

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Appellate Case No. 2013-000015

NORMA HALL, 283470,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Dorchester County
Honorable Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

Respondent,

vs.

NORMA PATRICK HALL,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL**I.**

The trial court did not abuse its discretion in determining that appellant's voluntary ingestion of two eight-ball's of crank was not a mitigating factor for purposes of her sentencing hearing, where appellant hid in the woods with her child for several days and killed him by blunt-force trauma after failing to suffocate him with wadded up swamp grass, then lied to law enforcement for days afterwards and attempted to direct them away from the child's shallow grave.

STATEMENT OF THE CASE

Respondent agrees that appellant's statement of the case is substantially correct.

STATEMENT OF FACTS

Appellant (Hall), brought her six-month old son, VICTIM, along on a weekend long, drug-crazed excursion into the woods behind her house, camped out in her car. VICTIM died of blunt-force trauma from four bruises on his skull. Hall buried VICTIM in a shallow grave of pine needles and lied for days afterward about what happened.

Hall's guilty plea was rejected where Hall would not admit her guilt. She then subsequently pled under Alford which was followed by an extensive sentencing proceeding. Dr. Joel Sexton, a forensic pathologist, testified that during the autopsy, he found that VICTIM suffered four internal bruises. The impact that led to the bruises caused blunt-force trauma, which killed the child. VICTIM suffered subarachnoid and subdural hemorrhages. Dr. Sexton testified that it would take a lot of force to cause this kind of injury. The bleeding over the surface of the brain did not actually cause the death, however. Instead, the force, itself, caused depolarization of the brain so the brain ceased to function. R. pp. 131 - 138. Dr. Sexton testified that this sort of injury was not likely to occur from a fall. R. p. 140, line 20 - p. 141, line 16. From the presence of bleeding, Dr. Sexton determined that the injuries leading to the blunt force trauma were pre-mortem injuries. R. p. 141, line 17 - p. 142, line 16.

Dr. Sexton also testified that he found about twenty strands of grass, about four to six inches long, folded together in VICTIM's stomach. R. p. 144, line 2 - p. 145, line 6. Also in VICTIM's stomach was muddy water. R. p. 147, lines 5-7. Dr. Baker, an expert in forensic pediatrics, testified that a six-month old child would not have the dexterity to fold grass in the manner in which it was found. R. p. 174, lines 1-3.

Pamela Eckert was a friend of Hall. On Monday morning, April 23, 2001, Hall called Eckert on the phone. Hall told Eckert that Hall's husband abandoned her and VICTIM in the woods and left them for dead. Hall asked Eckert to pick her up on a dirt road that leads to Hall's house. R. p. 206, line 15 - p. 207, line 18. When Eckert arrived, Hall was wearing shoes and jeans, but no shirt, with a leather jacket draped over her shoulder. She was scratched and bruised, and generally a mess. She carried two bags and a gun. She did not have VICTIM with her. Hall appeared scared, and when Eckert asked what she was doing with the gun, Hall said that if anyone messed with her, she would kill them. R. p. 207, line 19 - p. 209, line 15.

Eckert asked Hall what happened to VICTIM. Hall said that her husband, Randall, threw VICTIM in the canal. Hall said she drove her car into the woods to spy on Randall because she thought Randall was having an affair. The car became stuck and she went to find VICTIM water. Randall and a woman attacked Hall and someone took VICTIM from her. The woman said she killed VICTIM and that Randall needed to kill Hall. Hall escaped and hid in the woods, buried under grass. According to Hall, Randall threw VICTIM in the canal. Hall also mentioned observing a cult that drank animal blood in the woods. R. p. 211, line 10 - p. 212, line 11. Eckert was driving by some EMS workers standing by an ambulance. She stopped, but Hall said "what the 'F' are you doing." Eckert still approached EMS and told them what was going on. R. p. 213, line 15 - p. 214, line 12. Eckert testified that Hall was familiar with the woods that adjoined her property, which belonged to a hunt club. R. p. 214, lines 6 - 15.

Detective Tom Marshall testified that he interviewed Hall that Monday. She was

wearing just a bra with a white sheet wrapped around her. She was scraped and cut. Her hands were "very dirty." R. p. 302, line 11 - p. 303, line 9. She was in the process of giving a statement to another officer when Marshall arrived. Hall said that on April 20 (Friday), she left the house after she got in a fight with her husband. She brought VICTIM. She picked up her husband's paycheck and cashed it. She told Marshall that she went to her father's grave and then checked into a motel. That portion of the story did not check out, and Hall then admitted she lied about staying at a motel. She said she and VICTIM spent the night in the cemetery. R. p. 304, line 12 - p. 306, line 20.

Hall and VICTIM woke up and headed to St. George for the Grits Festival. She headed back home and decided to look at some property adjoining Hall's property. She went down a dirt road that she said her husband had shown her. At the end of the road, her car slipped and slid and became stuck. R. p. 307, lines 1-16. She grabbed VICTIM, and rather than back track, she went deeper into the woods. She heard noises and became scared because Randall told her there were panthers in the woods. She heard voices and thought she heard her husband. She went back to the car and stayed there until Sunday morning. Then she went into the woods again and came upon a canal. She claimed she was attacked there, and told Marshall that although she knew who it was, she did not want to get anyone in trouble. Then she blamed Randall and his girlfriend. R. p. 307, line 17 - p. 308, line 24.

Marshall and Hall attempted to find the car. Hall led Marshall down several country roads, but ultimately a helicopter pilot found the car miles away from where Hall had led Marshall. R. p. 309, line 2 - p. 311, line 20. Despite the fact that the car was located by Old Dam Road and that Hall said she knew where Old Dam Road was, she angrily claimed that

the car was nowhere near Old Dam Road. R. p. 311, line 21 - p. 312, line 12.

Hall was brought to the station Monday evening for further questioning. In Marshall's opinion, Hall was coherent that day. She became upset when Marshall asked her again about VICTIM's whereabouts. Hall said that if she did kill VICTIM, she would not hide him in those woods - she knows hiding places where no one would find him. R. p. 313, line 20 - p. 314, line 25.

On Tuesday, Marshall and some others took Hall out to the woods where the car was found. Hall kept trying to steer Marshall away from where the car was found and led him to a canal. On the way, she pointed to a bottle and said that was the bottle that she tried to put swamp water in. At the canal, she said that was where she was attacked and VICTIM was taken. R. p. 315, line 15 - p. 316, line 22. Hall's footprints were found in this area, but not any other footprints. R. p. 317, lines 3-11. Although Hall claimed her assaulters fired at her, no casings or evidence of bullet ricochets were found. R. p. 317, line 16 - p. 318, line 18. She led Marshall to her clothes, which were within a mile of her house. R. p. 319, line 14 - p. 320, line 8.

On Wednesday, she gave a four page statement to law enforcement. R. p. 320, lines 9-16. On Thursday, VICTIM was found in the woods near the car. Some three to four hundred volunteers were searching for VICTIM since Monday with no success. But then Jeffrey Worsham, a volunteer fireman, returned to the woods alone on Thursday. He followed a deer path near the car, and as he stumbled, noticed a white plastic bag under leaves and debris. The bag was partially in a green jacket, wadded in a ball. He picked up the coat and bag. It was heavy. As he began to open the jacket, he saw a child's thigh. Overwhelmed,

Worsham stepped back, but then touched the baby again to make sure. R. pp. 321 - 325.

Hall was interviewed again later that day. She indicated she knew where VICTIM was. She said she woke up the previous night and remembered that VICTIM was dead and recalled where VICTIM could be found. R. p. 321, line 8 - p. 323, line 6.

Hall said the death was an accident. She said when she woke up in the woods, she left VICTIM on the car seat and walked deeper into the woods. Forty-five minutes to an hour later, she returned to the car, and found that VICTIM was not moving. She picked him up and tried to do CPR. She said that VICTIM was dead. R. p. 324, line 10 - p. 325, line 7. Hall ran through the woods stripping off her clothes, which, she surmised, was how she probably lost her keys. She returned to the car, which was locked, and broke the window. She then moved VICTIM about fifteen feet from the car and laid leaves over him. She found her way out of the woods and broke into her own house to call Eckert. R. p. 325, line 15 - p. 326, line 4.

Hall was arrested after the interview. She asked to speak to Marshall on Friday. At that point, Marshall was informed that the autopsy results indicated the cause of death was blunt-force trauma. Marshall asked Hall if there was anything she forgot to tell Marshall about Harley. Hall still insisted that VICTIM just stopped breathing. R. p. 326, line 16 - p. 327, line 4. Marshall told Hall that VICTIM died of blunt-force trauma. Hall said she might have fallen with the child or dropped the child, but she assured Marshall that she did not beat the child to death. R. p. 329, lines 8-22.

Dr. Donna Schwartz-Watts testified that Hall suffered from amphetamine dependence. She testified that Hall told her that Hall took two eight-ball's of crank, roughly the equivalent of forty-nine hits of speed, on Friday and Saturday. Schwartz-Watts opined

that Hall may have been suffering from a drug-induced psychosis. R. pp. 262 - 265. Schwartz-Watts attributed some of the obvious inaccuracies in Hall's account of events as being a product of intoxication. However, she admitted that at times in Hall's statements, she was deliberately misleading detectives – such as the statement about the hotel. R. p. 268, lines 11-23. On cross-examination, Dr. Schwartz-Watts admitted that some deception on Hall's part when she continued to deny knowing where VICTIM was. R. p. 297, lines 12-19.

Tammy Corbin testified as a witness for Hall. But on cross-examination she admitted that she knew Hall was using drugs and one time drove to Corbin's house about twenty miles from the Hall residence, while intoxicated, with her children in the car. R. p. 375, lines 1-23. Corbin also admitted that Hall and her tried to spy on Randall from the Hunt club property. R. p. 378, lines 6-24. They had walked from the hunt club gate through the woods to Hall's house. R. p. 379, line 11 - p. 380, line 2.

At her guilty plea, Hall was asked if she was pleading guilty because she was guilty. She replied as follows:

Your Honor, I am guilty of reckless indifference. I am guilty of not supplying adequate care to my child, I am guilty of having an accident while being under the influence of methamphetamines, I am guilty of those things, Your Honor.

R. p. 11, lines 10-15.

After the prosecution's recitation of the facts and a brief recess, Hall told her version of the facts. She denied feeding VICTIM any grass. She claimed she lost her sense of direction in the woods. Hall left VICTIM in the car, and secured him so he would not roll off the seat. When Hall returned twenty minutes later, VICTIM appeared to be lifeless. Hall ran with VICTIM to the canal. She fell three times running to the canal, and twice running back.

She surmised that the impact of her body must have killed VICTIM. Hall said that she became psychotic after VICTIM died.

At her Alford plea hearing, Hall said she was guilty of reckless indifference. R. p. 402, line 22-23. She chalked up the apparent murder to her confusion from abusiveness, depression, and drugs. R. p. 401, lines 19-22.

ARGUMENT

I

The trial court did not abuse its discretion in determining that appellant's voluntary ingestion of two eight-ball's of crack was not a mitigating factor for purposes of her sentencing hearing, where appellant hid in the woods with her child for several days and killed him by blunt-force trauma after failing to suffocate him with wadded up swamp grass, then lied to law enforcement for days afterwards and attempted to direct them away from the child's shallow grave.

Hall argues that the plea court erred in not considering her voluntary intoxication as a mitigating factor. The State introduced evidence showing Hall murdered her six-month old daughter by four blunt strikes to the child's head, after an attempt to suffocate the child by forcing grass down his throat failed. Despite considerable evidence to the contrary, Hall argued that she did not strike the child, but that she left him in her car that was stuck in the woods, and returned to find him lifeless. Hall claimed she was under the influence of amphetamines at the time of the murder.

Hall complains that the plea court erred as a matter of law in failing to consider voluntary intoxication as a mitigating circumstance. The plea court made a specific finding on the issue, which is as follows:

The mitigation that has been forwarded for the Court's consideration has been that of drug abuse. As you all know, diminished capacity is no defense in South Carolina, and in this instance I fail to find it is a mitigating circumstance.

R. p. 416, lines 9-14 (emphasis added).

Contrary to Hall's argument, the plea court did not claim that diminished capacity

could not be a mitigating factor to consider in sentencing. Instead, the plea court found it was not mitigating "in this instance." Therefore, the logical reading of the plea court's comments are that the plea court finds that in this particular case, she found the presentation of drug use as a mitigating factor to be unavailing.

The plea judge is given broad discretion in sentencing within statutory limits. Brooks v. State, 325 S.C. 269, 272, 481 S.E.2d 712, 713 (1997). "The exercise of a sound judicial discretion must and should be performed in every case with a conscientious regard as to what is just and proper under the circumstances." State v. King, 222 S.C. 108, 71 S.E.2d 793, 795 (1952) (citations omitted). Certainly evidence of voluntary intoxication may be considered as mitigation. State v. Pierce, 289 S.C. 430, 346 S.E.2d 707 (1986). However, evidence of mitigation need not be affirmatively accepted by the plea court merely because it is presented. State v. Grooms, 343 S.C. 248, 540 S.E.2d 99 (2000) (finding that trial court did not have to accept evidence that victim abused Grooms as true, but that Grooms was required to prove of claim by preponderance evidence in a hearing pursuant to S.C. Code § 16-25-90).

Further, in the instant case, the intoxication could be considered aggravating, rather than mitigating. Under the homicide by child abuse statute, a person is guilty if causing death "while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life; . . ." S.C. Code Ann. § 16-3-85 (A)(1) (Supp. 2002). The Supreme Court recently quoted this Court's interpretation of "extreme indifference" where this Court stated as follows:

In this state, indifference in the context of criminal statutes has been compared to the conscious act of disregarding a risk which a person's conduct has created, or a failure to exercise ordinary of due care. (Citations omitted) . . . There-

fore, we . . . hold that in the context of homicide by child abuse statutes, extreme indifference is a mental state akin to intent characterized by a deliberate act culminating in death.

State v. McKnight, 352 S.C. 635, 576 S.E.2d 168, 173 (2003) (quoting State v. Jarrell, 350 S.C. 90, 97, 564 S.E.2d 362, 366 (Ct. App. 2002)). In the instant case, the voluntary intoxication, rather than being evidence of mitigation, is the direct evidence of extreme indifference itself. Before entering the woods, Hall ingested two eight ball's of crank, the equivalent of forty-nine hits of speed. By hiding out in the woods for several days, Hall maintained exclusive possession over the child. Hall clearly owed a duty of due care to her child. Yet she acted in complete disregard of the inherent risks to his welfare in her extreme intoxication while the six-month old child was in her care. Her deliberate act of intoxication alone demonstrates her extreme indifference to the welfare of her child. Hall also used alcohol and marijuana in the woods. R. p. 414, lines 8-11. Further, the plea court noted Hall's admission that the drug-induced psychosis set in after the victim already died. R. p. 411 - 412.

Certainly it would be ludicrous to suggest that voluntary intoxication is a mitigating factor in every case. For instance, voluntary intoxication is part and parcel of driving under the influence, and could never be a mitigating factor. More to the point is caselaw on prosecution based on the voluntary ingestion of crack cocaine by a pregnant woman. See State v. McKnight, 352 S.C. 635, 576 S.E.2d 168 (2003); Whitner v. State, 328 S.C. 1, 10, 492 S.E.2d 777, 782 (1997), *cert. denied* 523 U.S. 1145, 118 S.Ct. 1857, 140 L.Ed.2d 1104 (1998). The Supreme Court in Whitner noted that the potential harm to an unborn fetus by a mother's ingestion of crack cocaine was within the realm of public knowledge and gave

notice to Whitner that use of crack constituted child endangerment. In McKnight, the defendant gave birth to a still born child, who died as a result of defendant's cocaine abuse. The McKnight court found these facts to support homicide by child abuse.

The potential problems with crank use seem to be no less public knowledge as in Whitner and McKnight. In the instant case, Dr. Schwartz-Watts discussed the effects of crank. Rates of violence while intoxicated by amphetamines is four times greater than someone not on the drug. The use of crank will cause a person to be extremely irritable, restless, and to suffer insomnia. It's prolonged use may lead to confusion and agitation, or psychotic episodes. R. pp. 263-265. Hall should have been aware that incapacitation from the drug would render her a serious risk to her six-month old child. Therefore, her ingestion of grossly excessive amounts of crank while a child is exclusively in her care is in and of itself, extreme indifference to the care of the child.

In attempting to persuade the court to accept the guilty plea, counsel for Hall argued that: "the question would be but for her reckless indifference being in the woods under the influence of methamphetamine[,] whether the baby would be alive." R. p. 57, lines 12-23. Therefore, Hall's position at the plea, ironically, was that intoxication was the crime itself.

