STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DARLINGTON	)	
	)	
	)	2012-CP-16-814
Timothy Michael Farris,	)	
	)	
Applicant,	)	
	)	
v.	)	
	)	NOTICE OF MOTION AND
State of South Carolina,	)	MOTION TO ALTER OR AMEND ORDER
	)	PURSUANT TO RULE 59(E), SCRCP
Respondent.	)	
	)	
	)	

2015 JAN -6 PM 3:44
SCOTT B. SUGGS
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.
FILED

TO: HONORABLE THOMAS A. RUSSO

JOSHUA THOMAS, ESQ., COUNSEL FOR RESPONDENT

YOU WILL PLEASE TAKE NOTICE that the undersigned, Applicant Pro Se, will move before this Court at such time and place as the Court may direct, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, for an Order altering or amending the Order of Dismissal filed on December 19, 2014.

The grounds for this motion are as follows:

I. <u>Illegal Extradition from North Carolina to Darlington Detention Center</u>

A. The Court erred by citing *Adams* and *Whetsell* to excuse the illegal extradition.[1] *Adams* centers on prisoners and the Interstate Agreement on Detainers–not extradition. Extradition law is older, very different, and centers on fugitives. *Whetsell*, similarly, is irrelevant--Whetsell would have pleaded guilty again, if granted a new trial.

[1] *State v. Adams* , 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003); *Whetsell v. State*, 276 S.C. 295, 277 S.E.2d 891 (1981).

B. Extradition was illegal because the Applicant was not a fugitive from justice. He had never been indicted in South Carolina nor any other state.

C. The extradition was illegal without a request for extradition from the Governor of South Carolina. Sergeant Specht had no authority to enter North Carolina to arrest a suspect.[1]

D. Ignoring the law, Detective Specht arrested the Applicant in North Carolina and drove him, in handcuffs, to Darlington Detention Center.

E. Ignoring the law, Detective Specht **twice** refused the Applicant's requests for a lawyer.

F. Detective Specht also seized belongings of the Applicant and of his grandmother and brought these items to South Carolina. He had no authority to seize these items.

G. Detective Specht violated the Applicant's Fourth and Sixth Amendment rights, and his Extradition rights.[2]

H. Neither of the public defenders who testified challenged these violations of the Applicant's rights. This is a jurisdictional issue. The seizure of the Applicant and the family's possessions violated the Fourth Amendment.

I. The failure of both defense counsel, Little and Swilley, to recognize these violations, and their failure to challenge jurisdiction is a blatant example of ineffective representation.

J. The Court erred when it stated that the Applicant waived his rights by consenting to

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[1] *See*, Section 2, Clause 2 of Article 4 of the Constitution of the United States. ("A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime."); also see, *South Carolina v. Bailey*, 289 U.S. 412 (1933) in which Bailey, similar to this Applicant, was a resident of North Carolina and not a fugitive. Bailey had the opportunity to prove he had not fled South Carolina after committing a crime.

[2] "[L]aw enforcement officials [must follow] the clear mandates of state and federal extradition laws in the apprehension and transportation of fugitives." *Wirth v. Surles*, 562 F.2d 319, 323 (1977). Also see, *Roberts v. Reilly*, 116 U.S. 80 , 29 L. ed. 544, 6 Sup. Ct. Rep. 291.

extradition. These rights cannot be waived by conduct or consent.[1] Moreover, he did not know his rights–other than to ask for a lawyer. He was intimidated into compliance. No attorney spoke with the Applicant for more than a year after the illegal extradition and illegal arrest–and that attorney was oblivious. The Applicant was ignorant of law; he had no one who could advise him; and neither he nor his grandparents had funds to pay a lawyer.

K. The 20-year-old was dragged from bed, was in shock at being arrested and shackled and surrounded by law enforcement. He was submissive and compliant, when ordered to sign the Waiver, and did so without reading it. He did not know until four years later, when he saw a copy, that the Extradition Waiver included a box checked by an unknown person–a box that said he admitted to being a fleeing felon. Since he had no criminal history, why didn't his attorneys ask him about this? How could he possibly know his rights, if his attorneys did not advise him?

L. The Applicant's "very credible" attorneys, Little and Swilley, would have known that South Carolina did not have personal jurisdiction *if* they examined the discovery provided by the state and did a pinch of legal research. Their failure to do this was prejudicial. "Jurisdiction of the offense charged and of the person of the accused is indispensable to a valid conviction."[2]

M. The Court erred when it stated the Applicant waived his rights to challenge personal jurisdiction by South Carolina. The defendant's relationship with the state must arise from the defendant's contacts with the forum, not with persons who reside there.[3]

N. The failure of each appointed attorney to challenge jurisdiction is clear evidence of

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[1] *State v. Dudley*, 364 S.C. 578, 614 S.E.2d 623 (2005).

