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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to the Court of Appeals
Appeal from Greenville County
Perry H. Gravely, Circuit Court Judge

Opinion No. 2025-UP-386 (S.C. Ct. App. filed November 26, 2025)

THE STATE,

RESPONDENT,

V.

JAMES ORIAN GREGORY,

APPELLANT

APPELLATE CASE NO. 2024-000072

APPENDIX

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Honorable Perry H. Gravely, Circuit Court Judge

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FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the circuit court abused its discretion by placing Appellant on the sex offender registry where the court denied defense counsel's motion to allow for a psycho-sexual examination prior to Appellant being placed on the registry to determine Appellant's risk to reoffend and where the State failed to make a showing of good cause because there is no evidence in the record showing that Appellant was a risk to reoffend sexually?

STATEMENT OF THE CASE

Appellant was indicted for one count of criminal sexual conduct with a minor first degree during the July 2019 term of the Greenville County grand jury. R. 18-19. On December 6, 2023, Appellant appeared before the Honorable Perry H. Gravely, to enter a negotiated guilty plea to the lesser included offense of assault and battery first degree. R. 1-2. The State was represented by Christine K. Sustakovitch. Appellant was represented by Michael G. Martinez. R. 1.

Under the terms of the plea negotiations Appellant pled pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), for seven-years imprisonment with the determination of whether he would be required to register as a sex offender left to the circuit court's discretion. R. 10, l. 21-R. 11, l. 2. The court accepted Appellant's plea pursuant to Alford and ordered he register as a sex offender. R. 16, ll. 16-20. Counsel Martinez filed a motion to reconsider the registry requirement on December 13, 2023. R. 22-24. By written order file on January 3, 2024, the court denied the motion to reconsider. R. 25).

This appeal follows.

STANDARD OF REVIEW

"A [sentencing court] has broad discretion in sentencing within statutory limits." In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010). "A [sentencing court] *must* be permitted to consider *any and all information that reasonably might bear on the proper sentence* for a particular defendant." Id. (emphasis added). The sentence imposed will not be overturned on appeal absent an abuse of discretion. Id. An abuse of discretion occurs when the sentence imposed was based on either an error of law or a factual conclusion not supported by evidence in the record. Id.

ARGUMENT

The circuit court abused its discretion by placing Appellant on the sex offender registry where the court denied defense counsel's motion to allow for a psycho-sexual examination prior to Appellant being placed on the registry to determine Appellant's risk to reoffend and where the State failed to make a showing of good cause because there is no evidence in the record showing that Appellant was a risk to reoffend sexually.

Relevant Facts

In August 2018, charges were filed against Appellant accusing him of criminal sexual conduct with a minor first degree for incidents alleged to have occurred in July 2014 and July 2016.[1] R. 18-19. On December 6, 2023, Appellant appeared in court to plead pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), to one count of assault and battery first degree. Under the negotiated terms of the plea, Appellant would be sentenced to seven years of incarceration.[2] However, the question of whether Appellant would be placed on the sex offender registry (SOR) was left to the discretion of the court. R. 10, l. 24-R. 11, l. 2. Appellant was thirty-four years old at the time he entered the Alford plea. R. 3, ll. 13-19. His prior record consisted of a 2008 unlawful carrying of a weapon, a 2009 receiving stolen goods, a 2010 domestic violence first offense, and a 2013 receiving stolen goods. R. 10, ll. 4-7.

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[1] According to the public index, Appellant was arrested and charged in April 2018. See https://www2.greenvillecounty.org/SCJD/PublicIndex/PISearch.aspx (Search Case No: 2017A2310100426); See also Wise v. Wise. 394 S.C. 591, 601, 716 S.E.2d. 117, 122 (Ct. App. 2011) (noting an appellate court can take judicial notice of a fact that was not before the lower court if the fact is indisputable); Freeman v. McBee, 280 S.C. 490, 313 S.E.2d 325 (Ct. App. 1984) (stating a court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records).

[2] Appellant received 1,398 days of pre-trial time served credit.

In support of the plea the State alleged that on September 5, 2017, Minor was having a sleepover with her cousins. During the sleepover the girls read Minor's diary in which she alleged that Appellant had put his penis into her rearend. When they returned home from the sleepover the cousins told their mother about what they had read in Minor's diary. Their mother subsequently informed Minor's mother of the allegations against Appellant that were in Minor's diary. Law enforcement became involved, Minor was taken for a forensic interview, and charges were eventually brought against Appellant. R. 8, l. 19-R. 9, l. 9.

During the plea, Solicitor Sustakovitch informed the court that there were "issues with the case. And that is the only reason, Judge, that this case is being resolved in this manner." The Solicitor continued, "[t]here are real concerns based on how old it is that there could be some things that could come up down the road on – on appeal should this Defendant be convicted." R. 11, ll. 11-16. She also informed the court that "the State has been very clear with Defense Counsel that we believe this Defendant should be on the sex offender registry." R. 11, ll. 2-5. The State requested a permanent restraining order (PRO) barring Appellant from any form of contact – direct or indirect – with Minor or her mother for the remainder of Appellant's natural life. R. 11, l. 23-R. 12, l. 3. Minor's mother then spoke and requested that Appellant be placed on the SOR. R. 12, l. 10-R. 13, l. 1.