Further, the plea court found powerful aggravating circumstances warranting a severe sentence. The act itself was extremely brutal. The child died from blunt-force trauma to the head caused by four blows. This followed an obvious attempt to suffocate the child by folding blades of grass and forcing it down the child's throat. The plea court chillingly reflected that swallowing the grass would be difficult for this child, who likely choked on the grass before it managed to find its way to his stomach, especially since the child did not have

teeth. R. p. 413, lines 8-20. Before this, Hall caused VICIUM to ingest muddy water. R. p. 413, lines 21-24. The heinous nature of the crime itself can not be over-emphasized.

The utter lack of remorse by Hall is also significant to the plea court's determination of a proper sentence. Hall maintains that she left the child, and the child was fine, but returned forty-five minutes later to find the child lifeless. Hall's convenient story, that she fell while running with VICIUM, emerged only once she was confronted with the cause of death. It is a highly improbable story at best and shows that Hall was still trying to hide from the consequences of her actions.

Hall maintained this position despite the obvious evidence to the contrary, and tries to avoid responsibility by hiding in legalese that she was only guilty of reckless indifference. R. p. 402, lines 22-23. Despite her familiarity with the woods behind her house, Hall still maintained that she was lost on "unfamiliar property." R. p. 401, line 23 - p. 402, line 8. The plea court found that Hall intentionally directed law enforcement away from the child. R. p. 415, lines 1-11.

The plea court further found as follows:

And considering all these things, considering that it is the parent's duty to protect a child, it is a parent's duty when necessary to protect that child from the parent if required, I would also say that when that fails, when the ability of a parent at whatever cost to protect a child fails, and when that becomes acceptable to society, then that society is at great risk.

R. p. 417, line 17 - p. 418, line 6. The plea court did not abuse its discretion, therefore, the

conviction and sentence should be affirmed.¹

Further, the issue is not preserved for appeal. Hall failed to object to the sentence or the plea court's findings at the plea. A challenge to sentencing must be raised at trial, or it is not preserved for review. State v. Johnston, 333 S.C. 459, 462, 510 S.E.2d 423, 425 (1999). If Hall had timely raised her concerns to the plea court, the plea court could clarify its position. "[A] specific objection to the admission of evidence must be made to preserve the issue for appeal." McKissick v. J.F. Cleckley & Co., 325 S.C. 327, 344, 479 S.E.2d 67, 75 (Cl. App. 1996). "The objection should be sufficiently specific to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the trial judge." Id. "The same ground argued on appeal must have been argued to the trial judge." Id. Failing to articulate her concerns to the plea court, Hall failed to preserve this error for review. Accordingly, the conviction and sentence should be affirmed.

¹ Hall asks for either a new sentencing or to have her plea vacated. Without giving credence to Hall's argument on error, the State submits the proper relief would be merely a new sentencing hearing.

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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IN THE COURT OF APPEALS

Appeal From Dorchester County
Honorable Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

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vs.

NORMA PATRICK HALL,

Appellant.

PROOF OF SERVICE

I, Karen Farrell, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.

This 5th day of September, 2003.


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OCT - 8 2003

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County

Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

NORMA PATRICK HALL,

APPELLANT

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ARGUMENT IN REPLY

The state, in its brief, chooses to ignore the fact that appellant admitted she was “doing an extreme amount of drugs at this time [however]...I did not deliberately hurt my child or intentionally hurt my child.” Appellant told the judge she lost her sense of direction in the woods after her car became stuck. When she returned to the car about twenty minutes later, her child “appeared to be lifeless.” Appellant tried to splash water onto the child to wake him up, and she surmised she apparently fell on top of him. “Evidently the impact of my body falling upon him killed him, which was an accident.” R. 53, l. 14 – 54, l. 25. Appellant had been under the influence of amphetamines for days without sleep. R. 49, l. 24 – 50, l. 9.

Further, Donna Schwartz-Watts also provided strong evidence for the defense that appellant had done eight balls of crank during the week that this happened. Appellant was amphetamine dependent or addicted. Appellant was mentally ill in her condition, and the former County Administrator said appellant had been a good county employee prior to her addiction. R. 115, l. 15 – 120, l. 11; R. 261, l. 1 – 279, l. 22

One of the by-products of this drug use or addiction can be confusion. R. 261, l. 1 – 279, l. 22. The defense correctly argued that the judge was obligated to take into account appellant’s drug addiction as a mitigating factor. R. 408, l. 14 – 411, l. 5. Certainly an intoxicated or impaired person is more likely to become lost or disoriented.

Voluntary intoxication is not a defense or excuse for the crime of homicide by child abuse. However, diminished capacity has been widely applied as a mitigating circumstance in other contexts. See S. C. Code §16-3-20(C)(b) in the death penalty context. See, also, State v. Stone, 350 S.C. 442, 567 S.E.2d 244, 248 (2000).

The legislative mandate contained in S.C. Code §16-3-85(D) states that a judge must consider aggravating and mitigating circumstances when sentencing a defendant for homicide by child abuse. Respectfully, the law in this state will not have any coherence if one trial judge can consider drug intoxication or addiction as an aggravating circumstance in a homicide by child abuse case, and another judge can consider such intoxication or addiction in its traditional sense as mitigating.¹

The state argues by analogy that intoxication is not mitigating in a DUI case. However, "being under the influence" is the central element to driving under the influence. One must be under the influence to be guilty.

Similarly, in State v. McKnight, 352 S.C. 635, 576 S.E.2d 168 (2003), also cited by the state, the fact of using cocaine while pregnant was the cause of death of the viable fetus. Cocaine use while pregnant was not a factor in that homicide by child abuse case, it was the case.

"Diminished capacity" caused by drug use, drug addiction, chronic alcoholism or drug use, mental retardation, mental illness or similar defect have been widely adopted by the legislature as mitigating circumstances. The legislature was aware of that fact when it passed S.C. Code §16-3-85(D) mandating judicial consideration of mitigating circumstances when sentencing a defendant for homicide by child abuse.

¹ The state also argues that appellant was obligated to object to the judge's finding that drug intoxication and addiction was not mitigating. However, appellant respectfully submits trial counsel did all he was obligated to do when he argued the judge *must* consider appellant's drug use and dependence as a mitigating circumstance. Counsel also argued the sentence the state wanted the judge to impose -- 40 years -- would be draconian. Counsel made a clear and concise argument for his position that appellant's drug problem *had to be considered* in mitigation. Counsel was not obligated to argue

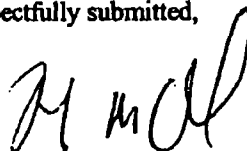
Where intoxication or addiction is an element of the principal offense, then obviously it is not a factor in mitigation. However, the judge here erred by refusing to consider appellant's diminished capacity and drug use in mitigation. What *weight or how much consideration* to give that mitigating circumstance under the facts of a particular case was a matter within the judge's discretion in a homicide by child abuse case. The refusal to consider it as mitigating altogether violates the mandate of the legislature, and that is what the trial judge did in this case.

with the judge after she rejected his position, and sentenced appellant to 40 years in prison. *Cf. State v. Johnson*, 332 S.C. 62, 508 S.E.2d 29, 31, n. 1 (1998).

CONCLUSION

For the reasons stated in appellant's initial brief and this initial reply brief, appellant's Alford plea should be vacate. In the alternative, appellant should be granted re-sentencing after a sentencing hearing.

Respectfully submitted,



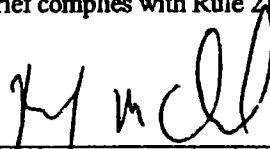
Robert M. Dudek
Assistant Appellate Defender

ATTORNEY FOR APPELLANT.

This 7th day of October, 2003.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.



ROBERT M. DUDEK
Assistant Appellate Defender

1122 Lady Street, Suite 940
Columbia, SC 29201
(803) 734-1330

Attorney for Appellant.

October 7, 2003

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

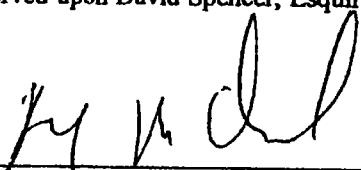
V.

NORMA PATRICK HALL,

APPELLANT

CERTIFICATE OF SERVICE

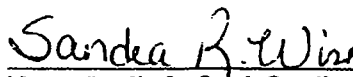
The undersigned attorney hereby certifies that a true copy of the Final Reply Brief of Appellant in the above referenced case has been served upon David Spencer, Esquire, this 7th day of October, 2003.



Robert M. Didek
Assistant Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 7th day of October, 2003.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: February 3, 2005.

RECEIVED

MAR - 2 2004

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Norma Patrick Hall,

Appellant.

Appeal From Dorchester County
Diane Schafer Goodstein, Circuit Court Judge

Unpublished Opinion No. 2004-UP-145
Submitted December 23, 2003 – Filed March 1, 2004

AFFIRMED

Assistant Appellate Defender Robert M. Dudek, Office of Appellate Defense, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Charles H. Richardson, Assistant Attorney General David A. Spencer, all of Columbia; and Solicitor Walter M. Bailey, Jr., of Summerville, for Respondent.

PER CURIAM: Norma Patrick Hall was charged with one count of homicide by child abuse, for which she entered a plea under North Carolina v. Alford, 400 U.S. 25 (1970). She appeals her sentence, arguing the circuit court failed to consider her diminished capacity due to drug use as a mitigating factor during sentencing. We affirm.

FACTS/PROCEDURAL HISTORY

In April 2002, Hall was indicted for one count of homicide by child abuse in connection with the death of her six-month old son, Harley Benjamin Hall. She entered into an Alford plea agreement and was sentenced to forty years in prison. During sentencing, the circuit court refused to consider Hall's diminished mental capacity resulting from drug use, stating "The mitigation that has been forwarded for the Court's consideration has been that of drug abuse. As you all know, diminished capacity is no defense in South Carolina, and in this instance I fail to find it is a mitigating circumstance." This appeal follows.

LAW/ANALYSIS

Hall argues the circuit court erred as a matter of law by failing to consider diminished capacity resulting from her drug use during her sentencing phase. In fact, the trial judge clearly considered that diminished capacity resulting from drug abuse may be a mitigating factor, but determined it was not so in the present case. Moreover, Hall did not object when the circuit court imposed its sentence. Thus, the issue of the sentence is not preserved for our review. State v. Johnston, 333 S.C. 459, 462, 510 S.E.2d 423, 425 (1999) (stating that a challenge to sentencing must be raised at trial, or the issue will not be preserved for appellate review).

AFFIRMED.

GOOLSBY, HOWARD, and KITTREDGE, JJ., concur.



The South Carolina Court of Appeals

MAR 18 2004

CLERK'S OFFICE

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

March 18, 2004

REMITTITUR

The Honorable Cheryl L. Graham
101 Ridge Street
St. George, SC 29477

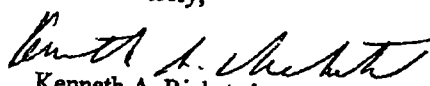
Re: The State v. Hall, Norma Patrick
2001-GS-18-01126

Dear Ms. Graham:

The above referenced matter is hereby remitted to the trial court. A copy of the judgment of this Court is attached.

By copy of this letter we request the Attorney General's Office issue an order for the pickup of these exhibits by the Office of Attorney General or its designee. The exhibits are as follow: State's Exhibit #1 (large photograph of grass), State's Exhibit #4 (photograph) and State's Exhibit #5 (photograph), State's Exhibit #3 (photograph).

Sincerely,


Kenneth A. Richstad
Clerk of Court

KAR/tj

cc: Assistant Appellate Defender Robert M. Dudek
Assistant Attorney General David A. Spencer
Walter M. Bailey, Jr., Esquire

STATE OF SOUTH CAROLINA

In the Court of Common Pleas

County of DorchesterNorma Patrick Hall #283470

Full name and prison number, if any, of applicant.

v.

State of South Carolina

Name of Respondent

APPLICATION FOR

POST-CONVICTION RELIEF

FILED - RECORDED
 2005 FEB 15 AM 11:14
 SHERYL GRAHAM
 CLERK OF COURT
 DORCHESTER COUNTY

INSTRUCTIONS - READ CAREFULLY

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

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

If the applicant 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 applicant was convicted.

1. Place of detention Camille Griffin Graham Correctional Institution
4450 Broad River Road, Columbia, SC 29210
2. Name and location of Court which imposed sentence Court of General Sessions - St.
Dorchester County, South Carolina
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2001 GS 18-1126 Homicide By Child Abuse
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 18, 2002 Homicide By Child Abuse - 40 years
 - (b) _____
 - (c) _____

5. 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 Plea _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? _____
- Yes _____
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
- i. Court of Appeals - State of South Carolina _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Action Affirmed by the Court of Appeals _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. March 1, 2004 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of trial counsel in violation of the _____
- ~~(b)~~ Sixth Amendment of the US Constitution & in violation of Article _____
- ~~(c)~~ I-Section 14 of the S. C. Constitution _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) Upon information & belief trial counsels performance fell below
the threshold required by the Sixth Amendment & the SC Constitution

(b) x for the following reasons:

Continued on seperate page

(c) x

11. 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 petitions in State or Federal Courts for habeas corpus or post-conviction relief?

No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any,
 already specified in (7) No

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

No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

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

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

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

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

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

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

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

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
Yes
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? _____

17. If you answered "yes" to one or more parts of (16), list:

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

i. Michael Tommy Bolus - Attorney at Law

~~ii~~ 2127 Dorchester Road, North Charleston SC 29405

~~iiix~~ Robert M. Dudek - Assistant Appellate Defender

1122 Lady Street, Suite 940, Columbia, SC 29201-3243

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

i. Bolus - General Session - Alford Plea

ii. Dudek - Appeal

iii. _____

18. State clearly the relief you seek in filing this application.

Alford Plea to be vacated. To have a new sentence hearing and to be
re-sentenced.

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

No

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Richland) VERIFICATION

I, Norma Patrick-Hall #283470, 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.

Norma Patrick-Hall

Sworn to and subscribed before me

This 8th day of February 2005.

Kathryn R. Henry L.S.

Notary Public for South Carolina

My Commission Expires 07-27-05

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

I, Norma Patrick Hall #283470, 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 or 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 proceeding or give security therefor.

Norma Patrick-Hall
 Applicant

Sworn to and subscribed before me

This 8th day of February, 2005.

Kathryn R. Henry L.S.

Notary Public for South Carolina

My Commission Expires: 07-27-05

Continued

9 (B)

1. Judge Diane Goodstein actively pursued with the conflicting interest and that conflict adversely affected her performance. Constitutional error has occurred by Hall knowing and working with the Judge previously and prejudice is thereby presumed. She did not maintain professional competence in her judicial administration. She allowed the knowing use of perjured testimony such as the following:
 - A. The Autopsy Report and the Pathologist testimony do not coincide. The Burden of Proof here was not proved or shown here. Speculation was the issue.
 - B. The Court Order for Hall to be placed at the William S. Hall Psychiatric Institute was for 30 days. The Court Order is hereby invalid due to Hall only staying hours upon being evaluated and was released. The evaluation results were Amphetamine Induced Psychosis. Hall's child died April 22, 2001 and she was arrested April 26, 2001, and the evaluation took place in August of 2001.
 - C. Trident Hospital's Medical Records reveal that Hall tested positive for amphetamine and marijuana. It was submitted to the Court as evidence of drug use. The records reveal the test was a urine screen test only - not confirmed or quantitated. Hall had a prescription for the drug - Didrex which is an amphetamine given by Dr. James S. Howell. Please note this is a prescription drug.
 - D. The Judge allowed the prosecution to use a taped interview as evidence of deception. Said tape was basically inaudible. The typed information from said interview is invalid due to the fact that several of the remarks made by Hall were not knowlegable to her at said time. The taped interview's documentation is hereby inconclusive. It shows bias, badgering and misleading tactics were used by the department at the time and further used by the Solicitor at said trial.

Continued

10 (A)

1. Trial counsel failed to object or challenge the 40 year sentence after Judge Goodstein pronounced the sentence or before the sentence hearing was adjourned. Statute 16-3-85 states that all aggravating and mitigating circumstances must be considered. The Judge threw out the mitigating circumstances due to drug use.
2. Hall wavered continuously on taking a plea. On April 10, 2002 Hall plead guilty and Judge Goodstein would not accept the plea. On April 15, 2002 finally after a jury was picked she pled under the Alford Plea. Hall detrimentally relied on trial counsel's erroneous advice which led to the Alford Plea thus making said plea involuntary. He used unprofound and unreasonable tactics to force Hall to accept the plea. In due fact Hall told the Court that she never intentionally or deliberately hurt her child. Hall did not dispute the use of drugs.
3. Trial counsel did not obtain witnesses from Edisto Pediatrics or the Medical University of South Carolina to conclude the medical records of the victim to determine possible exculpatory information and defenses available to the defendant in this case. The testimony of the aforementioned would have been favorable and material to the defense which is per the compulsory process clause.
4. Trial counsel failed to properly investigate the case. Bolus did not present reasonable doubt as to the causation of the fatal injury. He never submitted the other indications of the cause of death. He failed to exhaust Hall's said challenges in this case. He erred by not putting up a proper defense in a Homicide trial.
5. Trial counsel failed on his advise on direct consequences and collateral consequences. Counsel's function is to assist the defendant, derive the overarching duty to advocate the defendant's cause and the more particular duties to consult with the defendant on important developments in the course of prosecution. Counsel did not bear skill and knowledge that rendered the trial a reliable adversarial testing process.
6. Bolus submitted to the prosecutorial misconduct without objection, the legality of the prosecutorial tactics such as the following:

Page Two (2)
Continued
10 (A)

Witness coaching
Providing false evidence
Allowing false testimony
Eliciting false/misleading statements
Alleged lack of candor
Impaired scientific judgement by testimony

The State's admission of evidence - the probative value impugned Hall's character and credibility.

