

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Greenville County

Honorable G.D. Morgan, Jr., Circuit Court Judge

REGINA OWINGS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000459

APPENDIX

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
State of South Carolina,	)	Case No(s) : 2019GS2300015
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Regina Gail Owings,	)	
	)	
Defendant.	)	
	)	

January 29, 2019
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

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

CHRISTY SUSTAKOVITCH, Esquire
Attorney for Plaintiff

MICHAEL MORIN, Esquire
Attorney for Defendant

Teresa B. Johnson, CVR-M-CM, RVR, RVR-M
Realtime Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

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AudioScribe



I N D E XDIRECT CROSS REDIRECT RECROSS

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EXHIBITS PAGENO.DESCRIPTIONID EV**PLAINTIFF EXHIBITS**

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(Proceedings begin on the 29th day of January 2018,
at approximately 10:49 a.m.)

MS. SUSTAKOVITCH: Thank you, Your Honor. May
it please the Court?

THE COURT: Certainly.

MS. SUSTAKOVITCH: The state calls the case
of the State versus Regina Gail Owings, pleading
guilty to criminal sexual conduct with a minor in
the second degree, Indictment No. 2019GS230015. It
is a waiver.

THE COURT: Thank you.

MS. SUSTAKOVITCH: Yes, ma'am.

MR. MORAN: And Your Honor, this is under
Alford.

THE COURT: Okay. Ms. Owens, will you raise
your right hand for me please.

(The defendant is first duly sworn.)

THE DEFENDANT: Yes. Yes, Your Honor. I do.

THE COURT: Okay. You can put your hand down.
You are here today to enter an *Alford plea*, what we
call an *Alford plea*, to criminal sexual conduct
with a minor second degree. That carries ---

MS. SUSTAKOVITCH: Up to 20 years,
Your Honor.

1 **THE COURT:** --- up to 20. I'm sorry.

2 **MS. SUSTAKOVITCH:** 0 to 20.

3 **THE COURT:** Okay. That is a violent offense
4 and a most serious offense, and it, of course,
5 includes mandatory sex offender registry. Is that
6 your understanding?

7 **THE DEFENDANT:** Yes, ma'am.

8 **THE COURT:** Have you discussed this charge
9 with your lawyer?

10 **THE DEFENDANT:** Yes, ma'am.

11 **THE COURT:** Are you happy with what your
12 lawyer's done for you?

13 **THE DEFENDANT:** Yes, ma'am.

14 **THE COURT:** Are you under the influence of
15 drugs or alcohol here today?

16 **THE DEFENDANT:** No, ma'am.

17 **THE COURT:** Has anyone forced you to plead
18 guilty?

19 **THE DEFENDANT:** No, ma'am.

20 **THE COURT:** Has anybody promised you anything
21 to get you to plead guilty --

22 **THE DEFENDANT:** No, ma'am.

23 **THE COURT:** -- I mean, not plead guilty,
24 enter an *Alford* plea.

25 **THE DEFENDANT:** No, ma'am.

1 **THE COURT:** Sorry. When you enter a plea, you
2 give up certain constitutional rights: One is your
3 right to a jury trial on this matter. Do you know
4 that?

5 **THE DEFENDANT:** Yes, ma'am.

6 **THE COURT:** At that trial, your attorney
7 could call witnesses for you, cross-examine
8 witnesses against you and the state would have to
9 prove your guilt beyond a reasonable doubt. But
10 when you plead guilty -- when you enter an *Alford*
11 *plea*, you give up your right to a jury trial. Do
12 you know that?

13 **THE DEFENDANT:** Yes, ma'am.

14 **THE COURT:** And you understand that an *Alford*
15 *plea* means that you're saying that the state likely
16 has the evidence to convict you at trial; you're
17 not necessarily admitting your guilt.

18 **THE DEFENDANT:** Yes.

19 **THE COURT:** Is that your understanding?

20 **THE DEFENDANT:** Yes, ma'am.

21 **THE COURT:** This sentencing sheet says you're
22 48 years old. Is that right?

23 **THE DEFENDANT:** Yes, ma'am.

24 **THE COURT:** How far have you gone in school?

25 **THE DEFENDANT:** I went to seventh grade.

1 **THE COURT:** Okay. And what kind of work have
2 you done since then?

3 **THE DEFENDANT:** I haven't worked.

4 **THE COURT:** Oh, okay. Okay. Well, how did you
5 live?

6 **THE DEFENDANT:** I was a prostitute ---

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

8 **THE DEFENDANT:** --- most of my life.

9 **THE COURT:** Okay. Okay. All right. And my
10 understanding is that you had -- that you have
11 struggled with substance abuse problems in the
12 past.

13 **THE DEFENDANT:** Yes, ma'am.

14 **THE COURT:** Have you ever been treated for
15 that?

16 **THE DEFENDANT:** No, ma'am.

17 **THE COURT:** All right.

18 **THE DEFENDANT:** And you've been in jail for
19 some time; is that right?

20 **MR. MORAN:** Yes, Your Honor. In fact, the
21 solicitor's office and I are still ---

22 **MS. SUSTAKOVITCH:** Ms. Kicklighter is working
23 on that right now.

24 **MR. MORAN:** --- working on that number
25 because it was some different things going on

1 there.

2 **THE COURT:** Here she comes.

3 **THE INVESTIGATOR:** Sorry.

4 **THE COURT:** No. You're the lifesaver.

5 **THE INVESTIGATOR:** So 943 total. That was on
6 HIP. (Indicating.)

7 **MS. SUSTAKOVITCH:** Okay. Judge, she is --
8 this case dates back to the summer of 2016 and she
9 first was arrested in that summer. She has about
10 943 days of actual incarceration time.

11 **THE COURT:** Okay.

12 **MS. SUSTAKOVITCH:** 368 of those days --
13 excuse me, 943 days; 368 of those were on HIP. So
14 if Your Honor is inclined to give her credit for
15 those, that's -- but her total days would have been
16 943.

17 **THE COURT:** Why is she back in jail?

18 **MS. SUSTAKOVITCH:** She --

19 **MR. MORAN:** She violated HIP because of
20 substance abuse.

21 **MS. SUSTAKOVITCH:** She went out and she has
22 violated HIP twice. And Your Honor, I believe we
23 put her back out and then she violated again most
24 recently in October.

25 **THE COURT:** Okay.

1 **MS. SUSTAKOVITCH:** And she's back in.

2 **THE COURT:** All right. Have you ever been
3 treated for any type of mental health disorder or
4 anything like that?

5 **THE DEFENDANT:** I'm on medication for being
6 bipolar.

7 **THE COURT:** Okay. When did you go on that
8 medication?

9 **THE DEFENDANT:** I've been on it for quite
10 some time. When I was out, I was going to mental
11 health and therapy. And --

12 **THE COURT:** Are you taking that medication as
13 prescribed to you from the jail?

14 **THE DEFENDANT:** Yes, ma'am.

15 **THE COURT:** Do you feel clearheaded here
16 today?

17 **THE DEFENDANT:** Yes, ma'am.

18 **THE COURT:** You feel like you understand
19 what's going on?

20 **THE DEFENDANT:** Yes, ma'am.

21 **THE COURT:** All right. And that's what you
22 want to do is -- oh, I'm sorry. This case has not
23 been indicted by the grand jury. You want to give
24 up that right and enter an *Alford plea* today
25 anyway?

1 **THE DEFENDANT:** Yes, ma'am.

2 **THE COURT:** And is that what you want to do:
3 Enter an *Alford* plea?

4 **THE DEFENDANT:** Yes, ma'am.

5 **THE COURT:** All right. All right. I want you
6 to listen to the state offer the facts they would
7 intend to prove at trial.

8 **MS. SUSTAKOVITCH:** Thank you, Your Honor. May
9 it please the Court. By way of clarifying the
10 record here: The co-defendant in this case,
11 Your Honor, William Lee Carpenter, was tried in
12 September 2018, before Your Honor. And defense
13 counsel in that case moved to sever that case --
14 this -- his client's case. And the state did allow
15 the cases to be severed, which has led to this
16 guilty plea today to the criminal sexual conduct
17 with a minor second.

18 As to the facts, between -- around
19 Thanksgiving, rather -- between Thanksgiving of
20 2014 and 2015, this defendant was living with
21 William Lee Carpenter, Jr. And the grandchildren
22 who are the subject of the abuse in this case were
23 living in the home, as well. The victim in this
24 case, Minor 2, did disclose in the summer of 2016 that
25 while she was in this defendant and the co-

1 defendant's bedroom, one time on a couch, that the
2 co-defendant did digitally penetrate her and one
3 time put his penis in her. The child did state that
4 this defendant held her shoulders during that
5 incident -- those instances.

6 **THE COURT:** All right. And ma'am, are those
7 the facts that you believe the state could prove at
8 trial? Just not necessarily admitting your guilt. I
9 understand that you -- that you have no
10 recollection of this incident, is my understanding.

11 **THE DEFENDANT:** Yes. I have no --
12 (Mr. Moran consults with the defendant.)

13 **THE DEFENDANT:** Yes, ma'am.

14 **THE COURT:** Okay. Okay. All right. That's all
15 I wanted to know. Okay. I'll accept your plea as
16 being freely and voluntarily made with the advice
17 of extremely competent counsel with whom you say
18 you're well satisfied; and the plea does have a
19 substantial factual basis.

20 All right. And you say there's an agreement in
21 this case of a cap?

22 **MS. SUSTAKOVITCH:** A cap of 15 years,
23 Your Honor.

24 **THE COURT:** Okay.

25 **MS. SUSTAKOVITCH:** She does have a prior

1 criminal record.

2 **THE COURT:** All right. Yes, ma'am.

3 **MS. SUSTAKOVITCH:** '91, prostitution and
4 trespassing; '92, forgery, possession of marijuana,
5 two counts, DUS; '93, grand larceny, five counts;
6 '95, forgery; '99, possession of drug
7 paraphernalia; 2000, forgery; 2001, possession of
8 controlled substance and theft of property; 2004,
9 harassment; 2005, trespassing; 2009, possession of
10 controlled substance.

11 **THE COURT:** All right. All right.

12 Yes, sir.

13 **MR. MORAN:** Your Honor, let me begin by
14 saying I've been representing Ms. Owens for over
15 two years. And we've discussed this case and the
16 facts and listened to and see videos and what for -
17 - whatnot. It's my belief, in this case, that Mr.
18 Carpenter, and over the last few years she was
19 living with him, when he met her, he, basically,
20 realizing her education -- her limited education
21 and her substance abuse issues, he basically
22 groomed her to do what I would only say to give him
23 access to some of the stranger sexual proclivities,
24 I guess, is the best way I would put it.

25 **THE COURT:** Uh-huh.

1 **MR. MORAN:** When she first met him, I don't
2 believe that was the case. But given her
3 background, given her substance abuse, given his
4 access to money, he basically took -- over time,
5 got involved with substance abuse to get her to go
6 along with some of the things he was doing with
7 her.

8 She has a child -- a daughter, and she has
9 grandchildren. Needless to say, when we were first
10 discussing these facts, she was like, "If I had of
11 known this was going on or if I had thought this
12 was going on, I would have stopped it. I would have
13 done something."

14 Time to time in my practice, I find that an
15 *Alford* plea might facilitate a plea, however, in
16 this case, I don't believe it's facilitating; I
17 think it's accurate. I think there's evidence of
18 substance abuse going on when this was occurring.
19 It's one of the reasons that I -- and I wasn't
20 present at that trial. But it's one of the reasons
21 I asked to sever, because there were photographs
22 and things that involved my client that I felt were
23 not related to the charge she has.

24 It's really unfortunate many things she's done
25 over her life, but getting involved with Lee

1 Carpenter and Lee, basically, grooming her much
2 like defendants in these kind of cases do, to get
3 to the point where they want them to be. And as you
4 heard from the record, she has a substance abuse
5 problem.

6 **THE COURT:** Yeah.

7 **MR. MORAN:** As you heard today, she has 943
8 days -- well, actually she has, from my
9 calculations: 575 days in jail and 368 days on HIP.
10 She's violated that HIP --

11 **THE COURT:** I'm sorry. I thought she had 943
12 days total.

13 **MS. SUSTAKOVITCH:** Judge, and I might not
14 have been clear. So 943 total, but that's including
15 both together. It's 575 actually in jail ---

16 **MR. MORAN:** Uh-huh.

17 **MS. SUSTAKOVITCH:** --- and then 368 where she
18 was on HIP.

19 **THE COURT:** I got you.

20 **MS. SUSTAKOVITCH:** Yes, ma'am.

21 **THE COURT:** Okay. Thank you.

22 I'm sorry. Go ahead.

23 **MR. MORAN:** And Your Honor, she's continued
24 -- and she's continued to struggle with substance
25 abuse. It's been an issue. It's caused her to

1 violate HIP. And to be honest with Your Honor,
2 she's violated it twice. She was doing well and was
3 out from February of -- or January of -- no. She
4 was out from Christmastime 2017 until October of
5 this year.

6 She does need some assistance in that she's in
7 an odd situation in that he found her and she was
8 perfect for what he wanted. He even took her
9 overseas to Jamaica on a trip and basically got her
10 set up where she was relying on him for things you
11 asked about: How do you take care of yourself? --

12 **THE COURT:** Uh-huh.

13 **MR. MORAN:** -- over the last several years.
14 And after she got out on bond, she was living with
15 her mother who is seated on the front row. What I
16 would ask Your Honor to consider doing is doing a
17 split sentence on this. She certainly has gotten in
18 the situation where she understands what it means
19 to be out and what it means if you won't want to
20 violate the key -- you want to use the keys in your
21 pocket to let yourself back in. She, obviously,
22 doesn't want to go to the Department of
23 Corrections. She understands that's certainly
24 something that could happen today.

25 But what I would ask you to do is give --

1 fashion a sentence that would do some time and then
2 give her a chance to show that she wants to get
3 over this drug addiction. It's terrible. The photos
4 I've seen in this was terrible. The case is
5 terrible. And I believe Lee Carpenter is terrible.

6 **THE COURT:** I agree with all that that you
7 just said. I do agree with that. Let me -- is there
8 anything your client wants to say? She does not
9 have to and I understand --

10 **MR. MORAN:** I think she has just a few things
11 to say.

12 **THE COURT:** Yes, ma'am. Yes, ma'am.

13 **THE DEFENDANT:** If I would have known he was
14 doing anything like that, I would have stopped it.
15 I would have killed him because I have grandkids
16 and I love my babies. And I love them kids to
17 death. And I'm sorry that I got mixed up with him.
18 I wish I could take it back and do it all over,
19 cause if I knowed what I knew now, it would have
20 been different.

21 **THE COURT:** I -- I wish you could take it
22 back and do it over again, too, more than anything.

23 **MR. MORAN:** And Your Honor, I would also say
24 that we've had a long discussion about voluntary
25 intoxication, as well.

1 **THE COURT:** Okay.

2 **MS. SUSTAKOVITCH:** Your Honor, the victims'
3 parents are in the courtroom, as you see, Dalina
4 Moore and William Carpenter, III. They did not want
5 to speak but they did want to ask Your Honor for
6 incarceration and point out that she has violated
7 her bond as far as ---

8 Excuse me.

9 --- the substance abuse and violation of HIP.

10 **THE COURT:** Ms. Owings, I appreciate that you
11 are remorseful today and that you entered this
12 plea, even though you really did not have a clear
13 recollection of those events. I appreciate that.
14 And I'm going to give you some credit for it. But I
15 cannot mince words with you, this is probably --
16 I've been doing this job eight years. Before that,
17 I -- I was prosecutor part of that time ---

18 **THE DEFENDANT:** Yes, ma'am.

19 **THE COURT:** --- that did these types of
20 cases. Save one, this is the worse case I've ever
21 seen. Save one. There's one that just will forever
22 be, and I gave that person life in prison.

23 The sentence of the Court is 14 years, credit
24 for 575 days. I can't give you credit for the HIP
25 when you violated it. Good luck to you.

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MS. SUSTAKOVITCH: Thank you, Your Honor.

THE COURT: Thank you.

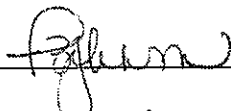
(Proceedings conclude at approximately 11:03 a.m.)

C E R T I F I C A T E

19

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville, South Carolina, on this 19th day of August 2019.

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



Teresa B. Johnson, CVR-M-CM, RVR, RVR-M
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of Greenville)

IN THE COURT OF COMMON PLEAS

Regina Cail Owings #195154
Full name and prison number (if any) of Applicant)

2019-CP-23- 02686

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

ENTERED COMPUTER

INSTRUCTIONS B 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 Leath Correctional, 2809 Airport Rd.
Greenville, SC 29649
2. Name and location of Court which imposed sentence Greenville County General Sessions, Greenville, SC
3. Name(s) of co-defendant(s) (if any) William Lee Carpenter
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) Unknown Indictment Number - Criminal Sexual Conduct

- (b) _____
 (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) January 29, 2019, 14 years
 (b) _____
 (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 ☒ Alford
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered Ayes@ 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 Ano@ to (7), state your reasons for not so appealing:
 (a) Was not aware I could appeal

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel:
- (b) Wrongful Prosecution;
- (c) Excessive and unfair sentencing;
- (d) The judicial judgment; Violation of US & State Rights
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel failed to adequately represent applicant, an innocent person
- (b) Applicant was prosecuted based on supposition and mistruths
- (c) Applicant was given an unfair sentence, particularly based on circumstances
- (d) Applicant's rights to due process were denied by counsel and the court
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 Ayes@ to any part of (12), list with respect to each petition, motion or application: NA
- (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: *NA*

(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 other appeals or reconsiderations have been brought.
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered Ayes to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Michael Moran
Spartanburg, SC (Currently now in York County)
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Alford Plea
- ii. _____
- iii. _____

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

Resentencing, new trial, release from incarceration
Modification/Sentencing

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Regina Coil Owens, 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.

Regina Owens

SWORN to and subscribed before me this 23
 day of April, 2019.

Don J. Kab (L.S.)
 Notary Public

My Commission Expires 2-23-2029

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

I, Regina Gail Owens, 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.

Regina Owens
Applicant

SWORN or affirmed to and subscribed before me this
23 day of April, 2019.

Neufeld
Notary Public

My Commission Expires: 2-23-2029

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
	)	
Regina Gail Owings, #195454,	)	Case No.: 2019-CP-23-02686
	)	
Applicant,	)	RETURN, PARTIAL
	)	MOTION TO DISMISS, AND
v.	)	MOTION FOR A MORE
	)	DEFINITE STATEMENT
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the application for post-conviction relief filed by Regina Gail Owings (Applicant) on May 10, 2019, would respectfully show this Court:

I. Procedural History

Applicant is presently incarcerated according to an order of commitment of the Greenville County Clerk of Court. Applicant was represented in the case by Michael David Morin, Esquire, (plea counsel) and Assistant Solicitor Christine Kednocker Sustakovitch of the Thirteenth Circuit Solicitor's Office prosecuted the case. On January 29, 2019, Applicant appeared before the Honorable Letitia H. Verdin (plea court), and waived presentment and pleaded guilty to second-degree criminal sexual conduct with a minor (2019-GS-23-15) pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). The plea court sentenced Applicant to imprisonment for fourteen years with credit for time served. Applicant did not appeal her plea or sentence.

II. Current Application

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

1. Ineffective assistance of counsel
 - a. Failure to adequately represent Applicant
2. Wrongful prosecution
 - a. Prosecution was based on "supposition and mistruths"

3. Excessive and unfair sentencing
 - a. Sentence was unfair
4. Prejudicial judgment and violation of state's rights
 - a. Applicant was denied the right to due process by plea counsel and the plea court

Applicant prays that the PCR court would grant post-conviction relief by resentencing her, granting a new trial, releasing her from incarceration, and modifying her sentence.

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

III. Summary Dismissal

Applicant alleges that she is entitled to post-conviction relief due to wrongful prosecution, an unfair sentence, a prejudicial judgment, and a violation of state's rights. As to these issues, the undersigned hereby moves for summary dismissal.

Pursuant to S.C. Code Ann. § 17-27-70(c), the Court may summarily dispose of an application if there is no genuine issue of material fact in the "pleadings, depositions and admissions and agreements of fact . . ." and the movant is entitled to judgment as a matter of law. With regard to these allegations, Respondent is entitled to judgment as a matter of law and there is no genuine issue of material fact.

An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
 2. That the court was without jurisdiction to impose sentence;
 3. That the sentence exceeds the maximum authorized by law;
 4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
 5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint;
- or

6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A).

Because an application for post-conviction relief is not a substitute for a direct appeal of trial court error, and because of the modern simplification of criminal jurisdiction jurisprudence in South Carolina, the overwhelming majority of cognizable claims fall under the broad umbrella of “ineffective assistance of counsel,” a contention under the Sixth Amendment to the Constitution of the United States. See Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (“Allegations of trial court error are not cognizable on PCR.”) (citing Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997); State v. Johnston, 333 S.C. 459, 510 S.E.2d 423 (1999)). Post-conviction relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). An Applicant may not base an application for post-conviction relief upon an allegation of the insufficiency of the evidence against him. Simmons v. State, 264 S.C. 417, 422-23, 215 S.E.2d 883, 885 (1975) (citing Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973)); S.C. Code Ann. § 17-27-20 (A)(6). Applicant’s allegation that she was the recipient of excessive punishment is likewise without merit. See Cummings v. State, 274 S.C. 26, 28, 260 S.E.2d 187, 188 (1979) (per curiam) (stating that it was sufficient when dispensing with Cummings’ claim that he was subjected to an excessive sentence to note that the sentence imposed was within the statutory limits and that there were not facts to support his allegation of prejudice on the part of the sentencing court). The allegations referenced herein do not support a cognizable claim for post-conviction relief under any of the statutory grounds.

The summary dismissal of an application for post-conviction relief without a hearing is appropriate only when it is apparent on the fact of the application that a hearing is not needed for

the development of a factual record and the applicant is not entitled to relief. Mose v. State, 420 S.C. 500, 505, 803 S.E.2d 718, 720 (2017) (citing Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005)). The Court, in considering the motion for summary dismissal without the holding of an evidentiary hearing, must assume the facts presented by Applicant as true and view then in the light most favorable to Applicant. Robertson v. State, 418 S.C. 505, 519, 795 S.E.2d 29, 36 (2016) (citing McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013)). Even if the facts alleged by Applicant are true, Respondent is entitled to judgment as a matter of law. Therefore, this Court should summarily dismiss these allegations pursuant to S.C. Code Ann. § 17-27-70(c) (2003).

IV. Ineffective Assistance of Counsel

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

presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Petitioner such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). The “prejudice prong ordinarily requires more than simply a defendant’s assertion that but for counsel’s deficient performance he would not have pled but would have gone to trial.” Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009).

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

“A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). “Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea.” Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”). “[W]hile most pleas of guilty consist of both a waiver of trial and an express admission of guilt, the latter element is not a constitutional requisite to the imposition of criminal penalty.” Alford, 400 U.S. at 37. Indeed, “[a]n individual accused of crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime.” Id. The Supreme Court in Alford noted:

That [the defendant] would not have pleaded except for the opportunity to limit the possible penalty does not necessarily demonstrate that the plea of guilty was not the product of a free and rational choice, especially where the defendant was represented by competent counsel whose advice was that the plea would be to the defendant’s advantage.

Id. at 30.

In essence, an Alford plea is a guilty plea, which carries the same penalties and punishments. State v. Herndon, 403 S.C. 84, 91, 742 S.E.2d 375, 379 (2013). Furthermore, the entry of an Alford plea “has the same preclusive effect as a standard guilty plea.” Zurcher v. Bilton, 379 S.C. 132, 137, 666 S.E.2d 224, 227 (2008). Indeed, in South Carolina, “there is no significant distinction between a standard guilty plea and an Alford plea.” Herndon, 403 S.C. at 93, 742 S.E.2d at 380.

Applicant does not include any specific information in her application with regard to her

allegation that plea counsel was constitutionally ineffective, and Respondent is therefore unable to effectively respond. The undersigned moves later herein for a more definite statement with regard to this allegation in order that Respondent may fully prepare for an evidentiary hearing in the matter.

V. Motion for a More Definite Statement

Respondent moves for a more definite statement as to Applicant's allegations. Applicant alleges that plea counsel failed to adequately represent her, but does not explain how counsel's conduct was inadequate. Applicant fails to set forth with specificity the facts and circumstances upon this claim is based. The Uniform Post-Conviction Procedure Act requires that Applicant must "specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

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

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

Furthermore, Rule 8(a), SCRPC, 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), SCRPC, to require Applicant to provide a more definite statement of her claim. Respondent moves to require Applicant to file an additional amended or supplemental application well in advance of any evidentiary hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended or supplemental application

setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the allegation.

VI. Denial of All Other Allegations

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

VII. Future Amendments and the Discovery Process

Applicant must specify any claims she intends to raise at the post-conviction relief evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant is represented by private counsel, that attorney and not the Applicant is the only individual authorized to file amendments to this application for post-conviction relief. See Rule 11, SCRCP. Pro se filings will not be considered at the evidentiary hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent pursuant to Love v. State, Op. No. 27921 (S.C. Sup. Ct. filed October 2, 2019) (Shearhouse Adv. Sh. No. 39 at 14), or, alternatively, Respondent will move for a continuance in the matter. See Love, at 24 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

VIII. Conclusion

WHEREFORE, Respondent requests that the Court summarily dismiss the specified allegations in the application for post-conviction relief and order Applicant to provide a more definite statement as to the allegation that plea counsel was constitutionally ineffective before convening an evidentiary hearing into the allegations, if such a hearing is warranted.

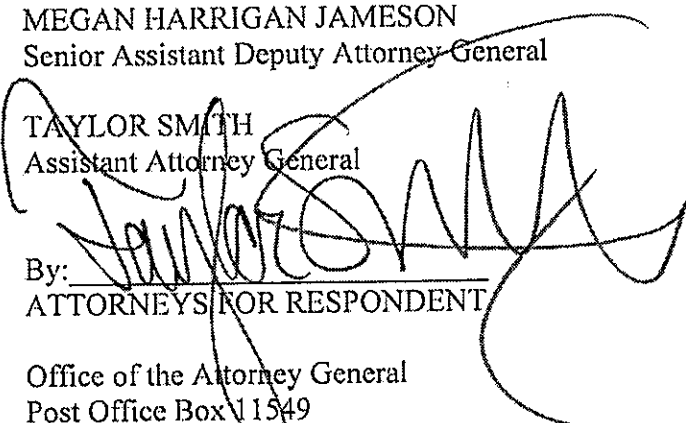
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

TAYLOR SMITH
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

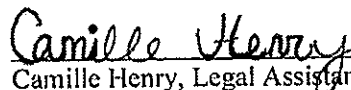
December 13, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2019-CP-23-2686
	)	
REGINA GAIL OWINGS, #195454	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

William G. Yarborough, III, Esquire
 William G. Yarborough III, Attorney at Law, LLC
 308 W. Stone Avenue
 Greenville, South Carolina 29609

DATED this 13th day of December, 2019.


 Camille Henry, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Regina Gail Owings, #195454
Applicant,

v.

State of South Carolina,
Respondent.IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2019-CP-23-02686

MOTION TO AMEND APPLICATION
FOR POST-CONVICTION RELIEF

ENTERED COMPUTER

2020 JUL -2 AM 10:04
FILED
CLERK OF COURT
THIRTEENTH JUDICIAL CIRCUIT
GREENVILLE, SOUTH CAROLINA

NOW COMES the Applicant, Regina Gail Owings, by and through undersigned counsel, William G. Yarborough III, and moves this Honorable Court for leave to amend her application for Post-conviction Relief.

Applicant respectfully submits the following grounds and supporting facts to supplement her PCR application:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) Pursuant to Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064. 80 L Ed.2d 674, 692 (1984), the Applicant's Sixth Amendment rights were violated by counsel's failure to adequately advise her of her Constitutional rights.
 - (b) Applicant maintained her innocence, but counsel instructed her to plead guilty. Pursuant to Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064. 80 L Ed.2d 674, 692 (1984), Applicant was denied her Sixth Amendment right to effective assistance of counsel due to counsel's failure to adequately investigate the facts of the case.

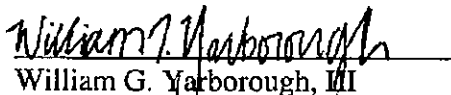
SCANNED

- (c) Excessive and unfair sentencing pursuant to *Strickland v. Washington*, 466 US 668 (1984).
 - (d) Prejudicial judgment in violation of *Strickland v. Washington*, 466 US 668 (1984).
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Plea counsel neglected to advise the Applicant of her Constitutional right to appeal the judgment from the trial court. Applicant's time to file an appeal expired due to counsel's failure to inform the Applicant of her right to seek relief. Plea counsel failed to advise the Applicant of the effects and consequences of an Alford Plea, thus hindering the Applicant's ability to voluntarily, knowingly, and intelligently accept the State's offer. Additionally, plea counsel failed to notify the Applicant of all available plea offers from the State, including a proffer agreement.
 - (b) Two material witnesses, Jeremy Owens and Amber Gordon, were never interviewed. Both witnesses lived with the Applicant, co-defendant, and victims. Plea counsel also failed to investigate potentially mitigating circumstances such as the Applicant's history of abuse, mental disorders, and prostitution. But for these errors, Applicant would not have pleaded guilty and instead would have proceeded to trial.
 - (c) Applicant was given an unfair sentence, particularly based on circumstance. Applicant was prosecuted based on suppositions and mistruths. Counsel failed to adequately investigate mitigating circumstances relevant to sentencing, and consequently failed to adequately present these mitigating circumstances to the court during sentencing.
 - (d) Counsel failed to adequately represent applicant, an innocent person. Counsel failed to adequately review discovery with Applicant and advise her accordingly; failed to

explain the nature of the charges and implications of any potential sentence to Applicant; failed to adequately explain the plea agreement's terms and its advantages and disadvantages to Applicant; and failed to explain the implications and consequences of her guilty plea. Each error not only impacted Applicant's decision as to whether to plead guilty or proceed to trial, but also rendered her guilty plea to be not knowingly, intelligently, or voluntarily entered.

WHEREFORE, Applicant respectfully requests this Honorable Court to allow Applicant leave to amend her APCR and to elicit testimony on the grounds raised herein at the upcoming evidentiary hearing.

Respectfully submitted,


William G. Yarborough, III
Attorney for the Applicant
308 W. Stone Avenue
Greenville, SC 29609
(864) 331-1612
SC Bar No.: 10271

Greenville, SC
June 23, 2020

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

Regina Gail Owings, #195454)
Applicant,)

v.)

State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2019-CP-23-02686

CERTIFICATE OF SERVICE BY MAIL

FILED-CLERK OF COURT
PAUL B. WICKENHISE
GREENVILLE, SC
2020 JUL -2 AM 10:14

The undersigned hereby certifies that she is employed in the Law Office of William G. Yarborough, III, 308 W. Stone Avenue, Greenville, South Carolina, and is a person of such age and discretion as to be competent to serve papers.

That on the 25th day of June 2020, she served a copy of the attached **ATTACHMENT TO APPLICATION FOR POST-CONVICTION RELIEF**, by placing said copy in a postpaid envelope, addressed to the person hereinafter named, at the place and address stated below, by depositing said envelope and contents in the United States Mail at Greenville, South Carolina.

Greenville County Clerk of Court
Greenville County Courthouse
305 E. North Street, #202
Greenville, South Carolina 29601

Assistant Attorney General Taylor Z. Smith
South Carolina Attorney General's Office
PO Box 11549
Columbia, South Carolina 29211

This 25th day of JUNE, 2020.

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Regina Gail Owings # 1954542)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

02686
2019-CP-230286

**MOTION TO AMEND APPLICATION
FOR POST-CONVICTION RELIEF**

ENTERED COMPUTER

FILED
PAUL J. HARRIS
CLERK OF COURT
2020 AUG 24 PM 1:52

NOW COMES the Applicant, Regina Gail Owings, by and through undersigned counsel, William G. Yarborough III, and moves this Honorable Court for leave to amend her application for post-conviction relief.

Applicant respectfully submits the following grounds and supporting facts to supplement her PCR application:

I. Applicant was denied the right to the effective assistance of counsel guaranteed by the Sixth Amendment pursuant to *Strickland v. Washington*, 466 U.S. 668 (1984).

