

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Appeal from York County

Honorable Frank R. Addy, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**

APR 27 2017

S.C. SUPREME COURT

MICHAEL CHRISTOPHER KENNEDY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001595

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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1 State of South Carolina

Court of General Sessions

2 County of York

3

4 State of South Carolina, )

Transcript of Record

5 vs. )

2015-GS-46-00972

6 Michael Christopher Kennedy, )

2015-GS-46-00973

7 Defendant. )

2015-GS-46-01602

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9

10

May 27, 2015

York, South Carolina

11

12

B E F O R E:

13

The Honorable Eugene C. Griffith, Jr., Judge

14

15

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

16

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Attorney for the State

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18

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Attorney for the Defendant

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Stacy S. Johnson, RPR  
Circuit Court Reporter

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I N D E X

PAGE

CERTIFICATE OF REPORTER

30

E X H I B I T S

NO.

DESCRIPTION

ID.

EVD.

C - 1-A - 1-U

Prior Convictions

3

28

C - 2

Lewd Act Conviction

3

28

C - 3

Lewd Act Conviction

3

28

C - 4

Failure to Register Conviction

3

28

1 (The following proceedings were held on May 27, 2015.)

2 (Court's Exhibit Number 1-A through 1-U and Court's  
3 Exhibits 2, 3 and 4 were marked for identification.)

4 **BAILIFF:** All rise. Court is now in session.

5 **THE CLERK:** Sir, would you please raise your right  
6 hand and place your left hand on the Bible.

7 (Whereupon, Michael Christopher Kennedy was duly sworn  
8 by the Clerk of Court.)

9 **THE CLERK:** Thank you.

10 **MS. JOYNER:** May it please the Court?

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

12 **MS. JOYNER:** Your Honor, before the Court is Michael  
13 Christopher Kennedy. He's represented by Melissa Inzerillo  
14 of the Public Defender's Office. My name is Erin Joyner  
15 with the Solicitor's Office.

16 Mr. Kennedy is pleading today to three charges. The  
17 first charge is a shoplifting enhancement. That was the  
18 case that was scheduled to being called to trial today.  
19 That was Docket 2015-GS-46-00973, shoplifting enhanced.  
20 He's also entering a plea under North Carolina versus  
21 Alford to Indictment 2015-GS-46-00972, failure to register  
22 as a sex offender, second offense, and he is pleading  
23 guilty to a second count of failure to register as a sex  
24 offender, second offense, Indictment 2015-GS-46-01602. He  
25 also has a probation violation today, Your Honor.

1           **THE COURT:** All right. Your name is Michael  
2 Christopher Kennedy?

3           **THE DEFENDANT:** Yes, sir.

4           **THE COURT:** I'm gonna publish three indictments,  
5 the first of which is Amended Indictment 15-GS-46-973.  
6 It's for shoplifting enhanced. And that indictment reads,  
7 in part, that you, while in York County, on the 6th of  
8 November, 2014, did take away certain goods or merchandise  
9 valued at less than \$2,000 offered for sale by Wal-Mart  
10 without paying the merchant the benefit of the retail  
11 value, this being in violation of 16-13-110, and to be  
12 sentenced under the enhanceability provision of 16-1,  
13 Subsection 57.

14           It's my understanding that you wish to tender a  
15 plea under the tenets of North Carolina versus Alford. Is  
16 that correct?

17           **THE DEFENDANT:** Yes, sir.

18           **THE COURT:** And also Indictment 15-GS-46-1602. It's  
19 for violation of failure to register as a sex offender.  
20 That indictment reads that you, while in York County,  
21 between the dates of December 1st of '14 and January 7th  
22 of '15, did fail to register with the York County Sheriff's  
23 Office or notify them of a change of address under the  
24 provisions of 23-3-470. It's my understanding that you  
25 wish to plead guilty on that indictment.

1           **THE DEFENDANT:** Yes, sir.

2           **THE COURT:** And lastly, Indictment 15-GS-46-972, also  
3 for failure to register. That indictment reads that you,  
4 while in York County, on or about November 4th of '14,  
5 did fail to register as a sex offender in York County over  
6 at the Sheriff's Office in violation of the provisions  
7 of 23-3-470. It's my understanding that you wish to  
8 plead guilty under North Carolina versus Alford to that  
9 indictment. Is that correct?

10           **THE DEFENDANT:** Yes, sir.

11           **THE COURT:** Ms. Inzerillo, you represent Mr. Kennedy  
12 on these three matters?

13           **MS. INZERILLO:** Yes, Your Honor.

14           **THE COURT:** Have you explained to him the elements of  
15 all three offenses and its potential punishment?

16           **MS. INZERILLO:** Yes, Your Honor.

17           **THE COURT:** And under the two cases for the Alford  
18 pleas, which would be Indictments 15-973 and 15-972, do you  
19 have a belief that you're client is receiving a benefit as  
20 required under Alford for entering this plea?

21           **MS. INZERILLO:** Yes, Your Honor.

22           **THE COURT:** All right. Mr. Kennedy, you've been  
23 placed under oath. I'm gonna ask you a few questions. In  
24 the last twenty-four hours, have you taken any alcohol,  
25 drugs or medications?

1           **THE DEFENDANT:** No, sir.

2           **THE COURT:** Are you clear-headed right now?

3           **THE DEFENDANT:** Yes, sir.

4           **THE COURT:** Do you suffer from any disabilities,  
5 mental, physical or emotional ones, which would affect your  
6 understanding of what you're here for today?

7           **THE DEFENDANT:** No, sir.

8           **THE COURT:** Now if you wish to plead guilty on  
9 these indictments, you must waive your rights to defend  
10 yourself at trial. Do you understand?

11          **THE DEFENDANT:** Yes, sir.

12          **THE COURT:** Now on Indictment 15-GS-46-1602, you're  
13 pleading guilty to failure to register, second offense. On  
14 the other two, you're pleading under the tenets of North  
15 Carolina versus Alford, which means you're not admitting  
16 your guilt, but you have a belief that after examining the  
17 discovery the State has provided to you and your attorney  
18 that if the State calls the case to trial, presented its  
19 witnesses, its witnesses were believed, that more probable  
20 than not you would be convicted in spite of your denial  
21 that you did these two offenses, and, you receive a benefit  
22 for foregoing your right to defend yourself at trial in  
23 spite of your denial is a benefit in the sentence or a  
24 reduction of the charge or something to that offense --  
25 that effect, which causes you to want to avoid defending

1 yourself at trial. Do you have a belief that you're being  
2 conveyed a benefit by avoiding trial on these two offenses?

3 **THE DEFENDANT:** Yes, sir.

4 **THE COURT:** Now have you had enough time -- I'm sorry.  
5 Are you waving your right to defend yourself at trial on  
6 all three indictments freely and voluntarily?

7 **THE DEFENDANT:** Yes, sir.

8 **THE COURT:** Do you understand that if you went to  
9 trial the State would call witnesses and present  
10 evidence, your attorney would be allowed the right of  
11 cross-examination on your behalf? She could cross-examine  
12 the witnesses, challenge the introduction of the evidence,  
13 present defenses perhaps you may have available to you.  
14 You do not have to testify. The State's not allowed to  
15 call you as a witness in its case in chief and, likewise,  
16 the State is not allowed to utilize your silence against  
17 you in any way in the presence of the jury. Do you  
18 understand those rights?

19 **THE DEFENDANT:** Yes, sir.

20 **THE COURT:** And those are the rights you're giving up  
21 to enter these pleas?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** All right. Please tell me what happened.

24 **MS. JOYNER:** Your Honor, as to the shoplifting  
25 offense, Your Honor, this is a second offense -- or third

1 offense, I'm sorry, and the jurisdiction of the court is  
2 by virtue of multiple guilty pleas that were entered on  
3 -- all on the same day on March 6th of 2014 in Judge  
4 Benfield's court.

5 Your Honor, I've previously marked these. It was for  
6 purposes of a pre-trial hearing. I actually marked 1-A  
7 through 1-U to show all the different actual convictions.  
8 I believe there's twenty total counts of receiving stolen  
9 goods and obtaining property under false pretenses and the  
10 State's researched the legal issue and believes that those  
11 offenses would constitute two or more offenses for purposes  
12 of the enhancement statute.

13 Your Honor, as to the substantive facts of the  
14 shoplifting, had we proceeded to trial today the State  
15 would have presented the testimony of two loss prevention  
16 officers in addition to showing surveillance video. Your  
17 Honor, the surveillance video would show the Defendant  
18 -- the State's position is it would show the Defendant  
19 entering the Wal-Mart with his wife, Misty Williford  
20 Kennedy. They pulled into the parking lot at approximately  
21 12:30, 12:31. They were in the car for almost seven  
22 minutes before finally exiting the vehicle. They entered  
23 the store at about 12:39 PM, selected a buggy and by  
24 12:41:30 the Defendant is in the DVD section -- in that  
25 specific section with box sets -- expensive box sets. He

1 is seen on DVD selecting two box sets of a television  
2 series. One was True Blood and I can't remember what the  
3 other was, but it was identified by the loss prevention  
4 officer.

5 Loss prevention would have testified they became  
6 suspicious of the Defendant and his wife as they watched  
7 them next to the movie bin that was located close to the  
8 electronics section and they noticed an overwhelming number  
9 of these DVD's and Blu-ray's in the shopping cart, and that  
10 was a red flag to them; that it seemed odd that anybody  
11 would be buying so many at one time.

12 They followed the couple. These were plain-clothes,  
13 Your Honor, they looked like any other customers, loss  
14 prevention officers. They would testify they followed the  
15 couple across the other end of the store close to the  
16 grocery store section where they entered the -- the aisle  
17 that contained some bedding and pillowcases. One loss  
18 prevention officer would testify he was at one end of the  
19 aisle, another loss prevention officer was at the other  
20 end of the aisle, each having different advantage points,  
21 and they both would have testified that they observed  
22 Mr. Kennedy and the woman with him putting DVD's into her  
23 purse. One loss prevention officer had somewhat of an  
24 obstructive view in terms of looking through merchandise  
25 and through the racks. The other officer would have

1 testified that he had a clear and unobstructed view and was  
2 actually peering around the corner. Their surveillance  
3 video, unfortunately, did not -- was not on this particular  
4 aisle, but that's what the eyewitnesses testimony would  
5 have been.