Defense counsel agreed that there were problems with the case which would have been brought out at trial. However, Appellant had considered the State's evidence and believed the State could probably secure a conviction against him if he went to trial. He had therefore decided that he would plead to a lesser included offense pursuant to Alford, *supra*, instead of risking a trial on a charge that carried a potential sentence of twenty-five years to life imprisonment. Counsel Martinez requested that the court delay any order regarding the SOR

until Appellant could undergo a psycho-sexual evaluation with Dr. Geoff McKee to determine Appellant's risk, if any, of reoffending sexually. Dr. McKee had informed Counsel Martinez that he could evaluate Appellant within two months of the December plea. Dr. McKee had also stated that he could potentially evaluate Appellant within the month of December if his schedule allowed. Counsel Martinez requested that the court sign a funding order for Dr. McKee to perform the evaluation, as well as an order keeping Appellant in the local detention center pending the evaluation report by Dr. McKee. R. 13, l. 14-R. 15, l. 3. Appellant and Counsel Martinez both clarified for the court that Appellant understood and consented to the terms of the PRO. R. 15, l. 17-R. 16, l. 9.

The court accepted Appellant's plea pursuant to Alford, *supra*, and sentenced Appellant according to the negotiated terms of the plea. Regarding the SOR, the court stated,

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

R. 16, ll. 13-20.

Counsel Martinez timely filed a motion to reconsider the order of the court requiring that Appellant be on the SOR. R. 22-24. Counsel Martinez argued that the State advocated for Appellant's placement on the SOR based solely on the underlying facts in the indictment. He argued that the underlying facts, without more, did not meet the "good cause" required by statute, especially considering Appellant had maintained his innocence by pleading pursuant to Alford, *supra*. He requested that the court reverse its order and hold the matter in abeyance pending the completion of a psycho-sexual exam which would determine Appellant's risk of reoffending. Counsel Martinez argued that without the psycho-sexual evaluation the court

lacked the necessary evidence on which to base its determination that Appellant should be placed on the SOR. R. 22-24.

In a written order filed January 3, 2024, the circuit court denied the motion to reconsider. The court, citing to State v. Herndon, 403 S.C. 84, 742 S.E.2d 375 (2013), reasoned that an Alford plea is treated the same as a guilty plea and was a sufficient basis for "good cause" to place Appellant on the SOR. The court wrote, "[t]he Court finds good cause was presented by the prosecution to require the Defendant to be placed on the Sex Offender Registry...". The court did not address the lack of a psycho-sexual evaluation or Appellant's risk to reoffend in the order denying the motion to reconsider. R. 25.

Discussion

Appellant entered an Alford plea to assault and battery first degree. Accordingly, he was not required to register as a sex offender unless the State showed good cause. The record before this Court wholly lacks a showing of cause, much less a showing of good cause, that would support the determination that Appellant must register as a sex offender. The linchpin of the good cause determination is an offender's risk to reoffend sexually. Counsel Martinez properly requested that the court delay its determination on the registry until Appellant could undergo a psycho-sexual evaluation to determine Appellant's risk to reoffend. The court denied the request, stating that a doctor's report would not change its mind. Without an evaluation, however, the court was left with no evidence indicating if Appellant was at a risk to reoffend. Consequently, the lower court lacked the necessary evidentiary support required to place Appellant on the SOR. The lower court's denial of Counsel Martinez's request for a psycho-sexual evaluation and the placement of Appellant on the SOR without any showing of good cause by the State was an abuse of the court's discretion.

In 1994, the South Carolina General Assembly enacted the SOR law. The purpose of the legislation was laid out in S.C. Code Ann. § 23-3-400, which states:

> The intent of this article is to promote the state's fundamental right to provide for the public health, welfare, and safety of its citizens. Notwithstanding this legitimate state purpose, these provisions are not intended to violate the guaranteed constitutional rights of those who have violated our nation's laws.
>
> The sex offender registry will provide law enforcement with the tools needed in investigating criminal offenses. *Statistics show that sex offenders often pose a high risk of re-offending.* Additionally, law enforcement's efforts to protect communities, conduct investigations, and *apprehend offenders who commit sex offenses are impaired by the lack of information about these convicted offenders who live within the law enforcement agency's jurisdiction.*

Powell v. Keel, 433 S.C. 457, 465, 860 S.E.2d 344, 348 (2021) (emphasis added). As made apparent by the plain language of the statute, the intent of the General Assembly in passing the SOR law was to register those offenders who posed a high risk of re-offending sexually. "Indeed, *a likelihood of re-offending lies at the core* of South Carolina's civil statutory scheme." Id. at 466, 860 S.E.2d at 349 (2021) (internal quotations and citations removed) (emphasis added). See Also State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (From this language, it is clear the General Assembly did not intend to punish sex offenders, but instead intended to *protect the public from those sex offenders who may re-offend* and to aid law enforcement in solving sex crimes) (emphasis added). The statutory registry requirements bear out the legislative intent.

S.C. Code Ann. §23-3-430 sets forth the statutory requirements for placement of an individual on the SOR. When an individual is convicted of or pleads to an offense specifically enumerated in S.C. Code Ann. §23-3-430(C)(1)-(3), that individual is automatically required by law to register as a sex offender based on the nature and severity of the offense. However, when a person is convicted of, or pleads to, a non-enumerated offense, S.C. Code Ann. § 23-3-430(D)

directs that "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.*" (emphasis added). Our Supreme Court has held "that a finding of good cause in this context means only that the judge must consider the facts and circumstances of the case to make the determination of *whether or not the evidence indicates a risk to reoffend sexually.*" In re M.B.H., 387 S.C. 323, 327, 692 S.E.2d 541, 542 (2010) (emphasis added).

