

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Honorable Larry B. Hyman, Circuit Court Judge

BRIAN STAPLETON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001402

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 Brian Scott Stapleton,) 2011-GS-42-1934
7 Defendant.) June 20, 2013
8) Spartanburg, South Carolina
9
10

11 B E F O R E:

12 HONORABLE J. DERHAM COLE, JUDGE
13
14

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

16 SUSAN SHAVER REESE, ESQUIRE
17 Attorney for the State

18 J. ROGER POOLE, ESQUIRE
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21

22 Linda D. Moffitt
23 Circuit Court Reporter
24
25

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Guilty plea -- page 2.

No sworn testimony; no exhibits entered into evidence.

1 MS. REESE: Your Honor, before you is Brian Scott
2 Stapleton. He is pleading under North Carolina vs. Alford,
3 2011-GS-42-1934.

4 He was originally indicted for criminal sexual conduct
5 with a minor in the first degree. He's waiving presentment
6 and pleading guilty to criminal sexual conduct in the first
7 degree. There are no recommendations.

8 THE COURT: Is there some issue with the age?

9 MS. REESE: No, Your Honor, there's not.

10 THE COURT: Okay. You are Brian Scott Stapleton.

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Mr. Poole is your lawyer.

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: How long has he been representing you on
15 this charge?

16 THE DEFENDANT: Twenty-nine months.

17 THE COURT: You've been in jail that entire time?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Have you had plenty of opportunity to talk
20 with him about this charge, as well as your apparent
21 decision to plead guilty to the charge of criminal sexual
22 conduct in the first degree?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And did he read the indictment to you or
25 go over it with you and explain to you what the state

1 claims you did?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: So you understand what the allegations are
4 contained in the indictment?

5 THE DEFENDANT: I do.

6 THE COURT: Did he tell you what kind of sentence
7 could be imposed if you were convicted of criminal sexual
8 conduct in the first degree?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And you understand it?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Carries up to 30 years in jail.

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And did you tell him everything you know
15 about the allegations?

16 THE DEFENDANT: I have.

17 THE COURT: Did y'all discuss whether or not you have
18 a defense to the charge of criminal sexual conduct?

19 THE DEFENDANT: We have.

20 THE COURT: Do you know of any defense that you have
21 to it?

22 THE DEFENDANT: Not -- everything is not clear that
23 happened that day, sir, no, sir.

24 THE COURT: Everything that happened that day is not
25 clear to you?

1 THE DEFENDANT: Yes, sir. I --

2 THE COURT: Well, do you understand what -- do you
3 understand the allegations they've made, what they claim
4 you did on that day.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you know of any reason why you should
7 not be found guilty of criminal sexual conduct?

8 THE DEFENDANT: No, sir.

9 THE COURT: Did Mr. Poole explain to you what would
10 have to be proven in court before you could be found
11 guilty?

12 THE DEFENDANT: Yes, sir. Well, I was told that
13 basically I could be convicted off of the testimony if I
14 went to trial with this.

15 THE COURT: Okay. And if you were convicted you
16 understood you could get up to 30 years for criminal sexual
17 conduct in the first degree.

18 THE DEFENDANT: Yes, sir. I understand that.

19 THE COURT: And did Mr. Poole also explain to you that
20 criminal sexual conduct in the first degree is designated
21 and classified as a violent offense under the law?

22 THE DEFENDANT: He did, your Honor.

23 THE COURT: Do you understand the significance of that
24 designation?

25 THE DEFENDANT: I do.

1 THE COURT: Have you previously been convicted of a
2 violent offense?

3 THE DEFENDANT: No, sir.

4 THE COURT: Did he also explain to you that criminal
5 sexual conduct in the first degree is designated and
6 classified as a most serious offense?

7 THE DEFENDANT: Yes, Your Honor. He has.

8 THE COURT: Do you understand the significance of that
9 designation?

10 THE DEFENDANT: I do.

11 THE COURT: Have you ever been convicted of a crime
12 classified as serious or most serious?

13 THE DEFENDANT: No, Your Honor. I have not.

14 THE COURT: Did he also explain to you that criminal
15 sexual conduct in the first degree is classified as a
16 no-parole offense?

17 THE DEFENDANT: I understand that.

18 THE COURT: Do you understand the significance of that
19 designation?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you also understand that it requires
22 registration, sex offender registration?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Has Mr. Poole also explained to you that
25 you have the right to remain silent?

7
1 THE DEFENDANT: Yes, Your Honor, he has.

2 THE COURT: which means you don't have to say
3 anything. You don't have to testify if your case goes to
4 trial. You don't have to make any statements. You don't
5 have to answer any questions that relate to this charge.

6 You have an absolute right to remain silent and to
7 require the state to come into court with sufficient
8 evidence to establish your guilt to the satisfaction of a
9 jury beyond a reasonable doubt. And you never have to
10 assist the state in their efforts to prove your guilt by
11 you making statements, answering questions or testifying in
12 the -- in court. Do you understand your right to remain
13 silent?

14 THE DEFENDANT: Yes, sir, I do.

15 THE COURT: Do you understand that when you plead
16 guilty you have to give that right up?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Is that what you wish to do?

19 THE DEFENDANT: I was -- I guess Alford plea is the
20 same thing as a guilty plea pretty much.

21 THE COURT: Yes, sir.

22 THE DEFENDANT: I understand.

23 THE COURT: Well, do you want to give up your right to
24 remain silent?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Did Mr. Poole also explain to you that you
2 have a right to confront and to examine any witness in
3 court that would offer evidence against you?

4 THE DEFENDANT: I understand that.

5 THE COURT: And do you understand that if you plead
6 guilty no witnesses come to court and testify? They're not
7 subjected to any type of examination.

8 THE DEFENDANT: I understand, Your Honor.

9 THE COURT: Do you wish to give up your right to
10 confront and to examine the witnesses?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Did Mr. Poole also explain to you that you
13 have the right to have a jury trial and have 12 jurors
14 determine if you're guilty or not?

15 THE DEFENDANT: I do.

16 THE COURT: Do you understand that if you were to have
17 a jury trial you would help pick the jury from a larger
18 panel or pool of jurors that would be here this week for
19 that purpose?

20 Twelve would be selected from that panel, and they
21 would sit over there in the jury box. They would consider
22 all of the testimony and other evidence received during the
23 trial of the case. From that evidence they would determine
24 what they believe to be the facts as they relate to these
25 allegations made against you. They would do that by

1 considering evidence presented by the state, as well as
2 evidence presented by you if you chose to testify or call
3 some other witness or produce some type of evidence.

4 They would decide what the facts as they relate to
5 these allegations. Then they would apply the law that the
6 Court would provide them. And a jury would determine
7 whether or not you're guilty of any crime that the state
8 claims that you have committed.

9 Before a jury could find you guilty all 12 jurors
10 would have to be convinced of your guilt beyond a
11 reasonable doubt. And the burden is on the state to
12 convince them of that fact.

13 The burden is not upon you to prove that you're not
14 guilty. The burden is on the state to prove that you are.
15 And so you can have a jury trial, and you still don't have
16 to testify or present any evidence. Of course you'd be
17 allowed to if you wished to. Do you understand your right
18 to have a jury trial?

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

20 THE COURT: And understanding that right, do you wish
21 to give it up in order to plead guilty?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Other than the reduction of the charge
24 from that of criminal sexual conduct with a minor in the
25 first degree to that of criminal sexual conduct in the

1 first degree, have you been promised anything?

2 THE DEFENDANT: Other than the zero to 30 that I'm
3 standing here before you today on, no. No promises.

4 THE COURT: That's not a promise. That's just a range
5 of sentence that I have to determine.

6 THE DEFENDANT: I understand that.

7 THE COURT: Has anybody promised you a particular
8 sentence that would be imposed if you pled guilty?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: So you understand it could be 30 years
11 here today.

12 THE DEFENDANT: I understand.

13 THE COURT: So you've not been promised anything?

14 THE DEFENDANT: No, Your Honor. I have not.

15 THE COURT: Have you been threatened or coerced or
16 pressured by anybody in any way?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: Are you pleading guilty freely and
19 voluntarily?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Was it your decision?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And you're satisfied with that decision?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Now, I understand that you're pleading

1 guilty pursuant to what's called an Alford plea, pursuant
2 to North Carolina vs. Alford. And that just simply means
3 that you're pleading guilty but you're not admitting your
4 guilt. You're not admitting specifically the allegations
5 that the state has made against you.