- Counsel failed to explain the nature of the charges and the extent of the State's evidence against her and did not adequately review discovery with Applicant.
- Counsel failed to advise her accordingly relative to potential case or trial strategy, her potential success should she proceed to trial, and the decision to plead guilty;
- Counsel failed to explain the implications of the potential sentence she may receive as well as the nature and implications of entering a plea of guilty, including a sufficient advisement of the rights she would be waiving.
- Counsel failed to adequately inform or explain to Applicant the previously extended proffer and plea offers and the terms thereof, including cooperation, and advise her accordingly.

Each of these instances prejudiced Applicant and her decision as to whether to plead guilty or proceed to trial and also rendered his guilty plea not knowingly, intelligently, or voluntarily entered.

SCANNED

II. Plea Counsel's performance was ineffective in that he failed to advise Applicant of her right to direct appeal. The time to file an appeal expired without Plea Counsel filing a notice of intent to appeal on her behalf, or informing Applicant that she had the right to an appeal and how to seek such relief.

III. Plea Counsel failed to adequately investigate.

- Plea Counsel failed to adequately investigate the facts of the case because two material witnesses, Jeremy Owens and Amber Gordon, were never interviewed. The two witnesses lived with the Applicant, her co-defendant, and victims.
- Plea Counsel failed to adequately investigate for the purposes of case strategy and sentencing various mitigating circumstances such as the Applicant's long history of abuse, mental disorders, and prostitution. Plea Counsel failed to fully present the extent thereof to the court with appropriate and available substantiation.

WHEREFORE, Applicant respectfully requests this Honorable Court to allow Applicant leave to amend his APCR and to elicit testimony on the grounds raised herein at the upcoming evidentiary hearing.

Respectfully submitted,



William G. Yarborough, III
Attorney for the Applicant
308 W. Stone Ave., Greenville, SC 29609
(864) 331-1612
SC Bar No.: 10271

Greenville, SC

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
REGINA GAIL OWINGS #1954542,)
APPLICANT.)
VS.)
STATE OF SOUTH CAROLINA,)
RESPONDENT.)

IN THE COURT OF GENERAL SESSIONS
THIRTEENTH JUDICIAL CIRCUIT

2019-CP-230288

CERTIFICATE OF SERVICE

2020 AUG 24 PM 1:52

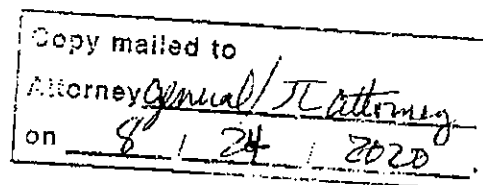
The undersigned hereby certifies that she is employed in the Law Office of William G. Yarborough, 308 W. Stone Avenue, Greenville, South Carolina, and is a person of such age and discretion as to be competent to serve papers.

That on the 11th day of August 2020, she served a copy of the attached **Motion to Amend Application for Post-Conviction Relief** by placing said copy in a postpaid envelope, addressed to the person hereinafter named, at the place and address stated below, by depositing said envelope and contents in the United States Mail at Greenville, South Carolina.

Lisa Cherry

Lisa Cherry
Paralegal to James F. Brehm

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



A Certified Copy
Paul B. Wulfsberg
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS	
COUNTY OF GREENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT	
	)		
Regina Gail Owings, #195454,	)	Case No.: 2019-CP-23-02686	
	)		
Applicant,	)	RETURN TO AMENDED	
	)	APPLICATIONS, PARTIAL	
v.	)	MOTION TO DISMISS,	
	)	AND MOTION FOR A MORE	
State of South Carolina,	)	DEFINITE STATEMENT	
	)		
Respondent.	)	ENTERED COMPLETION	

FILED-CLERK OF COURT
PAUL B. WILSON
2020 OCT 29 AM 11:26

The State ("Respondent"), making its return to the application for post-conviction relief filed by Regina Gail Owings ("Applicant"), through counsel, on May 10, 2019, the first amended application filed by Applicant on July 2, 2020, and the second amended application filed by Applicant on August 24, 2020, would respectfully show this Court:¹

I. Procedural History

Applicant is presently incarcerated in the South Carolina Department of Corrections. Applicant was represented in the case by Michael David Morin ("plea counsel"), Esquire. Assistant Solicitor Christine Kednocker Sustakovitch of the Thirteenth Circuit Solicitor's Office prosecuted the case. On January 29, 2019, Applicant appeared before the Honorable Letitia H. Verdin, waived presentment, and pleaded guilty to second-degree criminal sexual conduct with a minor (2019-GS-23-15) pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). At that plea hearing, the assistant solicitor provided the following recitations of facts the State would seek to prove if Applicant proceeded to trial, which Applicant agreed the State would likely be able to prove:

[B]etween Thanksgiving of 2014 and 2015, [Applicant] was living with [co-defendant] William Lee Carpenter, Jr. And the grandchildren who are the subject of the abuse in this case were living in the home, as well. The victim in this case . .

¹ Applicant filed a motion to amend her application on each of these dates. Respondent accepts the motions as amended applications and refers to them as such in this return.

did disclose in the summary of 2016 that while she was in [Applicant's] and the co-defendant's bedroom, one time on a couch, that the co-defendant did digitally penetrate her and one time put his penis in her. The child did state that [Applicant] held her shoulders during that incident—those instances.

Plea Tran. 10-11. In accordance with the State's recommended sentencing cap of imprisonment for fifteen years, Judge Verdin sentenced Applicant to imprisonment for fourteen years, with credit for time served.

Applicant did not appeal her conviction or sentence.

II. Current Application

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

1. Ineffective assistance of counsel
 - a. Failure to adequately represent Applicant
2. Wrongful prosecution
 - a. Prosecution was based on "supposition and mistruths"
3. Excessive and unfair sentencing
 - a. Sentence was unfair
4. Prejudicial judgment and violation of state's rights
 - a. Applicant was denied the right to due process by plea counsel and the plea court

On July 2, 2020, Applicant filed an amended application, stating she wished to supplement her application with multiple claims, which Respondent interprets as follows:

1. Applicant's guilty plea was not knowingly, intelligently, and voluntarily entered because plea counsel was constitutionally ineffective for:
 - a. Failing to advise Applicant of the effects and consequences of entering an Alford plea, which hindered Applicant's ability to knowingly, voluntarily, and intelligently accept the State's offer;
 - b. Failing to notify Applicant of all plea offers, and a proffer agreement, extended by the State;
 - c. Failing to conduct an adequate investigation by not interviewing two material witnesses—Jeremy Owens and Amber Gordon—who lived with Applicant, Applicant's codefendant, and the victims;
 - d. Failing to conduct an adequate investigation into mitigating circumstances, such as Applicant's long history of abuse, Applicant's mental disorders, and Applicant's engaging in prostitution, and failing to present them to Judge Verdin, which

- caused Applicant to plead guilty rather than proceeding to trial;
 - e. Failing to review discovery with Applicant adequately;
 - f. Failing to explain the nature of the charges and the implications of any potential sentence;
 - g. Failing to explain adequately to Applicant the terms, advantages, and disadvantages of the plea agreement; and
 - h. Failing to explain to Applicant the implications and consequences of pleading guilty;
2. Applicant did not knowingly and voluntarily waive her right to direct appellate review of her conviction and sentence;
 3. Applicant's sentence was unfair and excessive based upon the circumstances; and
 4. Applicant's sentence was unfair and excessive because she was prosecuted based on suppositions and mistruths.

On August 24, 2020, Applicant filed a second amended application, stating she wished to supplement her application with multiple claims, which Respondent interprets as follows:

5. Plea counsel was constitutionally ineffective for:
 - a. Failing to explain to Applicant the nature of the charges and the extent of the State's evidence of Applicant's guilt;
 - b. Failing to review discovery with Applicant adequately;
 - c. Failing to advise Applicant of potential trial strategies, the potential for an acquittal should Applicant proceed to trial, and Applicant's decision to plead guilty;
 - d. Failing to explain the implications of the potential sentences Applicant could receive, the nature and implications of pleading guilty, and advise Applicant sufficiently of the rights she would be waiving by pleading guilty;
 - e. Failing to inform or explain adequately to Applicant the proffer and plea offers previously extended to Applicant and the terms thereof, including any requirement of cooperation, and to advise Applicant accordingly;
 - f. Failing to conduct an adequate investigation by not interviewing two material witnesses—Jeremy Owens and Amber Gordon—who lived with Applicant, Applicant's codefendant, and the victims; and
 - g. Failing to conduct an adequate investigation into mitigating circumstances, such as Applicant's long history of abuse, Applicant's mental disorders, and Applicant's engaging in prostitution, and failing to present them to Judge Verdin; and
6. Applicant did not knowingly and voluntarily waive her right to direct appellate review of her conviction and sentence.

Applicant prays that the PCR court would grant post-conviction relief by resentencing her, granting a new trial, releasing her from incarceration, and modifying her sentence.

Respondent reserves the right to amend this return upon its receipt of any relevant materials.

III. Summary Dismissal

Applicant alleges that she is entitled to post-conviction relief due to wrongful prosecution, an unfair sentence, a prejudicial judgment, and a violation of state's rights. As to these issues, the undersigned hereby moves for summary dismissal. Pursuant to S.C. Code Ann. § 17-27-70(c), the Court may summarily dispose of an application if there is no genuine issue of material fact in the "pleadings, depositions and admissions and agreements of fact . . ." and the movant is entitled to judgment as a matter of law. The summary dismissal of an application for post-conviction relief without a hearing is appropriate only when it is apparent on the face of the application that a hearing is not needed for the development of a factual record and the applicant is not entitled to relief. Mose v. State, 420 S.C. 500, 505, 803 S.E.2d 718, 720 (2017) (citing Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005)). The Court, in considering the motion for summary dismissal without the holding of an evidentiary hearing, must assume the facts presented by Applicant as true and view them in the light most favorable to Applicant. Robertson v. State, 418 S.C. 505, 519, 795 S.E.2d 29, 36 (2016) (citing McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013)).

With regard to these allegations, Respondent is entitled to judgment as a matter of law and there is no genuine issue of material fact.

An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint;

or

6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A). Because an application for post-conviction relief is not a substitute for a direct appeal of trial court error, and because of the modern simplification of criminal jurisdiction jurisprudence in South Carolina, the overwhelming majority of cognizable claims fall under the broad umbrella of "ineffective assistance of counsel," a contention under the Sixth Amendment to the Constitution of the United States. See Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) ("Allegations of trial court error are not cognizable on PCR.") (citing State v. Johnston, 333 S.C. 459, 510 S.E.2d 423 (1999); Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997)). Post-conviction relief is proper only when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). An applicant may not base an application upon an allegation of the insufficiency of the evidence against him. Simunons v. State, 264 S.C. 417, 422-23, 215 S.E.2d 883, 885 (1975) (citing Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973)); S.C. Code Ann. § 17-27-20 (A)(6). Applicant's allegation that she was the recipient of excessive punishment is likewise without merit. See Cummings v. State, 274 S.C. 26, 28, 260 S.E.2d 187, 188 (1979) (per curiam) (stating that it was sufficient when dispensing with Cummings' claim he was subjected to an excessive sentence to note that the sentence imposed was within the statutory limits and that there were not facts to support his allegation of prejudice on the part of the sentencing court). The allegations referenced herein do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Even if the facts alleged by Applicant are true, Respondent is entitled to judgment as a matter of law. Therefore, this Court should summarily dismiss these allegations pursuant to S.C. Code Ann. § 17-27-70(c) (2003).

IV. Response to Applicant's Direct Appeal Claim

In White v. State, 263 S.C. 110, 119, 108 S.E.2d 35, 39 (1974), the South Carolina Supreme Court held that, even though the post-conviction relief court may find that an applicant did not voluntarily and intelligently abandon his right to a direct appeal, the PCR court does not have jurisdiction to grant a belated appeal. However, when an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected. Id. at 119, 108 S.E.2d at 39-40.

Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470 (2000). When counsel has consulted with the defendant regarding the right to appeal, "Counsel performs in a professionally unreasonable manner only by failing to follow the defendant's express instructions with respect to an appeal." Id. at 478 (underlining added). In order to establish he was prejudiced by counsel's failure to file an appeal, an applicant must show he would have appealed absent counsel's deficient performance. See Id. at 484. "Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver." Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981).

Applicant claims she did not knowingly and voluntarily waive her right to direct appellate review of her convictions and sentence. Respondent submits Applicant cannot meet her burden in showing that she did not knowingly and voluntarily waive that right. However, because this allegation may raise questions of fact not conclusively refuted by the record, Respondent requests

an evidentiary hearing to fully resolve the matter. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (holding that an evidentiary hearing is required when an application for post-conviction relief alleges specific instances of ineffectiveness that are not conclusively refuted by the record) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

V. Ineffective Assistance of Counsel

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008); Strickland v. Washington, 466 U.S. 668 (1984). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that counsel was constitutionally ineffective, he must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result.” Strickland, at 686. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, at 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, at 117, 386 S.E.2d at 625 (quoting Strickland, at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, at 690). Applicant must overcome this presumption to receive relief. Cherry, at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors,

the result of the proceeding would have been different.” Cherry, at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing: (1) counsel was deficient and (2) there is a reasonable probability that but for counsel’s errors, the defendant would not have pleaded guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). The “prejudice prong ordinarily requires more than simply a defendant’s assertion that but for counsel’s deficient performance he would not have pled but would have gone to trial.” Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, at 670. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Id. at 697. Therefore, the function of the post-conviction relief court is to determine if “in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney. Id. at 690.

“A guilty plea is a solemn, judicial admission of the truth of the charges against an

individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (S.C. Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). "Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea." Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea"). The South Carolina Supreme Court has instructed that:

The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.

State v. Inman, 395 S.C. 539, 556, 720 S.E.2d 31, 40 (2011) (internal quotations and citations omitted). "[A] guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison, at 468, 765 S.E.2d at 129 (citations omitted).

"[W]hile most pleas of guilty consist of both a waiver of trial and an express admission of guilt, the latter element is not a constitutional requisite to the imposition of criminal penalty." Alford, 400 U.S. at 37. Indeed, "[a]n individual accused of crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime." Id. The Supreme Court in Alford noted:

That [the defendant] would not have pleaded except for the opportunity to limit the possible penalty does not necessarily demonstrate that the plea of guilty was not the product of a free and rational choice, especially where the defendant was represented by competent counsel whose advice was that the plea would be to the defendant's advantage.

Id. at 30. In essence, an Alford plea is a guilty plea, which carries the same penalties and

punishments. State v. Herndon, 403 S.C. 84, 91, 742 S.E.2d 375, 379 (2013). Furthermore, the entry of an Alford plea “has the same preclusive effect as a standard guilty plea.” Zurcher v. Bilton, 379 S.C. 132, 137, 666 S.E.2d 224, 227 (2008). Indeed, in South Carolina, “there is no significant distinction between a standard guilty plea and an Alford plea.” Herndon, 403 S.C. at 93, 742 S.E.2d at 380.

Applicant raises multiple claims concerning plea counsel’s alleged ineffectiveness for failing to conduct an adequate investigation. A defense attorney has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland, at 691. Thus, “[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.” McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). A defense attorney’s “[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.” Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing Kibler v. State, 267 S.C. 250, 227 S.E.2d 199 (1976)). An applicant alleging that his attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome. Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997). Moreover, counsel’s decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel’s judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). “[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed as of the time of counsel’s conduct.” Id. at 690; Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (S.C. Ct. App. 2014). An “applicant must produce the testimony of a favorable witness or

otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (1998)); see also Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (holding that the PCR court's finding that Dempsey was prejudiced by trial counsel's failure to call an expert at trial to rebut the State's expert was merely speculative when Dempsey failed to have an expert testify at his PCR hearing), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). When discussing an attorney's decision to limit the scope of his investigation into potential mitigating evidence, the Supreme Court of the United States has provided that "strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable" Wiggins v. Smith, 539 U.S. 510, 521 (2003) (citing Strickland, at 690-91). Though a defense attorney is not required to investigate every conceivable line of mitigation evidence or introduce it into evidence, the attorney's strategic choices made after he has made a less than complete investigation is "reasonable only to the extent that reasonable professional judgment support[s] the limitations on investigation A decision not to investigate thus must be directly assessed for reasonableness in all the circumstances. Von Dohlen v. State, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004) (citing Wiggins, 539 U.S. at 533).

Applicant raises multiple claims that she did not knowingly and voluntarily plead guilty. The Due Process Clause of the United States Constitution requires that a defendant enter a guilty plea voluntarily, knowingly, and intelligently. Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citing Boykin v. Alabama, 395 U.S. 238 (1969)). The defendant must be aware of the right to confront his accusers, the privilege against his self-incrimination, the right to be tried by a jury, the nature and crucial elements of the offense for which he is being accused, the maximum

and minimum possible penalties, and the nature of any constitutional rights being waived by the entry of a guilty plea. Id. (citations omitted). It is not required that a court direct a defendant's attention to "each and every constitutional right and obtain a separate waiver for each." State v. Lambert, 266 S.C. 574, 578-79, 225 S.E.2d 340, 342 (1976) (citing Wade v. Coiner, 468 F.2d 1059 (4th Cir. 1972)). Even if plea counsel misadvised Applicant in matters such as the possible sentences Applicant could face if she pleaded guilty, the consequences of entering an Alford plea, and the right Applicant would be waiving by pleading guilty, Judge Verdin's colloquy would have cured such an error. Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011) (citations omitted) (concluding that any alleged deficiency in plea counsel's advice to Holden was cured by the plea court's colloquy), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Applicant claims plea counsel failed to inform her of all plea offers extended by the State. "[A]s a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms a conditions that may be favorable to the accused." Missouri v. Frye, 566 U.S. 134, 145 (2012); see Davie v. State, 381 S.C. 601, 610, 675 S.E.2d 416, 421 (2009) (finding that counsel's failure to communicate a plea offer was deficient), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Respondent submits Applicant likely cannot show she is entitled to post-conviction relief on any of the grounds in her applications; however, because the claims may raise questions of fact not conclusively refuted by the record, Respondent requests an evidentiary hearing to fully resolve the matter. Sharper, at 265, 305 S.E.2d at 248 (holding that an evidentiary hearing is required when an application for post-conviction relief alleges specific instances of ineffectiveness that are not conclusively refuted by the record).

VI. Motion for a More Definite Statement

Respondent moves for a more definite statement as to Applicant's claims. Applicant claims plea counsel was constitutionally ineffective for failing to conduct an adequate investigation by not interviewing two material witnesses—Jeremy Owens and Amber Gordon—who lived with Applicant, Applicant's codefendant, and the victims, but fails to explain what benefit the defense would have gained from the testimony of the two potential witnesses and fails to explain how plea counsel's failure to interview them caused her to plead guilty rather than proceeding to trial. Applicant fails to set forth with specificity the facts and circumstances upon this claim is based. The Uniform Post-Conviction Procedure Act requires that Applicant must "specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

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

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

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

Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of her claim. Respondent moves to require Applicant to file an additional amended or supplemental application well in advance of any evidentiary hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended or supplemental application

setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the allegation.

VII. Denial of All Other Allegations

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

VIII. Future Amendments and the Discovery Process

Applicant must specify any claims she intends to raise at the post-conviction relief evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant is represented by private counsel, that attorney and not the Applicant is the only individual authorized to file amendments to this application for post-conviction relief. See Rule 11, SCRCP. Pro se filings will not be considered at the evidentiary hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent pursuant to Love v. State, Op. No. 27921 (S.C. Sup. Ct. filed October 2, 2019) (Shearhouse Adv. Sh. No. 39 at 14), or, alternatively, Respondent will move for a continuance in the matter. See Love, at 24 (Kittredge, J., dissent) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

IX. Conclusion

WHEREFORE, Respondent requests that the Court summarily dismiss the specified claims in the application for post-conviction relief, require Applicant to provide a more definite statement as to the claims identified in the motion included in this return, and convene an evidentiary hearing

as to all claims requiring one.

Respectfully submitted,

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Attorney General

W. JEFFREY YOUNG
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By: s/Taylor Zane Smith
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October 28, 2019

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Regina Gail Owings, #195454,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-23-02686

CERTIFICATE OF SERVICE

FILED-CLERK OF COURT
PAUL B. WILSON
CLERK OF COURT
2020 OCT 29 AM 11:26

1. Undersigned is counsel of record for the Respondent in the above-captioned action.
2. Pursuant to the South Carolina Supreme Court's Order "RE: Operation of the Trial Courts During the Coronavirus Emergency" (Appellate Case No. 2020-000447), dated April 3, 2020, "a lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer's primary email address listed in the Attorney Information System (AIS)."
3. Undersigned has served a copy of the **Return to Amended Applications, Partial Motion to Dismiss, and Motion for a More Definite Statement** in the above-captioned matter on opposing counsel by emailing a copy to the email address as listed in the AIS:

William G. Yarborough, III, Esquire
wgyarborough@gmail.com

DATED this 28th day of October, 2020.

s/Taylor Zane Smith
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STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Regina Gail Owings # 1954542,
Applicant.)

v.)

State of South Carolina,
Respondent.)IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUITCase No. 2019-CP-23 ~~0286~~ 02686**APPLICANT'S REPLY IN OPPOSITION
TO RESPONDENT'S RETURN AND
PARTIAL MOTION TO DISMISS**

ENTERED COMPUTER

DEC 23 4:11:31
CLERK OF COURT
JUDICIAL CIRCUIT
THIRTEENTH JUDICIAL CIRCUIT

NOW COMES the Applicant, Regina Gail Owings, by and through her counsel of record, and hereby respectfully submits this Reply in Opposition to the Respondent's Return and Partial Motion to Dismiss.

As further discussed herein, Respondent's motions should be denied because Applicant's PCR allegations properly raise claims of ineffective assistance of counsel and have been properly pleaded with sufficient specificity. The allegations also raise genuine issues of material fact that can only be resolved by an evidentiary hearing. Applicant thus respectfully urges this Court to deny the Respondent's Motion to Dismiss and hold an evidentiary hearing on the merits.

I. APPLICANT'S PCR ALLEGATIONS ARE COGNIZABLE FOR RELIEF UNDER THE UNIFORM POST-CONVICTION PROCEDURE ACT AND ARE THUS NOT SUBJECT TO DISMISSAL.

In the Return and Motion to Dismiss, Respondent paraphrases each individual PCR ground but also characterizes Applicant's allegations collectively as claims of "wrongful prosecution, an unfair sentence, a prejudicial judgment, and a violation of state's rights." (Return & Mot. to Dismiss, pp. 3-6). Respondent argues the allegations as summarized are not then cognizable for review before this Court or relief under the PCR Act. *Id.*

First, Applicant respectfully disagrees with Respondent's summarizations and urges this Court to instead refer to the actual text of each allegation raised in the respective original or amended application. The very text of Applicant's PCR applications makes clear that the allegations are explicitly raised as ineffective assistance of counsel claims¹ under the Sixth Amendment pursuant to *Strickland v. Washington*.² The explanation or support provided for each allegation accordingly specifies the error in Counsel's decision-making or actions while representing Applicant.

Applicant therefore respectfully urges this Court to deny Respondent's Motion to Dismiss.

II. THE PCR ALLEGATIONS ARE PROPERLY PLEADED AND WITH SUFFICIENT SPECIFICITY.

Respondent urges this Court to order Applicant to plead the failure to investigate allegation with more specificity or otherwise decline to consider the allegation on evidentiary review. Applicant has filed several amended PCR applications that raise thorough and detailed allegations, including the failure to investigate allegation for which Respondent takes issue:

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

...

- (b) Applicant maintained her innocence, but counsel instructed her to plead guilty. Pursuant to *Strickland v. Washington*, Applicant was denied her Sixth Amendment right to effective assistance of counsel due to counsel's failure to adequately investigate the facts of the case.

...

¹Even if the allegations were found not to raise ineffective assistance of counsel claims, pursuant to *Fortune v. State*, the allegations nonetheless raise constitutional claims cognizable for relief under the PCR Act.

² 466 U.S. 668 (1984).

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

...

- (b) Two material witnesses, Jeremy Owen and Amber Gordon, were never interviewed. Both witnesses lived with Applicant, her codefendant, and victims.

(Amended PCR App. filed July 2, 2020).

III. Plea Counsel failed to adequately investigate.

- Plea Counsel failed to adequately investigate the facts of the case because two material witnesses, Jeremy Owens and Amber Gordon, were never interviewed. The two witnesses lived with the Applicant, her co-defendant, and victims.

(Amended PCR App. filed August 24, 2020). Respondent's argument that the failure to investigate allegation is insufficient pursuant to the South Carolina Rules of Civil Procedure and the PCR Act is erroneous and Applicant has made the requisite *prima facie* showing that she is entitled to relief. John H. Blume provides the following apt summary of the pleading requirements applicable to PCR filings:

South Carolina's civil rules "merely require that the pleadings give notice of the claim being made against the adversary and of the grounds upon which it rests, *rather than allege in detail the specific facts upon which the claim is based.*" The purpose of notice pleading "is simply to give fair notice to the opposing party" of the legal claims, but the "[r]esolution of facts which sustain a pleading is left to discovery." The PCR Act and Form 5 are consistent with the notice pleading regime in that they require the applicant to specifically identify the grounds (or legal claims) upon which the application is based and give a "concise" statement of the facts to support each ground.

John H. Blume & Emily C. Paavola, *A Reintroduction: Survival Skills for Post-conviction Practice in South Carolina*, 4 CHARLESTON L. REV. 223, 260-61 (2010) (internal punctuation and citations omitted) (italics added).

Contrary to Respondent's position, the failure to investigate allegation, as do all Applicant's PCR allegations, provide Respondent with sufficient notice of claim raised and are properly pleaded under the South Carolina Rules of Civil Procedure and the PCR Act. The

surrounding circumstances and details of the case as revealed by the record also provide supplemental context. The answers Respondent seeks are properly reserved for the evidentiary hearing. Resolution of this allegation by way of an evidentiary hearing on the merits naturally follows from the rule to deny relief where a PCR applicant raises such allegations but then fails to present at the PCR hearing evidence of what further investigation would have revealed. *See e.g., Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) ("PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify.").

Applicant thus respectfully urges this Court to deny Respondent's request for an order requiring Applicant to provide a more definite statement of her PCR allegations. Notwithstanding the foregoing, Applicant does not seek to forego or waive filing a motion for leave from this Court to further amend or supplement her PCR applications should it become necessary. In that event, Applicant certifies that any motion for leave to amend and amendments would comply with the procedures and timeframes provided in all applicable rules and statutes, or as set by this Court and as stated in Respondent's Return in order to provide sufficient notice to Respondent and prevent undue surprise.

III. APPLICANT'S PCR ALLEGATIONS ARE OTHERWISE NOT SUBJECT TO DISMISSAL AND THE RESPONDENT IS NOT ENTITLED TO JUDGMENT AS A MATTER OF LAW.

Pursuant to the PCR Act, the dismissal of a PCR application without a hearing is inappropriate if there is a genuine issue of material fact. S.C. Code Ann. § 17-27-70 (c). *See also e.g., E.g., Wilson v. State*, 348 S.C. 215, 217, 559 S.E.2d 581, 582 (2002); *Coardes v. State*, 262

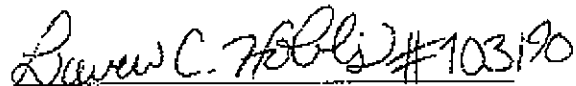
S.C. 493, 497-98, 206 S.E.2d 264, 265-66 (1974) (holding dismissal proper where the ineffective assistance of counsel allegation was conclusively refuted by the record).

Here, Applicant's PCR allegations raise genuine issues of material fact that can only be resolved by an evidentiary hearing and the Respondent is not entitled to judgment as a matter of law. Applicant respectfully urges this Court to deny Respondent's motion for dismissal.

CONCLUSION

In light of the foregoing, Applicant respectfully urges this Court to deny Respondent's motions because the allegations raised for post-conviction relief are properly pleaded with sufficient specificity and asserts claims cognizable for relief under the PCR Act. The allegations are otherwise not subject to dismissal and Applicant is entitled to an evidentiary hearing on the merits.

Respectfully submitted,

#103190

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Applicant's Response in Opposition to Respondent's Return and Motion to Dismiss filed on behalf of Regina Owings in *Owings v. State of South Carolina* Case No. 2019-CP-230286) was served upon the Respondent this 10th day of December, 2020 by depositing it in the U.S. postal mail with sufficient postage attached, addressed to:

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

This 10th day of December, 2020.



William G. Yarborough III, Attorney at Law, LLC

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	2019-CP-23-2686
	)	
	)	
REGINA G. OWINGS	)	
	)	APPLICANT
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA	)	
	)	RESPONDENT

November 9, 2021
Greenville, South Carolina

B E F O R E:

THE HONORABLE G.D. MORGAN, JR., Judge.

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

WILLIAM G. YARBOROUGH, ESQ.
Attorney for the Applicant

TAYLOR Z. SMITH, ESQ.
Attorney for the State

APRIL HERRON
Official Court Reporter

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1 THE COURT: All right, I believe the first
2 matter we have is Regina Owings vs. State of South
3 Carolina; is that correct?

4 MR. SMITH: That's correct, Your Honor.

5 THE COURT: All right, everybody ready to
6 proceed?

7 MR. SMITH: Yes, Your Honor, we're just waiting
8 for Ms. Owings.

9 MR. YARBOROUGH: Good morning, Your Honor.

10 THE COURT: Good morning, how are you?

11 MR. YARBOROUGH: I'm good, Your Honor. I would,
12 Your Honor, if The Court please, before we proceed in
13 this matter, I have discussed at length with
14 Ms. Owings, her potential liability should she win
15 this case. And I would ask that The Court swear her
16 and ask her if she understands that what would happen
17 is she would receive -- if she won on the merits of
18 the case, she would receive a new trial. Which could
19 mean that the 15 year cap that was originally
20 recommended on the record, which I think Judge Verdin
21 sentenced her to 14 years -- just so she understands.
22 I've tried to explain that to her. And I think it's
23 important that we put that on the record, if that's
24 okay, Your Honor.

25 THE COURT: Yeah, that's fine.

REGINA OWINGS-EXAMINATION BY THE COURT

1 Ms. Owings, if you'd raise your right hand.

2 REGINA OWINGS, after being duly

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

4 EXAMINATION

5 BY THE COURT:

6 Q All right, you've heard Mr. Yarborough set out
7 potential possibilities that could happen here if the
8 court were to grant your PCR relief and you go back and,
9 potentially, face trial, then you face -- you received 14
10 years by Judge Verdin. Looks like there was a cap set at

11 15 years and she gave you 14 years. But you could,
12 potentially, be exposed, if you go back, to a greater
13 sentence; which would carry up to 20 years. Do you
14 understand that?

15 A Yes, sir.

16 Q All right. Again, by prevailing in a PCR here,
17 you could, potentially, face a higher sentence if it went
18 back down; so you do understand?

19 A Yes, sir.

20 Q All right. And you do want to proceed here
21 today?

22 A Yes, sir.

23 THE COURT: All right. Thank you.

24 All right, anything else?

25 MR. YARBOROUGH: No, sir, Your Honor. I think

1 we, just for the record, I think you've got our
2 original PCR application. And then we filed a motion
3 to amend our application in July of 2020. And I
4 think you should have that for the record. And you
5 should have, hopefully, a transcript of the guilty
6 plea in front of Judge Verdin on January 29th, 2019.
7 And I don't think there's anything else I see but
8 I'll ask the Attorney General's office.

9 Is there anything else that y'all think might be
10 a part of the record that we need to have at this
11 point?

12 MR. SMITH: I believe that there was also a
13 second amended application filed on August 24th,
14 2020. As far as I know, we've provided that to The
15 Court, too.

16 MR. YARBOROUGH: That's correct. I just think
17 that had a couple other grounds that were laid out
18 that were -- and I'm not sure, it really didn't
19 inadvertently just repeat what was originally filed
20 in July.

21 THE COURT: All right. So it was amended on
22 August 24, 2020, to the July 2020 amendment; is that
23 right?

24 MR. YARBOROUGH: Yes, sir.

25 THE COURT: Okay.

1 MR. YARBOROUGH: And they all fall under
2 Strickland v. Washington. That whole series of
3 cases. And when PCR applications, I tend to rely on
4 those original Strickland v. Washington cases versus
5 state cases. Just for the record.