In M.B.H., *supra*, four juvenile petitions were filed against M.B.H. alleging lewd acts with a minor, assault with intent to commit sexual battery, and sexual battery. Id. at 325, 692 S.E.2d at 541-542. M.B.H., who was fourteen at the time of the incidents, admitted delinquency to two amended charges of assault and battery of a high and aggravated nature (ABHAN). Id. At the hearing where M.B.H. admitted delinquency, the State recommended that M.B.H. undergo an inpatient evaluation and be placed on the private SOR. Id. The court agreed that M.B.H. should undergo an evaluation. However, the court withheld a final determination on whether M.B.H. would have to be on the private SOR until after the evaluation. The court reasoned that the evaluation would determine M.B.H.'s risk to reoffend and what treatment measures he needed. Id. at 326, 692 S.E.2d at 542. The court ultimately found good cause existed to require M.B.H. to register on the private SOR based on the evaluation and facts of the case. In ordering that M.B.H. register, the court listed numerous reasons supporting good cause, including: that M.B.H. had multiple offenses with multiple, younger, same-sex victims, that he had a sense of victimization and denied harming others, that he had borderline intellectual functioning, and that it was recommended that he receive inpatient sexual offender treatment. Id.

On appeal, M.B.H. argued that the State had failed to show good cause for his registration on the private SOR. Our Supreme Court disagreed with M.B.H. and held that the

lower court did not abuse its discretion in requiring him to register, where the solicitor showed good cause:

> At the dispositional hearing, the solicitor introduced the [Coastal Evaluation] Center's evaluation report to support the request for Appellant to be placed on the private sex offender registry. *The judge relied on the professional findings and recommendations in that report in concluding good cause existed for placing Appellant on the registry. The record is clear that the judge considered all of the facts and circumstances of this case, both aggravating and mitigating, in determining that there is a risk of sexual reoffense. Such a determination is supported by the evidence in the record.*

Id. at 327, 692 S.E.2d at 542-43 (emphasis added).

In State v. Fraley, 437 S.C. 135, 136-137, 876 S.E.2d 703, 704 (Ct. App. 2022), Fraley was accused of four sex crimes. He pled guilty pursuant to Alford to assault and battery first degree. As part of his sentence, Fraley was required to undergo an evaluation to determine if he should be placed on the SOR. The court ultimately ordered that he register, and Fraley appealed. Fraley presented two arguments on appeal: that because he pled under Alford, he did not commit a sex crime and was therefore not at a risk to reoffend, Id., and that the State failed to show good cause for him to register. Id. at 138, 876 S.E.2d at 705.

As to the first argument, this Court was unpersuaded. This Court noted that an Alford plea carries the same effect as a regular guilty plea or guilty verdict for the purposes of imposing punishment. Fraley pled to crimes of a sexual nature, as laid out clearly in the indictment. This Court held it was not an abuse of discretion for the circuit court to consider that fact in determining whether placement on the SOR was necessary. Id. at 137-138; 876 S.E.2d at 705.

As to the second argument, this Court concluded that the record established good cause. This Court wrote,

> Dueling experts testified for and against requiring Fraley to register. The State's evaluator, Dr. Lee, ultimately concluded that the court should require Fraley to register if the court was of the opinion that the original allegations made

> against Fraley were true. Fraley's expert, Dr. Gunter, saw no definitive data supporting that Fraley committed a sexual offense and believed the allegations brought by the alleged victim had serious credibility issues.
>
> We may or may not have come to the same conclusions as the plea court, but we do not see how we could say the court abused its discretion. In the written order denying reconsideration, *the court explained that it considered all of the facts and circumstances of the case, and there is undoubtedly some evidence supporting the court's bottom-line conclusion that there was "good cause" for Fraley to register.* While Dr. Lee did not give an unequivocal recommendation that Fraley should register, *she did recommend requiring registration if the court believed the allegations against Fraley were true.*

Id. at 138; 876 S.E.2d at 705 (emphasis added).

This Court distinguished Fraley's case from In re Christopher H., 432 S.C. 600, 607, 854 S.E.2d 853, 856 (Ct. App. 2021), in which this Court reversed the order requiring Christopher to register where the only evidence in the record indicated a low risk to re-offend and the evidence overwhelmingly indicated that registration was not proper. Unlike In re Christopher H., the State's expert in Fraley cited "certain factors indicating a diagnosable sex-related disorder and noted other factors as counseling against registration." Her ultimate opinion was that the court should require Fraley to register if it believed he was guilty of the allegations against him as that was proof of a diagnosable sex-related disorder. This Court concluded, "[w]e do not think the court gave the State a pass on the burden to show "good cause." If the burden proved lighter here, it was because Fraley's guilt was a key fact, and Fraley had already pled guilty." Id. at 139, 876 S.E.2d at 750.

M.B.H. and Fraley, are examples of cases where the lower court properly placed an individual on the SOR based upon a good cause showing. In each case, there were facts outside of the charged conduct and plea of the defendant that supported the lower court's determination of good cause – namely there was evidence of the individual's likelihood to reoffend sexually. The same cannot be said for the matter, *sub judice*. The lower court refused to allow Appellant

to undergo a psycho-sexual evaluation because it did not think a doctor's report would change its mind. Respectfully, the courts subjective opinion about Appellant or the case facts was not relevant in the determination of good cause. What the court was required to consider was Appellant's risk to reoffend sexually in connection with the facts and circumstances of the case. The only way for the court to properly make that determination was to allow for Appellant to undergo a psycho-sexual evaluation. The denial of Counsel Martinez's request to delay a determination on Appellant's SOR status to allow for an evaluation was not supported by the facts in the record and resulted in the lower court abusing its discretion.

