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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Perry H. Gravely, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES ORIAN GREGORY,

APPELLANT

APPELLATE CASE NO. 2024-000072

RECORD ON APPEAL

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)	
)	COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE)	2019-GS-23-05452
)	
)	
)	
)	
STATE OF SOUTH CAROLINA,)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
JAMES ORIAN GREGORY,)	
DEFENDANT.)	
_____)	

December 6, 2023
 Greenville, South Carolina

B E F O R E:

THE HONORABLE PERRY H. GRAVELY, JUDGE.

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

CHRISTINE K. SUSTAKOVITCH, ESQ.
 Assistant Solicitor

MICHAEL G. MARTINEZ, ESQ.
 Attorney for the Defendant

HOLLIE M. JENKINS
 Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

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P R O C E E D I N G S

THE CLERK: Your Honor, this is case number 2019-GS-23-5452, the State vs. James Orian Gregory, indicted for criminal sexual conduct with a minor first degree, pleading to assault and battery in the first degree. It's a true bill.

Please raise your right hand.

WHEREUPON,

JAMES ORIAN GREGORY,

after first having been duly sworn, testified as follows:

THE COURT: All right. Are you James Gregory?

DEFENDANT GREGORY: Yes, sir, I am.

THE COURT: How old are you?

DEFENDANT GREGORY: I'm 34 as of today.

THE COURT: All right. Well, this has your birthday a totally different date.

DEFENDANT GREGORY: Right, [REDACTED].

MR. MARTINEZ: I -- I think he's saying he's 34.

DEFENDANT GREGORY: I'm 34.

THE COURT: Oh, I thought you meant today was your birthday.

DEFENDANT GREGORY: I apologize.

THE COURT: No. That's fine.

All right. Are you under the influence of any alcohol, drugs, or medication today?

1 DEFENDANT GREGORY: I am not.

2 THE COURT: Are you -- do you have any health or
3 mental issues which would keep you from understanding
4 what's going on?

5 MR. MARTINEZ: Judge, sorry. He -- he is under -- on
6 some medication that he can tell you about.

7 THE COURT: Okay. Yeah. What kind of -- what are
8 you on?

9 DEFENDANT GREGORY: I take Effexor. I suffer from a
10 severe mental breakdown. And I was dealing with
11 depression. So I, also, take a psych med called Remeron.

12 THE COURT: All right. And are you taking those
13 pursuant to a doctor's prescription?

14 DEFENDANT GREGORY: Yes, sir, I am.

15 THE COURT: Are you taking them the way the doctor
16 told you to take them?

17 DEFENDANT GREGORY: Yes, sir, I am.

18 THE COURT: And does that keep you from understanding
19 anything?

20 DEFENDANT GREGORY: It do not.

21 THE COURT: All right. So you're -- you're fine
22 going forward this morning?

23 DEFENDANT GREGORY: Yes, sir.

24 THE COURT: All right. And, Mr. Martinez, are you --
25 do you feel like he's -- are you comfortable with him

1 going forward today?

2 MR. MARTINEZ: I am, Your Honor.

3 THE COURT: All right. Do you have any health or
4 mental issues which would keep you from understanding
5 what's going on?

6 DEFENDANT GREGORY: I do not.

7 THE COURT: All right. Your case has gone to the
8 Grand Jury, but you have other Constitutional rights which
9 you are waiving by pleading guilty. Let me go through
10 these with you.

11 You have a right to a jury trial. You have a right
12 to make the State prove its case against you beyond a
13 reasonable doubt. And you're presumed innocent up to that
14 point. You have a right to confront all witnesses. You
15 have a right to examine all evidence. And, finally, you
16 have a right to remain silent. That means if you went to
17 court and you decided not to testify, then that cannot be
18 used against you.

19 Do you understand each of these rights and realize
20 you waive them by pleading guilty?

21 DEFENDANT GREGORY: I do.

22 MR. MARTINEZ: And, Your Honor, he is pleading under
23 Alford.

24 THE COURT: Right. And I'll go through that in just
25 a minute, I guess.

1 All right. So -- not I guess, I will go through
2 that.

3 MR. MARTINEZ: Sorry, Judge.

4 THE COURT: All right. Also, you can appeal your
5 plea and your sentence, but you'd have to do so in writing
6 within 10 days.

7 Do you understand that?

8 DEFENDANT GREGORY: Yes, sir.

9 THE COURT: All right. Have you had sufficient time
10 to talk to your attorney? Has he answered all the
11 questions you had and done all the investigation that you
12 felt was appropriate?