[2] *State v. Dudley*, 354 S.C. 514, 523, 581 S.E.2d 171, 176 (Ct.App.2003), aff'd as modified, 364 S.C. 578, 614 S.E.2d at 175 (2003) (quoting State v. Langford, 223 S.C. 20, 26, 73 S.E.2d 854, 857 (1953)).

[3] *Walden v. Fiore*, 134 U.S. 1115 (2014). "The Due Process Clause of the Fourteenth Amendment constrains a State's authority to bind a nonresident defendant to a judgment of its courts."

ineffective representation that prejudiced the Applicant.

II. Failure to Challenge the Arrest and Search Warrants

A. No search warrant, other than those served on Yahoo and MySpace, was provided to this Court, although both testifying attorneys claimed to have reviewed a search warrant. The Applicant never received a personal search warrant issued by South Carolina, nor was one in the file he received in June 2012. It is likely none was issued by South Carolina, since it would have required the magistrate to authorize Sergeant Specht to search a home and car in another state.

B. The Applicant agrees with the Court that Sergeant Specht's failure to appear personally before the magistrate is "not fatal to the validity of the warrant." What makes the warrant invalid is:

1. Sergeant Specht did not provide an affidavit, let alone a sworn affidavit.

2. The sworn affidavit was submitted **not** by an investigator but by a low level employee of the police department who had no personal knowledge to support the arrest warrant;[1]

3. The affidavit is conclusory and insufficient. Among other things, it "recited no more than the elements of the crime charged" and did not state how (or if) the computer chats were traced to the Applicant's computer.[2] It does not contain any facts linking Farris to the alleged crime.[3]

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[1] "[T]he magistrate or municipal judge must find within the complainant's affidavit enough information that will justify a reasonable belief that (1) a crime has been committed and (2) the person to be arrested committed the offense . . .. [T]he affidavit must contain facts, not conclusions. For example, if the complainant merely says, "I swear under oath that Brian Smith stole an automobile," it is conclusory and insufficient." *Judge's Bench Book.*

[2] *Giordenello v. United States*, 357 U.S. 480 (1958).
(Conviction "set aside" due to (a) "...suspicions of petitioner's guilt derived entirely from information given him by law enforcement officers and other persons . . . none of whom either appeared before the Commissioner or submitted affidavits." and, (b) "The complaint contains no affirmative allegation that the affiant spoke with personal knowledge of the matters contained therein.")

[3] *Gist v. Berkeley County Sheriff's Department*, 336 S.C. 611 (1999), 521 S.E.2d 163. ("The affidavit does (continued...)

4. No attempt was ever made to cure these defects.[1]

5. The arrest warrant limits the arrest to the state of South Carolina but was executed in North Carolina.

6. Despite these defects, the Court found "credible Ms. Little's testimony that she had no reason to challenge the arrest warrant." Contrary to the Court's conclusion, this was not evidence of "strategy." It was evidence of incompetence or neglect.

7. Cases cited by the Court in support of Sergeant Specht's North Carolina arrest expedition are inapposite. *Spiker v. Comm.* addresses whether an officer from one county can arrest a person in another county **within the same state.**[2] In other words, Sergeant Specht of Hartsville could arrest anyone in Berkeley or Horry or any other county of South Carolina.[3] *Spiker* does not support the Court's conclusion that Specht had authority to arrest a suspect beyond the borders of this state.

8. *State v. Dunbar,* briefly cited by the Court and also in the Applicant's Motion for Summary Judgment, does not support the affidavit for Specht's arrest warrant.[4] Contrary to this Court's interpretation, the *Dunbar* court reversed the conviction after finding, "The person signing the affidavit had no knowledge of the facts alleged in the affidavit."

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[3](...continued)
not contain any facts linking Gist to the crime.") Conviction reversed.

[1] "[T]he complaining officer [ ] relied exclusively upon hearsay information, rather than personal knowledge in executing the complaint; and (2) that the complaint was, in any event, defective in that it, in effect, recited no more than the elements of the crime charged . . .." *Giordenello, supra.*

[2] 711 S.E.2d 228 (Va. Ct. App.).

[3] S.C. Code Annot. Chapter 13, Section 17-13-40 confers similar statewide jurisdiction.

[4] 361 S.C. 240, 249, 603 S.E.2d 615, 620 (Ct. App. 2004).