Equally worrisome was the total lack of evidence or testimony presented by the State that would support a finding of good cause in this case. The only thing the State said regarding the SOR was that it had conveyed to defense counsel it believed Appellant should be on the SOR. The State offered no arguments, facts, or basis upon which to place Appellant on the registry, outside of the fact that he was charged with a crime of a sexual nature. The State made absolutely no showing that Appellant was at a risk to reoffend sexually. Critically, the State could not have made a showing of good cause without showing that Appellant was at a risk to reoffend sexually. When there is not good cause shown at the plea hearing, the sentencing judge lacks the statutory authority to sentence an offender to the SOR. See State vs. Davis, 375 S.C. 12, 16, 649 S.E.2d 178, 180 (Ct. App. 2007) ("With no good cause having been shown at the plea hearing, the Sentencing Judge would be without the statutory authority to either sentence Davis to be placed in the Registry or to make it a condition of probation."). Thus, the placement of Appellant on the SOR was an error of law, amounting to an abuse of discretion by the court.

Notably, the lower court did not explain or point to specific facts in evidence that supported placing Appellant on the SOR. Instead, the court concluded in a single sentence in the

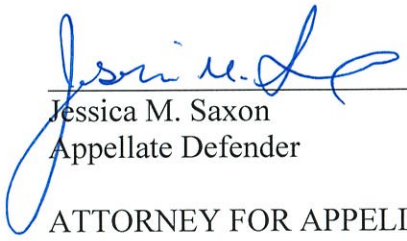
order denying reconsideration that the State had presented good cause. This determination was not supported by the record. Also, the lower court's reliance on Herndon, *supra*, is misplaced. Undoubtedly, an Alford plea is treated the same as standard guilty plea for the purposes of punishment. However, the entry of any plea alone does not rise to the level of good cause necessary to place an individual on the SOR. As our Supreme Court set out in M.B.H., the judge must be able to determine from the facts and circumstances of the case whether the individual is likely to reoffend sexually. Nothing before the lower court, or before this Court on appeal, indicates that Appellant has any risk of re-offending sexually.

In Powell v. Keel, 433 S.C. 457, 466, 860 S.E.2d 344, 348-349 (2021), our Supreme Court wrote "the lifetime inclusion of individual who have a low risk of re-offending renders the registry over-inclusive and dilutes its utility by creating an ever-growing list of registrants that is less effective at protecting the public and meeting the needs of law enforcement." The Court went on to hold that the lifetime registry requirement was unconstitutional because it lacked "any opportunity for judicial review to *assess the risk of re-offending*..." and was therefore arbitrary and not rationally related to the legislature's stated purpose of protecting the public from those with a high risk of re-offending. Id. If a determination that a registrant is a low risk to reoffend is necessary to remove an individual from the SOR, then surely a determination of a high-risk to reoffend is necessary to add an individual to the SOR.

The record in this matter is wholly void of evidence that Appellant is at a risk to reoffend sexually. Without a psycho-sexual evaluation there was no way for the court to determine that Appellant should be placed on the SOR. Further, the State failed to present the necessary good cause required by the statute. The court's finding that the State presented good cause is not supported by the record. The ruling of the lower court was an abuse of discretion.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests that this Court find the State failed to show the necessary good cause to require Appellant to register as a sex offender, reverse the circuit court's determination that he should be required to register, and order removal of Appellant's name from the sex offender registry.



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of March, 2025.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and 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."

March 4, 2025.

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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 Final Brief of Appellant in the above-referenced case has been served upon Brian H. Gibbs, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 4th day of March, 2025.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2024-000072

THE STATE,

Respondent,

v.

JAMES ORIAN GREGORY,

Appellant.

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STATEMENT OF ISSUE ON APPEAL

Appellant's Issue Statement

Whether the circuit court abused its discretion by placing Appellant on the sex offender registry where the court denied defense counsel's motion to allow for a psycho-sexual examination prior to Appellant being placed on the registry to determine Appellant's risk to reoffend and where the State failed to make a showing of good cause because there is no evidence in the record showing that Appellant was a risk to reoffend sexually?

Respondent's Counterstatement

Whether the plea court abused its discretion when it ordered Appellant to be placed on the sex offender registry after the State showed good cause.

STATEMENT OF THE CASE

In July 2019, a Greenville County grand jury indicted Appellant for first-degree criminal sexual conduct with a minor. (R. 18-19). On December 6, 2023, Appellant proceeded to a plea hearing before the Honorable Perry H. Gravely. (R. 1).

At the plea hearing, the solicitor stated that Appellant would be pleading to first-degree assault and battery. (R. 3). Appellant indicated that he was 34 years old and was taking Effexor and Remeron, which did not affect his understanding of the proceedings. (R. 3-4). Appellant indicated that he understood his rights regarding trial, that he chose to waive those rights, and that he was pleading guilty pursuant to *Alford*.[1] (R. 5). Appellant stated that he was completely satisfied with his plea counsel's representation and that he understood first-degree assault and battery carried a maximum sentence of ten years' imprisonment. (R. 7). Appellant stated that he was promised credit for time served as part of the negotiated sentence. (R. 7).