13 DEFENDANT GREGORY: He have.

14 THE COURT: Are you completely satisfied with his
15 representation of you?

16 DEFENDANT GREGORY: I am.

17 THE COURT: All right. We have a charge here of
18 assault and battery in the first degree, which carries --
19 What's the range on this?

20 MS. SUSTAKOVITCH: Up to 10 years, Your Honor.

21 THE COURT: All right. Which carries up to 10 years.
22 Do you understand the charge?

23 DEFENDANT GREGORY: Yes, sir, I do.

24 THE COURT: Okay. It's my understanding you wish
25 to enter this plea under North Carolina vs. Alford. And

1 I'm sure your attorney explained to you what that means is
2 you accept the fact -- or do you agree that if this case
3 were to go to trial and the State presented their case,
4 and you presented this case to a jury that a jury would
5 most probably find you guilty?

6 DEFENDANT GREGORY: Sadly, but true.

7 THE COURT: Okay. And for all intents and purposes,
8 though, it's still a conviction on your record. It's
9 still treated and sentenced the same as a guilty plea. So
10 all the other ramifications of the plea are the same as a
11 guilty plea.

12 So do you understand that?

13 DEFENDANT GREGORY: Yes, sir, Your Honor.

14 THE COURT: And do you wish to enter this plea for
15 assault and battery under the -- as an Alford plea?

16 DEFENDANT GREGORY: I do.

17 THE COURT: Okay. Now, you realize that other than a
18 negotiated sentence, you would be facing 10 years on this?

19 DEFENDANT GREGORY: Yes, sir, Your Honor.

20 THE COURT: All right. Other than the negotiated
21 sentence parameters, has anybody promised you anything to
22 plead -- to enter this plea?

23 DEFENDANT GREGORY: That I would get all of my time
24 served credited.

25 THE COURT: Okay. And has anybody threatened

1 you to -- other -- other than that, has anybody promised
2 you anything?

3 DEFENDANT GREGORY: No, sir.

4 THE COURT: All right. Has anybody threatened you to
5 plead guilty?

6 DEFENDANT GREGORY: No, sir.

7 THE COURT: I'm sorry. Not plead guilty, enter this
8 plea.

9 And are you entering this plea freely and
10 voluntarily?

11 DEFENDANT GREGORY: I am.

12 THE COURT: Okay. I'm going to hear the facts. And,
13 again, I'm going to say -- I'm going to ask you when
14 you -- when we get through with the facts if you believe
15 that's what the State is prepared to present at a trial.

16 DEFENDANT GREGORY: Yes, sir.

17 MS. SUSTAKOVITCH: Thank you, Your Honor.

18 May it please the Court.

19 On September 5th, 2017, the victim in this case, who
20 was nine at the time, disclosed to her cousins at a spend
21 the night that this Defendant had sexually assaulted her.
22 She stated that this Defendant had put his penis into her
23 private -- into her backside, Your Honor. And this was
24 disclosed by reading her diary at her house during the
25 spend the night.

1 When the girls -- her cousins were picked up, they
2 spoke with the child's -- excuse me, they spoke with their
3 mother and told her about what they had learned from the
4 diary. That's when the victim's mom in this case,
5 Brittany Robinson, was called by Lakeshia, her cousin.
6 And that's when this case came to light.

7 The victim was taken for a forensic interview. And
8 that was, again, in 2017 when she was nine where she gave
9 that forensic, Your Honor.

10 This case has had a long procedural history. But as
11 to the facts in this case, if it was presented at trial,
12 that would be what the State would present, Your Honor.

13 THE COURT: All right. Mr. Gregory, do you believe
14 that that's what the State is prepared to present if -- if
15 you went to trial?

16 DEFENDANT GREGORY: From what I see, yes, sir, Your
17 Honor.

18 THE COURT: All right. And you believe that based on
19 that that the -- a jury would most probably find you
20 guilty?

21 DEFENDANT GREGORY: The belief is a substantial risk.

22 THE COURT: All right. I will accept the plea under
23 Alford. I find it's been knowingly, intelligently, and
24 voluntarily made with the advice of competent legal
25 counsel with whom you've indicated you're satisfied. And

1 there's a substantial factual basis for the plea.