7. Trial counsel failed to file for a change of venue. This was a high profile case - Highly Publicized. Unconscious conspiracy intended to punish one in order to assuage public outrage, family revenge or for possible political gain. The Court should be for justice not for revenge.
8. Under the American Bar Association - Canons of Professional Ethics - Canon 15 states the following:

Trial counsel owes "entire devotion to the interest of the client warm zeal in the maintenance and defense of his or her rights and the exertion of his utmost learning and ability" to the end that nothing be taken or be withheld from him or her, save by the rules of the law, legally applied. The trial counsel failed to protect and defend the clients rights submitted therein.

CGGCI C-3 Rm. 19
4450 Broad River Rd.
Columbia, SC 29210

Ms. Cheryl Graham
Clerk of Court - Dorchester County
101 Ridge Street
St. George, SC 29477

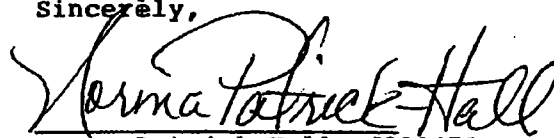
Dear Ms. Graham:

Enclosed please find a copy of my PCR Application.

I am hereby requesting a copy be returned to me with the
date stamp on same.

I thank you in advance for your assistance in this matter.

Sincerely,


Norma Patrick-Hall #283470

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	
	)	
	)	2005-CP-18-283
	)	
Norma Patrick Hall, # 283470,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed February 15, 2005, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. The Applicant was indicted at the April, 2002 term of the Dorchester County Grand Jury for murder (2001-GS-18-628) and homicide by child abuse (01-GS-18-1126). She was represented by Tommy Bolus, Esquire. On April 10, 2002, the Applicant pled guilty to homicide by child abuse. She was sentenced by the Honorable Diane S. Goodstein to confinement for a period of forty (40) years for homicide by child abuse.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Norma Patrick Hall, Op. No. 2004-UP-145 (S.C. Ct. App. filed March 18, 2004).

Attached herewith and incorporated herein are the records of the Dorchester County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, and the Applicant's appellate records. Any of the above not so attached will be forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In her current Application, the Applicant alleges that she is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel;
2. Involuntary Guilty Plea.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that

his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

The State therefore requests that this Court convene an evidentiary hearing on the issue of ineffective assistance of counsel.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that a hearing be held.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ROBERT L. BROWN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

3/22, 2006

STATE OF SOUTH CAROLINA

COUNTY OF Dorchester

STATE VS.

Norma Patrick Hall

AKA:

Race: W Sex: F Age: _____

DOB: 1/1 SS#: _____

Address: _____

DL# _____

SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: **542**

2001-GS-14-1126

A/W#: 20010214

Date of Offense: 4/22/01

S.C. Code §: 16-3-85

CDR Code #: 2131516

☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Homicide B1 CHILD ABUSE

in violation of § 16-3-85 of the S.C. Code of Laws, bearing CDR Code # 2131516

☐ NON-VIOLENT

☒ VIOLENT

☐ SERIOUS

☒ MOST SERIOUS

☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

Norma P. Hall
Defendant

mt Bilus
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 40 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.

☐ The Defendant is to be given credit for _____ days/months jail time

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS

Recipient: _____

*Fine:\$ _____

§14-1-206 (Assessments 100%)....\$ _____

§14-1-211(A)(1) (Surcharge).....\$ 100.00

§14-1-211(A)(2) (Surcharge).....\$ _____

§56-5-2995 (DUI Assessment).....\$ _____

3% to County (if paid in installments).....\$ 300

TOTAL\$ 103.00

[Signature]
Clerk of Court/Deputy Clerk

Court Reporter: [Signature]

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

PRESIDING JUDGE [Signature]

Judge Code: 111121

Sentence Date: 4-19-02

RECEIVED

April 1, 2002

PTUP _____

_____ days/hours _____

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

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: _____

SCCA/217 (1/2001)

STATE OF SOUTH CAROLINA

COUNTY OF Dorchester
 STATE VS.
Norma Patrick Hall
 AKA:
 Race: W Sex: F Age:
 DOB: 1/1 SS#:
 Address:
 DL# SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: **543**

2001-GS-19-1126
 A/W#: 20010214
 Date of Offense: 4/22/01
 S.C. Code §: 16-3-85
 CDR Code #: 2131516

☐ CASE RESTORED

SENTENCE
☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Homicide By CHILD ABUSE

in violation of § 16-3-85 of the S.C. Code of Laws, bearing CDR Code # 2131516

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
 Solicitor

Norma P. Hall
 Defendant

[Signature]
 Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 40 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.

☐ The Defendant is to be given credit for _____ days/months jail time.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:\$ _____

§14-1-206 (Assessments 100%)\$ _____

§14-1-211(A)(1) (Surcharge)\$ 100.00

§14-1-211(A)(2) (Surcharge)\$ _____

§56-5-2995 (DUI Assessment)\$ _____

3% to County (if paid in installments) ...\$ 300

TOTAL\$ 103.00

[Signature]
 Clerk of Court Deputy Clerk

Court Reporter: [Signature]

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

PRESIDING JUDGE

Judge Code: 11121

Sentence Date: 4-18-02

[Signature]

SCC-217 (1/2001)

54

WITNESSES

DET. T. MARSHALL, DCSD

ARREST WARRANT NUMBER

2001DOR16

Arrested: Apr 26, 2001

ACTION OF GRAND JURY

True Bill
Don H-11-02
Patty W. Richardson

Foreperson of Grand Jury

Date: April 11, 2002

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 001GS18-1126

The State of South Carolina

County of

DORCHESTER

COURT OF GENERAL SESSIONS

April 15, 2002 TERM

THE STATE

vs.

Norma Patrick Hall

Indictment for

HOMICIDE BY CHILD ABUSE

SC Code: 16-03-0085

CDR Code: 2356

Class: FEL-EXM

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

CERTIFIED COPY
2005 APR -4 AM 8:33
Defendant

Cheryl N. Smith
hereby appear in my own proper person and
plead guilty to the within indictment or to
CLERK OF COURT
DORCHESTER COUNTY

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

INDICTMENT
2001GS18-1126

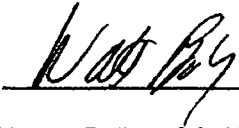
At a Court of General Sessions, convened on April 15, 2002 the Grand Jurors of
Dorchester County present upon their oath:

HOMICIDE BY CHILD ABUSE

That Norma Patrick Hall, did in Dorchester County, on or about April 22, 2001, in
violation of Section 16-3-85(A)(1), of the South Carolina Code of Laws, as amended,
cause the death of VICTIM a child under the age of eleven, while
committing an act of child abuse or neglect as defined in Section 16-3-85(B) of the
South Carolina Code of Laws as amended, and the death did occur under
circumstances of extreme indifference to human life.

CERTIFIED COPY
2005 APR -4 AM 8:33
Clayton A. Hester
CLERK OF COURT
DORCHESTER COUNTY

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



Walter Bailey SOLICITOR

546
ARREST WARRANT
G-326982
STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Dorchester
THE STATE
against

Norma Patricia Hall
Address: 214 Breckinridge Dr
Dorchester SC 29927
Phone: _____ SSN: 2817
Sex: F Race: W Height: 5'3" Weight: 125
DL State: _____ DL #: _____
DOB: 9-16-62 Agency ORI #: _____
Prosecuting Agency: _____
Prosecuting Officer: Det. Alvin Coker
Offense: MURDER Offense Code: _____
Code/Ordinance Sec. Common Law

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of _____
The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)
Date: _____

RETURN
A copy of this arrest warrant was delivered to
defendant Norma Patricia Hall
on 4/26/01
Michael D. Miller
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
Dorchester)

AFFIDAVIT

Form Approved by
S.C. Attorney General
July 26, 1990
SOCA 618

Personally appeared before me the affiant Detective Alvin Coker who
being duly sworn deposes and says that defendant Norma Patricia Hall
did within this county and state on April 22, 2001 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Dorchester)
in the following particulars:
DESCRIPTION OF OFFENSE: MURDER (Common Law)

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

See Affidavit

Sworn to and subscribed before me)
on 4-26-01)
Michael D. Miller (L.S.)
Signature of Issuing Judge

AMCoker
Signature of Affiant
Affiant's Address DC SO - 100 S. GEORGE ST.
ST. GEORGE SC 29477
Affiant's Telephone 563-0259

STATE OF SOUTH CAROLINA)
☐ County/ ☐ Municipality of)
_____)

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that
on April 22, 2001 defendant Norma Patricia Hall
did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Dorchester) as set forth below:

DESCRIPTION OF OFFENSE: MURDER (Common Law)

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

Michael D. Miller (L.S.)
Signature of Issuing Judge
Judge's Address 912 Dennyway Ave
St. George SC 29473
Judge's Telephone 882-0870
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

CERTIFIED COPY
FILED
2001 MAY -7 PM 1:28
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

WARRANT NUMBER: 6-326982 547
DCSO CASE NUMBER: 01003559

AFFIDAVIT

Personally appeared before me, a magistrate of this County, one DETECTIVE ALVIN COKER, who, being duly sworn, deposes and says that HALL, NORMA PATRICK, W/F 5' 03" / 125 lb. / DOB: 09-15-62 / SSN: [REDACTED] -2817 / [REDACTED],
Dorchester, SC did within this County and State on the 22ND day of APRIL, 2001, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

MURDER: Violation of Section (COMMON LAW) of the South Carolina Code of Laws, 1976 as Amended.

The Affiant states that there is probable cause to believe that the defendant named above did commit the crime set forth, and that such probable cause is based on the following facts:

That on APRIL 22, 2001 located in a wooded area known as the Pine Hill Hunting Club, near the community of Dorchester, within the County and State aforesaid, the Defendant, Norma Patrick Hall, did commit the offense of MURDER, in violation of section (COMMON LAW) of the South Carolina Code of Law 1976 as amended. In that she did willfully and unlawfully with malice and aforethought, did kill her Six month old infant son VICTIM by suffocating the infant. Furthermore that on Friday 04/20/01 the defendant left her residence with her infant child and did not return home. On Saturday the Defendant was observed at various location with her son. She again did not return home. On Sunday 04/22/01 the defendant drove her White 1995 Chevrolet Lumina 4-door vehicle on the Pine Hill Hunting Club property that adjoins her property. She drove down the main dirt road that dissects the hunting club property and turned onto a narrow logging road and followed it to a firebreak. She turned right onto the firebreak where she bogged the vehicle down. The defendant smothered her son and wrapped him in a green jacket, placed his body in a plastic bag and buried the body in a shallow grave, partially covered with leaves approximately 15 - 20 feet from the vehicle in the woods. The defendant could not free her car from the muddy bog and then attempted to walk out of the woods, however she became disoriented and lost her way spent Sunday night in the woods. On Monday morning she again attempted to free the car from the muddy bog but failed. She walked and found her way back to her residence where she forced open a rear window to gain entry. Once inside she called an acquaintance (Pam Eckert) and ask her to pick her up. Pam Eckert drove to the defendant's residence where she found the defendant down the road from her residence. The defendant was covered with cuts and abrasions from having walked or ran through thick woods and underbrush and was clothed only in a bra, jeans and had a jacket wrapped around her. The defendant retrieved a 30-30 rifle and clothing and got into the vehicle with Mrs. Eckert, and told Eckert that someone had tried to kill her and had taken her son. Eckert then drove to the Town of Ridgeville, SC where she stopped a Dorchester County Ambulance in order to get some medical attention for the defendant. The defendant refused medical treatment from EMS and EMS called for a Deputy. Deputy Moses Smalls responded and then called for investigators. The defendant gave numerous versions of what had happened to her and her son. She was taken to the Hospital for medical treatment on Monday night, while an intensive search initiated to locate the missing child. The defendant later accompanied law enforcement officers back into the area where items of evidence had been recovered and was ask repeatedly if she knew where her son was. She continued to deny any knowledge of where he was. Instead she lead officers to locations where items of evidence were recovered including her clothing (pants) and US Currency that she had hidden under fallen trees. The defendant was returned to the scene where her car had been stuck and where the infant's body was later found, and never disclosed the location of the body. Instead she repeatedly led officers away from the victim's body. On Thursday 04/26/01 search party members located the body of the child. The defendant was again interviewed and eventually told interviewers that her baby had suffocated and she tried to revive him but failed, so she wrapped the child in articles of clothing and buried him. All is against the Law, Peace and Dignity of the State of South Carolina.

SWORN AND SUBSCRIBED BEFORE ME

THIS 26 DAY OF

April, 2001

(ISSUING JUDGE)

(SIGNATURE OF AFFIANT)

ADDRESS: 100 SEARS STREET
ST. GEORGE, S.C. 29477
TELEPHONE: (843) 563-0259

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 04/08/05
OMCOMITA RELEASE DATE SCREEN C023981
SCDC# > 283470 LOC: GRAHAM CORR
HALL, NORMA PATRICK SCDC CLASSIFICATION..: VIOLENT

SEXUAL REGISTRY..: N
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL PREDATOR..: NOT APP
DNA STATUS.....: COMPLETED
CURRENT SENTENCE: 040-00-000 CONSECUTIVE SENTENCE ...: N
CURRENT SENT START DATE: 04/22/2001
PROJECTED COMPLETION DATES
MAXOUT DATE: 04/14/2035 CURRENT EWC ..: 3 P 5
YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ...: 000339 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS: 000000 OFFENSE > CAT 3
TOTAL EXTRA EARNED CREDITS ..: 000
TOTAL SERVICE TIME EARNED ...: 001426

PFKEYS: 5:HISTORY OF DATE CHANGES

4-⁶ 1 Sess-1 167.7.50.33 TNET1540 3/11

CLASSIFICATION SUMMARY REPORT DATED 04/08/05

C023981

SCDC# 283470 HALL,NORMA PATRICK
OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

FBI# 717283VB8

INSTITUTION ... GRAHAM CORR INST
SECURITY/CUST.: 3 MINIMUM IN
CURR INCARC SENT...: 40 YRS 0 MOS 0 DYS
CENTRAL MONITORING.: YES
MED CLASS: 2 MED PROB/NO WORK RESTRICT
MENTAL CLASS: NMH (NO MENTAL HEALTH TRE
CURRENT PROGRAM...: SISTERCARE WORKSHOP
AGE...: 42DORM.....: C30038T
TOBACCO USER....: Y
PROJ MAXOUT DATE: 04/14/2035
PROJ PAROLE DATE: 00/00/0000
EWC JOB...: CANTEEN OPERATOR HEL
EDUC PGM.: NO CURR EDUC PROGRAM
EWC LEVEL: 3F5 EEC LEVEL:
ASSIGNMENT...: CANTEEN

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE YRS MOS DYS COUNTY	SENTENCE START V/NV CAT INDICT
HOMICIDE BY CHILD ABUSE	40 0 0 DORCHESTER	04/22/2001 V 5 016S181126

PRIOR COMMITMENTS OVER 90 DAYS:

NO PRIOR COMMITMENTS OVER 90 DAYS

DETAINEES (HOLD,WANTED,NOTIFY):

NO DETAINEES

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

NO NON-ASSAULTIVE DISCIPLINARY HISTORY

HISTORY OF MOVEMENTS:

DATE	LOCATION	STATUS	REASON
07/11/03	GRAHAM CORR INS	INCARCERATED	RETURN FROM COURT
07/11/03	DORCHESTER CO	ABSENT WITH LEAVE (A	TO COURT
05/21/02	GRAHAM CORR INS	INCARCERATED	ADMINISTRATIVE
04/19/02	GRAHAM R&E	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL 3F5
CANTEEN OPERATOR HEL	05/30/02	00/00/00		

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
--------------------	---------------	-------------	-----------------------

NO SCHOOL ASSIGNMENTS

***** END OF REPORT *****

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER) COURT OF COMMON PLEAS
2005-CP-18-288

Norma P Hall,)
APPLICANT)
vs.) TRANSCRIPT OF RECORD
State of SC,)
RESPONDENT)

April 23, 2007
Orangeburg, South Carolina

B E F O R E:

THE HONORABLE R FERRELL COTHRAN, JR., PRESIDING
JUDGE.