The solicitor recited the facts of the case as follows:

> On September 5th, 2017, the victim in this case, who was nine at the time, disclosed to her cousins at a spend the night that this [Appellant] had sexually assaulted her. She stated that this [Appellant] had put his penis into her private—into her backside, Your Honor. And this was disclosed by reading her diary at her house during the spend the night.
>
> When the girls—her cousins were picked up, they spoke with the child's—excuse me, they spoke with their mother and told her about what they had learned from the diary. That's when the victim's mom in this case . . . was called by . . . her cousin. And that's when this case came to light.
>
> The victim was taken for a forensic interview. And that was, again, in 2017 when she was nine where she gave that forensic, Your Honor.

(R. 8-9).

[1] *North Carolina v. Alford*, 400 U.S. 25 (1970).

Appellant believed a substantial risk existed that a jury would find him guilty based on the State's recitation of the facts. (R. 9). The plea court accepted Appellant's plea pursuant to *Alford*, finding that Appellant made the plea knowingly, intelligently, voluntarily, and with the advice of competent counsel. (R. 9). The plea court also determined that a substantial factual basis for the plea existed. (R. 10).

The solicitor confirmed that as part of the negotiated sentence, the State agreed to credit for time served, which was 1,398 days. (R. 10). The solicitor informed the plea court of Appellant's prior criminal record, which included (1) a 2008 conviction for unlawful carrying of a weapon; (2) a 2009 conviction for receiving stolen goods; (3) a 2010 conviction for first-degree domestic violence; and (4) a 2013 conviction for receiving stolen goods. (R. 10).

The solicitor stated that Appellant's case was five years old and had gone through "a lot of negotiations" involving numerous prosecutors and defense attorneys. (R. 10). The solicitor informed the plea court that the negotiated sentence before the court was a plea to first-degree assault and battery under *Alford*. (R. 10). The solicitor indicated that being placed on the sex offender registry was part of the negotiated sentence before stating that placement on the registry was up to the plea court. (R. 10-11). However, the solicitor stated that "the State has been very clear with Defense Counsel that we believe [Appellant] should be on the sex offender registry." (Tr. 11). The solicitor stated that there were issues with this case, which is why it was being resolved through a plea and not a trial, but did not indicate what those issues were except for the age of the case and other unspecified "things" that could come up on appeal. (R. 11).

The solicitor informed the plea court that the victim and her parents requested a permanent restraining order against Appellant so he could have no direct or indirect contact with the victim or her mother for the rest of his natural life. (R. 11-12).

The victim's mother addressed the plea court as follows:

> Today, I come to ask . . . that [Appellant] be placed on the sex offender registry.
>
> My daughter is almost 16 years old and has been through so much. She has had to relive what has happened to her every day. Her grades have suffered. Her innocence was taken. She had no choice in the matter.
>
> Before I see or hear of another little girl going through the same situation, [Appellant] needs to be held accountable. [Appellant] shouldn't have the opportunity of doing this to someone else.
>
> [The victim] has always, always had a sweetness about her. And he took that from her.
>
> Please put him on the registry so it will make it harder for him to have the opportunity again.

(R. 12-13).

Appellant asked the plea court to accept the seven-year negotiated sentence. (R. 13). He asked the plea court to delay any order regarding the registry until a psychological evaluation of his risk to reoffend could be conducted. (R. 14). Appellant informed the plea court that his preferred evaluator, Dr. Jeff McKey, could conduct the evaluation within two months of the plea hearing. (R. 14). He asked for a funding order and sixty days during which the evaluation could take place before the plea court determined whether he should be placed on the registry. (R. 14). Appellant consented to the plea court issuing the permanent restraining order. (R. 16).

The plea court accepted the negotiated sentence of seven years' imprisonment and gave Appellant credit for 1,398 days of time served. (R. 16). The plea court also issued the permanent restraining order. (R. 16). Regarding placing Appellant on the sex offender registry, the plea court stated:

> I am going to find that the sexual offender registry is appropriate. I'm not sure that a report from the doctor will change—would change my mind anyway. So I'm going to deny [Appellant's]

> request for any delay of time and find that he will be on the sex offender registry.

(R. 16).

Appellant filed a motion to reconsider, pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure. (R. 22). He argued that section 23-3-430 of the South Carolina Code governs when a person may be placed on the sex offender registry, but because he pled guilty to first-degree assault and battery, which was not a specifically delineated offense under the statute, the determination of registration was left to the discretion of the plea court and was to be based on good cause shown by the State. (R. 23). Appellant contended that the State argued for his placement on the registry solely based on the allegations underlying the indictment. (R. 23). He argued that because he pled guilty pursuant to *Alford* and did not admit to any of the allegations in the indictment, the State failed to show good cause for his placement on the registry. (R. 23).

Appellant argued that his request to delay the determination of whether he should be placed on the registry would have allowed the plea court to consider the psychological evaluation and base its decision on that yet-to-be-produced evidence. (R. 23). He requested the plea court vacate its decision ordering him to register and hold the issue in abeyance pending the completion of a psychological evaluation assessing his risk to commit sex offenses. (R. 23-24).

In its order denying Appellant's motion to reconsider, the plea court noted that pursuant to *Herndon*,[2] a guilty plea pursuant to *Alford* is treated the same as any other guilty plea. (R. 25). The plea court found that the State presented good cause to require Appellant to be placed on the registry and denied Appellant's motion to reconsider. (R. 25).