6 But you understand that whether or not you actually
7 admit those allegations when you enter a plea of guilty,
8 even pursuant to Alford vs. North Carolina, or North
9 Carolina vs. Alford, it still authorizes me to impose a
10 sentence just as if you had pled guilty and admitted
11 everything the state has alleged against you or just as if
12 you had had a jury trial and a jury had found you guilty of
13 criminal sexual conduct. Do you understand that?

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

15 THE COURT: You're 32 years old?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: How far did you go in school?

18 THE DEFENDANT: I have a G.E.D., dropped out in the
19 ninth.

20 THE COURT: But you are able to read and write and
21 understand fully what's going on here today?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Are you married?

24 THE DEFENDANT: No, sir.

25 THE COURT: Do you have children?

1 THE DEFENDANT: Yes, sir, I do.

2 THE COURT: Do you work?

3 THE DEFENDANT: I was working prior to coming, before
4 I was arrested.

5 THE COURT: And what did you do?

6 THE DEFENDANT: At that time I was working at Big
7 Lots.

8 THE COURT: Doing what?

9 THE DEFENDANT: I was working in the furniture
10 department.

11 THE COURT: Have you ever been treated for any type of
12 substance abuse or addiction?

13 THE DEFENDANT: I have.

14 THE COURT: And when were you treated?

15 THE DEFENDANT: It was 2005 Holmesview in North
16 Carolina, I mean, not North Carolina. I'm sorry.
17 Greenville.

18 THE COURT: In Greenwood?

19 THE DEFENDANT: Greenville.

20 THE COURT: Greenville?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And what were you treated for?

23 THE DEFENDANT: For cocaine abuse.

24 THE COURT: And that was in 2005?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And did you successfully complete that
2 treatment program?

3 THE DEFENDANT: I did.

4 THE COURT: Have you suffered from any relapse or any
5 drug addiction since that time?

6 THE DEFENDANT: I've suffered from being an alcoholic
7 and pills and marijuana.

8 THE COURT: Since 2005?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Do you suffer from any addiction today?

11 THE DEFENDANT: I do not.

12 THE COURT: You do not?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: You've been in jail for how long?

15 THE DEFENDANT: Twenty-nine months.

16 THE COURT: And have you had any alcohol or drugs or
17 pills or anything while you've been in jail?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: Are you suffering from any sort of
20 withdrawal, from any sort of addiction you may have had?

21 THE DEFENDANT: No. I have not.

22 THE COURT: So you're not suffering from any issue
23 today about your drug dependency?

24 THE DEFENDANT: No, Your Honor.

25 THE COURT: Have you ever been treated for any type of

1 mental illness or emotional disturbance?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Do you suffer from any such a condition
4 today?

5 THE DEFENDANT: No, sir.

6 THE COURT: Do you understand fully what you're doing
7 here today and the consequences of your decision?

8 THE DEFENDANT: I do.

9 THE COURT: All right. Listen to what the solicitor
10 tells me about the facts that relate to your case.

11 MS. REESE: Thank you, Your Honor.

12 Your Honor, on January 8th of 2011 the victim in this
13 case was at home with her mother and stepfather and brother
14 in Spartanburg County. The family was cleaning off some
15 property they had just purchased and planned to have a
16 cookout for the stepfather for that evening for a birthday.

17 A number of relatives and friends came over to help
18 them clear this property. And some of the people that came
19 over were the child's biological father and the child's --
20 the child's cousin. The defendant is her cousin. He's a
21 cousin of her biological father. The victim's mother is
22 also the aunt of the defendant's young son.

23 During the day she realized that the defendant had
24 that child for the weekend, and she offered because she was
25 concerned about where the child would be staying to allow

1 the defendant and his young son to stay at her house
2 overnight that night.

3 She stated that they agreed that they would go to
4 church in the morning. And she made a bedroom for the
5 child and the defendant in a room that some other children
6 had that the other children weren't there that weekend.

7 The cookout lasted for several hours. The victim
8 stayed up for cake and went to bed in her room which was
9 across the bedroom from her mother and stepfather.

10 She stated that she put on clothes that night because
11 she knew they were going to church in the morning and she
12 wanted to be dressed for church and just be ready when she
13 woke up.

14 The victim's mother and stepfather went to bed. And
15 another relative of the family also decided to stay. He
16 was sleeping on the couch that night.

17 In the late night or early morning of January the
18 9th of 2011 the victim ran into her stepfather's room. She
19 was hysterical. She told her stepfather the defendant had
20 raped her.

21 The child's stepfather saw the defendant at that time
22 through an open door pass by his bedroom door. He grabbed
23 a baseball bat and went into the room where the defendant
24 was supposed to be staying. He stated that the defendant
25 was there in that room at that time pretending to be asleep.

1 in the bed. He began to strike at the defendant with the
2 baseball bat. The defendant ran from the home, and he
3 followed him out into a driveway and out into the woods.

4 The stepfather returned to the home to check on his
5 step-daughter. When he went back into her bedroom he found
6 defendant's jacket lying on the floor of the child's
7 bedroom. In anger he picked that jacket up and threw it
8 into the front yard.

9 The mother called 9-1-1 and officers arrived. The
10 sheriff's department came, and they had to have a canine
11 unit come out. They found the defendant in the woods about
12 200 yards from the house. The officers say he was
13 pretending to be asleep. He was in a pair of jeans but did
14 not have anything else on at the time.

15 officers called the forensics department from the
16 sheriff's department to the scene. The forensics unit
17 found the defendant's shoes and socks also in the child's
18 bedroom. And at that time she was transported to
19 Spartanburg Regional.

20 Kelly Cloonan who was the SANE nurse on duty that
21 night performed a rape exam, a sexual assault examination
22 of the child. She found significant bruising to the
23 vaginal area from seven to ten o'clock. She also found a
24 vaginal abrasion at nine.

25 During the examination she took vaginal and rectal

1 swabs. Though no semen was found on the vaginal swabs, the
2 rectal swab did indicate the presence of semen. And that
3 rape kit was sent to SLED. SLED did an evaluation of that
4 evidence. They did also detect semen on the rectal swabs.
5 They were unable to develop a D.N.A. profile from the small
6 sample obtained.

7 At the time of this assault the child was ten years
8 old. The child was referred --

9 THE COURT: Ten years old?

10 MS. REESE: Ten years old.

11 The child was referred to the Children's Advocacy
12 Center where she underwent a forensic examination. She
13 disclosed to therapists there that she had been asleep in
14 her room when she awoke to the defendant actually on top of
15 her. She stated he pulled down her underwear and his and
16 began rubbing her breasts and vaginal area. He repeatedly
17 told her not to tell anyone.

18 She said she struggled to get free but could not. He
19 held her there. She stated that he put his private part in
20 both her vaginal area and her rectal area. She said he
21 kept telling her not to tell anyone and he kept trying to
22 put his tongue in her mouth.

23 The child stated that after he had assaulted her both
24 anally and vaginally he began to perform oral sex on her.
25 That is when she was able to kick at him and get free. And

1 she ran into her stepfather's bedroom.

2 The defendant was transported back to the sheriff's
3 office where he was interviewed by investigators. At that
4 time he told investigators that he and the adults in the
5 home had all attended a strip club that night and that he
6 was tired, had come back, had gone to sleep, that he was
7 tired and got in bed with ^{minor} He said that he didn't
8 know anything that had happened until he saw this man
9 standing over the bed with a baseball bat.

10 He declined to give a written statement at the time.
11 The defendant did later write a letter to the biological
12 father of the child stating that he thought someone had
13 possibly put something in his drink at the strip club that
14 made him do this.

15 The child's mother and stepfather wanted to make
16 clear, Your Honor, in this plea that they never attended a
17 strip club with him, that they were home the entire night,
18 as was ^{minor} She's also indicated to me that her
19 parents never left, there was never any incident with a
20 strip club, that this was a cousin and was there staying
21 with his young son in their home that night.

22 On January 12th of 2011 after this incident, Your
23 Honor, the stepbrother of ^{minor} a six-year-old little
24 boy, also indicated that he had been touched that day by
25 the defendant.