2 Now, the -- he's got 1,398 days for credit?

3 MS. SUSTAKOVITCH: Yes, sir.

4 THE COURT: And prior record?

5 MS. SUSTAKOVITCH: Your Honor, 2008, unlawful
6 carrying of a weapon; 2009, receiving stolen goods; 2010,
7 DV first; and a receiving stolen goods in 2013.

8 THE COURT: All right. And --

9 MS. SUSTAKOVITCH: At the --

10 THE COURT: I'm sorry.

11 MS. SUSTAKOVITCH: At the appropriate time, I'll
12 address the negotiations. And then the victim --

13 THE COURT: All right. If you'll give me the
14 negotiated sentence. And, again, I'll be glad to hear
15 anything from the victim.

16 MS. SUSTAKOVITCH: Your Honor, the -- this case
17 has -- is five years old. And it has gone through a lot
18 of negotiations. The State -- I am the third prosecutor
19 on it. And Defense Counsel is the fifth attorney on it.
20 And it's gone through different hands.

21 Back many years ago, the negotiation that's before
22 this Court today was presented to the Defendant. And that
23 was a plea to assault and battery first degree with --
24 under Alford and the sex offender registry. That -- that
25 is the negotiated part of seven years under Alford for A

1 and B first.

2 The registry in this case is up to the Court. And
3 the State has been very clear with Defense Counsel that we
4 believe this Defendant should be on the sex offender
5 registry.

6 Through the course of the negotiations in this case,
7 since Defense Counsel and I were not the first, second,
8 third attorneys, we have tried to deal with a lot of
9 different issues. And this case is set for trial on
10 Monday.

11 There are issues with the case. And that is the only
12 reason, Judge, that this case is being resolved in this
13 manner. There are real concerns based on how old it is
14 that there could be some things that could come up down
15 the road on -- on appeal should this Defendant be
16 convicted.

17 I did want to state to Your Honor that the victim's
18 mother and her father have been consulted very -- for a
19 lengthy period of time. And Brittany Robinson is present
20 at the rail. The victim's father is Steven Alexander.
21 And we just really discussed all of this very hard.

22 But in this case, they want to see a conviction.
23 They want to see finality. They want to see this
24 permanent restraining order that I'm passing up to Your
25 Honor that will tell this -- oh, I apologize -- that will

1 tell this Defendant that he can have no contact with the
2 victim or her mother for this rest of his natural life and
3 no indirect contact as well. And they just -- they want
4 it to be over.

5 But the victim's mom would like the sex offender
6 registry. And she would like to address the Court at this
7 time with a brief statement.

8 THE COURT: Yeah. I'll be glad to hear from you,
9 ma'am.

10 MS. BRITTANY ROBINSON: Good morning, Your Honor.

11 My name is Brittany Robinson. And I'm the mother of
12 the victim, **Minor** .

13 Today, I come to you to ask that James Gregory be
14 placed on the sex offender registry.

15 My daughter is almost 16 years old and has been
16 through so much. She has had to relive what has happened
17 to her every day. Her grades have suffered. Her
18 innocence was taken. She had no choice in the matter.

19 Before I see or hear of another little girl going
20 through the same situation, he needs to be held
21 accountable. James Gregory shouldn't have the opportunity
22 of doing this to someone else.

23 **Minor** has always, always had a sweetness about
24 her. And he took that from her.

25 Please put him on the registry so it will make it

1 harder for him to have the opportunity again.

2 Thank you, Your Honor.

3 THE COURT: Thank you.

4 I'm sorry for what you've been through.

5 MS. SUSTAKOVITCH: That's the State's case.

6 THE COURT: All right. Mr. Martinez.

7 MR. MARTINEZ: May it please the Court.

8 Your Honor, Michael Martinez on behalf of James
9 Gregory.

10 Your Honor, we'd -- we'd ask you to -- to accept the
11 seven-year negotiated sentence. As Ms. Sustakovitch laid
12 out for the Court, this is a very old case with a lengthy
13 history behind it.

14 As she, also, indicated, there are problems with the
15 case. And I won't go through all the problems for Your
16 Honor. But there are problems that would have been
17 pointed out if this case were to go to trial next week.

18 But as a result of -- of extensive negotiations with
19 Ms. Sustakovitch and -- in the past, we came to this
20 negotiated sentence here which, you know, after talking
21 with -- with James extensively about it and the nature of
22 these kinds of cases, and trials, and the tremendous risk
23 that he would face if he were to go to trial with a 25 to
24 life sentence.