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

LAURA S KNOBELOCH, ESQ.
Attorney for the Applicant

LANCE S BOOZER, ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

Kathleen Richardson, RPR, CRR
Official Court Reporter

INDEX OF WITNESSES

NORMA PATRICK HALL

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Cross Mr. Boozer 15

Redirect By Mrs. Knobeloch 23

TOMMY BOLUS

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Cross By Mrs. Knobeloch 38

Redirect By Mr. Boozer 52

1 MR. BOOZER: Your Honor, this is the matter of
2 Norma Hall versus State. I believe we have a couple
3 of folks that are involved in this case that stepped
4 out for a moment and they will be right in -- if
5 that's okay with the Court. May I approach?

6 THE COURT: Certainly.

7 (Mr. Boozer handed the Court papers).

8 MRS. KNOBELOCH: Your Honor, I'm Laura
9 Knobeloch, Your Honor, from Mt. Pleasant. If I could
10 approach. I wanted to give you my card so you could
11 see who I am.

12 THE COURT: Thank you.

13 MRS. KNOBELOCH: I'm sorry I'm late.

14 THE COURT: That's okay. I know y'all had
15 traffic problems.

16 MRS. KNOBELOCH: Yeah, it was like Hurricane
17 Floyd all over again.

18 MR. BOOZER: Your Honor, the State's ready.

19 THE COURT: Okay.

20 MR. BOOZER: This is case of Norma Hall versus
21 the State, Your Honor. Your Honor, just briefly for
22 background, the applicant filed this post-conviction
23 relief application February the 15th, 2005.

24 Your Honor, the applicant was indicted at an
25 April 2002 term of the Dorchester County Grand Jury

1 for murder, homicide by child abuse.

2 Your Honor, she was represented by Mr. Tommy
3 Bolus. On April 10th, Your Honor, the applicant
4 proceeded to a guilty plea before Judge Goodstein,
5 and Judge Goodstein would not accept the guilty plea.

6 On April 18th, Your Honor, they again reconvened
7 and the applicant pled pursuant to Alford V State.
8 She was sentenced by Judge Goodstein to confinement
9 for a period of 40 years for homicide by child abuse.

10 Your Honor, timely notice of appeal was filed on
11 the applicant's behalf. South Carolina Court of
12 Appeals affirmed the applicant's conviction and
13 sentence. Your Honor, that was filed March 18th,
14 2004.

15 Your Honor, in this application for PCR the
16 applicant has a few allegations of ineffective
17 assistance of counsel as well as involuntary plea.

18 *THE COURT:* Okay.

19 *MR. BOOZER:* Thank you.

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

21 *MRS. KNOBELOCH:* Thank you. May it please the
22 Court. Your Honor, just briefly we're going to amend
23 her application. It's just very brief, the issues.

24 Do you -- and I have let the Attorney General
25 know we're just going to argue that she was promised

1 a lesser sentence than she got if she pled guilty.
2 Also that she was threatened through some other
3 people with -- that Judge Goodstein had supposedly
4 told people that if she went to trial and lost, she
5 was going to get life.

6 And we're going to argue those -- that that
7 threat along with the promise, you know, coerced her
8 into the plea. And also we're going to argue that
9 the Alford plea, her attorney was ineffective in
10 letting her do an Alford plea where she really
11 received no benefit.

12 I think the two prongs of Alford are that you
13 have to believe that you'd be convicted at trial and
14 that you get some benefit from the plea.

15 And the only thing that was done for her is the
16 murder charge was dropped, but that carries the same
17 potential sentence as what she pled to. So any way,
18 those -- that's our change in the petition. The
19 Attorney General is fine with that. And we would
20 just go ahead and call Ms. Hall if you're ready.

21 THE COURT: That's fine. If you could place
22 your left hand on that bible and raise your right
23 hand. Thank you, sir.

24 NORMA PATRICK HALL, after being duly
25 sworn, testified as follows:

DIRECT EXAMINATION

BY MRS. KNOBELOCH:

Q Ms. Hall, can you please state your full name for the record, please?

A Norma Patrick Hall.

Q And where are you currently incarcerated?

A Camille Goodman -- Graham in Columbia.

Q Okay. And why are you there?

A Charged with homicide by child abuse.

Q Okay. That's what you pled to? And when did you plead to that?

A In April of 2002, ma'am.

Q Okay. And that was an Alford plea. Do you -- or was it?

A Yes.

Q Okay. It's an Alford plea. Can you tell me what you understand an Alford plea to be?

A That I wasn't actually admitting to guilt but that the State would have enough evidence if I was brought to trial to convict me.

Q Okay. And Mr. Bolus, he was retained as your attorney?

A That's correct.

Q Okay. When you were -- from the time you were arrested to the time that you pled guilty, were you in

1 jail the whole time or did you ever bond out?

2 A No, ma'am. I was incarcerated -- I was in jail.

3 Q Okay. And when did -- when was Mr. Bolus hired to be
4 your attorney? How long had you been in jail?

5 A Probably close to seven months.

6 Q Okay. Did you have an attorney before him?

7 A A Public Defender, yes, ma'am.

8 Q And then your family hired Mr. Bolus?

9 A Uh-huh.

10 Q Okay. How many times did he come to see you at the
11 jail?

12 A Five to seven, something like that.

13 Q Okay. And I know this is a long time ago, but if you
14 can remember, about how long would he come and visit with
15 you when he would see you at the jail?

16 A About 30 minutes maybe.

17 Q Okay. You don't think any visit was ever longer than
18 30 minutes?

19 A I don't remember exactly. I'm going to say around 30
20 minutes.

21 Q Okay. And did he provide you with discovery in your
22 case, the police reports and things like that?

23 A He did provide me with the rule five.

24 Q Okay. And you had a chance to look at all that?

25 A Yes.

1 Q Okay. And did you and Mr. Bolus talk about the
2 discovery?

3 A Some of it, yeah.

4 Q Okay. Did you ever indicate to Mr. Bolus an interest
5 in pleading guilty?

6 A No.

7 Q Okay. In your conversations with him, did you tell
8 him what you wanted to do as far as either having a trial
9 or pleading guilty?

10 A He knew that I didn't want to plead.

11 Q Did you want a trial?

12 A Yes, ma'am.

13 Q Okay. And you told Mr. Bolus that?

14 A Yes, ma'am.

15 Q Okay. In fact, from the transcript you actually had
16 picked a jury before --

17 A That's correct.

18 Q -- you pled guilty. Okay. What changed your mind?
19 I mean, obviously you're picking a jury, you're having a
20 trial. You're in the middle of a trial. What made you
21 decide to plead guilty?

22 A On the morning of April the 15th I was visited by
23 Mark Hane and Jim Bell at the county jail. They had
24 breakfast with Judge Diane Goodstein's husband which would
25 have been Arnold Goodstein.

1 And he passed along the message and said that she had
2 told him that if I wasted the taxpayers' money, that she
3 would give me life in prison.

4 Q I'm sorry. What does -- did you -- what did you take
5 that to mean, wasted the taxpayers' money? What does that
6 mean?

7 A That if I went to trial, that she would give me life.

8 Q If you were convicted at trial?

9 A Right.

10 Q Okay. Did Mr -- was Mr. Bolus present for this
11 conversation?

12 A He knew about it, yes.

13 Q Okay. Did he ever question -- and this is before any
14 evidence has been presented, right? The jury--

15 A That's correct.

16 Q Okay. Did he -- did Mr. Bolus ever question the
17 Judge Goodstein as to if she had already made up her mind
18 about what she was going to do at sentencing if there was
19 a sentencing?

20 A Ma'am, I don't know. I...

21 Q Okay. Do you -- are you -- do you know whether or
22 not he asked her to recuse herself from this trial based
23 on what you had heard, that she had already made up her
24 mind what to do with you?

25 A No, he didn't ask her. And at the very beginning --

1 I had worked with Mrs. Goodstein. I worked for the county
2 for eight and a half years as a clerk to council and to
3 the county administrator, and at that time she was the
4 county attorney.

5 Q Uh-huh.

6 A And so I had a conflict with it from the beginning.
7 But when asked, I went along with it because my attorney
8 wanted me to go along with it, and so we went along with
9 that.

10 Q Okay. When you say, went along with it, are you
11 talking about at the beginning of everything when it
12 was -- this conflict was brought out?

13 A Yes, ma'am. Actually, they discussed it at the
14 bench.

15 Q Okay. That you had known Judge Goodstein prior to
16 this trial?

17 A That's correct.

18 Q And on the record everybody agreed that you would
19 waive any conflict, that you were fine to go forward in
20 front of Judge Goodstein?

21 A I believe that's what they decided, yes.

22 Q Okay. But you're saying now that you didn't want to
23 waive that.

24 A I didn't know that I really had a choice, but...

25 Q Okay. Did you tell Mr. Bolus that you did not want

1 Judge Goodstein from the beginning? Did you tell him
2 that?

3 A I -- I didn't want her to be the Judge, no, ma'am.

4 Q Did you tell your attorney that?

5 A I don't remember, ma'am, honestly. I don't remember.

6 Q Okay. Okay. But back to, you know, jumping later
7 again where we left off, the morning of the 15th when you
8 learned that supposedly Judge Goodstein had told her
9 husband if you were convicted at trial she was giving you
10 life, you -- do you recall your attorney ever having any
11 conversation on the record with the Judge about that
12 allegation?

13 A No, ma'am.

14 Q Okay. And -- okay. So back to that -- all right.
15 So that's what -- that's what influenced your -- that's
16 what made you decide to take that plea rather than having
17 a trial?

18 A It upset my mother. She came in the back where I was
19 and began to cry. She was afraid for them to give me
20 life.

21 Q Okay. Did your attorney ever tell you if you pled
22 guilty what the sentencing arrange was--

23 A He thought I would get 20 to 25 years.

24 Q If you pled guilty?

25 A Yes.

1 Q Okay. Do--

2 A I didn't sign any documentation in that, though,
3 ma'am.

4 Q Excuse me?

5 A I didn't sign documentation to that, but that's...

6 Q That's what he told you?

7 A Right.

8 Q Did he tell you if you were convicted at trial what
9 the possible sentencing was?

10 A Well, the two different charges carried different
11 sentences. And I didn't know which charge they were going
12 to go under.

13 Q Okay. Didn't tell you what the possible sentences
14 were for each charge, the murder and the homicide by child
15 abuse?

16 A They offered me a plea for 30 years to the murder
17 charge, but I didn't take it.

18 Q Okay. Why didn't you take it?

19 A I wasn't going to plea.

20 Q You wanted a trial?

21 A Right.

22 Q Okay. Okay. When, you know, after you picked this
23 jury and you change your mind, decide you're going to take
24 this plea, we talked about that this was an Alford plea
25 where you didn't have to admit any guilt.

1 Did you believe that -- at that point did you believe
2 that if you were convicted by a jury, the jury -- I'm
3 sorry -- that if you had a trial, that the jury would have
4 convicted you?

5 A Possibly, yes.

6 Q Okay. And what if anything was the State going to do
7 for you in exchange for your guilty plea?

8 A I don't think they were to do anything.

9 Q Well, they did dismiss the murder charge when you
10 pled to the -- to the homicide by child abuse. Was there
11 anything else that the State did? For example, to
12 recommend a lower -- particular sentence that you were in
13 agreement with?

14 A No, ma'am.

15 Q Okay. So the only thing that happened because of the
16 Alford -- because of you accepting that deal was they
17 dismissed the murder charge; is that right?

18 A I think so, yes, ma'am.

19 Q Okay. When the Judge sentenced you and she gave you
20 40 years, were you surprised?

21 A Very.

22 Q Okay. Did you tell your attorney that you were
23 surprised by the sentence?

24 A I think he was surprised as well, very surprised.

25 Q But did you actually discuss it with him?

1 A Yes.

2 Q When--

3 A And I also asked him to file my appeal, and he did
4 so.

5 Q Okay. When was this?

6 A A few minutes after she slammed the gavel down.

7 Q Okay. Where was this?

8 A In St. George at the Dorchester County Courthouse.

9 Q But after she slammed the gavel down, what happened?

10 A He and I talked for a moment and...

11 Q And what did you tell him?

12 A I told him to appeal, file my appeal.

13 Q Okay. So in other words, you were--

14 A And we walked -- and once I left from out of the
15 courtroom and went into a back conference room where they
16 had allowed me to sit during the trial, the four day
17 period, he had looked at me and told me to file my PCR
18 under ineffective counsel, but at that point in time I
19 didn't understand what that meant, but now today of course
20 I do.

21 Q Okay. So immediately after the plea you told him to
22 file an appeal because you were not happy with that
23 sentence?

24 A Very upset.

25 Q You were not expecting that sentence based on what

1 you had been promised by your attorney. Okay. And you --
2 okay.

3 MRS. KNOBELOCH: I have no further questions,
4 Your Honor.

5 THE COURT: Okay. Mr. Boozer?

6 MR. BOOZER: Court's indulgence, Your Honor.

7 THE COURT: Sure.

8 MR. BOOZER: May it please the Court, Your
9 Honor.

10 CROSS-EXAMINATION

11 BY MR. BOOZER:

12 Q Do you have a copy of the transcript with you, Ms.
13 Hall?

14 A No, sir.

15 MR. BOOZER: May I approach the witness, Your
16 Honor?

17 THE COURT: Certainly.

18 BY MR. BOOZER:

19 Q Ms. Hall, if you would turn to page 81 of the
20 transcript. I believe there are a few volumes there, so
21 it may be a little bit later on.

22 MRS. KNOBELOCH: Which day of the transcript are
23 you talking about?

24 MR. BOOZER: I handed the Court my transcript,
25 so I don't know. It's page 81.

1 MRS. KNOBELOCH: Okay. I will find it.

2 THE WITNESS: Okay.

3 BY MR. BOOZER:

4 Q Are you there? You on page 81?

5 A Yes, sir.

6 Q Look down. The Court asked you if you had any
7 physical, emotional, nervous, alcohol problem, anything
8 that would keep you from understanding what you were doing
9 in court that day, and you said no. Is that correct?

10 A If I'm not mistaken, this was on April the tenth, the
11 very first day we went to trial.

12 Q Okay.

13 A Yeah.

14 Q So that was on April the tenth. That wasn't April --
15 that wasn't the Alford plea?

16 A No, sir, it wasn't. This is your first guilty plea
17 that she didn't accept.

18 MR. BOOZER: Court's indulgence, Your Honor.

19 THE COURT: Yes, sir.

20 THE WITNESS: Has April the tenth on the
21 first -- the front of it.

22 THE COURT: It's page 131 in one transcript and
23 81 in the other.

24 MR. BOOZER: Okay. My transcript is different.

25 THE COURT: At least what I have on page -- I

1 see the question is on line 13 because it comes down
2 to line 22 and asks about Alford, so I assume
3 that's--

4 MR. BOOZER: Yes, sir. And this is in regard to
5 the Alford plea. It's on 131 in this transcript.
6 The one that I had at the office was numbered
7 differently, and I believe it was from the record on
8 appeal which is why. Are you on 131, Your Honor?

9 THE COURT: Yes.

10 BY MR. BOOZER:

11 Q And this will be your 131, Ms. Hall. Okay. So the
12 Court asked you if you had any physical, emotional,
13 nervous or alcohol problems that would keep you from
14 understanding what you were doing in court, and you said
15 no. Is that right?

16 A That's correct.

17 Q Okay. You flip to the next page. Court -- you told
18 the Court you understood homicide by child abuse carries a
19 minimum sentence of 20 years and a max of life. Is that
20 correct?

21 A That's what the statute reads, that's correct, 16
22 385.

23 Q But you told the Court you understood that. Is that
24 right?

25 A It's best I could at that time, yes, sir.

1 Q Now, further down you went ahead and you told the
2 Court that you understood the consequences of an Alford
3 plea. Is that correct? You see that? Line 14 you say,
4 yes, ma'am, Your Honor.

5 A Yes, I see that.

6 Q Okay. Further down the Court asks you, says, do you
7 need any more time to speak with counsel or anything you
8 don't understand? You say, no, you don't need any more
9 time. And I even think you said, proceed please. Is that
10 what you said?

11 A Transcript says, yes.

12 Q Okay. Let me get my page numbers correct here. Page
13 135 you again -- you again tell the Court that you fully
14 understand the nature of the charge and its consequences.
15 Is that correct? It's line eight.

16 A That's correct.

17 Q All right. Flip over to page 136. Now, you go on
18 and you tell the Court, you say that you're pleading
19 pursuant to Alford and that you say there was enough
20 evidence that a jury could convict you of homicide by
21 child abuse. Is that correct?

22 A Due to the reckless indifference, yes, sir.

23 Q But that's what you said, though. Is that correct?

24 A Due to the reckless indifference.

25 Q And you said, so therefore I'm pleading to homicide by

1 child abuse. Is that correct?