9. There was no probable cause to arrest the Applicant in North Carolina.[1] In every other case of internet solicitation of a minor, the suspect was arrested when he went to meet the decoy. Sergeant Specht could have waited until there were arrangements to meet and the suspect arrived in South Carolina, where Specht had the right to arrest him. Arranging to meet is one of the criteria used in all other cases.

III. "All Other Allegations"

A. These issues are crucial, which is why they needed twenty pages of the 32-page Motion for Summary Judgment. The Order of Dismissal lumps them together as "all other allegations" and, ignoring Exhibits E-V, dismisses them with the words, "Appellant failed to present any evidence regarding such allegations." [2]

B. The Applicant requests specific findings of fact and expressly stated conclusions of law related to each issue (and the evidentiary support) in the Motion for Summary Judgment.[3] The PCR court is required to do this.

C. Contrary to their testimony, neither Little nor Swilley discussed the file with the Applicant and they did not show him the evidence. Such testimony by police has come to be known as "testilying." These lawyers adopted that modus operandi for self-preservation. For example, Ms. Little falsely claimed that the Applicant admitted his guilt at their first meeting. Then why did he

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[1] "The fundamental question in determining the lawfulness of an arrest is whether probable cause existed to make the arrest." *State v. Baccus*, 625 S.E.2d 716 (S.C. 2006)

[2] *See*, Appendix list and Statement of Undisputed Facts from Motion for Summary Judgment (Exh. 2, 3).

[3] "A PCR court 'shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented.' S.C. Code Ann. § 17-27-80 (2003)" *Marlar v. South Carolina* , 653 S.E.2d 266, 267 (S.C. 2007);; *Elam v. South Carolina Dep't. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) ("A party *must* file such a motion when an issue or argument has been raised, but not ruled on, to preserve it for appellate review.") (emphasis in original).

refuse to plead guilty in November 2009, when she ordered him to a plea hearing?[1] If he admitted anything to her, it was the use of Yahoo chat but not the *intent* to have sex with a minor, nor that he had any knowledge he was chatting with a minor. The First Amendment protects obscene chats between adults.

D. If Ms. Little did any legal research on behalf of the Applicant, she would have learned that " To prove attempt, the State must prove that the defendant had the *specific intent* to commit the underlying offense, along with some *overt act*, beyond mere preparation, in furtherance of the intent.[2]

E. If either attorney perused the documents, they would know Sargent Specht claimed that they discussed plans to meet in Hartsville. This is not supported with evidence. A simple computer search of the chats will prove the word "Hartsville" is not mentioned.[3]

F. If either attorney did legal research, they would have learned that pedophiles "groom" their victims (i.e., promises of gifts, flattery, etc.) and sometimes email photos of their genitals. Pedophiles typically are older and pretend to be much younger, when they chat with a minor. Throughout the nation, the computers of convicted pedophiles invariably include child pornography. None of this is true of this Applicant.[4] Ignorance of this type of crime has to be reason Ms. Little urged him, and Mr. Swilley coerced him to plead guilty. It is inexplicable how could this Court could view them as "very competent" (pgs. 3, 10-11, 12, 13).

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[1] Exhibit P, Motion for Summary Judgment

[2] *State v. Reid*, 679 SE2d 199 (Ct. App. 2009) citing *State v. Nesbitt*, 346 S.C. 226, 231, 550 S.E.2d 864, 866 (Ct. App. 2001).

[3] Exhibit O, Motion for Summary Judgment (Chat logs)

[4] His computer was examined by the state. If child pornography had been found, that charge would have ben added. There was time: The Applicant was not indicted for solicitation until two weeks after his arrest.

G. The Applicant was *told* there was evidence of his guilt. He testified that neither Little nor Swilley discussed the evidence with him–and that is the reason he did not know the dates, the times, or the content of the chats. When he finally saw the chat logs in 2012, he saw no evidence that the investigator pretended to be a 13-year-old and, contrary to the investigator's statement in his Incident Report there was no mention of meeting in Hartsville.[1]

H. In 2014, the PCR attorney viewed the video of screen shots of the chat logs and told the Applicant there was no evidence of the age of the decoy. That the video was not presented to this Court is the fault of the PCR attorney. This is a serious omission–exculpatory evidence.

I. The Court failed to address the possibility of email address hijacking. A review of South Carolina appeals that challenged convictions for internet solicitation of a minor reveals email aliases not associated with the identity of the accused:

1. In *State v. Reid*, the defendant used the alias, "Fine_Ass_Seminoles_Fan."[2]

2. In *State v. Odom* the defendant (a former prosecutor) used the alias, "Danger6552000," which also displayed the name "Roge Wilson."[3]

3. In *State v. Gaines*, the defendant used the alias, "HMMRTHEGRT8."[4]

4. In *State v. Green*, the defendant used the alias, "blak slyder."[5]

5. There are many such examples–from other states as well as the federal courts. All used an alias; none used an email address widely known as his computer identity. Could the reason

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[1] Exhibit O, Motion for Summary Judgment (Chat logs)

[2] 679 SE2d 199 (Ct. App. 2009)

[3] 676 S.E.2d 124 (2009), 382 S.C. 144.