1 The Children's Advocacy Center did a brief interview
2 with him, but they did not pursue charges at that time.
3 Your Honor, we're just putting on the record that as a
4 result of this plea we are not going forward on the case
5 involving the six-year-old little boy either.

6 The victim's family do not wish to speak, but they
7 wish me to speak for them at the appropriate time.

8 THE COURT: All right. Now would be that time.

9 MS. REESE: Okay. The mother of this child wants you
10 to know that she has just been terribly scarred by this.
11 She has nightmares.

12 They have placed her -- after some time they put her
13 on some sleeping medication to help her try to sleep
14 through the night.

15 She has been through counseling. However, in -- in
16 November of this year after this case was placed on the
17 trial docket, we did meet at that time. After the meeting,
18 a few days after that meeting, she wants you to know that
19 her child got out of bed after she'd been given a sleeping
20 medication, went into the bathroom and took a whole bottle
21 of sleeping pills. She then went to sleep. Her mother did
22 not know that she had taken all of these pills.

23 The following morning she tried to wake her daughter
24 and couldn't. She could get her a little bit conscious but
25 couldn't quite get her to wake up all the way.

1 minor tells me that she was just shocked that she
2 was awake. She wasn't supposed to be awake, and she didn't
3 understand why she was waking up.

4 The child managed to get her clothes on and get to
5 school but collapsed there at school and was taken to the
6 emergency room.

7 After that she was placed in Three Rivers where she
8 spent about three weeks. Since then she is in therapy.

9 In trying to decide what to do with this case we
10 were -- we had talked about some offers. The defense
11 talked about -- we talked with them about possibly pleading
12 without recommendations to C.S.C. first. The mother felt
13 that that was -- the reason for that the defendant was
14 willing to do that because there wasn't a mandatory minimum
15 on that choice. And the mother just felt that in view of
16 her daughter's issues and the recent suicide attempt that
17 this was in the best interest of her daughter. But she
18 wants you to know that the entire family has been affected
19 by this and that her daughter is really struggling, really,
20 really struggling, with this at her young age.

21 THE COURT: All right. Mr. Stapleton, you heard what
22 the solicitor told me about the facts that relate to your
23 case.

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Do you agree or disagree with what she has

1 told me?

2 THE DEFENDANT: I do not agree with everything she
3 said.

4 THE COURT: Okay. Do you understand that's what she
5 would offer to prove if your case went to trial before a
6 jury?

7 THE DEFENDANT: I understand that.

8 THE COURT: Understanding what that evidence would be
9 and understanding that you'd have a right to testify too if
10 you wished to, do you think the evidence presented at the
11 trial of this case would likely result in a jury finding
12 you guilty of criminal sexual conduct in the first degree?

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

14 THE COURT: And based upon that belief, that opinion
15 and the fact that the state has agreed to let you plead
16 guilty to a different charge than what is actually set
17 forth in the indictment, do you still wish to go forward
18 and plead guilty, notwithstanding you deny that you've
19 committed the acts as they allege?

20 THE DEFENDANT: Yes, Your Honor. I understand.

21 THE COURT: And you still want me to accept your plea
22 of guilty?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: All right. I'll accept your plea and hear
25 from you and Mr. Poole.

1 MR. POOLE: Thank you, Judge Cole.

2 As Mr. Stapleton has told you, he is 32 years of age.
3 He's a lifelong resident of Spartanburg. His prior
4 employment has consisted of remodeling and landscaping.
5 He's done cable work for Charter.

6 And, as the Court knows, he has a four-year-old son
7 with whom he's very close, and up until his incarceration
8 he was very close to his son, and he supported him.

9 He has been incarcerated since January 9 of 2011,
10 which results in 893 days.

11 Certainly not in defense but in mitigation I will say
12 on Mr. Stapleton's behalf that there was a three-year
13 period there where he lost both of his parents, his brother
14 and grandmother, and that contributed to depression and the
15 use of illegal substances which puts one in the continual
16 cycle of trying to beat depression with substance abuse and
17 trying to relieve the substance abuse by trying to get off
18 the depression, the cycle.

19 And on this particular day he tells me that he had
20 taken two Valium and drank a lot of vodka and that he went
21 to bed and he really did not know what happened.

22 Now, we've gone over the evidence in the case. I
23 shared the discovery with him and told him what the
24 forensic evidence -- we talked. And as of last week as we
25 continued to talk -- Ms. Reese and I about trying to work

1 this case out -- Mr. Stapleton said that he wanted to go
2 ahead and do this plea this way, plead under North Carolina
3 vs. Alford.

4 And he did, in fact, write a letter to the victim's
5 father, and he did say something about the strip club and
6 somebody may have put something in his drink, but he also
7 said that he was really -- did not really remember.

8 And he said in that letter that if he did do something
9 like this he was very sorry. And he is very sorry, in
10 fact, and he's very ashamed.

11 And he -- he is 32 years of age. He doesn't have
12 anything like this in his history, any type of charge that
13 remotely resembles this.

14 And he is on probation and was on probation back in
15 2008, I think is when he tagged the probation. And we were
16 willing to go ahead and have that matter resolved in the
17 context of this hearing.

18 So I would ask the Court since you do have such a wide
19 latitude in sentencing Mr. Stapleton to take all of these
20 things into consideration. And whatever the sentence may
21 be we know that justice has to be done, but to the extent
22 that you can temper it with mercy.

23 THE COURT: All right. Tell me about his probation
24 matter.

25 PROBATION AGENT: Your Honor, on January the 5th of

1 2009 Mr. Stapleton went before Judge Couch for the offenses
2 of driving under the influence third offense and use of
3 vehicle without the owner's permission.

4 And then on January -- I'm sorry -- May the 24th of
5 2010 he was in Horry County and he was sentenced for
6 burglary third degree. And that was a five-year sentence,
7 provided upon the service of 169 days and three years
8 probation.

9 Your Honor, he has prior violations on both of the
10 cases where he changed his residence without consent,
11 failed to pay his restitution and supervision fee. And he
12 was continued on probation on October the 15th of 2010, and
13 they extended the case five years and restructured his
14 financial obligations.

15 THE COURT: All right. Mr. Stapleton, you've heard
16 what the probation agent told me.

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Do you understand that if I accept your
19 plea of guilty today -- and I've heard what she's told me
20 about your probation matter -- that I can revoke all or any
21 portion of that sentence that was suspended during the
22 period of probation in addition to any sentence I impose on
23 this indictment to which you're pleading guilty today?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Do you wish to go forward with the

1 probation matter also?

2 THE DEFENDANT: I do.

3 THE COURT: Do you have anything you'd like to add to
4 what Mr. Poole has told me?

5 THE DEFENDANT: I do.

6 First, I'd like to apologize for standing here before
7 you today. And if anything did actually happen to this
8 child, I'd like to apologize to her and her family for what
9 they've been through and what they're going through now.

10 I'm here before you today pleading no-contest because
11 I've been convinced that if I go to trial I'll be found
12 guilty and possibly receive the max of that sentence.

13 I've been in jail for 29 months. In those 29 months
14 I've turned my life over to the Lord. I'm ready to serve
15 him now to lead people to Christ and tell them how he's
16 changed my life.

17 I ask that you have mercy on me here today as my
18 Father in Heaven does, and I ask that you give me a chance
19 to be a father to my son, someone that he needs in his
20 life. And I ask you here today, that you give me that
21 chance.

22 THE COURT: All right. With regard to his probation,
23 I find the defendant has wilfully failed to comply with the
24 conditions of probation. Revoke those. Reduce any
25 financial obligation to a civil judgment.

1 On this indictment, 2011-1934, Sentence of the Court
2 is you, Brian Scott Stapleton, be confined to the South
3 Carolina Department of Corrections for a period of 25
4 years.

5 Give him credit for any time he's entitled to pursuant
6 to 24-13-40.

7 END OF REQUESTED TRANSCRIPT OF RECORD

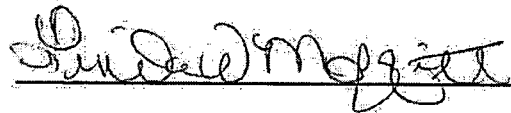
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 19th day of June 2013.