25 He -- he is here to acknowledge that the State's

1 evidence, if he went to trial, would -- would most
2 probably result in his conviction. And he -- he's here
3 to -- to take the negotiated sentence that -- that we have
4 negotiated. And we ask the Court to accept that.

5 With respect to the -- to the registry issue, I would
6 ask the Court to delay any order on the registry, any
7 determination of the appropriateness of placing him on the
8 registry. Given that this is a -- an Alford plea, I have
9 consulted with Dr. Jeff McKey, who has agreed that he
10 could conduct a -- an evaluation into Mr. Gregory's risk
11 of offending and, specifically, his risk of -- of any sort
12 of sex offense.

13 Dr. McKey indicated he could conduct the evaluation
14 within -- within the next two months. I would ask the
15 Court to -- I've got a proposed funding order to have
16 Dr. McKey do that. And he said he could do it as quickly
17 as two months, but potentially within the month of
18 December pending his review of his schedule.

19 In -- if the Court is inclined to -- to delay that,
20 I've, also, got a proposed order for the Court to hold
21 Mr. Gregory for up to 60 days pending that evaluation at
22 the Greenville County Detention Center to facilitate
23 the -- Dr. McKey doing that evaluation.

24 Your Honor, we would ask the Court to -- to accept
25 the seven-year negotiated sentence, provide Mr. Gregory

1 the 1,398 days of time served, and delay any order on the
2 registry pending that report by Dr. McKey, which I would
3 provide the Court as soon as I receive it.

4 Thank you, Your Honor.

5 THE COURT: Mr. Gregory.

6 DEFENDANT GREGORY: Yes, sir.

7 THE COURT: I'll be glad to hear from you. Anything
8 you want to tell me?

9 DEFENDANT GREGORY: Yes. First thing I -- I want to
10 say something to the family. I want to apologize if I
11 ever said or did anything to make them feel some type of
12 way. And I just -- I hope that somewhere in their heart
13 they find forgiveness and they learn to move on and let me
14 get on with my life.

15 And I am, you know, pleased with my attorney that he
16 did everything I asked him to do. And -- and that's all.

17 MR. MARTINEZ: And, Your Honor, lastly, we --

18 THE COURT: Yeah.

19 MR. MARTINEZ: -- we, certainly, have no issue with
20 the permanent restraining order. And we understand that
21 it -- it not only applies to -- to the child here in this
22 case, but it, also, applies to the child's mother. And I
23 will, certainly, explain to Mr. Gregory there is a second
24 child involved that he would have to go through the Family
25 Court for anything related to that second child where it

1 is alleged that he is the father.

2 THE COURT: All right. And, Mr. Gregory, to
3 follow-up on that, you do agree and consent to the
4 permanent restraining order, not only as to Brittany
5 Robinson, but as to Minor as well?

6 DEFENDANT GREGORY: I do.

7 THE COURT: All right. And you realize if you
8 violate that, that's a separate criminal charge?

9 DEFENDANT GREGORY: Yes, sir.

10 THE COURT: All right. Anything else?

11 MR. MARTINEZ: That's it, Your Honor.

12 Thank you.

13 THE COURT: All right. I will accept the negotiated
14 sentence of seven years. Credit for 1,398 days. I've,
15 also, signed the permanent restraining order.

16 I am going to find that the sexual offender registry
17 is appropriate. I'm not sure that a report from the
18 doctor will change -- would change my mind anyway. So I'm
19 going to deny your request for any delay of time and find
20 that he will be on the sex offender registry.

21 *****END OF TRANSCRIPT OF RECORD*****

22

23

24

25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 6th day of December, 2023.

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

March 27, 2024

Hollie M. Jenkins, Court Reporter

005452

DOCKET NO. 2019-GS-23-

KBH

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July TERM 2019

THE STATE

vs.

JAMES ORIAN GREGORY

WITNESSES

Cheri H Lyda

Greenville County Sheriffs Office

4/4/2018

ARREST WARRANT NUMBER

2017A2310100426

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

VIOLATION § 16-03-0655

Foreperson of Petit Jury

Date:

ENTERED ACCT

[Handwritten signature]

STATE OF SOUTH CAROLINA)
COUNTY OF Greenville)

IN THE COURT OF GENERAL SESSIONS

STATE)
VS.)