6 THE COURT: All right.

7 All right, anything else?

8 MR. SMITH: I believe that covers it, Your
9 Honor.

10 THE COURT: All right, I'll let the Attorney
11 General go ahead and call the case and then we'll
12 proceed.

13 MR. SMITH: May it please the Court. This is
14 the case of Regina Gail Owings v. State, case number
15 is 2019-CP-23-02686. I'll note that we're doing this
16 in person today. It was -- the hearing was
17 previously continued from WebEx. And, I believe,
18 ~~Judge McIntosh ordered that we had to do this in~~
19 person. Ms. Owings is serving out a 14 year sentence
20 in SCDC. She was represented in the underlining
21 criminal case by Mr. Michael Morin. And Assistant
22 Solicitor Christy Sustakovitch prosecuted her. In
23 January of 2019 Ms. Owings appeared before Judge
24 Verdin, waived presentment and pleaded guilty to
25 second degree CSC with a minor, entering a Alford

1 plea.

2 And I'll note for the record that Ms. Owings had
3 a co-defendant who did proceed to trial. I believe
4 his sentence was 30 years or more, I can't remember
5 the exact number. But at the guilty plea hearing The
6 State recommended a sentencing cap of 15 years, as
7 Your Honor has already heard. And Ms. Owings did not
8 appeal. And she has since filed this application.
9 And that's the introduction.

10 THE COURT: All right, Mr. Yarborough.

11 MR. YARBOROUGH: If The Court please, Your
12 Honor. We'd call Michael Morin to the stand, please.

13 THE COURT: All right.

14 MR. SMITH: I'm sorry, again, Your Honor, I've
15 overlooked something. Depending on what things
16 Ms. Owings presents to The Court today, I believe
17 some of them are, actually, The State is entitled to
18 judgment on some of the claims as a matter of law.
19 But I'm not sure which of those she'll argue so I'll
20 be happy to point those out. This would be -- the
21 claims that there was wrongful prosecution and unfair
22 sentence. A prejudicial judgment and a violation of
23 State's rights. I'll site the PCR statute, there's
24 also case law saying Your Honor can grant judgment if
25 there's no issue of material fact.

1 And under the statute which is 17-27-28, it lays
2 out the things that someone could raise on PCR. And
3 that statute and case law interrupting the statute, I
4 believe prohibits those particular issues from being
5 argued before The Court. So if Ms. Owings intends to
6 present those today, I believe that they're subject
7 to dismissal.

8 THE COURT: All right, so wrongful prosecution,
9 excessive sentence. What were the others?

10 MR. SMITH: Prejudicial judgment and a violation
11 of State's rights. And, I believe, that all of those
12 were in the original application, so it may be that
13 those are not at issue today.

14 MR. YARBOROUGH: Yeah, Your Honor, those were in
15 the original application. And, I think, when we were
16 initially involved in the case, after that we didn't
17 file those in our second and third application. And
18 ~~so I wasn't planning on moving forward. I did plan~~
19 on calling the solicitor's office just on some
20 discovery issues but that was it.

21 THE COURT: Okay. So you're not moving forward
22 on those grounds?

23 MR. YARBOROUGH: No, sir.

24 THE COURT: Okay. I think that takes care of
25 that then. All right.

1 THE CLERK: Mr. Morin, please place your left
2 hand on the Bible.

3 MICHAEL MORIN, after being duly
4 sworn{,}testified as follows:{F}

5 THE CLERK: Please state your full name for the
6 record.

7 THE WITNESS: Michael Morin.

8 THE CLERK: Thank you, you may be seated.

9 MR. YARBOROUGH: Your Honor, just so you'll
10 know, that's my paralegal sitting over there. That's
11 Lisa Cherry, she keeps me somewhat organized, that
12 might be an issue.

13 THE COURT: That might be tough.

14 DIRECT EXAMINATION

15 BY MR. YARBOROUGH:

16 Q Could you state your name for the record,
17 please?

18 A Michael Morin.

19 Q Michael, how long have you been practicing law?

20 A Twenty-nine years.

21 Q Okay. And most of it -- all of it in Greenville
22 County?

23 A Almost all of it in Spartanburg. A good bit in
24 Cherokee, a little bit in York and a few here in
25 Greenville.

MICHAEL MORIN-DIRECT BY MR. YARBOROUGH

1 Q But, I mean, I guess, I should have said the
2 Upstate?

3 A Yes, the Upstate.

4 Q And, at some point, did you get involved in the
5 case of Regina Gail Owings?

6 A Yes, I did.

7 Q Okay. And can you tell The Court a little bit
8 about that?

9 A I was -- I think this first I came into it was
10 Mr. Carpenter, co-defendant, came to my office in

11 Spartanburg and wanted to hire me to represent her.
12 Because, I think, initially, he thought they were going to
13 have the same lawyer, then realized they weren't. Think
14 he was represented by Fletcher Smith. Fletcher knew me
15 and he came and talked to me. Eventually, I was hired to
16 represent her.

17 Q Okay. And but you were paid by the
18 co-defendant?

19 A Yes.

20 Q And they had somewhat of a close relationship?
21 I don't know how you would describe that.

22 A Ms. Owings and Mr. Carpenter?

23 Q Yes.

24 A Yes, they were inmate partners. I guess is the
25 best way to put that.

MICHAEL MORIN-DIRECT BY MR. YARBOROUGH

1 Q And did it appear like Mr. Carpenter did most of
2 the talking or how would you describe that?

3 A No, after he hired me I spoke to -- I did speak
4 on occasion to him but when I did I reported it to
5 Mr. Smith. Because I'm having contact with a
6 co-defendant.

7 Q Okay.

8 A But I -- all of my conversations -- I'd say 98
9 percent of my conversations were with Ms. Owings, not with
10 Mr. Carpenter.

11 Q Okay. And once you started talking to
12 Ms. Owings directly, she told you that she had not done
13 this?

14 A Correct.

15 Q Okay. And she told you what was her
16 relationship with these children?

17 A Yes.

18 Q What was that relationship?

19 A The children were Mr. Carpenter's grandchildren.
20 And, I think, they lived with them on-and-off during the
21 time that these things were accused of happening.

22 Q Okay. And how did you -- how did you come to
23 find out detail, what was accused of happening? Was that
24 through Mr. Carpenter telling you that or was that through
25 Ms. Owings or how did all that happen?

MICHAEL MORIN-DIRECT BY MR. YARBOROUGH

1 A Ms. Owings and the discovery that I received
2 from The State. After I got the discovery from The State,
3 I went to the house where it allegedly occurred. Walked
4 through it. At that time, I believe, Ms. Owings was still
5 in jail. Mr. Carpenter was out. But we walked through
6 the house where the alleged incident took place, that kind
7 of thing. I took some pictures for my own so I could
8 remember later if we went to trial as to what that was.
9 So that's -- those were the ways that I came about.

10 Q Can you describe in detail what that house
11 looked like? And I'm talking about ground level, mid
12 level and third floor?

13 A The house is, basically -- or the parts that I
14 saw, that I remember, was that it was one level. There
15 might have been a step down to, like, a living room area.
16 But the kitchen, living room area. I remember some fish
17 tanks that went into a -- there's, like, a french door
18 that went into a bedroom that had an attached bathroom.

19 The bed was here and there was like a bench seat or some
20 kind -- I think they watched TV in the bedroom there. So
21 there was, like, a seat.

22 Q But that's all on the lower level of the house,
23 right?

24 A That's the level where everything that I
25 understood happened --

MICHAEL MORIN-DIRECT BY MR. YARBOROUGH

1 Q Allegedly happened --

2 A -- I don't remember going upstairs. I -- no,
3 there was a downstairs, there was a basement.

4 Q Okay.

5 A Now that you say that.

6 Q But what I'm trying to get at is there were
7 people living up on the third floor, right?

8 A People, you mean--

9 Q But, like, the children's parents?

10 A Yes, yes--

11 Q The children's parents, actually, lived in the
12 house?

13 A Yes, you're correct. Yeah, yeah, yeah.

14 Q And they lived up on the third floor?

15 A Yes.

16 Q Okay. And so, during the time that this
17 allegedly happened, the parents were upstairs in the
18 house?

19 A Yes.

20 Q Okay.

21 A Or they lived in the house. I don't remember if
22 they were supposedly there or not at the time this
23 occurred but yes.

24 Q But, I mean, the children told some pretty
25 graphic stuff that went on over an extended period of

MICHAEL MORIN-DIRECT BY MR. YARBOROUGH

1 time?

2 A Yes.

3 Q And most of that dealt with stuff that
4 Mr. Carpenter, allegedly, did, not what Ms. Owings?

5 A Correct.

6 Q Okay. And there was some allegation that
7 Mr. Carpenter kept Ms. Owings induced with drugs, would
8 that be?

9 A Ms. Owings had a drug problem that Mr. Carpenter
10 took advantage of, yes. And, I think, I said that in the
11 plea and, I believe, The State would agree with that.

12 Q Okay. And did you have an opportunity to
13 interview the parents of these children?

14 A I did not speak to the parents.

15 Q Did you try to speak to them?

16 A Not that I recall.

17 Q Okay. And how old were the children,
18 allegedly -- when this took place, how old were they

19 supposed to have been?

20 A At least one of them was less than 11. Maybe
21 both of them.

22 Q Okay. And they were the, I guess, the -- were
23 they the nieces and nephews or the grandchildren?

24 A I could be wrong but I'm pretty certain that
25 they were related to Mr. Carpenter by blood.

MICHAEL MORIN-DIRECT BY MR. YARBOROUGH

1 Q Right.

2 A Now, whether or not they were his grandchildren
3 or his nephews, nieces, you know, I--

4 Q Right. But the bottom line was that the parents
5 upstairs were being taken care of by Mr. Carpenter as
6 well?

7 A Yes.

8 Q Okay. And he was the one funding this whole
9 whatever, right?

10 A Yes.

11 Q Okay. And so do you know how these allegations
12 ever came about?

13 A I know that it occurred -- that it started in
14 Traveler's Rest. I believe it started from, and just on
15 my memory, it might have started with some sort of report
16 at school or something. But Traveler's Rest Police
17 Department are the ones that started the investigation.

18 Q Okay. And they -- do you recall, did they go to
19 the school to interview the kids or did they go to the
20 house? Or did the. . .

21 A I recall that -- I know that they interviewed,
22 at least, one of them at the Traveler's Rest. And that
23 was something that concerned me because the person who was
24 doing the interviewing was not qualified, in my opinion,
25 to be doing that.

MICHAEL MORIN-DIRECT BY MR. YARBOROUGH

1 Q Okay. That's where I was trying to get at is
2 that they weren't qualified to do what, I guess, we call
3 them SAME [ph].

4 A Forensic interview.

5 Q However you want to call that. And so at some
6 point, these people had been -- these kids had been talked
7 to by the police at Traveler's Rest and they had been
8 talked to extensively by the parents, correct?

9 A Yes.

10 Q And perhaps, at least, one of them talked to by
11 somebody, the resource officer at the school?

12 A Yes.

13 Q Okay. And then the sheriff's office got
14 involved and they sent them to where? Where did they go,
15 to Julie?

16 A The one that -- they have one they use here in
17 Greenville that does the forensic child's interview. I
18 ~~can't remember the name of it.~~

19 Q Okay. Is it Jul--

20 A Jul--

21 Q Is that the Julie Valentine Center?

22 A That sounds familiar.

23 Q Okay.

24 A But I, you know, in the discovery I got the CAC
25 video?

MICHAEL MORIN-DIRECT BY MR. YARBOROUGH

1 Q Okay. And you got all of that discovery?

2 A Yes.

3 Q You brought it with you?

4 A Yes.

5 Q Okay. And I'll get there in a second. Now, my
6 client, Ms. Owings, ended up in -- she got out on bond and
7 then she violated because of a drug problem; right?

8 A Yes.

9 Q Okay. And so she's in the Greenville County
10 Detention Center?

11 A Yes.

12 Q Okay. And how did you go over the discovery
13 with her?

14 A I arranged, as you do here in Greenville, called
15 ahead, made an appointment. On, at least, one occasion, I
16 called and told them I would be bringing a laptop. On the
17 way, I stopped, I don't remember if it was Best Buy or
18 what have you, but I got a wired earpiece so that when we
19 got into the room, she would be able to hear what was on
20 to CAC videos. We watched them together. That was not
21 the first time that I had gone over some discovery.
22 Because I remember going over reports prior to that
23 meeting. And then I said I'll come back with the laptop
24 and we'll look at the CAC videos. And we did that.

25 Q Okay. And one of Ms. Owings' allegations is

MICHAEL MORIN-DIRECT BY MR. YARBOROUGH

1 that you did not go over the discovery with her, are you
2 aware of that?

3 A Yes.

4 Q Okay. And do you know -- did you give her the
5 police reports?

6 A I don't know -- my -- I try to give it to them
7 but I can't say for certain that I gave them to her. But
8 to say I didn't go over it with them is not true.

9 Q Okay. Do you have any direct recollection of
10 giving her any of the code five's?

11 A No.

12 Q Okay. And do you know anything about -- you
13 said that you -- did you give her the report -- let's just
14 call it the Julie Valentine Center. I know you don't
15 rec -- but -- okay, but that's the name of it.

16 A Yes.

17 Q Okay. Do you recall giving her the reports from
18 the Julie Valentine Center?

19 A I don't recall giving her anything. I just
20 recall going there and going over it with her. That's --
21 I mean, I can't say that I, actually, physically gave her
22 anything.

23 Q Okay. Did you take any notes when you went over
24 it with her?

25 A Yes, I did.

MICHAEL MORIN-DIRECT BY MR. YARBOROUGH

1 Q Okay. Just check and--

2 A It's going to take me a minute.

3 Q It's -- it's. . .

4 A All right, let's see what I got here.

5 August 31st -- you want me go over these?

6 Q Yeah, please.

7 A August 31st, 2016, I went to see her, we talked
8 about Minor1 and Minor2 . In May of 2015, apparently,
9 Delana [ph] took them to the doctor for nightmares, that
10 was Dr. Gambell in Greer.

11 Q Okay. Let's go back to Dr. Gambell in Greer,
12 did you interview him?

13 A I did not.

14 Q Okay, go ahead.

15 A Officer spoke to the children, as I stated, that
16 we talked about the fact that the officers spoke with them
17 about -- who wasn't qualified as a CAC personnel.

18 Q Okay. And he interviewed them and did he -- he
19 did a police report?

20 A He did and we went over that.

21 Q Okay. Now, let's just because she doesn't --
22 the allegations are that she did not have an opportunity
23 to go over that. Do you recall going over that report
24 with her?

25 A Yes.

MICHAEL MORIN-DIRECT BY MR. YARBOROUGH

1 Q Okay. And so what was the synopsis of that
2 report?

3 A The officer was asking the child questions
4 regarding the sexual abuse. And what I wrote was,
5 Officers spoke to both children, with mom present, without
6 a CAC trained person.

7 THE COURT REPORTER: I'm sorry, are you saying,
8 Cat?

9 THE WITNESS: CAC. I use the word CAC because
10 in Spartanburg, Children's Advocacy Center. So that
11 was my notes.

12 BY MR. YARBOROUGH:

13 Q Right. And I think we use SANE [ph] here? We
14 use the same thing here, we just use the Julie Valentine
15 Center. But anyway, so what you're saying is that they
16 went over this with the child and with the child's parents
17 sat there, right?

18 A That's what -- yes, that's we talked about.

19 Q And that's what you talked about. And at that
20 point, do you remember what she told you?

21 A She was telling me that the children had said
22 many different things. And that the thing that she was
23 being accused of and the thing that Mr. Carpenter was
24 being accused of did not happen.

25 Q Okay. And she says, Look, I'm -- she said, I'm

MICHAEL MORIN-DIRECT BY MR. YARBOROUGH

1 living in that house, I would have seen it.

2 A Yes.

3 Q Okay.

4 A And that they would have known about it, they
5 were living in the house.

6 Q The parents would have known?

7 A Yes.

8 Q Right. And the parents never reported it and
9 she never reported it. And God knows what Mr. Carpenter
10 was doing, right?

11 A That was going to be the trial plan, yes.

12 Q Okay. And so -- well, since we're at the trial,
13 we'll back back up. But since you said that, was there an
14 opportunity to go to trial with Mr. Carpenter?

15 A Yes.

16 Q Okay. And did you move to sever that trial?

17 A I believe I did. I did not want her sitting
18 next to Mr. Carpenter.

19 Q Okay. But did you discuss that with her?

20 A Yes.

21 Q You discussed with--

22 A Yes.

23 Q So if she says that you didn't discuss the
24 severance motion -- well, how about this?

25 A Yes.

MICHAEL MORIN-DIRECT BY MR. YARBOROUGH

1 Q I'm just curious. And I have been in your
2 position many times, I'm not criticizing. But what made
3 you decide not to go to trial with Mr. Carpenter?

4 A I didn't what to go with Mr. Carpenter because
5 Mr. Carpenter -- the evidence against Mr. Carpenter and
6 Mr. Carpenter's lifestyle, which I believe contributed to
7 his conviction, would have caused a problem for her.
8 Because of the things that she was participating in with
9 Mr. Carpenter.

10 Q Okay. Okay.

11 A And I've just -- may I--

12 Q Okay, that's my question is this. If she told
13 you she didn't do it, how -- how -- how do you know what
14 Mr. Carpenter's lifestyle was? Because your client's
15 telling you she didn't know anything about this.

16 A Well, Mr. Carpenter testified that they drank
17 each others urine, okay.

18 Q Right.

19 A That is just one of many things that
20 Mr. Carpenter and Ms. Owings participated in that I would
21 call not normal sexual behavior.

22 Q Right.

23 A And if you see Mr. Carpenter, if you knew how he
24 looked, you did not -- it was my judgment and I advised
25 her, that we didn't want to be with him because we were

MICHAEL MORIN-DIRECT BY MR. YARBOROUGH

1 going to be lumped with him.

2 Q Right.

3 A And what the defense is, Mr. Carpenter is the
4 one who knew she had a drug problem. Mr. Carpenter is the
5 one who was supplying the money and/or drugs to her. And
6 she was a victim of Mr. Carpenter.

7 Q Okay.

8 A That was what I wanted to do. But I felt, and I
9 let her know and we agreed, that if she went to trial with
10 him, that would be harder to do. Especially, given the
11 fact that the two of them were on the same defense line at
12 that point that nothing happened and they were together
13 and that kind of thing. I was opposed to being with
14 Mr. Carpenter. He's the one who did these things.

15 Q Okay. Wouldn't there be another way to look at
16 that from a defense standpoint and, you know, like point
17 the finger at the bad guy?

18 A Uh-huh.

19 Q Couldn't you have tried the case by pointing the
20 finger at the bad guy and allowing her to say I didn't do
21 it and she could have testified?

22 A Yes. That's another way you could have done it.

23 Q Okay. And did you spend time explaining that to
24 Ms. Owings?

25 A I wouldn't have asked for that without

MICHAEL MORIN-DIRECT BY MR. YARBOROUGH

1 explaining it to her. And if my motion or if there wasn't
2 some sort of severance, then that's what I would have
3 done.

4 Q Okay. Do your notes reflect discussing that
5 with her? Because she. . .

6 A I do not see notes about that.

7 Q Okay.

8 A I don't see any notes about that,
9 Mr. Yarborough.

10 Q Okay. That's -- that's -- we can move on to
11 another point. I'm sure the attorney general will ask you
12 some more questions. Did you subpoena -- you said it
13 was -- what it Dr. Gray?

14 A Gambell.

15 Q Did you have him under subpoena?

16 A No.

17 Q Okay.

18 A Gambell.

19 Q Gambell, that's it. Did you -- and we're not --
20 were there -- were there reports from him about his
21 interview with the children?

22 A If I can just have one moment.

23 Q Okay, take your time.

24 A I don't remember having a subpoena. But I will
25 say that when I was going through the stuff for today, I

MICHAEL MORIN-DIRECT BY MR. YARBOROUGH

1 noticed that I had a lot of stuff, medical records from
2 Northhills Medical Center for Minor 1 . So --
3 and I'd like to be able to say I know exactly why I had
4 those. But I had started looking at those. And that's
5 what I wanted to check.

6 Q Were you able to watch the trial of
7 Mr. Carpenter?

8 A I could have but I did not.

9 Q Okay. And that was -- was there a reason why
10 you didn't do that?

11 A I was running a law practice and had other court
12 obligations.

13 Q Okay, yeah. But at the point, that -- that
14 Mr. Carpenter went to trial, Ms. Owings was still going to
15 trial; right?

16 A Yes.

17 Q Okay. And then after he was convicted he
18 received a sentence of 30 years?

19 A At least 30. He got some other charges, ten's
20 and stuff like that. But I don't know if they were
21 consecutive or concurrent.

22 Q Okay. And, at that point, you went down and saw
23 her, she was incarcerated at the Greenville County
24 Detention Center; is that correct? After he was convicted
25 or do you remember?

MICHAEL MORIN-DIRECT BY MR. YARBOROUGH

1 A I thought she was out at that time. And I
2 thought that she had seen the trial.

3 Q Okay. And did you -- did you tell her, at that
4 point, that you thought should she should plead guilty?

5 A No, sir.

6 Q No?

7 A No, sir.

8 Q Okay.

9 A This is one of the things--

10 Q It was a pretty shaky situation, how about that?

11 A No, sir. I need to -- this is one those things
12 that stands out in my 29 years. When he got convicted, I
13 knew he got convicted because she called me. And she was
14 almost hysterical. And she said, He just got 30 years, I
15 need to work out a plea. That was the first time I ever
16 had any conversations about a plea. It was initiated by
17 her. And it was initiated after Mr. Carpenter's

18 ~~conviction. Now, I may have, during the time I~~
19 represented her, said we might need to consider this, as
20 any lawyer would.

21 Q Sure.

22 A But I was -- every -- I always figured we were
23 going to trial on this until that day. That was the first
24 time it ever occurred to me that this might be a plea.

25 Q Okay. If she disagrees with you about that, do

MICHAEL MORIN-DIRECT BY MR. YARBOROUGH

1 you have anything that reflects your notes?

2 A No, sir. That's not -- it's one of those
3 things, like I say.

4 Q Okay. Were you aware, how did this Alford plea
5 come about? I guess, that's what I'm trying to get to.

6 A Okay.

7 Q I mean, he gets convicted, he gets 30 years.
8 And what -- we'll just say for the sake of argument, she's
9 probably going to say that you called her and said you
10 better do something. And you don't agree with that. But
11 at some point, somebody came up with some Alford plea;
12 right?

13 A Yes, sir.

14 Q Okay. And you and I both been practicing law
15 for a long time and I don't know anybody that can define
16 North Carolina vs. Alford very well but I'd love to hear
17 your explanation.

18 A If she had gone to trial, I believe, and The
19 State intended to try her as a CSC first, just like
20 Mr. Carpenter, under the hand of one, hand of all. And
21 they were agreeing to give her a cap lower than what she
22 pled guilty. And what Alford says is you cannot admit
23 that you did it but you have a belief that if you go to
24 trial you would be found guilty. And The State has made
25 an offer which you want to take advantage of. My position

MICHAEL MORIN-DIRECT BY MR. YARBOROUGH

1 in talking to The State about an Alford plea, was based on
2 the fact that Ms. Owings had a drug problem and that,
3 perhaps, she can't remember what exactly was occurring.
4 And as a result, having seen Mr. Carpenter be convicted,
5 realized that the same facts may apply to her. And that
6 because The State was lowering it to that cap and she took
7 advantage of that, because she couldn't remember, but
8 said, I think, if I go to trial there's a chance --
9 there's a good chance I'll be found guilty. So that's why
10 the Alford plea came up. And I probably brought that up,

11 no doubt, because I realized what her drug situation was.
12 And that there was an offer. And as I stated, it's one of
13 the things that is clear to me, was when she said, I need
14 to work out a plea. Which was after Carpenter was
15 convicted. So that's when that -- that kind of takes you
16 through what I thought and how I was looking at it.

17 Q And so I'm guessing you're kind of in that
18 ~~theory that voluntarily intoxication is not a defense?~~

19 A That's -- that's the -- yes, I am in that
20 theory, in that.

21 Q Okay. Did she ever tell you that it wasn't
22 voluntary, that Mr. Carpenter would, actually, force her
23 to do drugs?

24 A She never -- not that I recall. And she was
25 having a ongoing drug problem when I represented her and

MICHAEL MORIN-DIRECT BY MR. YARBOROUGH

1 she was telling me that he was using voluntary drugs with
2 one of the parents during the time that this was
3 occurring.

4 Q Okay.

5 A So.

6 Q I know that -- that's after what I'm talking
7 about. During the course of when these allegations took
8 place, did she tell you that Mr. Carpenter was -- was
9 giving her drugs?

10 A I believe he was giving her drugs, yes.

11 Q Okay.

12 A Because she had a drug problem and he was giving
13 them to her.

14 Q Okay. And so did you explore whether or not
15 that was voluntary or involuntary intoxication?

16 A No.

17 Q Okay. Did you look at the possibility, after
18 Mr. Carpenter was convicted, going to Fletcher Smith and
19 saying, Fletcher, look, I know your guy just got hammered,
20 he takes the position that he didn't do anything wrong.
21 Could you, possibly, call him as a witness for Regina,
22 Ms. Owings? Did you go to Fletcher and ask him that?

23 A Not that I recall.

24 Q Okay. Did they ever reach out to you?

25 A Not that I recall.

MICHAEL MORIN-DIRECT BY MR. YARBOROUGH

1 Q Okay. Did you try to -- did you ever try to
2 develop the theory -- as I understand it, there's always
3 been some discussion about Mr. Carpenter having a lot of
4 money. Are you aware of that?

5 A Yes, I'm aware of that discussion.

6 Q Okay. So did you ever check into the potential
7 defense that the children's--

8 A Parents.

9 Q Mother --

10 A Uh-huh.

11 Q Right. Can you tell us about that?

12 A I believe that if we had gone to trial we would
13 have developed the motive that the parents wanted
14 Mr. Carpenter out of the way in some manner to get at his
15 finances. Yes, that's something that Ms. Owings and I
16 talked about a lot. And if we had gone to trial, that
17 certainly would have been one of the lines of questioning
18 ~~that would have occurred.~~

19 Q Right. I -- I don't need to know, nor am I
20 asking, what your fee was, but I'd like to know who paid
21 your fee?

22 A Mr. Carpenter.

23 Q Mr. Carpenter paid your fee?

24 A Yep.

25 Q Okay. Did you ever talk to him after that first

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1 day after?

2 A He might have come by the office once or twice.
3 As I said, we didn't go into my office and talk. We would
4 have just sort of standing in the lobby where nobody was.
5 I would have -- and like I say, anytime that happens I
6 call the attorney that's representing the defendant --

7 Q Sure.

8 A -- and say, hey, this person came by, this is
9 what they said.

10 Q You have a great relationship with Fletcher?

11 A I would say that. I mean, we don't see each
12 other that often but, yes.

13 Q Yeah. So it wouldn't be unusual for you to call
14 Fletcher and say, Mr. Carpenter came by?

15 A No.

16 MR. YARBOROUGH: Okay, could I have one second,
17 Your Honor?

18 THE COURT: Yes, sir.

19 BY MR. YARBOROUGH:

20 Q Do you know Ms. Owings' mother?

21 A I spoke to her several times during the course
22 of the representation. I spoke to her before and after
23 the guilty plea.

24 Q Okay. Did you go to -- did you -- after
25 Mr. Carpenter was convicted, did you call her mother? Do

MICHAEL MORIN-DIRECT BY MR. YARBOROUGH

1 you recall that?

2 A I don't recall but it's possible.

3 Q Okay. Do you know if you discussed, at that
4 point, that we really need to work something out?

5 A I may have discussed the idea that something may
6 work out.

7 Q Let's go back to this North Carolina vs. Alford.
8 Sometimes it's -- those -- we've both been doing this a
9 long time. Sometimes it's hard for a client to understand
10 that; isn't it?

11 A Yes.

12 Q Okay. Because the way I understand it, and tell
13 me if you think I'm right, it's -- you're telling the
14 client that they're allowed to go in and not admit to
15 guilt but allowed to be sentenced, is that?

16 A That can happen. However, my own personal
17 practice is it's not a crutch for me to try to use for my
~~18 client so I can get them to do a plea. And I see~~
19 attorneys use it as a crutch. I don't prefer that. I try
20 to avoid that. However, in this particular case, with her
21 particular drug offense and the reduction, it fit. If
22 that makes sense to you. I see some lawyers, they're just
23 like, well, I just tell you what we'll do is you just do
24 this and you won't have to admit anything. Because they
25 want to move the case along.

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1 Q Right.

2 A For whatever reason. I don't believe in that.

3 I don't subscribe to that. And that certainly was the

4 case when I was representing her.

5 Q Okay. And I'll move on. But I'll -- I'll

6 commend you on that, thank you. Let me ask you -- okay.

7 There was -- there were a bunch of defenses to this case,

8 right?

9 A Yes. There was Mr. Carpenter and the drugs,

10 yes.

11 Q And the family dynamics and all that stuff. Did

12 you ever hire anybody that was, like, a expert in family

13 dynamics?

14 A No, sir.

15 Q Okay. And did you look at how children can be

16 swayed or anything like that?

17 A I was aware from other cases and I knew where I

18 wanted to go with some of what the children being swayed

19 by the parents. Especially, as it relates to the parents

20 interested in Mr. Carpenter's money and what have you.

21 Q All right.

22 A Yes.

23 Q Okay. And were -- did you look at all those as

24 possible defenses?

25 A Yes.

MICHAEL MORIN-DIRECT BY MR. YARBOROUGH

1 Q And you were prepared to go forward?

2 A That's where the case was going. I want to be
3 clear about this too. We weren't, like, going to trial
4 next week or next month but I was developing that case to
5 do that when we came to this. But we had discussed these
6 things. You're asking me if I'd, actually, gotten
7 witnesses ready to go to trial. I had not done that. I
8 had explored the defenses to which we're discussing.

9 Q Okay. But all those defenses stem directly from
10 what Mr. Carpenter did, right?

11 A Yes.

12 Q Okay. The money was Mr. Carpenter, the family
13 was Mr. Carpenter, the alleged allegations were
14 Mr. Carpenter's. The only thing you could have possibly
15 ever said is that she was -- what was the word you used?
16 Someone that was drugged to go along or?

17 A I want to make sure I haven't misspoken.

18 Q Okay.

19 A Mr. Carpenter and Ms. Owings have a
20 relationship. And Mr. Carpenter's aware that Ms. Owings
21 has this drug issue. When I say he was giving her drugs,
22 I don't mean he was forcing them. I mean, he was making
23 them available so she could do her habit. Now, so I want
24 to make clear on that. Because it sounds -- I may have
25 made it sound like that he was forcing her to take drugs.

MICHAEL MORIN-DIRECT BY MR. YARBOROUGH

1 He wasn't forcing her to take the drugs. He wasn't
2 forcing her, he was making them available because she had
3 this habit.

4 Q So--

5 A And that's from her, not just from him.

6 Q Right. And so everything that was evidence
7 against Ms. Owings, it was really what Mr. Carpenter was
8 doing; right?

9 A Yes.

10 Q Okay. So I go back to this thing, why didn't
11 you try the cases together?

12 A Again, she voluntarily was with Mr. Carpenter.
13 They were doing all of these things. You're trying to
14 say, well, they were with them, they did all these drugs,
15 they did all these other things. But then, I'm going to
16 cut out this one piece and tell the jury, don't look at
17 this one piece, all this other stuff. That was the
18 problem. He's going to get up there, he's going to say, I
19 didn't do anything. She's going to get up there and
20 say -- let me back up. I know she was going to say we
21 didn't do anything. And I suspect he was also going to
22 say that. These children, while I could impeach them,
23 it's one thing to say, oh, I'm going to impeach the child.
24 But it's another thing when the child gets up there and
25 points to -- at The Defendant and says, this is what they

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1 did. That's a whole different thing. And I felt that
2 sitting next to Mr. Carpenter, as she had been doing for
3 many years to her detriment, would have also been a
4 detriment. I certainly can see the strategy of sitting
5 next to him but my strategy was to not sit with him.