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

September 12, 2014

A handwritten signature in cursive script, appearing to read "Linda D. Moffitt", written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of SPARTANBURG)BRIAN S. STAPLETON 308556)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2014-CP-42-1893

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention S.C. Department of Corrections
Perry C.I.; 430 Oaklawn Rd; Pelzer, S.C. 29669
2. Name and location of Court which imposed sentence Spartanburg County
Court house; 180 Magnolia St. Spartanburg S.C. 29309
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which (sentence was imposed:
 - (a) Indictment Number 2011GS4201934 C.S.C 1st
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) June 2013 / 25 yrs
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere Alford plea
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. September 5, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. ~~Appellate~~ Appellate Case No. 2013-001442
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) Involuntary guilty plea
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Trial Counsel was Ineffective For failing to do an Adequate Investigation
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Direct Appeal - Dismissed
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. S.C. Court of Appeals P.O. Box 11629 Columbia, S.C. 29211
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

- i. Sept, 5th 2013
- ii. _____
- iii. _____
- iv. _____

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

- i. Appellate Case No. 2013-001442
- ii. _____
- iii. _____
- iv. _____

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

no

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

(a) which grounds have been presented:

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

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

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

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

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

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

(a) your arraignment and plea? _____
 (b) your trial, if any? _____
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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

(a) the name and address of each attorney who represented you:
 i. J. Roger Poole - Assistant Public Defender -
366 North Church St Suite 3000 Spartanburg S.C 29303
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Plea & Sentencing
 ii. _____
 iii. _____

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

Vacate Conviction and Sentence

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

NO

STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

I, Brian S. Stapleton #308556, 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.

SWORN to and subscribed before me this _____
day of _____.

Notary Public (L.S.)

My Commission Expires: _____

2014 MAY 12 PM 10:40
M. HOPE BLACKLEY

Revised 3/2003

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

I, Brian Scott Stapleton #308556, 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.

Brian Stapleton
Applicant

SWORN or affirmed to and subscribed before me this

7 day of May, 2014.

Tamara Conwell
Notary Public

My Commission Expires

My Commission Expires: September 25, 2023

FILED
CLERK OF COURT
2014 MAY 12 AM 10:40
M. HOPE BLACKLEY

Brian Stapleton 308556
 Perry C.I. QIA 213
 430 Oaklawn Rd.
 Pelzer SC. 29669

The Honorable M. Hope Blackley
 Spartanburg County Court House
 180 Magnolia St. PO. Box 3483
 Spartanburg SC. 29304

Dear Clerk of Court:

Inclosed please find one original PC R
 Application. Please clock stamp and send me
 a copy. Thank you for your time in the
 matter.

Sincerely,
 Brian Stapleton

FILED
 CLERK OF COURT
 SPARTANBURG, SC
 MAY 12 AM 10:40
 M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Brian S. Stapleton, #308556,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2014-CP-42-1893

RETURN

Respondent, making its Return to the application for post-conviction relief (PCR) filed May 12, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the March 2011 term of the Spartanburg County Grand Jury for criminal sexual conduct with a minor, first degree (2011-GS-42-1934). The Applicant was represented by J. Roger Poole, Esquire. On June 20, 2013, the Applicant waived presentment to the Grand Jury and pled guilty pursuant to NC v. Alford to the charge of criminal sexual conduct, first degree. The Honorable J. Derham Cole sentenced the Applicant to a term of twenty-five (25) years imprisonment.

A timely notice of appeal was filed on the Applicant's behalf. The South Carolina Court of Appeals dismissed the Applicant's appeal by order filed September 5, 2013. The Remittitur was returned on September 24, 2013.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina

Department of Corrections, the plea transcript, and Applicant's appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel, in that;
 - a. "Trial counsel was ineffective for failing to do an adequate investigation."
2. Involuntary Guilty Plea.

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland.

Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

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

IV.

The Applicant alleges that he did not plead guilty freely and voluntarily. The State submits this allegation has no merit. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The State submits the transcript reflects that the pleas were knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Boykin, *supra*; Dover, *supra*. Further, 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. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52

L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). The State submits the Applicant should not be allowed to depart from the truth of the statements he made during his guilty plea hearing.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to this claim, the Respondent submits that the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it should therefore, be treated as such.

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

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

November 18, 2014.

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

BRIAN S. STAPLETON, #308556)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

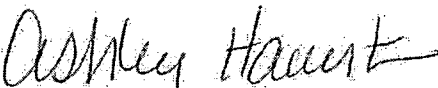
2014-CP-42-1893

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. John Brandt Rucker, Esquire
Brandt Rucker Attorney At Law
522 North Church Street
Greenville, SC 29601

DATED this 18TH day of November, 2014.


 Ashley Haworth, Legal Assistant
 For Respondent

State of South Carolina	)	
	)	Court of Common Pleas
County of Spartanburg	)	
		Post Conviction Relief

2014-CP-42-1893

Brian S. Stapleton	)	
vs.	)	Transcript of Record
	)	
	)	
State of South Carolina	)	
Defendant	)	

November 9, 2015
Spartanburg, South Carolina

B E F O R E:

Honorable Larry B. Hyman, Judge

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

Alicia A. Olive, Assistant Attorney General
Attorney for the State

J. Brandt Rucker, Esq.
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

I N D E X O F W I T N E S S E S

(IC) - Denotes In Camera
(DW) - Denotes Defense Witness
(SW) - Denotes State's Witness

(DW) Brian Stapleton

Direct examination by Mr. Rucker: 6

Cross-examination by Ms. Olive: 13

(SW) Roger Poole

Direct examination by Ms. Olive: 16

Cross-examination by Mr. Rucker: 19

Redirect examination by Ms. Olive: 24

Certificate of Reporter 28

EXHIBITS

(There were no exhibits introduced.)

1 MS. OLIVE: Your Honor, may it please the Court?

2 THE COURT: Yes.

3 MS. OLIVE: This is case of Brian S. Stapleton v. The
4 State, 2014-CP-42-1893. Mr. Templeton filed this PCR May
5 12th, 2014. He was indicted at the March 2011 term of
6 Spartanburg County Grand Jury for criminal sexual conduct
7 with a minor in the first degree. He was represented on
8 those charges, on that charge by Mr. Roger Poole. On June
9 20th of 2013 he waived presentment to the Grand Jury and
10 pleaded guilty pursuant to North Carolina v. Alford for
11 the charge of criminal sexual conduct first degree. Judge
12 Cole sentenced him to 25 years. He did file a notice of
13 appeal which the Court of Appeals dismissed. And today, I
14 will hand it over to Mr. Rucker in terms of what
15 allegations he is going forward on today.

16 THE COURT: All right, Mr. Rucker.

17 MR. RUCKER: If it please the Court, we are alleging
18 involuntary guilty plea and ineffective assistance of
19 counsel based on failure of trial counsel, plea counsel
20 doing inadequate investigation.

21 THE COURT: All right, Mr. Stapleton, do you
22 understand that in a Post Conviction Relief application,
23 it is not like a, I don't reverse your conviction as an
24 appeal court would. I don't dismiss your case. What I do
25 is I make a determination that you are being unlawfully

1 incarcerated, I guess. The end results at best with a new
2 sentencing for a new trial. Okay. If I do that,
3 understand if you go back to square one, I don't know what
4 you were charged with initially. What was he charged with
5 initially, Counsel?

6 MR. RUCKER: Criminal sexual conduct with a minor.

7 THE COURT: And, Mr. Rucker, what did he plead to?

8 MR. RUCKER: He plead to CSC with a minor.

9 THE COURT: The same thing?

10 MR. RUCKER: Yes, sir.

11 THE COURT: He plead as charged.

12 MS. OLIVE: Your Honor, I am sorry, I believe that
13 might be a mistake. I think he plead to just CSC first,
14 not with a minor.

15 MR. RUCKER: I apologize.

16 THE COURT: Do you understand that you will go back
17 to your original charge, if there are any charges
18 dismissed you have to face those as well.