INDICTMENT/CASE#: 2019 - GS - 23 - 05452

James Orian Gregory)

A/W#: 2017A2310100426
Date of Offense: 7/4/2014
S.C. Code § 16-03-0655(A)(1)
CDR Code #: 0385

AKA: _____)
Race: BLACK Sex: M Age: 34)
DOB: [REDACTED]-1989 SS#: [REDACTED])
Address: DUNCAN CHAPEL RD)
City, State, Zip: Greenville, SC 29617)
DL#: [REDACTED] SID#: _____)

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

N.C. v. Alford Plea

In disposition of the above indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Assault/Assault and Battery in the First Degree (0-10)

in violation of § 16-03-0600(C)(1) of the S.C. Code of Laws, bearing CDR Code # 3412

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (def.'s initials)

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

ATTEST: *[Signature]* 79325 Defendant *[Signature]* 101800
Sustakovitch, Christy SC Bar # MARTINEZ, MICHAEL SC Bar#
Kednocker Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Correction, County Detention Center, for a determinate term of 7 days/months/years/Time Served Youthful Offender Act not to exceed ___ years and/or to pay a fine of \$ _____; provided that upon the service of ___ days/months/years/Time Served and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run CONCURRENT or CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 1398 days/months

To include time spent on monitored house arrest prior to trial and sentencing.

The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. James Orian Gregory INDICTMENT/CASE#: 2019 - GS - 23 - 05452

SPECIAL CONDITIONS:

PTUP after _____ months/years

And Other Terms Listed Below:

- Substance Abuse Counseling Completion of GED Random Drug/Alcohol Testing
- Attend Voc. Rehab. or Job Corp No Contact with Victim Domestic Violence Intervention Program
- Mental Health Counseling May serve W/E beginning: _____

Sex Offender Registry pursuant to S.C. Code § 23-3-430 Public Service Employment _____ days/hours

Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Other: Permanent Restraining Order

RESTITUTION: **Deferred** **Def. Waives Hearing** **Ordered**

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

Payment Terms: _____ Set by SCDPPPS

Recipient: _____

*Fine:		\$
Fine may be pd. in equal, consecutive weekly/monthly pmts. of	\$ _____	Beginning _____
§14-1-206 (Assessments 107.5 %)		\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	TBD	\$ <u>3.75</u>
<input type="checkbox"/> Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.	\$500	\$
<input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$
TOTAL		\$ <u>128.75</u>

Clerk of Court/ Deputy Clerk: *Grice Coates*
Court Reporter: Jenkins

Presiding Judge: *Doug H. Muly* *GN*
Judge Code: 2755
Sentence Date: 12-6-23

THE STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE)	THIRTEENTH JUDICIAL CIRCUIT
)	Warrant/Indictment Nos.: 2017A2310100426-428
THE STATE)	
)	
v.)	MOTION TO RECONSIDER
)	
JAMES ORIAN GREGORY,)	
)	
<u>DEFENDANT.</u>)	

23 DEC 13 PM 2:42
Brice Garrett ODC GVL SC

The defendant, **James Orian Gregory**, by and through his undersigned counsel, pursuant to Rule 29 of the S.C. Rules of Criminal Procedure, respectfully moves this Honorable Court to Reconsider its Order of December 6, 2023, ordering Mr. Gregory to the Sex Offender Registry.

Mr. Gregory entered a plea pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970) to the charge of Assault and Battery 1st degree, and the Honorable Judge Gravely accepted the plea after a colloquy specifically pertaining to the defendant's individual case and sentenced Mr. Gregory to seven years' incarceration in accordance with the negotiated agreement between the State and Mr. Gregory. Before the Court was the determination of whether to place Mr. Gregory on the sex offender registry as a result of his conviction on the charge. The State advocated for Mr. Gregory to be placed on the registry based on the facts underlying its indictment of Mr. Gregory, and Mr. Gregory requested the Court delay its determination until after the completion of a psychological evaluation by Dr. Geoff McKee that would assess Mr. Gregory's risk of committing any sex offenses.

The Court denied the request and ordered Mr. Gregory to be placed on the sex offender registry. Mr. Gregory seeks reconsideration of the Court's order.

ARGUMENT

I. Mr. Gregory moves for the Court to reconsider its Order placing him on the Sex Offender Registry prior to the completion and availability of the evaluation report.

Section 23-3-430 of the South Carolina Code governs when a person may be placed on the sex offender registry as a result of a conviction for a criminal offense. Because Mr. Gregory was convicted of assault and battery - first degree, and not a specifically delineated offense, the sex offender registry determination is left to the discretion of the Court based on whether good cause exists. Specifically, "[u]pon conviction . . . of an offense not listed in this article, the presiding judge may order as a condition of sentencing that the person be included in the sex offender registry if good cause is shown by the prosecution." S.C. Code Ann. § 23-3-430(D).