2 A That's what the transcript say, yes, sir.

3 Q But that's what you said that day. Isn't that right?

4 A Yes, sir.

5 Q And the Court, just to make sure, they say, you're
6 pleading guilty to homicide by child abuse pursuant to
7 Alford v North Carolina. And you say, yes, ma'am. Is
8 that what you said?

9 A That's correct.

10 Q If you'd flip over to page 137. Now, page 137 the
11 Court goes over this litany of rights that you're giving
12 up by pleading under this. And you tell the Court, I
13 understand those rights. Is that what you said?

14 A I did.

15 Q On page 188 you -- again you tell the Court, you say
16 you understand it and that you want to plead under Alford.
17 Is that right?

18 A Yes, sir.

19 Q Now, on page 139 you tell the Court that you
20 understand that the witnesses that were going to be called
21 were going to be called only for sentencing purposes.
22 Isn't that correct? That's at the bottom. That starts at
23 line 17, page 139. Is that what the transcript says?

24 A Yes, sir.

25 Q Flip on over to page 141. You again -- you tell the

1 Court again just like you have been doing the whole time,
2 you tell them, I want to plead under Alford; isn't that
3 correct?

4 A That is correct.

5 Q Now, starting down at the bottom, page 141. The
6 Court tells you that they have been -- the Court's been
7 over the recitation of facts that the Solicitor has
8 presented and tells you that they would use those in the
9 case, and you say you have been over that, you have been
10 over those facts with your attorney, is that right, and
11 you have been over the evidence in the case; is that
12 right?

13 A The rule five, yes, sir.

14 Q Flipping on over to page 143. You go on and you tell
15 the Court that a jury again could convict you of homicide
16 by child abuse; is that correct?

17 A Yes, that's what it says.

18 Q And on page 195 -- or excuse me, 145 -- looking at my
19 95, starting on line two. The Court asks you, has anyone
20 promised you anything, threatened you, made you plead
21 guilty? What did you tell them? You tell them no; don't
22 you?

23 A That's what I did.

24 Q That's what you said; isn't it?

25 A Uh-huh.

1 Q You said -- further on you said you were pleading
2 guilty on your own free will and accord, this was a
3 voluntary plea; is that correct?

4 A As much as I knew about it at the time, yes, sir.

5 Q But that's what you said this day; isn't it?

6 A That's what I said that day, yes, sir.

7 Q Okay. And the Court further down they ask you, you
8 satisfied with Mr. Bolus' representation? You told the
9 Court, yes, ma'am. Is that what you said?

10 A Yeah, that's what I said as well.

11 Q Continuing on to page 146 you tell the Court that you
12 didn't need any more time to meet with counsel. You told
13 the Court that you understood all your talks with your
14 attorney and you were completely satisfied with his
15 services. Is that what you said? Line 17. Is that what
16 you told the Court?

17 A Yes, sir.

18 Q And you told the Court, you said, he had done
19 everything he should have done. Is that what you told
20 them?

21 A Well, he provided me with the rule five motion to
22 discovery information. And up until that point I didn't
23 have it, so... yes.

24 Q Well, what did you tell the Court that day, though?
25 You told them he had done everything he should have done.

1 You didn't say that. You said, yes, ma'am.

2 A Okay. Well, I didn't know nearly what I do today,
3 but okay. Yes, sir. That's what I said.

4 Q Now, continuing over you told the Court you had no
5 complaints against anyone including your lawyer, you told
6 the Court you had no complaints against the Solicitor, no
7 complaints against law enforcement. Is that what you told
8 them?

9 A Sir, at the time I didn't know that I could have--

10 Q Is this -- is that what you told them?

11 A Yes, that's what I told them.

12 Q Now, further down you tell the Court that you
13 understood all of the Court's questions; is that correct?

14 A Yes, sir.

15 Q You told the Court no one told you how to answer
16 those questions. And then you even said, these are my own
17 answers. Is that what you told the Court?

18 A Yes.

19 Q On page 147 to 148, the bottom to the top of 148 you
20 told the Court that you had been completely and absolutely
21 truthful with her; is that correct?

22 A Okay, yes.

23 Q You told the Court you have been absolutely truthful;
24 is that correct?

25 A Yes.

1 MR. BOOZER: No further questions, Your Honor.

2 THE COURT: Okay.

3 MRS. KNOBELOCH: Just a few, Your Honor. May it
4 please the Court.

5 THE COURT: Yes, ma'am.

6 REDIRECT EXAMINATION

7 BY MRS. KNOBELOCH:

8 Q Ms. Hall, had you ever been to court before?

9 A No.

10 Q You have no other record at all, no criminal record?

11 A No, ma'am.

12 Q This was your first time ever in a courtroom accused
13 of something?

14 A Yes, ma'am.

15 Q Were you nervous?

16 A Absolutely.

17 Q Okay. Were you relying on what your -- on your
18 attorney's advice that day?

19 A Absolutely.

20 Q Okay. And what was that? What did he tell you was
21 going to happen if you pled guilty?

22 A Well, he knew about the life sentence and he thought
23 that I would get between 25 and 20 years, 20 to 25.

24 MR. BOOZER: Your Honor, I'm going to object.

25 She can't testify to what he thinks he thought she

1 was getting.

2 THE WITNESS: I know what he said, yes, sir.

3 MRS. KNOBELOCH: It's hearsay. That's fine.

4 That's fine. I can re-word the question, rephrase
5 it.

6 BY MRS. KNOBELOCH:

7 Q Based on your conversations with your attorney that
8 day, what did you think the sentence was going to be if
9 you pled guilty?

10 A Twenty to 25.

11 Q Okay. And the Solicitor asked you or pointed out
12 that you agreed with the Judge that -- that you told her
13 that -- that you believed if you went to trial, a jury
14 could convict you; right?

15 A Yes, ma'am.

16 Q Okay. Did the Judge -- and she also asked you if any
17 promises were made or any threats, and you said that no
18 one had promised you anything. Again, what -- what were
19 you getting in exchange for this plea?

20 A Nothing.

21 Q Okay. Just the murder charge dismissed?

22 A That's correct.

23 Q And you told the Judge, as the prosecutor pointed
24 out, that you were happy with your attorney. But at that
25 time you hadn't been sentenced yet; had you?

1 A No, ma'am.

2 Q Okay. And it was after the Judge handed down that
3 sentence that you became unhappy?

4 A Very much so.

5 Q Okay. And why were you unhappy again after she
6 sentenced you? Were you expecting that sentence?

7 A No, ma'am, I wasn't.

8 Q Okay.

9 A I don't think my attorney was expecting it either,
10 but I guess that's hearsay, but okay.

11 Q Okay.

12 MRS. KNOBELOCH: I have no further questions,
13 Your Honor.

14 THE COURT: Okay. Anything further, Mr. Boozer?

15 MR. BOOZER: None from this witness, Your Honor.

16 THE COURT: Thank you, ma'am. You're through.

17 THE WITNESS: Yes, sir.

18 (Witness left the stand.)

19 THE COURT: Anything else?

20 MRS. KNOBELOCH: We have no further witnesses,
21 Your Honor.

22 THE COURT: Okay.

23 MR. BOOZER: Your Honor, the State would call
24 Mr. Tommy Bolus to the stand.

25 TOMMY BOLUS, after being duly sworn,

1 testified as follows:

2 DIRECT EXAMINATION

3 BY MR. BOOZER:

4 Q How are you doing this morning, Mr. Bolus?

5 A Fine.

6 Q Good. You recall when you first met with the
7 applicant?

8 A When I first what?

9 Q When you first met with Ms. Hall, do you recall?

10 A She was right, it's about -- she served about seven
11 months, six and a half months, and I got a call from her
12 mother who had been referred to me by someone who knew me,
13 and I went up and -- to the St. George jail and spent
14 about an hour with her because I didn't know anything
15 about the case except I remembered reading about it in the
16 newspapers several months ago.

17 Q Do you recall about how many times y'all met
18 throughout the course of this?

19 A It -- it was more than five but less than 10, but
20 she's probably right, seven, somewhere around there at the
21 jail.

22 Q Now, if you could, looking back throughout the course
23 of these meetings that y'all would have, could you just
24 tell us what exactly y'all would discuss during these
25 meetings?

1 A Well, first of all you see that file that's on --
2 under the two books? That's a quarter of my information.
3 I distilled it to bring to court. It was a voluminous --
4 it was more discovery that I had ever seen in a -- this
5 kind of case, and probably I have only had two other cases
6 that had more so -- there was a lot of things to discuss.

7 And she probably received about 80 percent of what I
8 received because some of the things just weren't worth
9 reproducing. And we talked about -- there was a lot of
10 police reports. There were a lot of statements she made.

11 There were a lot of videos of her made when they were
12 trying to -- I call it break her down, you know, when they
13 weren't -- disbelieving her story. She never watched
14 them, I don't believe, but I -- I watched them and I told
15 her what was in the videos, and they made transcripts. We
16 have all that stuff and we spent time going over that
17 stuff.

18 Q During these meetings, did you discuss the facts of
19 the case with Ms. Hall?

20 A Very much so.

21 Q Did you discuss the elements of those charges that
22 she was charged with, the child -- homicide by child abuse
23 as well as the murder? Did you discuss that?

24 A Oh, yes.

25 Q Did you tell her what the State was required to prove

1 with regard to those charges?

2 A First of all, Walter Bailey was probably the most
3 proficient and efficient and competent prosecutor this
4 state had probably ever had, and at that point in time him
5 and Donnie Myers probably had the -- they were probably in
6 a tie for convictions and all that.

7 And I let her know that Donnie -- he was not somebody
8 to play with, and a Dorchester County jury was nothing to
9 play with either. But I did throughout my representation
10 said, even though it's Walter Bailey, he'd have a hard
11 time proving premeditated murder on the facts the way they
12 were presented.

13 Even if the jury believed his version almost to the
14 exclusion of ours, they might have a problem on
15 premeditated murder. But child abuse by homicide, I -- I
16 always told her there was a definite probability a jury
17 would convict her of those charges.

18 Q During your discussions with her, did she ever tell
19 you that she didn't understand any of what you were
20 telling her?

21 A She understood. She was very emotional about it. I
22 mean, the whole five or six months I associated with her,
23 I mean, she was -- basically would cry and, you know, I
24 thought it was -- it was sincere. It wasn't just put on
25 for me. I think she was highly upset every time I met

1 her.

2 Q Now, during these meetings, again, did you get to go
3 over any defenses that she might have or did you discuss
4 anything like that with the applicant?

5 A The defense -- the main defense would have been that
6 she had a voluntary intoxication on methamphetamine, so I
7 knew that based on the things that happened, what she
8 ended up telling the police in the transcripts probably
9 would nullify premeditated motive to kill a child.

10 But based on what she had done and how she had taken
11 the child out in the woods and really not provided for the
12 child, that I thought a definite child abuse by reckless
13 indifference -- I think Walter's best case could have been
14 actually showing some affirmative action like blows to the
15 head, but we even had Joel Sexton agreeing that even
16 though the baby had three or four blows to the head and
17 probably died that way, not through suffocation, that he
18 could not surmise whether they were from accident or like
19 a person falling on the child or whether hitting the
20 child.

21 So that's when I knew we had a good case on the
22 premeditated murder, that they -- you know, they'd have to
23 believe Norma struck this child intentionally to get
24 premeditated murder out of it -- you know, a conviction.

25 Q And you discussed this with her?

1 A Oh, yeah.

2 Q Now, going back, what type of investigation did you
3 do into the case?

4 A I have had may be five -- I've been doing this 31
5 years and probably this is in the top five cases where I
6 put in -- I have had three death penalty cases, and this
7 is probably right below that would be the -- more time put
8 on this case, any other case I ever had except for those
9 death penalty cases.

10 Q Did the -- did Ms. Hall provide you with any
11 witnesses or anything like that for you to investigate?

12 A Well, the witnesses were most -- mostly character
13 types of -- she had -- she had -- in the community she had
14 a lot of friends. As a matter of fact, I think Tom
15 Marshal, the investigating officer, really -- he's a good
16 guy and he did most of the investigation.

17 He even liked her in spite of the situation. He had
18 a job to do. I mean, she had -- she had a good reputation
19 in the community for good -- being a good worker and a --
20 and what I uncovered by looking at the medical report, she
21 was a good mother.

22 The child was suffering a little bit from a soft
23 cleft palate and had a problem being nursed, but Walter
24 Bailey was not going to be able to prove in a court of law
25 in my opinion that she was deliberately neglecting this

1 child's health.

2 As a matter of fact, the records showed otherwise.
3 She was doing what she could with MUSC and Edisto
4 Pediatrics to make sure her child nursed and gained
5 weight, but he did have a little -- a problem with
6 digestion, and I think they were trying to switch him over
7 to different nipples and milk formulas and all that, but
8 he was losing weight. He wasn't gaining weight throughout
9 his short life.

10 Q Now, did you come to any conclusions about the
11 State's ability to prove Ms. Hall's guilt in this case?

12 A I thought that guilt was right around the corner on
13 the child abuse -- child homicide by -- the reckless
14 indifference. And then, you know, if they believed the
15 version about the conjecture that she hit the child in the
16 head, but I didn't believe that version, then it would
17 have been -- it could have been worse.

18 But I thought by her -- she admitted freely that she
19 had done about -- that week about six to eight eight-balls
20 of methamphetamine, and that's a lot of methamphetamine
21 for a human being to consume.

22 I thought that even though that could -- a
23 double-edge sword, it could hurt you in some respects
24 because it could be an aggravating factor in a child abuse
25 case, but it's also a mitigating factor when it comes time

1 to think, well, did a mother deliberately doing something
2 to the child other than being so intoxicated.

3 That's bad, but she -- did she do something
4 affirmative to this child to kill this child. I thought
5 we had -- we had a, you know, a pretty good case in terms
6 of mitigation really.

7 But I did not ever think we were going to win that
8 case, not -- not the -- not just for a jury to acquit her
9 on both charges because Walter, he's a scary guy. When he
10 puts a murder indictment on you and then you've got a
11 child abuse indictment and you figure, well, you know, the
12 jury let her go on two counts -- I didn't see it
13 happening.

14 Q Now, was there a plea negotiation in this case?

15 A The plea negotiations -- I wrote several letters to
16 Walter, talked to him. And at that point in time he
17 believed, and I think the Supreme Court just changed that
18 two months ago, the statute called for a minimum sentence,
19 and he believed that me arguing for less than 20 wasn't
20 going to fly because the law at the time -- there's an old
21 Attorney General opinion, an old case back in -- I think
22 in the 50s or something that said the minimum sentence
23 meant you couldn't go below 20.

24 I kind of thought otherwise, and I'm not exactly
25 right about it, but I mean, the Supreme Court did

1 eventually say that unless the -- you know -- state
2 legislature absolutely says that none can be suspended,
3 evidently I was right that we could have argued for less
4 than 20, but he wasn't going to offer 20.

5 He said he would -- went to trial, he was going to
6 put the murder indictment on her, which is 30 years or
7 life, and that's -- you don't get 85 percent, the little
8 discount there, good time credits or whatever. You have
9 to serve the full 30, the full life.

10 But if she pled guilty to child -- homicide by child
11 abuse, that he would make a deal that it would be no more
12 than 30 years, and I did relay that to Norma about the 30
13 years.

14 That was -- he would not -- he would not hear any
15 talk about 20 because I tried to get him to take 20, take
16 25. He said, absolutely not, it's going to be 30 or we're
17 going to have a, you know, if she pleads.

18 Q Did you ever make any promises with regard to what
19 type of sentence Ms. Hall would receive?

20 A I wouldn't call it a promise, but she's right. I did
21 think that we put up some good people, some real good
22 people. And we had a -- even a -- I think a sheriff from
23 the jail come over and speak for her, we had a pastor
24 there, we had friends, we had neighbors, we had Dr. Donna
25 Schwartz-Watts come down.

1 And I thought we were doing pretty good in terms of
2 what we had as witnesses. I thought that we -- I told her
3 probably, I think the Judge will give you 20 to 25. I
4 didn't phrase it like, that's what to going to happen, but
5 I thought we had a good case on that with everything in
6 the case.

7 Q Now with regard to sentencing, whose discretion is it
8 with regard to sentencing? Is it the Judge's?

9 A Of course.

10 Q So you have no control over what she gets; is that
11 right?

12 A Oh, no, especially not with Judge Goodstein.

13 Q Did you ever make any misrepresentations to the
14 charges or any of the defenses or any of the options that
15 were available to Ms. Hall?

16 A I don't understand that misrepresentation. I would
17 hope I would never misrepresent -- I mean, I could be
18 wrong at times. I don't think I deliberately -- what do
19 you mean?

20 Q I think you answered the question.

21 A Okay.

22 Q Did you explain the sentencing? I think you may have
23 been over this earlier. Did you explain the sentencing
24 and the possible penalties that she would be subjected to
25 looking at both of these charges?

1 A I told her the Judge could give her 20 years or
2 increments all the way up to life where you could actually
3 get -- I don't know what would happen, you got life on a
4 child abuse out of -- I don't know because at the time,
5 only life -- you got life for murder, you had to do life.