[4] 667 S.E.2d 728 (S.C. 2008).

[5] 724 S.E.2d 664 (SC 2012).

be that they knew they were chatting with a minor? Because they had *intent*?

6. Apparently, both defense counsel presumed guilt so as to convince the client to plead, sparing the work of investigation, avoiding the time to research similar cases. Despite the Court's belief that Little and Swilley were "very credible," neither had a clue how to advocate, if they were forced to go to trial. They did not know enough about these types of cases. They did not know, for example, that if their client actually was the emailer the state would have to prove he knew he was chatting with a minor, that he had intent to solicit sex with the minor, that he committed some overt act which showed intent.[1]

7. No defense attorney considered the possibility that someone, possibly a much older man, hijacked the email address. It would have been easy to "spoof" Farris' identity. He used "Michael24339" for frequent postings that revealed much about his life–as do many naive people of all ages. Sergeant Specht admitted he identified the email address as belonging to Farris through internet postings.[2] As detailed in the Motion for Summary Judgment, cyber-identity theft ("spoofing") is a frequent occurrence, affecting an Arizona legislator and leading to criminal charges in New York. Not included in that Motion is a summary of the Associated Press' Twitter feed being hacked on April 22, 2013. A fake tweet was sent–that there had been two explosions at the White House and President Barack Obama had been injured. This led to the Dow Jones Industrial Average

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[1] "S.C. Code Ann. § 16-15-342(A) provides:

"(A) A person eighteen years of age or older commits the offense of criminal solicitation of a minor if he **knowingly contacts or communicates with, or attempts to contact or communicate with, a person who is under the age of eighteen**, or a person reasonably believed to be under the age of eighteen, **for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity** as defined in Section 16-15-375(5) or a violent crime as defined in Section 16-1-60, or with the intent to perform a sexual activity in the presence of the person under the age of eighteen, or person reasonably believed to be under the age of eighteen. (emphasis supplied)." *Gaines, supra* (emphasis in *Gaines*)

[2] Exhibit J, Motion for Summary Judgment.

falling more than 150 points in a two minute span.

8. The failure of the attorneys to investigate is fatal to their claims of competency.[1]

J. The Court needs to consider the issue of IP addresses provided by Yahoo. According to the Applicant's Yahoo registration, his IP address was 69.40.60.194.[2] A computer search of the more than two dozen IP addresses used by "Michael24339" on the dates provided by Sergeant Specht turns up not one that matches the Applicant.

K. The Court believes the Applicant knew he was chatting with a 13-year-old because the chat logs show "Michael24339" claiming to be seven years older. His Yahoo account has the wrong birth year, making him five years older–and seven years older than an eighteen-year-old.[3] This could mean the person who used "Michael24339" believed the girl was eighteen–the age required by Yahoo for participation. Or it could mean the person who used "Michael24339" knew the spoofed identity belonged to someone who was 20 years (easily learned from his many email postings on the 'net–the source of Sergeant Specht's identification of him).[4] Because neither Little nor Swilley discussed the evidence with the Applicant nor showed it to him, he had no opportunity to point out possible alternative explanations.

L. Of chief concern among the issues ignored by the Court are IP addresses. At the hearing, attorney Swilley admitted he did not know what the IP addresses meant–and he admitted

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[1] *United States v. Cronic*, 466 U.S. 648 (1984). [If no actual "Assistance" "for" the accused's "defence" is provided, then the constitutional guarantee has been violated. To hold otherwise "could convert the appointment of counsel into a sham and nothing more than a formal compliance with the Constitution's requirement that an accused be given the assistance of counsel. The Constitution's guarantee of assistance of counsel cannot be satisfied by mere formal appointment." Avery v. Alabama, 308 U.S. 444, 446 (1940)]

[2] Exh. L, filed with Motion for Summary Judgment.

[3] *Id.*

[4] If the emailer knew Farris was twenty and not twenty-five, it does not explain how the hacker would know the decoy was thirteen.

he did no investigation. "[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary."[1] He would have known, if he researched South Carolina case law.[2]

1. IP addresses have been addressed by other courts, as detailed in the Motion for Summary Judgment. Had either attorney investigated, it would be apparent that the "Michael 24339" email was used by more than two dozen computer IP addresses. Had they compared the times this email was used with the times on Sergeant Specht's chat logs they would know that none of the times matched. Had they traced the location of these IP addresses . . .. All this and more is in the Motion for Summary Judgment.