6 Q Okay. Okay.

7 One second, Your Honor.

8 Did you have the opportunity to -- is there
9 anything -- finish that whole train of thought. Did you
10 get out whatever you wanted to just a minute ago?

11 A I think.

12 Q I wasn't trying to cut you off. I do think, I
13 guess, my real question is this. I understand your reason
14 for asking for a severance, did you have that -- that's a
15 pretty complicated analysis that you just told The Court.
16 Did you have that conversation with her?

17 A Yes.

18 ~~Q Could she have understood it?~~

19 A I think she understood it. She was in jail. I
20 think, at that time. I mean--

21 Q Okay. I think you're missing my point. My
22 point is this is a complicated criminal -- this ain't
23 criminal 101, this is criminal 600. This is, like, I'm
24 going from a LLM at New York University on how to try a
25 case, right?

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1 A Yes, sir.

2 Q Okay. And she's not -- not criticizing her but
3 she's not the smartest woman and she was coming off drugs
4 and she was having a drug problem, could she have
5 understood everything you just told us?

6 A I believe she could.

7 Q Okay. I'll -- I'll accept -- accept that
8 answer. I don't know that I agree with you but I'll
9 accept it. Did you have -- you went -- I think you said
10 that you went over the forensic interview with her at the
11 jail, right?

12 A Yes, sir.

13 Q Okay. And that forensic interview, 99.9 percent
14 of it dealt with stuff that Mr. Carpenter did, right?

15 A I wouldn't -- I'm not sure what the percentage
16 was. I don't know if it was 99 or what it was but it was
17 a significant amount of Mr. Carpenter, yes.

18 Q Right. And did you have anybody examine the
19 forensic interviewer -- interview to say these children
20 were coached or not coached?

21 A No.

22 Q Did you think about that?

23 A Yes.

24 Q Okay. And you chose not to do that?

25 A We hadn't gotten to that. To my recollection,

MICHAEL MORIN-DIRECT BY MR. YARBOROUGH

1 there was no trial date set yet for Ms. Owings when this
2 plea started to come about.

3 Q Okay. Is that part of your common practice to
4 do that? To. . .

5 A No.

6 Q Did you speak with any lawyers from over here
7 about the problems at the Julie Valentine Center?

8 A No.

9 Q Okay. I'm sure you reviewed the cases, they're
10 multiple cases that have gone before the South Carolina

11 Supreme Court and stuff dealing with the Julie Valentine
12 Center and leading witnesses and all of that --

13 A Yeah --

14 Q -- did you look at that?

15 A Yes, I was aware of that.

16 Q Okay.

17 I'm just about through, Your Honor, I'm
18 sorry.

19 I'm -- I don't -- did you ever feel like
20 the fact that you had been retained by Mr. Carpenter
21 affected your ability to represent Ms. Owings?

22 A No, sir.

23 Q Okay. Did you tell her -- did you have that
24 discussion with her, at least?

25 A She was aware that he had hired me. I had told

MICHAEL MORIN-DIRECT BY MR. YARBOROUGH

1 her that what we talked about was between us.

2 Q Okay. And did you -- did you discuss with
3 Fletcher the severance motion which you filed? Like,
4 Fletcher Smith, I'm sorry, forward [verbatim], Mr.
5 Carpenter's lawyer?

6 A I think so.

7 Q Okay.

8 A Because we were, you know, we were starting to
9 move towards the trial or the discussion of the trial
10 date. And I was telling The State that I didn't -- I
11 wanted to be severed from it.

12 Q Okay.

13 A From him, sorry.

14 Q Would you agree it was probably more
15 advantageous for Mr. Carpenter to go to trial alone versus
16 having Ms. Owings sitting there?

17 MR. SMITH: Objection, speculation about
18 co-defendant's case.

19 THE WITNESS: I never -- I never considered what
20 Mr. Carpenter's defenses or what would be
21 advantageous to him. I was planning on attacking
22 him, as well as. I was going to attack everybody
23 that was involved in this if we had gone to trial. I
24 was going to attack Mr. Carpenter, I was going to
25 attack the kids, I was going to attack the parents.

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1 Not attack but, you know, those were all lines of
2 defenses. I did not -- never took into consideration
3 what Mr. Carpenter wanted or what was good for him.
4 Not one single second.

5 Q Okay. So you felt like she was on her own?

6 A Yes, it was -- I was representing her and she
7 was against all of that. Now, she felt like Mr. Carpenter
8 didn't do anything and that kind of thing.

9 Q But was there ever an opportunity to use her as
10 a witness against Mr. Carpenter?

11 A The State wanted to use her as a witness.

12 Q Did you go to her and tell her that?

13 A She said I can't do anything because nothing
14 happened.

15 Q Did you have her interviewed by the police at
16 that point?

17 A No.

18 ~~MR. YARBOROUGH: I don't have anything else,~~

19 thank you.

20 THE WITNESS: Thanks.

21 THE COURT: All right, cross-examination.

22 CROSS-EXAMINATION

23 BY MR. SMITH:

24 Q Mr. Morin, do you remember how many times you
25 met with Ms. Owings?

MICHAEL MORIN-CROSS BY MR. SMITH

1 A It was at least 10.

2 Q Okay.

3 A Maybe more.

4 Q Okay. Outside of those meetings did you
5 communicate by phone, email or mail?

6 A Well, there wasn't -- most of -- there was some
7 phone communication but I don't believe there's any email
8 or. If there was a letter, it was just something like you
9 need to contact me. But I can't say for certain. I mean,
10 I haven't gone through everything.

11 Q Okay. When you met with her, did you tell her
12 about the nature of the charges, the defenses, like the
13 elements?

14 A Yes.

15 Q Okay. Did you have any reason to believe that
16 she did not understand what you were telling her about
17 that?

18 A No.

19 Q Okay. She didn't give you any indication?

20 A No.

21 Q Okay. Did you -- I know there was some
22 questions earlier about discovery, is there anything that
23 you received in discovery that you either did not show to
24 Ms. Owings or discuss with her?

25 A I went over the whole file with her.

MICHAEL MORIN-CROSS BY MR. SMITH

1 Q Okay.

2 A That I have.

3 Q Okay. Did she give you any reason to believe
4 that she did not understand what you were telling her
5 about what was in that discovery?

6 A No. We were engaged, she was telling me this
7 isn't true and you need to do this. I mean, we were
8 having a back and forth.

9 Q Okay.

10 A So she was--

11 Q She was lucid?

12 A Yeah, she gave every indication that she
13 understood based on the questions and statements she was
14 making.

15 Q Okay. What do you remember The State -- what
16 was The State's evidence of Ms. Owings guilt?

17 A The testimony of the children.

18 ~~Q Okay. So, you know, there's been questions~~
19 about Mr. Carpenter. So if Ms. Owings had gone to trial,
20 the people would have been pointing at Ms. Owings and
21 saying she did this, those would have been the children?

22 A Correct.

23 Q Okay. When you were discussing -- I know you
24 testified earlier that you discussed defense strategies
25 with Ms. Owings. When you discussed strategies with her

MICHAEL MORIN-CROSS BY MR. SMITH

1 for the defense, did she give you any reason to think that
2 she didn't understand those?

3 A No.

4 Q Okay. What investigation did you do to get
5 ready for trial?

6 A I was reviewing the discovery, I was talking to
7 Ms. Owings, I was looking at some medical records. I
8 fully expected this was going to trial. I had no
9 indication, prior to Mr. Carpenter's conviction, that it
10 ever would have been a plea. During the course of my
11 representation of her I may have said maybe we should do
12 this, maybe we should do that. She said, didn't do
13 anything, don't know anything, didn't happen. That was
14 always the thing. That was fine with me, we'll go to
15 trial.

16 Q Okay. So no trial date had been set at the time
17 she pleaded guilty?

18 A Not that I remember.

19 Q Okay. If she had decided to plead guilty, would
20 you have done additional investigation before her trial
21 was actually held?

22 A Yes, we would have continued to get ready for
23 trial. That's what I would call it.

24 Q Okay. What sorts of things, at the time, were
25 you thinking that you were going to do that you had not

MICHAEL MORIN-CROSS BY MR. SMITH

1 yet done by that point?

2 A I can -- I mean, as Mr. Yarborough asked me
3 about, potentially, getting someone to talk about CAC
4 videos, I kicked around that idea. I had started to see
5 about using -- finding out that. I was going through
6 getting the case. I mean, there's different things that
7 came up. I'd like to be able to say this, this, this and
8 check them off. But I'm not sure exactly what it was. I
9 just know what posture my cases are for trial. And it was
10 sort in the middle.

11 Q So, there's more you would have done?

12 A Yes.

13 Q Okay. So when you say CAC, by that -- is that a
14 recording from the forensic interview of the child?

15 A Yes. Again, I apologize but in Spartanburg,
16 I've been doing it so long, the Children's Advocacy Center
17 does these types of forensic interviews, it's just my
~~18 shorthand for that kind of interview of the children.~~

19 Q Okay. Just wanted to clear that up. So as part
20 of that, you were asked about Dr. Green earlier--

21 A Graham.

22 Q Green --

23 A I think it's Graham.

24 Q Greer. Okay. Do you remember if you talked to
25 him?

MICHAEL MORIN-CROSS BY MR. SMITH

1 A I don't remember speaking with him.

2 Q Okay. Do you know -- was there a reason that
3 you didn't speak to him?

4 A I can't remember if I was doing that when we
5 were dealing with the DSS thing in Pickens. But I don't
6 remember speaking with him.

7 Q Okay.

8 A That's the best I can say.

9 Q Okay. Are the names of Jeremy Owings and Amber
10 Gordon familiar to you?

11 A Jeremy Owings, I believe, is one of -- those are
12 her relatives but other than that I don't recall right
13 off.

14 Q Okay. Did you interview either of them?

15 A I may have spoken to them on the phone but I
16 can't be certain. I definitely didn't sit down with them.

17 Q Okay. Would you have called either of them as a
18 witness if Ms. Owings had gone to trial?

19 A I don't remember where that was going to go at
20 this point.

21 Q Okay. Did you tell Ms. Owings about the
22 potential sentence she could receive if she were convicted
23 at trial?

24 A Yes.

25 Q Okay. Did you tell Ms. Owings what rights she

MICHAEL MORIN-CROSS BY MR. SMITH

1 would be waiving by pleading guilty?

2 A Yes.

3 Q Okay. Did she give you any reason to believe
4 that she could not understand the substance of that
5 conversation?

6 A No.

7 Q Okay. Was Ms. Owings -- did Ms. Owings express
8 any interest to you in pleading guilty before the end of
9 her co-defendant's trial?

10 A No.

11 Q Okay. So let me ask you questions about her
12 co-defendant. You mentioned earlier that he had a certain
13 lifestyle or habits, can you tell me what those were?

14 A From speaking with my client and some from
15 discovery, there were times when Mr. Carpenter would have
16 sex with more than one person at a time. Sometimes
17 Ms. Owings was involved in that. There were other

18 ~~nontraditional sexual activities, I guess, is what you~~
19 might call them, that came out during my interviews with
20 her as well as from what I can see in the discovery.
21 That's what I refer to. I can't -- I mean--

22 Q Tell me what you mean about nontraditional
23 sexual--

24 A Well, if you're having sex with another man and
25 Ms. Owings or two women, that's what I would call

MICHAEL MORIN-CROSS BY MR. SMITH

1 nontraditional. When you're saying that you drink each
2 others urine as part of some sort of sexual thing, that I
3 would consider nontraditional. There's a picture of
4 Ms. Owings covered in feces, as part of discovery; which I
5 consider nontraditional.

6 Q Okay. And so that's the sort of thing you
7 wanted to avoid having associated with Ms. Owings; is that
8 correct?

9 A Yes.

10 Q Okay. Was Mr. Carpenter discrete about his
11 lifestyle?

12 A No.

13 Q Or was he open about that?

14 A Not that I can -- from what I knew about him, he
15 was not discrete.

16 Q Okay. So there was evidence that Ms. Owings
17 engaged in some of those activities with Mr. Carpenter?

18 A Yes.

19 Q Okay. At any point, did Ms. Owings express
20 willingness to cooperate with The State in the prosecution
21 of Mr. Carpenter?

22 A No. She was adamant that she didn't know
23 anything, nothing happened. She could not testify on
24 their behalf.

25 Q Okay.

MICHAEL MORIN-CROSS BY MR. SMITH

1 A On his behalf.

2 Q Speaking of Ms. Owings' limited education, drug
3 use, that sort of thing, are those things you made Judge
4 Verdin aware of in mitigation in her guilty plea hearing?

5 A I believe I did, yes.

6 Q Okay. Did you discuss with Ms. Owings the fact
7 that she would have a right to appellate review?

8 A Probably only cursory, as it was a guilty plea.

9 Q Okay. Did she give you any reason to believe
10 that she wanted to appeal?

11 A No.

12 Q Okay. Her sentence of 14 years, did you believe
13 that that was a better sentence than what she could have
14 been exposed to without the plea deal?

15 A Yes. I think it was too high. But it was
16 better than what would have happened.

17 Q Okay. And the sentence was less than the cap?

18 A Correct.

19 Q Okay. If Ms. Owings had asked you to file a
20 notice of appeal, would you have done so?

21 A Yes.

22 Q Okay. What did you talk about with Ms. Owings
23 mother?

24 A We were talking about court dates. At the end,
25 she was living with her mother, I believe, while she was

MICHAEL MORIN-CROSS BY MR. SMITH

1 on home detention. I know that I talked to her when
2 Ms. Owings took off the bracelet and was gone. We talked
3 about that, her need to come. I'd been out to the house
4 when Ms. Owings was there with her mother. I went into
5 their house and talked to them about the case and she was
6 present for some of that. She was aware, as far as, where
7 the case was time wise. Not in all this, I didn't discuss
8 facts of discovery or things like that with her mother.
9 But whether there was going to be a trial, whether it was
10 going to be a plea, that kind of stuff.

11 Q Logistical things?

12 A Yes.

13 Q Okay.

14 A Logistical.

15 Q Okay. When Mr. Carpenter would come to your
16 office, would he show up or did you invite him to come?

17 A No, he just showed up. He didn't call ahead, he
18 just -- Mr. Carpenter is in the lobby.

19 Q Okay. When he would come by, did you always
20 inform his lawyer that he had come by or that sort of
21 thing?

22 A That's my practice is to inform the lawyer that
23 I've had contact with your client.

24 Q Okay. Did you tell Ms. Owings what he would say
25 when he would come by the office?

MICHAEL MORIN-CROSS BY MR. SMITH

1 A I probably told her he came by and we talked
2 about it. It was, usually, again, that was logistical for
3 the most part as well. But I don't, you know.

4 Q Okay. You mentioned earlier Code Five, what is
5 Code Five?

6 A Mr. Yarborough said it, I took it to mean some
7 sort of report or something from law enforcement but I. .
8 .

9 Q Okay. You testified earlier about the call you
10 received from Ms. Owings after the end of Mr. Carpenter's
11 trial, why does that phone call stick in your mind?

12 A Because of the sound of her voice and the fact
13 that she was saying things that she had never even
14 broached before. It was such a flip from I'm definitely
15 going to trial to I want to work out a plea. It was -- it
16 was a complete 180 as to how she was talking about the
17 case and we were approaching the case. And that's why it
18 stands out.

19 Q Okay. Why did you not interview the children's
20 parents?

21 A I had their statements. If I remember, there
22 was things in their statements that I thought would assist
23 us. But sometimes I talk to parents in these cases,
24 sometimes I don't. It just depends.

25 Q Okay. Was it clear one way or the other whether

MICHAEL MORIN-CROSS BY MR. SMITH

1 they would be -- they would provide something beneficial
2 to the defense?

3 A Well, they certainly were going to be hostile.
4 And if -- but I just hadn't done that.

5 Q Okay. You mentioned earlier that Mr. Carpenter
6 had a certain look, if someone had seen him. What do you
7 mean by that?

8 A He -- I -- he had a -- and, of course, I say it
9 and I don't want to be politically incorrect. But he had
10 a earring, he had a way of carrying himself. I mean, I
11 have to be able to imagine how jurors are going to judge
12 people as they appear. And when even -- it's my
13 understanding at his trial he admitted to a lot of the
14 things that I have said regarding his lifestyle. Even if
15 he hadn't, if any of that had come out, it just would have
16 reinforced a stereotype by the defense -- I mean, by the
17 jury against him and her voluntarily being in a
18 relationship with him. If that makes sense. I mean, I
19 was concerned about those things.

20 Q Right. Okay. You're protecting Ms. Owings?

21 A Yeah, that's what I always was trying to do.

22 Q Right. Okay. When Ms. Owings would describe to
23 you the drug use, her drug use while she was with
24 Mr. Carpenter and her drug use while these acts were going
25 on, what did she say about that?

MICHAEL MORIN-CROSS BY MR. SMITH

1 A She didn't break them down into I was using
2 drugs here, I was -- she did say I was using drugs at this
3 time. I was getting some drugs. I believe the mother of
4 the child, she said we were using drugs. There was some
5 discussion about in the truck where they were using drugs
6 together. So, I mean, it was just sort of an ongoing
7 problem that she had during this time. And during the
8 time I represented her. The drug problem would -- I had
9 peaks and valleys. But she was on home detention one time
10 and came back because she violated the drug thing. And we
11 talked about the drug problem throughout my representation
12 of her. Because it was clear that it was -- it was a
13 controlling factor. It probably was a controlling factor
14 in other things that had happened to her during her life.
15 From what I discussed with her.

16 Q All right. And that's what you brought up in
17 mitigation?

18 A Yes.

19 Q Did she ever tell you that Mr. Carpenter forced
20 her -- forcibly administered drugs to her?

21 A I don't recall her saying they were forcibly
22 administered. They were in this relationship. Was it --
23 I mean, they both chose to be with each other as they
24 were. I don't think anybody was forcing anybody to do
25 anything that they didn't want to do.

MICHAEL MORIN-REDIRECT BY MR. YARBOROUGH

1 MR. SMITH: No more questions, thank you.

2 THE COURT: All right, any redirect?

3 MR. YARBOROUGH: Briefly, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. YARBOROUGH:

6 Q Did you ever talk to anybody about people that
7 are on drugs, how they tend to react to their suppliers in
8 order to try to show some kind of mitigation in her
9 behalf?

10 A I didn't speak to anybody. But, obviously, my
11 career I've come in contact with it. Which is what I try
12 to bring to the Judge.

13 Q Couldn't you have done something along those
14 lines in mitigation?

15 A I suppose, yeah.

16 Q And, in fact, let me ask you about the sentence.
17 You, actually, thought the sentence would be far less than
18 what. . .

19 A I recall we talked about eight to 12, we were
20 trying to keep it under 10.

21 Q Okay.

22 A And I thought that was -- you know, if we could
23 get eight or nine that would be great. It could go 11 or
24 12, which would not be good. So, as I said to her, 14.
25 But, you know, we talked about it going all the way to 15

MICHAEL MORIN-REDIRECT BY MR. YARBOROUGH

1 but I didn't think 14 was going to happen. That happens
2 sometimes.

3 Q Okay. Did -- you seemed to have outlined it
4 just a monumental amount of evidence that was against
5 Mr. Carpenter. If you had to look back now, what evidence
6 was there against Ms. Owings?

7 A One of the children was going to plant her.

8 Q One of the children?

9 A That's right.

10 Q One of the two?

11 A That's right. And said, She held my hands while
12 Mr. Carpenter sexually assaulted me. And she said that in
13 the video. She outlined the room to which I have referred
14 to that definitely happened. I intended to argue at trial
15 that that couldn't have happened without anybody knowing.

16 Q Right, okay.

17 A This isn't a situation where I talked to anybody
18 into pleading guilty. I don't do that. I don't know what
19 my reputation is among the bar but one of the things I'm
20 talking about is I will try a case. And I would have
21 tried this case.

22 Q And, I think, I'm not trying to imply you tried
23 to talk anybody into pleading guilty, my question is this,
24 is if that was the allegation, that was the picture.

25 A Uh-huh.

MICHAEL MORIN-REDIRECT BY MR. YARBOROUGH

1 Q You know we all come to court, what's the
2 picture? That's the picture, I got it.

3 A Okay.

4 Q But you got a picture and then you go, what
5 makes that picture not look right, right?

6 A Uh-huh.

7 Q And so you interview the parents who lived in
8 the in house, right? That would be a way to look at that
9 picture and say, okay, let's take some of that picture
10 away. You'd interview the parents, right?

11 A Sure.

12 Q Okay. And you didn't do that?

13 A No. I mean, again, you're asking me two
14 different things now. We're getting--

15 Q I only asked you one thing but go ahead.

16 A Are you asking me what I would have done if she
17 had chosen to go to trial, at a unspecified time? Or are
18 you asking me about whether or not I would have gotten
19 mitigation experts at a plea? And, I'm sorry, but maybe I
20 just--

21 Q Look, I mean no disrespect, okay. But my
22 question is this. Is she pled guilty, you were
23 representing her. In that case, you filed a severance
24 motion, right?

25 A Yes.

MICHAEL MORIN-REDIRECT BY MR. YARBOROUGH .

1 Q Okay. A person with her intelligence level has
2 no idea what a severance motion is, correct?

3 MR. SMITH: Objection.

4 THE COURT: What's the grounds?

5 BY MR. YARBOROUGH:

6 Q The average -- the average person that comes
7 into your office that you talk to, does not know what
8 severance means; is that correct?

9 A Yeah, that's correct.

10 Q That's correct. So she's relying on your legal
11 representation to file a severance motion, correct?

12 A Or any motion, yes.

13 Q Right. And that's trial strategy, right?

14 A Yes.

15 Q Okay. And to have trial strategy, you got to be
16 able to paint the picture, right?

17 A Yes.

18 ~~Q Okay. And so the picture wasn't painted.~~

19 That's what I'm saying. You couldn't tell what the
20 picture of the trial was when you filed the severance
21 motion, isn't that correct?

22 A No.

23 Q But you hadn't interviewed--

24 A That didn't have anything to do with whether or
25 not I was going to do the severance. And again, I don't

MICHAEL MORIN-REDIRECT BY MR. YARBOROUGH

1 want to be with Mr. Carpenter. That is bad. That's why
2 she's here. Because she chose to be with Mr. Carpenter.
3 That is bad.

4 Q Right. But it should have been her choice to
5 decide whether she went to trial with Mr. Carpenter or
6 not; correct?

7 A We discussed that. And I recommended the
8 severance. And she, as far as I know, she understood.
9 You're correct, she's average intelligence and doesn't
10 know that. They don't know a lot of things that we do
11 when we represent them but we have to discuss it with
12 them.

13 Q Sure.

14 A You're asking me if I didn't discuss it with
15 her, if I forced her to do a severance; is that what's
16 being asked?

17 Q No, that's not what I'm asking, okay. My
18 question is simple. What did you know about the picture?
19 What you describe what the picture was was her hand with
20 this child, right?

21 A Right.

22 Q That's your picture, you drew the picture?

23 A Uh-huh.

24 Q What did you do to make sure that that picture
25 was correct?

MICHAEL MORIN-REDIRECT BY MR. YARBOROUGH

1 A Well, among one of the other things that we
2 haven't talked about is there was a DSS action against her
3 as well. And there was a deposition that was held. And
4 those parents, at that deposition, made testimony and I
5 cross-examined them some at that.

6 Q So you cross-examined--

7 A Well, yes.

8 Q You cross-examined the parents at the DSS--

9 A I asked questions of the parents at the DSS
10 deposition.

11 Q And were you able to determine if their answers
12 were correct?

13 A Correct or credible?

14 Q Credible?

15 A I didn't think they were credible. But I
16 believed Ms. Owings and what she was telling me.

17 Q Yeah, I mean, no, I think, we're -- the parents
18 ~~had very little credibility, correct?~~

19 A I didn't think they had credibility. Yes, I
20 agree with you.

21 Q Okay.

22 A From my perspective.

23 Q And you didn't see them testify at the trial of
24 Mr. Carpenter?

25 A I did not.

MICHAEL MORIN-REDIRECT BY MR. YARBOROUGH

1 Q Okay. And you never -- you wouldn't have ever
2 had a chance to talk to the children, correct?

3 A No.

4 Q And were you able to investigate the financial
5 issue between the parents and Mr. Carpenter?

6 A I was aware of it. Mr. Carpenter was
7 financially supporting them during the time that this was
8 occurring. I don't think anybody disputed that.

9 Q Okay. And the parents wanted -- somehow wanted
10 Mr. Carpenter's money?

11 A That's my understanding, yes.

12 Q But you weren't able to look into that?

13 A Not that I recall.

14 Q Okay.

15 I don't have anything further.

16 THE COURT: Any recross?

17 MR. SMITH: I have a few questions, Your Honor,
18 but I'm waiting on something from the solicitor's
19 office to try to introduce. Can I ask for just a few
20 minutes to wait for that?

21 THE COURT: Sure, I'll give you a few minutes.

22 MR. SMITH: Okay, thank you.

23 (WHEREUPON, a short break was taken.)

24 THE COURT: All right, Mr. Smith.

25 MR. SMITH: Just a few more questions.

MICHAEL MORIN-REDIRECT BY MR. YARBOROUGH

1 BY MR. SMITH:

2 Q Mr. Morin, was there any disagreement between
3 the defense and The State whether Ms. Owings had a drug
4 abuse problem?

5 A No.

6 Q Okay. Is that something that would have been
7 cleared by Judge Verdin?

8 A I thought so.

9 Q Okay.

10 A I think The State agreed there was a drug
11 problem.

12 MR. SMITH: Your Honor, may I approach the
13 witness?

14 THE COURT: Yeah.

15 BY MR. SMITH:

16 Q Okay. Mr. Morin, would you agree that what I'm
17 handing you is the transcript from Ms. Owings--

18 ~~A I think he wants to see it.~~

19 MR. YARBOROUGH: Just tell me what page.

20 MR. SMITH: This is the transcript from the
21 guilty plea hearing.

22 MR. YARBOROUGH: What page?

23 MR. SMITH: Seventeen.

24 BY MR. SMITH:

25 Q Okay. And if you'll look here at Lines 10

MICHAEL MORIN-REDIRECT BY MR. YARBOROUGH

1 through 15, will you agree with me that Judge Verdin
2 acknowledges that Ms. Owings' position was that she didn't
3 remember the events?

4 A Yes, she does, yes.

5 Q Okay. The time that you moved to sever, you
6 already knew about Mr. Carpenter's sexual predilections at
7 that time?

8 A Yes.

9 Q Okay. And you had statements from the children?

10 A Yes.

11 Q Okay. And so the issue of the children's
12 parents wanting money from Mr. Carpenter, did Ms. Owings
13 have any money?

14 A No.

15 Q Okay. It was Mr. Carpenter's money?

16 A Yes.

17 MR. SMITH: Okay, thank you.

18 THE COURT: Thank you, Mr. Morin, you may step
19 down.

20 All right, any additional witnesses?

21 MR. YARBOROUGH: Yes, sir, I would call
22 Ms. Sustakov -- I can't never pronounce her name
23 right.

24 MS. SUSTAKOVITCH: That's okay, it's
25 Sustakovitch.

CHRISTY SUSTAKOVITCH-DIRECT BY MR. YARBOROUGH

1 MR. YARBOROUGH: Sustakovitch.

2 MS. SUSTAKOVITCH: Yes.

3 THE CLERK: Ms. Sustakovitch, please place your
4 left hand on the Bible, raise your right hand.

5 CHRISTY SUSTAKOVITCH, after being duly
6 sworn{,}testified as follows:{F}

7 THE CLERK: Please state your name for record.

8 THE WITNESS: Christy Sustakovitch.

9 THE CLERK: Thank you, you may be seated.

10 THE WITNESS: Thank you.

11 DIRECT EXAMINATION

12 BY MR. YARBOROUGH:

13 Q Can you state your name for the record?

14 A Yes, it's Christy Kednocker Sustakovitch.

15 Q Long name.

16 A Long name.

17 Q You've been with the solicitor's office here for
18 how long?

19 A I'm in my 20th year.

20 Q And you were the prosecutor on Mr. Carpenter's
21 case?

22 A Yes, I was. I handled Mr. Carpenter, as well
23 as, Regina Owings cases.

24 Q At some point, do you recall the discovery
25 process in this case?

CHRISTY SUSTAKOVITCH-DIRECT BY MR. YARBOROUGH

1 A I do. I mean, I went back and reviewed notes.
2 I will say that this case, the inception of it was in
3 2016, the summer of 2016. It was a very, very difficult
4 case. And yes, I do.

5 Q Okay. And, you know, do you recall how you
6 handled -- did you handle the discovery in this case the
7 same way you normally handle it?

8 A Yes, we did have some very graphic evidence in
9 this case. Which in prosecuting sex crimes now for 19
10 years, I just never seen some of the evidence that was
11 presented in this case. There were very graphic
12 photographs of Ms. Owings in the bathtub covered in feces,
13 there were very graphic--

14 Q There was no child or anything around her when
15 she was covered in feces?

16 A That's correct, it was --

17 Q Graphic --

18 (WHEREUPON, Mr. Yarborough and the witness were
19 talking over one another.)

20 THE WITNESS: Yes. And then, when you asked if
21 we handled it any differently, I did have defense
22 counsel come and look at some of the photographs in
23 my office. The Defendant, the co-defendant rather,
24 and Ms. Owings were into a sexual, I don't know how
25 to say it, proclivity, where it involved feces and

CHRISTY SUSTAKOVITCH-DIRECT BY MR. YARBOROUGH

1 urine. And there were a lot of very graphic
2 photographs on Mr. Carpenter's phone that showed
3 adults involved in drinking urine and having sex with
4 urine and feces and that type of thing. And then
5 Ms. Owings, there were some very graphic videos of
6 Ms. Owings and Mr. Carpenter engaged in sex acts with
7 feces themselves.

8 BY MR. YARBOROUGH:

9 Q Okay. And all that led you to believe that this
10 was a very significant case. It was a different case than
11 the normal case you handled in CSC with minor cases; isn't
12 that correct?

13 A I can say I just never handled one with
14 coprophilia. And I'm definitely not a prude but I had
15 never dealt with one that had the incorporation of feces
16 in that manner. It was something that I was educated to
17 in the handling of this case, definitely.

18 Q ~~And that word you used is -- what was it?~~

19 A It's coprophilia. It's a --

20 Q I know what it is.

21 A Okay.

22 Q Okay, thanks. But in all of that, it made you
23 focus more intensely on the prosecution of this case than
24 other cases, correct?

25 A I wouldn't say that, I had -- I handle a docket

CHRISTY SUSTAKOVITCH-DIRECT BY MR. YARBOROUGH

1 that's very heavy in sex crimes. And each one is very
2 important. I have homicide by child abuse cases at any
3 given time and they all take a large part of my time.

4 Q Okay. But let's go back to the pictures and
5 everything that deals with the urine and -- what -- we
6 know what we're talking about, right?

7 A Yeah.

8 Q But human waste. Let's just use that term
9 because I'm more comfortable with that. I can -- the --
10 so those pictures all involved adults?

11 A Correct.

12 Q Right. Okay. None of that involved Ms. Owings
13 involved in anything with children, correct?

14 A That's --

15 Q None of those pictures?

16 A None of those pictures. The disclosures from
17 the children, one of the children, it did involve
18 Ms. Owings. And I want to just -- I feel like the
19 landscape is not quite clear as far as what this case was.
20 It started out in the summer of 2016 where there was a
21 disclosure of sexual abuse by Minor2. [ph], which was
22 Mr. Carpenter's granddaughter--

23 Q Right. And that was about Mr. Carpenter?

24 A And this Defendant.

25 Q Right.

CHRISTY SUSTAKOVITCH-DIRECT BY MR. YARBOROUGH

1 A Minor2 disclosed that Mr. Carpenter and this
2 Defendant had sexually assaulted her in the bedroom that
3 they shared. And that this Defendant had held her arms
4 while Mr. Carpenter put his penis inside her.