19 MR. STAPLETON: Yes, Your Honor.

20 THE COURT: And that is what you want to do?

21 MR. STAPLETON: Yes, Your Honor.

22 THE COURT: All right, very well. Please be seated.
23 Mr. Rucker.

24 MR. RUCKER: Your Honor, I call my client to the
25 stand.

1 THE COURT: Come around.

2 BRIAN STAPLETON, being
3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 By Mr. Rucker:

6 Q State your name for the record, please.

7 A Brian Scott Stapleton.

8 Q Mr. Stapleton, what were you convicted of and what is
9 your sentence right now?

10 A I was convicted of CSC first and sentenced to 25
11 years.

12 Q Was that as a result of a guilty plea or a trial?

13 A It was the result of a guilty plea.

14 Q Did you have an attorney at the guilty plea?

15 A I did.

16 Q Who was that attorney?

17 A Roger Poole.

18 Q How long had he been your attorney at the point you
19 entered this guilty plea?

20 A 29 months.

21 Q How many times did you meet with Mr. Poole?

22 A I only met with him once, four days before court.

23 Q Okay. No other, you didn't meet with him any other
24 time?

25 A No, sir.

1 Q How did you know he was your attorney before four
2 days before trial?

3 A He sent me a letter telling me he was appointed to
4 me.

5 Q Did you know what criminal discovery is?

6 A Yes.

7 Q Did you ever go over criminal discovery, the evidence
8 that was going to be used against you with him?

9 A I went over what they gave me, what was included in
10 my discovery but there was several things that were left
11 out, still haven't had a chance to go over them.

12 Q When you say, they gave you, who gave you that?

13 A My lawyer, Roger Poole, sent it to me.

14 Q What do you believe was missing from the discovery?

15 A There was medical records, DNA, lab reports missing.

16 Q Do you know, in fact, they exist?

17 A Yes, I do.

18 Q How do you know that they exist?

19 A Due to the police reports stated that she was carried
20 to the hospital and examined. Also there was a DNA swab
21 done on her and me also. There were things sent for a
22 forensic lab testing.

23 Q Did you discuss that issue with Roger Poole?

24 A I did.

25 Q The fact that that evidence was missing?

1 A I got a copy of two motions that I filed to the Clerk
2 of Court trying to get it because he wouldn't respond to
3 any of my letters that I sent him when I was in the
4 County.

5 Q When you actually met with him, how long did y'all
6 meet to go over the discovery?

7 A It might have been fifteen or twenty minutes. We
8 just went over what I had. He brought one other thing
9 dealing with medical records and that was it.

10 Q And what was that thing that he brought?

11 A It was just saying that they was, alleged bruising,
12 at 10:00 o'clock and 1:00 o'clock or something. That was
13 it, it wasn't actually what they were, it was just a
14 picture of, a drawn up figure.

15 Q Did Mr. Poole tell you that y'all were going to trial
16 that next week?

17 A He did.

18 Q Did he tell you that they would bring witnesses to
19 testify against you?

20 A He did state that they would put the alleged victim
21 on the stand to testify.

22 Q When did he tell you about the statements of the
23 alleged victim?

24 A He didn't tell me anything about it other than what
25 was disclosed to me in my discovery, what she said and

1 what the mother and the step-father had stated.

2 Q Did he tell you that you needed to plead guilty?

3 A He did.

4 Q And what were the reasons that he gave you?

5 A He told me if I was to go to trial that, if she got
6 on the stand I would be found guilty and I would receive a
7 max, he said it was the best thing for me to go ahead and
8 plead to 0 to 30 and leave it up to the Judge because I
9 had turned down an offer of 20 years. And he said, I
10 don't blame you for turning down 20 years, he said the
11 Judge is not going to give you 20 years. He said, I don't
12 even think you will get 15.

13 Q And did he tell you why that he believed that?

14 A He just said he had been doing it for 40 years and he
15 said the Judge wouldn't sentence me to that amount of
16 time. He said that my best bet was to leave it up to the
17 Judge.

18 Q Do you know what Brady v. Maryland is?

19 A I do.

20 Q Basically what is that?

21 A It is evidence that has been withheld that would have
22 changed the outcome of the trial.

23 Q Do you believe there was evidence that was never
24 given to you that was Brady material?

25 A I do.

1 Q What is that evidence?

2 A I believe that DNA would have shown that the incident
3 never occurred and also, like I said, he went over some of
4 the things about the medical records but I never seen the
5 forensic lab testing or the forensic reports. I also
6 believe that that would also show, point towards
7 innocence.

8 Q Were there statements made by an alleged witness that
9 you think was contradicted later?

10 A There was. At my bond hearing it was stated that
11 Sherry told me, to that witness, the act occurring and
12 then later on the statement that was disclosed to me
13 stated that she was in the bedroom when her daughter
14 entered the room and told her what happened.

15 Q Who is Sherry?

16 A Her mother.

17 Q Whose mother? The alleged victim?

18 A The alleged victim.

19 Q Did you discuss that matter with Mr. Poole?

20 A I did. I sent him a letter and he never responded to
21 the letter.

22 Q Did you talk about it before you went to trial?

23 A Four days before the trial, at that point and time I
24 was listening to what he was going over on everything, you
25 know, and I didn't actually, the point about the

1 contradicting statements at the time, it had slipped my
2 mind. But I did send him a letter and mentioning that to
3 him and he never followed up on it.

4 Q When did you send that letter compared to when the
5 trial was--

6 A It was right after I received my discovery, I would
7 have to look at the date. It was sometime during 2012,
8 probably around March or April.

9 Q When was your trial date?

10 A June of 2013.

11 Q Okay. You testified earlier that an offer was
12 extended to you. How did you know about that offer?

13 A He brought it and showed it to me and he thought at
14 first it was a cap and then he come back and reviewed it
15 again with the Solicitor and come back and said that she
16 said it is not a cap, that is, it is they are offering 20.

17 Q Outside of going over the discovery in that meeting,
18 how many other times did you meet with him to go over the
19 offer?

20 A Only one time, he come in and came back that same
21 day, after he come in and showed me the offer and I turned
22 it down. He left and come back just a couple of hours
23 later and said that it was an offer of 20, it wasn't a
24 cap. And then that is when we reviewed everything.

25 Q Did you talk to him, I want to make sure of your

1 testimony, did you talk to him about the DNA evidence and
2 the things that were missing from the discovery?

3 A I asked him about all of that and all he had to say
4 was, he said that even though they may not have anything
5 pointing towards guilt, he said if she gets on the stand
6 they will find you guilty.

7 Q Did you, I think you testified before and just to
8 make clear. Why did he, what did he, how did he convince
9 you that that was true?

10 A I mean, basically he just said that, you know, they
11 are going to, it is going to boil down to my story against
12 her's and they are going to believe her before they
13 believe me. But he never stated the facts, in which I
14 believe if he did any cross-examine and presented any
15 evidence pointing towards my innocence that I would have
16 had a fair chance at trial.

17 Q What are you asking the Judge today to do?

18 A I am asking him to overturn my case or either, if he
19 can't do that at this point I would like for him to
20 subpoena the evidence that I still haven't had a chance to
21 review. There are several items that I still haven't had
22 a chance to review that I have been trying to get ever
23 since I was locked up and I still haven't been able to get
24 them.

25 Q Mr. Poole never sent that to you?

1 A He didn't.

2 Q No further questions.

3 THE COURT: Ms. Olive.

4 CROSS-EXAMINATION

5 By Ms. Olive:

6 Q Good afternoon, Mr. Singleton.

7 A Good afternoon.

8 Q You testified that your attorney did go over your
9 discovery with you?

10 A What was present at the time is what he went over
11 with me.

12 Q Did you discuss this matter with your version of what
13 happened?

14 A I did.

15 Q Did you discuss any potential defense you might have?

16 A Yeah, and he still insisted that even though that
17 physical evidence may point towards innocence that I
18 didn't have a chance at trial if she testified.

19 Q And you testified that he did discuss the plea offers
20 with you?

21 A Yes.

22 Q Was it ultimately your decision to plead guilty?

23 A I didn't want to, to be honest, but based off the
24 advice I was given by my counsel that that was my best
25 option, because I didn't stand a chance at trial.

1 Q And when you plead guilty, the Judge went over your
2 constitutional rights you were given?

3 A He did.

4 Q And do you know what you would have been facing had
5 you gone to trial on the charge in which you were
6 indicted?

7 A I believe I was told it was 25 to life on the
8 original charges.

9 Q And what was CSC with a minor first degree?

10 A Yes.

11 Q And you plead to just CSC first?

12 A Yes.

13 Q But is it your testimony that you would have not
14 plead guilty, that you would have wanted to go to trial on
15 the CSC with a minor first?