6 But if you get life for child abuse homicide, I don't
7 know if you serve life or some sort of portion of that.

8 But I said whatever you get, it's going to be an
9 85 percent deal.

10 If you get 30 years, it's 85 percent and you can come
11 out. But if you get 30 years for murder, it's the full
12 30, there's no discount.

13 Q Did she understand these conversations?

14 A I think she was aware of that because we talked about
15 it.

16 Q Now, in the transcript I believe -- and there's four
17 volumes -- did she initially plead guilty or try to plead
18 guilty?

19 A Well, yeah. The newspapers and everybody and the
20 brother were there with cameras and everybody was coming.
21 I think it's April the...

22 MRS. KNOBELOCH: Tenth.

23 A It's the first time, it's the April 10th.

24 Q And Judge Goodstein wouldn't accept the plea, so then
25 did y'all -- did y'all then proceed to trial and select a

1 jury?

2 A No, we -- she -- she said -- I think that might have
3 been a -- a Friday or... whatever it was, she said, we're
4 going to dis -- continue until next week and -- and then
5 Bailey wasn't deciding whether he was going to call the
6 case on a Monday, that following Monday which is April the
7 15th, but he ended up telling me he would, so she just
8 shut down court in terms of our case any way.

9 Q Now you, you heard Ms. Hall's testimony earlier. She
10 testified that she never expressed an interest in pleading
11 guilty. Did she express an interest to you in pleading
12 guilty?

13 A She -- she was pretty adamant she wanted a trial. I
14 have to give her that. She was pretty adamant. But there
15 were friends and some in her family that were trying to
16 get her, along with me.

17 I was trying to convince her, I don't think that's a
18 good idea when you're staring at a murder indictment on
19 top of that, I -- you know, I did my best to try to get
20 her to I thought come to her senses and at least accept
21 some responsibility and -- and plead out the child abuse
22 homicide.

23 Q Ultimately whose decision was it to plead pursuant to
24 Alford v State?

25 A Always -- always the defendant's, and it was her's in

1 this case. But now, that wasn't -- the Alford wasn't on
2 the tenth. That was a straight out guilty plea that went
3 aurie (sic).

4 Q Right. But ultimately whose decision was it to plead
5 pursuant to Alford v State?

6 A It was Norma's.

7 Q Now, looking back -- and I think you said Solicitor
8 Bailey was a very good prosecutor. Did you see any
9 evidence or anything that you thought in your mind was a
10 prosecutorial misconduct?

11 A I think -- I also think he's one of the most honest
12 people I ever dealt with. He was a heck of a guy. And he
13 spent three hours at a time, him and his staff and me,
14 they took me all through the woods.

15 I ruined a suit. Should have wore my cameos (sic) or
16 whatever, we'd gone through here and there, and they spent
17 a lot of time. And I actually in my heart of hearts, I
18 think they -- Tom and Walter wanted her to plead out and
19 take the deal.

20 They really didn't want her to take a chance with
21 this murder thing. I think they felt for her. I think
22 Tom Marshal--

23 MRS. KNOBELOCH: I would object to the
24 speculation, Your Honor.

25 THE WITNESS: Okay. Well, can I rephrase?

1 THE COURT: Certainly.

2 THE WITNESS: It's not what they thought. It's
3 what they are telling me. You know, when we are
4 finally getting into a position where they are
5 saying, if she does this, you know -- you know,
6 Walter's looking at you now and say, you know, if she
7 pleads guilty to something, you know, I can probably
8 get rid of this murder indictment.

9 But he's not just going to throw his cards out
10 on the table and see what happens, you know. He
11 wants you to make some end roads and to, you know,
12 helping him out a little bit.

13 MR. BOOZER: Court's indulgence, Your Honor.

14 THE COURT: Certainly.

15 (Whereupon there was a pause.)

16 MR. BOOZER: No further questions, Your Honor.

17 THE COURT: Yes, ma'am.

18 MRS. KNOBELOCH: Thank you. May it please the
19 Court.

20 CROSS-EXAMINATION

21 BY MRS. KNOBELOCH:

22 Q Mr. Bolus, you said that to drop that murder
23 indictment, that Walter wanted y'all to do something for
24 him. He wasn't just going to throw it out. He wanted
25 y'all to plead to something --

1 A Oh, yeah.

2 Q -- is that correct? Okay. Well, let's talk about
3 what Ms. Hall got in exchange for pleading to -- pleading
4 guilty, basically just that murder indictment dismissed;
5 is that correct?

6 A She also -- he had a -- he made a deal with me that
7 if she pled to the child abuse homicide, he would only
8 recommend 30 years. And if you knew the system there,
9 that would have happened.

10 When he recommends 30, you're going to get 30. Of
11 course, a Judge might not listen. But my experience with
12 working with the two of them, it was 30 years, but he
13 didn't want to go through this three day -- we went
14 through a three day sentencing hearing.

15 But after that happened, he had to put up all his
16 witnesses, and they did good and our side did good. The
17 30 years is off the table at that point in time and that's
18 why the 40 years came around.

19 But she had 30 on the table which would have saved
20 her four and a half years versus a -- 30 years on a
21 murder, you have to do the full 30, so she had something
22 coming her way to do that.

23 Q Well, she didn't have the 30 because that plea just
24 didn't work out because she couldn't say she was guilty
25 basically. She wanted a trial.

1 Now, in the plea that actually happened and went
2 through to the end, he did not recommend 30 years;
3 correct?

4 A Well, no. It would have been 30, but see we called
5 the statute -- and I didn't even know that till I got the
6 case, it's a separate sentencing, one of the few places
7 where you get -- on a death murder case, capital murder,
8 you get a separate sentencing. You get one also in child
9 abuse homicide.

10 So we had a three day -- a three day sentencing with
11 about 20 witnesses. That's when the offer get taken off
12 when he wasn't going to -- he wasn't going to let me go
13 through my deal and him go through his problems as
14 testimony and then still tell the Judge it's a 30 -- we
15 agreed to 30 years max. He wasn't going to do that.

16 Q Right. So what she chose to do -- I mean, in the end
17 when he -- when Walter spoke to the Judge, he recommended
18 40 years.

19 A I think it was -- yeah, he -- at that point in time
20 it -- yeah, it was 40 and she gave him the 40.

21 Q Okay. So basically in exchange for her pleading
22 guilty to the homicide by child abuse and having this
23 mitigation hearing --

24 A Yeah.

25 Q -- all she really got was that murder charge

1 dismissed.

2 A She actually ended up doing worse probably because
3 the previous deal was -- discussions was she -- he offered
4 me if she pled to murder, he would only ask for the 30
5 rather than life.

6 And I said, well, she's not going to do that. Then
7 he came down to the 30 years on the child abuse homicide.
8 But then after -- you're right, after the thing was over,
9 she -- she's doing worse now than if she had taken the
10 original offer of 30 years on the murder.

11 Q Okay. And as you testified, she was adamant
12 throughout, that she wanted a trial?

13 A Well she -- you know, the first hearing on the tenth
14 we spent a lot of time, and I -- a number of people talked
15 to her. I mean, people are trying to, you know, they were
16 pretty convinced. I think some were family. I can't
17 remember who, but they were all involved with, maybe don't
18 go to trial.

19 I know her mother was scared to death about her going
20 to trial on a murder case, and I think may been --
21 probably talked to her also about this.

22 She finally relented and tried to do a plea on the
23 tenth, which didn't -- April 10th, 2002, which the Judge
24 wouldn't accept because there was so much wishy washiness
25 going on and back sliding on the plea.

1 Q Because she accept -- she wouldn't say she was
2 guilty.

3 A She wouldn't -- she started talking accident rather
4 than reckless indifference --

5 Q Right.

6 A -- she entwined accident into the reckless
7 indifference. And finally the Judge said, well, you know,
8 you're saying basically you just took your baby out there
9 and you got intoxicated and it was an accident that the
10 baby died.

11 And that didn't satisfy Mrs. Goodstein or Judge
12 Goodstein at that point about accepting, you know, a plea
13 under -- a regular guilty plea any way.

14 Q Right. So when that plea fell apart, did Norma still
15 want a trial?

16 A At that point she -- I thought we were going to trial
17 on Monday because we picked a jury.

18 Q Right. You picked a jury. So at the beginning all
19 the way through except for that brief attempt on the tenth
20 I guess, for a plea, she wanted a trial. You had even
21 picked a jury?

22 A Well, we -- we picked the jury. That's all we did.
23 And then the Judge, you know, said let's recess, and we
24 had about three hours between the time she wanted to start
25 the trial. You know, it was on a Monday. So we did have

1 a jury picked.

2 Q Okay. Did you tell Ms. Hall that if she pled guilty
3 that she would get 20 to 25 years?

4 A I said that if we took the deal on a child abuse, the
5 homicide by child abuse with the witnesses we had, the
6 Judge could -- I thought might consider 20 to 25. I
7 thought we had a good case. But I never said she's going
8 to -- you're going to get that. That would be stupid.

9 Q You just told her you thought you had a good shot for
10 that?

11 A Yes, ma'am.

12 Q Okay.

13 A She wanted 20. There was no problem if I'd gotten 20
14 as far as she -- because she told me, Tommy, I can't do
15 30, I can do 20, because Walter Bailey was already stuck
16 at 30.

17 She wanted 20. That's where the problem was. She
18 didn't want to plead because I knew what would happen if
19 she pled, and Walter would probably get his 30 out of it.

20 But we still had a chance with all our witnesses, the
21 Judge could, you know, go below his 30 years what he was
22 recommending.

23 Q Okay. So you knew she'd take 20 --

24 A Yes.

25 Q -- and you told her to get her to plea that you

1 thought that the Judge would give her 20 to 25?

2 A Right.

3 Q Okay. In fact, when -- at the sentencing hearing
4 when it was your turn to address the Court, didn't you --
5 you did ask for a sentence somewhere around 20, 25 years,
6 I believe.

7 A I think so.

8 Q In fact, you -- you told the Judge that the 40 years
9 the -- the Solicitor was asking for was draconian?

10 A I think that's my word.

11 Q Okay.

12 MRS. KNOBELOCH: Court's indulgence.

13 (Whereupon there was a pause.)

14 BY MRS. KNOBELOCH:

15 Q Were you aware on -- let me see how I can word
16 this -- were you present for a conversation the morning of
17 the plea regarding Judge Goodstein's threat to sentence
18 her to life if she was convicted by a jury?

19 A We need to clarify this. I don't remember any words
20 about, quote, wasting the taxpayers' money or the word
21 threat. But Jim Bell, who is a very fine attorney in
22 Dorchester County, he came to the cell I believe with the
23 other fellow, I forgot the -- she mentioned it on the
24 stand -- I think it was her former boss or friend or
25 something, and they -- they really got on her about

1 wanting her to plead and not take a chance with getting
2 life in prison.

3 Q Uh-huh.

4 A And there was some conversation about they both knew
5 Arnold very well, who was Judge Goodstein's husband, and
6 that they -- there was no exactly like, Arnold says the
7 Judge is going to do this, but it was definitely the
8 intonation is that knowing Judge Goodstein's reputation --
9 she was a young Judge then, she still is fairly young.

10 But she was kind of new at the time and she had a
11 reputation known throughout the tri-county area of being
12 very, very rough on certain cases.

13 And there was conversations about, you know, the
14 Judge is going to give you life if you plead -- I mean, if
15 you try your case and you're convicted.

16 And I don't believe they just meant on the murder
17 either. I think they meant on -- the conversation
18 centered around the child abuse, whether she was convicted
19 of a child abuse or murder, they felt the Judge would give
20 her life.

21 Q If she had a trial?

22 A Any kind of trial and was found guilty.

23 Q Okay. And was there any discussion of -- that Judge
24 Goodstein had actually said that to someone?

25 A Now, she might remember it differently, but I

1 never -- see -- heard that Judge Goodstein told Arnold to
2 tell you two guys, Jim Bell and the other gentleman to
3 tell Mr. Bolus or Norma Hall that she's going to get life.

4 But somehow it was a conversation about that's how
5 she's thinking.

6 Q Okay. And you just don't recall if it was
7 specifically Judge Goodstein said she's going to do this?

8 A I -- yeah.

9 Q Okay.

10 A That was enough for me to be worried about the, you
11 know, again, I felt like --

12 Q About the trial?

13 A -- if she was convicted by Judge Goodstein in
14 Dorchester County, she would get a serious, serious
15 problem.

16 Q Okay. And you said that at that time Judge Goodstein
17 was a fairly young Judge and she was known to be really
18 tough on certain types of cases.

19 A Yes.

20 Q And it sounds like you felt like you and Jim Bell and
21 this other fellow all felt like she would be especially
22 tough on this kind of case?

23 A Yeah, but I didn't think -- you know, I thought if
24 someone, you know, tried to ante up the week before, I
25 thought with a good plea and some mitigation that I could

1 get her a 25. I never thought 40 years was coming our
2 way.

3 Q Okay. Well, back when you first took the case and
4 realized that there was a conflict because Judge Goodstein
5 had known Ms. Hall previously, wouldn't it be better to
6 have gone ahead and let Judge Goodstein get off that case
7 knowing that she's young and tough on these kind of cases?

8 A Well, that wouldn't have been a reason to tell a
9 Judge, you're young and tough, and you might find yourself
10 in a problem, but--

11 Q You know, my question is not telling her that, but
12 knowing that, and you had the opportunity for her to step
13 down, I believe she offered at the beginning to step down
14 from this case because of her prior relationship with
15 Ms. Hall --

16 A She sure--

17 Q -- that had to be affirmatively, you know, waived on
18 the record, any problem with a potential conflict. And
19 y'all did that. I'm asking why would you do that?

20 A Oh, I don't know. Now, in retrospect I would have
21 taken her up on it because she mentioned that she had
22 worked -- she was a county attorney at some point and she
23 was also Family Court -- no, she wasn't a Family Court
24 Judge, but county attorney or something and she'd call
25 over to Norma's office all the time to speak to the county

1 manager who they were very close, and then she would talk
2 to Norma.

3 And she actually said if that's a problem with
4 anybody. And Walter said it wasn't a problem with him and
5 I said it wasn't a problem with me, and I believe Norma
6 said she wasn't -- because, I mean, she was sitting right
7 there. There was no objection made. I wish I had--

8 Q Okay. So in retrospect, that would have been a good
9 idea to let her go ahead and get on off the case?

10 A Yeah.

11 Q Okay. And I'm sorry. Back to what we were talking
12 about, this, you know, suggestion that morning, you know,
13 with the conversation with Jim Bell and the other fellow
14 and you and Norma about -- and discussing that Judge
15 Goodstein would give -- would probably give the full life
16 sentence at trial on any charge that was discussed here,
17 did -- did you at any point ask Judge Goodstein, you know,
18 based on this conversation, if she had already made up her
19 mind as to what sentence --

20 A No.

21 Q -- she was going to give?

22 A No one approached her about that.

23 Q Okay. So you didn't ask her to be recused, you know,
24 or just to double-check if there had been some kind of
25 conversation?

1 A No.

2 Q Okay. Okay. And then eventually, of course, the
3 plea went through, and it was an Alford plea. And
4 obviously she put on the record, you knew -- Goodstein was
5 very thorough in discussing the fact that Ms. Hall felt
6 like a jury would convict her if she went to trial.
7 Right?

8 A Yeah.

9 Q And that is a necessary prong of the Alford plea;
10 correct?

11 A Yeah.

12 Q Okay. And did -- what benefit, if any, was she
13 getting by taking -- doing this Alford plea?

14 A Well, in my mind she wasn't exposing herself to the
15 murder indictment, a trial where the Judge -- jury, like I
16 said, could convict her of that. I thought it wasn't, you
17 know, it was probably -- more probably she get convicted
18 of abuse.

19 She was getting out of a murder thing which meant she
20 wasn't going to get a guaranteed 30 or life where there's
21 no parole, there's no good time credits and all that, you
22 get what you get.

23 So if she pled to the other one on the Alford, she
24 would still have a chance at somewhere between 20 and
25 life. And whatever she got, she would get 85 percent.

1 So she'd save four and a half years just off the bat
2 if Walter and the -- recommended 30, which he was, she'd
3 save four and a half years versus getting 30 years on a
4 murder charge, so we were thinking that way, too.

5 Q Okay. Of course, now even with -- if she had gotten
6 the -- even with the plea that she did, pleading to the
7 homicide by child abuse, there's no guarantee that she'll
8 get out at 85 percent. I mean --

9 A That's true.

10 Q -- the sentence is life, and it's only contingent if
11 you are, you know, squeaky clean that whole time that
12 you'll get that -- you don't know that she's going to get
13 that four years off.

14 A That's true.

15 Q It could be a whole life sentence.

16 A Well, if she got 30, it wouldn't be life. She'd max
17 out at 30 obviously --

18 Q Uh-huh.

19 A -- if she got life, I don't know even now what would
20 happen if somebody gets life --

21 Q Right.

22 A -- I don't know what would happen in terms of time.

23 Q I meant 30. I'm sorry. So basically what she got in
24 exchange for her Alford plea was a murder charge dismissed
25 that you felt like they couldn't prove any way.

1 A Well, thinking and -- is like a poker game, you know,
2 thinking you're going to win and all of a sudden you lose,
3 it's one of those things. It's dangerous territory in
4 Dorchester County in front of a jury up there.

5 You got a competent prosecutor, that's dangerous
6 territory especially little babies involved. But you're
7 right, I didn't think he would get -- even -- I didn't
8 think Walter Bailey himself would get that.

9 But I felt like he would still be able to show
10 everything but maybe premeditation, and all that was going
11 to get exposed, and the Judge could still feel the same
12 way, just give her life.

13 We can't call her a murderer, but we can call her
14 abuser of a child who causes death. She could still give
15 her life, you know, so I mean, you could come through the
16 back door and get what you wanted.

17 Q Okay. And again, the charge -- in exchange for her
18 Alford plea, the charge that was dismissed, the murder,
19 carries the same potential maximum sentence as the charge
20 she pled to?

21 A Right.

22 Q Okay.

23 MRS. KNOBELOCH: Court's indulgence. One
24 moment, Your Honor please.

25 (Conferring with client.)

1 *MRS. KNOBELOCH:* No further questions, Your
2 Honor.

3 *THE COURT:* Anything further?

4 *MR. BOOZER:* Just briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY *MR. BOOZER:*

7 Q Mr. Bolus, did you make objections where appropriate
8 throughout this trial, throughout this...

9 A I don't think there was a lot of objections because
10 it's a sentencing thing. A lot of stuff comes in that --
11 you know that -- that I don't -- I don't think there was
12 too much objections going on from what I read a week ago
13 in my transcript.

14 I didn't see a lot of people objecting too much. We
15 kind of let it all in because it was what it was. It's
16 almost like standing in front of a Judge for an hour or
17 two and explaining your case and the prosecutor explaining
18 his case except people were actually put under oath.

19 *MR. BOOZER:* Thank you.

20 *THE COURT:* Anything further?

21 *MR. BOOZER:* No further questions.

22 *THE COURT:* Thank you, sir. You can step down.

23 *THE WITNESS:* Thank you, Judge.

24 (Witness left the stand.)

25 *THE COURT:* Any other witnesses or anything?

1 MRS. KNOBELOCH: No, sir.

2 MR. BOOZER: None from the State, Your Honor.

3 MRS. KNOBELOCH: I would like to make a brief
4 argument, Your Honor, if the Court would allow.

5 THE COURT: Okay. Certainly.

6 MRS. KNOBELOCH: Thank you. May it please the
7 Court. Your Honor, again what we're alleging today
8 is that first that Ms. Hall absolutely wanted a
9 trial.

10 And as the -- I think that's the first prong you
11 have to meet in a PCR when you're doing a plea. That
12 you have to show that you, you know, wanted a trial.
13 And it's but for your attorney's ineffectiveness that
14 you didn't do that.

15 And, you know, 99 percent of the cases that come
16 in here on pleas for PCRs -- I know you know this --
17 you know, can't get that prong. Can't show they ever
18 wanted a trial at all.

19 We certainly have that. I mean, we got a jury
20 picked here before she pled. And it -- pled under
21 Alford, so it was hard to get her to plea.

22 I think the evidence here has shown that in her
23 attorney's own words, she was adamant about wanting a
24 trial, that he certainly -- I don't want to misstate
25 what he said, but he certainly tried to convince her

1 to plea.

2 He felt like that was in her best interest.
3 That she had her family pushing her -- and again,
4 this is her attorney's testimony -- her family had
5 been pushing her and attorney Jim Bell and this
6 friend who was a former boss were pushing her very
7 hard after the jury was picked for her to plead
8 guilty, to do some kind of plea.

9 Your Honor, the evidence we have also is that --
10 that I'm concerned about is that there were some kind
11 of conversation where Ms. Hall was told that Judge
12 Goodstein had told her husband that if she had a
13 trial, she was going to get a life sentence.

14 And Mr. Bolus really couldn't remember if that
15 part was true or not. He just remembered the general
16 conversation.

17 I would submit that -- that therefore the
18 evidence we have is that the conversation did happen.
19 And I'm concerned that her attorney was ineffective
20 for not questioning Judge Goodstein -- Judge
21 Goodstein on that to see if she had made up her mind
22 about this case prior to hearing any evidence.

23 And finally, Your Honor, I think that her
24 attorney was ineffective because there's no -- by
25 letting her plea under Alford, there was no benefit

1 to her.

2 And I believe that Alford has two prongs, that
3 if you want to plead and say you're not guilty, which
4 is really serious and was not allowed until this
5 Alford case came along, that you have to show two
6 things.

7 One is that you're firmly convinced that the
8 jury would convict you if you had a trial. And
9 number two, that you were getting some benefit from
10 the plea.

11 And I think there is no indication of any
12 benefit, that the charge that she pled to carried the
13 same potential sentence as the charge that was
14 dismissed in exchange for her plea.

15 So I think that that -- the Alford plea is
16 improper and her attorney was ineffective for not,
17 you know, for letting her do that.

18 But Your Honor, finally, you know, in closing,
19 we feel the evidence it absolutely shows that she
20 wanted a trial and that based on her attorney's, you
21 know, pushing her and, you know, promising her 20, 25
22 years, and these threats out there that Judge
23 Goodstein would give her life if she had a trial.

24 You know, she wanted a trial. Something changed
25 her mind. And this is what it is, and this is all

1 Your Honor, secondly, the claims of ineffective
2 assistance of counsel, no -- nothing has been
3 presented here to show that counsel was ineffective.

4 Counsel testified that he did a full
5 investigation. He even testified that out of his
6 cases, this was one of the top five that he spent the
7 most time on.

8 Your Honor, the State submits that counsel
9 thoroughly investigated the case. Counsel thoroughly
10 reviewed the evidence with the applicant. His file
11 is voluminous of which he was only able to bring a
12 portion of.

13 Your Honor, counsel testified that he never made
14 any promises to Ms. Hall as to what sentence he --
15 she would receive.

16 Your Honor, the State submits that sentencing is
17 in the sole discretion of the Court. Mr. Bolus
18 doesn't choose Ms. Hall's sentence. The Solicitor
19 doesn't choose Ms. Hall's sentence. Ms. Hall doesn't
20 choose Ms. Hall's sentence.

21 So any -- any claims with this sentencing I
22 think are just -- are just refuted in the record.
23 And by that, that it's in the Court's discretion.

24 Your Honor, even if counsel was prejudiced (sic)
25 -- which the State submits counsel was not

1 ineffective -- she has shown no prejudice, Your
2 Honor.

3 She pled pursuant to Alford v State. She's the
4 one that entered this plea. Judge Goodstein was
5 thorough in her litany of questions that she asked to
6 make sure that this was a voluntary plea.

7 And we went over it on cross-examination and
8 Ms. Hall said, yes, this is what I said, I was doing
9 this voluntary. She said that she had no complaints
10 against anyone.

11 She wasn't being threatened. She wasn't being
12 promised anything. She was pleading pursuant to
13 Alford on her free will in a court.

14 Your Honor, this issue of Judge Goodstein being
15 the county attorney and her having some prior contact
16 with Ms. Hall previous to this trial, no -- no
17 prejudice has been shown from that, small amount of
18 contact.

19 I believe Judge Goodstein goes over it in the
20 record, and counsel at the time -- and that was a
21 guilty plea that didn't even go through -- counsel at
22 the time said he didn't object to it.

23 Looking back he says he would have objected, but
24 there are a lot of things we look back and wish we
25 would have done. But I don't think that rises to the

1 level of ineffective assistance of counsel.

2 This conversation that the applicant brings up
3 was between Judge Goodstein and some other folks
4 there at the courthouse. No witnesses have been
5 presented to talk about this conversation.

6 We haven't heard any testimony of what this
7 conversation was. This is all pure hearsay
8 testimony. Mr. Bolus doesn't recall what the
9 testimony was.

10 They presented no evidence whatsoever to show
11 that Judge Goodstein was biased, that some
12 conversation happened where she received life, and
13 regardless of that, she -- she was sentenced to 40
14 years. She didn't get life.

15 Your Honor, for these reasons the Court thinks
16 that, number one -- or excuse me -- the State submits
17 that number one, there was no ineffective assistance
18 of counsel.

19 Number two, even if there was ineffective
20 assistance of counsel, which the State submits there
21 was none, no prejudice has been shown.

22 Three, Your Honor, no witnesses have been
23 presented with regards to this alleged conversation
24 that occurred at the courthouse or wherever it
25 occurred.

1 Your Honor, the State lastly reiterates that the
2 benefit -- you can't just say there was no benefit
3 because it was just murder or it was just had her
4 charges dismissed. She had a murder charge
5 dismissed.

6 I think -- the State submits that's a big
7 benefit to not have to go to trial or not have to
8 plead guilty to murder with a life sentence.

9 Your Honor, for these reasons the State submits
10 that Ms. Hall's application should be denied and
11 dismissed.

12 *THE COURT:* Okay. Anything else? Well, the one
13 point Mr. Boozer has brought out that I haven't heard
14 any evidence about this alleged breakfast
15 conversation other than counsel.

16 I haven't heard any testimony that there was
17 some threat that she would have gotten life if she'd
18 have gone to trial with Judge Goodstein.

19 But I go back -- I want to read this file again
20 because obviously there's a lot involved in this plea
21 before I make my ruling. So I'm going to take this
22 under advisement and read this entire file and get
23 back with y'all.

24 *MRS. KNOBELOCH:* Thank you, Your Honor.

25 *MR. BOOZER:* Thank you, Your Honor.

(End of requested transcript of record.)

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STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

05-CP-18-288

Norma Patrick Hall, #283470,

Applicant,

v.

State of South Carolina,

Respondent.

**ORDER OF DISMISSAL
WITH PREJUDICE**

10/16/15
10/16/15
10/16/15

Laura S. Knobloch, Esq. appearing for the Applicant.

Lance S. Boozer, Esq., Assistant Attorney General, appearing for the Respondent.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 15, 2005. An evidentiary hearing into the matter was convened on April 23, 2007, at the Dorchester County Courthouse.

At the hearing, the Applicant testified on her own behalf. Testifying on behalf of the State was Tommy Bolus, Esquire. This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Dorchester County Clerk of Court and the Applicant's records from the South Carolina Department of Corrections.

I. PROCEDURAL BACKGROUND

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. The Applicant was indicted at the April, 2002 term of the Dorchester County Grand Jury for murder (2001-GS-18-628) and homicide by child abuse (01-GS-18-1126). She was represented by Tommy Bolus,

Esquire. On April 10, 2002, the Applicant pled guilty to homicide by child abuse. She was sentenced by the Honorable Diane S. Goodstein to confinement for a period of forty (40) years for homicide by child abuse.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Norma Patrick Hall, Op. No. 2004-UP-145 (S.C. Ct. App. filed March 18, 2004).

II. APPLICABLE LAW

a. Ineffective Assistance of Counsel

In a Post-Conviction relief action, the Applicant has the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985); Rule 71.1(e), SCRPC. For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

b. Involuntary Guilty Plea

In a post-conviction relief action, the Applicant has the burden of proving the allegations in

the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A PCR applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A PCR applicant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S.Ct. 366, 369 (1985). To find a guilty plea is voluntarily and knowingly entered into, the record must establish the accused had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived. Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea must be established by a complete record, and may be accomplished by colloquy between the court and the accused, between the court and the accused's counsel, or both. Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000). A guilty plea is a solemn, judicial admission of the truth of the

charges against the applicant. Statements made during the plea should be considered conclusive unless the applicant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the PCR hearing. Anderson v. State, 342 S.C. 54, 535 S.E.2d 649 (2000).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. § 17-27-80 (1985), this Court makes the following findings of fact based upon all of the probative evidence presented.

Allegation of involuntary guilty plea as a result of ineffective assistance of counsel

The allegation that the Applicant's guilty plea was rendered involuntary as the result of ineffective assistance of counsel is without merit. This Court finds that every aspect of the Applicant's testimony regarding the deficiencies of her plea counsel's representation was not credible. Specifically, Applicant testified counsel failed to investigate and failed to advise her of the consequences of the plea. Applicant also testified counsel did not investigate a defense or object to the sentence. Applicant further alleged counsel failed to object to prosecutorial misconduct. Applicant also testified trial counsel failed to move to have the plea judge removed. Applicant

alleged the plea judge was biased and had threatened to give her a life sentence if she went to trial. Applicant also alleged the judge should have recused herself because Applicant had previous contact with the judge when Applicant was employed with Dorchester County and the judge was the County Attorney.

On cross-examination, Applicant testified the court informed her that Homicide by Child Abuse carries a maximum sentence of life. Applicant also acknowledged she told the court she understood the consequences of an Alford plea. Applicant further acknowledged telling the plea court she understood her right to a jury trial. Applicant testified she told the plea court she had reviewed the evidence in the case and that a jury could convict her of Homicide by Child Abuse. She also admitted telling the plea court that no one threatened or coerced her in to pleading. The plea transcript further reflects the Applicant indicated she was satisfied with counsel and had no complaints against anyone. The transcript also reflects the Applicant stated she had been completely truthful in her answers to the court.

Counsel testified he reviewed the discovery materials with the Applicant prior to the plea. Counsel indicated he discussed the facts of the case and the elements of the charges with the Applicant. Counsel stated that during his meetings with the Applicant, she appeared to understand their discussions. Counsel further stated he discussed all available defenses to the charges with the Applicant. Counsel testified that in his thirty-one (31) years in practice, he had only put more time into a death penalty case. Counsel also testified the plea negotiations were to drop the Murder charge and recommend thirty (30) years on the remaining Homicide by Child Abuse charge. Counsel indicated he relayed this offer to the Applicant. However, counsel testified he never promised Applicant she would receive a specific sentence. Further, counsel indicated sentencing is

solely within the judge's discretion. Counsel stated that during his discussions with the Applicant he court informed the Applicant of the possible sentences she could receive on the Murder charge and the Homicide by Child Abuse charge. Counsel testified the Applicant understood the sentencing possibilities. Counsel testified it was the Applicant's decision to plead pursuant to Alford. Counsel also testified he believes Solicitor Bailey is one of the most honest people he has ever worked with. Counsel indicated the Solicitor even assisted him in his investigation. Counsel indicated although the plea judge was tough on certain cases, he never heard the judge tell anyone she would definitely give Applicant life if Applicant went to trial. Counsel further testified that just because a judge may have a reputation as being hard on crime, that is not a reason to ask the judge to recuse herself. Counsel testified Judge Goodstein had limited phone contact with the Applicant when she was the County Attorney. Counsel further testified and the record reflects, Judge Goodstein addressed this issue and the Solicitor, the judge and the Applicant did not see any conflict.

This Court finds that Applicant's testimony regarding counsel's performance was not credible. Further, this Court finds that trial counsel's testimony was credible and this Court affords it great weight. This Court finds that the transcript and plea counsel's testimony shows that Applicant understood the consequences of a guilty plea, her Constitutional rights, and the possible sentences. This Court finds that trial counsel was not deficient in any aspect of his representation and performed well within reasonable professional norms for a criminal defense attorney. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984); Hill v. Lockhart. This Court further finds the Applicant also failed to carry her burden of proof to show that but for trial counsel's alleged deficient representation she would have not pled guilty but would have insisted on going to trial. Roscoe v. State. Applicant failed further to show prejudice. Additionally, this Court finds the Applicant's

guilty plea was knowingly and voluntarily made. Boykin v. Alabama; Pittman v. State. Therefore, the Applicant's guilty plea was not rendered involuntary as a result of the ineffective assistance of counsel. Furthermore, Applicant failed to show the plea judge should have been recused. Applicant failed to present any evidence to show the judge was prejudiced to her case or that she said she would give Applicant life if she proceeded to trial. Applicant's contention is based purely on hearsay statements. Accordingly, the allegation of involuntary guilty plea resulting from the allegation of ineffective assistance of counsel is denied.

Miscellaneous Allegations

As to any and all allegations which were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds that the Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that the Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice.

CONCLUSION

This Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

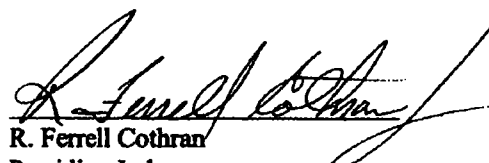
Applicant's Right to Appeal

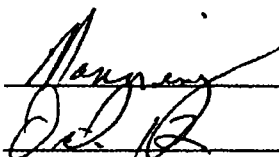
Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Appellate counsel is required to brief arguable issues in order to safeguard the right to appeal. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must file a Notice of Appeal on the

Applicant's behalf. The Court advises the Applicant and his attorney of record that any Notice of Appeal must be filed within thirty (30) days of service of the signed copy. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures on appeal.