5 Q Okay. Was there anybody -- was there any
6 evidence at all that substantiated that from any third
7 party?

8 A Well, as with--

9 Q Any evidence at all from any third party.

10 A Do we have a witness, is that what you're
11 saying?

12 Q Yeah. Did you have a witness? You had a child,
13 right?

14 A Yes, as with many CSC cases--

15 Q Well, hold on, hold on. Let me just -- you had
16 a trial?

17 A Yep.

18 Q ~~Okay. And did anybody besides that child say~~
19 that?

20 A Nobody.

21 Q Nobody.

22 A As I said it was --

23 Q Okay. And then you sent the child to the Julie
24 Valentine Center, correct?

25 A She did go. And her--

CHRISTY SUSTAKOVITCH-DIRECT BY MR. YARBOROUGH

1 Q She went --

2 A -- brother went --

3 Q -- to the --

4 A -- as well --

5 (WHEREUPON, Mr. Yarborough and the witness were
6 talking over one another.)

7 BY MR. YARBOROUGH:

8 Q -- Julie Valentine Center and she did work --
9 before she went to the Julie Valentine Center, she,
10 actually, went to the emergency room; is that correct? Am
11 I -- or?

12 A I'm sorry. It has been five years--

13 Q Okay--

14 A -- since the happened.

15 Q That's okay.

16 A And --

17 Q That's okay --

18 A -- I don't want to misspeak, I can't tell you
19 exactly if she went to the emergency room. But what I can
20 tell you is that when that disclosure came out in the
21 summer of 2016, now five years ago, Minor2 was interviewed
22 and so was Minor1 . Minor1 did not initially disclose
23 sexual abuse.

24 Q Right. That's correct. He did not, that was
25 disclosed later.

CHRISTY SUSTAKOVITCH-DIRECT BY MR. YARBOROUGH

1 A It was several months later --

2 Q Right. After he had gone down and gotten
3 interviewed by the Julie Valentine Center, right?

4 A No. It was several months later he was in
5 counseling--

6 Q Okay.

7 A -- and he disclosed that he had --

8 Q So --

9 A -- been sexually --

10 Q That --

11 A -- abused--

12 Q -- that also was not the same counselor that was
13 used by the Julie Valentine Center --

14 A No.

15 Q -- was it a different one?

16 A No.

17 Q Which counselor was that?

18 A ~~I don't know the name offhand, I honestly don't.~~

19 Q Okay.

20 A But I know that the second set of charges, I was
21 just trying to lay this out for Judge Morgan. They
22 stemmed from a disclosure later in the fall of 2016 where
23 Minor 1 , at that point, stated that Mr. Carpenter had
24 taken, Minor 1 was 10, had taken him in the bathroom and
25 taken, he called it a douche, had put it in his rectum,

CHRISTY SUSTAKOVITCH-DIRECT BY MR. YARBOROUGH

1 made him defecate. That this Defendant was in the
2 bathroom and was part of holding him and then the feces
3 came out, it was put on his back. Minor2 also described
4 feces being put on her back as well. And both children
5 disclosed that they had to drink urine.

6 Q You know, I keep hearing this and I don't know
7 how to describe it. People testify to people drinking
8 urine, wouldn't that make somebody sick?

9 A I'll be honest with you, when Mr. Carpenter
10 testified, I was probably standing right there. And I was
11 stunned. I didn't expect in cross-examination that he
12 would admit to it. But I asked him, I said, What do you
13 get -- this is paraphrasing. But what do you get out of
14 drinking peoples urine? And I thought he was going to
15 deny it, to be honest with you. I just asked the question
16 to see where it would land. And that's when he said that
17 it was an act of subjugation. And that he liked drinking
18 other peoples urine. So I was pretty surprised to get
19 that out on the stand. And then I asked him, do you
20 like -- again, this is paraphrasing, you get the
21 transcript it won't be exactly the same. But, you know,
22 the urine of a eight year old or 10 year old. And he said
23 no, he liked to drink Regina's urine. So that's where we
24 went with that.

25 Q Okay. So -- but there, again, that has nothing

CHRISTY SUSTAKOVITCH-DIRECT BY MR. YARBOROUGH

1 to do with CSC with a minor, correct?

2 A No.

3 Q Okay. So do you understand how this thing ever
4 got severed? Why didn't you try these together?

5 A Well, the whole -- frankly, if defense counsel
6 had not moved to sever, The State may have tried them
7 separately on my own. I don't know how that would have
8 worked out. I do know that Mr. Morin, for what it's
9 worth, I deal with a lot of defense attorneys. And he had
10 a lot of contact with me. He was very on top of the case.

11 And as far as severance, I do recall he knew the
12 allegations. And I remember emailing him about
13 Mr. Carpenter. Mr. Carpenter senior, not the children's
14 father. But the children's father came in and disclosed
15 to us, to me, that he had also been sexually assaulted by
16 William Carpenter when he was a boy.

17 And The State sent notice over to defense
18 ~~counsel, Mr. Morin, and also, at that point, it was for~~
19 Ms. Owings, it was Fletcher Smith, and let them know that
20 The State would make a motion under State vs. Lyle for the
21 son, Mr. Carpenter's son and the children's father, to,
22 potentially, testify as a Lyle victim. He stated that
23 Carpenter, Mr. Carpenter senior, had forced him to perform
24 oral sex. And so, you know, there was that issue going
25 on. And there was a time during the whole thing where

CHRISTY SUSTAKOVITCH-DIRECT BY MR. YARBOROUGH

1 Minor 1 , in talking about the incident that happened where
2 he said Carpenter put a douche in his rectum and he
3 defecated and then Regina was part of it. Then he had
4 to -- and Carpenter performed anal sexual. Minor 1 , in
5 being interviewed at one point, started to gag, dry heave,
6 and could not finish talking about it.

7 Q Would you 99.5 percent of the evidence you have
8 in your file was against Mr. Carpenter?

9 A No, I definitely would not say that. I would
10 definitely not say that.

11 Q Okay. Give it to me. What evidence was there
12 against Ms. Owings?

13 A What you have, again, you have a disclosure of
14 Minor 2 that in the Summer of 2016, she disclosed that she
15 was held by Ms. Owings, by the arms and that Mr. Carpenter
16 put his penis --

17 Q You said --

18 A -- inside her --

19 Q -- you said that. That was one --

20 A If I could --

21 Q Now --

22 A -- finish just saying.

23 (WHEREUPON, Mr. Yarborough and the witness were
24 talking over one another.)

25 THE WITNESS: That in and of itself, if nothing

CHRISTY SUSTAKOVITCH-DIRECT BY MR. YARBOROUGH

1 else had happened in this case, that would be a count
2 of CSC with a minor in the first degree. And The
3 State never thought that anything was going to
4 happen, honestly. It was when these new allegations
5 came out in the fall, it was very surprising. I
6 was -- until I saw--

7 Q You were surprised at that point?

8 A I was surprised that people engaged in sex acts
9 like that. I will say that.

10 Q Okay.

11 A I was surprised to see the search warrant and to
12 see the evidence that was collected in this case. And so
13 when Minor 1 gave his disclosure, as far as what he said
14 happened in the bathroom with Mr. Carpenter and this
15 co-defendant, and you had the corroborating evidence --
16 just imagine, Mr. Yarborough, if none of that evidence had
17 been collected, where we would be. If we didn't see all
18 ~~the photos of people engaged in coprophilia or the~~
19 co-defendant, Mr. Carpenter, engaged in that, it could
20 make a reasonable mind think that maybe that stuff doesn't
21 even happen. Because it is very different. I would say
22 it's just a very different way of expressing sex. And so
23 the evidence is that when it's fine for adults to do that
24 but when you have a child disclosing that they have had to
25 engage in that. And it is backed up by evidence that you

CHRISTY SUSTAKOVITCH-DIRECT BY MR. YARBOROUGH

1 find on electronic devices. It's not a figment of
2 someone's imagination.

3 Q You keep saying it's backed up witness but
4 there's no evidence that she was engaged in anything by
5 any of that.

6 A It was --

7 Q There's nothing --

8 A -- it was --

9 Q -- it was zero, right? Point one thing.

10 A I just did tell you the disclosure of Minor2 was
11 vaginal penetration by co-defendant with this Defendant
12 holding her arms.

13 Q Okay, let's stop there, okay, you said that.

14 A Yep.

15 Q Now, I want to know, did you send her for an
16 analysis to a doctor where she was checked to see if what
17 kind of shape her hymen was in?

18 A She was medically examined and that exam came
19 back normal.

20 Q Came back normal?

21 A Yes.

22 Q Okay, that came back normal?

23 A Yes.

24 Q And so that could have led you to a question of
25 whether or not this was possible or not, right? Because

CHRISTY SUSTAKOVITCH-DIRECT BY MR. YARBOROUGH

1 you've got a non-torn hymen.

2 A Right.

3 Q And let me ask you this.

4 A Yes.

5 Q Did defense counsel ever come to you and say,
6 hey, look, something's wrong here because you got a
7 non-torn hymen --

8 A Yes.

9 Q -- and she's saying she's been penetrated
10 multiple, multiple, multiple times by this man.

11 A She said one time by this man. And yes, every
12 defense attorney does that. And I don't mean this in a
13 flippant way. I would say after doing these for the
14 number of years that I have, that is very common. And it
15 is what any good defense attorney should raise. But the
16 fact of the matter is that at Mr. Carpenter's trial,
17 Dr. Croswell testified and she, as an expert, explained
18 ~~the fact that normal is normal. And that even in cases~~
19 where there's a documented history of abuse, meaning a
20 defendant has confessed to sexually assaulting a child,
21 there can be a normal exam.

22 Q Okay.

23 A So it doesn't rule it in, it doesn't rule it
24 out. It basically -- and doctors, who are sworn as
25 experts, testify to that all the time in these cases and

CHRISTY SUSTAKOVITCH-DIRECT BY MR. YARBOROUGH

1 educated the jurors about why that is. As far as anal
2 sex, to explain that, I do know that the defense attorney
3 for Mr. Carpenter was very concerned about anal tearing
4 with Minor1 . He said, where's the anal tearing?

5 Q Right.

6 A And as we know in that type of case --

7 Q In both cases, now that you brought up Minor1 ,
8 in both cases there was never any medical evidence of
9 that?

10 A Correct.

11 Q Substantial?

12 A Correct.

13 Q Neither case.

14 A Correct.

15 Q So we're still are back here trying to paint
16 this picture, right?

17 A Yes.

18 Q There's no -- nobody's painting the picture.
19 There's nothing that corroborates any of this. They're no
20 pictures, you said you got all these pictures off the
21 computer, you got all these things off a cell phone, you
22 got all of that. There's nothing that ties her into this
23 case at all?

24 A I just would dispute that. We have the
25 disclosures but I don't want to go back and forth with

CHRISTY SUSTAKOVITCH-DIRECT BY MR. YARBOROUGH

1 you.

2 Q Right. Okay, so you're -- right, no, we'll go
3 where you want to go, we'll go. There was one disclosure
4 by one individual and then six months later there was
5 another disclosure by another child; isn't that correct?

6 A There was two children.

7 Q Two children.

8 A Siblings.

9 Q One -- yeah. One here.

10 A Yep.

11 Q Denied -- one here?

12 A Yes.

13 Q Okay. They made a disclosure, one thing. And
14 then the other child, Minor1 , was interviewed and he said
15 no, correct?

16 A Correct.

17 Q Okay. And then six months later Minor1 says,

18 ~~oh yeah, it did happen, right?~~

19 A I believe it was November. Maybe October.

20 After Minor2 had disclosed the vaginal penetration, he in
21 counseling disclosed that he had, actually, been sexually
22 abused. And that's when he disclosed the incident with
23 the enema being put in his rectum and the feces in the
24 bathroom, where he said Ms. Owings was involved.

25 Q Okay. Now, I'm not -- I'm -- enemas in

CHRISTY SUSTAKOVITCH-DIRECT BY MR. YARBOROUGH

1 children, as I understand, are sometimes used to stop
2 constipation; is that correct?

3 A Yes, I definitely know that to be true. But in
4 this case, the enema was used and then the child was
5 anally penetrated.

6 Q Just asking the question.

7 A Yep.

8 Q Okay. So we're here, we're still -- what -- did
9 defense counsel ever ask permission to interview the
10 children?

11 A He did not ask me.

12 Q Okay. Did -- are you aware of any reports or
13 experts that were hired to review the Julie Valentine's
14 disclosures? Are you aware of that at all?

15 A In the co-defendant's trial, the defense counsel
16 did have an expert and her name was, I believe, Gay Allen
17 Cook. And she reviewed the file. And she testified at
18 trial.

19 Q And she testified at trial that?

20 A She testified about memory and how -- and again,
21 this is --

22 Your Honor, if I'm testifying to anything
23 different than the transcript, I'm just trying to go on my
24 memory.

25 But it was as to memory and how disclosures

CHRISTY SUSTAKOVITCH-DIRECT BY MR. YARBOROUGH

1 are important and how kids disclosure are important, that
2 type of thing. She did testify.

3 Q Right. And she testified for the defense, not
4 for you; correct?

5 A She did, she testified for the defense.

6 Q Right. And she said that these disclosures
7 would not have been that unusual under the circumstances;
8 is that correct?

9 A I don't recall her saying that.

10 Q She said there was--

11 A No, she just said --

12 Q -- there is the potential for a child to lie in
13 a situation like that, I'll make it more direct than that.
14 Is that. . .

15 A It wasn't lie per se but without having the
16 transcript -- they had this Gay Allen Cook testify for
17 Mr. Carpenter. And keep in mind he was convicted on all
18 ~~charges at the end of a jury trial. That's what I recall.~~

19 Q Yep. And during your investigation of
20 Mr. Carpenter, it was clear that Mr. Carpenter was giving
21 drugs to Ms. Owings, right?

22 A Yes. This case was just very sad. It was
23 terrible. It was -- Ms. Owings, I do believe and I told
24 defense counsel this, had a drug problem. She definitely
25 did. And so in looking at this case and looking at The

CHRISTY SUSTAKOVITCH-DIRECT BY MR. YARBOROUGH

1 State has knowledge that Mr. Carpenter senior has sexually
2 abused his own son. That's factoring into where the --
3 where The State's mind is in this whole thing. Also,
4 knowing that she had the drug problem that she did, I
5 would share with you one thing that I told defense counsel
6 about. And he had this in discovery. I don't know if you
7 have it. But there was a phone call between the
8 children's mother, Delina. And then this co-defendant and
9 Ms. Owings. And it was where they're talking --
10 Ms. Owings was talking about how she would have to stand
11 on the bathtub and defecate on Mr. Carpenter. And--

12 Q But see that's going back--

13 A Hold on, I'm getting to the --

14 Q Look --

15 (WHEREUPON, Mr. Yarborough and witness were
16 talking over one another.)

17 THE COURT: Just let her finish.

18 MR. YARBOROUGH: Okay.

19 THE WITNESS: I was just trying to get to this
20 one point. You asked me about drug use. And in this
21 phone call they talked Ms. Owings having to defecate
22 on him and all the different things. They said
23 Mr. Carpenter had sex with horses. I don't know that
24 to be true. I have no idea. That's what Ms. Owings
25 said, it's on a recorded phone call. But the one

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1 thing that stuck out to me was when she said, I can't
2 wait to get my painkillers and my Xanax. I work so
3 hard to get those motherfuckers. Then she said, I
4 want those mf'ers so bad. And then she said, I'm
5 going to get some of them motherfucks [ph] and I'm
6 going to lay in his f'd up stuff and I'm not going to
7 give a damn.

8 And honestly, Mr. Yarborough, I do believe when
9 I saw the pictures of Ms. Owings laying in that
10 bathtub covered in feces, and there's a photograph of
11 her face, I really questioned whether she knew what
12 was going on in that moment. I hope, maybe, she
13 didn't. I don't know.

14 MR. YARBOROUGH: You know what, I'm not going to
15 ask anymore questions. Thank you.

16 THE COURT: Before we get into cross, we need to
17 take a break. We've been going about two hours here.

18 ~~So we need to give everybody a little break here.~~

19 So, we'll be in recess a few minutes and take a
20 break.

21 (WHEREUPON, a short break was taken.)

22 THE COURT: All right, Mr. Smith, cross.

23 MR. SMITH: Thank you, Your Honor.

24 CROSS-EXAMINATION

25

CHRISTY SUSTAKOVITCH-CROSS BY MR. SMITH

1 BY MR. SMITH:

2 Q Ms. Sustakovitch, would you have been willing to
3 enter into some sort of a plea agreement with Ms. Owings
4 if she had been willing to testify against Mr. Carpenter?

5 A What I recall telling Mr. Morin was that if she
6 wanted to be honest and truthful about what she could tell
7 The State in this case, that it certainly would work in
8 her favor. We never really got far or anywhere, actually,
9 as far as a plea. Because Mr. Morin just -- he came back
10 and said she says they didn't do it, she didn't do it,
11 this didn't happen. And so, we just never got anywhere
12 with that.

13 Q Okay. When did Mr. Morin notify you that
14 Ms. Owings was interested in pleading guilty?

15 A Hold on.

16 Beg, the Court's indulgence.

17 Let's see. So Mr. Carpenter was tried in
18 September of 2018. And it was somewhere, I don't have the
19 exact date, but after that point that defense counsel let
20 me know that she wanted to plead. I believe I have an
21 email from -- I know it was January of 2019, where
22 Mr. Morin said that she was signed up and that it was an
23 Alford plea.

24 And I said, Good.

25 Q Okay. So you tried Mr. Carpenter, right?

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1 A Yes, I did.

2 Q Okay. Do you remember seeing Ms. Owings there
3 ever in trial or in the audience or anything?

4 A I could have missed her but I don't recall
5 seeing her there.

6 Q Okay.

7 A I don't think she was.

8 Q Okay. So what Ms. Owings pled to, were there
9 other charges other than that?

10 A So Ms. Owings had a set of charges related to
11 what Minor2 had disclosed and she also had charges related
12 to what Minor1 has disclosed. And when Mr. Morin and I
13 came down on the plea agreement that she pled to in
14 January of 2019, The State had decided to just not to go
15 forward on Minor1 's disclosure about the enema in the
16 bathroom and what he said was Ms. Owings involvement
17 there. The State decided to just have her plead to one
18 ~~count of CSC with a minor second with a cap of 15 years.~~

19 And then all the other charges were dismissed.

20 Q Okay. If she had gone to trial, would you have
21 tried her for crimes related to both Minor2 and Minor1 ?

22 A Yes. If we had gone to trial, and I explained
23 it to Mr. Morin, we would have gone forward on everything.
24 Then the issue with the bathroom and Minor1 would have
25 been part of that CSC with a minor first charge. And then

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1 the Minor2 disclosure would have also been charged. As I
2 told Mr. Morin, and I believe I touched on this earlier,
3 with Minor1 there was some inconsistency, I guess, you
4 can call it inconsistency. In meeting with him, getting
5 prepared for trial on that. That's what I was trying to
6 describe earlier. Minor1, when he talked about what
7 happened in the bathroom, he started to dry heave. And he
8 just could not continue talking to me. So I stopped the
9 pretrial. My investigator, who's in the courtroom, was
10 there with me. And when he came me to our office, we went
11 through it again. And that is where he said that
12 Ms. Owings was in the bathroom and was part of what
13 happened with the enema. But then he started vomiting.
14 And it just -- had we gone to trial, we would have gone
15 forward on both children and what they disclosed. But The
16 State felt to make it easier, as far as a guilty plea, we
17 would just focus on what happened with Minor2. We did not
18 go forward on what Minor1 had disclosed at all related to
19 her guilty plea.

20 Q Okay. Did you dismiss the charges related to
21 Minor1 ?

22 A I did.

23 Q Okay. Did you dismiss those after Ms. Owings
24 pled guilty or before?

25 A It might have been the same day. I don't

CHRISTY SUSTAKOVITCH-CROSS BY MR. SMITH

1 recall. But it was after -- either right after she pled
2 or after that.

3 Q But those -- the dismissal and the guilty plea
4 were linked?

5 A Yes, yes.

6 Q Okay. If, you know, the disclosure from
7 Minor1 , you'll agree the story about the feces in the
8 tub, that's a wild story?

9 A Yes. When I first got this case in the fall of
10 2016, again, you get educated all the time in doing this
11 job. I just was not aware that consenting adults were
12 into that lifestyle. And it's not to judge anybody. As
13 we said during different pretrial hearings, consenting
14 adults can do whatever consenting adults want to do. But
15 it's when you involve a child in it that there is the
16 crime. And so, yeah, I did not know that that really
17 existed. In the way that it does. There's a whole
18 ~~subcultural out there.~~

19 Q You were shocked?

20 A It was just something I had not seen in my years
21 of prosecuting sex crimes.

22 Q Okay. Have you prosecuted other cases of
23 criminal sexual conduct with a minor before?

24 A I'm the head of our sex crimes unit, I have
25 prosecuted sex crimes for about 19 years. Eighteen and a

CHRISTY SUSTAKOVITCH-CROSS BY MR. SMITH

1 half to be exact. And yes, I've handled hundreds and
2 hundreds. I've never kept a tally over the years.

3 Q It is common to have CSC with a minor trials
4 where primarily you're relying in prosecution on the
5 child's disclosure alone?

6 A Most CSC trials that go to trial are going to be
7 where you have a forensic interview, a child under 11, if
8 it's CSC with a minor first. And you're not going to have
9 witnesses. You're not going to have people that walked in
10 the room or videos or any of that stuff. What you're
11 going to have is the child's disclosure, you're going to
12 have the forensic interview. And then when you go through
13 the forensic interview, and this is what I always tell
14 jurors, it's the sensory details that you're picking up
15 from that child when they are giving that interview that
16 give you different nuggets to what happened to them.
17 Whether they're talking about the smells or the taste of
18 things or the senses of it, things that I would say that a
19 child can't really make up how something tastes. When
20 they say, it's salty. That's a powerful piece of
21 evidence. So I think, sometimes, I just -- defense
22 attorneys and I go back and forth when they say it's just
23 the word of a child versus the defendant. You look at the
24 forensic interview, you look at the totality of that
25 disclosure and all of those nuggets that come together.

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1 And, in this case, as in any case, you look at all of
2 that.

3 Q Do you have many child rapes that happen in the
4 town square?

5 A No.

6 Q Okay. Okay. So it's common to not really have
7 eye witnesses?

8 A Right.

9 Q In that kind of case.

10 A Right.

11 Q Okay. If you had gone to the -- if Ms. Owings
12 had decided to go to trial, would you have put up an
13 expert to testify about how a female child who's
14 penetrated can still have a normal physical exam?

15 A Yes. So, generally, the doctor that saw the
16 child, it would be Nancy Henderson or Dr. Croswell. They
17 would testify, sworn as a expert. And they would talk
18 ~~about reasons that normal exams can be normal, as I~~

19 testified to earlier. And still have a history of abuse.
20 I would have put that expert up.

21 Q Okay. Did you have any evidence that you could
22 have used to corroborate Minor 1 's story about the sexual
23 conduct involving Mr. Carpenter, Ms. Owings and feces?

24 A I mean, you know, we had, I think, it was 136
25 different photographs on the computer of people engaged in

CHRISTY SUSTAKOVITCH-CROSS BY MR. SMITH

1 all manner of sex with feces. And you would have -- there
2 were some websites that were visited to where I didn't
3 know this to be a thing, but it would be a syringe and it
4 would be inserted into an adult woman. And stuff would
5 come out. That corroborates what Minor1 said as far as
6 he had a -- he wasn't, based on his disclosure, there was
7 no medical purpose or diagnosis for what happened to him.
8 What happened to him was a sexual assault. So if that
9 answers your question.

10 Q Sure. So--

11 A And also, I'm sorry. The photograph of
12 Ms. Owings when this case was -- when they were out on the
13 scene with Mr. Carpenter, there was a photograph that was
14 on his phone of Ms. Owings laying in the bathtub and she
15 was naked, covered in feces. And Mr. Carpenter, you could
16 see his ankle with the tattoo on it. And that was other
17 evidence.

18 Q So your argument at trial would have been that
19 Minor1 's disclosure includes this element of this
20 involvement with feces and Ms. Owings and Mr. Carpenter?

21 A Well, not to re-litigate his trial but at his
22 trial, Judge Verdin allowed one photograph into evidence.
23 It was the photograph in the bathtub. And The State's
24 argument in that trial was Mr. Carpenter was charged with
25 several counts of CSC with a minor first. He was also

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1 charged with CSC with a minor third. Where -- that is
2 where somebody is touching the body of a child for sexual
3 lust and gratification. And to prove an element of CSC
4 with a minor third, you have to be able to explain to a
5 jury that anybody gets sexual gratification from putting
6 feces on the body of a child. And that was the argument
7 that I made with Judge Verdin and she ruled with The State
8 to allow one photograph. That it was outside the common
9 knowledge of a jury to understand that people would
10 enjoy -- that that would be sexually gratifying. That

11 most jurors would not -- that would not come to their mind
12 to think that that is a thing. And so she allowed one
13 photograph.

14 Q Okay. So Minor1 's disclosure involved
15 Ms.~Owings being in the room and feces, right?

16 A Yes.

17 Q Okay. And you had and still have a photograph
18 of Ms. Owings being involved with feces?

19 A Yes.

20 Q Okay. So if The Court or Mr. Yarborough needed
21 to see that, that's something that you could provide?

22 A I believe you have a copy of it.

23 Q Okay. Parents, you know, it may be normal for a
24 parent to administer a enema to a child, right?

25 A I guess you could, yes. I can imagine a medical

CHRISTY SUSTAKOVITCH-CROSS BY MR. SMITH

1 reason why a child might need a enema if they're
2 constipated or something like that.

3 Q Okay. Is it normal for that to be followed by
4 anal rape?

5 A Yeah, no. I never heard of a child having that
6 happened and then disclosing that they were anally
7 penetrated and feces was put on them.

8 Q Okay. In the statements and evidence that
9 you're aware of involving Ms. Owings drug use, are you
10 aware of anywhere she makes the statement that she was
11 forced to do drugs?

12 A No. She and one of the -- she and the victims
13 mother, in this case, had a sexual relationship that The
14 State was not aware of, actually, until we got closer to
15 trial. And that's when Delina came off of that thinking,
16 listen, let The State know that, yes, she and Regina had
17 had a sexual relationship so that The State was not
18 surprised at trial about that, with Mr. Carpenter. But
19 back to your question, there was never an allegation that
20 she was forced to take drugs. But it was just -- I didn't
21 get the sense that Mr. Carpenter was using drugs in the
22 manner that she was. And just when I went back to that
23 phone call, it just informed me and made me honestly feel
24 and I'll always feel that she was being given drugs by
25 Mr. Carpenter.

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1 And back to that quote I gave you, she said
2 she would have to take Xanax and be f'd up to lay in his
3 stuff and not give a, quote, Damn. So that's what defense
4 counsel Mr. Morin and I talked about numerous times was
5 that we both viewed her to be having a drug problem. And
6 in talking with the victims parents, they were okay if
7 Ms. Owings got less than William Carpenter.

8 Q Do you have a copy of the guilty plea transcript
9 up there?

10 A Hang on one second. I do.

11 Q Okay. If you'll refer to Page 12.

12 A Yes.

13 Q Can you tell me how early -- well, will you
14 confirm that this is on Page 12 where you give Judge
15 Verdin information about Ms. Owings past convictions?

16 A Yes, I see that.

17 Q What's her earliest drug-related conviction?

18 ~~Obvious, the most obvious drug-related conviction?~~

19 A Well, I see a possession of marijuana in '92.

20 Q Okay.

21 A Prostitution, I believe she had an issue with
22 that. But possession of controlled substance in 2001.
23 Another possession of controlled substance in 2009.

24 Q So her drug history goes on and on back?

25 A I do see those three different incidents listed

CHRISTY SUSTAKOVITCH-REDIRECT BY MR. YARBOROUGH

1 in what I read to The Court on Page 12.

2 Q Okay. And those were dates before the child --
3 the children disclosed they had been abused, right?

4 A Yes.

5 Q May have even been before they were born?

6 A Yes.

7 Q Okay.

8 MR. SMITH: Those are the only questions I have.

9 Thank you.

10 THE COURT: All right, any redirect?

11 REDIRECT EXAMINATION

12 BY MR. YARBOROUGH:

13 Q You were at the -- you handled the guilty plea,
14 right?

15 A I did.

16 Q And you're -- I just said you handled the guilty
17 plea, it was not a guilty plea, it was under North
18 Carolina vs. Alford; is that correct?

19 A That's correct.

20 Q Okay. And you -- you knew that she had a
21 significant drug problem, correct?

22 A I believe that she did.

23 Q Okay. And at some point, she addressed The
24 Court and she said, If I would have known -- this on Page
25 16.

CHRISTY SUSTAKOVITCH-REDIRECT BY MR. YARBOROUGH

1 A Yes.

2 Q The Defendant says, If I would have known he was
3 doing anything like that, I would have stopped it. I
4 would have killed him because I have grandkids and I love
5 my babies. And love them kids to death. And I'm sorry
6 that I got mixed up with him. I wish I could take it back
7 and do it all over again. Because if I know what I knew
8 now, it would have been different.

9 Now, is -- that sound like somebody that's
10 making some type of admission that they were under drugs
11 or somehow did not know what was going on? I mean, it
12 just -- those are petty -- those are pretty bold words
13 from a defendant that, allegedly, is allowing The Court
14 for sentencing them, isn't it? You been doing this a long
15 time.

16 A Yeah, I don't know how to qualify them. I know
17 that The Court has her plea summary, it's discussed at
18 ~~length with her defense counsel about her drug use.~~

19 Q Right. But what I'm talking about is we -- I
20 mean, we have hundreds of cases, I mean, a lot. For a
21 Alford plea to have somebody take it, that harsh, have you
22 ever seen it like that? You ever seen somebody
23 [indiscernible] saying, I didn't know what was going on?

24 A I tell you, Mr. Yarborough, at the end of a
25 homicide by child abuse, where the man killed two

CHRISTY SUSTAKOVITCH-REDIRECT BY MR. YARBOROUGH

1 children, he stood there after a jury verdict, turned
2 around and looked at the mother and still maintained his
3 innocence. So if that's what the question is--

4 Q No, you just -- you just hit the nail on the
5 head and thank you.

6 A Okay.

7 Q You just hit the nail on the head. That guy
8 went to trial, was convicted, turned around and said, look
9 I don't care what that jury said, I didn't do it. That's
10 a big difference than standing in front of a Judge and
11 saying, hey, Judge, sentence me. You know, I would have
12 stopped it if had I known. I would have killed him.
13 Because I have grandkids.

14 That, I mean, at that point there's a -- as
15 a prosecutor, didn't you say to yourself, hey, look, wait
16 a second, I need to stop this thing. This Judge is
17 getting ready to take a North Carolina Alford plea from
18 somebody that doesn't really know what's going on.

19 A With all due respect, Judge Verdin is a
20 excellent Judge. And all three of us were present in that
21 courtroom. And I can tell you, I've seen many a
22 defendant, after being convicted by a jury, turn around
23 and maintain their innocence. And I get what you're
24 saying--

25 Q You're talking about a jury, I'm talking about a

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1 Judge.

2 A There was no moment that anybody felt like
3 anything needed to be stopped. The -- she has been
4 consistent through her attorney that she didn't do
5 anything, okay. And the way that this got to North
6 Carolina vs. Alford was through, as we've discussed,
7 defense counsel and I talking. And when you get to what
8 he talks about in the plea colloquy -- I mean, excuse me,
9 in the plea summary, I don't know what I can add, I'm
10 sorry.

11 Q Okay. And I -- I just -- I look at this -- this
12 plea summary and it -- it -- if you look on Page 13, you
13 know, Mr. Morin said, She had a child, a daughter, she has
14 a grandchild. Needless to say, when we were first
15 discussing these facts, she was, like, if I had known this
16 was going on or if I would have thought this was going on,
17 I would have stopped it. I would have done something.

18 A Uh-huh.

19 Q I mean, that's different than a -- in a normal
20 North Carolina vs. Alford plea. I mean, that's her lawyer
21 saying that. And then I just asked you questions about
22 her saying that. I mean, that's an affirmative statement,
23 I didn't do this; right?

24 A I don't know how you want to take that. Under
25 North Carolina vs. Alford, the defendant is not accepting

CHRISTY SUSTAKOVITCH-REDIRECT BY MR. YARBOROUGH

1 responsibility. They're saying that they believe that the
2 likelihood, if they went to trial, is that they would be
3 convicted; as Mr. Morin explained.

4 Q Right. And I don't agree with that but, I mean,
5 I don't disagree with what you just said. But my question
6 is these -- those are both affirmative statements by
7 defense counsel and The Defendant that they didn't do it.
8 I didn't do it. I did not do it. I'm arguing, I did not
9 do it. Would you agree that's what those arguments were?

10 A Again, I can't say what she's thinking--

11 Q I'm not asking what --

12 A -- defense --

13 Q -- she's thinking --

14 A -- counsel --

15 Q -- I'm just asking what he said and what she
16 said. I'm not asking--

17 A Mr. Yarborough, if she had been pleading in a
18 traditional guilty plea, no. This plea would have had--

19 Q That would have never happened?

20 A Well, she was pleading under North Carolina vs.
21 Alford. And her defense attorney did set for the record,
22 her prior drug use. And explained why, I mean, if she's
23 stating in this phone call that I explained to you, she
24 would have to take Xanax so she could lay in feces in a
25 bathtub. And not recall what she was doing. So I

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1 can't -- I can't get into the internal workings of
2 someone's mind, who may or may not have be under drugs.
3 But I can just tell you she pled under North Carolina vs.
4 Alford, as part of the plea agreement.

5 Q Okay. And I'll just ask you if you agree with
6 this or not. Would you agree that the reason that plea
7 was accepted, or you and Mr. Morin talked about this, was
8 because the evidence outside of there being a charge of
9 criminal sexual conduct with a minor, was so egregious, so
10 unsat -- left so many people with a bad taste in its

11 mouth, it was hard for this Defendant to get a fair trial?

12 A I would disagree, Mr. Yarborough. Here's what
13 I -- oh, I'm sorry, you can. . . .

14 Q No, I just would love to hear your answer.

15 A What I would say to you is this. If this case
16 ended with Minor2 's disclosure from the summer of 2016.
17 And I'm looking back to notes from her forensic interview.

~~18 Where he called her in the room, he stuck his pee-pee in~~
19 her. They were sitting on the couch, he had on his
20 clothes, he was the dead man. And she goes into all these
21 different details. He had trouble getting it in me
22 because I'm so small. And then she says, Regina was in
23 the room. She was holding me down by my shoulders. She
24 came behind me and pulled me down by my shoulders.

25 What she pled to, if all The State went

CHRISTY SUSTAKOVITCH-REDIRECT BY MR. YARBOROUGH

1 forward with with her was that case, The State would still
2 be seeking conviction for that conduct with Minor2 . And
3 everyday in the courts of this state, convictions are had
4 with that evidence just there. So I--

5 Q But can I say this?

6 A Sure.

7 Q You and I have been doing this a long time,
8 right?

9 A Sure, yep.

10 Q 99.9 percent of those times, that case would
11 have been tried with two defendants sitting in this
12 courtroom, not one. Because they're the same act, right?

13 A I can't say one way or another.

14 Q You been doing this as long as I have, it's 30
15 years, what's the answer to the question, yes or no?

16 A I cannot tell you how that would have gone.

17 Q I'm not asking you to say how it would have
18 gone, I'm asking you to say, as a prosecutor, as head of
19 the -- you would have tried them together, every time?

20 A I think that generally speaking, for judicial
21 economy, it makes sense to try these cases together when
22 you can. But I can't say that there's a set blanket rule.
23 And for the children I think it's best to try them
24 together as well.

25 Q Correct.

REGINA OWINGS-DIRECT BY MR. YARBOROUGH

1 A But it just depends on the case and all the
2 factors.

3 Q Right. And so this case should have been tried
4 together, right?

5 A No. I would not--

6 Q We'll choose to disagree.

7 A Okay, thank you.

8 MR. YARBOROUGH: Thanks.

9 THE COURT: All right, you may step down,
10 Ms. Sustakovitch.

11 MS. SUSTAKOVITCH: Yes, sir.

12 THE COURT: Thank you, ma'am.

13 All right, call your next witness.

14 MR. YARBOROUGH: Call Regina Owings.

15 THE COURT: Ms. Owings, I remind you that you've
16 already been sworn.

17 DIRECT EXAMINATION

18 ~~BY MR. YARBOROUGH:~~

19 Q Regina, state your name for the record.

20 A Regina Gail Owings.

21 Q Ms. Owings, how old are you?

22 A I'm 51.

23 Q Okay. Did you -- did you, originally, file an
24 application for a post-conviction relief in 2019; is that
25 right?

REGINA OWINGS-DIRECT BY MR. YARBOROUGH

- 1 A Yes, sir.
- 2 Q Is that correct?
- 3 A Yes, sir.
- 4 Q You did that yourself?
- 5 A Yes. Yep. Well, I had help with a lady in
6 prison.
- 7 Q Right. Prison lawyer?
- 8 A Yeah.
- 9 Q Okay. And you're doing how many years?
- 10 A Fourteen.
- 11 Q Okay. And you -- you had a lawyer in that case?
- 12 A Yes, sir.
- 13 Q Who was that lawyer?
- 14 A Michael Morin.
- 15 Q Okay. And how did you end up getting him as
16 your lawyer?
- 17 A My brother-in-law went and paid him to be my
18 lawyer. It wasn't my husband, it was my brother-in-law.
19 My husband's brother-in-law, Jerry Jackson.
- 20 Q Okay. But who's money was it?
- 21 A It was my husband's.
- 22 Q Yeah, okay. And who recommended that lawyer?
- 23 A Who recommended that lawyer was Fletcher Smith.
- 24 Q Whose lawyer was that--
- 25 A My husband's lawyer.

REGINA OWINGS-DIRECT BY MR. YARBOROUGH

1 Q Whose lawyer was that?

2 A My husband's.

3 Q Okay.

4 A Lee Carpenter.

5 Q Right. And did you want to -- just tell The
6 Court, are you guilty of this?

7 A No, I'm not guilty of this at all. I love them
8 grand -- I love all my grandbabies. And I consider them
9 as my grandkids. I took care of them kids. I stayed at
10 home with them while their momma was high. I took them to

11 school, I picked them up from school. Matter of fact,
12 when they moved in with us and Minor1 started elementary
13 school, DSS got involved for stuff that Minor1 was doing
14 at school. And DSS workers come out to the house. And if
15 it wun't [verbatim] for me and Lee, they would have been
16 under DSS for a long time.

17 Q How many years before all that happened?

18 A How many years before--

19 Q Before y'all got charged and DSS--

20 A Well, they lived with us for two years.

21 Q Okay. So DSS came out there two years before
22 these charges came?

23 A Yeah. They came out two years before. And
24 something Minor1 was doing at school, I can't remember
25 exactly what it was. But--

REGINA OWINGS-DIRECT BY MR. YARBOROUGH

1 Q Okay. And did you tell Mr. Morin all of that?

2 A Yeah, he knew it all. I mean, I told Michael
3 everything.

4 Q Okay. Did you meet with him and talk to him a
5 lot about the case?

6 A Well, it wasn't a lot, lot. But he met with me
7 some and we talked about the case, he was good.

8 Q I mean, did you tell him some people to talk to
9 to show that you didn't do this?

10 A Yes. We -- my hus -- Lee Carpenter even had
11 about \$300 of recordings of me and Delina talking and
12 doing drugs and her talking about having sex with men.
13 She got on the computer one day, me and my husband was at
14 the shop and had sex with four different men while the
15 kids was in the basement. She called me crying about it,
16 told me to come home.

17 MR. SMITH: Objection, hearsay.

18 THE WITNESS: We had recordings.

19 THE COURT: Sustained.

20 BY MR. YARBOROUGH:

21 Q Okay. You can't say what somebody else said.
22 Just tell me, what was your feeling about pleading. And
23 what I'm trying to understand and what I want you to tell
24 Judge Morgan, what was your feelings about pleading
25 guilty --

REGINA OWINGS-DIRECT BY MR. YARBOROUGH

1 A -- but I didn't plead guilty --

2 Q -- I know, pleading under Alford. What were
3 your feelings about that? Did you want to do that?

4 A Actually, I didn't know what I wanted to do. It
5 was up to Michael. I asked Michael, what should we do?
6 And Michael said if I took it too trial, I was going to
7 get 30 years. So I was scared to death to take it to
8 trial. And he come up with this North Carolina Alford.
9 He told me it was pleading not guilty but letting the
10 Judge decide to do what she wanted to do with you.

11 Q Right. And what kind of time did you think you
12 were going to get?

13 A He told me that I was looking at five to eight
14 years? Because he visited me in this, right here, where
15 you visited me at. And he told me -- see, he even said I
16 could pick my own Judge. I picked Kilo [verbatim] or Kalo
17 [verbatim]. The Judge that let me get on house arrest and
18 ~~take care of my mom. Then --~~

19 Q Did you want to--

20 A -- the day of court --

21 Q -- did you --

22 A -- the day of court --

23 Q -- hold on, hold on. Did you want to go in
24 front of Judge Verdin because you knew that Judge Verdin--

25 A No, I did not want to go in front of her.

REGINA OWINGS-DIRECT BY MR. YARBOROUGH

1 Whatsoever.

2 Q Did you tell your lawyer that?

3 A Yes, he knew that.

4 Q Okay. And what did he say?

5 A He told me I can pick the Judge. Then at the
6 last minute, he told me that I was going in front of Judge
7 Verdin.

8 Q Okay. And the reason you didn't want to go in
9 front of Judge Verdin was because of why?

10 A Because she was -- she was the Judge of my
11 husband's four day trial.

12 Q Right. And did you feel like he let you down by
13 having you go in front of Judge Verdin?

14 A Yeah, in a way I do feel like he let me down.

15 Q In a way or did you or didn't you?

16 A Oh, I felt like he let me down going in front of
17 her.

18 Q Okay. Did you -- did you want to talk to the
19 prosecutor and tell the prosecutor you didn't do this?

20 A Yes. I mean--

21 Q Tell Judge Morgan about that. It's your day to
22 tell him what happened. Tell him.

23 A I mean --

24 Q You said you had a lot to say, let's hear it.

25 A Well, Your Honor, I mean, it was just crazy

REGINA OWINGS-DIRECT BY MR. YARBOROUGH

1 because I love my grandkids and loved them kids, really.
2 I took care of them. Yeah, I did do drugs. But I did my
3 drugs in Spartanburg. I'd go to Spartanburg to do my
4 drugs. And we lived in Traveler's Rest. I would stay
5 gone for two or three days at a time. And my husband
6 would beg me to come home. And I raised one of my
7 grandbabies until she was eight years old. With my mom.

8 Q Who all lived in that house?

9 A It was me, my husband, William, Delina and the
10 four kids.

11 Q Okay. And that's William --

12 A William--

13 Q Who is William?

14 A William is Delina's husband. We call him
15 William and my husband Lee. But his name is William Lee.
16 and William's name is William Lee the third.

17 Q Now, that's -- is that Mr. Carpenter's son?

18 A Yes.

19 Q Okay. And what kind of relationship did they
20 have?

21 A Well, they had a pretty good relationship. What
22 happened was my husband had bought a house in Charleston,
23 in Summerville. Well, they lost the house due to drugs.
24 Which my husband was giving them money every week through
25 SunTrust Bank so they could pay their bills. William

REGINA OWINGS-DIRECT BY MR. YARBOROUGH

1 comes down, said he lost his job and she cheated on him,
2 at first. He came without her and the kids. Two weeks
3 later, the kids and her was coming. So he come to his
4 daddy and told him that they lost the place.

5 MR. SMITH: Objection, hearsay.

6 THE WITNESS: They had lost--

7 THE COURT: Can't say what anybody told you.

8 THE WITNESS: I got you. Well.

9 BY MR. YARBOROUGH:

10 Q Let me ask you this, did you tell your lawyer
11 all this?

12 A Yes.

13 Q Okay.

14 A I told him the whole story.

15 Q You told him that for what reason? Why did you
16 tell him all of that?

17 A Because it was all due -- it was due to money.

18 Q And you wanted him to understand that there was
19 a greed/money issue, right?

20 A Right. Delina wanted William Carpenter's money,
21 that's all she ever wanted. Because we went and gave them
22 a new van when they moved out. We gave them a new van for
23 her, for the kids. So they would have a way to the
24 grocery store. Because I was still going down there
25 taking them to the grocery store when they moved out,

REGINA OWINGS-DIRECT BY MR. YARBOROUGH

1 okay. And then when we went down there and gave them the
2 new van, my husband told them, no more Christmas, no
3 more -- if your lights get turned off, don't call me. No
4 more birthdays, the money's gone, you're cut off.

5 And I had to cut her off my pain pills at
6 the time because I was getting pain pills from a doctor.
7 And I told her no more because my husband told me I
8 couldn't give her no more of the pain pills because he was
9 going to take my medicine to work and give me my daily
10 dose and that's all I was going to get. Because he wasn't
11 furnishing her drug habit any more.

12 Q Okay --

13 A -- she wanted to --

14 Q -- y'all had all those fights drugs and money
15 and how did all this stuff happen with these kids?

16 A I think Delina coached the kids. Because Delina
17 watched videos with me and my husband doing what we did.

18 ~~So she knew about it.~~

19 Q Are you proud of what you did?

20 A No, I'm not proud of it. I mean, I'm not proud
21 it but I'm not ashamed. That's what my husband got into.
22 As far as putting feces on their back, that wouldn't be
23 anything my husband got into. He would want it on him.

24 Q Okay. I get -- I get the picture. But what
25 you're saying is that there was never any feces put on the

REGINA OWINGS-DIRECT BY MR. YARBOROUGH

1 child's back?

2 A Never. He wouldn't want--

3 Q Did you tell your lawyer that?

4 A Uh?

5 Q Did you tell your lawyer that?

6 A Yes. But the feces -- my husband wouldn't have
7 even put it on their back. He wouldn't --

8 Q Well, let's --

9 A -- back ain't got nothing -- I mean, that don't
10 even make sense.

11 Q Go ahead.

12 A He likes it on him, mainly. And the one --

13 Q I figured y'all did that picture.

14 A The one time that I did it in the bathtub, was
15 the only time that I was ever covered in feces. Out of
16 all the videos and all the pictures on there, I tried it
17 one time.

18 Q Let me ask you this, where there ever any
19 pictures or anything like that with any children involved?

20 A Lord no. No, not at all.

21 Q Would you have ever, ever been involved in
22 anything like that?

23 A No.

24 Q Did you tell Mr. Morin that?

25 A Yes. And I also said that my husband told me

REGINA OWINGS-DIRECT BY MR. YARBOROUGH

1 two things when he introduced me to this. He told me
2 there's two things that he would never do--

3 MR. SMITH: Objection, hearsay.

4 THE COURT: Sustained.

5 BY MR. SMITH:

6 Q Okay. You can't --

7 A Okay.

8 Q Okay. But you trusted your husband because you
9 knew what he thought, right?

10 A Yeah.

11 Q Okay. And did you think he would ever touch a
12 child?

13 A No.

14 Q Okay. So you didn't believe that he did it
15 either?

16 A No, I didn't.

17 Q Okay. And so did -- I'm trying to get to the

18 ~~bottom of -- did -- did you and Mr. Morin ever try to sit~~
19 down with the prosecutor or the sheriff's office or
20 anybody?

21 A As far as I know, no. I mean, he never
22 brought -- brought it up. He wanted to know if I wanted
23 to take a plea. And I told him no because I didn't do it.

24 Q Okay. Now, let's -- let's talk about, did
25 you -- did you ask him to interview the people that -- the

REGINA OWINGS-DIRECT BY MR. YARBOROUGH

1 adults that lived in that house?

2 A Yes.

3 Q Okay. And that's -- you just gave their names
4 but --

5 A Delina Moore and William Carpenter the third.

6 Q Okay, were they ever interviewed?

7 A No. As far as I know they hadn't been.

8 Q Okay. And did you want him to interview the
9 children?

10 A Yes.

11 Q Okay. And do you know if they were ever
12 interviewed by anybody on your side?

13 A As far as I know, no.

14 Q Okay. And were you asking him to do that while
15 you were preparing for trial?

16 A Yes.

17 Q Okay. Because you thought that would help you,
18 is that why?

19 A Yes.

20 Q Well tell The Court why you thought that would
21 help you.

22 A Well, I figure the kids seen the doctor and they
23 said there was no sign of molestation on either child.
24 Her hymen hadn't been busted.

25 Q So you looked at the evidence and you knew that

REGINA OWINGS-DIRECT BY MR. YARBOROUGH

1 her hymen had not been busted, correct?

2 A No, I didn't before I went to trial. My husband
3 told me this.

4 Q Well, you can't talk about what your husband
5 told you.

6 A Okay.

7 Q So let's just back up then. So you never looked
8 at the medical reports before you went to trial?

9 A No.

10 Q You never did. Why not?

11 A Because it wasn't shown to me. I was never
12 told.

13 Q So he didn't show you the reports, he didn't
14 show you the videos of the children?

15 A No, I saw the videos. We saw the videos of the
16 children. But--

17 Q And what did you tell -- what did you tell him
18 after you saw the videos of the children?

19 A I told him there's no way I done this. And the
20 kids wun't --

21 Q And what did -- what -- and you can say what he
22 told you, what did he tell you?

23 A He didn't believe we done it either.

24 Q Okay. And in your opinion, did the children
25 look credible on the tape?

REGINA OWINGS-DIRECT BY MR. YARBOROUGH

1 A No.

2 Q Okay. Did you tell him you wanted to go to
3 trial?

4 A Yeah, I told him I did at first. But when he
5 told me that I could get 30 years like my husband, because
6 there was enough evidence against me, I was scared.

7 Q Okay. And did you want him to do some more
8 stuff to try to keep you from being scared?

9 A Yeah, I would appreciate it if he had told me
10 more and said, look, you get a good chance because the
11 doctor did this, this and I mean, he could have told me.

12 Q Well, let me ask you this. Were you aware you
13 weren't going to get tried with your husband? Do you know
14 what a severance motion is?

15 A No.

16 Q Did you think you were going to get tried with
17 your husband until your husband got tried?

18 A No, my husband's lawyer or something said that
19 we weren't going to be tried together.

20 MR. SMITH: Objection, hearsay.

21 THE COURT: Sustained.

22 BY MR. YARBOROUGH:

23 Q Okay. You can't say what --

24 A -- I got it --

25 Q -- somebody else said.

REGINA OWINGS-DIRECT BY MR. YARBOROUGH

1 A That's what I was told --

2 Q How did -- how did you -- did you agree with
3 that decision?

4 A No. I, actually, wanted to be tried with him
5 because they saying that we done this together, they
6 saying that me and him was together when we done it.

7 Q Right. But you're--

8 A Why couldn't be together --

9 Q -- well --

10 A -- when we got tried?

11 Q Let me ask you this, what they're saying that
12 you did is there were two incidences, that, I think, the
13 prosecutor just outlined; where they said that you held
14 one girl down and then one boy, right?

15 A Yeah.

16 Q Okay. Did you see any evidence about that?

17 A No. No, sir.

18 Q Okay. So then why did you go in and plead under

19 North Carolina vs. Alford?

20 A I don't know.

21 Q Did you talk --

22 A Michael was telling me--

23 Q -- to your lawyer about it?

24 A Michael was telling me that I was pleading not
25 guilty, though.

REGINA OWINGS-DIRECT BY MR. YARBOROUGH

1 Q Okay. Well, let's agree --

2 (WHEREUPON, Mr. Yarborough and the witness were
3 talking over one another.)

4 BY MR. YARBOROUGH:

5 Q -- that you pled not guilty, let's agree with
6 that, why did you do it?

7 A Because Michael told me all I wun't going to get
8 but five to eight years. That's what he recommended.

9 Q So what you're really complaining about is -- or
10 one of the things you're complaining about is the
11 sentence. So when you, initially, filed your PCR, back in
12 2019, that's what it outlines, right?

13 A Yes. I wun't going to get but five to eight
14 years. He said if I did this, the Judge would give me
15 five to eight years.

16 Q Okay. And so that's -- I'm going back to the
17 initial --

18 Your Honor, the initial PCR that was filed,
19 does -- if you go and look at Sections 11(a) through (d),
20 they almost all consistently deal with the amount of the
21 sentence, not with the other parts that I -- that I filed
22 in my -- in my two applications that I filed after that.

23 Now, after you met with me, did we start
24 talking about what the evidence was against you?

25 A Yes.

REGINA OWINGS-DIRECT BY MR. YARBOROUGH

1 Q Okay. And did I ask you these questions about
2 these forensic interviews?

3 A Yes.

4 Q Okay. And did I ask you if your lawyer had
5 interviewed these witnesses for you?

6 A Yes.

7 Q And what did you tell me about all that?

8 A I told you no.

9 Q Okay. And, at some point, you may have told me
10 you didn't see the forensic interview, but now you think
11 maybe you saw it at the jail; is that right?

12 A Yeah, I didn't--

13 Q You just didn't know what a forensic interview
14 was?

15 A Yes, I remember watching the interview of the
16 kids. But I really don't even remember what the kids was
17 saying on there. But I knew it really wasn't any evidence

18 ~~against me. Because me and --- Michael said, you know,~~

19 there really ain't saying anything against you.

20 Q Okay.

21 A Except for -- wait a minute. Except that I give
22 one of them a ice cream cone to do this.

23 MR. SMITH: Objection.

24 MR. YARBOROUGH: Or I took one --

25 MR. SMITH: -- not in evidence.

REGINA OWINGS-DIRECT BY MR. YARBOROUGH

1 THE COURT: Sustained.

2 THE WITNESS: All right, I give one of them more
3 m&ms than I give this one because this happened. To
4 keep their mouth closed.

5 BY MR. YARBOROUGH:

6 Q All right, let me ask you this. Do you feel
7 like you're being mistreated in this case because of your
8 lawyer?

9 A Yes.

10 Q Okay. Tell Judge Morgan why that is. That's
11 what I want you to do.

12 A Because I just don't feel like he put initiative
13 in to help me. And my husband hired him. And I told --
14 and I told Lee from the getgo, I said, Michael may be a
15 good lawyer but he's not a bulldog. And I need somebody
16 that's going to fight for me.

17 Q Okay. And were you afraid that he could not
18 fight for you in the courtroom?

19 A Yes.

20 Q Okay. So is that why you pled under North
21 Carolina vs. Alford?

22 A Yes.

23 Q Okay. And so there's all these other things you
24 wanted done that weren't done, correct?

25 A Yes.

REGINA OWINGS-DIRECT BY MR. YARBOROUGH

1 Q Okay. And that was interviewing witnesses and
2 maybe hiring some experts, right?

3 A Yes.

4 Q Tell us about that.

5 A See in my husband's trial, he had a sex test, he
6 took three lie detector tests, known of that was in court.
7 His defense didn't use any of that. They didn't even
8 cross-examine the kids. I mean, I don't. . .

9 Q Is that why you wanted to be tried with your
10 husband?

11 A I wanted to be tried with my husband because he
12 had all the evidence. For him. I mean, that was willing
13 to be there for him. But didn't get put in there for him.

14 Q You feel like that they didn't share the
15 evidence with you?

16 A Yeah, they didn't.

17 Q And you felt like from the very beginning?

18 ~~A Yes. I kept -- I really felt like stuff was~~
19 being hid from me from the very beginning.

20 Can I get some water, please? My mouth is
21 dry. I have false teeth and my mouth is dry. Thank you.

22 Q Would you have liked your lawyer to hire a
23 expert on drug addiction and something in that regard that
24 would have helped you?

25 A Yeah, I mean, but I know I have a drug

REGINA OWINGS-DIRECT BY MR. YARBOROUGH

1 addiction. I had a drug addiction. I smoked crack since
2 I was 19 years old. I had three kids. I had -- my first
3 one got took from me because I smoked crack with him for
4 the very first time ever when I was eight and a half
5 months pregnant and went in labor. And they took him from
6 me. So I was the first crack mother in the State of South
7 Carolina. But I fought and got him back. And they give
8 me custody back of him. I had two other children, and yes
9 I smoked crack with them, but I put them up for adoption
10 because I didn't want them in a drug home. And I
11 couldn't--

12 Q So you've struggled with this all your life?

13 A Yes, I have.

14 Q Okay. But you would never hurt these kids?

15 A No, just like I was fixing to tell you, I put
16 two kids up for adoption because I didn't want them in a
17 home running here and there, everywhere in a drug place
18 here, drug place there. I wouldn't do that. And that's
19 why I put two kids, two of my boys, up for adoption.
20 Because I didn't want to put them through that. I would
21 never do that. And as I got older, when my first
22 grandbaby come along and I come home from prison --
23 because I was in prison in Alabama for counterfeit money.
24 And when I come home, she was there. She was -- her momma
25 wun't but 14 years old when she had her. So me and my mom

REGINA OWINGS-DIRECT BY MR. YARBOROUGH

1 volunteered to take care of her until her momma got older
2 and quit being wild and would settle down with her. Thank
3 you God she did. And then me and my mom raised Sonny.
4 But I would never even do drugs around my grandkids or
5 nothing. They -- the only way they knew I got high, is if
6 my mom or the parents said something to them about me
7 getting high.

8 Q And you would have liked -- you would have liked
9 for your lawyer to have done more?

10 A Yes, I would.

11 Q And that affected how you ended up entering a
12 plea under North Carolina vs. Alford?

13 A I think it -- how much time I got. I wish I had
14 known more about the North Carolina Alford myself.
15 Because Michael says I called him and -- when my husband
16 got sentenced. I don't remember calling him. I remember
17 him calling me -- well, I did call him and tell him Lee
18 ~~got sentenced to 30 years. I don't remember ever saying,~~
19 let's do something, let's make a -- get a plea or
20 whatever. Michael come to me at my momma's. And he
21 called and I had him come to my momma's. And, at this
22 time, I had already cut my ankle monitor off, at this
23 time.

24 Q Right.

25 A And he came to momma's and he told me, he said,

REGINA OWINGS-DIRECT BY MR. YARBOROUGH

1 the best thing I can do is -- he figured it out. That the
2 best thing I could do is do a North Carolina Alford
3 because that was pleading not guilty but let the Judge
4 decide to do what she wanted to do with me. And there was
5 a 15 year cap. But he thought that if I did that, that
6 she wouldn't give me but five to eight years. And I said,
7 okay, I can deal with that with the time I've already
8 done. Because I stayed so long in the County jail.

9 Q Right. Okay. And did you -- do you know
10 what -- what mitigation of damages is; do you know what
11 that means?

12 A No.

13 Q Okay. Do you know what it means to argue that
14 somebody had a bad drug problem and that's why they did
15 something?

16 A You just told me, yes.

17 Q Okay. And do you feel like that should have
18 been developed more for you?

19 A Yes.

20 Q And would you have liked for an expert to have
21 been called in that regard?

22 A Yes.

23 Q Okay. There's bunch of places that you wish
24 somebody else would have done some more investigation,
25 correct?

REGINA OWINGS-DIRECT BY MR. YARBOROUGH

1 A Yes, I do.

2 Q Answer any questions -- well, you know what,
3 it's your day in court, is there something else you want
4 to tell The Judge? I'm not -- is there something else you
5 feel like that you would like to tell Judge Morgan while
6 you're here and have a chance to address him?

7 A Your Honor, all in all, I would have never hurt
8 them kids. I love them kids. And the two girls stayed in
9 my bedroom. Which was a couch and the TV, was a sitting
10 area along with my bedroom. The two girls stayed in my

11 bedroom all the time. They even wished I could be their
12 momma. And I told them I couldn't be their momma, I'd be
13 their grandmother. Because the other child that they had,
14 the seven year old, Kaylip, he was still in diapers at
15 seven years old. He couldn't even write his name, his
16 ABC's, he didn't know all that. So when I came in, I did
17 a lot things with them kids. I took them swimming, I took
18 ~~them skating, with my grandkids. That I told you that I~~

19 raised, Sonny. I would have never hurt them babies. I
20 would have never even thought about hurting them babies.
21 That don't come to my mind.

22 If I wanted to have sex, I prostituted a
23 lot. I wouldn't even have sex with somebody younger than
24 me. That's paying me. I mean, that sounds whatever. I
25 know how y'all probably feel about that toward me but I

REGINA OWINGS-CROSS BY MR. SMITH

1 had to do that growing up. To get my drugs and stuff.
2 But I just don't have sex with younger kids. That's just
3 not a turn on for me. Even -- I don't how care how high I
4 am, I would never hurt a child. I'd rather take that
5 child somewhere and give that child to somebody than hurt
6 that baby. I mean, I talk to my grandbabies now on the
7 telephone and they love me. They think I'm coming to live
8 with them when I get out. But I told them I can't do
9 that.

10 MR. SMITH: Objection, hearsay.

11 THE COURT: Sustained.

12 THE WITNESS: Okay, I understand.

13 THE COURT: Okay.

14 MR. YARBOROUGH: Thank you, answer any questions
15 he's got.

16 THE WITNESS: All right.

17 THE COURT: Cross.

18 CROSS-EXAMINATION

19 BY MR. SMITH:

20 Q Ms. Owings, when you pled guilty in front of
21 Judge Verdin, didn't you agree with her that Mr. Morin had
22 told you that you could get anywhere from zero to 20 years
23 in prison?

24 A No, I don't remember that -- they said I had a
25 15 year cap on my sentence.

REGINA OWINGS-CROSS BY MR. SMITH

1 Q Okay. Okay. And you remember agreeing that
2 they told you you had a 15 year cap?

3 A Yeah, I remember that.

4 Q Okay. And you agreed with Judge Verdin that you
5 wanted to waive your rights to a trial?

6 A Yes because Michael was telling me that's the
7 best thing to do.

8 Q Okay. Didn't you tell Judge Verdin you thought
9 you'd probably be found guilty if you went to trial?

10 A That's what Michael had told me, yes.

11 Q Okay. And you told Judge Verdin you were happy
12 with what Mr. Morin had done for you?

13 A At the time I was. But when I found out about
14 the evidence was -- that was presented in my husband's
15 trial, I wun't real happy about it.

16 Q Okay. So you mentioned some things earlier. So
17 when you refer to your husband, you're talking about your
18 co-defendant, Mr. Carpenter?

19 A Yeah, Lee Carpenter.

20 Q Okay. You talked about drugs, what drugs have
21 you done before?

22 A I done -- I smoked crack cocaine, that was my
23 drug of choice. And marijuana, pain pills, which the
24 doctor gave me my pain pills and Xanaxes [verbatim].

25 Q Okay.

REGINA OWINGS-CROSS BY MR. SMITH

1 A And the doctor gave me those, so. I did those
2 on doctor's levels and the crack cocaine was the drug of
3 choice that. . .

4 Q Okay.

5 A And marijuana. I -- me and him both smoked
6 marijuana. He only smoked the crack cocaine when we was
7 playing, is what we call it, playing.

8 Q Right.

9 A Okay. He really never -- he didn't even like
10 the crack cocaine. Half of that time he wouldn't buy it
11 for me. That's why I go and leave home for two or three
12 days at a time.

13 Q Okay.

14 A Me and Delina smoked crack together.

15 Q Okay. So y'all just smoke or smoke crack or?

16 A We smoke crack -- who me and my husband or me
17 and Delina?

18 Q Your husband.

19 A Me and my husband. No, we never just smoked
20 crack. If we smoked -- if he smoked anything we had to be
21 playing. Rather that than, he didn't touch it.

22 Q Okay.

23 A He was a businessman. He had his own business
24 for 23 years and worked for Midas for 23 years. He
25 wouldn't -- no, he's not the type of guy that goes around

REGINA OWINGS-CROSS BY MR. SMITH

1 smoking crack.

2 Q Okay. Would there be sometimes when you would
3 want drugs and he wouldn't let you have any?

4 A Oh, yeah.

5 Q Okay.

6 A Oh, yeah. I cussed him at the shop one day and
7 told him that he was a poop eating SOB and everything else
8 because he wouldn't give me no money. And I embarrassed
9 him and he called my mom to come get me. So, yeah.

10 Q I guess if you -- if you got that much of a drug
11 problem, there's a lot of stuff you'd do for drugs?

12 A Yeah. There's a lot of stuff I have done for
13 drugs.

14 Q Well, you mentioned too you had--

15 A But I'd never mess with no child, never.

16 Q Where were you when you got the counterfeiting
17 charge?

18 A Alabama.

19 Q Okay.

20 A And I had my son then.

21 Q Okay.

22 A And I was driving a truck.

23 Q Okay.

24 A A 18 wheeler.

25 Q Okay. Why did you cut off your ankle monitor?

REGINA OWINGS-CROSS BY MR. SMITH

1 Because I heard you mention that.

2 A Well, because my husband got 30 years and I
3 messed up. And I snorted a line of cocaine and my drug
4 test come back faint. It was faint. So they was going to
5 arrest me again and I cut my ankle monitor off.