2. The failure of attorneys to investigate is ineffective representation.[3]

3. These "very credible" attorneys did not know Farris had alibi witnesses because they did not ask–even when one sat with Mr. Swilley and the Applicant one week before the plea hearing. Neither the witness nor the Applicant knew at that time that an alibi witness could be helpful to the defense. Two years later, in 2013, this witness provided a notarized affidavit.[4] He would have testified in 2014–but the PCR attorney did not notify him about the hearing. Nor did the

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[1] *Strickland v. Washington*, 466 U.S. at 691 (1984).

[2] "Each computer connected to the internet is assigned a unique numerical address, otherwise known as an Internet protocol or IP address, to identify itself and facilitate the orderly flow of electronic traffic. An IP address is a string of up to twelve digits, such as '202.134.34.9.' Peterson v. National Telecommunications and Information Admin., 478 F.3d 626, 629 (4th Cir. 2007)." *State v. Odom*, 676 S.E.2d 124 (2009), 382 S.C. 144.

[3] *Edwards v. State*, 392 S.C. 449; 710 S.E.2d 60 (2011) ["This Court has stated previously that criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case. *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007); *see also McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008) ("A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State."]

[4] Exhibit Q, filed with the Motion for Summary Judgment.

PCR attorney file the notarized affidavit from another alibi witness, one with a better memory for details. He, too, was not notified about the hearing.

IV. Ineffective Assistance of Plea Counsel

A. Representation by Matthew Swilley and his predecessor, Tonya Copeland Little ,was a sham. They had scant knowledge of the facts, scant knowledge of relevant law, but their attempts to justify their limited investigation somehow convinced the Court to find them "very credible." Not only was the Court emphatic about this, but repeatedly emphatic, using that exact phrase on pages 3, 10-11, 12 and 13. Somehow the Court did not realize that Tonya Copeland Little violated attorney-client privilege when she testified as a prosecution witness. This was unethical since she was not a named defendant in the petition for Post-Conviction Relief.

B. Ms. Little perjured herself when she claimed the Applicant told her he was guilty. Perhaps she wrote "guilty" in her notes because that was her mind-set. She testified that (a) he "had difficulty deciding to plea, but she never anticipated the case would go to trial," and (b) "he never told her he wanted a trial."

But when she ordered him to attend a plea hearing, he came–with his grandfather. And stood before the judge and declared he would not plead guilty. What choices were left? Ms. Little departed without another word to the Applicant. After several months, he phoned her office and learned she no longer was an assistant public defender and that no attorney was assigned to him. In his ignorance, he presumed the case was gone.[1]

C. Ms. Little testified that she tried to arrange a plea deal. What she failed to tell the Court is how liberal she is with facts. She wrote to the assistant attorney general that the Applicant had completed drug rehabilitation. [Exh. A] Possibly her intent was to create sympathy, but this

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[1] Applicant's Affidavit in support of Motion for Summary Judgment.

statement is untrue. The Applicant had no insurance, his grandparents had minimal income and, in fact, filed for bankruptcy protection the year prior to the Applicant's arrest. There simply was no money to pay for rehabilitation–if he had needed it.

D. Both Ms. Little and Mr. Swilley testified if the Applicant wanted a trial, they would have hired an expert witness. That reveals how little they knew of the facts and the law. An expert was unnecessary. Other than legal research, everything needed to advocate for the Applicant was in the file–if they troubled to peruse it. Ms. Little's claim of doing legal research is a smokescreen. She claimed to have reviewed the arrest warrant and found "nothing objectionable." Had she actually done legal research instead of presuming guilt, she would not have been insistent about a guilty plea.

E. Mr. Swilley testified he had "thorough discussions with Ms. Little." He is required to do his own, independent investigation[1]. He chose not to do so because Ms. Little convinced him that the Applicant's actions met the definition of solicitation. It did not occur to him that the chats could be interpreted as obscene conversation between two adults.

Mr. Swilley testified that he "spoke with the investigating officer"–at a social function. When the officer heard the name of Swilley's client, he said, "He's a loser." Swilley did not ask why he made that remark. He did not ask under what authority the investigating officer crossed into North Carolina to make the arrest, nor why he could not wait until the suspect came to South Carolina. He did not he ask why the chat logs do not include the number "thirteen."

Neither of these attorneys knew the Applicant had alibi witnesses–because they did not ask. And he did not know enough to volunteer this information.

Swilley's self-serving claim that he did not know the Applicant wanted to go to trial reflects selective memory. Evidence that the Applicant wanted an alternative to a guilty plea was his

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[1] *Edwards*, supra, p. 10 n.2.

questions–about filing a Clayton motion; about pleading "no contest;" and whether there was any motion that could be filed.[1] Applicant had no idea the evidence against him was insufficient–and neither did his attorney. Because neither examined the documents.[2]

F. The Court cites *Whetsell* to support the view the Applicant's guilty plea prohibits him from claiming ineffective representation.[3] The defendant in *Whetsell* was very different–he would have pleaded guilt again, if given the chance.[4] But if this Applicant had been granted the direct appeal to which he was entitled, and if represented by an experienced, competent, diligent appellate defender, the story would have had a very different end.

This Applicant never had the experience described in *Whetsell*: a discussion in which "the defendant and his counsel must make their best judgment as to the weight of the State's case. Counsel must predict how the facts, as he understands them, would be viewed by a court. If proved, would these facts convince a judge or jury of the defendant's guilt?"

The Applicant did not know that defense counsel was obligated to consult with him about the state's case before deciding whether to plead or go to trial.

Who would risk a trial one week away, with an attorney who believes in your guilt, does not discuss the case with you, asks no questions, does nothing to prepare for trial and warns a trial could lead to a decade or more in prison?

The Duke lacrosse players did not know their rights when they were arrested for first-degree

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[1] *See* Applicant's Affidavit in support of Motion for Summary Judgment.

[2] It is astonishing to read, "the Court finds Mr. Swilley conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation."

[3] *Whetsell*, supra., p.1.

[4] *Johnson v. State*, 336 S.C. 354, 520 S.E.2d 617 (1999) ("Whetsell does not stand for the proposition that a defendant who admits his guilt is barred collaterally attacking his conviction. Whetsell stands only for the narrow proposition that a PCR applicant who has pled guilty on advice of counsel cannot satisfy the prejudice prong on collateral attack if he states would have pled guilty in any event.")

rape, first-degree kidnapping, first-degree sexual offense, common-law robbery, "felonious strangulation," and conspiracy to commit murder. If they were represented by the type of attorneys assigned to this Applicant, they would be in prison today.

G. Ms. Little attempted to negotiate a plea agreement. Mr. Swilley made no such effort. Neither discussed with the Applicant how they might advocate for him. Neither suggested they might challenge jurisdiction. All they said and all they failed to do spelled doom for the Applicant. He went to the plea hearing hoping for probation and fearing a ten year sentence. That was all Swilley offered, when he coached the Applicant on how to answer the judge's questions.

The Court's Order excuses this deficient performance by citing *Hyman*.[1] But *Hyman* does not refer to defense counsel's failure to investigate, nor the failure to evaluate the evidence with a client. *Hyman* refers to the requirement for a state to disclose *Brady* material to the defense. The state is not at fault here–defense counsel is at fault. Instead of reviewing with the Applicant the state's evidence, they *told* him the evidence condemned him. They did not know, therefore he did not know the evidence was insufficient. All he knew was he needed a better lawyer, but an appeal was foreclosed when Mr. Swilley was inaccessible to daily phone calls until fifteen days after the plea hearing.

With attorneys of the caliber of Little and Swilley, the Applicant did not have a chance.

CONCLUSION

For the foregoing reasons the Applicant respectfully requests that the Court alter or amend its Order filed on December 19, 2014, as requested herein, and enter judgment in favor of the Applicant.

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[1] *Hyman v. State*, 397 S.C. 35, 723 S.E.2d 375 (2012).

Respectfully submitted,

Timothy Michael Farris Dated: 1-5-15

Timothy Michael Farris, Applicant Pro Se

Please direct any reply to me at:

7910 Hillanby Court, Waxhaw, NC 28173

[redacted]

Exhibits

Tonya Little's letter in which she falsely claimed her client had drug rehab.

Appendix to Motion for Summary Judgment

Statement of Undisputed Facts from Motion for Summary Judgment

Fourth Circuit Public Defender's Office
300 Russell Street, Suite 113
Darlington, S.C. 29532

A.C. Michael Stephens, Circuit Defender

J. Richard Jones, Assistant Circuit Defender
Tonya Copeland Little, Assistant Circuit Defender

Mailing Address:
P.O. Box 648
Darlington, S.C. 29540-0648

Telephone – 877.225.2922
Facsimile – 800-670-6375

June 19, 2009

Ms. Susanne Ringler
Assistant Attorney General
PO Box 11549
Columbia, SC 29211-1549

Re: State v. Timothy Michael Farris

Dear Ms. Ringler:

Thank you for your letter dated May 12, 2009, and your plea offer. Mr. Farris and I have discussed your offer at length and he is currently considering his options.

Mr. Farris is 21 years old and has a high school diploma. He has never been arrested in the past and works as an account manager for AMT Advertising. He successfully completed substance abuse counseling almost a year ago and is currently living with his grandparents in Waxhaw, NC.

From our phone conversation, it is my understanding that this is your final offer and you will not consider a counteroffer unless it is approved by your supervisor. However, on behalf of my client and at his request, please consider or ask your supervisor to consider the following counteroffer and write back or call me:

1. PLEAD TO ONE COUNT CONTRIBUTING TO DELINQUENCY OF A MINOR (NEW INDICTMENT)
2. CONSENT TO FORFEITURE
3. DISMISS PENDING CHARGES

Thank you for your consideration.

Sincerely,

TONYA COPELAND LITTLE

cc: Timothy Michael Farris ✓ Timothy:

Contributing to Delinquency of a Minor is a misdemeanor – it carries up to 3 yrs.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DARLINGTON	)	
	)	
	)	
	)	2012-CP-16-814
Timothy Michael Farris,	)	
	)	
Applicant,	)	
	)	SEPARATE STATEMENT OF
v.	)	
	)	UNDISPUTED FACTS IN SUPPORT OF
State of South Carolina,	)	
	)	APPLICANT'S MOTION FOR
Respondent.	)	
	)	SUMMARY JUDGMENT
	)	

"Exh." references exhibits in the Appendix.

1. South Carolina lacked jurisdiction to arrest the Applicant in North Carolina.
SUPPORTING EVIDENCE: Exh. B (Affidavit for SC arrest warrant).

2. The South Carolina arrest warrant, signed on July 31, 2008 was facially deficient.
SUPPORTING EVIDENCE: Exh. B (Affidavit for SC arrest warrant).

3. In the presence of Hartsville Detective Specht and others, the Applicant was told to sign the Waiver of Extradition.
SUPPORTING EVIDENCE: Applicant's affidavit; Exh. E (Waiver).

4. The Waiver is blank in the boxes for "crime(s) in demanding state" and "date of crime(s)."
SUPPORTING EVIDENCE: Exh. E (Waiver).

5. The Waiver falsely states that Applicant was a fleeing felon.
SUPPORTING EVIDENCE: Exh. E (Waiver).

6. Detective Specht knew the Applicant was not a fleeing felon.
SUPPORTING EVIDENCE: Exh. G (Indictment).

7. Detective Specht took custody of the Applicant and the confiscated items in North Carolina.
SUPPORTING EVIDENCE: Exh. C and D (Incident Report; List of Items).

8. Detective Specht did not have authority to transport the Applicant to South Carolina.
SUPPORTING EVIDENCE: Exh. B (Affidavit for SC arrest warrant).

9. Detective Specht drove the Applicant from North Carolina to Darlington Detention Center in South Carolina.
SUPPORTING EVIDENCE: Court records; Applicant's affidavit.

10. Two weeks later, on August 21, 2008, the Applicant was indicted for criminal solicitation of a minor.
SUPPORTING EVIDENCE: Exh. G (Indictment).

11. Two days after the indictment, appointed attorney Robert Kilgo, Jr. sent discovery requests to the prosecutor. Several months later Kilgo left the public defender's employ without ever speaking with the Applicant.
SUPPORTING EVIDENCE: Applicants's affidavit; Exh. H (Kilgo's discovery request); court records.

12. Detective Specht's affidavit in support of the Yahoo search warrant admits he relied exclusively on publicly available web sites to link the Yahoo email name "Michael24339" to the Applicant.
SUPPORTING EVIDENCE: Exh. J (Specht's affidavit).

13. In the pages Detective Specht claims are records of the Instant Messages (IM) there is no evidence Specht stated he was posing as a girl of thirteen years.
SUPPORTING EVIDENCE: Exh. O.

14. In the pages Detective Specht claims are records of IM exchanged with Michael24339, there is no evidence of plans to meet (i.e., no intent).
SUPPORTING EVIDENCE: Exh. O.

15. There is no evidence of authentication of the IM (chat logs).
SUPPORTING EVIDENCE: Exh. K (footnote #1, p.3, Yahoo search & seizure).

16. There is no evidence of tracing the IM to Applicant's computer.

17. There is no evidence of tracing the IM to Applicant's grandmother's computer.

18. Specht confiscated property that was not relevant to the alleged crime.
SUPPORTING EVIDENCE: Exh. D.

19. At the time of the arrest and indictment Chief Justice Finney's 1999 Order required disposition of criminal cases within 180 days of arrest.
SUPPORTING EVIDENCE: Judge Finney's Order.

20. No court determined that exceptional circumstances existed to allow a delay of fifteen months to dispose of the case against the Applicant.
SUPPORTING EVIDENCE: Court docket.

21. On November 9, 2009–fifteen months after his arrest–the Applicant was ordered to a plea hearing scheduled by the prosecutor. He refused to plead guilty.
SUPPORTING EVIDENCE: Applicant's affidavit; Exh. O (attorney Little's letter).

22. Two and a half years after the arrest, on February 24, 2011, Matthew S. Swilley was appointed to represent the Applicant.
SUPPORTING EVIDENCE: Exh. A (Appointment).

23. One week after his appointment, Swilley phoned the Applicant to notify him about a plea hearing scheduled for the following week.
SUPPORTING EVIDENCE: Applicant's affidavit.

24. Swilley did not ask for a continuance to allow him to investigate or prepare for trial.
SUPPORTING EVIDENCE: Court records; Applicant's affidavit.

25. Swilley abandoned any semblance of representing the Applicant.
SUPPORTING EVIDENCE: Applicant's affidavit; court records.

26. At the plea hearing on March 9, 2011 the Applicant was sentenced to probation.
SUPPORTING EVIDENCE: Court records; Applicant's affidavit.

27. Two days after the plea hearing plea defense counsel Swilley signed a forfeiture of the Applicant's computer, webcam, digital camera, music CDs, letters, and his grandmother's computer monitor, keyboard, and mouse.
SUPPORTING EVIDENCE: Exh. U (Forfeiture form).

28. The forfeiture form has a space for the Applicant's signature. It is blank.
SUPPORTING EVIDENCE: Exh. U (Forfeiture form).

29. Swilley never notified the Applicant about the forfeiture.
SUPPORTING EVIDENCE: Applicant's affidavit.

30. Forfeiture of Applicant's grandmother's monitor, mouse, and keyboard were improper and illegal.
SUPPORTING EVIDENCE: S.C. Code Ann. §16-15-445.

31. Forfeiture of Applicant's property was improper and illegal.
SUPPORTING EVIDENCE: S.C. Code Ann. §16-15-445.

32. The Applicant did not know about the forfeiture until he received the entire file in June 2012.
SUPPORTING EVIDENCE: Applicant's affidavit.

33. Applicant left messages for Swilley each day after the plea hearing but did not reach him until the fifteenth day. It was too late to withdraw the guilty plea, too late to file a direct appeal. This was a violation of Rule 62.
SUPPORTING EVIDENCE: Applicant's affidavit.

34. In June 2012, nearly four years after the arrest, the Applicant received the entire file from the public defenders' office. A.C. Michael Stevens noted on one of the pages that this was the complete file.
SUPPORTING EVIDENCE: Exh. V (list of items).

35. On September 24, 2012 the Applicant filed for post-conviction relief, pro se.
SUPPORTING EVIDENCE: Court records.

36. The state was required to respond within sixty days of the September 24th filing.
SUPPORTING EVIDENCE: S.C. CODE §17-27-70, Rule 12(A).

37. The state did not request an extension of time for filing.
SUPPORTING EVIDENCE: Court records.

38. On January 17, 2013 the state filed a motion to dismiss. It was mailed to the wrong address and not received by the Applicant.
SUPPORTING EVIDENCE: Court records; Applicant's Reply to Motion to Dismiss.

39. On February 5, 2013 the court issued a Conditional Order of Dismissal, granting the Applicant 20 days to respond. Because this was mailed by the clerk's office, it was sent to the correct address.
SUPPORTING EVIDENCE: Court records.

40. On February 13, 2013 the Applicant responded to the Conditional Order.
SUPPORTING EVIDENCE: Court records.

41. On March 19, 2013 the Applicant again requested appointment of counsel.
SUPPORTING EVIDENCE: Court records.

42. On April 22, 2013 prosecutor T. Andrew Johnson filed his appearance with the court for this case.
SUPPORTING EVIDENCE: Court records.

43. No attorney has been appointed for the Applicant, who continues pro se.
SUPPORTING EVIDENCE: Court records.

44. Unless the conviction is vacated, the Applicant will be a Registered Sex Offender for the remainder of his life.
SUPPORTING EVIDENCE: S.C. Code Ann. §23-3-46; N.C. G.S. § 14-208.12A.

<SIGNATURE BLOCK IS ON NEXT PAGE>

I swear under penalty of perjury that every statement in this pleading is true.

DATED:

BY:

TIMOTHY MICHAEL FARRIS, APPLICANT PRO SE
7910 Hillanby Court
Waxhaw, NC 28173
[redacted]