16 A Yes. That was my whole intent because I had waited
17 29 months, I didn't wait 29 months to take a plea. That
18 was not my intentions.

19 Q Thank you, no further questions.

20 THE COURT: Mr. Stapleton, and your allegations that
21 your attorney did not fully investigate your case, is that
22 right?

23 A Yes, Your Honor.

24 THE COURT: Okay. And what did he fail to uncover?

25 A Again, forensic lab testing.

1 THE COURT: Do you have them here for me today to
2 show that they would, in any way, exonerate you?

3 A I do not. I have got copies of all the letters where
4 I tried to get the evidence.

5 THE COURT: This is your hearing today.

6 A That is what I was asking, I was asking if I could
7 subpoena the evidence here today since I haven't had a
8 chance--

9 THE COURT: How long has this PCR been pending?

10 A Just a little over a year.

11 THE COURT: And you haven't subpoenaed during that
12 time?

13 A I don't know the process.

14 THE COURT: Well, tell me, have you had anything that
15 you can point to that he failed to uncover or discover for
16 you that we would view, would exonerate you or tend to
17 prove that you are not guilty?

18 A Without actually viewing that evidence I can't say
19 but I believe that DNA or forensic lab reports would show
20 some type of, I mean would show innocence.

21 THE COURT: So you are just speculating. Do you know
22 that they exist?

23 A I mean, yeah, according to the police reports. There
24 was forensic lab testing and they did a DNA swab on me and
25 a DNA swab on the victim.

1 THE COURT: All right, you can step down.

2 MR. RUCKER: Your Honor, that is our only witness.

3 THE COURT: Ms. Olive.

4 MS. OLIVE: Your Honor, the State would call Roger
5 Poole to the stand.

6 ROGER POOLE, being
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 By Ms. Olive:

10 Q Good afternoon, Mr. Poole.

11 A Good afternoon.

12 Q Thank you for bearing with us this morning. I am
13 sorry, this afternoon. In this case, first, how many
14 years have you been practicing law?

15 A 36 years.

16 Q And how much of that time has been criminal?

17 A I was in private practice for 25 plus years. After
18 I got out of law school I worked with the Public
19 Defender's office and then about six years ago I went back
20 to private practice.

21 Q And you filed a motion for discovery in this case?

22 A I did.

23 Q And did you review that discovery with Mr. Stapleton?

24 A I did.

25 Q Can you briefly describe the State's case against

1 him?

2 A The victim in this case was his 10-year-old cousin,
3 he was spending the night at her house along with her
4 step-father and her mother and some other children and
5 adults. He, the State claimed and had evidence that he
6 got out from his room into her room and basically had sex
7 with her and he went back to his room. When the child
8 went and told her step-father, her step-father went to Mr.
9 Stapleton's room with a baseball bat and started hitting
10 him, said you better get out of my house before I kill
11 you. Mr. Stapleton left the premises and was found in
12 some woods after a canine unit went out and he had his
13 pants on with no shoes or no shirt. The shirt and the
14 shoes and some, I believe some socks were found in the
15 little girl's room. Also there was a DNA test that was
16 late in coming in and basically it stated that after the
17 rape, the analysis of the rape kit and the DNA, that semen
18 was indicated from the girl's vagina and rectum. But
19 there was not enough or enough quality of it to have DNA
20 connection with the defendant. That is what was in the
21 SLED report. I represented Mr. Stapleton at a preliminary
22 hearing and we went through the evidence at that time
23 which is always incomplete in these types of cases
24 especially. I was involved in the case and appointed in
25 January of 2011. I also represented him at a bond

1 hearing. The, as the evidence would come in I would go
2 see him, I don't know how many times but I would share it
3 with him. And in these serious cases I shared with him
4 the most important parts. And there was a children's
5 advocacy center video that I viewed, took notes on and
6 went and talked to him about it. There was also a
7 children's advocacy center statement that is written up by
8 the interviewer which basically tracks what is on the
9 video or CD rather. I shared this information with him
10 and basically what the little girl, what was in the police
11 investigation. I spoke with him as it got closer to
12 trial. The Solicitor said that he could plead to 20 years
13 and, or go to trial. He rejected that offer, it was not a
14 cap, it was a mandatory 20 because that is what the
15 victim's family wanted. He rejected that offer, I asked
16 the Solicitor, would you consider getting out from under
17 the statute of CSC with a minor which carries a minimum
18 sentence of 25 years and a maximum of life and accept a
19 plea of criminal sexual conduct first degree which has a
20 range of 0 to 30 years. In my conversations with him, I
21 said, I would hope the Court would give you less than 20
22 years. I have never told a client a Judge is going to do
23 this or is going to do that.

24 Q So you didn't make any promises to him as his
25 attorney?

1 A No, ma'am.

2 Q And ultimately you discussed all of these things and
3 whose decision was it to plead guilty?

4 A It was Mr. Stapleton's decision.

5 Q That is all the questions that I have.

6 THE COURT: Mr. Rucker.

7 CROSS-EXAMINATION

8 By Mr. Rucker:

9 Q Mr. Poole, in the discovery responses that y'all,
10 gave to you, have you recently reviewed the CAC, the child
11 advocacy center report?

12 A I have looked over it this morning.

13 Q Okay. Very recently then. Was this child actually
14 exposed to sexuality in that home with the parents?

15 MS. OLIVE: Your Honor, I would object on grounds of
16 relevancy.

17 THE COURT: I will hear it, go ahead.

18 A I don't remember the details but it seems like there
19 was some disfunctionality there.

20 Q The CAC report actually talked about the child saying
21 there were sexual things going on in the house and that
22 she was exposed of?

23 A Yes.

24 Q For example, she was exposed to pornography?

25 A It is in there, yes.

1 Q Okay. She watched her maternal grandmother watch
2 sexual materials or watch it on TV?

3 A If it is in there, yes.

4 Q And I am just going through the list of things that
5 are in it just to make sure-

6 A --whatever is in there is in there, certainly.

7 Q Observed mother doing the dirty dance that was
8 simulating sex. Do you agree that is in there as well?

9 A Right.

10 Q And it goes on like that including seeing oral sex
11 being performed by someone else in the home. Is that
12 right?

13 A Yes.

14 Q When you describe the circumstances of that night,
15 were people drinking in the home?

16 A Mr. Stapleton stated that he had been, he had been
17 drinking vodka and he had taken some Valium.

18 Q Were there, there was more than one male actually in
19 the home that night?

20 A There was a step-father.

21 Q Okay. And let me go back to the bond hearing. You
22 represented him at the bond hearing?

23 A Right.

24 Q Do you recall Ms. Coleman stating that she witnessed
25 the actual sexual act, the alleged sexual act?

1 A I really don't recall that, she may have.

2 Q Did you request a transcript of the bond hearing, if
3 they keep those?

4 A No.

5 Q Why did you not do that?

6 A I didn't think it necessary.

7 Q Okay.

8 A For whatever reason. When we get down to talking
9 about this, the victim saw all of this stuff going on it
10 doesn't take away from the fact that the physical evidence
11 at the scene on the night indicated that this, that Mr.
12 Stapleton was involved in this sexual act with her.

13 Q I am trying to find out if you actually looked at
14 other people that could have been involved in this, that
15 is all I am doing.

16 A No, I did not.

17 Q Okay. And your testimony is that you did not follow
18 up on the grandmother's statement, contradictory
19 statements?

20 A No, I did not.

21 Q Okay. The DNA evidence that my client testified or,
22 is it your testimony that you turned over all of that
23 material to him?

24 A I typically do, I can't say on what day or what time.

25 Q Would you have kept that information from him?

1 A I would see no reason why not to, because I would
2 need to share it with him to be, so that it could be, he
3 could make an informed decision on how to proceed.

4 Q I am not trying to make this hard on you. The
5 discovery you turned over to my office, is that the
6 discovery you turned over to Mr. Stapleton?

7 A Yes.

8 Q Did that, and you reviewed that and did that include
9 the hospital's record that they could not, there was not
10 enough semen that they could determine whose it was?

11 A I can't say, specifically say that I turned over
12 medical records to him. Sometimes those are late in
13 coming in. And I didn't, I should have because I thought
14 I turned it over to him, all of the discovery.