6 They then followed them to the self-checkout. They  
7 were seen purchasing one DVD and according to the testimony  
8 and the surveillance video the facts would have shown they  
9 went to walk out of the store, the alarm went off because  
10 the DVD's in the female's bag. The Defendant stayed behind  
11 holding the receipt while the female exited the store, ran  
12 from loss prevention, actively evading them, understanding  
13 that they were -- they were trying to get her to come back  
14 into the store.

15 The video then shows loss prevention approaching the  
16 Defendant as he's trying to leave the store. Mr. Casey  
17 Davidson would have testified the Defendant said "I got a  
18 receipt, you've got nothing on me", and then he then walked  
19 out of the store as well.

20 They notified the police. Detective Mumaw of the  
21 York Police Department happened to be in the area, observed  
22 Mr. Kennedy matching the description that had been called  
23 out by dispatch and observed the loss prevention officers  
24 walking not far behind him and he did stop and apprehend  
25 Mr. Kennedy. And those are the facts, Your Honor.

1           As to the shoplifting, I'll tell you that the  
2 merchandise was never recovered. The State's position  
3 was that Ms. Williford was able to get away with the  
4 merchandise.

5           Your Honor, the next case for the facts is Indictment  
6 2015-GS-46-00972, failure to register as a sex offender.  
7 For the purpose of this plea and -- and the next, Your  
8 Honor, I have three Court's exhibits. Court's Exhibit 2  
9 is Indictment 2003-GS-46-2422. Court's Exhibit 3 is  
10 2003-GS-46-2423. Your Honor, these are certified  
11 convictions of his lewd act convictions from 2003 and  
12 he's on the sex offender registry by virtue of those  
13 convictions. Court's Exhibit 4 is the one prior  
14 enhanceable failure to register as a sex offender,  
15 2014-GS-46-00628. I'm gonna ask to enter Court's  
16 Exhibits 1 through 4 and make those a part of the record.

17           Your Honor, the facts as to this charge are if  
18 the State had proceeded to trial, we would have presented  
19 testimony from officers with the York County Sheriff's  
20 Office. The Defendant is a registered sex offender by  
21 virtue of the convictions contained in Court's Exhibit 2  
22 and 3; that by virtue of that conviction, he's required to  
23 register four times a year: During the month of his birth,  
24 March, June, September and, again, in December. That on  
25 October 1st of 2014 he registered late, but he did make

1 -- they counted that as his September registration. He  
2 registered an address at [REDACTED] Brookview Court, which is  
3 within Rock Hill, within the County of York. He appeared  
4 in person and stated that he lived in the residence.

5 On November 4th, Detective Strait of the York County  
6 Sheriff's Office went to the residence to do an in-person  
7 verification and was unable to verify that he lived there.  
8 He did encounter a handyman who stated that the house was  
9 under renovation and no one lived there. Unfortunately,  
10 the detective did not document the name of the person he  
11 spoke with, did not actually see the inside of the home,  
12 and we were unable after due diligence to locate that  
13 handyman, so we would not have been able to present that  
14 piece of information at this trial; however, we would have  
15 -- could have presented in support of the charge the fact  
16 that when the Defendant was arrested by York PD on the  
17 shoplifting charge on November 6th, which was within  
18 the time range of this case, that he did not provide  
19 the address of [REDACTED] Brookview Court, he affirmatively gave  
20 another address of his mother's address on McFarland Road,  
21 and he does not reside there and has never resided there.

22 We also would have presented in this case multiple  
23 jail phone calls that occurred between Mr. Kennedy and a  
24 person we believe to be his wife, the same person from  
25 the shoplifting, and those conversations would have .

1 supported the State's position that they at the very  
2 least temporarily were gone from the residence due to  
3 those renovations and that they had not been staying  
4 there prior to his arrest and we would have presented  
5 those in support of that second charge.

6 Your Honor, as to the final charge for failure to  
7 register as a sex offender, 2015-009 -- I'm sorry,  
8 2015-01602, he's pleading guilty to that charge, and  
9 the fact are, again, he's required to register. He was  
10 required to register and during the month of December  
11 of 2014. He failed -- he failed to register at all, did  
12 not come in, and he was arrested on June -- I'm sorry,  
13 on January 8th of 2015, never having made his December  
14 registration.

15 Your Honor, those are the facts and the State does  
16 have a position on sentencing at the appropriate time.

17 **THE COURT:** All right. As to the change of  
18 address, failure to register, the one he's pleading guilty  
19 to --

20 **MS. INZERILLO:** Right. Yes, Your Honor.

21 **THE COURT:** -- are those facts accurate, what he  
22 didn't do, the failure to notify a change of address?

23 **MS. INZERILLO:** The one where he did not actually  
24 come and re-register from December/January, yes.

25 **THE COURT:** Okay. So those facts are accurate.

1           Now on the other two, are those facts accurate as  
2 to what was represented by the State that they would  
3 intend to prove at trial, for the purposes of this Alford  
4 plea, are those facts accurate as to what the State  
5 represented to Mr. Kennedy and you, Ms. Inzerillo, that  
6 they would intend to present at trial?

7           **MS. INZERILLO:** Your Honor, it was not represented  
8 to the defense that -- the portions that Detective Strait  
9 did not get the name of the handyman, did not intend to  
10 present that piece of evidence, and did not enter into  
11 the house to verify that, and that certainly may have  
12 impacted Mr. Kennedy's decision to enter this plea and  
13 certainly may have impacted my advice to him on that. What  
14 had been presented to us by the State was that that was  
15 the information that they had and it was never further  
16 clarified that Detective Strait never actually had that  
17 person's information to be passed along.

18           **MS. JOYNER:** I -- I felt like that was clear from our  
19 -- our discovery.

20           **THE COURT:** All right. Well, regardless, do you need  
21 more time?

22           **MS. INZERILLO:** May I have -- just have --

23           **THE COURT:** Sure.

24           (Discussion between Ms. Inzerillo and the Defendant.)

25           **MS. INZERILLO:** Your Honor, after conversing with

1 Mr. Kennedy he still wishes to go forward.

2 **THE COURT:** All right.

3 All right. Now -- so, Mr. Kennedy, other than the  
4 representation of whether the witness was available or  
5 not regarding the handyman's name, other than that slight  
6 discrepancy, were the other facts represented to you  
7 consistent with the facts represented to you that would be  
8 presented at trial?

9 **THE DEFENDANT:** (Indicating.)

10 **THE COURT:** You can have a minute.

11 (Discussion between Ms. Inzerillo and the Defendant.)

12 **THE DEFENDANT:** Yes, sir.

13 **THE COURT:** Okay. And do you agree with the Court  
14 that the reduction from failure to register third offense  
15 to a second alleviates a 3- to 5-year sentence down to a  
16 366-day sentence is a benefit to you from the exposure of  
17 a minimum of a 3-year sentence down to a 1-year sentence?  
18 Is it your understanding that is a benefit to you by  
19 entering this plea under Alford?

20 **THE DEFENDANT:** Yes, sir.

21 **THE COURT:** Okay. Do you understand the shoplifting  
22 enhanced, you've got some priors, property offenses, this  
23 shoplifting charge, even though it's entered under Alford,  
24 can still be used against you later if a future property  
25 offense occurs and yet it will still be enhanceable? Do

1. you understand that?

2.       **THE DEFENDANT:** Yes, sir.

3.       **THE COURT:** Do you also understand these two failures  
4. to register can be counted as priors against you and future  
5. failures to register would also be enhanceable to a third  
6. by virtue of entering either of these two pleas, the one  
7. under Alford or the one straight away? Do you understand  
8. that?

9.       **THE DEFENDANT:** Yes, sir.

10.       **THE COURT:** Have you had enough time to discuss  
11. this entire plea with Ms. Inzerillo?

12.       **THE DEFENDANT:** Yes, sir.

13.       **THE COURT:** Has she answered all your questions?

14.       **THE DEFENDANT:** Yes, sir.

15.       **THE COURT:** Are you satisfied you understand her  
16. advice and counsel?

17.       **THE DEFENDANT:** Yes, sir.

18.       **THE COURT:** And you've understood your conversations  
19. with her?

20.       **THE DEFENDANT:** Yes, sir.

21.       **THE COURT:** Are you satisfied with the advice she's  
22. given you?

23.       **THE DEFENDANT:** Yes, sir.

24.       **THE COURT:** And are you entering these pleas, the two  
25. under Alford and the one under -- the straight up, are you

1 entering those freely and voluntarily?

2 **THE DEFENDANT:** Yes, sir.

3 **THE COURT:** And under the one failure to register,  
4 the December failure to register, are you pleading guilty  
5 to that offense because you are, in fact, guilty of not  
6 registering in December of '14?

7 **THE DEFENDANT:** Yes, sir.

8 **THE COURT:** Has anyone promised you anything other  
9 than a plea to the shoplifting third or more and the two  
10 failure to registers second, one under Alford, one not,  
11 other than that plea, has anyone offered you anything else  
12 of value to get you to plead guilty?

13 **THE DEFENDANT:** No, sir.

14 **THE COURT:** Has anyone threatened you or coerced you  
15 to get you to enter these pleas?

16 **THE DEFENDANT:** No, sir.

17 **THE COURT:** You're doing it of your own free will?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** Regarding indictment 15-GS-46-1602, I find  
20 that Michael Christopher Kennedy has made a free, knowing  
21 and intelligent plea of guilt to violation of registering  
22 as a sex offender, second offense. He's entered this plea  
23 with advice and counsel of an attorney of who he states  
24 he's satisfied and the State has provided facts to support  
25 it. I forgot to ask you this.

1           **THE DEFENDANT:** Yes, sir.

2           **THE COURT:** Do you understand you're currently on  
3 supervision of probation?

4           **THE DEFENDANT:** Yes, sir.

5           **THE COURT:** Do you understand that these pleas could  
6 be constituted as a willful violation of the terms of your  
7 supervision?

8           **THE DEFENDANT:** Yes, sir.

9           **THE COURT:** Understanding they can be used against you  
10 as violations of supervision, do you still want to plead  
11 guilty?

12           **THE DEFENDANT:** Yes, sir, I do.

13           **THE COURT:** And have you discussed that with  
14 Ms. Inzerillo?

15           **THE DEFENDANT:** Yes, sir.

16           **THE COURT:** Has Probation discussed with you their  
17 posture as a result of these two -- three pleas?

18           **MS. INZERILLO:** They have not, Your Honor, but they  
19 generally don't.

20           **THE COURT:** Okay. Fair enough. Regarding Indictments  
21 15-GS-46-972 and 973, I find that Michael Christopher  
22 Kennedy has made a free, knowing and intelligent plea of  
23 guilt under the tenets of North Carolina versus Alford.  
24 He's been conveyed a benefit of the reduction of a 3- to  
25 5-year offense to a 366-day offense. He's entered these

1 two pleas with advice and counsel of an attorney of whom  
2 he states he's satisfied; that the State could prove the  
3 facts if their witnesses were believed on those two  
4 charges, and that the plea will be accepted under the terms  
5 of North Carolina versus Alford. And Indictment 1602 is  
6 also accepted.

7 All right. Do we want to hear from Probation first?

8 **MS. INZERILLO:** Yes, Your Honor.

9 **THE COURT:** All right. He's set to plead to three  
10 convictions. Let's hear from you, ma'am.

11 **PROBATION AGENT:** May it please the Court, Your Honor?

12 **THE COURT:** Yes.

13 **PROBATION AGENT:** On March the 6th, 2014, Judge Kinard  
14 sentenced him in Indictment 2014-GS-46-628 for sex offender  
15 registry violation, first offense. He ordered one year  
16 upon time served, balance suspended to two years probation.  
17 Restitution in the amount of \$254 and fines and costs and  
18 assessments. He had one prior violation on March 28, 2014.  
19 A warrant was issued for use of cocaine and marijuana.  
20 He was arrested and held in jail awaiting bed space for  
21 inpatient treatment by Judge Hayes.

22 The present violations consist of the subject failed  
23 to follow advice and instruction of the supervising agent  
24 by failing to report to Probation -- to the Probation  
25 Office on the day of his release or the next business day

1 from inpatient treatment at Morris Village on 9-9-2014.  
2 The subject moved from his stated address of [REDACTED] Brookview  
3 Court, Rock Hill, South Carolina, without permission from  
4 the agent making his whereabouts unknown, thereby  
5 absconding supervision. He failed to pay restitution being  
6 \$140 at the issuance of the warrant, in arrears, failed to  
7 pay supervision fees, being \$350 in arrears at the issue of  
8 the warrant. And this violates Sections 1, 2, 7, 9, 10 and  
9 additional conditions. The warrant was served on the 7th  
10 day of November, 2014.

11 The probation agent in this case was recommend --  
12 is recommending a revocation and impose lifetime GPS  
13 monitoring as this case applies to Jessie's Law. I think  
14 there's some discussion about that. I'm not really sure on  
15 that part of it. He has served approximately four months  
16 with being held on a warrant and inpatient treatment. If  
17 he, in fact, is gonna get more than the -- what's on the  
18 case -- what's left on the case, we would not oppose just  
19 to terminate the probation case and do a civil judgment.

20 **THE COURT:** All right. Ms. Inzerillo, let's hear from  
21 you.

22 **MS. INZERILLO:** Your Honor, I would like to start with  
23 the mandatory GPS as referenced by Probation. Ms. Joyner  
24 and I have actually discussed this and from my review of  
25 the statute, and I believe she went a little further and

1 discussed it with the agent in charge at Probation, and it  
2 does not appear to us that it would require mandatory GPS  
3 in this case and with the -- I believe what he's under  
4 probation certainly -- and I'd ask Ms. Joyner to correct me  
5 if I say anything wrong and to enlighten the Court with  
6 anything that -- that she's learned, but it's our belief  
7 that it would not require mandatory GPS, so we would ask  
8 the Court not to impose that on Mr. Kennedy in relation to  
9 this probation violation as we don't think the underlying  
10 charges require that.

11 **MS. JOYNER:** Well, Your Honor, I didn't -- I don't  
12 understand the reasoning exactly, but the agent did come to  
13 my office last court week and we did a conference call with  
14 Dwight Burns, who's, I think, the agent in charge, and he  
15 stated that his view was that it was not -- GPS was not  
16 required for a violation on this charge and I thought the  
17 agent had intended to scratch through that provision. That  
18 was the last communication I had last court week, but I  
19 don't want to -- to say anything further than that. That  
20 was my last discussion, which would have been Monday or  
21 Tuesday of last week.

22 **MS. INZERILLO:** Correct.

23 **THE COURT:** Okay.

24 **MS. INZERILLO:** Further, Your Honor -- Your Honor,  
25 essentially the -- the progression of this case was

1 Mr. Kennedy was scheduled to go forward with a jury trial  
2 today on the shoplifting. Ms. Joyner has done a pretty  
3 thorough outline of the facts. I think what's clear is  
4 Mr. Kennedy himself wasn't on his own shoplifting anything,  
5 but the specter of what the jury would hear through the  
6 thread of her case is that he was charged with helping his  
7 wife do so. And certainly we could have crossed and tried  
8 to poke holes in that, but I think there was a likelihood  
9 they would have seen through that and convicted him.

10 Following that, Your Honor, I think the plan for this  
11 week or perhaps another term was to do a bench trial on the  
12 failure to register for which he was -- presented an Alford  
13 plea. The -- the reason for that was -- and certainly not  
14 to quibble over, you know, what Ms. Joyner's turned over  
15 because she is actually really good about turning over  
16 items to the defense, but essentially Mr. Kennedy was  
17 living at Brookview Court. The -- that house is owned by  
18 his mother-in-law, he stays there with his wife, they were  
19 -- they were doing renovations there, and it's our belief  
20 that the day that the detective went out there they weren't  
21 there because they had to move temporarily and stay at a  
22 hotel because of those renovations that were happening in  
23 the house, and so it was Mr. Kennedy's request to have a  
24 bench trial to essentially have his mother-in-law come in  
25 and explain to the judge it was -- you know, that he was

1 living there, it was her belief that he was living there,  
2 and moved back in shortly thereafter.

3       You can see from the dates even specified on the  
4 indictment it wasn't a long-term move out, I think it was  
5 four or five days that's listed on the indictment, and so  
6 I think the reason for his confusion was he wanted the  
7 Court to be aware even despite any misunderstandings  
8 between us as to what she would present. It was our intent  
9 to present his mother-in-law and have her take the stand  
10 to explain that she was the owner of the house and that  
11 they still did reside there and so he does contest anything  
12 with Probation that he did move from that address.

13       However -- and that certainly applies to the Alford  
14 plea and that's why he's chosen to plead guilty to the  
15 third one because he's always maintained that while he was  
16 trying to get in touch with the detectives that handle  
17 sex offender registry and he just didn't get in touch with  
18 them through the holidays and tried to contact them and  
19 the office was closed and then they picked him up before he  
20 was able to take care of his registration. So he not want  
21 to mislead the Court on that. He felt like he had -- he  
22 did have reasons to take the first two to trial for, you  
23 know, a bench trial or a jury trial, but did not wish to  
24 pursue the third one because he did feel that he was guilty  
25 on that.

1           Your Honor, Mr. Kennedy, he has to serve a 366-day  
2 sentence on the two failures to register. We would ask  
3 the Court to run those concurrently. On the shoplifting  
4 charge, Your Honor, it is a third essentially from a  
5 clump of charges that happened that he pled to in order  
6 to get a deal that involved him testifying against some  
7 co-defendants. It was sort of a package deal that he  
8 pled to, I believe, in 2014. In order to work on this  
9 global deal that involved him testifying in a case that is  
10 actually still on-going now, he had to plead to a slew of  
11 about twenty-two magistrate charges and so it is a third,  
12 I think, by virtue of the state of the law these days and  
13 sort of the clump, he doesn't have a long history of sort  
14 of thievery dating back a long way, but, you know, I have  
15 advised him that I do think it is a third by virtue of  
16 that. He's explained to me that the priors came up through  
17 sort of a misunderstanding with a family member, but he  
18 did agree with the prior attorney to plead to those in  
19 order to get that sort of global deal.

20           Your Honor, we would ask the Court to accept the  
21 recommendation of the State. I don't know if I should  
22 call it a recommendation, but to terminate -- not the  
23 State, Probation to terminate probation, any restitution  
24 to convert that to a civil judgment, and to sentence  
25 Mr. Kennedy to something around the 366 days. It's my

1 understanding he's got to pretty much serve all of that.  
2 I've spoken with him about that, so something maybe around  
3 a 1- to 2-year sentence to take care of all of this. He  
4 has served, I believe, about ten days in jail prior to  
5 this and we would ask for credit for that as well.

6 **THE COURT:** Anything you'd like to say?

7 **THE DEFENDANT:** Uh --

8 **THE COURT:** You don't have to.

9 **THE DEFENDANT:** Just pretty much what she said pretty  
10 much covers it. I mean, I -- I did not, like, change  
11 addresses or nothing like that. I mean, I did have to  
12 temporarily stay at a hotel room, but other than that, I  
13 mean -- I mean, according to what I read on that and what  
14 was given to me, paperwork by the sheriff's department, you  
15 have ten days if it's a temporary residence, I was only  
16 there six, so I don't feel like I had really done anything  
17 wrong on that. That's pretty much it.

18 **THE COURT:** Okay. All right. Ms. Joyner.

19 **MS. JOYNER:** Thank you, Your Honor. I'd like to  
20 read Mr. Kennedy's full criminal history first. In 2000,  
21 and I think he would have been 26 at the time that he  
22 was convicted of his first charge, he was convicted of  
23 criminal conspiracy and burglary second, nonviolent. He  
24 received a sentence of 15 years suspended on 90 days and  
25 five years probation. In 2003, following a jury trial,

1 he was convicted of two counts of lewd act, and I believe  
2 it was involving two separate victims, and he received a  
3 15-year sentence. He was revoked in full.

4 Your Honor, he was in the Department of Corrections  
5 until June 1st of 2010. He initially registered with  
6 the Sheriff's Office on June 2nd of 2010. In 2011, he  
7 was convicted of driving under suspension. In 2011, he  
8 was also arrested for another count of driving under  
9 suspension, but he was not convicted of that offense  
10 until 2012. He was also charged in October of 2012 with  
11 a violation of sex offender registry. That was handled  
12 in magistrate's court, Your Honor, and it was actually a  
13 trial in his absence and he was unrepresented, so we  
14 were unable to use that conviction. He's -- but my  
15 understanding is that warrant was outstanding for quite  
16 some time and he was not arrested until 2013. There would  
17 have been a huge gap in his -- his registration and I  
18 believe that -- and I ask you to correct me if I'm wrong,  
19 but that he was not arrested on that charge until he was  
20 arrested on these other charges in November of 2013.

21 He was arrested at that time for another failure to  
22 register as a sex offender and the clump of the property  
23 offenses that are a part of Court's Exhibit 1 and he  
24 did ultimately make a plea deal in which he testified  
25 against a co-defendant on a burglary charge. In 2014,

1 Your Honor, those were those convictions, the failure to  
2 register as a sex offender, he did plead as a first, and  
3 that was in March of 2014, and those property offenses.

4 I do wish to point out to the Court that although  
5 the record -- if you just look at his record does not seem  
6 as bad as it actually is until you understand how long he  
7 was actually incarcerated. He was actually incarcerated  
8 from 2003 until 2010 and since he was released from the  
9 Department of Corrections in June of 2010, he's been in  
10 trouble in some capacity during every calendar year. He  
11 certainly is an individual who, I think, has been placed on  
12 probation before, he violated and was revoked in full for  
13 his 2000 convictions. He's now before the Court on another  
14 probation violation, multiple issues with the sex offender  
15 registry. I'd ask the Court to impose a lengthy sentence  
16 on him, to consider something in the top range of the ten  
17 years that's available under the shoplifting or somehow  
18 stack charges to reach something much greater than what the  
19 defense is asking. He will -- I believe Mr. Kennedy will  
20 continue to be a problem in York County and will continue  
21 to commit crimes. Probation does not seem to help him.

22 **MS. INZERILLO:** Your Honor, Mr. Kennedy did wish  
23 to clarify that the convictions for lewd act was one, I  
24 believe, victim.

25 **MS. JOYNER:** I apologize, Your Honor.

1       **THE COURT:** Okay. Any objection to having -- the four  
2 Court's exhibits, making those a part of the record also?

3       **MS. INZERILLO:** No, Your Honor.

4       **THE DEFENDANT:** Very well. So 1-A through 1-U --

5       **MS. JOYNER:** Yes, sir.

6       **THE COURT:** -- is one exhibit, and then 2, 3 and 4.  
7 They're clasped together.

8       (Court's Exhibits 1-A through 1-U and Court's Exhibits  
9 2, 3 and 4 were entered into evidence.)

10       **THE COURT:** Okay. Anything else? I think I've  
11 already accepted the pleas for purposes of the probation  
12 violation. The probation violation, I believe, is a little  
13 less than eight months left.

14       **PROBATION AGENT:** Yes, sir.

15       **THE COURT:** Just revoke it in full and end the case.

16       **PROBATION AGENT:** Okay.

17       **THE COURT:** And then convert it into civil judgments.

18       **PROBATION AGENT:** Okay.

19       **THE COURT:** On the two failures to register, 366 days  
20 each. Credit for the ten days he's already done. On the  
21 shoplifting enhanced, the sentence of the Court is you're  
22 to be confined for forty-eight months. He gets credit for  
23 the ten days on that. I'm gonna run them all concurrent.

24       Mr. Kennedy, you need to straighten up, buddy.

25       **THE DEFENDANT:** Yes, sir.

1           **THE COURT:** Good luck to you.

2           **MS. INZERILLO:** Thank you, Your Honor.

3           **MS. JOYNER:** Thank you, Your Honor.

4           (Whereupon, the proceedings were concluded at  
5 11:58 AM.)

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## C E R T I F I C A T E

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I, Stacy S. Johnson, Official Court Reporter for the Eleventh 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 the evidence introduced in the hearing of the captioned case in Circuit Court on the 27th day of May, 2015.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

January 22, 2016

*s/ Stacy S. Johnson*  
STACY S. JOHNSON, RPR  
CIRCUIT COURT REPORTER

FORM 5

20156940 - 3222

STATE OF SOUTH CAROLINA )

County of YORK )

#296992 Michael Christopher Kennedy )  
Full name and prison number (if any) of Applicant )

v. )

State of South Carolina )

IN THE COURT OF COMMON PLEAS

APPLICATION FOR  
POST-CONVICTION RELIEF

DAVID HAMILTON  
C.C.P. & S.S.  
YORK COUNTY, SC

DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

FILED - RECEIVED  
2015 OCT 22 PM 2:34  
2015 OCT 26 AM 10:14  
CERTIFIED TRUE COPY  
Seal of York County

**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make 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 Kershaw Correctional Institution
2. Name and location of Court which imposed sentence 16<sup>th</sup> Circuit  
YORK County, Mass Justice Center York, SC
3. Name(s) of co-defendant(s) (if any) \_\_\_\_\_
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) Shoplifting (enhancement) Docket # 2015-GS-4600973
  - (b) \_\_\_\_\_

- (c) \_\_\_\_\_
- 5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) May 27, 2015 48 months non violent
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
- 6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty \_\_\_\_\_
  - (b) after a plea of not guilty \_\_\_\_\_
  - (c) after a plea of nolo contendere NC vs Alford
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?  
No
- 8. If you answered "yes" to (7), list:
  - (a) the name of each Court to which you appealed:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (b) the result in each such Court to which you appealed:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (c) the date of each such result:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (d) if known, citations of any written opinion or orders entered pursuant to such results:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
- 9. If you answered "no" to (7), state your reasons for not so appealing:
  - (a) Did not receive notarized statement until 10/1/15
  - (b) \_\_\_\_\_

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

- (a) Mitigating circumstances due to new evidence
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) Person who committed crime has made sworn statement of my innocence
- (b) They have been sentenced on the crime
- (c) They have paid restitution for the crime

12. Prior to this application have you filed with respect to this conviction: NO

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-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. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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) New found evidence
- (b) Not available to me or court until 10/1/15
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? \_\_\_\_\_
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
- (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. Melissa Inzirello  
York County Public Defender's Office PO Box 691 1675-1E YORK HWY
- ii. \_\_\_\_\_  
York, SC 29745
- iii. \_\_\_\_\_

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

- i. Arrest, Plea, Sentencing
- ii. ~~\_\_\_\_\_~~
- iii. ~~\_\_\_\_\_~~

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

Retrial

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

No

STATE OF SOUTH CAROLINA )

County of YORK )

VERIFICATION

I, Michael Christopher Kennedy, 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.

Michael C. Kennedy

SWORN to and subscribed before me this 16<sup>th</sup> day of October, 2015.

Catharine A. Amerson (L.S.)  
Notary Public

My Commission Expires: ~~My Commission Expires~~ December 22, 2018

Revised 3/2003

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

I, Michael Christopher Kennedy, 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.

Michael C. Kennedy  
Applicant

SWORN or affirmed to and subscribed before me this  
16<sup>th</sup> day of October, 2015.

Carlisle A. Amos  
Notary Public

My Commission Expires: My Commission Expires December 22, 2018

Revised 3/2003

2015CP46-3222

October 1, 2015

DAVID HAMILTON  
C.O.C.P. & S.S.  
YORK COUNTY, SC

FILED-RECEIVED  
2015 OCT 22 PM 2:31

To Whom It May Concern:

My name is Misty Williford. I am writing because Michael C. Kennedy is incarcerated for a crime he did not commit. On November 7<sup>th</sup>, 2014 I committed a crime by shoplifting in Walmart in York, SC. Mr. Kennedy was arrested for it. He did not know that I was shoplifting nor did he assist in this crime in ANY way. I have been arrested and convicted of this crime. I have paid the restitution and fines for My offense and I ask that you please reevaluate your conviction of Mr. Kennedy. You can plainly see in the evidence footage that Mr. Kennedy had no part of the crime. I have stated this many times.

Thank you.

Misty Williford

Brookview Court

Rock Hill, SC 29732

803-487-0843

*x* Misty Williford

*Notary for County of York SC*  
*[Signature]*

*10-15* My Commission Expires  
November 16, 2017

CERTIFIED TRUE COPY  
2015 OCT 26 AM 10:47  
DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

*[Signature]*

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	OF THE SIXTEENTH JUDICIAL CIRCUIT
	)	
	)	
Michael Christopher Kennedy,	)	
S.C.D.C. No. 296992,	)	2015-CP-46-3222
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed October 22, 2015 the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The York County Grand Jury indicted the Applicant at the May term of General Sessions for shoplifting (enhancement) (2015-GS-46-00973) and two counts of violation of sex offender registry (failure to register), second offense (2015-GS-46-01602, -00972). Melissa Inzirello, Esquire represented the Applicant.

On May 27, 2015 the Applicant pled no contest under N.C. v. Alford. The Honorable Eugene C. Griffith, Jr., sentenced the Applicant to forty-eight (48) months imprisonment for shoplifting, three hundred sixty-six (366) days imprisonment for violation of sex offender registry, failure to register and three hundred sixty-six (366) days imprisonment on the second

count of violation of sex offender registry, failure to register, to be served concurrently. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the York County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.

## II.

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

1. Ineffective assistance of counsel.
  - a. "Did not receive notarized statement until 10/1/15."
  - b. "Person who committed crime has made a sworn statement of my innocence."
  - c. "They have been sentenced on the crime."
  - d. "They have paid restitution for the crime."

## III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged 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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

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

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

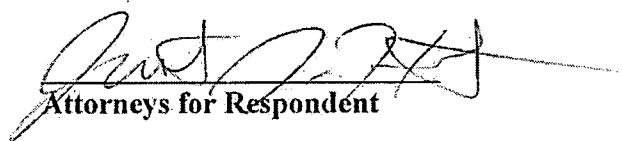
ALAN WILSON  
Attorney General

JOHN W. MCINTOSH  
Deputy Attorney General

JUSTIN J. HUNTER  
Assistant Attorney General

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

By:

  
Attorneys for Respondent

March 10, 2016

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF YORK )

IN THE COURT OF COMMON PLEAS

2015-CP-46-3222

MICHAEL C. KENNEDY, #296992 )  
 )  
Applicant, )

vs )

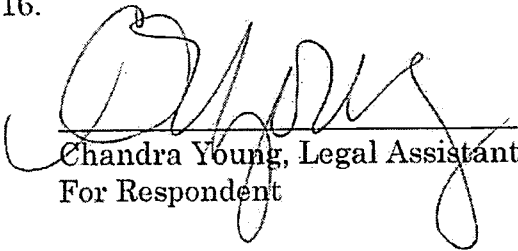
AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA, )  
 )  
Respondent. )  
\_\_\_\_\_ )

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

Leah B. Moody, Esquire  
235 East Main Street; Suite 115  
Rock Hill, SC 29730

DATED this 10<sup>th</sup> day of March , 2016.



Chandra Young, Legal Assistant  
For Respondent

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STATE OF SOUTH CAROLINA  
COURT OF COMMON PLEAS  
COUNTY OF YORK  
2015-CP-46-03222

Michael Kennedy

vs.

State of South Carolina

York, South Carolina

April 19, 2016

Before the Honorable Frank Addy

APPEARANCES

For the State: Justin Hunter

For the Applicant: Leah Moody

Reported by: Michael C. Watkins

Official Court Reporter

1	Michael Kennedy:	3
2	Misty Willaford:	13
3	Melissa Inzerillo:	21
4	Certificate:	28

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NO EXHIBITS

1 MR. HUNTER: May it please the Court, Your Honor?

2 THE COURT: Yes, sir.

3 MR. HUNTER: The next case is Michael Kennedy versus  
4 the State of South Carolina, it's 2015-CP-46-3222. Your  
5 Honor, he was indicted at the May 2015 term of the York  
6 County grand jury for shoplifting with enhancement, and  
7 just for background, in this guilty plea he also pled  
8 guilty to two other charges that he is not challenging in  
9 this application. So he was represented by Ms. Melissa  
10 Inzerillo. On May 27th, 2015, he pled no contest under  
11 North Carolina versus Alford before the Honorable Eugene C.  
12 Griffith, Jr. He was sentenced to 48 months imprisonment,  
13 he did not file notice of appeal. On October 22nd of 2015  
14 he filed this current application. He's present in court  
15 today represented by Ms. Leah Moody.

16 THE COURT: Ms. Moody?

17 MS. MOODY: Thank you, Your Honor. May I call my  
18 first witness, Michael Kennedy?

19 THE COURT: Sir, if you would come.

20 The witness, MICHAEL KENNEDY, was first duly sworn and  
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MS. MOODY:

24 Q Mr. Kennedy, could you please state your full name for  
25 the record?

## MICHAEL KENNEDY - DIRECT

1 A Michael Christopher Kennedy.

2 Q Where are you currently incarcerated?

3 A Kershaw Correctional.

4 Q And how long have you been at Kershaw Correctional?

5 A July 5th of last year.

6 Q And you heard the caption of the case, you're there on  
7 the charges of shoplifting and two other charges that you  
8 are not challenging, correct?

9 A Yes, ma'am.

10 Q And you're shoplifting charge, it carries -- the  
11 sentence you received was 48 months?

12 A Yes, ma'am.

13 Q Who was your attorney in that case?

14 A Melissa Inzerillo.

15 Q And was she your only attorney in this case?

16 A Yes, ma'am.

17 Q Did you have an opportunity to meet with Ms.  
18 Inzerillo?

19 A A few times, yes, I did.

20 Q And what, if anything, did you all discuss?

21 A Well, a couple of times we discussed where some plea  
22 bargains were offered or whatever and I told her I didn't  
23 want to take them because I was innocent.

24 Q And as to the shoplifting charge, was there a  
25 codefendant in this case?

## MICHAEL KENNEDY - DIRECT

1 A Yes, there is.

2 Q And who was that codefendant?

3 A That would be Misty Willaford (phonetically.)

4 Q And just for background for the Court, this was a  
5 shoplifting case that took place at Wal-Mart.

6 A Yes, ma'am.

7 Q Now, you filed this PCR application against Ms.

8 Inzerillo, correct?

9 A Yes, I reckon that's how it went. I mean, I filed it  
10 with the after-discovered evidence or whatever, but it all  
11 ends up being ineffective assistance of counsel I'm sure.

12 Q And so one of the grounds you indicate as far as  
13 ineffective assistance of counsel is your counsel did not  
14 receive a notarized statement until 2000 -- or excuse me,  
15 October 1st of 2015.

16 A I received that. It wasn't available until that  
17 time, I was unable to get it in my possession until that  
18 time.

19 Q Can you explain to the Court, what is this notarized  
20 statement?

21 A It's Ms. Willaford's admission of guilt and the fact  
22 that she admits that I had no participation or knowledge  
23 of her act.

24 Q Of her act of --

25 A Of shoplifting.

## MICHAEL KENNEDY - DIRECT

1 Q Okay. So she's saying you weren't involved in the  
2 shoplifting?

3 A Yes, ma'am. I have it with me if you would like me  
4 to read it.

5 Q Sure.

6 A Does it need to be introduced?

7 Q No.

8 MS. MOODY: Just for the record, Your Honor, it was  
9 attached to his application and the State has a copy of it  
10 as well.

11 A It says, "October 1st of 2015. To whom it may  
12 concern. My name is Misty Willaford. I am writing  
13 because Michael C. Kennedy is incarcerated for a crime he  
14 did not commit. On November 7th, 2014 I committed a crime  
15 of shoplifting in Wal-Mart in York, South Carolina. Mr.  
16 Kennedy was the one arrested for it. He did not know that  
17 I was shoplifting nor did he assist in this crime in any  
18 way. I have been arrested and convicted of this crime, I  
19 have been paid the restitution and fines for my offense,  
20 and I ask that you please reevaluate your conviction of  
21 Mr. Kennedy. You can plainly see in the evidence that Mr.  
22 Kennedy had no part of the crime. I have stated this many  
23 times. Thank you, Misty Willaford."

24 Q And that document is what you attached to your  
25 application?

## MICHAEL KENNEDY - DIRECT

1 A Yes, ma'am. It was notarized and sworn in front of a  
2 notary public.

3 Q It's attached to your application, right?

4 A Yes, ma'am.

5 Q Okay. So you are stating this was newly discovered  
6 evidence. Explain to the Court how this is newly  
7 discovered evidence.

8 A I was unable to receive any verification from her of  
9 her admission of this and the fact that I had nothing to  
10 do with the crime until this was received by me.

11 Q Did you explain that to your attorney?

12 A Actually, like I said at that time, I didn't have any  
13 way to prove anything whenever I went to court other than  
14 the video evidence.

15 Q But the question is did you explain that to your  
16 attorney?

17 A No, ma'am.

18 Q So -- go ahead.

19 A You're saying explain the letter, right? What I --

20 Q No, Ms. Misty Willaford's actions in Wal-Mart.

21 A Other than the fact that I told her that I did not do  
22 it, no. I said that someone else did it, that I didn't do  
23 it.

24 Q So you didn't provide the name to your attorney.

25 A No, ma'am.

## MICHAEL KENNEDY - DIRECT

1 Q What, if anything, did you discuss with your attorney  
2 about your plea?

3 A I ended up agreeing to do the North Carolina versus  
4 Alford plea simply because I will state that I am innocent  
5 of the crime, and I was informed that North Carolina  
6 versus Alford does not state that I'm actually admitting  
7 guilt to the crime, I'm just accepting the punishment for  
8 it was how it was explained to me, which is why I did it,  
9 take that punishment. But on had -- I had this available  
10 at that time, or had been able to get in contact with her,  
11 Misty Willaford and had her to be able to actually appear  
12 at court I would not have taken that plea, I would have  
13 went to trial.

14 Q So when you met with your attorney you all -- were you  
15 headed to trial or were you headed always to plead?

16 A Originally to trial.

17 Q Okay. And when did you accept the plea offer?

18 A When I was unable to contact Ms. Willaford at that  
19 time and have any kind of verification of the fact that I  
20 was innocent other than the video evidence, I felt like  
21 just the video evidence along without her admission of  
22 guilt and the admission that I had no participation of it  
23 would not have been strong enough in front of the jury.

24 Q Did you discuss that with your attorney?

25 A Yes, ma'am, I did. And also my mother was going to

## MICHAEL KENNEDY - DIRECT

1 be willing to testify as well to Misty Willaford's  
2 admitting to her as well, but it was told to me it would  
3 have been hearsay evidence without Misty being present  
4 testifying.

5 Q Now, so you're asking the Court to allow this evidence  
6 in as it relates to Ms. Willaford's admission?

7 A Yes, ma'am.

8 Q And what relief are you seeking from the Court?

9 A I mean, I asked for a retrial. I would accept  
10 whatever relief I could be granted, but I would prefer to  
11 have a retrial.

12 Q In your application what did you request?

13 A A retrial.

14 Q And you recognize that if the Court allows you --  
15 well, grants you the relief that you're seeking that you  
16 start over?

17 A Yes, ma'am.

18 Q And you start over as if you were arrested on that  
19 day.

20 A Yes, ma'am.

21 Q And you recognize that the charges that you have don't  
22 just go away, but if you were facing ten years on an  
23 enhanceable charge that's what you would be facing to start  
24 over.

25 A Yes, ma'am.

## MICHAEL KENNEDY - DIRECT

1 Q And you wish to proceed with this.

2 A Yes, ma'am, I do.

3 Q Is there anything else you want to tell the Court?

4 A No. Just as I said from day one, I was innocent of  
5 this crime and I would like a chance to -- now having the  
6 evidence to prove it to take it to trial.

7 MS. MOODY: No further questions of this witness, Your  
8 Honor.

9 THE COURT: Cross?

10 MR. HUNTER: May it please the Court?

11 THE COURT: Yes, sir.

12 CROSS EXAMINATION

13 BY MR. HUNTER:

14 Q Do you remember the solicitor going over what the  
15 State would have shown during trial during your plea?

16 A Vaguely, yes.

17 Q Do you remember -- I guess she went over what some of  
18 the loss prevention officers would have testified to that  
19 they saw?

20 A Yes, I do recall that.

21 Q Okay. And despite that you still are maintaining your  
22 innocence?

23 A Absolutely. What they would have stated would have  
24 been a balled face lie, which in my opinion would be  
25 perjury.

## MICHAEL KENNEDY - CROSS

1 Q Were you aware of any video evidence against you?

2 A Yes. All video evidence was given to me, and nowhere  
3 on the video evidence did it show me commit any crime.

4 Q Now, did you talk to Ms. Willaford after you were  
5 arrested?

6 A Yes, I did. I tried to locate her and find out where  
7 she was and what was going on.

8 Q Were you successful in that?

9 A I did manage to get a hold of her once or twice, yes.

10 Q Did you tell her that you had been arrested for this  
11 crime?

12 A Yes, I did.

13 Q Did she tell you at that point that you shouldn't have  
14 been arrested and that she did it and not you?

15 A Absolutely.

16 Q You did? Okay. Did you tell all of this to your  
17 attorney?

18 A Like I said, I have always maintained I was innocent.

19 Q But did you tell your attorney that you talked to Ms.  
20 Willaford personally, that you spoke to her?

21 A No, sir. I did not mention any names specifically,  
22 no.

23 Q Only after your sentencing did you get this letter?

24 A After I was sentenced and I received this letter then  
25 I was willing to state the name and so forth, because of

## MICHAEL KENNEDY - CROSS

1 the simple fact that from my past experience with law  
2 enforcement every time I've ever said anything that  
3 somebody else has said, even if it was truth and whatever  
4 it has always ended up going against me. So until I have  
5 some solid proof then I keep my mouth shut as far as  
6 names.

7 Q So essentially before this -- or at the time of this  
8 plea you knew that she -- essentially you knew that she  
9 knew that you were innocent but you weren't going to say  
10 anything until afterward?

11 A No, it wasn't that I wanted to just say something  
12 afterward. Before the sentencing and all of that when I  
13 was still willing to go to trial I tried numerous times to  
14 contact her to ask her to come up there.

15 Q You wanted her to come because of your plea?

16 A I wanted her to come as far as the trial, but once I  
17 couldn't get ahold of her -- as I said, her statement  
18 would have also been able to allow me to introduce my  
19 mother and sister's statement and therefore they wouldn't  
20 have been hearsay anymore as to her admitting to them as  
21 well.

22 Q So she was -- you made her aware of her trial date and  
23 she just wouldn't come.

24 A Yes. I was unable to get into contact with her.

25 Q Was your attorney aware of this?

## MICHAEL KENNEDY - CROSS

1 A Yes. I'm pretty sure that I made her aware that I  
2 was unable to contact her.

3 Q Okay.

4 MR. HUNTER: I don't have anything else, Your Honor.

5 THE COURT: Nothing on redirect?

6 MS. MOODY: No, sir, Your Honor.

7 THE COURT: Any additional witnesses on behalf of the  
8 applicant?

9 MS. MOODY: Yes, sir, Ms. Misty Willaford.

10 The witness, MISTY WILLAFORD, was first duly sworn and  
11 Testified as follows:

12 DIRECT EXAMINATION

13 BY MS. MOODY:

14 Q State your full name for the record.

15 A Misty Willard.

16 Q And where are you currently residing?

17 A Here in Rock Hill.

18 Q What's your address?

19 A Brookeview Court, [REDACTED]

20 Q And how long have you residing there?

21 A Off and on probably seven or eight years, but I live  
22 with my mother sometimes.

23 Q Is that in Rock Hill?

24 A Yes, ma'am.

25 Q And you're here on behalf of Mr. Kennedy?

## MICHAEL KENNEDY - CROSS

- 1 A Yes, ma'am.
- 2 Q And what is your relationship to Mr. Kennedy?
- 3 A We're married.
- 4 Q And at the time that this -- excuse me, in November of  
5 2015, were you married then?
- 6 A We were married but we were separated.
- 7 Q Okay. And were you -- did you accompany Mr. Kennedy  
8 to Wal-mart?
- 9 A Yes, he was in Wal-Mart with me that day.
- 10 Q And so are you aware of the facts of this particular  
11 case as to the shoplifting?
- 12 A Yes, ma'am.
- 13 Q And did you provide a statement to him that you wrote  
14 recording your involvement in that shoplifting?
- 15 A Yes, ma'am. I tried to turn myself in for the  
16 charges and everything and I was trying work with them on  
17 that, and I sent it to him and I also sent it to the  
18 solicitor's office.
- 19 Q And when was that that you turned yourself in?
- 20 A I think probably September or somewhere around there,  
21 2014.
- 22 Q August of 2015 or --
- 23 A I'm sorry, 2015.
- 24 Q On the day -- how did they miss you at Wal-Mart?
- 25 A I walked out, they didn't -- they weren't able to

## MISTY WILLARD - DIRECT

1 stop me I'm guessing.

2 Q So you fled the scene.

3 A Yes, ma'am.

4 Q And how did you know that you needed to turn yourself  
5 in?

6 A I had been on probation and I was told that there was  
7 some type of warrant or something out for me so I turned  
8 myself into York Police.

9 Q And did you ever talk to the State's assistant  
10 solicitor Erica Joyner?

11 A No, I don't think so.

12 Q Erin Joyner, I'm sorry.

13 A I don't think I ever spoke with her, no, ma'am.

14 Q When exactly did you talk to Mr. Kennedy about this  
15 case?

16 A Initially?

17 Q Yes.

18 A Heck, I think it was December or January. It was  
19 right after he was arrested.

20 Q And so I guess the question is, you were with him and  
21 you participated in the shoplifting.

22 A Yes, ma'am.

23 Q And you didn't think it would be prudent to come and  
24 tell law enforcement that he was not a party to the  
25 shoplifting?

## MISTY WILLARD - DIRECT

1 A I'm sure it would have been prudent but at the time  
2 obviously I didn't care.

3 Q You didn't care?

4 A No, I really didn't care at the time.

5 Q And so what came upon you to make you care to write  
6 the letter?

7 A I was trying to get my life back together and I would  
8 like to work things out with him.

9 Q I'm sorry?

10 A Oh, I'm sorry, I was speaking relationship wise, I  
11 said I would like to work things out with us eventually.  
12 I was trying to get myself together.

13 Q And did you plead before you wrote that later?

14 A I think it was right after I wrote the letter, it was  
15 around the same time.

16 Q Did you tell the solicitor that you -- that made you  
17 the offer to plead, did you tell them what happened?

18 A Well, I didn't -- what do you mean make a plea, like  
19 a deal of some sort?

20 Q Well, you pled guilty to the charge.

21 A Yes, ma'am, I did.

22 Q Were you represented by an attorney?

23 A Yes, ma'am. I had where they appoint you one, and  
24 then they had to get one at the last minute because that  
25 lady got in a bad wreck or something.

## MISTY WILLARD - DIRECT

1 Q Who was your attorney?

2 A I don't even remember his name, it was like a  
3 pinch-hitter, that morning he came in.

4 Q Do you recall the solicitor that stood in for the  
5 State when you entered your plea?

6 A Toni -- I don't know what his name was, but the lady  
7 I had was Toni something.

8 Q So this was a misdemeanor for you?

9 A Yes, ma'am.

10 Q And did you inform the Court that you were the only  
11 person that committed this crime?

12 A Yeah, I told the Judge that that day.

13 Q What did you tell them specifically?

14 A That I was the person that committed the crime,  
15 myself and only myself.

16 Q And did you tell him that Michael Kennedy had not  
17 committed the crime with you?

18 A They didn't ask me anything else, it was just me. I  
19 think my warrant didn't state anything different, it was  
20 just me on that.

21 Q So you didn't inform law enforcement or anybody until  
22 you wrote the letter?

23 A No, ma'am, I think that's right.

24 Q And so can you tell the Court what happened on that  
25 day at Wal-Mart?

## MISTY WILLARD - DIRECT

1 A Yes, ma'am. I went into Wal-Mart and I took a bunch  
2 of DVD's and I left the store.

3 Q Where did you put those DVD's?

4 A Well, the gentleman walked out behind me and I left,  
5 and I got nervous and I put the DVD's beside the trash  
6 can.

7 Q But where did you have the DVD's when you were walking  
8 out?

9 A I'm sorry, in my purse.

10 Q In your purse.

11 A Yes, ma'am.

12 Q And where was Mr. Kennedy at the time you were putting  
13 these DVD's in your purse?

14 A He was leaving, kind of behind me.

15 Q When you were putting the DVD's in your purse, where  
16 was he?

17 A Oh, I apologize, at the other end of the aisle.

18 Q On that same aisle?

19 A Yes, ma'am.

20 Q Did he see you putting the DVD's in your purse?

21 A No, I know that for a fact.

22 Q And how do you know that for a fact?

23 A Because he flipped out.

24 Q He flipped out about what?

25 A About the fact that I stole things out of the store

## MISTY WILLARD - DIRECT

1 and he was being in trouble for it.

2 Q When he was arrested, did you talk him in January?

3 A Yeah. It was right after he had been arrested, yes,  
4 ma'am.

5 Q And you still didn't come forward and tell law  
6 enforcement.

7 A No, ma'am.

8 Q Now, he informed you when you had a trial.

9 A I'm not sure if I found out before the trial or right  
10 after the trial.

11 Q Okay. And were you ever contacted by anyone?

12 A No, ma'am.

13 Q So here today you're testifying that he had nothing to  
14 do with the shoplifting.

15 A No. He had nothing to do, no, ma'am.

16 Q And you're aware you're under oath.

17 A Yes, ma'am.

18 Q And that you're statements here, you're telling them  
19 under oath and the possibility of perjury if you're not  
20 telling the truth.

21 A Yes, ma'am.

22 MS. MOODY: No further questions for this witness.

23 THE COURT: Cross?

24 MR. HUNTER: Just briefly, Your Honor.

25 CROSS EXAMINATION

## MISTY WILLARD - DIRECT

1 BY MR. HUNTER:

2 Q So just to get a timeframe, when was the first time  
3 you talked to him after his arrest?

4 A It was in December or January, somewhere around  
5 there. It was around Christmas.

6 Q Do you remember what y'all talked about?

7 A Well, he'd been trying to get ahold of me and at that  
8 time I was on drugs and stuff, so --

9 Q And did you tell him that he shouldn't have been  
10 charged, that he's innocent because you did it?

11 A He knew that, he knew he didn't do anything.

12 Q But did you tell him that during that conversation?

13 A I'm not sure if I told him that during that  
14 conversation or if it was when I spoke with him again.

15 Q Did you tell him that before his plea?

16 A Yes, I believe I did. And I told him I would come  
17 and speak with someone but I never did that.

18 MR. HUNTER: Nothing further.

19 THE COURT: Ma'am, you may step down. Any additional  
20 witnesses?

21 MS. MOODY: No, sir.

22 THE COURT: Anything else?

23 MR. HUNTER: The State would call Ms. Melissa  
24 Inzerillo.

25 The witness, MELISSA INZERILLO, was first duly sworn

## MISTY WILLARD - CROSS

1 and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. HUNTER:

4 Q Please state your name for the record.

5 A Melissa Inzerillo.

6 Q Where are you currently employed?

7 A York County Public Defender's Office.

8 Q Is that where you were employed in 2015?

9 A It is.

10 Q Now, would you give us a brief background of when you  
11 became involved in this case?

12 A I was appointed to Mr. Kennedy subsequent to his  
13 arrest in November of 2014. He had an initial appearance  
14 in December and I represented him throughout this case and  
15 then the other two charges he had.

16 Q So how many times essentially before this plea did you  
17 meet with him?

18 A Before the plea probably nine to ten times.

19 Q Do you remember what y'all talked about?

20 A Yes. He had two very different cases, one was a  
21 shoplifting and the other was a failure to register.  
22 There was, we believed, a legal issue with the failure to  
23 register, so the meetings involved shoplifting as well as  
24 the failure to register. He received a few offers, some  
25 at the initiative of the State, some in response to what

MELISSA INZERILLO - DIRECT

1 he had indicated he would accept and so we would discuss  
2 those. Particular to the shoplifting we discussed the  
3 evidence in his case, including the fact that there was  
4 another -- that there was a woman in the video with him.  
5 It was a little bit unclear from first pass of the  
6 discovery who she was and whether the police could  
7 identify her. So we did have -- had two, probably three  
8 conversations about who that lady because, if I could  
9 contact her, and discussing with him her involvement in  
10 the case in terms of a trial strategy if we would have her  
11 come in and take the charge or -- I don't mean it like  
12 that, or talk with her about her involvement, because she  
13 would also be a witness in the case as to what happened.

14 Q And were you aware at the time who that woman was?

15 A Not initially. When I asked Mr. Kennedy specifically  
16 he would sort of lie to me, dodge the question, would not  
17 tell me who she was. Through the course of the  
18 investigation kind of talking to other people while  
19 investigating the failure to register charge, I believed  
20 it was Ms. Willaford. So I asked him directly if it was  
21 Ms. Willaford and if I could speak with her and he in no  
22 uncertain terms told me I was not to speak to her and I  
23 was not to subpoena her to come in for his trial. We  
24 received some jail phone calls where Mr. Kennedy was  
25 speaking to a woman around the time he first goes in to

## MELISSA INZERILLO - DIRECT

1 jail, which is a few days after the shoplifting and there  
2 is some comments and conversations about -- that indicated  
3 to me that perhaps they both know what was going on, one  
4 person just got away and then he unfortunately was kind of  
5 left behind, and so I was looking at that angle in case  
6 those jail phone calls were used in trial. He was adamant  
7 to me that I was not to talk to Ms. Willaford. He also  
8 made a similar statement about a sister, that I was not to  
9 talk to her. He indicated to me I could speak to his mom  
10 and another lady, which I did. And then the day of trial  
11 Ms. Willaford's name was on the State's witness list, and  
12 so I talked to him that morning and explained that she was  
13 on the witness list and that's when he indicated he wished  
14 to enter the plea.

15 Q So when was the last time you spoke with him before  
16 the plea?

17 A That morning, we had two conversations.

18 Q Okay. And was it always going to be an Alford plea?

19 A I think we firmed that up probably closer to the  
20 plea. I think he wanted to sort of take care of  
21 everything, and there was, I felt, an issue with the  
22 failure to register. And in the shoplifting he indicated  
23 that he didn't feel like he did anything wrong, but if he  
24 could get a benefit of a package or go in and handle  
25 everything at the same time he would enter an Alford plea.

## MELISSA INZERILLO - DIRECT

1 Q You stated that you went over the State's evidence,  
2 does that include the videos with him?

3 A Yes.

4 Q And how would you characterize the State's evidence?

5 A Essentially the allegation is that Mr. Kennedy and  
6 Ms. Willaford went into a Wal-Mart, got down an aisle and  
7 take DVD's, that part is not on video. My recollection is  
8 what you see on video is Mr. Kennedy and woman, who I now  
9 believe was Ms. Willaford, go to the self-checkout. Mr.  
10 Kennedy swipes a DVD, he pays, gets a receipt, they walk  
11 out, they are confronted by law enforcement, Ms. Willaford  
12 gets away and Mr. Kennedy has a DVD and a receipt. And he  
13 explained to me that he is trying to explain to them that  
14 he bought the DVD that's in his possession, but the video  
15 shows them at the self-checkout. It's not 100 percent  
16 clear from the video that he had nothing to do with it.  
17 It shows them there together moving around the store  
18 together, so it would appear that there could be an  
19 argument by the State using video evidence that they were  
20 in concert together.

21 Q Given the State's evidence, do you think it was likely  
22 he would have been found guilty if y'all proceeded to a  
23 trial?

24 A I think so, especially in light of any possible  
25 testimony by Wal-Mart staff that they saw Mr. Kennedy and

## MELISSA INZERILLO - DIRECT

1 Ms. Willaford sort of act in concert in putting the DVD's  
2 in the bag. I did have some concerns as I mentioned about  
3 the statements in the jail phone calls about, "I was  
4 supposed to meet you afterwards," and, "Where were you,"  
5 and the woman indicating she had gotten away, that kind of  
6 thing. I think looking at the entirety and totality of  
7 the case he would most likely would be convicted.

8 Q Were you aware either at the time of the plea or  
9 before the plea about the statement -- or at least heard  
10 that this statement may have existed in her mind that she  
11 told him, "I did it all, you are innocent?"

12 A No, I was completely unaware of a statement. And as  
13 I indicated, Mr. Kennedy absolutely prohibited me from  
14 trying to contact Ms. Willaford.

15 Q Okay. Do you believe that pleading was in his best  
16 interest here?

17 A I do.

18 MR. HUNTER: No further questions.

19 THE COURT: Cross?

20 MS. MOODY: Thank you, Your Honor.

21 CROSS EXAMINATION

22 BY MS. MOODY:

23 Q Ms. Inzerillo, you indicated that you all were going  
24 to trial?

25 A Yes, ma'am.

## MELISSA INZERILLO - CROSS

1 Q And were you going -- when did you get the ultimate  
2 offer that made him decide he was going to accept a North  
3 Carolina v. Alford?

4 A Immediately before -- after I had received a State's  
5 witness list and their intended voir dire, and I saw Ms.  
6 Willaford's name on the witness list I spoke to Mr.  
7 Kennedy again, apprized him of the fact that she was on  
8 the list and he did a complete about-face and indicated  
9 that he wished to enter a plea.

10 Q So before then you were uncertain as to it being Ms.  
11 Willaford or you learned?

12 A I figured out through investigation that it was most  
13 likely her, and then when I would ask him about it he  
14 indicated to me that he did not wish for me to talk to  
15 her, which confirmed in my mind that the woman in the  
16 video was most likely her.

17 Q Did you have an address for her prior to the plea?

18 A I had an address that's in the file, and at the time  
19 it was a Brookeview Court, but at the time there was some  
20 question about who was living there, and it was more  
21 related to the failure to register case. There was some  
22 indication that perhaps she wasn't living there, and so I  
23 just had the last address they put in the York City file.

24 MS. MOODY: No further questions of this witness.

25 THE COURT: Thank you, ma'am, you may step down. Any

## MELISSA INZERILLO - CROSS

1 additional witnesses?

2 MR. HUNTER: Nothing else, Your Honor.

3 THE COURT: Anything in reply?

4 MS. MOODY: No, sir, Your Honor.

5 THE COURT: Well, I have had a chance to reflect on  
6 the testimony here today. The biggest problem obviously is  
7 the question on the issue of after-discovered evidence and  
8 whether or not it could have reasonably been discovered at  
9 the time, or prior to trial. Candidly the Court finds Ms.  
10 Inzerillo's testimony much, much more credible than that of  
11 Mr. Kennedy or Mrs. Willaby (sic). And the Court also has  
12 a hard time believing that a man is unable to locate or  
13 find his wife, so the Court will be denying PCR. Clearly  
14 this evidence could have been discovered prior to trial had  
15 Mr. Kennedy provided it to his attorney, and again the  
16 Court finds that he simply did not for whatever reason, so  
17 the Court will be denying PCR in this case. Attorney  
18 General, if you will issue an order to that effect, please.

19 (End of the hearing.)

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1 I, the undersigned, Michael C. Watkins,  
2 Official Court Reporter for the Sixth Judicial  
3 Circuit of the State of South Carolina, do hereby  
4 certify that the foregoing is a true, accurate and  
5 complete transcript of the proceedings had and  
6 evidence introduced in the trial of the captioned  
7 case relative to appeal in the Court of Common Pleas  
8 for York County, South Carolina, on the 19th day of  
9 April, 2016.

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

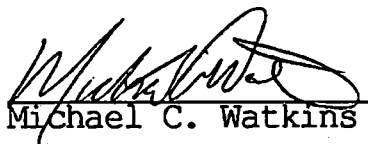
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November 21, 2016

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Michael C. Watkins

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Court Reporter

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 Michael Christopher Kennedy, )  
 S.C.D.C. No. 296992, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 OF THE SIXTEENTH JUDICIAL CIRCUIT  
 2015-CP-46-3222

**ORDER OF DISMISSAL**

FILED-RECEIVED  
 2016 JUL 13 PM 12:14  
 DAVID HAMILTON  
 C.C.P. & G.S.  
 YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed October 22, 2015. Respondent made its Return on or about March 10, 2016. An evidentiary hearing into the matter was convened on April 19, 2016, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Leah Moody, Esquire. Justin J. Hunter, Esquire, of the South Carolina Attorney General's Office represented the Respondent. At the hearing, Applicant testified on his own behalf. Melissa Inzerillo, Esquire, also testified. This Court also had before it a copy of the records of the York County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, Applicant's PCR application, and the plea transcript.

**I. PROCEDURAL HISTORY**

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The York County Grand Jury indicted Applicant at the May term of General Sessions for shoplifting (enhancement) (2015-GS-46-00973) and two counts of violation of sex offender registry (failure to register), second offense (2015-GS-46-01602, -00972). Melissa Inzirello, Esquire represented the Applicant.

On May 27, 2015 the Applicant pled no contest under N.C. v. Alford. The Honorable Eugene C. Griffith, Jr., sentenced the Applicant to forty-eight (48) months imprisonment for shoplifting, three hundred sixty-six (366) days imprisonment for violation of sex offender registry, failure to register and three hundred sixty-six (366) days imprisonment on the second count of violation of sex offender registry, failure to register, to be served concurrently.<sup>1</sup> Applicant did not appeal.

### Allegations

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

- I. Newly Discovered Evidence
  - a. "Person who committed crime has made a sworn statement of my innocence."
  - b. "They have been sentenced on the crime."
  - c. "They have paid restitution for the crime."

## II. SUMMARY AND EVIDENCE PRESENTED AT PCR HEARING

### Applicant's Testimony

Applicant testified that he met with Counsel a few times before the plea. He testified that he received a statement from Misty Williford on October 1, 2015 that states that he did not commit the shoplifting crime but that she did and that she paid restitution for it. He testified that he was unable to receive any notification from Ms. Williford giving this information before his plea. He testified he would not have pled guilty if Ms. Williford had been brought to court.

Applicant testified that he was able to get in touch with Ms. Williford prior to the plea and she told him that she committed the crime and that he did not. Applicant testified that he did not tell his attorney because he did not want to tell on her.

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<sup>1</sup> In this application, Applicant only challenges his shoplifting conviction.

### Misty Williford's Testimony

Ms. Williford testified that she took the DVDs and fled Wal-Mart. She testified that she put the DVDs in her purse while Applicant was at the other end of the aisle. She testified that she talked to Applicant right after his arrest. Ms. Williford testified that she first told Applicant that she committed the crime and that he is innocent in December or January – prior to Applicant's plea in May. She testified that she was not contacted about trial

### Counsel Melissa Inzerillo's Testimony

Counsel testified that she was appointed as counsel in November 2014. She testified that she met with Applicant nine to ten times prior to the plea. She testified that she tried to discuss the evidence with Applicant. She testified that she knew there was someone else involved in the crime but Applicant would never reveal Ms. Williford's name. Counsel testified that she later learned of Ms. Williford's identity but Applicant was adamant that Counsel was not to contact Ms. Williford. She testified that Applicant would have been found guilty, especially in light of the surveillance video evidence. She testified that she was unaware of any statement made by Ms. Williford. Counsel testified that Applicant was ready to proceed to trial but decided to plead when he saw Ms. Williford's name on the State's witness list.

### III. APPLICABLE LAW

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).

Under S.C. Code § 17-27-45(c), a newly-discovered evidence claim can be timely raised within one year of actual discovery or within one year of when, by the exercise of due diligence, such evidence *could have been* ascertained. When an applicant seeks relief on the basis of newly discovered evidence following a guilty plea, relief is appropriate only when the applicant



presents evidence showing (1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea and (2) the newly discovered evidence is of such weight and quality that, under the facts of circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea be vacated. Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).<sup>2</sup>

"[I]n South Carolina, a guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013) (citing Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal defendant's right to contest the validity of such a plea is usually, but not definitely, foreclosed. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (2007). In Jamison, the South Carolina Supreme Court noted it would be a "rare case" where the interests of justice require the vacation of a knowing and voluntary guilty plea involving an admission of guilt and a waiver of trial. Jamison, 165 S.E.2d at 130.

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the application for post-conviction relief, and the legal arguments made by the

<sup>2</sup> This Court notes that Jamison held that "the traditional, five-factor newly discovered evidence test is not the proper test for analyzing whether a PCR applicant is entitled to relief on the basis of newly discovered evidence following a guilty plea." Jamison v. State, 410 S.C. 456, 469, 765 S.E.2d 123, 129 (2014).

This Court also notes that the Jamison analysis is proper in this case despite the fact that Applicant's plea was an Alford plea. See State v. Herndon, 403 S.C. 84, 91, 742 S.E.2d 375, 379 (2013) (Holding "the Alford plea is, in essence, a guilty plea and carries with it the same penalties and punishments.")

attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

This Court finds Counsel's testimony to be much more credible than Applicant's testimony. This Court finds that Ms. Williford's statement in her letter to Applicant does not constitute newly discovered evidence. This Court finds that Applicant certainly could have, and did in fact come in contact with Ms. Williford prior to the plea with the same information presented in the letter. Applicant testified that he came in contact with Ms. Williford a short time after his arrest and Ms. Williford testified that she contacted Applicant in December or January prior to Applicant's plea in May. Thus, as Applicant has failed to show that this newly discovered evidence could not have been discovered prior to his plea, this application must be dismissed.

#### **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 Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

#### **V. CONCLUSION**

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

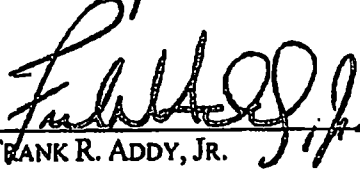


The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has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

**IT IS THEREFORE ORDERED THAT:**

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

AND IT IS SO ORDERED this 4<sup>th</sup> day of May, 2016.

  
 FRANK R. ADDY, JR.  
 Presiding Judge  
 Sixteenth Judicial Circuit

Alexander, South Carolina

F-822

PC0002

T-760

8036283133

CC General Sessions

02-27-17 14:57 FROM-

**WITNESSES**

YCSO

Witnessing Officer: *Vinesett*

**ARREST WARRANT NUMBER**

2014A4610101049

**ACTION OF GRAND JURY**

vs/ Shirley Sanders

3-26-2015 True Billed

**TRUE BILL**

*Shirley Sanders*  
Foreperson of Grand Jury  
Date: *5/14/15*

**VERDICT**

Foreperson of Grand Jury  
Date:

Anded  
DOCKET NO 15-GS-46-00972

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

MAY TERM 2015

THE STATE

VS.

**MICHAEL CHRISTOPHER  
KNEDY**

INDICTMENT FOR

**VIOLATION SEX OFFENDER  
REGISTRY-IL TO REGISTER**

SC Code 23-03-0470(A)  
CD bde: 2435

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

Defendant

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

*X Michael Knedy*  
Defendant

Witness:

*L Bonfield*  
C.C.C. PLS. AND G.S. Specialist

STATE OF SOUTH CAROLINA  
COUNTY OF YORK


INDICTMENT

At a Court of General Sessions, convened on May 14, 2015, the Grand Jurors of York County present upon their oath:

**VIOLATION OF SEX OFFENDER REGISTRY- FAIL TO REGISTER**

The defendant, Michael Christopher Kennedy, having been convicted of an offense for which he is required to register as sex offender, did on or about November 1, 2014, through November 6, 2014, in York County, South Carolina, fail to register as a sex offender with the York County Sheriff's Office and/or fail to notify the York County Sheriff's Office of his change of address. All in violation of 23-03-0470(A), *South Carolina Code of Laws* (1976, as amended).

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

  
\_\_\_\_\_  
ERIN M. JOYNER  
ASSISTANT SOLICITOR

F-822  
P0004  
T-760  
8036283133  
COC General Sessions  
02-27-17 14:58 FROM-

**WITNESSES**

YPD

Witnessing Officer: *MUMAW*

**ARREST WARRANT NUMBER**

2014A4620500391

**ACTION OF GRAND JURY**

Is/ Shirley Sanders

03/26/2015 True Billed

**TRUE BILL**

*Shirley Sanders*

Foreperson of Grand Jury

Date: *5/14/15*

**VERDICT**

Foreperson of Grand Jury

Date:

Amended  
DOCKET NO. 2015-GS-46-00973

**The State of South Carolina**

County of York

**COURT OF GENERAL SESSIONS**

**MAY 14, TERM 2015**

**THE STATE**

**VS.**

**MICHAEL CHRISTOPHER  
KENNEDY**

**INDICTMENT FOR**

**SHOPLIFTING - ENHANCEMENT**

SC Code: § 16-13-0110(A) and 16-1-57

CDR Code: 2877

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

**Defendant**

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

*X Michael Kennedy*  
**Defendant**

**Witness:**

*J. Bonfield*  
**C.C.C. PLS. AND G.S. Specialist**

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

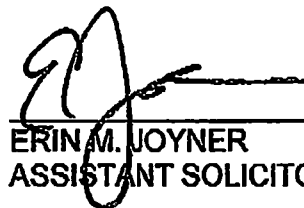
INDICTMENT

At a Court of General Sessions, convened on May 14, 2015, the Grand Jurors of York County present upon their oath:

**SHOPLIFTING - ENHANCEMENT**

The defendant, Michael Christopher Kennedy, did on or about November 6, 2014, in York County, take possession of, carry away, transfer from one person to another or from one area of a store to another area, or cause to be carried away or transferred merchandise, valued at less than two thousand dollars (\$2,000), which was displayed, held, stored, or offered for sale by Walmart with intent to deprive Walmart of the possession, use, or benefit of the merchandise without paying full retail value; to wit; one or more DVDs and/or blue ray discs. The defendant has been convicted of two or more offenses for which the term of imprisonment is contingent upon the value of the property involved. All in violation of Sections 16-13-0110(A) and 16-1-57, *Code of Laws of South*

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

  
ERIN M. JOYNER  
ASSISTANT SOLICITOR

F-822

P0006

T-760

8036283133

COC General Sessions

02-27-'17 14:59 FROM-

**WITNESSES**

YCSO

Witnessing Officer: *Vinesett*

**ARREST WARRANT NUMBER**

2015A4610100008

**ACTION OF GRAND JURY**

**TRUE BILL**

*Shirley Sanders*  
Foreperson of Grand Jury  
Date: *5/14/15*

**VERDICT**

Foreperson of Grand Jury  
Date:

DOCKET NO. 2015-GS-46- *01602*

**The State of South Carolina**

**County of York**

**COURT OF GENERAL SESSIONS**

**MAY 14, TERM 2015**

**THE STATE**

**VS.**

**MICHAEL CHRISTOPHER  
KENNEDY**

**INDICTMENT FOR**

**VIOLATION OF SEX OFFENDER  
REGISTRY- FAIL TO REGISTER**

SC Code: § 23-03-0470(A)  
CDR Code: 2435

After being fully advise legal rights, I hereby waive pt to the Grand Jury.

002

**Defendant**

I \_\_\_\_\_  
hereby appear in my c  
person and plead guilty in  
indictment or to \

*x Michael*  
**Defendant**

**Witness:**

*J. Bonfield*  
**C.C.C. PLS. AND G.S.**  
*adest*

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

INDICTMENT

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

  
ERIN M. JOYNER  
ASSISTANT SOLICITOR