6 Q Was he in jail then?

7 A Uh?

8 Q Was he in jail then?

9 A Yeah, he was in jail. And I put the ankle
10 monitor in his mailbox and I went to my momma's. And I
11 stayed at my momma's house and when the bounty hunters
12 come and got me, they said they have never seen nothing
13 like it because my momma went to the door and said, She's
14 here, she's been waiting on y'all to get here. So I was
15 there waiting on them to get there. But I was going to
16 see my momma. Because my momma passed two years ago. And
17 she was real sick when all this was going on.

18 Q Were you scared when you heard you could get a
19 lot of jail time?

20 A Yeah.

21 Q Okay. Did you --

22 A Who wouldn't be scared? I mean. . .

23 Q When you took that 15 year cap deal, were you
24 hoping that, hey, I'm getting this because you were hoping
25 to avoid something like 20 years?

REGINA OWINGS-CROSS BY MR. SMITH

1 A No. I hadn't even been told what I would get if
2 I went to court.

3 Q Okay.

4 A I was told that I would get the same sentence as
5 my husband of 30 years if I took it to trial. Twenty
6 years was never mentioned.

7 Q Okay.

8 A To me. The 15 year cap, Michael told me to take
9 it because she put a 15 year cap on it and he figured that
10 I would get five to eight years. And I said, Okay, with

11 the jail credit that I had, if she gave me five, I would
12 be done this with.

13 Q Okay. You wanted to kind of work it out so you
14 would get the smallest amount possible?

15 A I mean, because I didn't do anything.

16 Q Right.

17 A I didn't want any time.

18 Q Right.

19 A Because when I come out of my last bit, I said
20 I'd never go back to prison.

21 Q Right.

22 A And I meant that.

23 Q Okay. So you thought that, maybe, if you did
24 this, at least you'd get less than whatever?

25 A Yeah.

MICHAEL MORIN-DIRECT BY MR. SMITH

1 Q Okay. All right.

2 A That I wouldn't get the 30 that my husband got.

3 Q Right.

4 Okay, thank you. No more questions.

5 THE COURT: Any redirect?

6 MR. YARBOROUGH: I don't think so, Your Honor.

7 THE COURT: All right, you can step down,

8 Ms. Owings.

9 THE WITNESS: Okay.

10 THE COURT: Okay. All right, anything else from

11 The Applicant?

12 MR. YARBOROUGH: No, sir.

13 THE COURT: All right, anything from The State?

14 MR. SMITH: Your Honor, I have, maybe, two
15 questions for Mr. Morin.

16 THE COURT: All right, Mr. Morin, remember you
17 are still under oath.

18 MR. MORIN: Yes, sir.

19 DIRECT EXAMINATION

20 BY MR. SMITH:

21 Q Mr. Morin, what did you tell Ms. Owings that she
22 would be exposed to in terms of prison sentence if she
23 were to go to trial?

24 A I -- there was a time when I was -- she was
25 charged with a second. I was concerned that they might --

MICHAEL MORIN-DIRECT BY MR. SMITH

1 they might indict her as a first. And I can't say right
2 off if I said 20 or 30 but it was one of those.

3 Q At that time, was she -- was the charge from,
4 stemming from Minor1 , still out there?

5 A Yes.

6 Q Okay. When you told Ms. Owings about the 15
7 year cap, did you promise her any particular sentence?

8 A No. As I said earlier, I was excepting to get
9 below what she got.

10 Q Right.

11 A She says five to eight. I remember eight to 12.
12 But, you know, I told her that's what we were going to try
13 to do. But, obviously, I also told her that the Judge
14 could go all the up to 15.

15 Q Okay. But you didn't promise her anything,
16 specific?

17 A No, I told her what we were going to try to get.

18 ~~And I think she said something like we were going to ask.~~

19 But I don't want to -- but, yeah.

20 MR. SMITH: Okay. All right, thank you. No
21 more questions.

22 THE COURT: Any cross?

23 MR. YARBOROUGH: I don't think so.

24 THE COURT: All right, you may step down.

25 Anything else from The State?

1 MR. SMITH: That's The State's case, Your Honor.

2 THE COURT: All right. I've read the entire
3 file and I've heard the testimony. If y'all want to
4 give any kind of closing, summarize, I'll be glad to
5 let you do that if you want to.

6 MR. YARBOROUGH: Your Honor, I think pretty much
7 heard my. . .

8 THE COURT: Mr. Smith, anything?

9 MR. SMITH: I think, Your Honor, the evidence
10 you heard today is sufficient. Unless there's
11 something specific we should address?

12 THE COURT: Like I said I read the entire file
13 and I've heard the evidence. I'll take it under
14 advisement. But thank you both for your presentation
15 here. So we'll--

16 MR. SMITH: Well, Your Honor, I guess, I would
17 just point one thing out, if I may? That the case of
18 North Carolina v. Alford, in that case, the U.S.
19 Supreme Court said that even if the defendant would
20 not have plead guilty, except for the opportunity to
21 limit the possible penalty, does not necessarily
22 demonstrate that the plea of guilty was not the
23 product of a free and rational choice. Especially,
24 where the defendant was represented by competent
25 counsel whose advice was that the plea would be to

1 the defendant's advantage.

2 And that's the only thing I would supply, Your
3 Honor.

4 THE COURT: Any response to that?

5 MR. YARBOROUGH: Your Honor, I think, clearly,
6 she stated on the record that she would have never
7 touched these kids. And that's what she was pleading
8 to. And, I think -- pleading under Alford too. And
9 I think there are a number of reasons that The
10 Applicant stated why she did that. So I urge The

11 Court to look at the record in its entirety.

12 THE COURT: Well, and as I told you, I have read
13 it and heard the testimony. I'll reread it. I'll
14 reread everything and look at my notes before making
15 a decision. But I will take it under advisement and
16 let you know.

17 MR. SMITH: Thank you.

18 ~~MR. YARBOROUGH: Thank you, Your Honor.~~

19 THE COURT: Thank you both.

20 (WHEREUPON, the proceedings were concluded.)
21
22
23
24
25

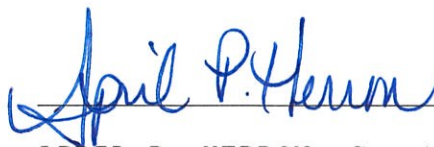
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for
the Thirteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
Common Pleas for Greenville County, South Carolina, on the
Ninth day of November, 2021.

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

August 26, 2022

A handwritten signature in blue ink, reading "April P. Herron", is written over a horizontal line.

APRIL P. HERRON, Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
	)	
Regina Gail Owings, #195454,	)	Case No. 2019-CP-23-02686
	)	
Applicant,	)	ENTERED COURT FILE
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

This matter comes before this Court by way of an application for post-conviction relief filed by Regina Gail Owings (“Applicant”), through counsel, on May 10, 2019. The State’s (“Respondent”) return to the application included a motion for a more definite statement and a motion for the summary dismissal of some of the claims raised in the application. An evidentiary hearing in this matter was held before the undersigned at the Greenville County Courthouse on November 9, 2021. Applicant was present and was represented by William G. Yarborough, III. Taylor Zane Smith of the South Carolina Attorney General’s Office represented Respondent. Following a thorough review of the record in its entirety and the testimony and evidence presented at the evidentiary hearing, this Court finds that Applicant has failed to prove that she is entitled to post-conviction relief, and denies the application with prejudice.

PROCEDURAL HISTORY

Applicant is presently imprisoned in the South Carolina Department of Corrections. On January 29, 2019, Applicant appeared before the Honorable Letitia H. Verdin (“the plea court”), waived presentment, and pleaded guilty to second-degree criminal sexual conduct with a minor (2019-GS-23-15) pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). Michael David Morin (“plea counsel”) represented Applicant at the guilty plea hearing. Christine Kednocker

Sustakovitch (“the solicitor”) of the Thirteenth Circuit Solicitor’s Office prosecuted Applicant. At the guilty plea hearing, the solicitor provided the following recitations of facts that she would seek to prove if Applicant proceeded to trial:

[B]etween Thanksgiving of 2014 and 2015, [Applicant] was living with [co-defendant] William Lee Carpenter, Jr. And the grandchildren who are the subject of the abuse in this case were living in the home, as well. The victim in this case . . . did disclose in the summer of 2016 that while she was in [Applicant’s] and the co-defendant’s bedroom, one time on a couch, that the co-defendant did digitally penetrate her and one time put his penis in her. The child did state that [Applicant] held her shoulders during that incident—those instances.

Plea Tran. 10-11. After the solicitor provided the recitation, Applicant agreed that the State would likely be able to prove her guilt if she proceeded to trial. Plea Tran. 11. In accordance with the solicitor’s recommended sentencing cap of imprisonment for fifteen years, the plea court sentenced Applicant to imprisonment for fourteen years, with credit for time served.

Applicant did not appeal her conviction or sentence.

CURRENT PROCEEDING

This Court interprets the claims raised in the application for post-conviction relief, filed on July 2, 2020, as follows:

1. Plea counsel was constitutionally ineffective for failing to represent Applicant adequately;
2. Applicant was the victim of wrongful prosecution because the prosecution was based on “supposition and mistruths;
3. Applicant’s sentence was excessive and unfair; and
4. The denial of due process to Applicant by plea counsel and the plea court served as a violation of state’s rights.

On July 2, 2020, Applicant filed an amended application, supplementing her application with additional claims, which this Court interprets as follows:

1. Applicant’s guilty plea was not knowingly, intelligently, and voluntarily entered because plea counsel was constitutionally ineffective for:
 - a. Failing to advise Applicant of the effects and consequences of entering an Alford plea, which hindered Applicant’s ability to

- knowingly, voluntarily, and intelligently accept the State's offer;
- b. Failing to notify Applicant of all plea offers, and a proffer agreement, extended by the State;
- c. Failing to conduct an adequate investigation by not interviewing two material witnesses—Jeremy Owens and Amber Gordon—who lived with Applicant, Applicant's codefendant, and the victims;
- d. Failing to conduct an adequate investigation into mitigating circumstances, such as Applicant's long history of abuse, Applicant's mental disorders, and Applicant's engaging in prostitution, and failing to present them to the plea court, which caused Applicant to plead guilty rather than proceeding to trial;
- e. Failing to review discovery with Applicant adequately;
- f. Failing to explain the nature of the charges and the implications of any potential sentence;
- g. Failing to explain adequately to Applicant the terms, advantages, and disadvantages of the plea agreement; and
- h. Failing to explain to Applicant the implications and consequences of pleading guilty;
- 2. Applicant did not knowingly and voluntarily waive her right to direct appellate review of her conviction and sentence;
- 3. Applicant's sentence was unfair and excessive based upon the circumstances; and
- 4. Applicant's sentence was unfair and excessive because she was prosecuted based on suppositions and mistruths.

On August 24, 2020, Applicant filed a second amended application, supplementing her application with multiple claims, which this Court interprets as follows:

- 1. Plea counsel was constitutionally ineffective for:
 - a. Failing to explain to Applicant the nature of the charges and the extent of the State's evidence of Applicant's guilt;
 - b. Failing to review discovery with Applicant adequately;
 - c. Failing to advise Applicant of potential trial strategies, the potential for an acquittal should Applicant proceed to trial, and Applicant's decision to plead guilty;
 - d. Failing to explain the implications of the potential sentences Applicant could receive, the nature and implications of pleading guilty, and to advise Applicant sufficiently of the rights she would be waiving by pleading guilty;
 - e. Failing to inform or explain adequately to Applicant the proffer and plea offers previously extended to Applicant and the terms thereof, including any requirement of cooperation, and to advise Applicant accordingly;
 - f. Failing to conduct an adequate investigation by not interviewing two material witnesses—Jeremy Owens and Amber Gordon—who lived

- with Applicant, Applicant's codefendant, and the victims; and
- g. Failing to conduct an adequate investigation into mitigating circumstances, such as Applicant's long history of abuse, Applicant's mental disorders, and Applicant's engaging in prostitution, and failing to present them to the plea court; and
- 2. Applicant did not knowingly and voluntarily waive her right to direct appellate review of her conviction and sentence.

At the start of the evidentiary hearing before this Court, Applicant affirmed that she would move forward at the hearing only upon the claims laid out in her second amended application. During the course of the hearing, Applicant asked questions that this Court interprets as questions meant to support the following claims: (1) that plea counsel was constitutionally ineffective for having a conflict of interest between Applicant and Applicant's co-defendant and (2) that plea counsel was constitutionally ineffective for seeking to have Applicant's trial severed from her co-defendant's trial. This Court finds that Applicant has abandoned and waived all claims but those presented in the second amended application and the two additional claims presented during the course of the hearing, and will address only these claims in this order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Before this Court are: the records of the Greenville County Clerk of Court for Applicant's conviction and sentence; Applicant's records from the Department of Corrections; the transcript from Applicant's guilty plea hearing; and all filings in this matter. Set forth below are the relevant findings of facts and conclusions of law with regards to the claims that Applicant advanced at the evidentiary hearing, as required by S.C. Code Ann. §17-27-80 (1985).

Applicant's claim that plea counsel was constitutionally ineffective for failing to explain to Applicant the nature of the charges and the extent of the State's evidence of Applicant's guilt.

Applicant raises a claim that plea counsel was constitutionally ineffective for failing to explain to Applicant the nature of the charges and the extent of the State's evidence of Applicant's

guilt. Applicant called plea counsel as a witness at the hearing before this Court. Plea counsel testified that he met with Applicant on at least ten occasions and that he spoke with her by phone outside of those meetings. He testified that he told her about the nature of the charged offenses, and that Applicant gave him no reason to believe that she did not understand the substance of those conversations. He testified that he went over with Applicant the things turned over to him in discovery, and made arrangements with the Greenville County Sheriff's Office for him to be able to use his laptop and headphones at the county jail to allow Applicant to watch the video recordings of the forensic interviews of the minor victims. He testified that, at that point, he had already gone over the documentary discovery with Applicant. He testified that he could not remember if he had actually given the police reports and forensic interview reports to Applicant, although he testified that he always tries to do that for clients, but he remembered going over the reports with Applicant. He testified that he went over everything in his file with Applicant and that there was nothing that he received in the discovery that he did not show to Applicant or discuss with her. He testified that Applicant gave him no reason to think that she did not understand the things in the discovery because she discussed them with him.

Plea counsel testified that, after he had reviewed the forensic interview reports with Applicant, Applicant told him that the minor victims' allegations were false, that the minor victims' parents would have known about the alleged instances of abuse if they had actually happened, and that Applicant herself would have had some recollection of the instances of abuse. He testified that he thinks that Applicant attended the trial of William Lee Carpenter ("co-defendant"), Applicant's husband and co-defendant, because Applicant called him, frantically, at

the conclusion of Carpenter's trial and tasked plea counsel with negotiating a plea deal for her.¹ He testified that, based upon his conversations with Applicant, he determined that he likely would not be able to assert the defense of voluntary intoxication if Applicant proceeded to trial because such would not have been a valid defense to the crimes, even though Applicant told him that she did not remember what happened during the alleged instances of abuse due to her drug use. He testified about the trial strategy that he would have employed had Applicant proceeded to trial and testified that he discussed it with Applicant. He testified that he advised Applicant of the possible sentences that she could receive if she were found guilty. He testified that he advised Applicant of her constitutional trial rights and the fact that she would be waiving them if she pleaded guilty. He testified that he believed that Applicant understood everything that he told her. Plea counsel testified later during the hearing that Applicant had been charged with second-degree criminal sexual conduct with a minor, and that he was worried that the State might yet indict her for first-degree criminal sexual conduct with a minor, and that he told her that she could be imprisoned for twenty or thirty years if she went to trial and was convicted of that crime, too.

Applicant testified at the hearing before this Court that plea counsel told her that entering an Alford plea was like pleading not guilty. She testified that she told plea counsel that her co-defendant had a good relationship with his son, that her co-defendant was paying for his son's home in Charleston, and that the victims' mother wanted her co-defendant's money. She testified that she asked plea counsel to interview the adults and children who lived in the home at the time of the alleged incidents of abuse. She testified that plea counsel did not show some medical reports to her, but she admitted that plea counsel showed her the video recordings of the forensic

¹ The South Carolina Court of Appeals affirmed the co-defendant's convictions and sentences. State v. Carpenter, Op. No. 2021-UP-182 (S.C. Sup. Ct. filed May 19, 2021) (per curiam). The plea court presided over the co-defendant's trial.

interviews of the children. She testified that she told plea counsel that she was innocent and that she did not remember the events that the kids were describing. She testified that she wanted a trial at first but became scared when plea counsel told her that, if she went to trial, she could get thirty years in prison like her co-defendant did. She testified that plea counsel did not tell her about all of the things that were favorable to her. She testified that she does not know why she pleaded guilty, and that plea counsel told her that she was pleading not guilty. She testified that she pleaded guilty only because plea counsel told her that she would receive only five to eight years in prison and because she really did not understand the evidence against her. She testified that she pleaded guilty because she knew that plea counsel would not fight for her. She testified that she wishes that she had known more about Alford pleas. She testified that she did not remember calling plea counsel and saying that she wanted to plead guilty. She testified that plea counsel visited her when she was at her mother's home, and that he told her that the best thing that she could do would be to enter an Alford plea, and that he believed that she would get only five years in prison despite the fifteen-year cap.

On cross-examination, Applicant affirmed that the plea court had informed her of the fifteen-year cap. She affirmed that she had agreed with the plea court that she wanted to waive her right to a trial, and testified that she made that decision because plea counsel told her that that was the best thing for Applicant to do. She testified that she agreed with the plea court that she would likely be found guilty at trial because that is what plea counsel told her to say. She agreed that she had told the plea court that she was happy with plea counsel's representation, and testified that she had been happy with it at that time. She testified that plea counsel told her that she would get the same sentence as her co-defendant if she went to trial.

All defendants have a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). A post-conviction relief applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that his lawyer was constitutionally ineffective, he must prove that the conduct of her lawyer “so undermined the proper functioning of the adversarial process that [that conduct] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. at 686. In evaluating allegations of ineffective assistance of counsel, the post-conviction relief court applies the two-pronged test outlined in Strickland. First, the applicant must prove that the performance of his lawyer was deficient. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (quoting Strickland). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). In order for a post-conviction relief applicant to successfully prove that his defense attorney’s performance was deficient, the applicant must prove “that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed by the Sixth Amendment.” Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quotation omitted). “The proper measure of counsel’s performance remains whether he has provided representation within the range of competence required of attorneys in criminal cases.” Id. (citations omitted). The “preeminent authority for all” courts when they are considering an applicant’s claim of constitutional ineffectiveness requires that the courts be highly deferential to a defense lawyer’s performance because:

[I]t is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the

circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.

Id. at 444-45, 334 S.E.2d at 815-16 (quoting Strickland). An applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. "The burden of rebutting this presumption rests squarely on the defendant, and it should go without saying that the absence of evidence cannot overcome it. In fact, even if there is reason to think that counsel's conduct was far from exemplary, a court still may not grant relief if the record does not reveal that counsel took an approach that no competent lawyer would have chosen." Dunn v. Reeves, 141 S. Ct. 2405, 2410 (2021) (quotation omitted).

Second, the deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for [the lawyer's] unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another. Even if a defendant shows that particular errors of counsel were unreasonable, therefore, the defendant must show that they actually had an adverse effect on the defense." Hill v. Lockhart, 474 U.S. 52, 58 (1985) (quotation omitted). With respect to a guilty plea counsel, an applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill, 474 U.S. at 59. A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing: (1) that counsel was deficient and (2) that there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). The "prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient

performance he would not have pled but would have gone to trial.” Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009).

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

“A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). “Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea.” Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty

plea and the finality that generally attaches to a guilty plea”). The South Carolina Supreme Court has instructed that:

The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.

State v. Inman, 395 S.C. 539, 556, 720 S.E.2d 31, 40 (2011) (internal quotations and citations omitted). “[A] guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights.” Jamison, at 468, 765 S.E.2d at 129 (citations omitted).

“[W]hile most pleas of guilty consist of both a waiver of trial and an express admission of guilt, the latter element is not a constitutional requisite to the imposition of criminal penalty.” Alford, 400 U.S. at 37. Indeed, “[a]n individual accused of crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime.” Id. The Supreme Court in Alford went on to note:

That [the defendant] would not have pleaded except for the opportunity to limit the possible penalty does not necessarily demonstrate that the plea of guilty was not the product of a free and rational choice, especially where the defendant was represented by competent counsel whose advice was that the plea would be to the defendant’s advantage.

Id. at 30. In essence, an Alford plea is a guilty plea, which carries the same penalties and punishments. State v. Herndon, 403 S.C. 84, 91, 742 S.E.2d 375, 379 (2013). Furthermore, the entry of an Alford plea “has the same preclusive effect as a standard guilty plea.” Zurcher v. Bilton, 379 S.C. 132, 137, 666 S.E.2d 224, 227 (2008). In South Carolina, “there is no significant distinction between a standard guilty plea and an Alford plea.” Herndon, 403 S.C. at 93, 742 S.E.2d at 380.

This Court finds that Applicant has failed to prove that there was any deficiency in plea counsel's performance with respect to his explanations to Applicant about the nature of the charges and the extent of the State's evidence of Applicant's guilt. Plea counsel's testimony that he discussed the charges, evidence, discovery, and possible defenses with Applicant, and that Applicant gave him no reason to believe that she did not understand the substance of those conversations, is credible. Applicant's testimony that plea counsel did not explain all of this to her and that she did not understand the significance of entering an Alford plea is not credible. Applicant affirmed at her guilty plea hearing that plea counsel had discussed with her the charge against her. Plea Tran. 5. Applicant affirmed that she was aware that the plea court could sentence her to imprisonment for any length of time between zero and twenty years if she pleaded guilty. Plea Tran. 5. Applicant affirmed that she knew about her constitutional trial rights and that she would be waiving them by pleading guilty. Plea Tran. 6. Applicant affirmed that she believed that she would probably be found guilty if she went to trial. Plea Tran. 6. Applicant affirmed that she was satisfied with plea counsel's representation of her. Plea Tran. 5. Applicant's affirmations at her guilty plea hearing undermine her testimony before this Court. Additionally, Applicant undermined her own claim by testifying before this Court that plea counsel advised her of the significance of entering an Alford plea, that she discussed the dynamics in her co-defendant's family with plea counsel, that she made investigatory requests of plea counsel, that plea counsel discussed at least some of the evidence with her (particularly, the video recordings from the forensic interviews of the minor victims), that plea counsel advised her of possible sentencing outcomes if Applicant were to be convicted at trial, that plea counsel visited her at her mother's home in order to discuss the case, that she was aware of the fifteen-year sentencing cap in the

solicitor's sentencing recommendation, and that she was happy with plea counsel's representation of her at the time of the representation.

The Due Process Clause requires that a defendant enter a guilty plea voluntarily, knowingly, and intelligently. Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citing Boykin v. Alabama, 395 U.S. 238 (1969)). The defendant must be aware of the right to confront his accusers, the privilege against his self-incrimination, the right to be tried by a jury, the nature and crucial elements of the offense for which he is being accused, the maximum and minimum possible penalties, and the nature of any constitutional rights being waived by the entry of a guilty plea. Id. (citations omitted). It is not required that a court direct a defendant's attention to "each and every constitutional right and obtain a separate waiver for each." State v. Lambert, 266 S.C. 574, 578-79, 225 S.E.2d 340, 342 (1976) (citing Wade v. Coiner, 468 F.2d 1059 (4th Cir. 1972)). This Court finds that plea counsel adequately informed Applicant of everything that she needed to know in order to enter her Alford plea voluntarily, knowingly, and intelligently, and finds that Applicant has given this Court no credible evidence to believe otherwise. Furthermore, even if plea counsel had incorrectly advised Applicant in matters such as the possible sentences that Applicant could face if she pleaded guilty, the consequences of entering an Alford plea, and the rights that Applicant would be waiving by pleading guilty, any error on plea counsel's part would have been cured by the plea court's colloquy. Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011) (citations omitted) (concluding that any alleged deficiency in plea counsel's advice to Holden was cured by the plea court's colloquy), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

This Court finds that Applicant has failed to prove that there is a reasonable likelihood that she would have proceeded to trial instead of entering an Alford plea but for the alleged deficiencies

in plea counsel's performance. Applicant testified before this Court that she had wanted a trial at first but became scared when plea counsel told her that, if she went to trial, she could get thirty years in prison like her co-defendant. She testified that plea counsel did not tell her about all of the things that were favorable to her. She testified that she does not know why she pleaded guilty, and that plea counsel told her that she was pleading not guilty. She testified that she only pleaded guilty because plea counsel told her that she would only receive five to eight years in prison and she really did not understand the evidence against her. She testified that she pleaded guilty because she knew that plea counsel would not fight for her. She testified that she did not remember calling plea counsel and saying that she wanted to plead guilty. This Court finds that Applicant's testimony on these points is not credible. Plea counsel credibly testified that Applicant had always indicated that she wanted to go to trial and that he had been planning to try the case throughout his representation of her, until Applicant's co-defendant was convicted, and that Applicant was highly motivated to seek a plea deal after that point.

This Court finds that Applicant has failed to prove that plea counsel was constitutionally ineffective for failing to explain to Applicant the nature of the charges and the extent of the State's evidence of Applicant's guilt because Applicant has failed to prove any deficiency in plea counsel's performance in this respect, and because Applicant has failed to prove any resulting prejudice. This Court denies Applicant's claim and dismisses it with prejudice.

Applicant's claim that plea counsel was constitutionally ineffective for failing to review discovery with Applicant adequately.

Applicant raises a claim that plea counsel was constitutionally ineffective for failing to review discovery with Applicant adequately. Applicant testified before this Court that plea counsel did not show some medical reports to her, but she admitted that plea counsel showed her the video recordings of the forensic interviews of the children. On cross-examination, Applicant affirmed

that she had agreed with the plea court at the guilty plea hearing that she would likely be found guilty at trial, but added that she did so because that is what plea counsel told her to say. She agreed that she had told the plea court that she was happy with plea counsel's representation, and testified that she had been happy with it at the time. Plea counsel testified that he reviewed with Applicant everything that he had received in discovery. He testified that he allowed Applicant to watch the video recordings of the forensic interviews of the minor victims and that he reviewed every piece of documentary evidence in discovery with Applicant.

This Court finds that Applicant has failed to prove that there was any deficiency in plea counsel's performance with respect to this claim. Applicant's testimony that plea counsel did not review the discovery with her adequately is not credible. Plea counsel credibly testified that he reviewed all of the discovery with Applicant and that Applicant gave the appearance of understanding the substance of their discussions, even to the extent that she engaged plea counsel in discussions about the evidence and possible defenses. Additionally, Applicant's affirmations to the plea court undermine the credibility of her testimony with regard to this claim.

This Court finds that Applicant has failed to prove that there is a reasonable likelihood that she would have proceeded to trial instead of entering an Alford plea but for the alleged deficiencies in plea counsel's review of evidence with her. As previously noted in this order, this Court finds that Applicant's testimony about being motivated to enter an Alford plea because she had been incorrectly advised about various things by plea counsel or because she felt that plea counsel's performance was deficient in some way is not credible; furthermore, this Court repeats here its finding that plea counsel's testimony that Applicant became motivated to plead guilty only after her co-defendant was convicted and that he had been preparing for trial up until that point is credible.

This Court finds that Applicant has failed to prove that plea counsel was constitutionally ineffective for failing to review discovery with Applicant adequately because she has failed to prove that there was any deficiency in plea counsel's performance with regard to this claim and has failed to prove any resulting prejudice. The claim is denied and dismissed with prejudice.

Applicant's claim that plea counsel was constitutionally ineffective for failing to advise Applicant of potential trial strategies, the potential for an acquittal should Applicant proceed to trial, and Applicant's decision to plead guilty.

Applicant raises a claim that plea counsel was constitutionally ineffective for failing to advise her of potential trial strategies, the potential for an acquittal should Applicant proceed to trial, and Applicant's decision to plead guilty. Applicant testified before this Court that plea counsel told her that entering an Alford plea was like pleading not guilty. She testified that she told plea counsel that her co-defendant had a good relationship with his son, that her co-defendant was paying for his son's home in Charleston, and that the victims' mother wanted her co-defendant's money. She testified that she told plea counsel that she was innocent and that she did not remember what the kids were saying. She testified that she wanted a trial at first but became scared when plea counsel told her that, if she went to trial, she could get thirty years in prison like her co-defendant. She testified that plea counsel did not tell her about all of the things that were favorable to her. She testified that she pleaded guilty only because plea counsel told her that she would receive only five to eight years in prison and because she really did not understand the evidence against her. She testified that she pleaded guilty because she knew that plea counsel would not fight for her. She testified that she did not remember calling plea counsel and saying that she wanted to plead guilty. She testified that plea counsel visited her when she was at her mother's home, and that he told her that the best thing that she could do would be to enter an Alford plea, and that he believed that she would get only five years in prison despite the fifteen-

year cap. On cross-examination, Applicant affirmed that she had agreed with the plea court at the guilty plea hearing that she wanted to waive her right to a trial, and testified that she made that decision because plea counsel told her that that was the best thing for Applicant to do. She testified that she had agreed with the plea court that she would likely be found guilty at trial because that is what plea counsel told her to say. She testified that plea counsel told her that she would get the same sentence as her co-defendant if she went to trial.

Plea counsel testified before this Court that he went over with Applicant all of the things turned over to him in the State's discovery disclosure. He testified that Applicant gave him no reason to think that she did not understand the things in the discovery because she discussed them with him. Plea counsel testified that Applicant told him that the victims' allegations were false, that the victims' parents would have known about the alleged instances of abuse if they had actually happened, and that Applicant herself would have had some recollection of the instances of abuse. He testified that he thinks that Applicant attended her co-defendant's trial because Applicant called him, frantically, at the conclusion of that trial and tasked plea counsel with negotiating a plea deal for Applicant. He testified that, based upon his conversations with Applicant, he determined that he likely would not have been able to assert the defense of voluntary intoxication if Applicant proceeded to trial because such would not have been a valid defense to the crimes, even though Applicant told him that she did not remember what happened during the alleged instances of abuse due to her drug use. He testified about the trial strategy that he would have employed had Applicant proceeded to trial and testified that he discussed it with Applicant. He testified that he advised Applicant of the possible sentences that she could receive if she were found guilty. He testified that he advised Applicant of her constitutional trial rights and the fact

that she would be waiving them if she pleaded guilty. He testified that he believed that Applicant understood everything that he told her.

This Court finds that Applicant has failed to prove any deficiency in plea counsel's performance with respect to this claim. Plea counsel credibly testified before this Court about his review of the evidence with Applicant and his discussions with her about the case, including the strategy that he would employ if Applicant proceeded to trial. Plea counsel apparently had concerns about Applicant's chance at getting an acquittal at trial; Applicant began to share plea counsel's concern once her co-defendant was convicted. Applicant's own testimony and plea counsel's proves that plea counsel discussed with Applicant her decision to plead guilty and the potential sentences that she could face, but Applicant's testimony that she did not understand the significance of entering an Alford plea is not credible. Plea counsel credibly testified about his advice to Applicant about the potential strategies or defenses available to her at trial, the chance for an acquittal if she proceeded to trial, and Applicant's decision to plead guilty. Applicant's testimony on those topics is not credible. Furthermore, Applicant's affirmations to the plea court also prove that her testimony is not credible.

This Court finds that Applicant has failed to prove that there is a reasonable likelihood that she would have proceeded to trial instead of entering an Alford plea but for the alleged deficiencies in plea counsel's performance. As previously noted in this order, this Court finds that Applicant's testimony about being motivated to enter an Alford plea because she had been incorrectly advised about various things by plea counsel or because she felt that plea counsel's performance was deficient in some way is not credible; furthermore, this Court repeats here its finding that plea counsel's testimony that Applicant became motivated to plead guilty only after her co-defendant was convicted and that he had been preparing for trial up until that point is credible.