15 Q How did you learn about that, that fact, about the
16 insufficient sample?

17 A I think it was through a SLED report.

18 Q Okay. But I am asking, was that through criminal
19 discovery or did you subpoena the hospital separately?

20 A No, it was through criminal discovery.

21 Q In your investigation, in your experience through the
22 Solicitor's office, there have been situations where you
23 didn't get crucial evidence until the absolute last second
24 before a trial?

25 A Well, after 36 years, sometimes it has occurred.

1 Q Did you have enough time to go over this thorough
2 discovery the Friday before the trial, when you had all of
3 the discovery together?

4 A Typically we do this in phases. When I get something
5 in I talk to him. For instance, the CAC video, after
6 reviewing it I go and talk to him about it and giving him
7 the CAC report. And so it is cumulative process
8 especially in cases like this when segments of discovery
9 come in at different times.

10 Q But you do agree on that Friday before the trial was
11 suppose to go forward--

12 A I don't know the dates, but before, I talked to him.

13 Q Is it your testimony that you told him that you
14 thought the witness was going to testify well and that was
15 why he should go through the plea and forget about the
16 forensics?

17 A Well, one major concern was, the first charge he is
18 charged with, that he would be going to trial on, the 25
19 years minimum and the maximum of life. And I am sorry,
20 what was your question again?

21 Q I am just asking, what evidence you thought that was
22 there to convince him, or why you thought he was going to
23 be convicted or more likely than not?

24 A The criminal investigation, the testimony of the
25 victim which I watched, saw how it was going by watching

1 the video. And just the evidence in general.

2 Q No further questions.

3 REDIRECT EXAMINATION

4 By Ms. Olive:

5 Q Those facts that he discussed, the fact that his
6 clothes were found on the bedroom floor and the medical
7 evidence they had regarding the semen, even though the
8 test was inconclusive, those facts were read into the
9 record at the plea hearing, right?

10 A Yes.

11 Q No further questions.

12 THE COURT: Mr. Poole, is there anything that you can
13 recall that was not turned over, evidentiary?

14 A No, sir.

15 THE COURT: You may step down. Anything further from
16 the State?

17 MS. OLIVE: No, Your Honor.

18 THE COURT: All right.

19 MR. RUCKER: Your Honor, I believe Mr. Poole conceded
20 that there was some miscommunication, if not more about
21 the bond hearing testimony. He did not follow up on the
22 bond hearing testimony. I realize that is a corroborating
23 witness rather than the actual victim. That is something
24 that he did not follow up on. In addition, he was hazy
25 about--

1 THE COURT: What can you point me to, your client
2 has, face allegations or just plain allegations that
3 there, that witness would have recanted or that there is
4 some DNA evidence out there that saves him. Other than
5 these bear allegations I see nothing to confirm that.

6 MR. RUCKER: Your Honor, I believe in Mr. Poole's
7 testimony, it is unclear if my client actually got full
8 discovery before he went to trial, he was not fully
9 understanding what evidence was going to be used against
10 him. And his argument is that, therefore his plea was
11 involuntary. Without actually seeing everything that was
12 there, he didn't know why he should go forward with the
13 plea.

14 THE COURT: Well, Mr. Poole, said he gave it to him
15 as I understood it. Is there anything you didn't give him
16 or discuss with him?

17 MR. POOLE: Nothing that I am aware of. I would give
18 him the discovery as it came in, I would go see him and
19 give it to him, talk to him about it.

20 THE COURT: And can you point to anything, even when
21 you say, I didn't get this or get that, can you point me
22 to anything that would convince me, but for that--

23 MR. RUCKER: Your Honor, in his review, in our
24 discussions, based on the evidence, he did not have a full
25 understanding of the evidence that was going to be used

1 against him therefore he plead guilty. And it is his view
2 that it is involuntary.

3 THE COURT: All right. Ms. Olive.

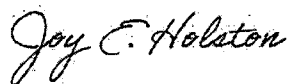
4 MS. OLIVE: Thank you, Your Honor. It is the State's
5 position that Mr. Stapleton has not met his burden of
6 proving ineffective assistance of counsel. Mr. Poole
7 testified that he gave him all of his discovery, went over
8 all of his discovery with him as it came in. He made a
9 recommendation based on that discovery being, although our
10 position based on the plea transcript and the testimony of
11 Mr. Poole, that the State's evidence was fairly against
12 Mr. Stapleton. There is certainly forensic evidence, I
13 mean there were the medical, I mean, the plea transcript
14 explains the child went to the hospital that day for or,
15 you know, immediately after it happened. There was and I
16 believe Mr. Stapleton testified to this, there was
17 bruising, I believe, between the 7:00 and 1:00 o'clock, I
18 am not sure if that is specifically correct in terms of
19 the numbers. But there was physical evidence. His
20 clothes were found in her room, he ran away. I think all
21 of these things, Mr. Poole gave a recommendation based on
22 all of that evidence. Those facts was went over during
23 the plea hearing and at no time did Mr. Stapleton indicate
24 that he wish to change his plea after those facts were
25 read into the record. Moreover he was indicted with a

1 criminal sexual conduct with a minor charge which carried
2 from 25 years to life. He plead, he was allowed to plead
3 guilty to criminal sexual conduct first which carried up
4 to 30 and he received a sentence of 25 years. So it is
5 our position that he cannot show prejudice. Thank you.

6 THE COURT: Well, looking at his case, I mean Mr.
7 Stapleton takes the stand, he tells me there must be
8 something out there, I just feel like there is something
9 out there that if had been turned over to me I would not
10 have plead. Two things have to be shown. Efficiency and
11 performance by counsel and a reasonable probabilty that
12 but for those that he would not have plead. A bear
13 allegation that something is out there, with nothing more
14 is not enough and I will therefore deny relief.

15 MS. OLIVE: Thank you, Your Honor.

16 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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1 CERTIFICATE OF REPORTER
2
34 State of South Carolina)
5 County of Newberry)
6
78 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Spartanburg, South
14 Carolina on the 9th day of November, 2015.15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.
17
1819 September 27, 2016
2021 
2223 Joy E. Holston, Court Reporter
24

25 My Commission expires: May 2, 2026

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Brian S. Stapleton, #308556,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
IN THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2014-CP-42-1893

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 12, 2014. Respondent filed its Return on November 18, 2014, requesting that an evidentiary hearing be held. An evidentiary hearing into the matter was convened at the Spartanburg County Courthouse before the undersigned on November 9, 2015. Applicant was present at the hearing and was represented by J. Brandt Rucker, Esquire. Alicia A. Olive, Esquire, represented Respondent.

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from J. Roger Poole, Esquire. This Court also had before it the records of the Spartanburg County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the plea transcript, Applicant's appellate records, and the pleadings.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the March 2011 term of the Spartanburg County Grand Jury for criminal sexual conduct with a minor, first degree (2011-GS-42-1934). Applicant was represented by J. Roger Poole, Esquire

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("Counsel"). On June 20, 2013, Applicant waived presentment to the Grand Jury and pleaded guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), to the charge of criminal sexual conduct, first degree. The Honorable J. Derham Cole sentenced Applicant to confinement for a period of twenty-five years.

A timely notice of appeal was filed on the Applicant's behalf. The South Carolina Court of Appeals dismissed the Applicant's appeal by order filed September 5, 2013. The Remittitur was returned on September 24, 2013.

Allegations

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that;
 - a. "Trial counsel was ineffective for failing to do an adequate investigation."
2. Involuntary Guilty Plea.

II. SUMMARY OF TESTIMONY PRESENTED

Applicant testified the sentencing range for criminal sexual conduct ("CSC") first degree was up to thirty years and that he was originally charged with CSC with a minor, first degree, which carried twenty-five years to life imprisonment. Applicant testified that Counsel went over discovery with him. Applicant testified that he discussed with Counsel his version of the facts, including any potential defenses. Applicant testified Counsel discussed plea offers with him. Applicant testified he turned down an offer of twenty years from the State.

Applicant testified that he knows he was facing twenty-five years to life if he had been convicted of CSC with a minor, first degree, but that he wanted to go to trial. Applicant said that DNA evidence would have shown the incident did not happen and that the only evidence was "he said she said." However, Applicant did not produce any items that the State failed to test for DNA. Applicant testified that Counsel said the victim would testify if he went to trial and

advised him to plead guilty. Applicant testified it was his decision to plead guilty based on Counsel's advice.