This appeal followed.

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[2] *State v. Herndon*, 403 S.C. 84, 742 S.E.2d 375 (2013).

STANDARD OF REVIEW

"In criminal cases, an appellate court sits to review only errors of law, and it is bound by the trial court's factual findings unless they are clearly erroneous." *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012). A trial judge has broad discretion in sentencing within statutory limits. *Brooks v. State*, 325 S.C. 269, 271, 481 S.E.2d 712, 713 (1997). A judge must be permitted to consider any and all information that reasonably might bear on the proper sentence for a particular defendant. *State v. Hicks*, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008). A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law or a factual conclusion without evidentiary support. *In re M.B.H.*, 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010).

ARGUMENT

I. The plea court did not abuse its discretion by placing Appellant on the sex offender registry because the plea court considered the facts and circumstances of the case before properly determining that good cause existed.[3]

Section 23-3-430(D) of the South Carolina Code provides that when a person is convicted or pleads guilty to an offense not listed in the statute, such as first-degree assault and battery, "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." Our Supreme Court has held that good cause "means only that the judge must consider the facts and circumstances of the case to make the determination of whether or not the evidence indicates a risk to reoffend sexually." *In re M.B.H.*, 387 S.C. 323, 327, 692 S.E.2d 541, 542 (2010). Further, our Supreme Court has held that when a judge has considered all the facts and circumstances of a case, both aggravating and mitigating, in determining that a risk of sexual offense exists and such a determination is supported by the evidence in the record, then the judge has not abused their discretion. *Id.* at 327, 692 S.E.2d at 542-43.

Here, the State's recitation of the facts detailed the sexual assault for which Appellant pled guilty to first-degree assault and battery under *Alford.* (R. 9). *See State v. Fraley*, 437 S.C. 135, 136, 876 S.E.2d 703, 704 (Ct. App. 2022) ("While *Alford* affords defendants the right to plead guilty when they cannot or will not admit their guilt, a guilty plea entered pursuant to *Alford* carries the same effect as a 'regular' guilty plea or a guilty verdict."). While first-degree assault and battery is not an offense requiring automatic inclusion on the sex offender registry under the statute, the crime with which Appellant was charged—first-degree criminal sexual conduct with a minor—is an offense requiring automatic inclusion on the sex offender registry. (Indictment). *See*

[3] Appellant appealed only his placement on the sex offender registry and not his guilty plea pursuant to *Alford* or his associated seven-year sentence.

S.C. Code Ann. § 23-3-430(C)(3)(a). Appellant admitted during the plea hearing that he likely would have been convicted by a jury as indicted based on the facts presented by the State. (R. 9). *See In re M.B.H.*, 387 S.C. at 327, 692 S.E.2d at 542 ("[A] finding of good cause . . . means only that the judge must consider the facts and circumstances of the case to make the determination of whether or not the evidence indicates a risk to reoffend sexually."); *id.* at 327, 692 S.E.2d at 542-43 (holding that the sentencing court considered all of the facts and circumstances of the case in determining that a risk of sexual re-offense existed).

Regarding Appellant's likelihood to reoffend, section 23-3-400 of the South Carolina Code specifically states that "[s]tatistics show that sex offenders often pose a high risk of re-offending." *See also Smith v. Doe*, 538 U.S. 84, 103 (2003) ("The risk of recidivism posed by sex offenders is 'frightening and high.'" (quoting *McKune v. Lile*, 536 U.S. 24, 34 (2002))); *McKune*, 536 U.S. at 33 ("When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault." (citing U.S. Dept. of Justice, Bureau of Justice Statistics, Sex Offenses and Offenders 27 (1997); U.S. Dept. of Justice, Bureau of Justice Statistics, Recidivism of Prisoners Released in 1983, p. 6 (1997))); *cf. In re Christopher H.*, 432 S.C. 600, 607, 854 S.E.2d 853, 856 (Ct. App. 2021) ("The only evidence of risk indicated a low risk, and the evidence overwhelmingly indicated registry in this case was not appropriate."); *State v. Davis*, 375 S.C. 12, 16, 649 S.E.2d 178, 180 (Ct. App. 2007) (holding that where both parties agreed that the defendant should not be included on the sex offender registry as part of a negotiated sentence, the State did not show good cause as to why the defendant should be placed on the registry during a probation revocation hearing). While a psychological evaluation may have assisted the plea court in determining Appellant's risk to reoffend, it was in no way necessary for

the plea court to order one. Moreover, Appellant has failed to point to any authority that requires a psychological evaluation before a court determines whether good cause exists.

The plea court considered all facts and circumstances in this case, namely the facts as recited by the State, under which Appellant agreed a jury would likely have found him guilty of first-degree criminal sexual conduct with a minor. (R. 9). Due to the sexual nature of the offense, which places Appellant as a high risk of reoffending under section 23-3-400, the plea court's determination that good cause existed is supported by the evidence in the record; thus, the plea court did not abuse its discretion in ordering Appellant to be placed on the sex offender registry.

CONCLUSION

Based on the foregoing, the State requests that this Court affirm Appellant's placement on the sex offender registry.

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Attorney General

BRIAN H. GIBBS
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W. WALTER WILKINS, III
Solicitor, Thirteenth Judicial Circuit

By: 
Brian H. Gibbs
S.C. Bar No. 104137

Attorneys for Respondent

March 7, 2025
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2024-000072

THE STATE,

Respondent,

v.