This Court finds that Applicant has failed to prove that plea counsel was constitutionally ineffective for failing to advise Applicant of potential trial strategies, the potential for an acquittal should Applicant proceed to trial, and Applicant's decision to plead guilty because Applicant has failed to prove that there was any deficiency in plea counsel's performance with respect to this claim, and because Applicant has failed to prove that there was any resulting prejudice. This claim is denied and dismissed with prejudice.

Applicant's claim that plea counsel was constitutionally ineffective for failing to explain the implications of the potential sentences Applicant could receive, the nature and implications of pleading guilty, and advise Applicant sufficiently of the rights she would be waiving by pleading guilty.

Applicant raises a claim that plea counsel was constitutionally ineffective for failing to explain the implications of the potential sentences that Applicant could receive, the nature and implications of pleading guilty, and advise Applicant sufficiently of the rights she would be waiving by pleading guilty. Applicant testified at the hearing before this Court that plea counsel told her that entering an Alford plea was like pleading not guilty. She testified that she wanted a trial at first but became scared when plea counsel told her that, if she went to trial, she could get thirty years in prison like her co-defendant. She testified that she does not know why she pleaded guilty, and that plea counsel told her that she was pleading not guilty. She testified that she pleaded guilty only because plea counsel told her that she would receive five to eight years in prison and because she really did not understand the evidence against her. She testified that she did not remember calling plea counsel and saying that she wanted to plead guilty. She testified that plea counsel visited her when she was at her mother's home, and that he told her that the best thing that she could do would be to enter an Alford plea, and that he believed that she would get only five years in prison despite the fifteen-year cap.

On cross-examination, Applicant affirmed that the plea court had informed her of the fifteen-year cap. She affirmed that she had agreed with the plea court that she wanted to waive her right to a trial, and testified that she made that decision because plea counsel told her that that was the best thing for Applicant to do. She testified that she agreed with the plea court that she would likely be found guilty at trial because that is what plea counsel told her to say. She testified that plea counsel told her that she would get the same sentence as her co-defendant if she went to trial.

Plea counsel testified that he met with Applicant on at least ten occasions and that he spoke with her by phone outside of those meetings. He testified that he told her about the nature of the charged offenses, and that Applicant gave him no reason to believe that she did not understand the substance of those conversations. He testified that he went over with Applicant the things turned over to him in discovery used his laptop and headphones at the jail to allow Applicant to watch the video recordings of the forensic interviews of the victims. He testified that he had already gone over the documentary discovery with Applicant. He testified that he could not remember if he had actually given the police reports and forensic interview reports to Applicants, although he always tries to do that for clients, but he definitely remembered going over them with Applicant. He testified that he went over everything in his file with Applicant and that there was nothing that he received in the discovery disclosure that he did not show to Applicant or discuss with her. He testified that Applicant gave him no reason to think that she did not understand the things in the discovery because she discussed them with him.

Plea counsel testified before this Court that he thought that Applicant attended the trial of her co-defendant because Applicant called him, frantically, at the conclusion of that trial and tasked plea counsel with negotiating a plea deal. He testified about the trial strategy that he would have employed had Applicant proceeded to trial and testified that he discussed it with Applicant. He

testified that he advised Applicant of the possible sentences that she could receive if she were found guilty. He testified that he advised Applicant of her constitutional trial rights and the fact that she would be waiving them if she pleaded guilty. He testified that he believed that Applicant understood everything that he told her. Plea counsel testified that he was worried that the State might indict Applicant for first-degree criminal sexual conduct with a minor if she proceeded to trial.

This Court finds that Applicant has failed to prove that there was any deficiency in plea counsel's performance with respect to these claims. Plea counsel credibly testified that he explained the potential sentences that Applicant was facing (including the sentences that she would receive if the State indicted her for first-degree criminal sexual conduct with a minor following her co-defendant's conviction), explained to Applicant the implications of pleading guilty and entering an Alford plea, and advised Applicant of the fact that she would be waiving her constitutional trial rights by pleading guilty. Applicant's testimony to the contrary is not credible. Even then, some of Applicant's testimony before this Court indicates that Applicant and plea counsel did discuss these topics, although she contests the extent of those conversations. Applicant's testimony before this Court is also contradicted by her affirmations to the plea court.

This Court finds that Applicant has failed to prove that there is a reasonable likelihood that she would have proceeded to trial instead of entering an Alford plea but for the alleged deficiencies in plea counsel's performance. As previously noted in this order, this Court finds that Applicant's testimony about being motivated to enter an Alford plea because she had been incorrectly advised about various things by plea counsel or because she felt that plea counsel's performance was deficient in some way is not credible; furthermore, this Court repeats here its finding that plea

counsel's testimony that Applicant became motivated to plead guilty only after her co-defendant was convicted and that he had been preparing for trial up until that point is credible.

This Court finds that Applicant has failed to prove that plea counsel was constitutionally for failing to explain the implications of the potential sentences Applicant could receive, the nature and implications of pleading guilty, and advise Applicant sufficiently of the rights she would be waiving by pleading guilty because Applicant has failed to prove that there was any deficiency in plea counsel's performance with respect to this claim and has failed to prove that there was any resulting prejudice. The claim is denied and dismissed with prejudice.

Applicant's claim that plea counsel was constitutionally ineffective for failing to inform or explain adequately to Applicant the proffer and plea offers previously extended to Applicant and the terms thereof, including any requirement of cooperation, and to advise Applicant accordingly.

The solicitor testified before this Court that she represented the State in its prosecutions of both Applicant and Applicant's co-defendant. She testified that she has been working at the Thirteenth Circuit Solicitor's Office for twenty years and is the head of the sex crimes unit. She testified that she told plea counsel that, if Applicant was honest about what happened during the instances of sexual abuse, it would work in Applicant's favor, but she testified that that offer did not go anywhere because Applicant insisted that she was innocent and that the allegations of abuse were false. She testified that they eventually settled on having Applicant to plead guilty to one count of second-degree criminal sexual conduct with a minor for the abuse of one of the victims, rather than trying Applicant for the sexual abuse of both victims. She testified that, had Applicant proceeded to trial, the State would have tried Applicant for the sexual abuse of both victims instead of only one. She testified that, as part of the plea agreement, the State dismissed the criminal sexual conduct charge relating to the male victim.

Plea counsel testified before this Court that Applicant maintained her innocence during his representation of her. He testified that the first time he had ever discussed the option of pleading guilty with Applicant was when she called him—in a hysterical mood—after her co-defendant was convicted and asked that he engage the solicitor in plea negotiations. He testified that the solicitor planned to charge Applicant with first-degree criminal sexual conduct with a minor and to prosecute Applicant under the theory of accomplice liability. He testified that he suggested that Applicant enter an Alford plea because she said that she did not remember any instances of sexual abuse because she had been taking drugs at the time, and that Applicant wanted to take advantage of a sentencing cap recommendation after her co-defendant was convicted.

When being cross-examined before this Court, Applicant agreed that the plea court had informed her at the guilty plea hearing that the solicitor was recommending a sentencing maximum of fifteen years.

This Court finds that Applicant has failed to prove that there was any deficiency in plea counsel's performance with respect to his communication with and advice to Applicant about plea offers from the State. "[A] defendant has the right to effective assistance of counsel during the plea bargaining process." Bell v. State, 410 S.C. 436, 440-41, 765 S.E.2d 4, 6 (Ct. App. 2014) (quoting Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009), abrogated on other grounds by Smalls, 422 S.C. 174, 810 S.E.2d 836. A defense attorney "has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." Id. (quoting Missouri v. Frye, 566 U.S. 134 (2012)). Applicant has presented this Court with no evidence that the solicitor extended any plea offer that plea counsel did not then communicate to Applicant. Plea counsel credibly testified that Applicant expressed no interest in pleading guilty

or engaging in plea negotiations, and in fact maintained her innocence, until her co-defendant was convicted.

This Court finds that Applicant has failed to prove that plea counsel was constitutionally ineffective for failing to inform or explain adequately to Applicant the proffer and plea offers extended to Applicant and the terms thereof, and to advise Applicant accordingly, because Applicant has failed to prove that there was any deficiency in plea counsel's performance with respect to this claim and has failed to prove any resulting prejudice. This claim is denied and dismissed with prejudice.

Applicant's claim that plea counsel was constitutionally ineffective failing to conduct an adequate investigation by not interviewing two material witnesses—Jeremy Owens and Amber Gordon—who lived with Applicant, Applicant's codefendant, and the victims.

Applicant raises a claim that plea counsel was constitutionally ineffective failing to conduct an adequate investigation by not interviewing two material witnesses—Jeremy Owens and Amber Gordon—who lived with Applicant, Applicant's codefendant, and the victims. Applicant also testified that she wanted plea counsel to interview Delana Moore, her co-defendant, and the two victims. A defense attorney has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland, 466 U.S. at 691. Thus, "[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." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). A defense attorney's "[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing Kibler v. State, 267 S.C. 250, 227 S.E.2d 199 (1976)). An applicant alleging that his

attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome. Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). "[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id. at 690; Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (Ct. App. 2014).

This Court finds that Applicant has failed to prove that there was any deficiency in plea counsel's performance with respect to this claim. Applicant has presented this Court with no evidence that plea counsel was required to interview Applicant's co-defendant, the two victims, or Moore. Plea counsel credibly testified before this Court that he believed that Owens and Gordon were Applicant's family members, and he thought that he may have spoken with them on the phone while representing Applicant. He testified that he was not sure that he would have called either of them as a witness at trial had Applicant gone to trial because he was not sure at that point in his representation of Applicant what he would have done at trial. Though plea counsel talked with Owens and Gordon, Applicant provided no explanation for why such was required of plea counsel. Plea counsel credibly testified that the recordings of the interviews of the two victims were included in discovery and that he reviewed them with Applicant. Plea counsel credibly testified that he reviewed the medical records of at least one of the victims in discovery. Plea counsel credibly testified that he did not interview the victims' parents because he already had the parents' statements in discovery and he knew that they were going to be witnesses hostile to Applicant, and he testified that he likely would have interviewed them if there had been any indications in their

statements that they could assist Applicant's defense. Plea counsel credibly testified that he would have done more to gather and interview witnesses had Applicant not decided to plead guilty, as her case had not yet been set for trial at the time of her guilty plea hearing. Plea counsel, therefore, did all that was required of him.

This Court finds that Applicant has failed to prove that there is a reasonable likelihood that she would have gone to trial instead of entering an Alford plea but for the alleged deficiency in plea counsel's pre-trial investigation. An "applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (1998)); see also Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (holding that the PCR court's finding that Dempsey was prejudiced by trial counsel's failure to call an expert at trial to rebut the State's expert was merely speculative when Dempsey failed to have an expert testify at his PCR hearing), abrogated on other grounds by Smalls, 422 S.C. 174, 810 S.E.2d 836. Applicant did not call Moore, Owens, Gordon, the two victims, the victims' parents, or her co-defendant as witnesses at her hearing. She has, therefore, produced no evidence that testimony from any of them would have been necessary or valuable at her trial, and has produced no evidence that any of them had testimony that would have had any bearing on Applicant's decision to enter an Alford plea.

This Court finds that Applicant has failed to prove that plea counsel was constitutionally ineffective failing to conduct an adequate investigation by not interviewing Owens and Gordon because Applicant has failed to prove that there was any deficiency in plea counsel's performance

with respect to these two people and has failed to prove that there was any resulting prejudice. The claim is denied and dismissed with prejudice.

Applicant's claim that plea counsel was constitutionally ineffective failing to conduct an adequate investigation into mitigating circumstances, such as Applicant's long history of abuse, Applicant's mental disorders, and Applicant's engaging in prostitution, and failing to present them to the plea court.

Applicant raises a claim that plea counsel was constitutionally ineffective failing to conduct an adequate investigation into mitigating circumstances, such as Applicant's long history of abuse, Applicant's mental disorders, and Applicant's engaging in prostitution, and failing to present them to the plea court. Applicant testified before this Court that she frequently travelled to Spartanburg, South Carolina, in order to take illegal drugs. She testified that she would be away from home on these drug trips for two or three days at a time. She testified that her co-defendant experienced sexual satisfaction by having human feces rubbed onto him and that she was only covered in feces on one occasion. She testified that she has a drug addiction and that she was the first "crack mother" in South Carolina. She testified that she had put two of her biological children up for adoption in the past and that she never took drugs when she was around the minor victims. She testified that she had engaged in prostitution frequently, but that she would not have sexual intercourse with someone younger than she, even if that person was paying for it. She testified that she had done lots of things in order to get drugs, but denied that she had ever sexually abused children. She testified that she had cut off her ankle monitor while she was awaiting trial because she had snorted lots of cocaine. She testified on cross-examination that she would get upset with her co-defendant whenever he would not allow her to have drugs.

Plea counsel testified before this Court that he was aware of the allegations that Applicant's co-defendant induced Applicant's behavior through the use of drugs. He testified that Applicant had been released on bond after her arrest, but that it was subsequently revoked because she had a

drug problem. He testified that he was aware that Applicant and her co-defendant drank each other's urine. He testified that he would have argued at trial, if Applicant had gone to trial, that Applicant's co-defendant was aware of her drug addiction and was victimizing Applicant through the enticement of drugs. He testified that he could not argue voluntary intoxication as a defense at Applicant's trial because it would not have been a valid defense to Applicant's crimes. He testified that he thought that Applicant might be eligible to enter an Alford plea because she said that she could not remember what happened during the instances of sexual abuse due to her drug use. He testified that Applicant had never told him that her co-defendant forced her to take drugs; instead, she was addicted to drugs in her own right and was even doing drugs while out on bond. He testified that Applicant told him that her co-defendant was not forcing her to take drugs but was only making them available for her. He testified that Applicant told him that she had been using drugs during the time period in question, and that Applicant's drug use continued to be a problem for Applicant throughout his representation of her. He considered drugs a controlling factor in Applicant's life. He testified that he was aware that drug addicts can sometimes have certain reactions to the people who supply them with drugs. He testified that there was no disagreement between him and the solicitor that Applicant had a drug addiction problem. He testified that he was considering incorporating Applicant's drug use and family dynamics into a defense at trial, but was not able to get very far in working on that because Applicant decided to enter her Alford plea before a trial had even been scheduled.

The solicitor testified before this Court that she was aware that Applicant had a drug problem. She referenced a jail phone call between Applicant and the minor victims' mother that had been recorded, and in which Applicant said that she could not wait to get more drugs. When referencing a photograph of Applicant lying in a bathtub while covered in feces, she testified that

she questioned whether Applicant understood what was going on in the moment captured in the photograph. She testified that Applicant never said that her co-defendant had forced her to take drugs.

At Applicant's guilty plea hearing, plea counsel informed the plea court that Applicant was in custody because she violated the terms of her home incarceration through substance abuse. Plea Tran. 8. Applicant informed the plea court that she was being treated for bipolar disorder with medication and that she had been going to mental health therapy before she was in custody. Plea Tran. 9. The solicitor notified the plea court of Applicant's past convictions, which included a conviction for prostitution and multiple convictions related to drug use and possession. Plea Tran. 12. Plea counsel argued to the plea court that Applicant's co-defendant, with knowledge of Applicant's drug addiction, had groomed her to satisfy his own sexual proclivities. Plea Tran. 12-15. Plea counsel said that he believed that Applicant had been abusing drugs during the incidents of sexual abuse. Plea Tran. 13-14. Plea counsel asked for a sentence that would allow Applicant to get treatment for her drug addiction. Plea Tran. 16. Plea counsel noted for the plea court that he and Applicant had discussed voluntary intoxication. Plea Tran. 16. When issuing the sentence, the plea court recognized that Applicant was taking responsibility for her crimes despite not having a clear recollection of them, and gave her credit for doing so. Plea Tran. 17.

This Court finds that Applicant has failed to prove that there was any deficiency in plea counsel's performance with respect to his presentation in mitigation to the plea court. Plea counsel was correct that Applicant's voluntary intoxication would not serve as a defense should she have gone to trial. Plea counsel credibly testified that Applicant told him that she willingly took drugs offered to her by her co-defendant, and that testimony was supported by Applicant's own testimony before this Court, in which she detailed her drug addiction and her anger whenever her

co-defendant withheld drugs from her. The plea court was aware of Applicant's addiction to drugs, Applicant's history of addiction, Applicant's past conviction for prostitution, Applicant's mental disorder, as well as Applicant's contention that her drug use may have impaired her memories of the incident of sexual abuse to which she pleaded guilty. Applicant has not proven that there was anything that plea counsel should have done that he did not.

This Court finds that Applicant has failed to prove that, but for the alleged deficiency in plea counsel's performance, she would have proceeded to trial instead of entering an Alford plea or that she would have received a more lenient sentence. The plea court still gave Applicant less time in prison than the solicitor's recommended cap.

This Court finds that Applicant has failed to prove that plea counsel was constitutionally ineffective failing to conduct an adequate investigation into mitigating circumstances, such as Applicant's long history of abuse, Applicant's mental disorders, and Applicant's engaging in prostitution, and failing to present them to the plea court because Applicant has failed to prove that there was any deficiency in plea counsel's performance with respect to this claim and that there was any resulting prejudice. This claim is denied and dismissed with prejudice.

Applicant's claim that plea counsel had a conflict of interest because someone else paid for plea counsel's representation of Applicant.

Although Applicant presented no argument regarding an alleged conflict of interest on the part of plea counsel due to the fact that plea counsel's representation of Applicant was paid for by Applicant's co-defendant, Applicant did ask questions during the course of the hearing before this Court that arguably were meant to advance a claim that plea counsel had a conflict of interest. Therefore, this Court will address the claim here.

Applicant testified before this Court that her co-defendant's brother hired plea counsel to represent her. Plea counsel testified that Applicant hired him to represent her and that her co-

defendant paid for plea counsel's representation of Applicant. He testified that, after Applicant hired him, Applicant's co-defendant came by his office once or twice to talk to plea counsel. He testified that he notified the co-defendant's criminal defense lawyer after each one of the co-defendant's visits. He testified that the co-defendant did not call ahead to notify plea counsel that he was coming to plea counsel's office or schedule the meetings with plea counsel; instead the co-defendant would just show up at the office. He testified that Applicant was aware that plea counsel's services had been paid for by her co-defendant, that plea counsel never felt that the fact that the co-defendant had paid him affected his ability to represent Applicant, and that plea counsel told Applicant that everything that she discussed with plea counsel would be private between them.

A conflict of interest occurs:

[W]hen a defense attorney places himself in a situation inherently conducive to divided loyalties If a defense attorney owes duties to a party whose interests are adverse to those of the defendant, than an actual conflict exists. The interests of the other client and the defendant are sufficiently adverse if it is shown that the attorney owes a duty to the defendant to take some action that could be detrimental to his other client.

Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809, 811 (1984) (quoting Zuck v. State of Alabama, 588 F.2d 436 (5th Cir. 1979)). The mere possibility that a defense lawyer had a conflict of interest is insufficient to impugn a conviction of that lawyer's client. State v. Gregory, 364 S.C. 150, 152-53, 612 S.E.2d 449, 450 (2005) (citing Langford v. State, 310 S.C. 357, 426 S.E.2d 793 (1993)).

The South Carolina Supreme Court has instructed that:

In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance [A] defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief. . . . But until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance.

Duncan, at 437-37, 315 S.E.2d at 810-11 (quoting Cuyler v. Sullivan, 446 U.S. 335 (1980)).

This Court finds that Applicant has failed to prove that plea counsel had a conflict of interest. Plea counsel credibly testified that Applicant's co-defendant paid for his representation of Applicant. Applicant has presented no evidence that plea counsel had divided loyalties between Applicant and her co-defendant. "[T]his is not a case where two or more defendants [were] represented by the same attorney for the same criminal episode" *Id.* at 438, 315 S.E.2d at 811. Neither is this "a case of concurrent representation." *Id.* Applicant has failed to prove that plea counsel "owed a duty to a party . . . whose interests were adverse to" Applicant's. *Id.* at 438, 315 S.E.2d at 811.

This Court finds that Applicant has failed to prove that the alleged conflict of interest had any effect on the adequacy of plea counsel's representation of Applicant. Plea counsel credibly testified that he was not concerned with what would have been beneficial to Applicant's co-defendant, and that he was concerned only with what would have been advantageous for Applicant.

This Court finds that Applicant has failed to prove that plea counsel was constitutionally ineffective due to a conflict of interest because Applicant has failed to prove that any such conflict existed and has failed to prove that the alleged conflict had any effect on the adequacy of plea counsel's representation of Applicant. This claim is denied and dismissed with prejudice.

Applicant's claim that plea counsel was constitutionally ineffective for seeking the severance of Applicant's trial from her co-defendant's trial.

Although Applicant presented no argument regarding plea counsel's decision to seek the severance of Applicant's trial from that of her co-defendant's, Applicant did ask questions during the course of the hearing before this Court that arguably were meant to advance a claim that plea counsel was constitutionally ineffective for seeking the severance. Therefore, this Court will address the claim here.

Applicant testified before this Court that she did not know what a severance was. She

testified that she did not agree with the decision that her trial would be severed from her co-defendant's trial because she wanted to be tried together with him. She testified that she felt that, since the victims alleged that Applicant and her co-defendant working together sexually abused them, she and her co-defendant should be tried together. She testified that she did not want to be tried before the plea court because the plea court presided over her co-defendant's trial.

Plea counsel testified before this Court that he would not have been able to call Applicant as a witness against the co-defendant because Applicant told plea counsel that she could not testify against her co-defendant because he was innocent. He testified that Applicant was not willing to cooperate with the solicitor in the prosecution of the co-defendant because Applicant was adamant that the sexual abuse did not happen and that she was not willing to testify against her co-defendant. He testified that Applicant's co-defendant had sex with multiple partners and engaged in other non-traditional sexual activities, which plea counsel learned about through his conversations with Applicant and through the discovery; those activities that Applicant and her co-defendant engaged in included drinking each other's urine. He testified that there was a photograph in discovery of Applicant covered in feces. He testified that the co-defendant had an earring and a certain way of carrying himself, which plea counsel was worried would cause the jurors to judge the co-defendant's appearance. He testified that the co-defendant admitted during his trial to many of the things plea counsel had discussed in his testimony, and that those admissions would have reinforced for the jury a stereotype that he did not want a jury to associate with Applicant. He testified that he tried to protect Applicant by having the trials severed. He testified that he wanted to avoid having those sexual activities associated with Applicant during a trial. He testified that Applicant's co-defendant was not discreet about his sexual activities. He testified that he told Applicant that he felt that it would be detrimental to her defense if she were tried jointly with her

co-defendant and that she gave him no reason to believe that she did not understand that advice. He testified that the solicitor planned to try Applicant for first-degree criminal sexual conduct with a minor under a theory of accomplice liability if Applicant proceeded to trial. He testified that he understood that he could have strategically had Applicant tried together with the co-defendant but he employed a strategy that involved her not being associated with the co-defendant. He testified that he moved to sever because he did not want Applicant sitting next to her co-defendant at a trial. He testified that, had his motion to sever been denied, he would have employed a strategy at trial of blaming the co-defendant.

The solicitor testified before this Court that there was graphic evidence in this case that she had not seen before in her nineteen years of legal experience. She testified about a photograph of Applicant that shows Applicant covered in feces. She testified that videos and photographs taken from the co-defendant's phone show the sexual activities between Applicant and the co-defendant that included feces and urine. She testified that the victims' allegations were that both Applicant and the co-defendant had abused them sexually. She testified that the female victim was the first to disclose, and that she disclosed that Applicant held her arms while the co-defendant penetrated that victim with her penis. She testified that the male victim made a disclosure months later that the co-defendant had sexually abused him in a bathroom and that Applicant was present with the co-defendant at the time. She testified that both victims disclosed that the co-defendant put his feces on them and had them drink his urine. She testified that she was stunned that the co-defendant admitted to having those sexual proclivities.

The solicitor testified that, had plea counsel not moved to sever Applicant's trial from co-defendant's, she likely would have done so of her own accord. She testified that she was aware that Applicant was a drug addict. She testified that she told plea counsel that it would work in

Applicant's favor if Applicant was honest about the crimes, but that that never went anywhere because Applicant insisted that nothing happened and that she was not involved. She testified that she had charged Applicant for the sexual abuse of the female victim and had also charged Applicant for the sexual abuse of the male victim, but that they ultimately decided to have Applicant plead guilty only for the crime relating to the female victim. She testified that she would have tried Applicant for both offenses had Applicant gone to trial instead of pleading guilty. She testified that she dismissed the charge related to the male victim after Applicant pleaded guilty. She testified that that victim started vomiting during his meeting with her when he was describing the sexual abuse that he had suffered.

This Court finds that Applicant has failed to prove that there was any deficiency in plea counsel's performance with respect to his motion to sever. First, Applicant has failed to provide this Court with any authority requiring Applicant to be tried jointly with her co-defendant even if she had wanted to be so tried. This is a glaring omission here because the more usual complaint from criminal defendants is that they were improperly tried jointly with their co-defendants. E.g., State v. Cope, 385 S.C. 274, 292-93, 684 S.E.2d 177, 186-87 (Ct. App. 2009) (finding that the trial court did not err in denying the defendant's motion to sever his trial from his co-defendant's trial). Second, Applicant has failed to prove that she actually wanted a joint trial. Applicant did testify before this Court that she wanted to be tried jointly with her co-defendant; on the other hand, Applicant also testified that she, after having observed or learned of the events at her co-defendant's trial before the plea court, did not want to be tried before the plea court. The contradiction in Applicant's testimony on this point demonstrates the lack of credibility in her testimony. Third, Applicant has failed to prove that plea counsel's decision to seek the severance deviated from prevailing professional norms. Plea counsel articulated a good reason for not

wanting Applicant to be tried jointly with her co-defendant, which, he explained, was motivated by his desire to protect Applicant from any harm that could be caused by her association in the jurors' minds with her co-defendant and his actions. Although Applicant questioned plea counsel about whether he could have employed a strategy if the trials had not been severed of blaming the co-defendant, plea counsel credibly testified that that strategy would likely have not been successful because Applicant maintained that her co-defendant was innocent. It may be true that Applicant now wishes that she had gone to trial instead of pleading guilty so that she could employ a certain trial strategy, but that does not change the fact that plea "counsel articulate[d] a valid reason for" believing that a different strategy would have been more effective. Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 525 S.E.2d 514 (2000)). At any rate, it is not clear to this Court how Applicant's now-suggested strategy of blaming the co-defendant for the crimes could have been a defense for Applicant if she had gone to trial jointly with her co-defendant because Applicant defended her co-defendant before this Court.

This Court finds that Applicant has failed to prove that there is a reasonable likelihood that she would have proceeded to trial instead of entering an Alford plea had plea counsel not successfully sought the severance of Applicant's trial from the co-defendant's trial. As already discussed in this order, plea counsel credibly testified that Applicant expressed no interest in pleading guilty or engaging in plea negotiations, and in fact maintained her innocence, until her co-defendant was convicted.

This Court finds that Applicant has failed to prove that plea counsel was constitutionally ineffective for seeking the severance of Applicant's trial from her co-defendant's trial because Applicant has failed to prove that there was any deficiency in plea counsel's performance and has

failed to prove that there was any resulting prejudice. This claim is denied and dismissed with prejudice.

Applicant's claim that she did not knowingly and voluntarily waive her right to direct appellate review of her conviction and sentence.

Applicant raises a claim that she did not knowingly and voluntarily waive her right to direct appellate review of her conviction and sentence. Applicant presented no evidence at the hearing in support of this claim. Plea counsel testified before this Court that he probably discussed with Applicant that she would have the right to appeal her conviction and sentence, and said that his discussion with her would have been cursory because Applicant was pleading guilty. He testified that Applicant gave him no reason to think that she wanted to appeal.

In White v. State, 263 S.C. 110, 119, 108 S.E.2d 35, 39 (1974), the South Carolina Supreme Court held that, even though the post-conviction relief court may find that an applicant did not voluntarily and intelligently abandon his right to a direct appeal, the post-conviction relief court does not have jurisdiction to grant a belated appeal. However, when an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected. Id. at 119, 108 S.E.2d at 39-40.

Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470 (2000). When counsel has consulted with the defendant regarding the right to appeal, "Counsel performs in a professionally unreasonable manner only by failing to follow the defendant's express instructions with respect to an appeal." Id. at 478

(underlining added). In order to establish that he was prejudiced by counsel's failure to file an appeal, an applicant must show he would have appealed absent counsel's deficient performance. See Id. at 484.

This Court finds that plea counsel consulted with Applicant about her right to appeal. Although he did not say that he had so with certainty, plea counsel believed that he had discussed the right to appeal with Applicant, even if he thought that the discussion may only have been cursory. This Court also finds that Applicant did not ask plea counsel to file a notice of appeal on her behalf or give any indication to him that she desired that he do so. Therefore, this Court finds that Applicant knowingly and voluntarily waived her right to direct appellate review of her conviction and sentence. This claim is denied and dismissed with prejudice.

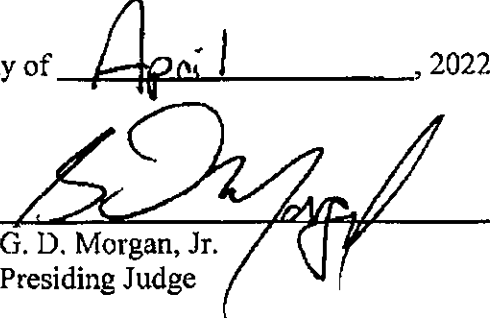
CONCLUSION

Based on all the foregoing, this Court finds that Applicant has not proven any constitutional violations or deprivations that would require this Court to grant her application for post-conviction relief. Therefore, this application is denied and dismissed with prejudice.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 10th day of April, 2022.


G. D. Morgan, Jr.
Presiding Judge

Greenville, South Carolina

Copy/mailed to
Attorney General / Bill Gardner
on <u>4</u> / <u>13</u> / <u>22</u>

WITNESSES

Tim Kelley

Travelers Rest Police Dept

DOA: 6/19/2016 W/F DOB: [REDACTED] 1970

**ARREST WARRANT NUMBER
DIRECT PRESENTMENT****ACTION OF GRAND JURY***Foreperson of Grand Jury***VERDICT***Foreperson of Petit Jury**Date:*DOCKET NO. 2019-GS-23-
CLK

0015A

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS**TERM 2019****THE STATE**

vs.

REGINA GAIL OWINGS**Indictment for**

0396

**CRIMINAL SEXUAL CONDUCT WITH A MINOR
SECOND DEGREE (11-14)**

VIOLATION § 16-03-0655(B)(1)

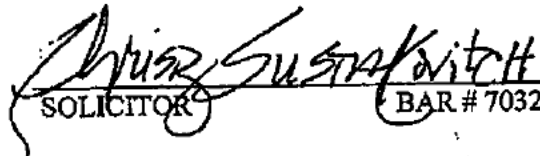
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR SECOND
DEGREE (11-14)

At a Court of General Sessions, convened on _____ the Grand Jurors of Greenville
County present upon their oath:

That « REGINA GAIL OWINGS did in Greenville County, between November 1, 2014 and December
15, 2015, commit a sexual battery on ^{Minor 2} who was fourteen years of age or less but who was at least
eleven years of age. This is in violation of § 16-3-655(B)(1) [formerly § 16-3-655(2)] of the South
Carolina Code of Laws (1976) as amended.

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


SOLICITOR BAR # 70325

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Regina Gail Owings

AKA:

Race: WHITE Sex: F Age: 48

DOB: 1970 SS#: [REDACTED]

Address: [REDACTED] Old Greenville Rd.

City, State, Zip: Spartanburg, SC 29301

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex: Crim Sex Cond. 2nd Degree W/Minor I

in violation of § 16-03-0655(B)(2) of the S.C. Code of Laws, bearing CDR Code # 0397

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC

w/minor 1st or 2nd 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] 70325 [Signature] Regina Owings [Signature] 65094
Sustakovitch Christy Kednocker SC Bar# Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 14 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 ☒ CONSECUTIVE to sentence on:☒ The Defendant is 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 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	\$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§36-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforcement Finding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$10/ea	\$
3% to County (if paid in installments)		\$ 3.75

TOTAL: \$ 128.75

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (04/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 1437843 2019-GS-23-0015A

A/Wit: 2017GS2300570A WAIVER

Date of Offense: 11/1/2014

S.C. Code § 16-03-0655(A)(1)

CDR Code #: 0385

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSObtain GID ☐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.

Presiding Judge

Judge Code:

Sentence Date:

1/29/19