Counsel testified he shared and reviewed all discovery materials with Applicant, including the forensic interview tape and the victim's statement. Counsel testified the victim was Applicant's ten-year-old cousin. Counsel testified the State's version of events was that Applicant had sex with the victim, the victim told her stepfather, and the stepfather went after Applicant with a baseball bat. Applicant was later found in the woods near the victim's house with only his pants on. Applicant's shirt, shoes, and socks were found in the victim's bedroom. Counsel testified that there was semen found from a swab done on the victim's rectum, but that the DNA was of insufficient quality to connect it to Applicant.¹

Counsel testified Applicant was initially offered a twenty-year plea deal, but that he rejected that offer. Counsel testified that the State then offered to allow Applicant to plead guilty to CSC first degree, which carried zero to thirty years imprisonment as opposed to CSC with a minor first degree, which carried twenty-five years to life imprisonment. Counsel testified he did not tell Applicant an exact sentence and that it was Applicant's decision to plead guilty.

On cross-examination, Counsel agreed that there was some indication that the victim might have been exposed to pornography as well as other sexual activities in the home. Counsel agreed that Applicant said he had been drinking and taking valium. Counsel testified he did not look at others as being a possible perpetrator. Counsel testified he discussed this discovery with Applicant and that he went over it in phases as he received it. Counsel testified he thought Applicant would be convicted based on the State's evidence, including victim's video interview.

¹ The full account of the facts supporting Applicant's plea is found in pages 14-19 of the guilty plea transcript.

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STATE OF ARIZONA

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, and closely pass upon their credibility. This Court has weighed their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

As a matter of general impression, this Court finds Counsel's testimony to be more credible than Applicant's testimony.

A. Ineffective Assistance of Counsel

In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The applicant "must first demonstrate that counsel was deficient and then must also show the deficiency resulted in prejudice." Walker v. State, 407 S.C. 400, 404-05, 756 S.E.2d 144, 146 (2014). "The two-part test adopted in Strickland also applies to challenges to guilty pleas based on ineffective assistance of counsel." Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011).

First, the applicant must show that counsel's performance "fell below an objective standard of reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, he would not have [pleaded] guilty, but would have insisted on going to trial." Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 297 (2000).

This Court finds that Counsel has extensive experience in criminal law. Counsel conferred with Applicant on numerous occasions. During conferences with Applicant, Counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof. The record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Applicant told the plea court that no one had threatened him or promised him anything, including a particular sentence, to plead guilty. This Court finds that Applicant understood the terms of the plea.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation.

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that is expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977). See also Strickland, 466 U.S. at 688 ("The proper measure of attorney performance remains simply reasonableness under prevailing professional norms.").

This Court finds that Counsel was not ineffective for failing to adequately investigate. Applicant has produced no evidence, through testimony or otherwise, that Counsel failed to adequately investigate the case. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

Here, the victim, a ten-year-old girl, was assaulted in her home in her bedroom in the middle of the night, and directly thereafter she ran into her parents' bedroom and told her stepfather that Applicant assaulted her. (Tr. p. 15, lines 17-20). The victim was hysterical. (Tr. p. 15). At the same time, her stepfather saw Applicant pass by his bedroom door. (Tr. p. 15). The stepfather then picked up a baseball bat and went to confront Applicant who had lay down and pretended to be asleep. (Tr. p. 15-16). Applicant was in the home because the victim's mother had invited him and his young son to stay at their house after attending a cookout there that

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night. (Tr. p. 15). Applicant's jacket, shoes, and socks were found in the victim's bedroom. (Tr. p. 16). Additionally, the victim was taken to the hospital where a rape exam was performed. (Tr. p. 16). The examination revealed that she had significant bruising to the vaginal area as well as an abrasion. (Tr. p. 16). As previously stated, semen was found on the rectal swab but ultimately was insufficient to develop a DNA profile. (Tr. p. 17).

Applicant failed to show that an additional investigation should have been done or what that investigation would have uncovered. There is no dispute that Applicant was an overnight guest in the home that night. There is no dispute that a DNA profile could not be developed from the semen sample. However, the victim identified Applicant as the perpetrator immediately after the assault, her stepfather saw him walk down the hall as she was telling him what happened, Applicant's clothing was found in the bedroom, and he was found in the woods near the house not long after the incident. Notwithstanding the fact that a DNA profile could not be developed from the semen sample, the evidence against Applicant was substantial. This Court notes Applicant was facing a charge of CSC with a minor, first degree, which carried up to life in prison. Counsel testified he felt Applicant would have been convicted if he had been tried for CSC with a minor first degree based on the State's evidence and on the victim's interview. As part of Applicant's plea arrangement, the State allowed him to plead guilty to CSC first degree, a charge that carried less severe sentencing range and consequences.

This Court finds that Applicant's allegation that Counsel failed to investigate is without merit and Applicant has failed to satisfy his burden of proving the first prong of the Strickland test—that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions while representing the Applicant. This Court further finds counsel

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adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. Furthermore, Applicant has failed to show that there is any evidence that was not shared with the defense. Counsel shared complete discovery with Applicant. Therefore, this Court finds Applicant failed to show that Counsel rendered deficient performance.

This Court likewise finds that Applicant failed to show there is a reasonable probability that but for Counsel's alleged deficient performance, he would not have pleaded guilty but would have insisted on going to trial. Applicant's allegations of ineffective assistance of counsel are without merit and are denied and dismissed.

B. Involuntary Guilty Plea

In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional

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norms.” Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. 668)). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel’s advice was not “within the competence demanded of attorneys in criminal cases.” Hill v. Lockhart, 474 U.S. at 56. Furthermore, “[a] guilty plea is a solemn, judicial admission of the truth of the charges” against the applicant. 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 (1977)). Statements “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.” Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

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This Court finds that the record fully supports the knowing and voluntary nature of Applicant's guilty plea. Applicant has presented no evidence or valid reasons why he should be allowed to depart from his statements made at the guilty plea hearing.

This Court found above that Applicant failed to show either that Counsel rendered deficient performance or that he was prejudiced by any alleged deficient performance. Accordingly, this Court hereby denies and dismisses Applicant's allegation that his guilty plea was involuntary.

C. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

IV. CONCLUSION

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

This Court notes that Applicant must file and serve a notice of appeal within thirty 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 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's

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behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 8 day of March, 2016.



LARRY B. HYMAN, JR.
Presiding Judge
Seventh Judicial Circuit

Cowley, South Carolina

CLERK
SPARTANBURG COUNTY
2016 MAR 14 AM 10:53
M. HOPE BLACKLEY

WITNESSES

Spartanburg County Sheriff's Office

CLERK

WARD

WEXEL

CHECKED WARRANTS

CHECKED SIGNATURE

ARRESTED AND

ARREST WARRANT NUMBER

DATE OF ARREST

M751997

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

MAR 25 2011

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. -

11-GS-42-1934
The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAR 28 2011

TERM

THE STATE

vs.

Brian Scott Stapleton

Indictment for

CRIMINAL SEXUAL CONDUCT
W/MINOR, FIRST DEGREE

SC Code: 16-03-0655(1)

CDR Code:0385

Class FEL-C(V)

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2011 MAR 29 AM 10:00

M. HOPE BLACKLEY

11-GS-42-1934

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

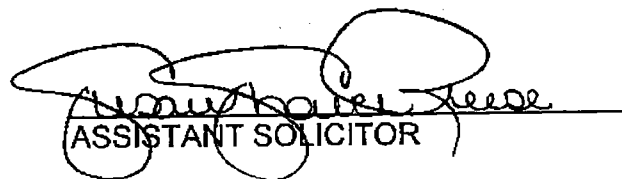
MAR 25 2011

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

That Brian Scott Stapleton, did in Spartanburg County, between the dates of January 8, 2011 and January 9, 2011 commit the crime of Criminal Sexual Conduct with a minor, in that the defendant did commit a sexual battery upon the minor victim, [REDACTED], who was under eleven (11) years of age at the time of the said incident. Said incident occurred in Spartanburg County, South Carolina, in violation of §16-03-655 (1), CODE OF LAWS OF SOUTH CAROLINA, (1976, as amended).

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


ASSISTANT SOLICITOR