JAMES ORIAN GREGORY,

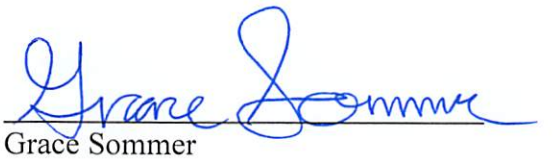
Appellant.

PROOF OF SERVICE

I, Grace Sommer, certify that I have served this Final Brief of Respondent on Jessica M. Saxon, Esquire, counsel of record for the Appellant, by electronic mail to the address listed for counsel in AIS.

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

This 7th day of March 2025.



Grace Sommer
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

James Orian Gregory, Appellant.

Appellate Case No. 2024-000072

Appeal From Greenville County
Perry H. Gravely, Circuit Court Judge

Unpublished Opinion No. 2025-UP-386
Submitted November 20, 2025 – Filed November 26, 2025

AFFIRMED

Appellate Defender Jessica M. Saxon, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant Attorney General Brian Hollis Gibbs, both of Columbia, for Respondent.

PER CURIAM: James Orian Gregory appeals the trial court's sentence requiring him to register as a sex offender. On appeal, Gregory argues the trial court abused its discretion by requiring him to register as a sex offender because the State failed

to establish good cause as required to impose registry. We affirm pursuant to Rule 220(b), SCACR.

We hold the trial court did not abuse its discretion in requiring Gregory to register as a sex offender because the record supports that the State made a showing of good cause for imposing registry. *See State v. Hicks*, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008) ("A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed."); *In re M.B.H.*, 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010) ("A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law or a factual conclusion without evidentiary support."); S.C. Code Ann. § 23-3-430(D) (2025) (explaining the trial court "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"); *In re M.B.H.*, 387 S.C. at 327, 692 S.E.2d at 542 (holding "a finding of good cause in this context means only that the judge must consider the facts and circumstances of the case to make the determination of whether or not the evidence indicates a risk to reoffend sexually"); *id.* ("Such a determination is a matter of the judge's discretion.").

AFFIRMED.[1]

MCDONALD, HEWITT, and TURNER, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

Opinion No. 2025-UP-386

THE STATE,

RESPONDENT,

V.

JAMES ORIAN GREGORY,

APPELLANT

APPELLATE CASE NO. 2024-000072

PETITION FOR REHEARING

On November 26, 2025, this Court held that the trial court did not abuse its discretion in requiring Appellant to register as a sex offender because the record supports that the state made a showing of good cause. State v. Gregory, Op. No. 2025-UP-386 (S.C. Ct. App. filed November 26, 2025). Pursuant to Rule 221(a), SCACR, Appellant requests that this Court rehear the matter because the record does not contain any support for the lower court's denial of Appellant's motion to allow him to undergo a psychosexual evaluation, and the record does not contain evidence that Appellant was at a risk to reoffend sexually, the linchpin in a "good cause" determination, therefore the state did not show good cause. See In re M.B.H., 387 S.C. 323, 327,

692 S.E.2d 541, 542 (2010) ("A finding of good cause in this context means only that the judge must consider the facts and circumstances of the case to make the determination of *whether or not the evidence indicates a risk to reoffend sexually.*") (emphasis added). See Also Powell v. Keel, 433 S.C. 457, 466, 860 S.E.2d 344, 349 (2021) ("Indeed, *a likelihood of re-offending lies at the core* of South Carolina's civil statutory scheme.") (internal quotations and citations removed) (emphasis added).

S.C. Code Ann. §23-3-430 sets forth the statutory requirements for placement of an individual on the SOR. When an individual is convicted of or pleads to an offense specifically enumerated in S.C. Code Ann. § 23-3-430(C)(1)-(3), that individual is automatically required by law to register as a sex offender based on the nature and severity of the offense. Under S.C. Code § 23-3-430(C)(1)-(3), the nature of the offense alone warrants placement on the SOR. However, when a person is convicted of, or pleads to, a non-enumerated offense, S.C. Code Ann. § 23-3-430(D) states: "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.*" (emphasis added). As this Court wrote in In the Interest of Christpoher H.,

> This requirement indicates an intent by the legislature *to require more than a scintilla of evidence of risk.* It is axiomatic that [an individual] with a history of a sexual offense or offenses *will be at some risk*, even if the risk is very low. **If any risk is sufficient to establish good cause, the statute requiring the solicitor to show good cause would be of no purpose because all [individuals] would automatically be placed on the registry**. An appellate court "must presume the legislature did not intend a futile act but rather intended its statutes to accomplish something." We presume the legislature must have intended some [individuals] would not be required to register. *Otherwise, there would be no need for the legislative requirement for a showing of good cause.*

432 S.C. 600, 606-07, 854 S.E.2d 853, 856 (2021) (emphasis added).

As the state agreed, the plea judge based its determination of good cause on "the facts as recited by the State" which *could* have supported a verdict of guilty to a criminal sexual conduct in the first-degree charge. FBOR, 9. However, if S.C. Code Ann. § 23-3-430(D) were to be interpreted to allow a judge to place a defendant on the SOR only because a defendant has pled guilty to a crime of a sexual nature, as the state asserted and this Court's opinion appears to allow, it would render the second half of the statute requiring the state to show good cause utterly superfluous. The statute and the jurisprudence of this state require more than a scintilla of evidence of risk. The language of the statute, and cases interpreting it such as In the Interest of Christopher H., make clear that when an individual pleads to or is convicted of a *non-enumerated offense*, the nature of the underlying offense alone is not sufficient for placement on the SOR. Instead, the state *must* show good cause. That did not occur in Appellant's case.

The state presented no evidence that Appellant was at a high risk to re-offend nor it did argue that Appellant had a high risk to re-offend. The state only informed the court that it believed registry was proper in this case and that the minor's mother had requested registration. R. 11, ll. 2-5; R. 12, ll. 5-6. A belief or desire for registration is not evidence of a risk to re-offend sufficient to establish good cause. In cases where our appellate courts have affirmed the placement of an individual on the SOR under S.C. Code Ann. § 23-3-430(D), the record reflected the state had presented evidence regarding the individual's risk of reoffending. State v. Fraley, 437 S.C. 135, 876 S.E.2d 703 (2022) (Dueling experts testified as to why Fraley should or should not be required to register, with the state's expert opining that if the court found Fraley had committed the allegations that he pled to, registration was required because the allegations were clear proof of a diagnosable sex-related disorder); In re: MBH, 387 S.C. 323, 692 S.E.2d 541 (2010) (The state presented the psychosocial evaluation from the Coastal Evaluation Center,

an inpatient sexual offender treatment center, and the judge relied upon that report and recommendation in finding good cause); State v. Hicks, 377 S.C. 322, 659, S.E.2d 449 (2008) (Hicks admitted to sleeping with minor, knew where minor lived, lived within a half mile of minor, had been to minor's home both before and after the incident, had made confrontational or predatory gestures towards minor's father, and numerous other girls similar in age to minor lived in the same neighborhood supported finding good cause.) No such evidence exists in the record of Appellant's case.

Further, in those cases where the courts have found good cause, the plea judge had properly considered all aggravating and mitigating circumstances as they were required to do. See In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010) (A sentencing court *must* be permitted to consider *any and all information that reasonably might bear on the proper sentence* for a particular defendant.) (emphasis added). When considering whether to place a defendant onto the SOR pursuant to S.C. Code. Ann. § 23-3-430(D) the lower court must be able to evaluate the defendant's risk to reoffend based on all the facts and circumstances of the case. The best way to determine an individual's risk to reoffend is through a psycho-sexual evaluation. In Appellant's case the court did not allow him to obtain and present a psycho-sexual evaluation, the most vital information that bore on whether he was at a risk of re-offending. R. 16, ll. 13-20. Thus the court did not considered "any and all information that reasonably might bear" on Appellant's risk to re-offend.

Appellant was charged with a crime that required mandatory registration. However, he pled under Alford[1] to a *single* non-enumerated offense, therefore the burden was on the state to show good cause to place him on the SOR. In so pleading, he did not admit the facts of the

1 North Carolina v. Alford, 400 U.S. 25 (1970)

indictment but merely that the state *likely could* prove him guilty at trial. The state presented no evidence that Appellant was a high or even likely risk to re-offend sexually, despite the fact that the burden to show good cause rests solely on the state. The lower court confirmed it placed Appellant on the SOR solely because of his guilty plea, and the court did not allow Appellant to present the relevant and necessary information that would have been contained in the psycho-sexual evaluation. The denial of the motion to allow Appellant to undergo a psycho-sexual evaluation was an abuse of discretion, as it precluded the plea judge from being able to properly consider all the facts and circumstances of the case, both aggravating and mitigating, in determining whether placement on the SOR was proper. The placement of Appellant on the SOR based solely on the facts of the plea, when the state provided at most a scintilla of evidence of risks and did not show sufficient good cause, was an abuse of discretion. See In the Interest of Christpoher H., 432 S.C. 600, 606-07, 854 S.E.2d 853, 856 (2021).

Based on the arguments set forth above, as well as those in the Brief of Appellant, Appellant respectfully requests that this Court rehear the case and determine that the state did not show good cause sufficient to require him to register as a sex offender and order removal of his name from the registry.

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 11th day of December, 2025.

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 Petition for Rehearing in the above-referenced case has been served upon Brian Gibbs, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 11th day of December, 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

The South Carolina Court of Appeals

The State, Respondent,

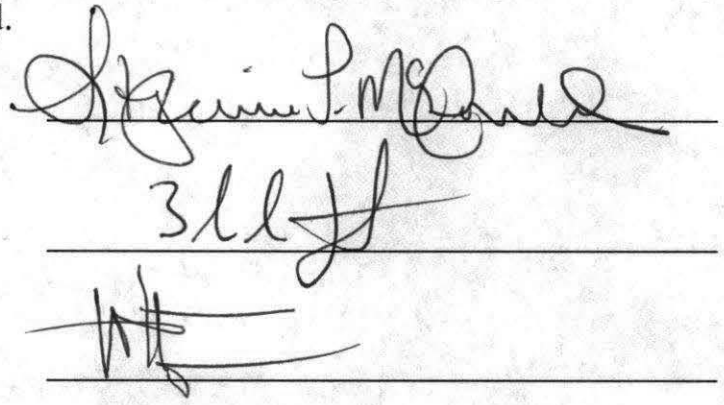
v.

James Orian Gregory, Appellant.

Appellate Case No. 2024-000072

ORDER

After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.

J.

J.

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
Jessica M. Saxon, Esquire
Brian Hollis Gibbs, Esquire
The Honorable Perry H. Gravely

FILED
Jan 29 2026