and when I
4 went and talked to him, I -- I told him that,
5 "I would not be able -- I don't think I'll be
6 able to do that." And -- and we talked about
7 other stuff dealing with the case in terms of
8 some out-of-state witnesses, and, you know, it
9 -- it was a lot of stuff that quite frankly I
10 don't think I'm going to be able to do, okay,
11 in terms of subpoenaing people from Texas.
12 I'm not going to be able to do that. And we
13 talked about the case, the facts, the pleading
14 guilty, going through the -- and so that's why
15 I said we had a good talk, and he determined
16 that he did not want to go forward with the
17 case.

18 Now, I would've came in this morning with
19 a different kind of approach to it had I known
20 that we were going to go forward on this.
21 I'll just put it that way. When I say "go
22 forward on this," it -- yeah. Because -- I'll
23 leave it at that.

24 THE COURT: Do you believe there is -- that --
25 that we should get a continuance, Mr. Richey?

1 Is there -- is there something that you said
2 you would've done something differently if you
3 -- had you known -- I mean, are you asking for
4 more time?

5 MR. RICHEY: No. What I would've done if I --
6 if before I got the letter from him, I
7 could've proceeded with the case, but once I
8 got the letter from him -- and -- and I'll
9 just tell the Court, in terms of what I can
10 do. I mean -- and I -- and I tell all my -- I
11 told them that back there, is that, you know,
12 in a month or two months, I'm not going to be
13 -- I don't think I'll be able to get that test
14 if I wait a year or two years. I don't -- I
15 mean . . .

16 THE COURT: So -- okay. Now, I think I
17 understand, Mr. Richey. So, basically, what
18 you're saying is your client told you he was
19 going to withdraw this plea, so you're not
20 prepared to go forward today?

21 MR. RICHEY: Well --

22 THE COURT: I don't blame you. I mean, if he
23 says he's going to withdraw the plea, I mean,
24 that --

25 MR. RICHEY: Well, I -- I -- he wants the

1 continuance. He's the client, then I'm going
2 to advocate for the continuance. Now, I've
3 discussed the whole case with him. It's not a
4 matter of I don't know -- understand what the
5 issues are of the case or where he's going.
6 But he's asking for a continuance, and because
7 he's asking for one, I'm asking the Court to
8 give him one. Now, in terms of --

9 THE COURT: Are you --

10 MR. RICHEY: -- me --

11 THE COURT: Are you prepared to proceed today?

12 MR. RICHEY: I could do the case because --
13 because we gonna talk about this DNA. That's
14 the whole issue.

15 THE COURT: Okay.

16 Mr. Sanders, are -- are you going to pay
17 for this DNA testing? How you gonna get it --
18 I mean, saying if I gave you 60 days to have
19 this test done, can you -- can you pay to have
20 a lab retest this DNA?

21 THE APPLICANT: I can't pay, but I got family
22 I need to get in contact with and my wife and
23 she -- she could sell our -- our home. I
24 mean, you know, I -- I --

25 THE COURT: But you haven't talked to them

1 about it before today?

2 THE APPLICANT: I -- no. I -- I talked to
3 them the day of my -- what would -- what it'll
4 cost and everything. I never knew -- or I
5 never knew if the Court would let me do it, or
6 I would have to pay for it myself.

7 MR. RICHEY: I discussed that with him about -
8 - about paying for the test, and he told me
9 that he had several relatives that he could
10 get a hundred dollars here, hundred dollars
11 there, hundred dollars -- and when all
12 combined that -- that he could pay for it.
13 Now, he says -- he told me it's going to take
14 a while for that to happen, but -- you know.
15 I -- I -- I -- I think, Your Honor, if -- if
16 we -- I think that -- I -- I think what the
17 best way maybe to handle this is that -- that
18 we -- and -- and I'm just making a suggestion
19 to the Court that we could have the hearing,
20 he gets 60 to 90 days to have a test done, and
21 he submits the results to the Court. And if -
22 - and if he -- he has 90 -- 60 to 90 days to
23 have the test at least scheduled and done and
24 the results, you know, something to that
25 extent.

1 THE COURT: Ms. Marto?

2 MS. MARTO: Your Honor, Mr. Richey might be
3 able to correct me on a couple of things if
4 I'm incorrect, but I have been talking to him
5 about his client's desire to get a new DNA
6 test prior probably, at most, like at least
7 six months. This has been a reoccurring
8 thing. I talked to Mr. Whelchel, and he
9 indicated that this was a tactic being used
10 before the plea, as well, and that he wanted a
11 second test, would exonerate him, and that was
12 not the case. Right as the record shows it --
13 it's very, very unlikely that it would produce
14 a separate result given the likelihood that it
15 -- the father -- because this involves a
16 child.

17 THE COURT: Oh, the defendant was convicted of
18 fathering this -- the child?

19 MS. MARTO: His granddaughter's child, Your
20 Honor, who is in the courtroom today. And so
21 because of that and because from my
22 understanding, Mr. Richey didn't receive the
23 withdrawal letter until yesterday, I think.
24 He had been preparing to go to a hearing, and
25 we had talked about going to a hearing up

1 until --

2 THE COURT: Is that correct, Mr. Richey, you
3 got the withdrawal letter yesterday?

4 MR. RICHEY: Yeah. I got -- it was -- it was
5 dated September 9th, but when I went back to
6 the office yesterday, I -- I had it.

7 THE COURT: I -- I -- I'm inclined to go
8 forward today.

9 Mr. Sanders, let me ask you one more
10 time, so I understand you believe an
11 additional DNA test would show that you're not
12 guilty of this crime?

13 THE APPLICANT: Yes, sir.

14 THE COURT: Even though you pled guilty to it?

15 THE APPLICANT: Yes, sir.

16 THE COURT: Okay. Why have you not had that
17 test done already?

18 THE APPLICANT: The lawyer had -- Mr. Whelchel
19 told me he needed more time to prepare.

20 THE COURT: But he hasn't represented you
21 since the plea, has he?

22 THE APPLICANT: No. That -- that was the last
23 time he represented me.

24 THE COURT: And so you pled guilty -- what was
25 the date of the guilty plea?

1 MR. RICHEY: It was August of --

2 MR. RAY: It was August 2019.

3 THE COURT: So since August of 2019 when you
4 pled guilty, why have you not done the test?

5 THE APPLICANT: I've been in contact with Mr.
6 -- we've been filing motions for -- for -- for
7 more evidence I was trying to build a case
8 with.

9 THE COURT: What -- what motions have you
10 filed? I don't understand.

11 THE APPLICANT: For the motion for my last
12 judge, what -- what was that?

13 THE COURT: Mr. Sanders, let me just -- I
14 mean, you're -- you're telling me you want to
15 pay for a private DNA test, but you've had
16 more than two years. Why haven't you done it?

17 THE APPLICANT: I didn't know I had to pay for
18 it, sir, for one thing. I -- I -- I -- until
19 I talked to him this morning that I -- that I
20 had to pay for it.

21 THE COURT: Did you ask him? I mean, was it
22 the first time you thought of this issue was
23 this morning?

24 THE APPLICANT: No. I -- I -- I -- I'd been
25 wanting a DNA test. Last person I talked to

1 about it was Mr. -- Mr. Whelchel, and --

2 THE COURT: That was two years ago.

3 THE APPLICANT: Huh?

4 THE COURT: That was two years ago.

5 THE APPLICANT: Yeah. That was two years ago.

6 And -- but I -- I've been writing him, he --

7 he wrote the court and got a motion for it, I

8 mean, and everything and I talked to him about

9 it, but I never knew I -- I could even get it

10 until I filed a motion for it. I was told I

11 had to file a motion to get a DNA test.

12 MR. RICHEY: Well, I'll -- I'll -- let me try

13 to clarify some of this. We -- we've had

14 discussions for months about this test.

15 And -- and from my understanding from my

16 letters and discussion with him that it was

17 going to be an issue about paying for this

18 because he is incarcerated, got a 16-year

19 sentence, and my whole conversation with him

20 is that I would have to petition the court

21 maybe to get the court to pay for the DNA

22 test, but I told him that because of the --

23 because, quite frankly, the number of tests

24 that's been done that I don't know if the

25 court would --

1 THE COURT: I would say -- as for me, I would
2 not be inclined to grant that motion in a --
3 MR. RICHEY: And -- and --
4 THE COURT: -- negotiated guilty plea.
5 MR. RICHEY: And I -- and I --
6 THE COURT: I mean that's --
7 MR. RICHEY: Yeah. And I told him that then
8 maybe he could file something under that --
9 that DNA statute. I -- maybe file there and
10 get it, but I told him at this case, I don't
11 think I'd be able to get it, so -- so that's
12 what our discussions have been about this.
13 THE COURT: I -- I mean, this is an issue so
14 that -- Mr. Sanders, you -- you -- this is an
15 issue you think has been an issue since the
16 time you pled guilty?
17 THE APPLICANT: Yes. Uh-huh.
18 THE COURT: And, in fact, you raised this
19 issue with your attorney prior to the guilty
20 plea, you see?
21 THE APPLICANT: Yes, sir. We -- we -- we went
22 back and forth two hours over there with my
23 last attorney, and -- and he convinced me that
24 if I go ahead and -- filed -- I plead guilty
25 that'll give him more time to come up with

1 more evidence. I didn't know that he wouldn't
2 be here to pled at -- at this hearing. And he
3 told me --

4 THE COURT: Well, Mr. -- Mr. Sanders --

5 THE APPLICANT: -- he -- he -- he would work
6 on this case and he would be here and -- and
7 be by me. I -- I -- and he would have more
8 evidence. He needed more time. That was the
9 only reason I took the plea -- a guilty plea.

10 THE COURT: And Mr. --

11 THE APPLICANT: I --

12 THE COURT: -- Sanders, I -- I -- I think I'm
13 -- I'm going to deny the request for a
14 continuance. I mean, this -- Mr. Sanders says
15 this has been an issue since his guilty plea.
16 He has been aware of this issue for two years.
17 I -- I don't think it's a basis for a
18 continuance at the day of the hearing, so
19 we're -- we're going to proceed.

20 MR. RICHEY: Okay. Go ahead and start.

21 MS. MARTO: You want me to start?

22 MR. RICHEY: Yeah. Please do.

23 MS. MARTO: Your Honor?

24 THE COURT: Yes, ma'am.

25 MS. MARTO: May it please the Court. Again,

1 we're here today in the case of Gerald
2 Sanders, 2020-CP-11-0350. I do have a packet
3 of the pleading --

4 THE COURT: Please.

5 MS. MARTO: -- if Your Honor would like.
6 Thank you.

7 MR. RICHEY: Thank you.

8 MS. MARTO: He was charged with second degree
9 criminal sexual conduct with a minor and
10 represented by Mr. Richard Whelchel.

11 August 28th, 2019, he appeared before the
12 Honorable R. Keith Kelly, pled to a negotiated
13 sentence of 16 years. He pled guilty and did
14 not appeal. This application was filed May
15 20th, 2020, and our return was made on
16 September 24th, 2020. I'll turn it over to
17 Mr. Richey to state the allegations.

18 MR. RICHEY: Your Honor, the -- the
19 allegations, they -- they center around this
20 DNA test, but he also said that he was
21 promised the time-served sentence, and that
22 the public defender was going to represent him
23 subsequently to the plea.

24 THE COURT: So there -- what's the second
25 part, Mr. Richey? The public defender was

1 going to do what?

2 MR. RICHEY: Represent him subsequently after
3 the plea, which has not -- I mean, at this
4 proceeding, which he can't do.

5 THE COURT: So Mr. Richey (as spoken)
6 maintains the public defender promised him he
7 would represent him in post-conviction
8 proceedings?

9 MR. RICHEY: Yeah. That's what Mr. Sanders
10 contends.

11 THE COURT: Yeah. Mr. -- I'm sorry. Mr.
12 Sanders, I mean.

13 MR. RICHEY: Yes, sir.

14 THE COURT: Okay. Well, let me just -- I
15 mean, there -- there's a plea transcript and
16 he said he thought he was going to get time
17 served?

18 MR. RICHEY: He said -- he said that he was
19 promised -- that he was promised a suspended
20 sentence with time served. I understand what
21 the -- the transcript says, but that's what
22 his belief was.

23 THE COURT: Okay.

24 MR. RICHEY: Okay.

25 THE COURT: All right.

1 MR. RICHEY: Okay. We call Mr. Whelchel.

2 (WHEREUPON, the witness was sworn.)

3 DIRECT EXAMINATION

4 BY MR. RICHEY:

5 Q Sir, would you state your name, please?

6 A Richard Whelchel.

7 Q And -- and, sir, do you recall representing Gerald
8 Sanders?

9 A Oh, yes.

10 Q Okay. And -- and you've been in the courtroom, and
11 I'm going to ask you: First of all, did Mr.
12 Sanders ever admit his guilt to you?

13 A (No response.)

14 Q Did he --

15 A Ever what?

16 Q -- admit that he was guilty of these charges?

17 A Well, yes.

18 Q He did?

19 A Yes.

20 Q Okay. He didn't tell you, "I'm not guilty. I
21 ain't do it?"

22 A He may have said that at the beginning, but over
23 the course of the representation, he decided he was
24 going to plead guilty after we reviewed the
25 evidence.

1 Q Okay. And about this paternity test, was there a
2 sample actually lost; the first one?

3 A The DNA test?

4 Q Yes.

5 A Yeah. I think he had given that before I became
6 involved --

7 Q Okay.

8 A -- in the case. I think that was done early on
9 with DSS. I'm not sure. I don't recall. But I
10 think that's the case. And they lost it or
11 something happened with it --

12 Q Right.

13 A -- or maybe the solicitor wasn't comfortable with
14 the shang (phonetic)**00:31:11, I'm not sure about
15 that.

16 Q Okay.

17 A But he was adamant that the DNA wouldn't --
18 wouldn't come back to him. And he was; you know --
19 so we did a second test -- consented to a second
20 test, and provided the sample for the second test.

21 Q Did -- now, the first test, were -- were there any
22 results on the first test?

23 A No.

24 Q Okay. So the -- so the second test -- he --

25 A Is the only test.

1 Q -- was the -- was --

2 A Yeah.

3 Q Okay. And --

4 A The only results.

5 Q Okay. And it came back that he was the father.

6 A Yes, sir.

7 Q Okay. When -- did you talk to him about -- and

8 when it came back that he was the father, did he

9 ask you for another test?

10 A He may have. I don't remember --

11 Q Uh-huh.

12 A -- him doing that. I don't -- I don't know that he

13 had the money, or we had the funds for that --

14 Q Okay.

15 A -- quite honestly.

16 Q And he said that he was promised a suspended

17 sentence with time served and probation by the

18 public defender. Did -- do you recall any of that?

19 A No.

20 Q Okay. Was -- was the offer that he got, was it --

21 was it the best offer? Did they offer -- did

22 they --

23 A The original --

24 Q -- offer --

25 A Hold on a second.

- 1 Q Okay. Okay.
- 2 A The original offer was a plea to 17, and when I
3 went back to the solicitor, they worked it down to
4 16, and we made it a negotiated plea, so that
5 everybody understood going in that the sentence is
6 going to be 16 years --
- 7 Q Did --
- 8 A -- in front of Judge Kelly.
- 9 Q Okay. Did -- now, he talked about not being able
10 to read and write, was you aware of that?
- 11 A Oh, yeah.
- 12 Q And -- and did you know whether he understood all
13 the terms of the agreement and all -- the plea
14 agreement because he has signed the sentencing
15 sheets, correct?
- 16 A Yeah.
- 17 Q Okay. And so are you comfortable that he
18 understood all -- all the --
- 19 A I am.
- 20 Q Okay. So this -- this offer, do you know when it
21 was received because he said that he didn't get it
22 till the day of the hearing? Yeah.
- 23 A (Reviews documents.) I received the e-mail on
24 August the 18th in the evening.
- 25 Q And that's 2019?

1 A Yes, sir.

2 Q Okay. And -- and when did you discuss it with him,
3 do you have a note on that?

4 A It was, I believe, the next day because I didn't
5 receive it --

6 Q I'm sorry. Excuse me?

7 A That -- that's okay.

8 Q Okay.

9 A I didn't receive it until after five o'clock.

10 Q Okay.

11 A I think he and his wife came in -- and if I
12 remember correctly -- the next day, and we went
13 over the -- the plea.

14 Q Okay.

15 A And -- and he may have signed it; the sentencing
16 sheet that day. I can't recall, but I believe so.

17 Q Did -- do you recall telling him you would
18 represent him at this hearing?

19 A No.

20 Q Okay. All right. Thank you.

21 MR. RICHEY: (To the witness) Answer any
22 questions the Attorney General may have.

23 CROSS-EXAMINATION

24 BY MS. MARTO:

25 Q Good afternoon, sir. Thank you for being here.

1 Now, approximately how many times did you meet with
2 Mr. Sanders about this case?

3 A Oh, I'd say half a dozen at least over the total
4 time that I was representing him. He had a stroke
5 at one point during my representation, and there
6 was a long period of time where he was unable to
7 come into the office, but telephone -- physically
8 being with him is at least that many times, and I
9 don't know how many phone calls.

10 Q Okay. And you all discussed the evidence and
11 discovery concerning the case?

12 A Excuse me?

13 MR. RICHEY: (To the Applicant) Shush.

14 Q You discussed the evidence in this --

15 A Oh, yeah.

16 Q Yeah. What -- roughly what evidence existed in the
17 case concerning --

18 A Well, the DNA was the main evidence and at one
19 point, I talked to the alleged victim in the case
20 and I told him that -- because they had wanted me
21 to talk to her. There was some -- there was some
22 belief that she didn't want to testify and that she
23 wasn't going to show up and things of that nature.
24 I was finally able to get her in front of me and I
25 told him that based on my conversation with her if

- 1 she testified the way she talked to me in my office
2 that he can be convicted and I believe there's a
3 very good chance of him being convicted and, if so,
4 he was going to get, in my opinion, a higher
5 sentence than what he was -- what we were able to
6 negotiate with the negotiated plea.
- 7 Q Okay. So, in your opinion, the plea was the better
8 option over the trial given the fact that he would
9 face less time?
- 10 A He was -- in my opinion, it was better to plea than
11 go to trial.
- 12 Q Right.
- 13 A That's correct.
- 14 Q Okay. Now, do you remember if the victim had any
15 relationship to Mr. Sanders?
- 16 A Think it was a -- either a grandchild or a step-
17 grandchild.
- 18 Q Okay. I know there was a child that was born as a
19 byproduct, correct?
- 20 A I believe so, yes.
- 21 Q Yeah. Now, all of the terms of the plea concerning
22 the charges and the sentence were spoken out loud
23 at the plea hearing, right?
- 24 A Correct.
- 25 Q Yeah. And he didn't give any indication to you

1 during that process that he didn't understand?

2 A No. We had already talked about that in my office

3 before the plea.

4 Q Okay.

5 A And I believe it was the day before, but I --

6 Q Okay.

7 A -- can't be sure.

8 Q Okay. Now --

9 THE APPLICANT: The --

10 MR. RICHEY: Shush.

11 THE APPLICANT: The --

12 Q -- leading up to the second DNA sample, did you all

13 have discussions about it. What was his opinion of

14 what he thought the sample would conclude?

15 A Well, now, he did not like the DNA results

16 because --

17 Q Yeah.

18 A -- they were going to be great evidence against

19 him, which is obvious --

20 Q Right.

21 A -- but -- and he never had the money to come up

22 with another test. I didn't think another test

23 would be beneficial.

24 Q Okay. Do you remember statistically how likely the

25 DNA sample came back in terms of implicating him --

- 1 A No. I mean, it was --
- 2 Q -- roughly? Was it --
- 3 A I have it, I believe. (Reviews documents.) Says,
4 "The DNA profile developed from **Isabella R.** , is
5 consistent with being from a biological offspring
6 of G.S.G. and Gerald William Sanders.
7 It is approximately 870 billion times more likely to
8 see these -- these genetic results if the alleged
9 father is the true biological father than if a
10 random man is the father. Given the genetic
11 evidence greater than a 99.99 percent of randomly
12 tested men would be excluded as the biological
13 father."
- 14 Q Okay. Thank you, sir. And your discussions
15 included the fact that he would be serving the
16 negotiated 16-year sentence, right, not time
17 served?
- 18 A Oh, yeah.
- 19 Q Yeah.
- 20 A He wanted me to ask, and I did ask and tried to get
21 a better sentence than what they offered, but
22 the -- you know, the bottom line is the CSC on a
23 minor.
- 24 Q Yeah.
- 25 A And they were -- they were actually -- they could

1 have brought more counts, but he pled to one count
2 because they were -- they were allegations that
3 happened on more than one occasion, but the plea
4 was negotiated 16, one count, and that was it.

5 Q Thank you.

6 MS. MARTO: No further questions, Your Honor.

7 THE COURT: Mr. Richey?

8 MR. RICHEY: No other questions.

9 THE COURT: Any objections to releasing Mr.
10 Whelchel?

11 MR. RICHEY: No. No objection.

12 MS. MARTO: No, Your Honor.

13 THE COURT: Mr. Whelchel, thank you, sir.

14 THE WITNESS: Thank you, Your Honor.

15 (WHEREUPON, the witness was excused.)

16 MR. RICHEY: We call Mr. Sanders. Mr.
17 Sanders.

18 THE BAILIFF: Does he need to be sworn, Your
19 Honor?

20 THE COURT: No, sir. Mr. Sanders, you're
21 still under oath.

22 DIRECT EXAMINATION

23 BY MR. RICHEY:

24 Q Okay. Your name is -- state your name.

25 A Gerald Sanders.

1 Q And, Mr. Sanders, you were in the courtroom, and I
2 want to ask you: Did you tell your lawyer, at any
3 point, in this case you're guilty of this charge?

4 A No. I didn't.

5 Q You did not tell him you're guilty?

6 A No, sir.

7 Q Okay. You maintained your innocence the whole --

8 A Yes, sir.

9 Q -- time?

10 A Yes, sir.

11 Q Okay. All right. I'm going to go over a few
12 things with you. Now, on this transcript, Page 5,
13 Line 14 through 16, the judge asked you, "Do you
14 plead guilty because you are guilty?"

15 And you say, "Yes, sir." Okay. Why did you
16 answer the Court -- why did you answer that
17 question to the judge if you're not guilty?

18 A I was told by my attorney what to say. He -- he
19 coached me. He told me what the judge was gonna --
20 gonna ask me because I -- I couldn't like I say --
21 I can't read or write. So he told me what the
22 judge was gonna ask me because he said he needed
23 more time.

24 Q Okay. Tell me how he -- how he told you how to
25 answer that question?

- 1 A He -- he told me the judge was going to ask that
2 question, and for -- for me to tell him, "No, sir"
3 -- what did I say exactly? No. He told me to
4 answer the questions, "No, sir," and "Yes, sir."
5 And to go ahead and agree with them because he was
6 gonna -- he needed more time to build a case.
- 7 Q Okay. And -- and at the time -- at the time of
8 this guilty plea, were you satisfied with his
9 representation?
- 10 A No, sir.
- 11 Q Okay. I'm gonna go to Page 6, Line 6 through 8,
12 the judge says, "Are you satisfied with his
13 services?"
- 14 And you say, "Yes, sir."
- 15 A Yes, sir.
- 16 Q And -- and you said, "Yes, sir"?
- 17 A Yeah. I said, "Yes, sir."
- 18 Q Okay. Why did you answer the Court's questions
19 that way?
- 20 A Because I was -- I was coached to do it.
- 21 Q Okay.
- 22 A I -- I was told to do it.
- 23 Q Okay. "Has he done" -- I'm going up two lines,
24 "Has he done everything he can to help you?"
- 25 And you say, "Yes, sir"?

- 1 A Yes. Because --
- 2 Q So -- okay. Go ahead. I'm sorry.
- 3 A Because he told me that the judge would be
- 4 asking -- asking me that question, and for me to go
- 5 ahead and say, "Yes. He -- he done everything,"
- 6 because he -- he was needing more time to get me
- 7 off.
- 8 Q Did he tell you that that was dishonesty? Did he
- 9 tell you that?
- 10 A He never said it was dishonest. He told me that's
- 11 the way the plea bargain worked. For me -- I had
- 12 to agree with everything the plea bargain said.
- 13 Q Well, let me go back and ask it this way, okay?
- 14 When you discussed these questions with your
- 15 lawyer, did he tell you you are going to be under
- 16 oath?
- 17 A No. No. He never told --
- 18 Q Okay.
- 19 A -- me that.
- 20 Q Well -- well, before this hearing, were you put
- 21 under oath, like the judge did today? Somebody put
- 22 you under oath, correct?
- 23 A Yes.
- 24 Q Okay. And so your lawyer didn't discuss to you
- 25 that if you don't answer these questions truthfully

1 then -- then you're not -- that that's not a good
2 thing, right?

3 A No, sir. He -- he wanted -- he told me how to
4 answer.

5 Q So he just -- he told you not to tell the judge the
6 truth?

7 A Yeah. He told me -- He told me how to answer the
8 questions and what the questions were gonna be and
9 how to answer them.

10 Q Okay. This negotiated sentence of 16 years, did
11 y'all talk about that negotiation?

12 A Yeah. I -- I did not want to take a plea bargain
13 period.

14 Q Okay.

15 A I told him I wanted to fight it. We went back and
16 forth, back and forth, and he told me he needed
17 more time to build a case.

18 Q Okay. I'm asking you: You didn't want to do 16
19 years, right?

20 A No. I don't.

21 Q Okay. Why -- why didn't you tell this judge at the
22 plea hearing, "I don't want to do 16 years"? And
23 say, "I don't want to do 16 years," why didn't you
24 say that?

25 A Because I remembered what he told me to do because

1 he said he -- he -- he would be by my side when we
2 comes back for -- for appeal. And that he -- he
3 would have more evidence and -- and we can beat
4 this.

5 Q Okay. So -- so you answered all these questions,
6 and told the judge you accept this 16 years because
7 the lawyer told you after the plea that he would,
8 one, represent you --

9 A Yes.

10 Q -- right? He was going to represent you?

11 A Yes.

12 Q And that y'all would have more evidence to fight
13 the case?

14 A Yes.

15 Q That's why you answered all these questions like
16 that?

17 A Yes.

18 Q Okay. All right. Talking about this test -- this
19 paternity test. Now, you believed -- it's your
20 position if that you could get another test it
21 would show you not the father?

22 A Yes.

23 Q And -- and tell me why you believe that?

24 A The first test was -- was -- was misplaced. I know
25 I have never touched my granddaughter in a sexual

1 way. I never have. And when -- but when I told
2 him I couldn't afford to get another lawyer, that's
3 when everything started coming up missing.

4 Everything -- everything turned on me.

5 Q When you say "turned" what does that mean?

6 A The -- the DNA test was lost.

7 Q Okay.

8 A He -- really, he didn't have no time for me. He
9 told me he used to be a -- a D.A. himself for 32
10 years. You know, I -- he -- he offered to work and
11 that best thing for me to do is give him more time
12 by pleading guilty and giving him more time to come
13 up with more evidence.

14 Q Okay. So -- okay. So I understand. So y'all --
15 so your position is the lawyer needed more time and
16 the way to get more time was to plead guilty and
17 accept this sentence?

18 A Yes. He -- he said the judge wanted us to go
19 forward with this right away. If you'll -- if
20 you'll look and -- and see what day I signed the
21 plea bargain was in the courtroom. I was -- he
22 called me in the office on -- on -- on Monday.
23 Tuesday, we was in -- in court -- in -- in court.
24 Friday, we went to court, they -- they -- they
25 offered me 17 years on Friday. Monday, he called

1 me in court -- he called me in his office on Monday

2 --

3 Q Uh-huh.

4 A -- evening -- about three o'clock Monday evening --

5 Q Uh-huh.

6 A -- and, Tuesday, in court, he put glasses on my

7 face and told me to, "Sign right here."

8 I asked him, "What am I signing?"

9 He said, "You -- you -- you're signing the
10 plea agreement."

11 And I said, "Well, I -- I don't know what this
12 says. My wife is over there. Can she read it?"

13 "We don't have time for that right now." My
14 wife read -- read all my -- my -- read everything is
15 what I mean because I can't read.

16 And he -- he -- he told me -- he said, "Well,
17 we don't have enough time right now. Here's my
18 glasses." He took glasses off his head, handed them to
19 me, and told me this is where I -- and he pointed to
20 where I needed to sign because I still couldn't see with
21 his glasses.

22 THE COURT: Mr. Sanders, I -- I'm less
23 concerned about what's on the paper because I
24 know you say you can't read and write.

25 THE APPLICANT: Yes.

1 THE COURT: And I'm concerned, are you telling
2 me here today that you lied repeatedly to the
3 judge at your plea hearing, and that was on
4 the instructions of Mr. Whelchel?

5 THE APPLICANT: Yes. Yes.

6 MR. RICHEY: (To the Court) No further
7 questions. (To the applicant) Answer
8 questions the Attorney General has.

9 CROSS-EXAMINATION

10 BY MS. MARTO:

11 Q Good afternoon, sir. What did you think of the --
12 what happened after the plea hearing if it didn't
13 mean the ending of your case? What did you think
14 the plea hearing did if it wasn't that?

15 A Give him more time to come up with more evidence
16 for -- for my appeal.

17 Q So you just thought it was nothing more than him
18 stalling the court?

19 A Yeah. That -- that was what I thought?

20 Q Okay.

21 A Because he -- he said he needed more time to come
22 up -- up with more evidence.

23 Q Okay. Now, you said you never touched the alleged
24 victim in this case, right?

25 A Yes.

1 Q Then why was she willing to testify at trial that
2 you did?

3 A I can't answer to what she thinks. I cannot do
4 that.

5 Q Did you have --

6 A I don't know what she's thinking.

7 Q Did -- did you have any discussions about that with
8 your attorney?

9 A No.

10 Q No?

11 A No.

12 MS. MARTO: No further questions, Your Honor.

13 THE COURT: Mr. Richey?

14 MR. RICHEY: No other questions.

15 THE COURT: (To the applicant) Thank you,
16 sir. You can step down.

17 (WHEREUPON, the applicant was excused.)

18 MR. RICHEY: We have no other witnesses.

19 MS. MARTO: No witnesses, Your Honor.

20 THE COURT: Mr. Richey, argue?

21 CLOSING ARGUMENTS

22 BY MR. RICHEY:

23 MR. RICHEY: Judge, we're going to rely on the
24 testimony and the record here as to
25 imposition, and we're going to let that be our

1 argument. His position. His testimony. He
2 already testified what he believed. We will
3 let the Court consider that.

4 THE COURT: Thank you, Mr. Richey. Ms. Marto?

5 CLOSING ARGUMENTS

6 BY MS. MARTO:

7 MS. MARTO: Yes, Your Honor. Just very
8 quickly, concerning the time-served
9 allegation, I think that both the record, as
10 well as Mr. Whelchel clarified that Mr.
11 Sanders seemingly understood he would be
12 serving 16 years, not time served.

13 That despite the fact that he isn't able
14 to read and write, he, seemingly, from the
15 transcript, did fully understand what he was
16 doing as it was being spoken out loud to him,
17 as well as in conversation with his attorney.
18 And, additionally, that a third DNA test even
19 though the results of the first one were lost
20 would likely not change the results of any
21 proceeding. And so for these reasons, we'd
22 request you deny relief. Thank you.

23 THE COURT: And this -- I want to clarify. I
24 want to make sure I'm understanding one fact
25 correctly. I -- I read the transcript, and it

1 appears there was an earlier DNA test that --
2 that's kind of started this whole matter, but
3 although it didn't identify the defendant in
4 particular, it did say there was a strong
5 likelihood the child was the child of a
6 relative; is that -- so that's -- so there was
7 another DNA test; is that correct?

8 MS. MARTO: That's my understanding, Your
9 Honor.

10 THE COURT: Mr. Richey?

11 MR. RICHEY: Yes, sir.

12 THE COURT: Okay. Counsel, I'm going to take
13 this matter under advisement.

14 MR. RICHEY: Okay. Thank you, Your Honor.

15 (Whereupon the within hearing was
16 concluded at 2:15 p.m.)

17 (*This transcript may contain quoted material.
18 Such material is reproduced as read or quoted
19 by the speaker.)

STATE OF SOUTH CAROLINA)
) CERTIFICATE
 COUNTY OF SPARTANBURG)

Be it known that Amber J. Payne took the foregoing proceeding and hereby attests:

that I was then and there a notary public in and for the State of South Carolina-at-large;

that the witnesses were first duly sworn to testify to the truth, the whole truth, and nothing but the truth, concerning the matter in the controversy aforesaid;

that the foregoing transcript represents a true, accurate, and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

that I am neither a relative nor an employee of any of the parties hereto, nor of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action;

that, if a recording of an event was supplied by another party for purposes of transcription and I was not present during that event, the foregoing pages were transcribed to the best of my skill and ability; additionally, any identifications of speakers were provided to me by the party supplying the recording;

that, in the event of a nonappearance by the witness, the foregoing details for the nonappearance are accurate.

In witness thereof, I have hereunto affixed my signature and title.

Amber J. Payne, CVR

Date: 2/27/2022

Notary public for South Carolina

My commission expires August 12, 2029

STATE OF SOUTH CAROLINA)
 COUNTY OF CHEROKEE)
)
 Gerald L. Sanders, #381267,-)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2020-CP-11-0350

ORDER OF DISMISSAL

FILED IN OFFICE OF
 CLERK OF COURT
 CHEROKEE COUNTY, S.C.
 2021 OCT 21 AM 11:06
 BRANDY W. MCBEE

This matter comes before this Court by way of Applicant's post-conviction relief application filed May 20, 2020. Respondent made its return on September 24, 2020, requesting an evidentiary hearing be convened. An evidentiary hearing was held on September 15, 2021, at the Spartanburg County Courthouse. Rodney W. Richey, Esquire, represented Applicant. Assistant Attorney General Chelsey F. Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel Richard Whelchel, Esquire, also testified. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Cherokee County Clerk of Court. During its August 2019 term, the Cherokee County Grand Jury indicted Applicant for Second Degree Criminal Sexual Conduct with a Minor (2019-GS-11-01280). Applicant was represented by Richard Whelchel, Esquire. Assistant Solicitor Matt Kendall of the Seventh Circuit Solicitor's Office prosecuted the case. On August 28, 2019, Applicant appeared before the R. Keith Kelly, circuit court judge, and

pled guilty to a negotiated sentence of sixteen years imprisonment.¹ Judge Kelly sentenced Applicant to sixteen years' imprisonment. Applicant did not pursue a direct appeal.

Summary of Relevant Facts

On May 3, 2018, Yocevia Stokes, went to the police department with her daughter, G.S.G. (Tr. 6). G.S.G.'s daughter, Isabella R. had genetic testing due to developmental delays, which showed that the father may have been a close family member to G.S.G. (Tr. 6). Stokes questioned G.S.G., who indicated that her grandfather, Applicant, had sex with her when she was fourteen. (Tr. 6). G.S.G. stated that in June 2015, she was spending the night at Applicant's house when she awoke from sleeping on the couch to Applicant touching her thigh. (Tr. 6). About a month later, she awoke again to finding her pants and underwear removed. (Tr. 7). G.S.G. stated Applicant put his fingers in her vagina. (Tr. 7). G.S.G. did not tell anyone because she did not want to make him angry. (Tr. 7). G.S.G. stated Applicant showed her pornography. (Tr. 7).

On October 15, 2015, G.S.G. was exiting the bathroom while at Applicant's house. (Tr. 7). While exiting, Applicant removed her pants, made her lie on the couch, removed his pants and sexual penetrated her with his penis. (Tr. 7). It lasted about five minutes and he ejaculated inside her. (Tr. 7). This behavior continued regularly into November. (Tr. 7). Upon receiving results of the paternity test, DNA samples were taken and the results ultimately showed that Applicant was most likely the father. (Tr. 7).

Current Action before this Court

In his current PCR application, Applicant alleges he is being held in custody unlawfully

¹ Applicant was also indicted for another count of Second Degree Criminal Sexual Conduct with a Minor (218-GS-11-00904). This was dismissed pursuant to the plea negotiations.

because of ineffective assistance of counsel in that:

1. "Loss of evidence."²
 - a. "Asked to submit additional DNA after loss of first taken samples."
2. "Could not read or write."³
 - a. "Public defender gave plea bargain on day of hearing with no one to read it to me."
3. "Promised suspended sentence with time served and probation by Public Defender."
 - a. "Was unaware that if I signed plea bargain it is what I would receive."

At the PCR hearing, Applicant proceeded forward on the following allegations:

1. Ineffective Assistance of Counsel.
 - a. Failure to investigate lost DNA evidence and procure another DNA sample.
 - b. Public defender told him he would represent him in PCR proceedings.
2. Invalid plea
 - a. Counsel promised him time served if he pled.
 - b. Applicant could not understand the plea because he cannot read or write.

All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Summary of the Testimony

Counsel Testimony

Counsel represented Applicant on his relevant charges leading up to the plea. Counsel stated Applicant admitted his guilt to him leading up to the plea hearing. Counsel stated that he believed Applicant was given the initial DNA test prior to Counsel's involvement in the case and it was either lost or the chain of custody broken. Counsel testified that Applicant was adamant that the DNA test would not be inculpatory for him. Counsel stated that they consented to a second test and it came back showing he was the father. Counsel stated this second test was the only test he obtained the results of. Counsel stated that Applicant could have asked for a third

² This is interpreted as an ineffective assistance of counsel claim for failure to investigate and failure to assert a defense concerning loss of evidence.

³ This is interpreted as a failure to properly advise on consequences of the plea negotiations, resulting in the plea being involuntarily entered and, thus, invalid.

test, but did not remember. Counsel stated he did not think Applicant had the money for a third test.

Counsel stated that no promises of a suspended sentence or probation only was promised to Applicant. Counsel stated that the State's initial offer was a negotiated seventeen years' imprisonment. Thereafter, Counsel stated that he went back to the prosecutor and worked the deal down to sixteen years' imprisonment. Counsel stated that everyone understood sixteen years' imprisonment would be imposed, including Applicant. Counsel stated that this offer was received on the evening of August 18, 2019, and delivered to Applicant the next day. Counsel stated that he reviewed the offer with Applicant the next day and that they may have signed the sentencing sheet that day. Counsel stated that, despite not being able to read or write, he understood everything. Counsel stated he never told Applicant he would represent him in a PCR matter.

On cross-examination, Counsel stated he met with Applicant at least six times prior to the plea hearing. Counsel testified that Applicant had a stroke sometime during the course of his representation and was unable to visit the office. However, Counsel testified they spoke on the phone many more times.

Counsel stated he and Applicant discussed the discovery and evidence in the case. Counsel stated that the DNA test was the main piece of evidence. Counsel testified that Applicant did not like the results of the DNA test because it was inculpatory in nature. Counsel stated that Applicant wanted another test, but could not find the money for another test. Regardless, Counsel asserted, another subsequent test would not have helped his case, given that the DNA profile showed it was 870 million times more likely that the father of the child was Applicant than anyone else. Accordingly, the DNA test results showed Applicant was the father

with 99.99% certainty.

Counsel stated he spoke with the victim at Applicant's request, because they thought she may not testify or appear at the trial. Counsel stated that the victim in the case was Applicant's granddaughter and their child was a byproduct of the incest. Counsel stated that he told Applicant that if the victim testified at trial, they would likely lose at trial. Counsel stated that if they lost at trial, Applicant would likely receive a higher sentence than he would by taking the negotiated guilty plea offer.

Counsel stated that he thought pleading, instead of going to trial, was in Applicant's best interest. Counsel stated that Applicant never indicated to him that he did not understand the plea process or what he was pleading to. Counsel stated they reviewed everything pertaining to the plea together. Counsel testified he informed Applicant that there was no way he would receive a time served sentence and, instead, he would receive the negotiated sixteen years' imprisonment sentence he pled to. Counsel stated the Solicitor's office could have brought more counts if they wanted to.

Applicant Testimony

Applicant testified that he always maintained his innocence throughout his criminal proceedings. Applicant stated he told the Judge at his plea hearing that he was guilty because Counsel told him to tell the judge that. Applicant stated he was coached in what to say because he cannot read or write. Applicant stated he pled so he could have more time in building his case.

Applicant stated he was not satisfied with Counsel's performance and stated he was because he was coached by Counsel to say that. Applicant stated Counsel told him to agree with everything at the hearing. Applicant stated he was not told all his answers were under oath, though he acknowledged he was placed under oath at the hearing. Applicant stated Counsel

never told him he should tell the truth.

Applicant stated that he never wanted to take a plea bargain, nor did he want to serve sixteen years in prison. Applicant stated Counsel told him he would continue representing him on appeal.

Applicant stated he wanted another DNA test, testifying that a subsequent test would have shown he was not the father. Applicant stated that his first test was lost and Counsel informed him he did not have time to procure another test. Instead, Applicant stated that Counsel told him that the best way to get more time was to plead guilty and accept the sentence. Applicant stated the judge wanted him to plead. Applicant stated he signed the plea bargain in the courtroom. Applicant testified he could not read and write and that he could not discuss the plea offer with his wife because there was not enough time.

This Court asked Applicant if Counsel instructed Applicant to lie to the Court at the plea hearing and if he actually lied at the plea hearing while under oath. Applicant's response to both questions was affirmative.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Cherokee County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "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, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRPC ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed

in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Invalid Plea

This Court finds the plea was entered freely, knowingly, intelligently, and voluntarily. In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant’s right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. See *Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The

subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

For a plea to be valid, the applicant must have been aware of the nature and crucial elements of the offense the maximum and minimum penalties, and the rights he is waiving by accepting the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000). A plea is not knowing or voluntary if a defendant “lacks knowledge of material evidence in the prosecution’s possession.” *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999).

A defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between the court and defendant, between the court and defendant’s counsel, or both.” *Roddy v. State*, 339 S.C. at 34, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). “[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874 (quoting *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). Further, “guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea.” *Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

The plea hearing transcript reflects that Applicant entered his plea freely, voluntarily,

knowingly, and intelligently. Applicant stated he was not on any medication or substance interfering with his ability to think clearly. (Tr. 3). Applicant stated he understood that he was pleading to a violent and most serious crime, that it carries up to twenty years in prison, and that he was pleading to a negotiated sentence of sixteen years. (Tr. 4). Applicant then waived his right to a jury trial, to remain silent, and to call and confront witnesses. (Tr. 4-5). Applicant stated he was pleading because he was guilty and that no one threatened or otherwise forced him into pleading. (Tr. 5). Applicant stated he had enough time to speak with Counsel, Counsel shared all materials with Applicant, Counsel answered all his questions, did everything he could to help him, and that Applicant was satisfied with Counsel's services. (Tr. 5-6). When the plea judge asked if the Solicitor's statement of facts were true, Applicant conceded that they were. (Tr. 8). Thus, based upon everything laid out above, Applicant entered the plea freely, knowingly, intelligently, and voluntarily and, thus, Applicant has waived all non-jurisdictional defects and defenses and cannot reassert them now.

Applicant alleges the plea was invalid because no one read the plea bargain to him and he was under the impression that he would have a suspended sentence with time served and probation instead of a sixteen year sentence. However, the plea hearing transcript makes clear that Applicant freely, voluntarily, knowingly, and intelligently pled to a negotiated sentence of sixteen years' imprisonment. (Tr. 4). Accordingly, relief is denied on this ground.

DNA

Applicant claims Counsel was ineffective for failing to procure a subsequent DNA test. *Strickland* makes clear that defense counsel "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S. at 691. When highlighting failure to investigate as a ground for a larger ineffective assistance of counsel

claim, judicial determination of this claim's validity is evaluated for "reasonableness [under] all the circumstances" with "a heavy measure of deference to counsel's judgments" applied. *Id.* At the PCR hearing, Applicant is required to present evidence or witnesses he alleges Counsel did not properly investigate. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Additionally, whether Applicant was prejudiced by Counsel's failure to investigate is contingent on whether the evidence presented would have led Counsel to change his recommendation regarding the plea. *Stalk v. State*, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009);

This Court finds Counsel was not ineffective on this ground. The record shows that the DNA profile showed it was 870 million times more likely that the father of the child was Applicant than anyone else. (Tr. 7). No showing that the test results were inaccurate or the process flawed has been made. Instead, the only issue Applicant seemingly takes with the test is that the results obtained were incriminating of him. Accordingly, this Court finds Counsel credibly testified that a subsequent test would have been unhelpful to Applicant. Consequently, Counsel was not deficient for failing to procure an additional test after one test was already taken and results obtained without any evidence indicating the test was flawed. If another test was obtained, it almost certainly would have produced the same result. Thus, the results would not have changed Counsel's recommendation as to the plea and, as a result, no prejudice can be found. Applicant cannot meet either prong of the *Strickland* test and, accordingly, relief is denied on this ground.

Counsel would Represent Him at PCR Proceedings

This Court finds Applicant's allegation that Counsel was ineffective for saying he would represent him at the PCR hearing when he did not is without merit. This Court finds Counsel's testimony that he never told Applicant he would represent him in a PCR matter credible.

Additionally, this Court finds it highly implausible that Counsel would inform a client he represented during criminal proceedings that he would represent that same client in a PCR matter, where the allegations raised generally target the performance of that same attorney. Accordingly, this Court finds this allegation is without merit and, accordingly, denies relief.

Conclusion

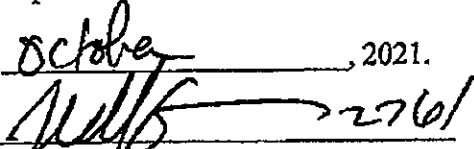
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

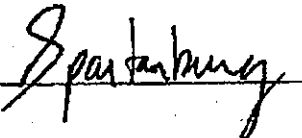
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 13 day of October, 2021.


 WILLIAM A. MCKINNON
 Presiding Judge
 Seventh Judicial Circuit

 South Carolina.

DOCKET NO. 19-GS-11-01280

CLERK OF COURT
CHEROKEE COUNTY, S.C.

2019 AUG 22 AM 10:47

BRANDY W. MCBEE

WITNESSES

Blacksburg Police Dept.

[Signature]

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

August 22, 2019 TERM

WARRANT

Direct Indictment

THE STATE

vs.

ACTION OF GRAND JURY

TRUE BILL

GERALD LANDON SANDERS

AT THE COURT
[Signature]
CLERK OF COURT
CHEROKEE COUNTY, S.C.

Indictment for

CRIMINAL SEXUAL CONDUCT
W/MINOR, SECOND DEGREE

SC Code: 16-03-655 (B)

CDR Code: 0397

Class FEL/C

VERDICT

Foreperson of Grand Jury

Date: 8-22-19

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

INDICTMENT

At a Court of General Sessions, convened on August 22, 2019 the
Grand Jurors of Cherokee County present upon their oath:


CRIMINAL SEXUAL CONDUCT WITH A MINOR SECOND DEGREE

That Gerald Landon Sanders did, in Cherokee County, between June 15, 2015, and December 31, 2015:

- (1) engage in sexual battery with a victim who is fourteen years of age or less but who is at least eleven years of age; and/or
- (2) engage in sexual battery with a victim who is at least fourteen years of age but who is less than sixteen years of age and the actor was in a position of familial, custodial, or official authority to coerce the victim to submit or is older than the victim.

To Wit: The defendant engaged in sexual battery with his granddaughter [REDACTED] old at the time, in violation of §16-03-655 (B), 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.


Assistant Solicitor

STATE OF SOUTH CAROLINA)
 COUNTY OF Cherokee)
 STATE VS.)
 Gerald Ladon Sanders)
 AKA:)
 Race: BLACK Sex: M Age: 56)
 Address: 200 Wright St)
 City/State/Zip: Blacksburg SC 29702-1158)
 SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS1101280
 A/W#: 2019GS1101280
 Date of Offense: 6/15/2015
 S.C. Code § : 16-03-0655(B)(2); 16-03-0
 CDR Code #: 0397

SENTENCE SHEET

CONVICTED OF or PLEADS

*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, Second degree (NEG: 16 years)

in violation of § 16-03-0655(B)(2); 16-03-0 of the S.C. Code of Laws, bearing CDR Code # 0397
 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. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
 ATTEST: [Signature] 77713 [Signature] 6857
 Solicitor 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 16 days/months/years or under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
 which are incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
 Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
 Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Payment Terms:
 Set by SCDPPPS

Recipient:

*Fine:	\$	
§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 (Public Def/Probation)	\$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	
3% to County (if paid in installments)	\$	3.75

TOTAL \$ 128.75

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,
 Proviso requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Clerk of Court/ Deputy Clerk: Brandi M. Bee
 Court Reporter: Mike [Signature]

Presiding Judge: [Signature]
 Judge Code: 21613
 Sentence Date: 8/28/19