The prosecution advocated for Mr. Gregory to be included in the sex offender registry based solely on the allegations underlying the indictment. Although Mr. Gregory agreed to enter a plea, he did so pursuant to *Alford v. North Carolina* and thereby did not admit to the alleged conduct. The alleged conduct was the sole basis on which the prosecution sought for Mr. Gregory to be ordered to the sex offender registry, and the allegations, in light of Mr. Gregory's plea under *Alford*, fail to satisfy the "good cause shown" standard set forth in the statute. Although a guilty plea, with its associated admission of the conduct and guilt, would normally establish the requisite "good cause shown," the absence of the admission of the conduct here requires further demonstration of "good cause" than simply the allegations underlying the indictment. Mr. Gregory requested the Court to delay its determination of the appropriateness of the sex offender registry until completion of a psychological evaluation because the Court would then have evidence on which to base its determination.

Mr. Gregory submits that the Court erred in ordering him to the sex offender registry without sufficient support and the Court should reconsider its order. Mr. Gregory accordingly requests the Court vacate its order placing him on the sex offender registry and hold the matter in

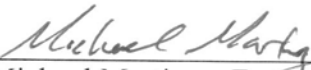
abeyance pending the completion of a report assessing Mr. Gregory's risk to commit sex offenses. For these reasons, Mr. Gregory moves for reconsideration of the Court's determination that he should be placed on the registry.

WHEREFORE, for the foregoing reasons, Mr. Gregory prays that this Court:

- (1) Reconsider its order placing Mr. Gregory on the sex offender registry; and
- (2) Hold the matter in abeyance pending completion of a psychological report.

Respectfully submitted,

GREENVILLE COUNTY PUBLIC DEFENDER

By: 
Michael Martinez, Esq.
Bar No. 101800
Attorney for Defendant
305 E. North Street, Suite 123
Greenville, SC 29601
(864) 467-8522

Greenville, SC
Date: December 13, 2023

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
The State of South Carolina,)
vs.)
James Orian Gregory,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
THIRTEENTH JUDICIAL CIRCUIT

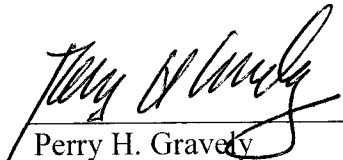
ORDER

Warrant/ Indictment No(s):
2017A2310100426-428

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The Court has reviewed the Defendant's Motion to Reconsider the sentence imposed on December 6, 2023, specifically contesting the requirement to register as a sex offender. The plea was taken pursuant to *N.C. v. Alford*. The Defendant argues that a plea pursuant to *Alford* does not support a basis for "good cause" required to place a defendant on the Sex Offender Registry pursuant to S.C. Code Ann. § 23-3-430(1). As held by the S.C. Supreme Court, an *Alford* plea is treated the same as a guilty plea. *See State v. Herndon*, 403 S.C. 84 (S.C. Sup. Ct. 2013) (addressing an Order requiring a Defendant to register as a sex offender under an *Alford* plea). The Court finds that good cause was presented by the prosecution to require the Defendant to be placed on the Sex Offender Registry and Defendant's Motion to Reconsider is denied.

It is so Ordered.


Perry H. Gravelly
Thirteenth Judicial Circuit

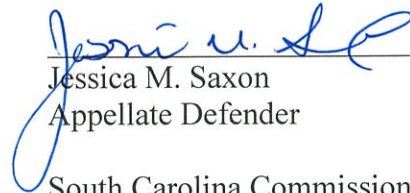
December 29, 2023
Greenville, South Carolina

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

Respectfully Submitted,

RECEIVED
Mar 04 2025
SC Court of Appeals



Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 4th day of March, 2025.

RECEIVED

Mar 04 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

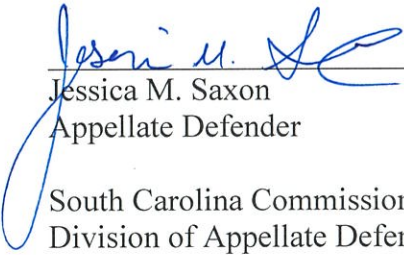
JAMES ORIAN GREGORY,

APPELLANT

APPELLATE CASE NO. 2024-000072

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); this 4th day of March, 2025.



Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT