

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County

Honorable J. Cordell Maddox, Circuit Court Judge

ALONZO ERIC VICTORLON GIBSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001678

APPENDIX

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State of South Carolina	)	
	)	Court of General Sessions
<u>County of Lexington</u>	)	2022-GS-32-04131

State of South Carolina	)	
	)	
vs.	)	Transcript of Record
	)	
Alonza V. Gibson	)	

November 30, 2022
Lexington, South Carolina

B E F O R E:

The Honorable Debra McCaslin, Judge.

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E X H I B I T S

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NO EXHIBITS INTRODUCED

1 THE CLERK: Claudia Driskell.

2 UNIDENTIFIED SPEAKER: What was the last name?

3 THE CLERK: Driskell.

4 UNIDENTIFIED SPEAKER: Okay.

5 UNIDENTIFIED SPEAKER: Number 40.

6 THE CLERK: Okay. Driskell, Luke, Newton, Gibson.

7 Number 2022-GS-32-4118, (indiscernible) Claudia Driskell,

8 (indiscernible) possession of (indiscernible) to the grand

9 jury (indiscernible). 2022-GS-32-4171 (Indiscernible) William

10 Luke (indiscernible) in possession with intent to

11 (indiscernible) methamphetamine (indiscernible) grand jury

12 (indiscernible). 2022-GS-32-4175, (indiscernible) Jacob

13 Newton (indiscernible) charged. 2022-GS-32-4166

14 (indiscernible) grand jury (indiscernible). 2022-GS-32-4131,

15 (indiscernible) Alonza Gibson (indiscernible) grand jury

16 (indiscernible).

17 THE COURT: Raise your right hand, please. Raise your

18 right hand, please.

19 (Defendants sworn)

20 MS. WELLMAN: Judge, we got three time served -- your

21 first three, time served. This last one has not worked out.

22 MS. MAULDIN: It's a straight-up plea.

23 THE COURT: All right. Ms. Driskell's time served.

24 MS. WELLMAN: Yes.

25 THE COURT: What about Mr. Luke?

1 MR. MAULDIN: Yes, Your Honor. That's time served.

2 MS. WELLMAN: Time served and vacate bench warrant.

3 THE COURT: Vacate bench warrant? And how about Mr.
4 Newton?

5 MS. SELERT: Time served and vacate --

6 MS. WELLMAN: And vacate bench warrant.

7 THE COURT: Let me ask you, Mr. Mauldin, how long has Mr.
8 Newton been in?

9 MS. SELERT: Oh, I have Mr. Newton.

10 THE COURT: Mr. Newton -- I'm sorry. Go ahead.

11 MS. SELERT: That's okay. So most recently he's been in
12 34 days. However, he was picked up on August 17th of 2017,
13 and then he bonded out, basically, and went immediately to
14 Georgia and spent time in Georgia. So he's been incarcerated
15 ever since then.

16 THE COURT: Okay. Well, this is what we're going to do
17 because you know how the jail is. If I give him anything over
18 90 days, he's going to sit there tonight. He ain't going to
19 be a happy camper --

20 MS. SELERT: So 34 days?

21 THE COURT: -- thinking he's got a time served sentence.
22 So I'm doing the 34 days that I know they can calculate so he
23 can get out today. Unless you want credit for all your time.

24 MS. SELERT: Thank you. I was going to ask --

25 THE COURT: And how about Mr. Luke?

1 MR. MAULDIN: 49 days, Your Honor.

2 THE COURT: 49 days.

3 And how about Ms. Driskell?

4 MR. McMASTER: Well, she was seven months pregnant when
5 she was arrested. She has about a day.

6 THE COURT: One day.

7 And then I've got Mr. Gibson all by himself that nobody's
8 offering time served to.

9 MS. MAULDIN: That's right, Your Honor. We're asking for
10 time served and hoping you'll end with that.

11 UNIDENTIFIED SPEAKER: I'll offer it.

12 MS. WELLMAN: The State is certainly not offering. There
13 are no negotiations or recommendations.

14 THE COURT: No negotiations, but he's the only one.
15 He's -- that's not getting time served -- or not recommended
16 time served out of everybody I got up here. All right.

17 All right. Let me ask the lawyers, anybody object to a
18 group plea? If so, please raise your hand.

19 And then let me ask Ms. Driskell, Mr. Luke, Mr. Newton,
20 and Mr. Gibson, any one of you object to doing a group plea?
21 If so, please raise your hand.

22 All right, let me tell you, I'd like for you to answer
23 individually. I want your own answers. Anybody under the
24 influence of any drugs or alcohol today?

25 Ms. Driskell?

1 MS. DRISKELL: No, ma'am.

2 THE COURT: Mr. Luke?

3 MR. LUKE: No, ma'am.

4 THE COURT: Mr. Newton?

5 MR. NEWTON: No, ma'am.

6 THE COURT: Mr. Gibson?

7 Has anyone been treated for any type of mental illness?

8 Ms. Driskell?

9 MS. DRISKELL: No, ma'am.

10 THE COURT: Mr. Luke?

11 MR. LUKE: No, ma'am.

12 THE COURT: Mr. Newton?

13 MR. NEWTON: No, ma'am.

14 THE COURT: Mr. Gibson?

15 MR. GIBSON: No, ma'am.

16 THE COURT: Y'all all know you're entitled to a jury
17 trial, and I'd give you one. You'd call witnesses, have your
18 lawyer cross-examine the State's witnesses, you could present
19 a defense, and you could choose to testify or not to testify.
20 Then you give up all your jury trial rights and go forward
21 with a guilty plea?

22 Ms. Driskell?

23 MS. DRISKELL: Yes.

24 THE COURT: Got to speak up loud where I can hear you.

25 Mr. Luke?

1 MR. LUKE: Yes, ma'am.

2 THE COURT: Mr. Newton?

3 MR. NEWTON: Yes, ma'am.

4 THE COURT: And Mr. Gibson?

5 MR. GIBSON: Yes, ma'am.

6 THE COURT: Anyone promise you anything to get you to
7 plead guilty today?

8 Ms. Driskell?

9 MS. DRISKELL: No, ma'am.

10 THE COURT: Mr. Luke?

11 MR. LUKE: No, ma'am.

12 THE COURT: Mr. Newton?

13 MR. NEWTON: No, ma'am.

14 THE COURT: Mr. Gibson?

15 MR. GIBSON: No, ma'am.

16 THE COURT: Anybody force you, threaten you to get you to
17 plead guilty today?

18 Ms. Driskell?

19 MS. DRISKELL: No, ma'am.

20 THE COURT: Mr. Luke?

21 MR. LUKE: No, ma'am.

22 THE COURT: And Mr. Newton?

23 MR. NEWTON: No, ma'am.

24 THE COURT: And Mr. Gibson?

25 Pleading guilty freely and voluntarily?

1 Mister -- Ms. Driskell?

2 MS. DRISKELL: Yes, ma'am.

3 THE COURT: Mr. Luke?

4 MR. LUKE: Yes, ma'am.

5 THE COURT: Mr. Newton?

6 MR. NEWTON: Yes, ma'am.

7 THE COURT: And Mr. Gibson?

8 MR. GIBSON: Yes, ma'am.

9 THE COURT: Standing on the indictment on Ms. Driskell?

10 MR. McMASTER: Yes, Your Honor.

11 THE COURT: Ms. Driskell, I'm going to accept your plea

12 and find it to be freely, voluntarily, intelligently made.

13 Sentence of the Court is you be committed to County Detention

14 Center for one day. Giving you credit for your one day.

15 That's time served. 120 days to pay your court costs. I

16 can't waive them.

17 Thank you, Mr. McMaster.

18 MR. McMASTER: Thank you.

19 THE COURT: All right. Standing on the indictment on Mr.

20 Luke?

21 MR. MAULDIN: Yes, Your Honor.

22 THE COURT: Mr. Luke, I too am going to accept your plea

23 and find it to be freely and voluntarily given. Sentence of

24 the Court is that you be committed to County Detention Center

25 for a period of 49 days. I'm giving you credit for 49 days.

1 I'm vacating your bench warrant and giving you 120 days to pay
2 your court costs. Okay?

3 MR. MAULDIN: Yes, ma'am.

4 MR. LUKE: Yes, ma'am. Thank you.

5 THE COURT: Merry Christmas.

6 Mr. Newton? Standing on the indictment for Mr. Newton?

7 MS. SELERT: Yes, ma'am.

8 THE COURT: All right. Mr. Newton, on both of your
9 indictments, which is the possession of a Schedule I, II --
10 looks like marijuana and failure to stop for a blue light,
11 sentence of the Court is that you be committed to the County
12 Detention Center for a period of 34 days. Giving you credit
13 for your 34 days. I'm vacating the bench warrant on both of
14 these and giving you 120 days to pay your court costs.

15 MR. NEWTON: Yes, ma'am.

16 THE COURT: Good luck to you.

17 MS. SELERT: Thank you.

18 THE COURT: All right. Now, tell me about -- before you
19 tell me about Mr. Gibson, Mr. Gibson, I've got an indictment
20 here for assault and battery, second degree. It has not been
21 presented to the grand jury. You going to waive presentment
22 in order to go forward?

23 MR. GIBSON: Yes, ma'am.

24 THE COURT: And it states that on or about March 7th of
25 2022, that you did injure or attempted to injure another

1 person. Are you pleading guilty or not guilty?

2 MR. GIBSON: I'm pleading not -- well, guilty for --
3 guilty.

4 THE COURT: Okay. All right. And I've already asked you
5 if anybody's promised you, forced you, threatened you --

6 MR. GIBSON: No, ma'am.

7 THE COURT: -- to plead guilty today, and you said no.
8 And you are pleading guilty freely and voluntarily, right?

9 MR. GIBSON: Yes, ma'am.

10 THE COURT: Okay. Let me turn to the solicitor and then
11 I'll come back to you.

12 MS. WELLMAN: Thank you, Your Honor, and may it please
13 the Court. This incident occurred on March 7th of this year.
14 On that date, officers with the West Columbia Police
15 Department responded to Lexington Medical Center in reference
16 to a victim of domestic and sexual assault.

17 Officers made contact with the victim in this case, Ms.
18 I.C. [REDACTED]. She stated that she was assaulted by her now
19 ex-boyfriend. She claimed that she was currently pregnant and
20 that her boyfriend was Eric (phonetic) or -- excuse me,
21 Derrick (phonetic) or Eric. He was later identified as this
22 defendant, Alonza Gibson. And I'll come to that -- how we
23 made that connection in a few moments.

24 She had significant bruising and cuts to her face.

25 If I may approach?

1 This photo was released in discovery. I don't actually
2 know if Ms. I.C. is pregnant or if she still is pregnant.
3 They were only together for about a month and a half, so --
4 I'll leave it at that.

5 She also had some pain in her arms, hands, and around her
6 body. She said that she was walking from the Columbia side of
7 West Columbia down 378 and she got into a verbal altercation
8 with the defendant because the defendant accused her of
9 sleeping with someone else.

10 They went to a couple of different stores on 378. You
11 can see them on surveillance video. There's some verbal
12 arguments going on between the two, and she had claimed that
13 the defendant then went to the front of a brown church located
14 at 1500 Sunset Boulevard. He digitally penetrated her and
15 then forcibly entered his penis into her vagina until
16 ejaculation. He then struck her in the face with an open hand
17 prior to leaving the church.

18 They continued walking westbound down Sunset Boulevard
19 past the Toyota Center --

20 THE COURT: After that, they're both seen walking down
21 the road?

22 MS. WELLMAN: Yes, Your Honor. She claims that he later
23 struck her in the face, head, stomach, back several times with
24 a closed fist, kicking her while she was down on the ground.
25 And then the defendant left her prior to arriving at Lexington

1 Medical Center.

2 Your Honor, while at the hospital, Ms. I.C. [REDACTED] refused a
3 sexual assault exam. There was nothing on the video evidence
4 to suggest -- or I didn't see anything consistent with a
5 sexual assault on the video.

6 Ms. I.C. [REDACTED] is homeless. We have made repeated attempts
7 to try and locate her at different facilities and have been
8 unsuccessful.

9 So this was going on -- or they had this story -- the
10 case was assigned to a Det. Shubert (phonetic) at West
11 Columbia Police Department. She heard of a similar incident
12 involving this defendant, Alonza Gibson, who was in custody in
13 Richland County for similar offenses. She went to talk to
14 him. He did waive his Miranda rights. He did admit to being
15 with Ms. I.C. [REDACTED]. He admitted to engaging in sexual activity
16 with her, though he said it was consensual. But he did also
17 admit that he got into a fight with her and that he did strike
18 her.

19 So that would be the basis for the plea in this case.
20 With regards to sentencing, I'll just wait until the
21 appropriate time.

22 THE COURT: All right. All right, Mr. Gibson, you heard
23 the solicitor. You agree with those facts?

24 MR. GIBSON: No. They're not true. Not at all.

25 THE COURT: Okay. Let me --

1 MS. MAULDIN: May I jump in?

2 THE COURT: Yes.

3 MS. MAULDIN: He wholeheartedly admits doing the assault
4 and battery and causing physical harm. He categorically
5 denies any sort of sexual assault. So he admits the charge
6 that he is pleading to. He denies the charge that is being
7 disposed.

8 THE COURT: Do you admit that you hit her?

9 MR. GIBSON: Me and her have known each other since --

10 MS. MAULDIN: Just -- she just wants to know if you
11 did --

12 MR. GIBSON: Yeah.

13 MS. MAULDIN: -- physical injury to the lady.

14 MR. GIBSON: Since last year, though. But yeah.

15 MS. MAULDIN: We'll talk about that later.

16 THE COURT: Okay. All right. Mr. Gibson, I'm going to
17 accept your plea; find it to be freely, voluntarily,
18 intelligently made. I'm just going to tell you right now, I'm
19 not even considering anything about a sexual assault in my
20 mind, whatsoever, because there's no evidence of it.

21 MR. GIBSON: Yes, ma'am.

22 THE COURT: The solicitor even put that on the record.
23 She has no evidence of that, and I'm not even considering it.

24 MR. GIBSON: Yes, ma'am.

25 THE COURT: Okay? I'm here -- the only thing I'm going

1 to consider is that you hit her.

2 MR. GIBSON: Yes, ma'am.

3 THE COURT: Okay? All right. Let me -- is there
4 anything else you want to add?

5 MS. WELLMAN: With regards to the facts, no, Your Honor.
6 With regards to sentencing, yes. So if you're ready for me to
7 speak on that --

8 THE COURT: Okay. No, I'm going to let Ms. Mauldin go
9 first.

10 Tell me what's going on.

11 MS. MAULDIN: Your Honor, may I defer until the end of
12 the entire State --

13 THE COURT: Sure.

14 MS. MAULDIN: -- presentation in this one?

15 THE COURT: Then I'm going to let you go.

16 MS. WELLMAN: Thank you, Your Honor. Mr. Gibson has an
17 extensive criminal history that includes many incidents of
18 violence against women. I provided the Court with a --

19 THE COURT: I'm looking at it.

20 MS. WELLMAN: -- a record that includes -- starts in
21 2002. And just for purposes of the record, I'm going to go
22 through it very quickly. 2002, six convictions for burglary
23 2nd, non-violent; contributing to the delinquency of a minor,
24 three convictions. 2012, two convictions for petty larceny
25 and trespassing, entering premises after warning.

1 2013 is where things started getting pretty bad. There's
2 a conviction for criminal sexual conduct in the first degree.
3 I would assume that would be aggravated force, as there's
4 nothing connecting him to, like, the kidnapping or the common
5 law robbery -- things like that. But there's also assault and
6 battery, second degree. Two convictions for that.

7 Two convictions for threatening the life of a public
8 official, and another conviction for criminal sexual conduct
9 in the third degree. Those made this defendant subject to the
10 Sexually Violent Predator Act.

11 There is a representative from the AG's office here
12 today. They wanted the Court to know -- she's right here --
13 wanted the Court to know that they have filed a petition to
14 get a detainer on him pursuant to the SVP Act.

15 And then, however, in 2014, entering premises after
16 warning. 2015, Sex Offender Registry violation. 2017,
17 breaking and entering of a motor vehicle. 2019, assault and
18 battery in the first degree. 2021, public disorderly conduct.
19 There's assault and battery, third degree. And then in 2002
20 (sic), there's assault and battery, second degree.

21 Looking with Ms. Mauldin at the public index for Richland
22 County, it appears that there were similar -- or excuse me,
23 pending charges in Richland County and that's what he was in
24 custody for. It potentially was resolved by the assault and
25 battery in the second degree.

1 There's also a pending Sex Offender Registry violation
2 charge. Forgive me, I cannot remember which county that is in
3 right now. But that --

4 THE COURT: For him not registering --

5 MS. WELLMAN: As a sex offender or complying with the
6 registry requirements. I don't know the specific details of
7 that charge or the specifics on the statute or the part of the
8 statute that he violated.

9 MR. GIBSON: Excuse me, ma'am?

10 MS. MAULDIN: Hold on. Hold on.

11 MR. GIBSON: Okay. Yeah.

12 MS. WELLMAN: Regardless, that criminal history is
13 extensive and very concerning. I don't blame the Attorney
14 General's office for being here and being concerned. That's
15 all I have, Your Honor.

16 THE COURT: Let me ask you, this assault and battery,
17 first degree, and assault and battery, second -- really, the
18 ones -- I mean, they look like they're kind of back-to-back.
19 2019. I got 2021. I got 2022. Are these all with women?
20 Does anybody know?

21 MS. WELLMAN: I can't speak to that, Your Honor.

22 THE COURT: Can the AG's office tell me?

23 MS. SHUPE: That's my understanding. Yes, ma'am. They
24 were --

25 THE COURT: Anybody know if it's the same victim?

1 MS. SHUPE: My understanding is it's different victims,
2 Your Honor.

3 THE COURT: Different victims. Okay.

4 All right, Ms. Mauldin, let me hear from you.

5 MS. MAULDIN: Starting with odds and ends on the
6 different county things that were pending at the same time as
7 this, he had the case pending in Richland County. That was
8 resolved as an assault and battery, second degree, and he was
9 sentenced to one year in SCDC. He's done that sentence.

10 THE COURT: That was in 2022?

11 MS. MAULDIN: Yes, Your Honor.

12 THE COURT: Okay.

13 MS. MAULDIN: Once he finished that, he went to Sumter.
14 And it's my understanding that the Sex Offender Registry --

15 MR. GIBSON: It was just a registry that -- where I
16 didn't show up. I was reporting all the time, so the new
17 officer put me -- reinstated me back on it because at least I
18 was paying and reporting. That's what that -- that's where
19 that came in.

20 MS. MAULDIN: At any rate, that's resolved. We --

21 MR. GIBSON: That was my first time.

22 MS. MAULDIN: -- checked with the bailiff. There are no
23 holds or anything like that at the jail for anything out of
24 Sumter.

25 And I'll get into time served now, if Your Honor would

1 like me to.

2 MR. GIBSON: And the victims were my old girlfriends.
3 That's what -- yeah. Different girl.

4 MS. MAULDIN: Judge, he was -- when this case arose, the
5 police went and interviewed him on March 10th of this year,
6 and then they got the warrant the next day. On March 11th,
7 the warrant was issued then. He was in Richland County Jail,
8 where they had interviewed him the day before. They just
9 didn't serve the warrant on him until June.

10 So I'm asking for credit back to that March 11th date. I
11 know he was doing time on another charge, but he was in
12 custody. They knew where he was because they just interviewed
13 him. They just didn't serve the warrant that was issued the
14 next day. They didn't get that served on him until June. So
15 I'm asking for the whole time from March 11th up until today,
16 and that's 265 days.

17 As far as the rest of this goes, Your Honor, the SVP
18 petition was news to me. I don't think the solicitor knew
19 about it in advance either, but I found out about it when I
20 got to the courtroom today. I told him that we could hold off
21 on the plea today and give me time to consult with somebody
22 that does SVP stuff on a regular basis and might have more
23 information about it in the off chance that this has any
24 negative effect on his SVP case. He didn't want to do that.
25 He wants to get out of the Lexington Jail one way or the

1 other, so we're going forward today with the plea.

2 However, Your Honor, for purposes of the record, I will
3 say this again, he totally denies any sort of sexual assault
4 allegations on this, and that charge is being dismissed. He
5 is admitting doing physical harm to this lady, and there were,
6 you know, bruises to her face, a cut on the back of her
7 head -- injuries like that.

8 As you heard, she denied any kind of rape exam as a
9 result of this. Some of her claims were outlandish in that he
10 pushed or dragged her about a mile and a third down the road.
11 It just didn't add up.

12 When the police went and talked to him, he admitted right
13 off the bat that he had done the assault on her but said that
14 any sex was consensual. So he was cooperative and honest with
15 them about what really happened.

16 At any rate, Your Honor, this was a brief relationship.
17 He is done with her. If any children resulted from that
18 union, his desire is to deal with that in family court. He
19 doesn't want to have anything to do with this lady anymore.

20 He's got family members he's worried about. Both his
21 parents are in poor health. He's anxious to go back to Sumter
22 and live with his sister and help take care of his parents.
23 His mother has had strokes, and he's worried about her and how
24 much longer she's going to be around.

25 So for all those reasons, we're asking for a time served

1 sentence since he's done pretty close to a year on this charge
2 already. If they're serving the SVP petition, he knows he's
3 going to have to deal with that. His plan is to go back to
4 his family in Sumter.

5 Your Honor, he does construction work. He wants to go
6 back to doing that and be as productive as he can, aside from
7 this new matter that's coming up.

8 THE COURT: They've already -- the AG's office has
9 already served a detainer, right?

10 MS. MAULDIN: Not yet.

11 MS. SHUPE: Your Honor, the way the SVP process works is
12 we have to file the petition, which will be done within the
13 next ten days. We then have to get a probable cause warrant
14 and have a hearing, and then we have a detainer. Until then,
15 if -- we don't have a detainer, Your Honor.

16 THE COURT: Okay.

17 MS. SHUPE: But that is our intent, and we will be moving
18 forward regardless of what happens here today. We will be
19 moving forward. And at the point we get a detainer, he will
20 be picked up if he's released. He will be picked up on that
21 detainer.

22 THE COURT: I got it.

23 MS. SHUPE: That's where we are concerned.

24 THE COURT: Okay.

25 MS. WELLMAN: If I may, Your Honor. In regards to Ms.

1 Mauldin's request for those three months between -- he's
2 legally not -- or excuse me, not legally entitled to credit
3 until the warrant was served. He was doing time on another
4 offense and I just can't consent to that --

5 MS. MAULDIN: We're --

6 MS. WELLMAN: -- because he's not --

7 MS. MAULDIN: I'm sorry.

8 MS. WELLMAN: Legally, he's not entitled to that per
9 statute.

10 MS. MAULDIN: And we're asking for it because the police
11 knew exactly where he was. They had just talked to him and
12 got the warrant the next day. So it was just a matter of not
13 serving it on him in a timely fashion.

14 THE COURT: Well, that's one of the things that irritated
15 me when I was in private practice. Matter of fact, I think
16 there was a case that came out stating that they can't sit
17 there and hold the warrants while they know you're in jail,
18 because it used to happen to my clients all the time. And I
19 know I'm right.

20 Ben, wasn't there a case that came out on that?

21 MR. STITELY: I think it was dealing with SCDC, Judge,
22 but it said there was an affirmative responsibility --

23 THE COURT: Duty --

24 MR. STITELY: -- to attempt to serve warrants when you
25 know where someone is, if you have them in hand.

1 THE COURT: Right.

2 MS. MAULDIN: Well, Judge McMahon's old administrative
3 order is still in effect, and that instructs law enforcement
4 agencies to do the same thing.

5 THE COURT: Well, I would agree with that.

6 This is what I'm going to do. I don't mind giving him
7 credit. What'd you tell me?

8 MS. MAULDIN: 265 days, Your Honor.

9 SENTENCE

10 THE COURT: But I'm sentencing him to 18 months. I'll
11 give him credit for his 265 days. I looked -- this picture
12 doesn't look very good. She's got a huge part of her face --
13 you can tell where she's cut, and on her forehead -- and the
14 criminal history is not good.

15 18 months. I'm not putting him on probation. I'm not
16 doing none of that.

17 MS. MAULDIN: Thank you, Your Honor.

18 THE COURT: Okay? Thank you.

19 MS. WELLMAN: Thank you, Judge. May I approach?

20 THE COURT: Good luck to you.

21 Yes.

22 (End of Transcript of Record)

23

24

25

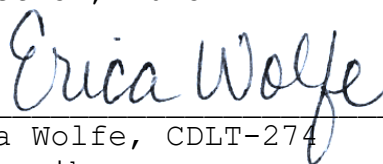
CERTIFICATE OF TRANSCRIBER

State of South Carolina)
)
County of Lexington)

I, ERICA WOLFE, a court-approved transcriber, do hereby
certify that the foregoing is a true, accurate and complete
Transcript of Record of the proceedings had and evidence
introduced in the trial of the captioned case, relative to
appeal, in the Court of General Sessions for Lexington County,
South Carolina, on the 30th day of November, 2022.

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

August 31, 2023



Erica Wolfe, CDLT-274
Transcriber

WITNESSES

West Columbia Police Department

Tushama M Suber

Law Enforcement Case #: 2208324

AEW

ARREST WARRANT NUMBER

2022A3221100111

ACTION OF GRAND JURYForeperson of Grand Jury
Date:**VERDICT**Foreperson of Petit Jury
Date:DOCKET NO. 2022GS3204131**The State of South Carolina**

County of Lexington

COURT OF GENERAL SESSIONS

DECEMBER TERM 2022

THE STATE

vs.

Alonza Victorlon Gibson

CDR #: 3413

Indictment for

Assault and Battery - Second Degree

§ 16-03-0600(D)(1)

S.R. Hubbard III, SOLICITOR

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

Alonza V. Gibson
Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Sarah M. Gibson
Witness
C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

INDICTMENT FOR
 Assault and Battery - Second Degree

§ 16-03-0600(D)(1)

At a Court of General Sessions, convened on December 2022, the Grand Jurors of Lexington County present upon their oath:

That Alonza Victorion Gibson did in Lexington County, South Carolina, on or about March 7, 2022, unlawfully injure another person, or offered or attempted to injure another person with the present ability to do so, and moderate bodily injury to another person, I.C. [REDACTED], resulted or moderate bodily injury to another person could have resulted; to wit: the defendant did strike the victim about the body and head causing visible injury to the body and head, in violation of §16-03-600(D) of the South Carolina Code of Laws of 1976, as amended.

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


 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA } IN THE COURT OF COMMON PLEAS
 County of Clarendon }
Alonzo, Eric Victorlan Gibson } APPLICATION FOR
Full Name of Applicant }
 v. } POST-CONVICTION RELIEF
 State of South Carolina } **2023CP3200992**

INSTRUCTION - READ CAREFULLY

In order for this application to receive consideration by the Courts, it shall be written in writing (legibly handwritten or typewritten), signed by the applicant and verified (Notarized), and it shall set forth in concise form the answer to each applicable question. Since every application must be sworn under oath, and false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury.

- FILED**
 2023 MAR 17 AM 9:00
 LISA B. CORCORAN
 CLERK OF COURT
 LEXINGTON, SC
1. Place of detention Clarendon County Detention Center
 2. Name and Location of Court which imposed sentence Lexington County Courthouse, Lexington, SC 29072
 3. Name(s) of Co-defendant(s) (if any) _____
 4. The indictment numbers (if known) upon which and the offenses for which sentence was imposed: (A) 2022-GS-32-4131
 (B) Assault + Battery 2nd
 (C) _____
 5. The date upon which sentence was imposed and the term of the sentence:
 (A) 11-30-22 18 mos. (265 days credit) NON-Violent
 (B) _____
 (C) _____

6. Check whether a finding of guilty was Made?

(A) after a plea of guilty ✓

(B) after a plea of Not guilty

(C) after a plea of Nolo Contendere

7. Did you appeal from the judgement of Conviction or the imposition of Sentence
NO

8. If you answered "yes" to (7), list:

(A) the name of each Court to which you appealed: (i)

 (ii) N/A

(iii)

9. If you answered "NO" to (7), state your reasons for not so appealing:

(A) I didn't know at the time of the SVP Civil-action

(B) I only had 30 days, after been giving 265 days Credit

(C)

10. State Concisely the grounds on which you base your allegations that you are being held in Custody unlawfully?

(A) I wasn't given notice of the SVP Civil Action

(B) Assault + Battery 2nd is not a Sex offense

(C) SVP civil action was base on my Conviction - Assault + Battery 2

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

(A) I was unaware that my Criminal history would prompt a Civil Action

(B) Assault + Battery ^{sex} is not a Sex offense

(C) With Knowledge of Civil Action I would have re-negotiated my Pl

12. Prior to this application have you filed with respect to this Conviction?

(A) any Petition in a state Court under South Carolina Law? NO

(B) any Petition in State or Federal Courts for Habeas Corpus or Post-Conviction relief? NO

(C) Any Petition in the United States Supreme Court for certiorari; other than petitions, if any, already specified in (8)? NO

(D) any other petitions, motions or applications in this or any other Courts 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:

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

(C) the disposition thereof:

(D) the date of each such disposition:

(E) If known, Citations of any written opinions or orders entered pursuant to each such disposition:

14. Has any ground set forth in (10) been previously presented to this Court or any other, State or Federal, in any petition, motion or application which you have filed? NO

15. If you answered "yes" to (14) identify: (A) which grounds have been presented:

(B) the proceeding in which each ground was raised:

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 grounds has not previously been presented: (A) _____

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

(A) your arraignment and plea? Yes

(B) your Trial, if any? Yes

(C) your Sentencing? Yes

(D) your appeal, if any, from judgment of Conviction or the imposition of Sentence? N/A

(E) Preparation, presentation or Consideration of any petitions, motions or applications with respect to this Conviction, which you filed?

N/A

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) Sarah Mauldin 803-785-8873

(ii)

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

(i) Sarah Mauldin Twickenment # 2022-GS-32-4131

(ii)

19. State clearly the relief you seek in filing this application: I want to challenge the fact that an Assault & Battery 2nd is Not a Sex offense so I can be release from detainment at Clar. Co. Det. Ctr.

20. Are you now under sentence from any other count that you have not challenged? NO

STATE OF SOUTH CAROLINA

VERIFICATION

County of Clarendon

I, Alonzo V. Gibson, 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.

Alonzo V. Gibson
Applicant Signature

SWORN to and subscribed before me this 21
day of February, 2023
Foster L. Smith Jr. (L.S.)
Notary Public

My Commission Expires: 06/16/2030

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

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

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

Alonzo V. Gibson
applicant

Sworn or affirmed to and subscribed before me this
21 day of February, 2023

John J. Smith
Notary Public

My Commission Expires: 06/16/2030

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	FOR THE 11th JUDICIAL CIRCUIT
	)	
	)	
Alonzo Eric Victorlon GIBSON,	)	Case No. 2023-CP-32-00992
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	(Counsel Appointed)
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
	)	


 The Respondent State of South Carolina hereby makes a Return to the *pro se* application for post-conviction relief filed March 6, 2023 by Alonzo Eric Victorlon Gibson. On November 28, 2023, the Clerk of Court appointed Chelsey Marto to represent the Applicant. The Respondent would show this Court the following:

I. FACTS & PROCEDURAL HISTORY

Applicant is not presently confined pursuant to the orders of commitment from Lexington County. In this Lexington PCR action, the Applicant was arrested on June 21, 2022 following an investigation into/incident involving Domestic Violence of a High and Aggravated Nature which occurred on March 7, 2022. (2022A3221100111) and Criminal Sexual Conduct 1st degree (2022A3221100110). The Applicant waived grand jury presentment on November 30, 2022. State v. Gibson, 2022-GS-32-04131, for the crime of Assault and Battery 2nd degree. He was present and represented in the matter by Sarah Hahn Mauldin at the guilty plea proceeding before the Honorable Debra McCaslin, Presiding Judge. The matter was prosecuted by Ashley E. Wellman of the 11th Circuit Solicitor Office. On that date, Judge McCaslin after a guilty plea sentenced the

Applicant to a determinate term of 18 months with credit for time served of 265 days. The arrest warrant for Criminal Sexual Conduct 1st degree (2022A3221100110) was *nolle prossed*.

He is presently not in custody pursuant to the Lexington conviction having maxed out of the sentence on or about February 10, 2023, prior to the filing of the current application for post-conviction relief.

He is presently confined at the Clarendon County Detention Center pursuant to a petition by the Attorney General of South Carolina to determine if he is a sexually violent predator pursuant to the South Carolina Sexually Violent Predator Act, S.C. Code Ann. Sections 44-48-10 *et seq.* ("the Act"). In the Matter in Care and Treatment of Alonza Victorlan Gibson, Jr. aka Eric Victorlan Gibson Jr., 2022-CP-14-00547 (Clarendon County). In the SVP Petition dated December 14, 2022 and filed December 21, 2022, the State asserted the following was a qualifying conviction under the SVP Act as defined by S.C. Code Ann. Section 44-48-30(1):

- A. Type of Conviction: Criminal Sexual Conduct Third Degree; Assault and Battery Second Degree; Threatening the life of a public official¹ - (**EXHIBIT C**).
- B. Date of Conviction: On or about September 12, 2013 in Clarendon County.
- C. Trial or Plea: Guilty Plea in Clarendon County
- D. Sentence Received: Ten (10) Years, upon service of thirty (30) months balance suspended to three (3) years' probation.
- E. Original Charge(s): Criminal Sexual Conduct First Degree; Kidnapping, Strong Armed Robbery; Assault and Battery First Degree.

Petition, p. 2.

The Petition also included the following, *but not as a Qualifying offense* but as part of the criminal history:

PRIOR SEXUAL/VIOLENT CHARGES AND/OR CONVICTIONS:

¹ Assault and Battery – Second Degree and Threatening the life of a public official are not sexually violent offense, but are placed with the CSC 3rd because the charges plead on the same day.

- A. Type of Conviction: Assault and Battery Second Degree (**EXHIBIT D**)
- B. Date of Conviction: On or about November 30, 2022 in Lexington County
- C. Trial or Plea: Guilty Plea in Lexington County
- D. Sentence Received: Eighteen (18) Months with 265 days' time served.
- E. Original Charge(s): Criminal Sexual Conduct First Degree;
Domestic Violence – ABHAN
- F. Max-Out Date: Currently set for February 10, 2023
- G. Brief Facts:

Victim 2: 41-Year-Old Female (Girlfriend)

Law Enforcement responded to Lexington Medical Center in reference to a Domestic Violence ABHAN and Criminal Sexual Assault. Upon arrival, Victim 2 stated she was hiding from her live in boyfriend (Respondent). Victim 2 left her hiding place and proceeded to start walking on Sunset Blvd when Respondent came up behind her with a knife. Respondent forced Victim 2 into an auto dealers parking lot. Respondent presented the knife again and struck Victim 2 multiple times with a closed fist. Respondent threw Victim 2 on the ground and proceeded to sexually assault her and penetrated her vagina with his penis without a condom.

When Respondent finished he left, and Victim 2 walked to Lexington Medical Center. Victim 2 had a swollen face and a laceration under her left eye. Victim 2's left hand was swollen, and she complained of left arm pain.

Petition, p. 2-3.

The Honorable R. Ferrell Cothran, Jr. issued an Order dated January 13, 2023 authorizing the Applicant to be taken in custody pursuant to the Act. Those SVP matters are currently pending. The Lexington charges are unrelated to the SVP action. He is currently represented in that civil matter by appointed counsel Kindle K. Johnson.

II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following (excerpted verbatim):

- (9) ...state reasons for not so appealing.
 - a. I didn't know at the time of the SVP civil action. I only had 2 months, after being given 265 days credit.

- (10) State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) I wasn't given notice of the SVP Civil Action.
 - (b) Assault and battery 2nd is not a sex offense.
 - (c) SVP civil action was based on my conviction – assault and battery 2.
- (11) State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) I was unaware that my criminal history would prompt a civil action.
 - (b) Assault and Battery 2nd is not a sex offense.
 - (c) With knowledge I would have re-negotiated my plea

Applicant requests relief as follows:

I want to challenge the fact that an assault and battery is not a sex offense so I can be released from detainment at Clarendon County Detention Center.

ATTACHMENTS

Attached to this return and incorporated by reference are the following:

1. Lexington County Clerk of Court records regarding the subject conviction,
2. Applicant's records from the South Carolina Department of Corrections,
3. November 30, 2022 guilty plea transcript, and
4. the records of the current PCR action.

The Respondent is also attaching the following records from the SVP action:

5. In the Matter in Care and Treatment of Alonza Victorlan Gibson, Jr. aka Eric Victorlan Gibson Jr., 2022-CP-14-00547 (Clarendon County), *Petition Pursuant to the Sexually Violent Predator Act*, dated December 14, 2022 and filed December 21, 2022 (without attachments)
6. Probable Cause Order, In the Matter in Care and Treatment of Alonza Victorlan Gibson, Jr. aka Eric Victorlan Gibson Jr., 2022-CP-14-00547 (January 13, 2023)(Cothran CAJ).

The State reserves the right to amend this return upon receipt of any relevant materials.

FACTUAL BASIS OF THE GUILTY PLEA

During the guilty plea, Assistant Solicitor Ashley Wellman set forth the following as the factual basis for his plea to assault and battery second degree:

This incident occurred on March 7th of this year. On that date, officers with the West Columbia Police Department responded to Lexington Medical Center in reference to a victim of domestic and sexual assault.

Officers made contact with the victim in this case, Ms. I--- C---. (VICTIM) She stated that she was assaulted by her now ex-boyfriend. She claimed that she was currently pregnant and that her boyfriend was Eric (phonetic) or -- excuse me, Derrick (phonetic) or Eric. He was later identified as this defendant, Alonza Gibson. And I'll come to that -- how we made that connection in a few moments.

She had significant bruising and cuts to her face. ...

... This photo was released in discovery. I don't actually know if (VICTIM) is pregnant or if she still is pregnant. They were only together for about a month and a half, so -- I'll leave it at that.

She also had some pain in her arms, hands, and around her body. She said that she was walking from the Columbia side of West Columbia down 378 and she got into a verbal altercation with the defendant because the defendant accused her of sleeping with someone else.

They went to a couple of different stores on 378. You can see them on surveillance video. There's some verbal arguments going on between the two, and she had claimed that the defendant then went to the front of a brown church located at 1500 Sunset Boulevard. He digitally penetrated her and then forcibly entered his penis into her vagina until ejaculation. He then struck her in the face with an open hand prior to leaving the church.

They continued walking westbound down Sunset Boulevard past the Toyota Center --

THE COURT: After that, they're both seen walking down the road?

MS. WELLMAN: Yes, Your Honor. She claims that he later struck her in the face, head, stomach, back several times with a closed fist, kicking her while she was down on the ground. And then the defendant left her prior to arriving at Lexington Medical Center.

Your Honor, while at the hospital, (VICTIM) refused a sexual assault exam. There was nothing on the video evidence to suggest -- or I didn't see anything consistent with a sexual assault on the video.

(VICTIM) is homeless. We have made repeated attempts to try and locate her at different facilities and have been unsuccessful.

So this was going on -- or they had this story -- the case was assigned to a Det. Shubert (phonetic) at West Columbia Police Department. She heard of a similar incident involving this defendant, Alonza Gibson, who was in custody in Richland County for similar offenses. She went to talk to him. He did waive his Miranda rights. He did admit to being with (VICTIM). He admitted to engaging in sexual activity with her, though he said it was consensual. But he did also admit that he got into a fight with her and that he did strike her.

So that would be the basis for the plea in this case. . .

Plea Tr.p. 11-13.

When asked by the Court if he agreed with the facts, the Applicant declared: "No, They're not true, Not at all." Tr.p.13, l. 24. The Applicant's counsel, Sara Mauldin acknowledged the limited nature of Applicant's acknowledgement of guilt related to the factual basis: "he wholeheartedly admits doing the assault and battery and causing physical harm. He categorically denies any sort of sexual assault. So he admits the charge he is pleading to. He denies that charge that is being disposed." Plea Tr.p. 14, l. 3-7.

MOTION FOR A MORE DEFINITE STATEMENT

Because Applicant failed to include any cognizable allegations in his application, the State requests Applicant, through counsel, provide allegations on which this action is based and include specific claims and facts to support such allegations. *See* S.C. Code Ann. § 17-27-50 (requiring an applicant to "specifically set forth the grounds upon which the application is based"); *Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the [PCR] court"); *see also Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (stating it is incumbent upon an applicant to make

at least a *prima facie* showing entitling him to relief before an evidentiary hearing will be scheduled and held); Rule 8(a)(2), SCRCF (requiring all civil pleadings to include “a short and plain statement of the facts showing that the pleader is entitled to relief”); Rule 71.1(d), SCRCF (“Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.”). Accordingly, the State moves to require Applicant to provide a more definite statement of his allegations of pursuant to Rule 12(e), SCRCF, and the Post-Conviction Procedure Act.

IV. MOTION TO DISMISS

Applicant’s allegation he wants to challenge the fact that his assault and battery second degree is not a qualifying offense for sexual violent offender treatment and that he was unaware that the State was pursuing SVP treatment when he pled guilty should be summarily dismissed for failure to state a cognizable claim under the Uniform Post-Conviction Procedure Act² (the Act). *See, e.g., Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) (“[PCR] is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal.”). An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

² S.C. Code Ann. § 17-27-10 to -160.

5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A).

Post-conviction relief “is a proper avenue of relief *only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence.*” *Al-Shabazz v. State*, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000).

B. Involuntary Guilty Plea



Given an extraordinary liberal construction, it may be that his claim is that his guilty plea was unknowing because he is claiming he was unaware of the potential for sexually violent offender treatment. “[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced.” *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant’s choice. *Id.* at 755; *see also United States v. Smith*, 440 F.2d 521, 528–529 (7th Cir. 1971) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the

admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant "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*, 337 S.C. at 599, 524 S.E.2d at 624.

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The defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); *see generally Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his guilty plea, the plea judge "usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." *Dover v. State*, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the plea judge "does not have to direct the defendant's attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea." *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

An applicant who enters a plea on the advice of counsel may "only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but

for counsel's errors, the [applicant] would not have pled guilty, but would have insisted on going to trial." *Roscoe*, 345 S.C. at 20, 546 S.E.2d at 419. In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. *Wolfe*, 326 S.C. at 165, 458 S.E.2d at 370; *cf. Rayford v. State*, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant's claim his lawyer misadvised him). The voluntariness of a guilty plea "is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." *Harres v. Leake*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984).

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). It is "well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment." *United States v. Cox*, 464 F.2d 937, 942 (6th Cir. 1972) (citing *Brady*, 397 U.S. 742). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750-53, or by increasing the risks of punishment on those who do not. *Alford*, 400 U.S. at 37.

Surmounting *Strickland*'s high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." *Lee*, 582 U.S. at ____, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); *cf. Hill*, 474 U.S. at 58


 (“[R]equiring a ‘prejudice’ showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel ‘will serve the fundamental interest in the finality of guilty pleas.’ ”). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977); see also *Jamison v. State*, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”); cf. *United States v. Broce*, 488 U.S. 563, 569 (1989) (“A plea of guilty and the ensuing conviction comprehend all of the factual and legal elements necessary to sustain a binding, final judgment of guilty and a lawful sentence. Accordingly, when the judgment of conviction upon a guilty plea has become final and the offender seeks to reopen the proceeding, the inquiry is ordinarily confined to whether the underlying plea was both counseled and voluntary. If the answer is in the affirmative then the conviction and the plea, as a general rule, foreclose the collateral attack.”)).

Of import here, a defendant is “bound,” absent clear and convincing evidence to the contrary, “by the representations he made under oath during a plea colloquy.” *Fields v. Attorney Gen. of Md.*, 956 F.2d 1290, 1299 (4th Cir. 1992); see *Blackledge v. Allison*, 431 U.S. 63, 74-75, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977); *United States v. Lemaster*, 403 F.3d 216, 221 (4th Cir. 2005). Indeed, “a defendant’s solemn declarations in open court affirming a [plea] agreement ... ‘carry a strong presumption of verity.’ ” *Lemaster*, 403 F.3d at 221 (quoting *Blackledge*, 431 U.S. at 74, 97 S.Ct. 1621). In a similar setting, conclusory allegations in a § 2255 federal habeas petition

petition that are contrary to testimony provided at a Rule 11 hearing are “palpably incredible and patently frivolous or false.” *Lemaster*, 403 F.3d at 222. As the Fourth Circuit has explained, “courts must be able to rely on the defendant's statements made under oath during a properly conducted Rule 11 plea colloquy.” *Id.*; see also *Blackledge*, 431 U.S. at 74, 97 S.Ct. 1621; *White*, 366 F.3d at 295-96; *United States v. Bowman*, 348 F.3d 408, 417 (4th Cir. 2003).

Indeed, admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements.” *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); cf. *Blackledge*, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a “formidable barrier in any subsequent collateral proceedings”). “What is at stake in this phase of the case is not the integrity of the state convictions obtained on guilty pleas, but whether, years later, defendants must be permitted to withdraw their pleas, which were perfectly valid when made, and be given another choice between admitting their guilt and putting the State to its proof.” *McMann v. Richardson*, 397 U.S. 759, 773 (1970) (noting the compelling interests in maintaining the finality of guilty-plea convictions validly obtained). “Furthermore, there must be some consequence attached to the decision to plead guilty.” *People v. Schneider*, 25 P.3d 755, 761 (Colo. 2001) (*cited with approval in Jamison*, 410 S.C. at 469, 765 S.E.2d at 129) (“A defendant who voluntarily and knowingly enters a plea accepting responsibility for the charges is properly held to a higher burden in demonstrating to the court that newly discovered evidence should allow him to withdraw that plea.”).

The Offense of Assault and Battery Second Degree is not a Qualifying Offense for SVP Treatment and Is Not Viewed as Such in Applicant’s Case.

The foundation of the Applicant's claim is a misunderstanding on his part that the crime he pleaded to on November 30, 2022 is the qualifying offense for the State's later claim to subject him to consideration as a "sexually violent predator pursuant to S.C. Code § 44-48-30." The Applicant is correct that "assault and battery second degree"³ is not a defined qualifying offense and is not on the qualifying offense list in S.C. Code § 44-48-30.⁴

³ Assault and battery second degree is defined in S.C. Code Ann. § 16-3-600 as follows:

(D)(1) A person commits the offense of assault and battery in the second degree if the person unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so, and:

- (a) moderate bodily injury to another person results or moderate bodily injury to another person could have resulted; or
- (b) the act involves the nonconsensual touching of the private parts of a person, either under or above clothing.

(2) A person who violates this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not more than two thousand five hundred dollars, or imprisoned for not more than three years, or both.

(3) Assault and battery in the second degree is a lesser-included offense of assault and battery in the first degree, as defined in subsection (C)(1), assault and battery of a high and aggravated nature, as defined in subsection (B)(1), and attempted murder, as defined in Section 16-3-29.

S.C. Code Ann. § 16-3-600

⁴ For purposes of this chapter:

(1) "Sexually violent predator" means a person who:

- (a) has been convicted of a sexually violent offense; and
- (b) suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.

(2) "Sexually violent offense" means:

- (a) criminal sexual conduct in the first degree, as provided in Section 16-3-652;
- (b) criminal sexual conduct in the second degree, as provided in Section 16-3-653;
- (c) criminal sexual conduct in the third degree, as provided in Section 16-3-654;
- (d) criminal sexual conduct with minors in the first degree, as provided in Section 16-3-655(A);
- (e) criminal sexual conduct with minors in the second degree, as provided in Section 16-3-655(B);
- (f) criminal sexual conduct with minors in the third degree, as provided in Section 16-3-655(C);
- (g) engaging a child for a sexual performance, as provided in Section 16-3-810;
- (h) producing, directing, or promoting sexual performance by a child, as provided in Section 16-3-820;
- (i) assault with intent to commit criminal sexual conduct, as provided in Section 16-3-656;
- (j) incest, as provided in Section 16-15-20;
- (k) buggery, as provided in Section 16-15-120;
- (l) violations of Article 3, Chapter 15, Title 16 involving a minor when the violations are felonies;
- (m) accessory before the fact to commit an offense enumerated in this item and as provided for in Section 16-1-40;
- (n) attempt to commit an offense enumerated in this item as provided by Section 16-1-80;
- (o) any offense for which the judge makes a specific finding on the record that based on the circumstances of the case, the person's offense should be considered a sexually violent offense; or**
- (p) criminal solicitation of a minor, as provided in Section 16-15-342, if the purpose or intent of the solicitation or attempted solicitation was to:

Contrary to the inference the Applicant claims in his application, a discussion of whether Applicant was facing sexually violent predator treatment consideration was raised at the time of the guilty plea. During defense counsel's argument in mitigation, she declared that she had discussed with Gibson holding off the guilty plea that date, after she had learned about the SVP Petition, to allow further discussion with someone who does SVP on a regular basis to determine if there was a chance the plea would have a negative effect on the SVP case. Plea Tr.p. 19, l. 17-25. Counsel Mauldin stated that Gibson did not want to hold off and wanted to get out of the Lexington County jail "one way or the other." PCR Tr.p. 19-10. She further continued to assert that Applicant's denial of any sexual assault related to the incident which was being dismissed, but admitted doing physical harm to the victim, including bruising to her face and a cut on her back. Tr.p. 20. Counsel asked for a time served sentence. Id. Counsel Mauldin acknowledged that that if the state serves the petition, he knows he has to deal with it. Id.

Senior Deputy Attorney General Deborah Shupe was present at the plea and then briefly explained the SVP process. She indicated an intent to file the SVP petition within 10 days, then have a probable cause warrant and have a hearing which could result in a detainer. She stated if they get a detainer, it would result with Applicant being picked up if he is released on that detainer. Plea Tr.p. 21, l. 11-21.

More importantly, Judge McCaslin did not declare this offense conviction as a qualifying offense under S.C. Code Ann. § 44-48-30(o): "(o) any offense for which the judge makes a specific

-
- (i) persuade, induce, entice, or coerce the person solicited to engage or participate in sexual activity as defined in Section 16-15-375(5); or
 - (ii) perform a sexual activity in the presence of the person solicited.

S.C. Code Ann. § 44-48-30

finding on the record that based on the circumstances of the case, the person's offense should be considered a sexually violent offense.” To the contrary, Judge McCaslin unequivocally stated:

THE COURT: Okay. All right. Mr. Gibson, I'm going to accept your plea; find it to be freely, voluntarily, intelligently made. I'm just going to tell you right now, I'm not even considering anything about a sexual assault in my mind, whatsoever, because there's no evidence of it.

Plea Tr.p. 14, l. 16-20. Judge McCaslin also noted that the solicitor had placed on the record at this plea that there was no evidence of a sexual assault. Plea Tr.p. 14, l. 22-23.

Respondent respectfully asserts that there is no basis for the Applicant to contend that his November 30, 2022 plea to assault and battery second degree was unknowing and therefore subject to being vacated. The crime was not a qualifying offense and Judge McCaslin specifically did not consider the charge had any sexual implications.

Respondent further asserts that the subsequent SVP Petition dated December 14, 2022 and filed December 21, 2022, the State asserted the following was the only qualifying conviction under the SVP Act as defined by S.C. Code Ann. Section 44-48-30(1): “Criminal Sexual Conduct Third Degree,” based upon a guilty plea on or about September 12, 2013 in Clarendon County. In the Matter in Care and Treatment of Alonza Victorlan Gibson, Jr. aka Eric Victorlan Gibson Jr., 2022-CP-14-00547 (Clarendon County), Petition Pursuant to the Sexually Violent Predator Act, dated December 14, 2022 and filed December 21, 2022.

His claims for relief must be denied since the record conclusively rejects his assertions.

ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRPC. *See also* Rules 15(a)–(b), SCRPC. The State

reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRC.P.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

V. GENERAL DENIAL

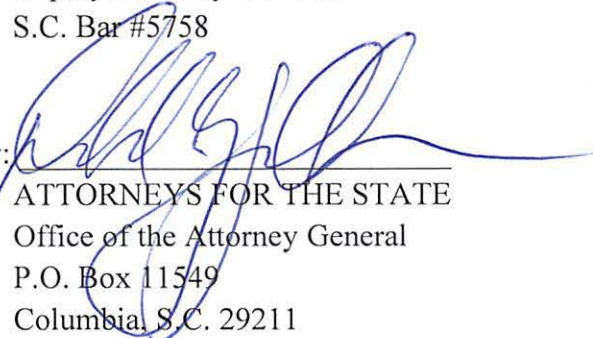
Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied. The Application must be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General
S.C. Bar #5758

By:


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November 29, 2023

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

THIRTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS

Alonzo V. Gibson,)
Applicant,)
)
)
)
)
)
)
State of South Carolina,)
Respondent.)

)

2023-CP-32-00992

TRANSCRIPT OF RECORD

March 21, 2024
Lexington, South Carolina

B E F O R E:

The Honorable J. Cordell Maddox, Judge

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

ATTORNEY FOR APPLICANT:
Chelsey F. Marto, Esquire

ATTORNEY FOR RESPONDENT:
Donald J. Zelenka, Deputy Assistant Attorney General

Tara T. Scott, CVR
Official Court Reporter

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(NO EXHIBITS INTRODUCED DURING THIS HEARING)

ALONZO GIBSON-DIRECT EXAMINATION

3

1 MR. ZELENKA: Your Honor, this is *Alonzo Eric Victorlon*
2 *Gibson v State of South Carolina*. This is a Lexington
3 County PCR, case number 2023-CP-32-992. Mr. Gibson
4 initially filed a pro se application for post-conviction
5 relief on March 6, 2023. He is currently represented by
6 Chelsey Marto. A brief procedural history in this case. He
7 is not presently confined pursuant to his convictions in
8 Lexington County, but is a detainee in Clarendon County for
9 sexually violent predator proceedings. That is in an early
10 stage. There's still some evaluations going on in that.

11 Involving this PCR directly, he was arrested June 21,
12 2022, following an investigation into domestic violence of a
13 high and aggravated nature and criminal sexual conduct in
14 the first degree. He waived Grand Jury presentment on
15 November 30, 2022 for the crime of assault and battery in
16 the second degree. At that time, he was present represented
17 by Sarah Hahn Mauldin at the guilty plea proceeding before
18 Judge McCaslin. The matter was prosecuted by Ashley Wellman
19 of the Eleventh Circuit. On that date, Judge McCaslin,
20 after a guilty plea, sentenced the Applicant to a
21 determinant sentence of eighteen months with credit for time
22 served for 265 days. The warrant for CSC in the first degree
23 was nol prossed.

24 In his allegations, he is asserting that he didn't
25 appeal his guilty plea because at that time he claimed he

ALONZO GIBSON-DIRECT EXAMINATION

4

1 wasn't aware of the SVP civil action, and he only had two
2 months to serve after he had been given 265 days credit. He
3 claimed in this action he wasn't given notice of the SVP
4 civil action. He claims assault and battery second is not a
5 sex offense. And essentially, if he had knowledge, he would
6 have renegotiated his plea. I understand Ms. Marto is ready
7 to go forward. We have present in the courtroom Sarah
8 Mauldin and Ashley Wellman.

9 THE COURT: Are you ready to move forward?

10 MS. MARTO: We are ready to move forward. I would call
11 Mr. Alonzo Gibson to the stand.

12 THE COURT: Come on up and we'll swear you in.

13 WHEREUPON, Alonzo Gibson, having first
14 been duly sworn, testified as follows:

15 COURT REPORTER: Is your first name spelled Alonzo or
16 Alonza?

17 APPLICANT: A-l-o-n-z-o.

18 DIRECT EXAMINATION

19 BY MS. MARTO:

20 Q Good afternoon, sir. So, what was the underlying
21 charge for this plea?

22 A For the plea in 2022?

23 Q Yes.

24 A It was a simple -- well, at first it was a criminal
25 sexual misconduct, but it was thrown out because there was

ALONZO GIBSON-DIRECT EXAMINATION

5

1 no evidence. But then, after it was all said and done, they
2 sentenced me to a simple assault second degree assault and
3 battery.

4 Q And what sentence did you get on that?

5 A I think they gave me, like, two years, a year,
6 something like that. I have to look at my paperwork. I
7 don't remember exactly.

8 Q But you maxed that out, right?

9 A Yeah, I maxed that out.

10 Q Okay. And you're detained right now because of SVP?

11 A Exactly.

12 Q Okay. And is the SVP related to another charge you got
13 before that plea?

14 A I have no idea because, like I said, I didn't know. I
15 had no idea of none of this, you know what I'm saying? That
16 it would bring all this chaos, you know what I'm saying?
17 Just pleading to a simple agreement, plea.

18 Q So when did you find out about SVP?

19 A Just being -- getting locked up after being sentenced
20 and what I was told, you know, that when I got served the
21 paperwork, you know, at a -- while I was in -- at the hands
22 of SCDC, and I was serving some paperwork saying SVP,
23 whatever. And I didn't understand that, so...

24 Q So, did I guess the head of SVP show up at your plea
25 hearing?

ALONZO GIBSON-DIRECT EXAMINATION

6

1 A They had me show up at a hearing last year in Sumter
2 County, and it was SVP then, and it was explaining what it
3 was about basically.

4 Q Did you get a chance to talk about SVP with your
5 attorney?

6 A No, it was just -- things were moving so quick, and I
7 didn't know what, you know, it's kind of by reading the
8 paperwork myself, I kind of like understood, okay, what they
9 had, you know what I'm saying? Just because the victim's
10 advocate was -- when I plead in 2022 here, the victim
11 advocate was here saying some stuff that I wasn't -- I
12 didn't, you know what I'm saying? I'm just thinking, okay,
13 let me take a simple plea and then that, you know. I didn't
14 know all of this would come up, so...

15 Q So counsel didn't warn you ---

16 A No.

17 Q --- that you might be admitted?

18 A Not at all.

19 Q The best of your knowledge, did counsel investigate
20 whether you would be committed?

21 A No.

22 Q Did you want counsel to investigate that?

23 A Well, I mean -- no.

24 Q Did you or counsel, in any way, try and stop the plea
25 from happening when you found out about SVP?

ALONZO GIBSON-CROSS-EXAMINATION

7

1 A No. Not at all.

2 Q Did you want an appeal filed?

3 A You're talking about for what? What they offered me?

4 The 2022?

5 Q Yeah.

6 A The ten-day appeal?

7 Q Yeah.

8 A I mean, probably if I had knowledge of it now, probably
9 would.

10 Q You're here today asking the Court to, I guess, give
11 you a new plea or trial on the A&B because of your new
12 knowledge on SVP; is that correct?

13 A No. My argument is, you know, really just like you
14 said, I didn't have no idea that this would, you know, after
15 my lawyer and them came to the jail and offered me a simple
16 plea agreement, then all this came up, so...

17 Q What was counsel's argument for you regarding
18 mitigation of the time? Do you recall?

19 A No, it wasn't nothing to my knowledge. No, I can't
20 recall.

21 Q Did she ever argue that, if you were to get active
22 time, that you might be committed?

23 A No. My attorney, right?

24 Q Yeah.

25 A No, she didn't. After I was just about sentenced she

ALONZO GIBSON-CROSS-EXAMINATION

8

1 came in and she was like, I don't think you should take
2 this, because I don't understand it, what's going on. So, I
3 was trying to understand her, and she was trying to explain
4 to me the best of her knowledge of what -- because she
5 didn't understand either. So...

6 Q Is there anything else you wish to tell the Court about
7 this?

8 A No, not really.

9 Answer the questions the State has for you.

10 CROSS-EXAMINATION

11 BY MR. ZELENKA:

12 Q Mr. Gibson, when you entered your guilty plea, what did
13 you expect was going to happen that day?

14 A I was going to get my simple time to go down the road,
15 time served, and that's that.

16 Q You thought you were going to get time served?

17 A I mean, that's what I was offered. That's what my
18 attorney came and sat with me at the jailhouse, that I was,
19 you know, it's a simple plea agreement.

20 Q Okay. And when did she tell you that?

21 A It was about November 2022. November. It was, like,
22 probably some days before, 27, 28, and I would be going to
23 court on November 30, 2022. The actual court date to be
24 sentenced.

25 Q So, was it the day of the plea, or was it days before?

ALONZO GIBSON-CROSS-EXAMINATION

9

1 A It's days -- the day of the plea -- that she told me
2 about the SVP?

3 Q No, I'm talking about what you thought you were going
4 to plead guilty to.

5 A Oh, what she told me?

6 Q What type of sentence?

7 A Oh. What she told me that I would be going up for a
8 simple plea agreement to assault and battery second. Yeah.

9 Q And during your plea, there ended up being a discussion
10 about SVP, didn't it?

11 A No, not at all.

12 Q You don't recall that?

13 A No, sir. She didn't -- it was no kind of discussion of
14 that.

15 Q Okay. Do you recall during your plea, when the court
16 asked you on the factual basis about what occurred on March
17 7th of that year, as to whether everything was true that the
18 government stated, and you said essentially they're not
19 true? Not at all. Do you recall that?

20 A I'm trying to understand what you're saying.

21 Q Okay. Can you read?

22 A Yes, sir.

23 MR. ZELENKA: Okay, I'm showing him page 11 of the
24 guilty plea transcript.

25 Q Backing up to page 10. On page 10, you're being asked

1 about the indictment for assault and battery, second degree,
2 and you waived presentment to those. Do you recall doing
3 that?

4 A No.

5 Q You don't recall that? And you were in a group of
6 other individuals -

7 A Yeah.

8 Q --- when you entered your plea.

9 A You mean waving my -- yeah. Okay. You talking about
10 when I went up for sentencing, right?

11 Q Right.

12 A Yes, sir.

13 Q That's what I'm talking about. And then you said you
14 were pleading guilty at the top of page 11?

15 A Yes, sir.

16 Q Do you recall that?

17 A Yes, sir.

18 Q And then the prosecutor, Ms. Wellman, who's sitting in
19 the back of the court. Do you recall her?

20 A Yeah.

21 Q Okay. If you don't recall her, you can say that.

22 A There are certain things I don't remember. I'm just --
23 it's been a while ago.

24 Q Okay, that's fine. She set out the factual basis as to
25 what occurred in that case for a number of pages. And then

ALONZO GIBSON-CROSS-EXAMINATION

11

1 you were asked at page 13, "Mr. Gibson, you heard the
2 Solicitor. Do you agree with all those facts?" You said,
3 "No, they're not true. Not at all." Do you recall that?

4 A (No verbal response.)

5 Q You don't?

6 A Oh, yeah, yeah, okay. Okay. I don't remember saying.

7 Q You don't remember saying that?

8 A Well, certain things in my -- when they was reading the
9 plea agreement out, things that didn't take place. Yeah,
10 that's why I said that probably.

11 Q But then did you admit doing the assault and battery
12 and causing physical harm --

13 A Yes, sir.

14 Q --- to the victim?

15 A Yes, sir.

16 Q And that's a true statement, isn't it?

17 A Yes, sir.

18 Q Okay, so you're not coming here denying that you
19 intended to enter a guilty plea on that day to what occurred
20 on -- before the Court on that day, are you?

21 A Yeah, I was agreeing to what I was going to agree. I
22 was agreeing to what she said that I would get, you know, as
23 the assault and battery second.

24 Q But what about the crime itself? You were admitting to
25 committing --

1 A No, I was admitting to ---

2 Q --- assault and battery?

3 A --- the facts, you know what I'm saying, that went
4 down. Like you said, you know, the assault and battery.

5 Q You're agreeing to that?

6 A Yeah.

7 Q Okay. Now, you admitted that you hit her, correct?

8 A Yes, sir.

9 Q Okay. I also want to make sure that that's clear on
10 the record. And the Court was only to consider, out of the
11 facts, that you actually were the one that hit her, correct?

12 A Yes, sir.

13 Q All right. And then there was a discussion on the
14 record. There was a member of my office there with the
15 sexually violent predator group, a Deborah Shue, that she
16 kind of had discussions also on the record with Judge
17 McCaslin about the status of your SVP case. Do you remember
18 that?

19 A No. Not that actual day in court when I was getting
20 sentenced. No.

21 Q Okay. Do you remember having discussions before you
22 entered your plea with Sarah Mauldin ---

23 A Yes, I did.

24 Q --- your lawyer?

25 A Yeah, she came in.

ALONZO GIBSON-CROSS-EXAMINATION

13

1 Q Do you remember her talking to you about SVP?

2 A She was saying that a group -- and it was -- she said
3 victims advocate. Yeah.

4 Q Sexually Violent Predator? Not victims advocate --

5 A Right. But later ---

6 Q -- but Sexually Violent Predator?

7 A --- on, to my knowledge, would be SVP. Yeah.

8 Q Okay.

9 COURT REPORTER: Please be careful about talking over
10 one another. You are covering each other up a little bit.

11 MR. ZELENKA: I'm sorry. I apologize.

12 Q And do you recall, within that discussion with her
13 about SVP, that she told you if you wanted to have a
14 continuance, she could ask for a continuance from the guilty
15 plea?

16 A Well, she was saying that she didn't think I should
17 take the plea, that I should stay in the county, because she
18 didn't understand too much about it, and until she can learn
19 more about it. That's what she said.

20 Q Okay. So, she was willing, on your behalf, to hold off
21 the plea so that she could better advise you --

22 A Right.

23 Q --- about the ramifications ---

24 A Understand what was going on.

25 Q --- of the plea on the sexually violent predator

1 proceedings ---

2 A Basically. Yes, sir.

3 Q --- which were just beginning?

4 A Yes, sir.

5 Q And is it correct that you responded to her that you
6 just wanted to go ahead and go forward ---

7 A Yeah. I did.

8 Q --- with the plea ---

9 A Right. Yes, sir.

10 Q --- on that day?

11 A Right.

12 COURT REPORTER: Can you wait until he finishes his
13 question before you answer, because I want to make sure the
14 record is clear, okay?

15 WITNESS: Okay.

16 COURT REPORTER: Thank you.

17 Q Okay. What was your answer to that question?

18 A Oh, yeah. So then, you know, I -- yeah, I did say
19 that, that I wanted to go ahead with the plea.

20 Q So, you indicated to her that you were ready to plead,
21 and you were good with the judge sentencing you on that day?

22 A Right, because I fully didn't understand about the SVP.

23 Q Okay. But she was willing to wait ---

24 A Right.

25 Q --- to get you some more information about that?

ALONZO GIBSON-REDIRECT EXAMINATION

15

1 A Yes, sir.

2 Q Okay. And Ms. Mauldin isn't representing you on the
3 SVP proceedings that are pending, is she?

4 A No, I have a lawyer by the State on the civil
5 proceeding, Kendall K. Johnson.

6 Q And Mr. Johnson is currently advising you about those
7 proceedings that are pending, is that correct?

8 A Yeah.

9 Q All right. And after you entered your plea, did you
10 decide that you wanted to appeal to the appellate courts?

11 A Well, now I probably would, because I didn't, just like
12 I said, I didn't know anything about it, but no, I probably
13 would have.

14 Q Okay.

15 A I'm thinking it was a -- something that was just
16 overlook when I first got sentenced and it came up. But,
17 you know, later on, you know, as I found out more about the
18 SVP then, and they held me in jail, so, had me detained.
19 So, now I probably would.

20 Q And they're doing evaluations of you right now.

21 A Yeah, I just finished my last evaluation, MUSC, waiting
22 to go to court.

23 Q Okay. And that last evaluation was with ---

24 A Godfrey.

25 Q --- the examiner from the Medical University of South

1 Carolina?

2 A MUSC in Charleston ---

3 Q Right.

4 A South Carolina. Godfrey.

5 Q Dr. Godfrey?

6 A Yes, sir.

7 MR. ZELENKA: I don't think I have any other questions.

8 THE COURT: Do you have anything?

9 MS. MARTO: Just briefly.

10 REDIRECT EXAMINATION

11 BY MS. MARTO:

12 Q Do you wish you had been informed about SVP, to the
13 extent you are now, before you went through the plea?

14 A Yeah, if I could have waited and not been so quick.
15 Yeah, yeah.

16 MS. MARTO: No further questions.

17 THE COURT: Okay. Any questions?

18 MR. ZELENKA: I don't have any questions.

19 THE COURT: He's being evaluated now?

20 MR. ZELENKA: Your Honor, there have been two
21 evaluations done. One was done by the Department of Mental
22 Health, and then the State requested an independent
23 evaluation, which we have not, upon information and belief
24 today, received a report from the independent examiner.
25 That's the current status.

SARAH MAULDIN-DIRECT EXAMINATION

17

1 THE COURT: Do you have a witness?

2 MS. MARTO: We would call Sarah Mauldin to the stand.

3 WHEREUPON, Sarah Hahn Mauldin, having
4 first been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. MARTO:

7 Q Good afternoon.

8 A Good afternoon.

9 Q So, you represented Mr. Gibson on his A and B charge,
10 right?

11 A Yes.

12 Q You represented him at the plea hearing as well?

13 A Yes.

14 Q And you work for the Public Defender's office, right?

15 A Yes.

16 Q How long have you been working for the Public
17 Defender's office?

18 A For close to 18 years.

19 Q Okay, so when did -- do you recall roughly how long
20 before the plea you took over Mr. Gibson's case?

21 A I received it on July 1, 2022.

22 Q And when did you -- okay, so when did you figure out
23 that he might be on the hook for SVP?

24 A Well, we kind of got sandbagged the day of the plea.

25 We -- I walked into the courtroom, and I heard someone

1 mention his name, that I believed to be from the Attorney
2 General's Office. I asked the Solicitor on the case who
3 that person was and what they had to do with the case, and
4 found out that he was in the process of having an SVP
5 petition and detainer against him.

6 Q And so, did you talk to Mr. Gibson about that at that
7 point?

8 A I did. I went into the -- I talked with the Solicitor,
9 and we -- you know, I told her that I thought we were going
10 to have to postpone the plea until I could learn more about
11 the effect that would have on him. I went into, I believe
12 it was this room, where they were holding inmates at the
13 time, and told him what I knew about SVP and that that meant
14 that the Attorney General's Office was seeking to hold him
15 in custody longer, and that I thought it would be in his
16 best interest to hold off on the plea until I could find out
17 more information about what that would subject him to.

18 Q And so the plea still went forward that day, right?

19 A He told me he wanted to go ahead and -- despite that,
20 yeah. I tried to mitigate it as much as I could by, in the
21 plea, putting on the record that it was -- that he was
22 pleading to the allegations of the assault rather than any
23 sort of sex offense. But, you know, unfortunately, that
24 didn't cure the problem.

25 Q Have you had prior clients get caught up in SVP before?

SARAH MAULDIN-DIRECT EXAMINATION

19

1 A I don't know that I have, and I've never handled any
2 SVP cases, and I'm unfamiliar with the process and that's
3 why I told him I needed to learn more about it.

4 Q Were you, I guess, acquainted with the fact that he
5 could only be committed if he was in custody?

6 A No, I don't know a thing about SVP.

7 Q Okay, sounds good. So, you didn't attempt to mitigate
8 the plea or the sentence by pointing out that if he got a
9 time served sentence ---

10 A No.

11 Q --- he likely would be committed?

12 A And, in fact, that may have had the opposite result.
13 If a judge thought that he were getting out immediately,
14 that it would be harder to treat him as a sexually violent
15 predator, they might be less likely to give him a time
16 served sentence.

17 Q Now, you had his prior record before the plea, right?

18 A Yes.

19 Q Was there anything in that that brought up red flags on
20 him potentially being committed?

21 A I knew that he had prior sex related offenses. I don't
22 remember them off the top of my head now, but that's what
23 gave me concern about going forward.

24 Q So, were you concerned about SVP before the day of the
25 plea?

1 A No.

2 Q Despite his prior sex convictions?

3 A Right.

4 Q Have you, I guess, been concerned before somebody gets
5 caught in that type of a situation that they would be
6 committed?

7 A Well, let me back up. When I have someone with a sex
8 offense, that's something that I advise them about, but I
9 tell them that I don't handle any SVP cases and can't advise
10 them about that process. But no, I would not have told him
11 that with an assault and battery plea, he would be subject
12 to any certain treatment with SVP, because I didn't know
13 that.

14 Q Did Mr. Gibson ask for an appeal after his plea was
15 done?

16 A No.

17 Q If he asked for one, would you have given him one?

18 A Yes.

19 MS. MARTO: No further questions.

20 THE COURT: Yes, sir?

21 CROSS-EXAMINATION

22 BY MR. ZELENKA:

23 Q Ms. Mauldin, prior to November 30, 2020, at the time
24 the plea went down, had you had any contact with the
25 Attorney General's Office or anyone about your client's

SARAH MAULDIN-CROSS-EXAMINATION

21

1 pending or potential for Sexually Violent Predator?

2 A No, I was unaware of any action against him for SVP
3 until I walked into the courtroom that day for court.

4 Q And when you went into the courtroom, as I understand
5 the scenario which has been presented, both at the plea and
6 by you today, you met with Ms. Shoup of the Attorney
7 General's Office, who works in the SVP prosecution unit in
8 our office -

9 THE COURT: Hold on. Mr. Gibson, just hold on. It's
10 hard for her to hear. That's okay. Go ahead.

11 Q Ms. Shoup, who works in the SVP office, do you recall
12 what that conversation was about?

13 A I don't think I had a conversation with her. When I
14 was there, she was there in the courtroom. It was clear
15 that the Solicitor had very recently found out about the SVP
16 petition as well. And my recollection is that there was
17 some conversation between the two of them, and that I talked
18 with the Solicitor as part of it, and my conversation was
19 with the Solicitor in terms of, hey, if this is going on, we
20 need to postpone.

21 Q Okay. So, as a result of learning that, you had a
22 separate meeting with your client?

23 A Yes.

24 Q And what occurred during that meeting?

25 A I told him that someone from the Attorney General's

1 Office was here, that they were from the SVP unit, and that
2 was related to sexually violent offenses, and that they, in
3 some cases, seek to keep people in prison longer than any
4 sentence they receive on a criminal charge. And it was my
5 understanding they were seeking to do that in his case, and
6 that I thought it would be best to hold off and wait until I
7 could consult someone who practices in SVP actions and find
8 out what effect a plea on my charge would have on the SVP
9 case.

10 Q And did your client have a concern about staying in
11 local custody? Basically, what was his rush to get this
12 thing done?

13 A I think it's probably the same that anybody in the
14 Lexington County jail feels, and that is, they want to get
15 out of the Lexington County jail as soon as possible. We
16 had, before this, tried to get him out on bond, and the
17 Solicitor actually consented to a bond order.
18 Unfortunately, he still was not able to comply with the
19 terms of that bond. And so I talked to her not long after
20 that about the possibility of a plea. We came up with the
21 plea to the assault and battery second degree. I asked her
22 about time served. She told me she couldn't recommend time
23 served, but we both understood at that point that he'd been
24 in jail for a long time, and that would be the likely
25 result, given the facts of the case.

1 Q Okay. So, what was the recommendation the government
2 had given to you about the potential sentencing consequences
3 with the A and B plea?

4 A They weren't taking a position on the sentence. As I
5 recall, it was the Solicitor was going to make it clear to
6 the judge that even though it was charged as a sex offense,
7 that there were significant problems with proving that.

8 Q Okay. And why was it important for you, at that time,
9 to separate the assertions related to a sexual offense from
10 the manner that he was actually pleading to?

11 A Well, I think it is a big difference factually in an
12 assault and a rape. But also my worry was that since there
13 was an SVP action pending to try and distinguish the facts
14 of this and make it clear that he was not admitting any sort
15 of sexual offense.

16 Q Because you knew enough that underlying the sexually
17 violent predator offense, that's basically a determination
18 that he is reasonably likely, by history, to recommit
19 sexually violent offenses. So, if this was considered a
20 sexually violent offense, that would enhance the problems
21 that he would have with a eventual SVP determination. Is
22 that correct?

23 A My worry was that it would be worse if it were
24 perceived as a sex offense.

25 Q Right. Worse both for SVP and worse in front of that

1 particular trial judge ---

2 A Yes, sir.

3 Q --- at the time. Okay. Did your client seem firm to
4 you before you went -- before the plea -- that that was a
5 strong course that he wanted to take?

6 A Yes.

7 Q Even though that wasn't the course that you wanted him
8 to take; is that correct?

9 A That's right.

10 Q And was there any way, under those circumstances, that
11 you could have stopped that plea from going forward based
12 upon the request for your client?

13 A I could have, but I felt like I was following my
14 client's wishes. I felt like he was informed that there was
15 a possibility that he could face additional time in a prison
16 facility, and he wanted to go ahead.

17 MR. ZELENKA: I have no further questions.

18 THE COURT: Anything in redirect?

19 MS. MARTO: Just briefly.

20 REDIRECT EXAMINATION

21 BY MS. MARTO:

22 Q So, you told him he could face additional time; right?

23 A Uh-huh.

24 Q Did you tell him that that amount of time would be
25 indefinite?

ASHLEY WELLMAN-DIRECT EXAMINATION

25

1 A No, I didn't tell him that. I said additional time.

2 Q Did he seem to fully understand the repercussions of
3 SVP?

4 A I doubt it, because I didn't.

5 MS. MARTO: Thank you. No further questions. We call
6 Ashley Wellman to the stand.

7 WHEREUPON, Ashley Elizabeth Wellman,
8 having first been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. MARTO:

11 Q Good afternoon, ma'am. How are you doing today?

12 A I'm fine. How are you?

13 Q Good. So, you prosecuted this case, correct?

14 A I did.

15 Q Okay. Do you recall when you took on this case?

16 A Vaguely. It was assigned to me by Chief Deputy
17 Solicitor Al Eargle.

18 Q Do you recall roughly how long you had it before the
19 day of the plea?

20 A I do not.

21 Q Do you recall when you found out that he might be
22 committed via SVP?

23 A I do. It was the day that we brought him to court to
24 either enter the plea or accept or reject the plea to
25 assault and battery in the second degree.

1 Q So, you didn't know about it until the day of plea?

2 A I did not.

3 Q Do you have any personal knowledge on how the Attorney
4 General's Office found out?

5 A I do not.

6 Q Now, when you found out about SVP, what conversation
7 did you have with, I'm presuming, counsel?

8 A I could be mistaken, but I actually believe it was Ms.
9 Mauldin that brought it to my attention. She and I talked
10 about the fact that someone from the Attorney General's
11 Office was present and that an SVP petition was forthcoming,
12 and neither she nor I were prepared for that. We had no
13 knowledge of that, had no prior notice. I know Ms. Mauldin
14 did say that, you know, she had asked her client about -- or
15 actually, I think she said she advised her client to maybe
16 let's hold off on the plea. I did agree to extend the plea
17 offer for Ms. Mauldin to, sort of, gather some more
18 information about this process and what would happen. It
19 was my understanding that Mr. Gibson wanted to go forward
20 because he was ready to get out of the Lexington County
21 Detention Center.

22 Q So you would have agreed with a continuance?

23 A Absolutely.

24 Q Now, is there anything in the case that caused you to
25 think he might be on the hook for SVP before that day?

1 A The only thing that I knew was Mr. Gibson had a pretty
2 significant record for violence against women. I know he
3 was already, or had already been, convicted of a sexually
4 based offense, but we made it clear on the record, both Ms.
5 Mauldin and I at the time of the plea, that the assault and
6 battery in the second degree that he was pleading to had
7 nothing to do with any alleged sexual misconduct. This was
8 the, you know, the physical injury, not any kind of unlawful
9 touching of private parts. So, I was not expecting this to
10 be an issue.

11 Q So, to the best of your knowledge, the A and B never
12 would have been considered as the underlying case for SVP?

13 A No. I actually haven't looked at the specific
14 indictment that I prepared, but if I recall, I made a
15 specific point to the language in the indictment that said
16 physical injury and made no mention of sexual assault. And
17 if I remember correctly, too, I even stated on the record
18 that while there had been an allegation made regarding a
19 criminal sexual conduct incident, that I had no evidence of
20 that. That the victim refused a SANE exam. So, I think
21 both Ms. Mauldin and I made it very clear on the record that
22 this was not a sexually based offense.

23 MS. MARTO: No further questions.

24 CROSS-EXAMINATION

25 BY MR. ZELENKA:

1 Q Just a couple of questions. Ms. Wellman, let me show
2 you what appears to be a copy of the indictment. And
3 exactly what point on that indictment are you referring to
4 that clearly limited the type of injury to -- arising from a
5 physical assault as opposed to a sexual assault?

6 A Yes, sir. The indictment actually states that the
7 Defendant did, on the date, unlawfully injure another person
8 or offered or attempted to injure another person, with the
9 present ability to do so. And this is the part that I think
10 is highly relevant. Moderate bodily injury to another
11 person, Ms. I.C. [REDACTED], resulted, or moderate bodily
12 injury to another person could have resulted. To wit, the
13 Defendant did strike the victim about the body and head,
14 causing visible injury to the body and the head.

15 Q It's your position that that language was such that it
16 would exclude an assault of a sexual nature?

17 A Correct. There's an entirely separate subsection of
18 the assault and battery second degree statute that actually
19 refers to the unlawful touching of private parts. That
20 being, you know, the genitals, the buttocks, or the breast.
21 So we are specifically focusing on the physical injury
22 causing moderate bodily injury subsection in this case.

23 Q All right. Was that -- when Ms. Shoup from the Attorney
24 General's office showed up, did that surprise you at that
25 time?

1 A It did.

2 Q Did it surprise you that Judge McCaslin, during his
3 plea in your case, made inquiry of Ms. Shoup about the
4 status of the SVP proceedings?

5 A I don't believe -- if I understand your question
6 correctly, I don't believe it surprised us that Judge
7 McCaslin went into that line of questioning during the plea
8 hearing, because that was some new information that I think
9 we all became aware of that day. And I think we were all
10 trying to ensure that this was a known and voluntarily made
11 plea. I know one thing that Judge McCaslin and I often do
12 when we are looking at an SVP type plea, we go into that
13 during the colloquy and just again, to make sure it's a
14 known and voluntary plea. And I understood that's what she
15 was doing in this case.

16 Q So you were doing it because even under your office's
17 belief, even though it's a collateral consequence, it's wise
18 and appropriate for the prosecution to go into that?

19 A Absolutely. I even -- my practice is on the sentencing
20 sheets where we put, sort of, the sentencing range up at the
21 top just to help everyone know what we're talking about. If
22 it's an SVP conviction, I usually note that on top of the
23 sentencing sheet just to make sure that I remember and the
24 judge knows that this is something we should go through.

25 Q Okay. Let me show you the sentencing sheet that was

1 done in your case and whether you see that it was indicated
2 that this was an SVP type of offense.

3 A It is not. I just listed the zero to three year
4 sentencing range for the assault and battery second degree
5 based on moderate bodily injury as the result of a physical
6 assault. Even assault and battery in the second degree,
7 that's not subject to SVP based on my understanding. So, we
8 wouldn't normally have gone into it at all. We went into it
9 because a member of the AG's office was here to go through
10 that.

11 MR. ZELENKA: Thank you very much. I have no further
12 questions.

13 MS. MARTO: No redirect and no further witnesses.

14 THE COURT: You may step down. So you all rest?

15 MS. MARTO: We rest.

16 THE COURT: Call any witnesses you have.

17 MR. ZELENKA: The State has no further witnesses, Your
18 Honor. We'll rely upon the guilty plea record that was
19 presented, as well as the materials in our return, and the
20 sentencing sheet, and the indictments in the case.

21 THE COURT: Okay. And I've read through about half of
22 this transcript. What I'm going to do is take it under
23 advisement and read through it. It's not a real complicated
24 thing, but I want to read everything in the file. So, I'll
25 do that and let you know the next two weeks. Is that okay?

ASHLEY WELLMAN-CROSS-EXAMINATION

31

1 MS. MARTO: Thank you, Judge.

2 MR. ZELENKA: Your Honor, I would also -- attached to
3 the return were some matters related to the SVP petition
4 that shows the timing of the petition and the other matter.
5 I think would be appropriate.

6 THE COURT: And I appreciate the packet. because this
7 is going to help me a lot.

8

9 ***END OF REQUESTED TRANSCRIPT OF RECORD)***

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Certificate of Reporter

I, the undersigned, Tara T. Scott, CVR, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Lexington County, South Carolina, on the 21st day of March, 2024.

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

A handwritten signature in black ink, reading "Tara T. Scott", is written over a horizontal line.

Tara T. Scott, CVR

Official Court Reporter

November 25, 2024

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON 2024 SEP 16 AM 9:32) FOR THE ELEVENTH JUDICIAL CIRCUIT

LISA M. COMER
CLERK OF COURT

Alonzo Eric Victorlon GIBSON, LEXINGTON SC Case No. 2023-CP-32-00992

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.



This matter comes before this Court by a *pro se* application for post-conviction relief filed March 6, 2023 by Alonzo Eric Victorlon Gibson. On March 21, 2024, an evidentiary hearing was held in this matter challenging his Lexington County conviction.. The Applicant was present with his court-appointed counsel, Chelsey Marto. The Respondent was represented by Deputy Attorney General Donald J. Zelenka. At the hearing, testimony was received from the Applicant, Sara Mauldin who was his plea attorney and the prosecutor, Ashley Wellman. At the conclusion of the hearing, this Court took the matter under advisement. This Order of Dismissal follows:

I. FACTS & PROCEDURAL HISTORY

Applicant is not presently confined pursuant to the orders of commitment from Lexington County. On the Lexington County conviction, the Applicant maxed out of the sentence on or about February 10, 2023, prior to the filing of the current application for post-conviction relief.

The Applicant was arrested on June 21, 2022, following an investigation into/incident involving Domestic Violence of a High and Aggravated Nature which occurred on March 7, 2022. (2022A3221100111) and Criminal Sexual Conduct 1st degree (2022A3221100110). The Applicant waived grand jury presentment on November 30, 2022. State v. Gibson, 2022-GS-32-

04131, for the crime of Assault and Battery 2nd degree. He was present and represented in the matter by Sarah Hahn Mauldin at the guilty plea proceeding before the Honorable Debra McCaslin, Presiding Judge. The matter was prosecuted by Ashley E. Wellman of the 11th Circuit Solicitor Office. On November 30, 2022, Judge McCaslin after the guilty plea sentenced the Applicant to a determinate term of 18 months with credit for time served of 265 days. The arrest warrant for Criminal Sexual Conduct 1st degree (2022A3221100110) was *nolle prossed*.

Applicant is presently confined at the Clarendon County Detention Center pursuant to a petition by the Attorney General of South Carolina to determine if he is a sexually violent predator pursuant to the South Carolina Sexually Violent Predator Act, S.C. Code Ann. Sections 44-48-10 *et seq.* (“the Act”). In the Matter in Care and Treatment of Alonza Victorlan Gibson, Jr. aka Eric Victorlan Gibson Jr., 2022-CP-14-00547 (Clarendon County). In the SVP Petition dated December 14, 2022 and filed December 21, 2022, the State asserted the following was a qualifying conviction under the SVP Act as defined by S.C. Code Ann. Section 44-48-30(1):

- A. Type of Conviction: Criminal Sexual Conduct Third Degree; Assault and Battery Second Degree; Threatening the life of a public official¹ - (EXHIBIT C).
- B. Date of Conviction: On or about September 12, 2013 in Clarendon County.
- C. Trial or Plea: Guilty Plea in Clarendon County
- D. Sentence Received: Ten (10) Years, upon service of thirty (30) months balance suspended to three (3) years’ probation.
- E. Original Charge(s): Criminal Sexual Conduct First Degree; Kidnapping, Strong Armed Robbery; Assault and Battery First Degree.

Petition, p. 2.

The Petition also included the following, *but not as a Qualifying offense* but as part of the criminal history:

¹ Assault and Battery – Second Degree and Threatening the life of a public official are not sexually violent offense but are placed with the CSC 3rd because the charges plead on the same day.

PRIOR SEXUAL/VIOLENT CHARGES AND/OR CONVICTIONS:

- A. Type of Conviction: Assault and Battery Second Degree (**EXHIBIT D**)
- B. Date of Conviction: On or about November 30, 2022 in Lexington County
- C. Trial or Plea: Guilty Plea in Lexington County
- D. Sentence Received: Eighteen (18) Months with 265 days' time served.
- E. Original Charge(s): Criminal Sexual Conduct First Degree;
Domestic Violence – ABHAN
- F. Max-Out Date: Currently set for February 10, 2023
- G. Brief Facts:

Victim 2: 41-Year-Old Female (Girlfriend)

Law Enforcement responded to Lexington Medical Center in reference to a Domestic Violence ABHAN and Criminal Sexual Assault. Upon arrival, Victim 2 stated she was hiding from her live in boyfriend (Respondent). Victim 2 left her hiding place and proceeded to start walking on Sunset Blvd when Respondent came up behind her with a knife. Respondent forced Victim 2 into an auto dealers parking lot. Respondent presented the knife again and struck Victim 2 multiple times with a closed fist. Respondent threw Victim 2 on the ground and proceeded to sexually assault her and penetrated her vagina with his penis without a condom.

When Respondent finished he left, and Victim 2 walked to Lexington Medical Center. Victim 2 had a swollen face and a laceration under her left eye. Victim 2's left hand was swollen, and she complained of left arm pain.

Petition, p. 2-3.

The Honorable R. Ferrell Cothran, Jr. issued an Order dated January 13, 2023 authorizing the Applicant to be taken in custody pursuant to the Act. The Court is advised that the SVP matters are currently pending. The Lexington charges are unrelated to the SVP action. He is currently represented in that civil matter by appointed counsel Kindle K. Johnson.

II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges the following allegations related to his November 2022 guilty plea and conviction:

- (9) ...state reasons for not so appealing.

- a. I didn't know at the time of the SVP civil action. I only had 2 months, after being given 265 days credit.

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

- (a) I wasn't given notice of the SVP Civil Action.
- (b) Assault and battery 2nd is not a sex offense.
- (c) SVP civil action was based on my conviction – assault and battery 2.

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

- (a) I was unaware that my criminal history would prompt a civil action.
- (b) Assault and Battery 2nd is not a sex offense.
- (c) With knowledge I would have re-negotiated my plea

Applicant requests relief as follows:

I want to challenge the fact that an assault and battery is not a sex offense so I can be released from detainment at Clarendon County Detention Center.

There were no additional amended applications by the Applicant.

This Court has before it the following:

1. Lexington County Clerk of Court records regarding the subject conviction,
2. Applicant's records from the South Carolina Department of Corrections,
3. November 30, 2022 guilty plea transcript, and
4. the records of the current PCR action.

The Court also had before it the following records from the SVP action:

5. In the Matter in Care and Treatment of Alonza Victorlan Gibson, Jr. aka Eric Victorlan Gibson Jr., 2022-CP-14-00547 (Clarendon County), Petition Pursuant to the Sexually Violent Predator Act, dated December 14, 2022 and filed December 21, 2022 (without attachments)
6. Probable Cause Order, In the Matter in Care and Treatment of Alonza Victorlan Gibson, Jr. aka Eric Victorlan Gibson Jr., 2022-CP-14-00547 (January 13, 2023)(Cothran CAJ).

FACTUAL BASIS OF THE GUILTY PLEA

During the guilty plea, Assistant Solicitor Ashley Wellman set forth the following as the factual basis for Gibson's plea to assault and battery second degree:

This incident occurred on March 7th of this year. On that date, officers with the West Columbia Police Department responded to Lexington Medical Center in reference to a victim of domestic and sexual assault.

Officers made contact with the victim in this case, Ms. I--- C---. (VICTIM) She stated that she was assaulted by her now ex-boyfriend. She claimed that she was currently pregnant and that her boyfriend was Eric (phonetic) or -- excuse me, Derrick (phonetic) or Eric. He was later identified as this defendant, Alonza Gibson. And I'll come to that -- how we made that connection in a few moments.

She had significant bruising and cuts to her face. ...

... This photo was released in discovery. I don't actually know if (VICTIM) is pregnant or if she still is pregnant. They were only together for about a month and a half, so -- I'll leave it at that.

She also had some pain in her arms, hands, and around her body. She said that she was walking from the Columbia side of West Columbia down 378 and she got into a verbal altercation with the defendant because the defendant accused her of sleeping with someone else.

They went to a couple of different stores on 378. You can see them on surveillance video. There's some verbal arguments going on between the two, and she had claimed that the defendant then went to the front of a brown church located at 1500 Sunset Boulevard. He digitally penetrated her and then forcibly entered his penis into her vagina until ejaculation. He then struck her in the face with an open hand prior to leaving the church.

They continued walking westbound down Sunset Boulevard past the Toyota Center --

THE COURT: After that, they're both seen walking down the road?

MS. WELLMAN: Yes, Your Honor. She claims that he later struck her in the face, head, stomach, back several times with a closed fist, kicking her while she was down on the ground. And then the defendant left her prior to arriving at Lexington Medical Center.

Your Honor, while at the hospital, (VICTIM) refused a sexual assault exam. There was nothing on the video evidence to suggest -- or I didn't see anything consistent with a sexual assault on the video.

(VICTIM) is homeless. We have made repeated attempts to try and locate her at different facilities and have been unsuccessful.

So this was going on -- or they had this story -- the case was assigned to a Det. Shubert (phonetic) at West Columbia Police Department. She heard of a similar incident involving this defendant, Alonza Gibson, who was in custody in Richland County for similar offenses. She went to talk to him. He did waive his Miranda rights. He did admit to being with (VICTIM). He admitted to engaging in sexual activity with her, though he said it was consensual. But he did also admit that he got into a fight with her and that he did strike her.

So that would be the basis for the plea in this case. . .

Plea Tr.p. 11-13.

When asked by the Court if he agreed with the facts, the Applicant declared: "No, They're not true, Not at all." Tr.p.13, l. 24. The Applicant's counsel, Sara Mauldin acknowledged the limited nature of Applicant's acknowledgement of guilt related to the factual basis: "he wholeheartedly admits doing the assault and battery and causing physical harm. He categorically denies any sort of sexual assault. So he admits the charge he is pleading to. He denies that charge that is being disposed." Plea Tr.p. 14, l. 3-7.

SUMMARY OF PCR HEARING TESTIMONY

During the PCR hearing, the Applicant was the initial witness. He stated he was initially charged with a criminal sexual conduct charge but he pled guilty to assault and battery – second degree.² He was sentenced to a year, but has been detained due to SVP, but does not know if it related to an earlier offense. He stated that he completed service of his sentence and was being detained for a determination on whether he was a sexually violent predator. He claimed that he

² Counsel Mauldin was asking for time served at the plea. Assistant Solicitor Wellman indicated that the State was not offering time served and that there were no negotiations or recommendations. Tr.p. 6.

first learned about SVP when he was locked up at SCDC and was served with the paperwork. He first learned about SVP on the day of the plea. He stated that he was not able to talk with his attorney, Sara Mauldin, about SVP. Counsel did not warn him or investigate the chance of SVP commitment. He claimed that no one attempted to stop the plea once he learned about SVP. In hindsight, he wished he would have appealed. He stated that he was offered a simple plea agreement and then SVP came up at the plea.

On cross-examination, Gibson stated he expected time served when he entered his plea based upon what his counsel told him days before his trial date. Gibson stated he was told about SVP on the day of his plea. He initially claimed that there was no discussion of SVP during the plea.³ He did not recall waiving presentment to assault and battery second degree at the plea. He stated that he advised the plea judge that all the facts set out by the solicitor were not true, because some of the facts did not take place. He admitted to committing the assault and battery, that he did cause harm to the victim, and that he was the one who hit her. He did not recall the Assistant Attorney General speaking to the judge. He admitted that he had discussions with counsel Mauldin about the SVP program prior to the plea. He confirmed that she had advised him that she did not think that he should take the plea because she did not understand its impact on the SVP matter. She was willing to hold off the plea so that she could better inform him on the plea. He said that he wanted the plea to go forward on that day even though she was willing to wait for more information. He claimed he would appeal now but did not know anything about SVP at the

³ The record of the plea shows a discussion of the SVP program on pages 19—20. Senior Assistant Deputy Attorney General Deborah Shupe appeared at the guilty plea and advised the court and confirmed that a detainer had not been prepared in the matter yet, but that an SVP petition would be done in 10 days it would be done in 10 days, which could lead to probable cause warrant and a hearing at which point he would be picked up if he is released.

time.⁴ He stated that he was appointed counsel for the SVP proceedings and had just finished his second evaluation with Dr. Gottfried after and an earlier one by the Department of Mental Health.

Public Defender Sara Mauldin testified that she represented Gibson on his 2022 charges. She stated that she felt sandbagged and learned about the SVP potential on the day of the plea. She also learned that the Attorney General's Office SVP person was there at the plea with an intent to file an SVP petition. Mauldin stated that she spoke with the Solicitor and that she thought the plea should be postponed. She thought the Attorney General was seeking to keep the Applicant in custody. However, she stated that Gibson wanted the plea to go forward. She stated that his admission at the plea was limited to the assault and battery and not the sexual allegation. She was aware that he had prior sex offense convictions but was not concerned about it before the plea because this was not a sex offense. She stated that she had not handled SVP related cases with her prior clients and did not know a thing about it. She stated that he did not ask for an appeal.

On cross-examination, Mauldin stated that she had not been in contact with the Attorney General SVP person previously and did not know about the SVP petition against him until that day. Maulding felt the Solicitor learned about the SVP possibility only recently. She stated that she asked the Solicitor to postpone the plea when she learned this. After learning about this she had a meeting with the Applicant and informed him about the SVP and the effect the charges would have on the SVP case. She said that Gibson wanted to get out of the Lexington County Detention Center as soon as possible. So he went through with it anyway. Mauldin stated that she advised Gibson that she could not guarantee time served by that it was a likely result. She stated that the solicitor had advised her that the recommendation by the state would be that they would

⁴ The plea record reflected he had a prior criminal sexual conduct in the first and third degree convictions in 2013 which made him subject to the Sexually Violent Predator Act. Tr.p. 16.

not take a position on sentencing. She stated that state had a significant problem in proving that there was a sexual offense in this assault. She was worried that it would have been worse if she pled to a sexual offense in front of the judge. She said the client was firm about pleading guilty in spite of the what Mauldin wanted him to do. Based on that she followed her client's wishes.

On redirect, Mauldin stated that she did not tell him additional time could be indefinite and that she doubts he understood the SVP program because she did not.

Assistant Solicitor Ashley Wellman was the prosecutor in this case as assigned by Chief Deputy Solicitor Al Eargle. She stated that on the day of the plea she learned about the SVP proceedings. She does not know how the Attorney General became aware of the plea. She stated that Mauldin brought it to her attention about the SVP proceeding was coming. She learned that Sara agreed to postpone the plea because she was also not prepared to for it because of her lack of knowledge about SVP. She agreed to extend the plea offer in order to gather more information. Wellman stated the only thing she knew was that Gibson had a prior record of violence against woman including a sex offense. Wellman stated the assault and battery second that Gibson pled did not have anything to do with sexual conduct so she did not think it would be an issue. She made a specific point that it was physical injury in the report and did not say sexual. Wellman noted that while there had been a criminal sexual conduct allegation, the victim had refused an examination, so it was not treated as a criminal sexual offence.

On cross-examination, Wellman reviewed a copy of the assault and battery indictment noting that it referred to a moderate body injury to the body and head and excluded the section about a sexual assault which would be a separate section. This was for solely a physical injury, according to Wellman. She stated the appearance at the plea by the Assistant Attorney General surprised her, but she was not surprised when Judge McCaslin inquired about the SVP proceedings

because it was new information. She stated that SVP She stated that assault and battery 2nd degree are not usually subject to SVP consideration .

FINDINGS OF FACT & CONCLUSIONS OF LAW

Pursuant to sections 17-27-70 and -17-27-80 of the South Carolina Code, this Court makes the following findings of facts and conclusions of law based upon the pleadings, records submitted by both parties, and the applicable law.

In order to establish a claim of ineffective assistance of counsel, a PCR applicant must prove counsel's performance was deficient and the deficient performance prejudiced the applicant's case. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Where there has been a guilty plea, the applicant must prove counsel's representation fell below the standard of reasonableness and, but for counsel's unprofessional errors, there is a reasonable probability he would not have pleaded 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); Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). See Page v. State, 364 S.C. 632, 635, 615 S.E.2d 740, 741 (2005)

Applicant's allegation is that he wants to challenge the fact that his assault and battery second degree is not a qualifying offense for sexual violent offender treatment and that he was unaware that the State was pursuing SVP treatment when he pled guilty should be denied. As stated above and below, prior to the plea, the Applicant, his counsel, and the prosecutor became aware that there was a potential SVP proceeding being prepared. In fact, counsel Mauldin was prepared to stop the plea from going forward in order to develop more understanding about the

SVP process. However, the Applicant, made the free and voluntary choice to go forward with a favorable plea rather than wait for further research to be done about the collateral SVP proceedings. Although there was no offer from the State by negotiations or recommendations, the Applicant's counsel requested time served as a disposition. Tr.p. 6.

In Page v. State, 364 S.C. 632, 636–37, 615 S.E.2d 740, 742 (2005), the Supreme Court concluded that counsel's failure to advise defendant of possible civil commitment as sexually violent predator did not render guilty plea involuntary. The Court determined that any possible civil commitment pursuant to the SVP Act does not flow directly from a defendant's guilty plea, but rather from a separate civil proceeding in which testing, evaluation, a probable cause hearing, and a trial by either the court or jury occurs. The Court stated:

We conclude Petitioner's counsel had no duty to inform him about the civil commitment process under the SVPA. Although eligibility for civil commitment under the SVPA is triggered by conviction of a “sexually violent offense,” civil commitment can be imposed only after testing, evaluation, a probable cause hearing, and a trial by either the court or jury. No one can be civilly committed as a “sexually violent predator” unless the State proves beyond a reasonable doubt the person suffers from a mental abnormality or personality disorder that makes the person likely to engage in sexual violence if not confined in a secure facility. Consequently, a person may be convicted of a predicate offense, and yet not be committed under the SVPA because the evidence is not sufficient to find that his or her present mental condition creates a likelihood of future sexually violent behavior. Thus, any possible civil commitment of Petitioner would not flow directly from his guilty plea, but rather from a separate civil proceeding as a collateral consequence.

Page v. State, 364 S.C. 632, 637, 615 S.E.2d 740, 742 (2005).

Subsequent to Page, the Court again addressed the SVP program and guilty pleas. In Hamm v. State, 403 S.C. 461, 464–65, 744 S.E.2d 503, 504–05 (2013), the Court addressed the ability to raise challenges to guilty pleas in SVP related matters. In Hamm, the state habeas applicant sought relief on the ground his plea judge and plea counsel were ineffective for failing to inform him that he was subject to the SVP Act as a direct consequence of pleading guilty. Hamm's claim was

different in that he felt he had to be advised that by pleading guilty to certain sex crimes it would subject him to the SVP Act and its potential implications, such as civil confinement.

Hamm failed to file a PCR application raising any issue related to Padilla within one year of that decision, issued March 31, 2010, as required by section 17–27–45 of the South Carolina Code. S.C.Code Ann. § 17–27–45(B) (2003). Because Hamm failed to exhaust all other remedies, he is barred from habeas corpus relief on his Padilla-related grounds. Gibson, 329 S.C. at 40, 495 S.E.2d at 427–28 (stating a petition for habeas relief must, in addition to other requirements, allege petitioner has exhausted all other remedies in order to be entitled to a hearing).

However, were we even to reach Hamm's Padilla claim, he is not entitled to relief. Commitment pursuant to the SVP Act does not automatically flow from the conviction, rather a civil proceeding occurs where the defendant is evaluated before confinement is certain; the USSC's rationale under Padilla does not extend to a person's civil commitment under the SVP Act; and Padilla does not apply retroactively.

Hamm v. State, 403 S.C. 461, 464–65, 744 S.E.2d 503, 504–05 (2013).⁵

⁵ In Padilla v Kentucky, 559 U.S. 356, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010), the United States Supreme Court (USSC) determined that as a matter of law, Padilla's plea counsel had an obligation to advise him that the offense to which he was pleading guilty would result in his deportation. Padilla, 130 S.Ct. at 1478. Although the Kentucky Supreme Court rejected Padilla's ineffectiveness claim on the ground that the risk of deportation was a collateral matter of which counsel did not have to advise him, the USSC stated “deportation as a consequence of criminal conviction is, because of its close connection to the criminal process, uniquely difficult to classify as either a direct or collateral consequence” and the “collateral versus direct distinction is thus ill-suited in evaluating a Strickland [v. Washington], 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)] claim concerning the specific risk of deportation.” *Id.* at 1481–82. The USSC further found that although deportation was not purely punitive, it was (1) of great importance; (2) virtually mandatory; (3) intimately related to the criminal process; and (4) a drastic measure. *Id.* at 1478–82. The USSC determined that “constitutionally competent counsel would have advised him that his conviction ... made him subject to automatic deportation.” *Id.* at 1478. Additionally, the USSC held counsel must inform the defendant whether his plea carries a risk of deportation because it is a critical factor the defendant is likely to consider in deciding whether to enter a plea or proceed to trial. *Id.* at 1484–86. Accordingly, the Court held that in order for counsel's representation to be deemed reasonable under Strickland, he must advise the defendant about the possibility of deportation. *Id.* at 1486–87. Thus, the USSC ruled counsel was deficient for failing to inform his client when the plea carried the risk of deportation. *Id.* at 1483. Notably, the USSC stated that to be afforded relief a party still needs to demonstrate the prejudice required by Strickland. *Id.* at 1483–84.

In light of Hamm and Page, this Court cannot find that counsel Mauldin was either deficient or prejudicial under Strickland. This Court finds that just prior to the plea, she became aware of the possibility of pending SVP proceedings. She offered to have the matter postponed in order to learn more about the impact of the plea on the SVP proceedings. However, counsel, with that knowledge, did not want to defer the guilty plea and move forward and get sentenced. Counsel was not deficient in failing to advise her client about the potential SVP proceedings because under Page, she had no duty to advise. Further, once she learned of the potential, she discussed the potential with Gibson, but she wanted further time to assess the impact of the plea on the SVP proceedings. This was reasonable action and advice on counsel's part. However, the Applicant, not counsel, wanted to proceed forward without any additional information about SVP and without delay. The Applicant has failed to show either deficient performance or prejudice under Strickland.⁶

B. Involuntary Guilty Plea

Given an extraordinary liberal construction, it may be that his claim is that his guilty plea was unknowing because he is claiming he was unaware of the potential for sexually violent offender treatment. “[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced.” *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. Boykin v. Alabama, 395 U.S. 238 (1969);

⁶ However, unlike the guilty plea setting, the South Carolina Supreme Court has established the right to counsel afforded by the state and federal constitutions, and by the Sexually Violent Predator Act, to an offender sought to be civilly committed as SVP is necessarily a right to effective counsel. See Matter of Chapman, 419 S.C. 172, 796 S.E.2d 843 (2017) .

Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. Brady v. United States, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. *Id.* at 755; see also United States v. Smith, 440 F.2d 521, 528–529 (7th Cir. 1971) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. Boykin, 395 U.S. at 243. Additionally, the defendant "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, 337 S.C. at 599, 524 S.E.2d at 624.

The defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); see generally Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his guilty plea, the plea judge "usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." Dover v. State, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392

(1991). However, the plea judge “does not have to direct the defendant’s attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea.” Carter v. State, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

An applicant who enters a plea on the advice of counsel may “only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the [applicant] would not have pled guilty but would have insisted on going to trial.” Roscoe, 345 S.C. at 20, 546 S.E.2d at 419. In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. Wolfe, 326 S.C. at 165, 458 S.E.2d at 370; *cf. Rayford v. State*, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant’s claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant’s claim his lawyer misadvised him). The voluntariness of a guilty plea “is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984).

The test for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” North Carolina v. Alford, 400 U.S. 25, 31 (1970). It is “well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment.” United States v. Cox, 464 F.2d 937, 942

(6th Cir. 1972) (citing Brady, 397 U.S. 742). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, Brady, 397 U.S. at 750–53, or by increasing the risks of punishment on those who do not. Alford, 400 U.S. at 37. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977); see also Jamison v. State, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”)

Of import here, a defendant is “bound,” absent clear and convincing evidence to the contrary, “by the representations he made under oath during a plea colloquy.” Fields v. Attorney Gen. of Md., 956 F.2d 1290, 1299 (4th Cir. 1992); see Blackledge v. Allison, 431 U.S. 63, 74–75, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977); United States v. Lemaster, 403 F.3d 216, 221 (4th Cir. 2005). Indeed, “a defendant’s solemn declarations in open court affirming a [plea] agreement ... ‘carry a strong presumption of verity.’ ” Lemaster, 403 F.3d at 221 (*quoting Blackledge*, 431 U.S. at 74, 97 S.Ct. 1621). In a similar setting, conclusory allegations in a § 2255 federal habeas petition that are contrary to testimony provided at a Rule 11 hearing are “palpably incredible and patently frivolous or false.” Lemaster, 403 F.3d at 222. As the Fourth Circuit has explained, “courts must be able to rely on the defendant’s statements made under oath during a properly conducted Rule 11 plea colloquy.” *Id.*; see also Blackledge, 431 U.S. at 74, 97 S.Ct. 1621; White, 366 F.3d at 295–96; United States v. Bowman, 348 F.3d 408, 417 (4th Cir. 2003).

Indeed, admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements.” Dalton, 376 S.C. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); cf. Blackledge, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a “formidable barrier in any subsequent collateral proceedings”). “What is at stake in this phase of the case is not the integrity of the state convictions obtained on guilty pleas, but whether, years later, defendants must be permitted to withdraw their pleas, which were perfectly valid when made, and be given another choice between admitting their guilt and putting the State to its proof.” McMann v. Richardson, 397 U.S. 759, 773 (1970) (noting the compelling interests in maintaining the finality of guilty-plea convictions validly obtained).

The Applicant stated at the plea under oath that he was aware that he had a right to a jury trial, the right to cross-examine witnesses, the right to call witnesses, and the right to testify or not testify. Tr.p. 7-8. He admitted that he was not promised anything to get him to plead guilty, that he was not forced to plead guilty and that he was doing so freely and voluntarily. Tr.p. 8 -9. The plea court also had an oral waiver of presentment of the indictment. Tr.p. 10-11. The Applicant unequivocally admitted to the charges in the indictment and just as clearly claimed, as supported by counsel, the State and the Judge, these charges did not include any criminal sexual assault. Tr.p. 14-15. The plea court as noted more fully below there was a discussion about SVP at the plea hearing and the Applicant’s position on wanting to proceed.

This Court must conclude that the Applicant has failed to meet his burden of proof in showing that the guilty plea to the charge of assault and battery second degree was entered unknowingly and involuntarily with ineffective assistance of counsel.

The Offense of Assault and Battery Second Degree is not a Qualifying Offense for SVP Treatment and Is Not Viewed as Such in Applicant's Case.

This Court further finds that the foundation of the Applicant's claim is a misunderstanding on his part that the crime he pleaded to on November 30, 2022 is the qualifying offense for the State's later claim to subject him to consideration as a "sexually violent predator pursuant to S.C. Code § 44-48-30." The Applicant is correct that "assault and battery second degree"⁷ is not a defined qualifying offense and is not on the qualifying offense list in S.C. Code § 44-48-30.⁸

⁷ Assault and battery second degree is defined in S.C. Code Ann. § 16-3-600 as follows:

(D)(1) A person commits the offense of assault and battery in the second degree if the person unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so, and:

- (a) moderate bodily injury to another person results or moderate bodily injury to another person could have resulted; or
- (b) the act involves the nonconsensual touching of the private parts of a person, either under or above clothing.

(2) A person who violates this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not more than two thousand five hundred dollars, or imprisoned for not more than three years, or both.

(3) Assault and battery in the second degree is a lesser-included offense of assault and battery in the first degree, as defined in subsection (C)(1), assault and battery of a high and aggravated nature, as defined in subsection (B)(1), and attempted murder, as defined in Section 16-3-29.

S.C. Code Ann. § 16-3-600

⁸ For purposes of this chapter:

(1) "Sexually violent predator" means a person who:

- (a) has been convicted of a sexually violent offense; and
- (b) suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.

(2) "Sexually violent offense" means:

- (a) criminal sexual conduct in the first degree, as provided in Section 16-3-652;
- (b) criminal sexual conduct in the second degree, as provided in Section 16-3-653;
- (c) criminal sexual conduct in the third degree, as provided in Section 16-3-654;
- (d) criminal sexual conduct with minors in the first degree, as provided in Section 16-3-655(A);
- (e) criminal sexual conduct with minors in the second degree, as provided in Section 16-3-655(B);

Contrary to the inference the Applicant claims in his application, a discussion of whether Applicant was facing sexually violent predator treatment consideration was raised at the time of the guilty plea. During defense counsel's argument in mitigation and during this PCR hearing, counsel Mauldin credibly declared that she had discussed with Gibson holding off the guilty plea that date, after she had learned about the SVP Petition, to allow further discussion with someone who does SVP on a regular basis to determine if there was a chance the plea would have a negative effect on the SVP case. Plea Tr.p. 19, l. 17-25. Counsel Mauldin stated that Gibson did not want to hold off and wanted to get out of the Lexington County jail "one way or the other." Plea Tr.p. 19-10. She further continued to assert that Applicant's denial of any sexual assault related to the incident which was being dismissed, but admitted doing physical harm to the victim, including

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- (f) criminal sexual conduct with minors in the third degree, as provided in Section 16-3-655(C);
 - (g) engaging a child for a sexual performance, as provided in Section 16-3-810;
 - (h) producing, directing, or promoting sexual performance by a child, as provided in Section 16-3-820;
 - (i) assault with intent to commit criminal sexual conduct, as provided in Section 16-3-656;
 - (j) incest, as provided in Section 16-15-20;
 - (k) buggery, as provided in Section 16-15-120;
 - (l) violations of Article 3, Chapter 15, Title 16 involving a minor when the violations are felonies;
 - (m) accessory before the fact to commit an offense enumerated in this item and as provided for in Section 16-1-40;
 - (n) attempt to commit an offense enumerated in this item as provided by Section 16-1-80;
 - (o) any offense for which the judge makes a specific finding on the record that based on the circumstances of the case, the person's offense should be considered a sexually violent offense; or**
 - (p) criminal solicitation of a minor, as provided in Section 16-15-342, if the purpose or intent of the solicitation or attempted solicitation was to:
 - (i) persuade, induce, entice, or coerce the person solicited to engage or participate in sexual activity as defined in Section 16-15-375(5); or
 - (ii) perform a sexual activity in the presence of the person solicited.

bruising to her face and a cut on her back. Tr.p. 20. Counsel asked for a time served sentence. Id. Counsel Mauldin acknowledged that that if the state serves the petition, he knows he has to deal with it. Id.

Senior Deputy Attorney General Deborah Shupe was present at the plea and then briefly explained the SVP process. She indicated an intent to file the SVP petition within 10 days, then have a probable cause warrant and have a hearing which could result in a detainer. She stated if they get a detainer, it would result with Applicant being picked up if he is released on that detainer. Plea Tr.p. 21, l. 11-21.

More importantly, Judge McCaslin did not declare this offense conviction as a qualifying offense under S.C. Code Ann. § 44-48-30(o): “(o) any offense for which the judge makes a specific finding on the record that based on the circumstances of the case, the person's offense should be considered a sexually violent offense.” To the contrary, Judge McCaslin unequivocally stated:

THE COURT: Okay. All right. Mr. Gibson, I'm going to accept your plea; find it to be freely, voluntarily, intelligently made. I'm just going to tell you right now, I'm not even considering anything about a sexual assault in my mind, whatsoever, because there's no evidence of it.

Plea Tr.p. 14, l. 16-20. Judge McCaslin also noted that the solicitor had placed on the record at this plea that there was no evidence of a sexual assault on the offense that he was pleading. Plea Tr.p. 14, l. 22-23.

This Court finds that there is no basis for the Applicant to contend that his November 30, 2022 plea to assault and battery second degree was unknowing and therefore subject to being vacated. The crime he pled guilty to was not a qualifying offense and Judge McCaslin specifically did not consider the crime had any sexual implications.

This Court further finds that in the subsequent SVP Petition dated December 14, 2022 and filed December 21, 2022, the State asserted the following was the only qualifying conviction under

the SVP Act as defined by S.C. Code Ann. Section 44-48-30(1): “Criminal Sexual Conduct Third Degree,” based upon a guilty plea on or about September 12, 2013 in Clarendon County. In the Matter in Care and Treatment of Alonza Victorlan Gibson, Jr. aka Eric Victorlan Gibson Jr., 2022-CP-14-00547 (Clarendon County), *Petition Pursuant to the Sexually Violent Predator Act*, dated December 14, 2022 and filed December 21, 2022.

His claims for relief must be denied since the record conclusively rejects his assertions for relief because the crime he pled to on November 2022 was not a qualifying offense conviction.

Alternately, the above determination is not properly before this Court. In his application, Gibson requests as follows: “I want to challenge the fact that an assault and battery is not a sex offense so I can be released from detainment at Clarendon County Detention Center.” This is beyond the scope of PCR proceedings and should only be addressed in the pending civil commitment proceedings pending in Clarendon County as far as release from the facility. See, e.g., Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) (“[PCR] is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal.”). An applicant may commence a post-conviction relief action on the following grounds:

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

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

S.C. Code Ann. § 17-27-20(A). Post-conviction relief “is a proper avenue of relief only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence.” Al-Shabazz v. State, 338 S.C. 354, 367, 527 S.E.2d. 367, 527 S.E.2d 742, 749 (2000). The Applicant is being detained in Clarendon County based upon a filing in a civil commitment proceeding under the SVP Act. It is not related to the validity of this guilty plea. This Court has no authority in this Lexington County PCR proceeding to address that detention. The allegation and request for relief must be dismissed.

The Applicant Is Not Entitled to Belated Appellate Review of his Guilty Plea.

In his application, Gibson stated that he did not appeal his guilty plea because he did not know at the time of the SVP action. As noted above, the Applicant was aware prior to the entry of the plea of the potential SVP action. However, the Applicant wanted to proceed forward on his guilty plea. The Applicant’s sentence was within the mandates of the sentence for assault and battery second degree and no objection was made by counsel. Further, the factual basis for the crime met the elements for the crime. No objection was made to anything concerning the plea.

Following a trial, counsel is required to make certain the defendant is made fully aware of the right to appeal. White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). Id. However, the standard for a guilty plea differs. Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in

appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000); Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995). In determining whether a rational defendant would have desired an appeal, “the court must consider such factors as whether the defendant received the sentence bargained for as a part of the plea and whether the plea expressly reserved or waived some or all appeal rights.” Flores-Ortega, *supra*.

Applicant pled guilty to the charges against him. On PCR, petitioner did not allege he asked counsel to file a direct appeal, he had viable issues for appeal, or there were other extraordinary circumstances which would require him to be advised of his right to a direct appeal from his guilty plea under Roe. No objections were made at the plea. There was no evidence at the PCR hearing that petitioner was entitled to be advised of his right to a direct appeal from his guilty plea and was not advised of that right, nor was there evidence petitioner requested counsel file an appeal.

Without evidence of extraordinary circumstances, Applicant is not entitled to a belated appellate review of his guilty plea nor of further advice by his lawyer at the time of his plea under Roe. His suggestion otherwise must be dismissed. Counsel was also not deficient in failing to advise Applicant so he has also failed to prove ineffective assistance of counsel related to this claim.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application and vacate his free and voluntary guilty plea. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty

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

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and

AND IT IS SO ORDERED this 6 day of September, 2024.


J. CORDELL MADDOX
Presiding Judge
Eleventh Judicial Circuit

Anderson, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON)	THIRD JUDICIAL CIRCUIT
)	
IN THE MATTER OF THE CARE)	CIVIL ACTION NO. 2022-CP-14- <u>547</u>
AND TREATMENT OF:)	
)	
ALONZA VICTORLON)	PETITION PURSUANT TO THE
GIBSON, JR., A/K/A ERIC)	SEXUALLY VIOLENT PREDATOR
VICTORLON GIBSON, JR.,)	ACT
RESPONDENT.)	

COMES NOW, Petitioner, State of South Carolina, by and through the undersigned, and for its cause of action herein alleges and states as follows:

1. This action is filed pursuant to the South Carolina Sexually Violent Predator Act, S.C. Code Ann. Sections 44-48-10 *et seq.* ("the Act").
2. The South Carolina Department of Corrections ("SCDC"), determined ALONZA VICTORLON GIBSON, JR., (hereinafter "Respondent"), has been convicted of at least one Sexually Violent Offense, and referred Respondent to the Multi-Disciplinary Team for assessment pursuant to S.C. Code Ann. Section 44-48-40. At the time of this filing, Respondent max-out from SCDC is currently set on or about February 10, 2023. His SCDC Inmate Number is 287029, and he was born in 1980.
3. The Multi-Disciplinary Team ("MDT") on October 20, 2022 determined after assessment that Respondent satisfied the definition of a Sexually Violent Predator as set forth in S.C. Code Ann. Section 44-48-30, and referred Respondent to the Prosecutor's Review Committee for a determination pursuant to S.C. Code Ann. Section 44-48-60 as to whether probable cause exists to believe Respondent is a Sexually Violent Predator (EXHIBIT A). The assessment of the Multi-Disciplinary Team is based on a review of existing records, which may include, but are not limited to the following: description of the qualifying offense(s); history of other sexual assault(s); history of other criminal offenses/convictions/adjudications; documentation, if any, of mental disorder(s); community and institutional adjustment; and risk factors.
4. The Prosecutor's Review Committee ("PRC") received the case from the MDT on October 24, 2022, and on November 21, 2022 determined there is probable cause to believe that Respondent is a Sexually Violent Predator as defined by statute (EXHIBIT B). The PRC bases its determination on the records and reports provided by the MDT including any information provided by the agency that prosecuted the qualifying offense.
5. SCDC records do not indicate prior military service, which would require a separate court order.
6. The Petitioner now alleges that Respondent is a Sexually Violent Predator.

CERTIFIED TRUE COPY

CLERK OF COURT, CLARENDON COUNTY, SC

DATE 12/21/2022

Brenda H. Roberts

CLERK OF COURT
CLARENDON COUNTY, SC

by S.C. Code Ann. Section 44-48-30(1), to wit:

QUALIFYING CONVICTION(S):

- A. Type of Conviction: Criminal Sexual Conduct Third Degree; Assault and Battery Second Degree; Threatening the life of a public official¹ - (EXHIBIT C).
- B. Date of Conviction: On or about September 12, 2013 in Clarendon County.
- C. Trial or Plea: Guilty Plea in Clarendon County
- D. Sentence Received: Ten (10) Years, upon service of thirty (30) months balance suspended to three (3) years' probation.
- E. Original Charge(s): Criminal Sexual Conduct First Degree; Kidnapping, Strong Armed Robbery; Assault and Battery First Degree.
- F. Brief Facts:

Victim 1: 17-Year-Old Female (Stranger)

On or about June 1, 2012, Victim 1 reported to law enforcement she was sitting on a park bench at 1 a.m., in the morning when Respondent approached her. They began talking and walked to a store for cigarettes. They left the store and walked to an abandoned residence approximately one block away. Victim 1 reported while at the residence, Respondent pulled her shirt up and a struggle began between the two of them. Victim 1 attempted to defend herself with a pair of chain link style brass knuckles, but Respondent took them from her. Victim 1 reported she tried to scream; however, Respondent covered her mouth while he raped her. Victim 1 reported to law enforcement that Respondent penetrated her during the rape.

Victim 1 was transported to the hospital. An investigation at the incident location produced a pair of chain link style chrome colored brass knuckles matching the description of the knuckles taken from Victim 1, a cell phone cover belonging to Victim 1, and a size 7 woman's shoe which Victim 1 lost at the incident location.

PRIOR SEXUAL/VIOLENT CHARGES AND/OR CONVICTIONS:

- A. Type of Conviction: Assault and Battery Second Degree (EXHIBIT D)
- B. Date of Conviction: On or about November 30, 2022 in Lexington County
- C. Trial or Plea: Guilty Plea in Lexington County
- D. Sentence Received: Eighteen (18) Months with 265 days' time served.
- E. Original Charge(s): Criminal Sexual Conduct First Degree; Domestic Violence – ABHAN
- F. Max-Out Date: Currently set for February 10, 2023

¹ Assault and Battery – Second Degree and Threatening the life of a public official are not sexually violent offense, but are placed with the CSC 3rd because the charges plead on the same day.

G. Brief Facts:

Victim 2: 41-Year-Old Female (Girlfriend)

Law Enforcement responded to Lexington Medical Center in reference to a Domestic Violence ABHAN and Criminal Sexual Assault. Upon arrival, Victim 2 stated she was hiding from her live in boyfriend (Respondent). Victim 2 left her hiding place and proceeded to start walking on Sunset Blvd when Respondent came up behind her with a knife. Respondent forced Victim 2 into an auto dealers parking lot. Respondent presented the knife again and struck Victim 2 multiple times with a closed fist. Respondent threw Victim 2 on the ground and proceeded to sexually assault her and penetrated her vagina with his penis without a condom.

When Respondent finished he left, and Victim 2 walked to Lexington Medical Center. Victim 2 had a swollen face and a laceration under her left eye. Victim 2's left hand was swollen, and she complained of left arm pain.

- A. Type of Conviction: Assault and Battery - First Degree (EXHIBIT E)
- B. Date of Conviction: On or about January 8, 2019 in Sumter County
- C. Trial or Plea: Guilty Plea in Sumter County
- D. Sentence Received: Three (3) Years
- E. Original Charge(s): Burglary First Degree, 2 counts – Assault and Battery in the First Degree
- F. Max-Out Date Unknown.
- G. Brief Facts:

Victim 3: 73-Year-Old Female (Acquaintance)

Respondent broke into Victim 3's house on or about September 9, 2018 and assaulted her by repeatedly punching her in the face causing severe bleeding and swelling of her forehead and nose. Victim 3's disabled husband attempted to intervene. Respondent pushed Victim 3 and her husband to the ground and fled the residence. Victim 3 reported to law enforcement she and Respondent had a previous consensual sexual encounter, and since then, Respondent was repeatedly showing up at her house uninvited and harassing her.

- A. Type of Charge: Criminal Sexual Conduct First Degree, Kidnapping, ABHAN (EXHIBIT F)
- B. Date of Conviction: Charges dismissed due to lack of victim cooperation
- C. Trial or Plea: N/A
- D. Sentence Received: N/A
- F. Max-Out Date N/A
- G. Brief Facts:

Victim 4: 37-Year-Old Female (Acquaintance)

Victim 4 reported on December 6, 2009, Respondent struck her above the eye with wrench, causing her to lose consciousness. Respondent then moved Victim 4 to another location and as she partially regained consciousness observed Respondent attempting to remove her clothing. Respondent sexually assaulted Victim 4 by penetrating her mouth, vagina, and anus with his penis. Victim 4 also stated Respondent was not wearing a condom during the assault and ejaculated.

PRIOR NON-SEXUAL CHARGES AND/OR CONVICTIONS:

A. Type of Conviction: Contributing to the Delinquency of a Minor (3 counts); Burglary Second Degree (6 counts) (EXHIBIT G)
 B. Date of Conviction: On or about September 4, 2002 in Clarendon County.
 C. Trial or Plea: Guilty Plea in Clarendon County
 D. Sentence Received: Youth Offender Act not to exceed three (3) years.
 E. Original Charge(s): Same as convictions

A. Type of Conviction: Assault and Battery Third Degree (EXHIBIT H).
 B. Date of Conviction: On or about July 15, 2021 in Sumter County
 C. Trial or Plea: Guilty – Bench Trial in Sumter County
 D. Sentence Received: Time Served
 E. Original Charge(s): Same as convictions

A. Type of Conviction: Trespass After Notice (EXHIBIT I).
 B. Date of Conviction: On or about July 11, 2012 in Clarendon County
 C. Trial or Plea: Guilty Plea in Clarendon County
 D. Sentence Received: Thirty (30) days
 E. Original Charge(s): Same as convictions

A. Type of Conviction: Sex Offender Registry Violation (2 counts)
 B. Date of Conviction: February 2, 2015
 C. Sentence Received: VOP 5 Years

A. Type of Conviction: Breaking into Auto/Tanks where fuel store
 B. Date of Conviction: November 7, 2017
 C. Sentence Received: Time Served (Unknown)

PROBATION VIOLATIONS/REVOCATIONS (EXHIBIT J):

On March 6, 2015, Respondent's probation was revoked for failure to report, failure to notify agent of address change, failure to work diligently in lawful occupation, failure to pay supervision fees, failure to pay fines, and most significantly, failure to attend sex offender counseling.

SCDC RECORDS (EXHIBIT K):

Disciplinary(s): 7 (Assaultive: 2) (Sex Misconduct: 0)

Non-Assaultive Disciplinaries:

Damage, Destroy, Property valued less than \$100

Threatening to Inflict Harm on Inmate

Fighting Without a Weapon

Assaultive Disciplinaries:

Striking an Employee With/Without Weapon

Striking Inmate With/Without Weapon

SEX OFFENDER TREATMENT WHILE AT SCDC (EXHIBIT L):

None on file.

GENERAL NOTES:

Risk factors common to cases of this nature include, but may not be limited to: (1) not related to victim, (2) prior non-sexual convictions, (3) four or more prior sentencing dates, (4) one or more major disciplinary reports while incarcerated, (5) more than one victim, (6) force or threat of force used, and (7) length of sexual offending history 1 to 6 years.

7. Sufficient evidence exists or will exist, to determine that Respondent suffers from a mental abnormality or personality disorder which makes him likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care and treatment, and that the Respondent has serious difficulty in controlling his behavior, or sexual desire impulses.
 - a. In support of the State's allegations that the Respondent has a mental abnormality or personality disorder that makes him likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment, the State, in addition to any other evidence which Petitioner may present to the Court hereafter, submits the following for consideration:
 - i. According to the Diagnostic and Statistical Manual of Mental Disorders, Ninth Edition, published by the American Psychiatric Association, the diagnostic criteria for **Paraphilic Disorder (EXHIBIT M)** are:
 1. Any intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners.

- ii. According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association, the diagnostic criteria for **Other Specified Personality Disorder (EXHIBIT N)** are:
 - 1. This category applies to presentations in which symptoms characteristic of a personality disorder that cause clinically significant distress or impairment in social, occupational, or other important areas of functioning predominate but do not meet the full criteria for any of the disorders in the personality disorders diagnostic class. The other specified personality disorder category is used in situations in which the clinician chooses to communicate the specific reason that the presentation does not meet the criteria for any specific personality disorder. This is done by recording "other specified personality disorder" followed by the specific reason (e.g., "mixed personality features").
- iii. "[P]revious instances of violent behavior are an important indicator of future violent tendencies." *Kansas v. Hendricks*, 521 U.S. 346, 358, 117 S. Ct. 2072, 2080 (1997). The Respondent's instances of violent and non-violent behavior are:
 - 1. His 2013 qualifying conviction in Clarendon County for Criminal Sexual Conduct in the Third Degree, and the original charges of Criminal Sexual Conduct in the First Degree, Kidnapping, Assault and Battery in the First Degree and Strong Armed Robbery (**EXHIBIT C**);
 - 2. His 2013 convictions for Assault and Battery Second Degree and Threatening the life of a public official (**EXHIBIT C**);
 - 3. His 2022 conviction in Lexington County for Assault and Battery Second Degree, and the original charges of Criminal Sexual Conduct in the First Degree and Domestic Violence ABHAN (**EXHIBIT D**);
 - 4. His 2019 conviction in Sumter County for Assault and Battery First Degree and the original charges (**EXHIBIT E**);
 - 5. The 2009 charges brought against him for Criminal Sexual Conduct First Degree, Kidnapping, and ABHAN (**EXHIBIT F**);

6. His non-sexual criminal history, including sex offender registry violations, multiple counts of Contributing to the Delinquency of a Minor and Burglary Second Degree, and Trespass (EXHIBIT G, H, I);
 7. His probation revocation, most significantly for failing to attend sex offender counseling (EXHIBIT J);
 8. His multiple major disciplinary infraction while at SCDC. (EXHIBIT K); and
 9. His lack of sex offender treatment while at SCDC. (EXHIBIT L).
- iv. The facts of the Respondent's offenses indicate the existence of a mental abnormality in that they could involve recurrent sexual urges, or behaviors involving adult females occurring over a period of at least six months.

WHEREFORE, Petitioner requests that based on the above information the Court find there is probable cause to believe Respondent ALONZA VICTORLON GIBSON, JR., is a Sexually Violent Predator and order:

1. Respondent be taken into custody and confined in a secure facility, if he has not already been so confined, such as at SCDC or in a county detention center;
2. Respondent be notified by the Court of the opportunity to appear in person at a hearing to contest probable cause as to whether he is a Sexually Violent Predator;
3. A hearing to contest probable cause be held within 72 hours after Respondent is taken into custody, but only if he is not already in custody as described *supra*;
4. Counsel be appointed for Respondent if necessary;
5. If probable cause is found at that hearing, that Respondent remain in custody and be transferred to an appropriate facility for an evaluation as to whether Respondent is a Sexually Violent Predator;
6. The Court appoint a qualified expert for such an evaluation if probable cause is found;
7. If probable cause is found a trial be held on all issues, and if Respondent is found to be a Sexually Violent Predator that he be committed to the custody

of the South Carolina Department of Mental Health for long term control, care, and treatment, until such time as Respondent's mental abnormality or personality disorder has so changed that Respondent is safe to be at large and has been released pursuant to the requirements of S.C. Code Ann. Sections 44-48-10 *et seq.*, and

8. For such other and further relief as the Court deems just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

CHRISTOPHER S. RUNYAN
Assistant Attorney General

By: 
Attorneys for Petitioner
S. C. Bar Number 104740
Office of the Attorney General
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Columbia, South Carolina 29211
Office: 803-734-1399
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December 14, 2022
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
 COUNTY OF CLARENDON)
)
 IN THE MATTER OF THE CARE)
 AND TREATMENT OF:)
)
 ALONZA VICTORLON GIBSON,))
 JR., A/K/A ERIC VICTORLON)
 GIBSON, JR.,)
RESPONDENT.)

IN THE COURT OF COMMON PLEAS
 THIRD JUDICIAL CIRCUIT

CIVIL ACTION NO. 2022-CP-14-00547

PROBABLE CAUSE ORDER

IT APPEARING FROM the petition filed by the State of South Carolina, after a review pursuant to S. C. Code Ann. Section 44-48-80, that there is probable cause to believe the Respondent meets the criteria to be a sexually violent predator pursuant to the statute, and the State of South Carolina has established sufficient evidence to require that the Respondent be taken into custody and confined in a secure facility, and a hearing be held to allow Respondent to contest probable cause as to whether Respondent is a sexually violent predator; therefore,

IT IS HEREBY ORDERED THAT:

1. If Respondent is not currently in custody in a secure facility, Respondent shall be taken into custody by the Sheriff of any county in which the Respondent may be found, and shall be transferred to the custody of the Sheriff of Clarendon County and shall be confined in the Clarendon County Detention Center pending the Probable Cause hearing held pursuant to Section 44-48-80(B);

2. Respondent shall be personally served, by the agency having custody of the Respondent, with a copy of the Petition filed in this action and this Order, as notice to the Respondent of this proceeding and of his opportunity to be heard;

3. A Probable Cause hearing shall be held before the Court to allow Respondent to contest whether probable cause exists to order that Respondent remain in custody, and be evaluated by an appointed expert; provided, that if Respondent is not already in custody, such as at the Department of Corrections, he shall be taken into custody and a Probable Cause hearing held within 72 hours.

4. The Clerk of Court for Clarendon County shall appoint the Commission on Indigent Defense Contract Attorney for court-appointed indigent cases in Clarendon County to represent the Respondent at the above hearing, and until further Order of the Court. The Clerk of Court shall promptly notify said attorney of that appointment;

5. Counsel for the State shall ensure that Respondent is transported to Court for the hearing on the date and time of the hearing as will be set by the Court.

AND IT IS SO ORDERED.

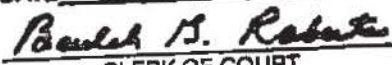
January 13, 2023
 Clarendon, South Carolina

2023 JAN 18 AM 10:00
 Staish Roberts, Clerk-Clarendon S.C


 R. FERRELL COTHERAN JR.
 Chief Administrative Judge
 Third Judicial Circuit
 Court of Common Pleas

**CERTIFIED TRUE COPY
 OF ORIGINAL FILED IN THIS OFFICE**

DATE 1/18/2023


 CLERK OF COURT
 CLARENDON COUNTY, SC