IT IS THEREFORE ORDERED THAT:

1. The post-conviction relief application is **DENIED**.
2. The Court advises the Applicant and his attorney of record that any Notice of Appeal must be filed within thirty (30) days of service of the signed copy. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures on appeal.
3. The Applicant is remanded to the custody of the Respondent for the completion of his sentence.


R. Ferrell Cothran
Presiding Judge
First Judicial Circuit

, South Carolina
2007.

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

NORMA PATRICK HALL, #283470,)
Applicant,)

2011-CP-18- 533

v.)

**APPLICATION FOR
POST-CONVICTION RELIEF**

THE STATE OF SOUTH CAROLINA,)
Respondent.)

2011 MAR 14 AM 9:56
CLERK OF COURT
DORCHESTER COUNTY

INSTRUCTIONS – READ CAREFULLY

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

Since every application must be sworn to 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 applicant 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 applicant was convicted.

1. Place of detention: Camille Griffin Graham Correctional Institution 4450 Broad River Road, Columbia, SC 29210
2. Name and location of Court which imposed sentence Dorchester County General Sessions Court
3. Name(s) of co-defendant(s) (if any) n/a
4. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2001-GS-18-1126 Homicide by Child Abuse.
 - (b) 2001-GS-18-628 Murder

5. The date upon which sentence was imposed and the terms of the sentence:
- (a). April 18, 2002 - Forty (40) years.
 - (b). April 15, 2002 - Nolle Prosequi.
6. Check whether a finding of guilty was made
- (a) after a plea of guilty XX
 - (b) after a plea of not guilty
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? Yes
8. If you answered "yes" to (7), list
- (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Affirmed
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. March 1, 2004
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. Unpublished Opinion No. 2004-UP-145
 - ii. _____
 - iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) n/a
 - (b) _____
 - (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) PCR attorney failed to perfect an appeal from order denying previous PCR Application docketed at 2005-CP-18-0288.
 - (b) _____
 - (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Order of Dismissal filed on October 24, 2007 on 05-CP-18-288 was not appealed. Through a clerical error, PCR Counsel failed to file Notice of Appeal from that decision. The Applicant now seeks a belated PCR Appeal through the guidelines and procedures set forth in Austin v. State.
 - (b) _____
 - (c) _____
12. Prior to this application, have you filed with respect to this conviction:
- (a) any petitions in a State Court under South Carolina law? Yes.
 - (b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief? Yes
 - (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 - (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. Prior PCR action.
 - ii. _____
 - iii. _____

iv. _____

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

i. Dorchester County Court of Common Pleas

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. Final Order of Dismissal

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. October 24, 2007.

ii. _____

iii. _____

iv. _____

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

i. Order of Dismissal (copy attached)

ii. _____

iii. _____

iv. _____

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

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) Previous Application raised collateral issues appropriate for review in a Post-Conviction Relief Application, as opposed to a direct appeal. The Applicant now seeks a belated appeal from the Order of Dismissal filed in that case.

(c) _____

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

(a) your arraignment and plea? _____

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

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

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

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

i. Laura S. Knobloch, Esq. 808 Johnnie Dodds Blvd, Mt. Pleasant, SC 29464.

ii. Robert M. Dudek, Esq. SCCID, 1122 Lady Street, Ste 940, Columbia, SC 29201

ii.

iii. _____

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

i. Trial and Sentencing

ii. Appeal

iii. _____

19. State clearly the relief you seek in filing this application. Seeks to have a belated PCR appeal granted pursuant to Austin v. State, 305 SC 453, 409 S.E. 2d 395 (1991).

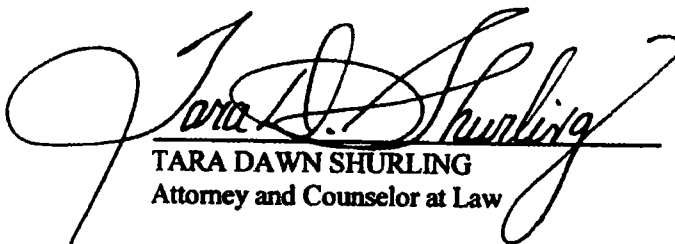
20. Are you now under sentence from any other court that you have not challenged? No

STATE OF SOUTH CAROLINA

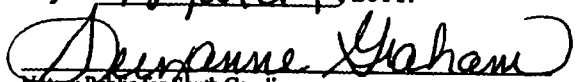
VERIFICATION

COUNTY OF DORCHESTER

I, TARA DAWN SHURLING, *retained* counsel for the Applicant, 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.


TARA DAWN SHURLING
Attorney and Counselor at Law

SWORN to and subscribed before me this 8th
day of March, 2011.


Notary Public for South Carolina
My Commission Expires: 3/12/2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	
	)	2011-CP-18-0533
	)	
Norma Patrick Hall, # 283470	)	
	)	
Applicant,	)	
	)	
v.	)	Return and Motion to Dismiss
	)	(Appointment of Counsel Requested)
State of South Carolina,	)	
	)	
Respondent.	)	

In response to the post-conviction relief application filed March 14, 2011, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. The Applicant was indicted at the April, 2002 term of the Dorchester County Gran Jury for Murder (2001-GS-18-0628) and Homicide by Child Abuse (2001-GS-18-1126). She was represented by Tommy Bolus, Esquire. On April 10, 2002, the Applicant pled guilty to Homicide by Child Abuse and was sentenced to forty (40) years imprisonment by the Honorable Diane S. Goodstein.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed the conviction and sentence by unpublished opinion on March 18, 2004. State v. Norma Patrick Hall, Op. No. 2004-UP-145 (S.C. Ct. App. filed March 18, 2004).

The Applicant then filed an application for Post-Conviction Relief on February 15, 2005 (2005-CP-18-0288). An evidentiary hearing was convened on April 23, 2007, where Applicant was present and represented by Laura S. Knobloch, Esquire. The Honorable R. Ferrell Cothran denied the application by order signed October 12, 2007, and filed October 27, 2007.

II.

Attached herewith and incorporated herein are the records of the Dorchester County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any of the above not so attached will be forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

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

1. "PCR attorney failed to perfect an appeal from order denying previous PCR Application docketed at 2005-CP-18-0288".
 - a. "Order of Dismissal filed October 27, 2007, on 05-CP-18-0288. Through a clerical error, PCR Counsel failed to file Notice of Appeal from that decision. The Applicant now seeks a belated PCR Appeal through the guidelines and procedures set forth in Austin v. State."

III.

The Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160.

S.C. Code Ann. §17-27-45(a) reads as follows:

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

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant pled guilty to the offense(s) he challenges in this Application on April 10, 2002 . The Applicant was therefore required to file the application for post conviction relief no later than April 11, 2003. This application was filed March 14, 2011, more than six (6) years after the statutory time period had run.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

IV.

Additionally, Applicant claims that she was denied the right to appeal the dismissal of the original PCR because her PCR attorney failed to properly file it and/or there were clerical mistakes made. Respondent submits that Applicant’s unexplained delay in filing for the belated appeal of the PCR order, where she had knowledge of her PCR attorney’s failure to perfect the appeal, precludes her from now securing a belated appeal.

Absent some explanation or justification for the delay, laches will prevent an Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to refute the applicant's claims. McElrath v. State, 276 S.C. 282, 277

S.E.2d 890 (1981); Honeycutt v. Ward, 612 F.2d 36 (2nd Cir. 1979). Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002).

To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. This requirement "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." McElrath, 276 S.C. at 283. Rule 9(a) of the Federal Habeas Corpus Act recognizes the doctrine of laches. The Rule states in pertinent part:

A petition may be dismissed if it appears that the state of which the Respondent is an officer has been prejudiced in its ability to respond to the Petition by delay in its filing unless the Petitioner shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred.

Furthermore the South Carolina legislature has recognized this problem and instituted a one year statute of limitations. See S.C. Code Ann. §17-27-45(a).

The Applicant's delay has greatly prejudiced the Respondent. It is questionable whether the attorneys will remember the case and whether their files will be available. If the Applicant had sought post-conviction relief within a reasonable time after his plea, neither of these problems would exist. Therefore, the Court should summarily dismiss the Application based on the Applicant's lack of diligence in processing his claim for relief.

Based on the records in Applicant's file, her 2005 PCR application was denied by Judge Cothran as entered on October 27, 2007. The order submitted specifically advised Applicant of her right to appeal the denial of her application within thirty (30) days of her receipt of the signed order (Order p. 7 – 8). Respondent received correspondence from Applicant in January 1, 2008, inquiring into the status of her PCR application. This letter was sent two and a half months after the entry of the order of dismissal, and a month and a half after the time for the appeal to be

filed. Respondent submits this letter shows Applicant was concerned with the status of her appeal and was requesting information about such more than three (3) years before filing this application seeking belated appeal. At no time during the next three years did Applicant file for a belated appeal of her original PCR.

Respondent submits Applicant intentionally delayed filing her application for a belated appeal for three (3) years during which Applicant had full knowledge of her right to appeal the dismissal and of PCR counsel's failure to perfect her appeal within the time allotted. Applicant's knowing and willful delay in filing has prejudiced Respondent and would continue to prejudice the State should a belated appeal overturn her plea and grant a new trial. If granted a new trial at the belated appeal, it will have been nearly a decade since the entry of her plea. The passage of such time will no doubt affect the memories of the attorneys/court reporter/judge involved in her plea, all as a result of Applicant's intentional actions.

Respondent submits that Applicant's belated PCR appeal allegation pursuant to Austin v. State is without merit. Further, her willful and knowing delay in filing for a belated appeal has caused an undue burden on Respondent. **Nevertheless, the allegation raises a question of fact that cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held.** Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, Respondent moves to summarily dismiss the application, but requests that a hearing be held solely on the belated PCR appeal issue.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Assistant Deputy Attorney General

ROBERT D. CORNEY
Staff Attorney

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondents

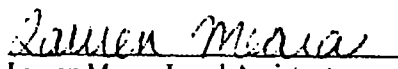
July 27, 2011

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	
	)	
	)	2011-CP-18-00533
	)	
NORMA PATRICK HALL, 283470,	)	
	)	
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 and Motion to Dismiss in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tara Dawn Shurling, Esquire
Law Office of Tara Dawn Shurling, PA
3614 Landmark Drive, Ste. D
Columbia, SC 29204

DATED this 27th day of July, 2011.


 Lauren Meara, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	
NORMA PATRICK HALL, #283470,	)	2011-CP-18-0533
	)	
Applicant,	)	
v.	)	CONSENT ORDER
	)	FOR AUSTIN REVIEW
THE STATE OF SOUTH CAROLINA,	)	
Respondent.	)	

CERTIFIED COPY
 2012 NOV 30 AM 10:26
 CLERK OF COURT
 DORCHESTER COUNTY

This matter comes before the Court by way of an Application for Post-Conviction Relief dated March 14, 2011. The Court is advised that the Respondent filed its Return on July 27, 2011. The sole relief sought by the Applicant in this current Application is an Austin review of the ruling issued in the Applicant's previously filed Post-Conviction Relief action docketed at 2005-CP-18-288. The Applicant's retained counsel, Tara Dawn Shurling, advises this Court that due to an oversight by Applicant's PCR attorney, Laura S. Knobloch, a Notice of Appeal from the Order of Dismissal filed in that case on October 24, 2007 was not filed. An Affidavit signed by Attorney. Knobloch, attesting to this fact is herein attached to this order.

The Applicant's current counsel filed a new Application for Post-Conviction Relief on behalf of this client in order to secure a belated PCR appeal through the guidelines and procedures set forth by the Supreme Court in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Counsel for the Respondent has consented to the sole relief sought in the current Application for Post-Conviction Relief by her signature below. Accordingly, this Application for Post-Conviction Relief is granted. The Applicant is hereby afforded the opportunity to appeal the Order of Dismissal issued in her previous Post-Conviction Relief case docketed at 2005-CP-18-288 by filing a Notice of Appeal from this Order.

IT IS SO ORDERED.

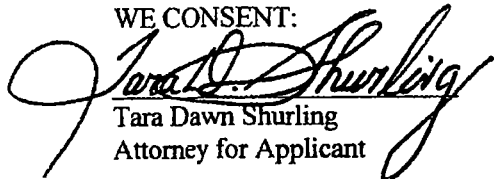


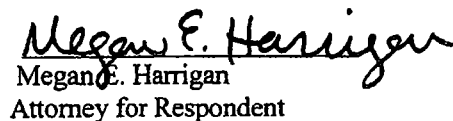
The Honorable Carmen T. Mullen
Circuit Court Judge
First Judicial Circuit

This 1 day of November, 2012.

St. George, South Carolina

WE CONSENT:


Tara Dawn Shurling
Attorney for Applicant


Megan E. Harrigan
Attorney for Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
NORMA PATRICK HALL, 283470)
Applicant,)
v.)
THE STATE,)
Respondent.)

IN THE COURT OF COMMON PLEAS

2011-CP-18-533

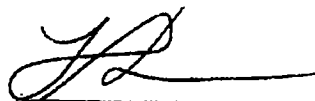
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Clerk of Court
DORCHESTER COUNTY

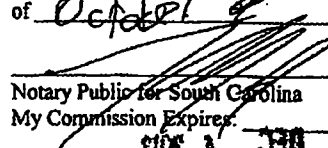
PERSONALLY appeared before me, Laura Spears Knobeloch, who being duly sworn, deposes and says:

1. I was counsel of record in a previous Post-Conviction Relief action filed by Norma Patrick Hall which was docketed at 2005-CP-18-288. An evidentiary hearing was held in that action on April 23, 2007 before the Honorable R. Ferrell Cothran, Jr. presiding circuit judge. That application for Post-Conviction Relief was denied by Order dated October 12, 2007 and filed on October 24, 2007.
2. Through an oversight on my part, the Applicant's right to appeal the Order of Dismissal entered in her 2005 Post-Conviction Relief action was not preserved. My failure to file a Notice of Appeal from said Order as required by Rule 71.1 (g), SCRCP, was entirely due to my oversight and did not reflect a knowing and voluntary waiver of the client's right to a Post-Conviction Relief appeal.

FURTHER AFFIANT SAYETH NAUGHT:


Laura Spears Knobeloch

SWORN TO before me this 31st day
of October, 2012.


Notary Public for South Carolina (L.S.)
My Commission Expires: 11/3/16

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE SUPREME COURT

NORMA PATRICK HALL, #283470,)

Applicant,)

v.)

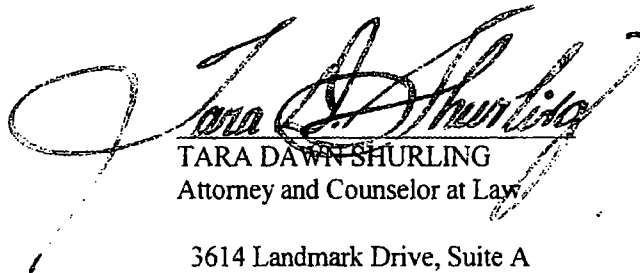
THE STATE,)

Respondent.)

NOTICE OF APPEAL

2011-CP-18-533
2005-CP-18-288 (*Austin* Review granted)

NOW COMES the Applicant in the above-captioned Post-Conviction Relief matter, acting by and through her undersigned counsel, giving notice of appeal from the Consent Order for *Austin* Review issued by the Honorable Carmen T. Mullen, Chief Administrative Judge, and filed on November 30, 2012 and received by counsel on December 4, 2012. Said Order granted *Austin* review of the Order of Dismissal filed in the Petitioner's previous Post-Conviction Relief action docketed at 2005-CP-18-288.



TARA DAWN SHURLING
Attorney and Counselor at Law

3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803)738-8622
(803)738-1600 FAX

ATTORNEY FOR APPLICANT

This 2nd day of January, 2013

RECEIVED

JAN 2 2013

S.C. Supreme Court

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

2011-CP-18-533, Judge Carmen T. Mullen
2005-CP-18-288, Judge R. Ferrell Cothran, Jr.

Norma Patrick Hall, 283470,

Applicant,

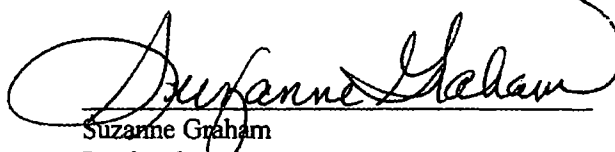
v.

THE STATE,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Applicant's Notice of Appeal in the above-entitled cause has been served upon opposing counsel, Megan E. Harrigan, by mailing in an envelope properly addressed with postage prepaid on this 2nd day of January, 2013.


Suzanne Graham
Paralegal

SWORN TO BEFORE me this 2nd day
of January, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: Jan. 16, 2017

RECEIVED

JAN 2 2013

S.C. Supreme Court