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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Appeal from Florence County

Honorable Jocelyn J. Newman, Circuit Court Judge

\_\_\_\_\_  
THOMAS ELBERT VANHOOSE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001602

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

TAYLOR D GILLIAM  
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South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE NO. 2012-GS-21-991

STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	

-vs-

TRANSCRIPT OF RECORD

THOMAS VANHOOSE, SR.,	)	
	)	
Defendant.	)	

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September 6, 2013  
 Florence, South Carolina

B E F O R E:

THE HONORABLE D. CRAIG BROWN, Judge

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

PATRICIA PARR, Assistant Solicitor  
Attorney for the Plaintiff

MICHAEL BELL, Esquire  
Attorney for the Defendant

KRYSTAL J. SMITH  
Court Reporter

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I N D E X

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
	(No Exhibits Presented)		

1 SEPTEMBER 6, 2013

2 (WHEREAS this matter was scheduled for a term of General  
3 Sessions court, the defendant appeared along with his  
4 counsel of record. Constitutional rights were given to  
5 all defendants in the courtroom at 9:13 a.m. as follows.)

6 THE COURT: All right. Listen up. I'm going to go over  
7 your constitutional rights with you. When you plead guilty,  
8 you give up certain important constitutional rights.

9 Each of you have a right to a jury trial. At a jury  
10 trial, I would tell the jury that you are presumed innocent,  
11 that you are presumed not guilty. The State would bear the  
12 burden of proving you guilty beyond a reasonable doubt. You  
13 would have the right to question any witnesses against you, as  
14 well as the right to present witnesses for your defense.

15 If you went to trial, you would have a right to remain  
16 silent. If you went to trial and remained silent, I would  
17 tell the jury that they could not hold that fact against you.  
18 You would have the right again to present any defense to the  
19 charge or charges against you and if you made any  
20 incriminating statements, you would have a right to challenge  
21 the admissibility of those statements.

22 Does anybody in here not understand those rights?

23 (Whereupon, there is no response.)

24 THE COURT: When you plead guilty, you give up those  
25 rights. Does anybody in here not understand that when they

1 plead guilty, they give up those rights?

2 (Whereupon, these is no response.)

3 THE COURT: Now, some of you may come before this Court  
4 waiving presentment of your charge to the grand jury. Please  
5 understand that you have a right to have your charge or  
6 charges presented to the grand jury for them to determine  
7 whether or not there is sufficient evidence to bring your case  
8 into this court. However, you may waive that right and  
9 proceed here today and plead guilty. Does anybody in here not  
10 understand that they have a right to have their charge or  
11 charges presented to the grand jury for them to determine  
12 whether or not there is sufficient evidence to bring your case  
13 into this court?

14 (Whereupon, there is no response.)

15 THE COURT: Does anybody in here not understand that they  
16 may waive their right to have their charge presented to the  
17 grand jury and proceed here in court and plead guilty?

18 (Whereupon, there is no response.)

19 THE COURT: All right.

20 (Whereupon, the reading of the constitutional rights ends  
21 at 9:17 a.m.)

22 (Whereupon, the defendant's case is called at 11:00 a.m.  
23 The courtroom was cleared prior to the start of the  
24 proceedings.)

25 THE COURT: All right. Go ahead, please.

1 MS. PARR: May it please the Court. This is Indictment  
2 2012-GS-21-991 against Thomas Elbert Vanhooose. He has  
3 actually been indicted on a four-count indictment, but on the  
4 indictment the State has agreed to let the defendant plead  
5 guilty under North Carolina versus Alford to two counts of  
6 lewd act versus -- on a minor and for a negotiated ten-year  
7 sentence. He can get up to fifteen years for each one of  
8 these offenses. The State also agrees that these sentences  
9 will run concurrent and that the criminal sexual conduct with  
10 a minor first degree would be dismissed and the criminal  
11 sexual conduct with a minor second degree will be dismissed.

12 The victims' mother is in the courtroom today, Ms.  
13 Elizabeth Vanhooose, as well as some other members, as well as  
14 law enforcement. The -- the victims are in school.

15 THE COURT: All right.

16 MS. PARR: And the victims are the -- the children of the  
17 defendant.

18 MR. BELL: There's also agreement it would be concurrent  
19 with the probation violation.

20 MS. PARR: Okay. And concurrent with the probation.

21 THE COURT: What's he on probation for? What are you on  
22 probation for?

23 PROBATION: He's on assault and battery high and  
24 aggravated nature. The victim was not notified.

25 THE COURT: All right.

1 PROBATION: Which is Ms. Vanhooose.

2 THE COURT: Okay. Ms. Vanhooose, the one that's seated in  
3 here?

4 PROBATION: Elizabeth Vanhooose.

5 MS. PARR: Who is Elizabeth Vanhooose?

6 PROBATION: It's the victim in his ---

7 THE COURT: In the probation matter?

8 PROBATION: --- probation case. Yes.

9 THE COURT: All right. And the negotiation is that it  
10 run concurrent with the probation revocation?

11 MS. PARR: Yes, Your Honor.

12 THE COURT: All right.

13 PROBATION: I also have to serve a citation on him, sir.

14 THE COURT: Go ahead then.

15 THE CLERK: She's not ready yet. She's got to fill it  
16 out first.

17 THE COURT: All right. Has he been sworn?

18 THE CLERK: Please raise your right hand. Do you swear  
19 to tell the truth, the whole truth, and nothing but the truth,  
20 so help you God?

21 THE DEFENDANT: Yes.

22 THE COURT: Sir, you are Thomas Elbert Vanhooose?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Have you ever been treated for alcohol abuse,  
25 drug abuse or mental illness?

1 THE DEFENDANT: No, sir.

2 THE COURT: In the last twenty-four hours, have you taken  
3 any medication, drugs or alcohol?

4 THE DEFENDANT: No, sir.

5 THE COURT: Are you aware of any physical, emotional or  
6 nervous problem that would prevent you or keep you from  
7 understanding what's going on here today?

8 THE DEFENDANT: No, sir.

9 THE COURT: The State indicates you're pleading guilty to  
10 two counts of lewd act. Is that correct?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand each of these -- each of  
13 these particular -- let me back up. You're pleading guilty  
14 pursuant to North Carolina v. Alford to two counts of lewd  
15 act. Is that right?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you understand each of these offenses  
18 carries up to fifteen years?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And you understand the State and your lawyer  
21 have negotiated a sentence of ten years concurrent on each of  
22 these two charges?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: In other words, I can either give you the ten  
25 years or I can reject it and set it aside and let you plead on

1 a different day or go to trial. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Is it your desire that I accept this plea  
4 pursuant to North Carolina v. Alford and sentence you to a  
5 period of incarceration of ten years concurrent as to each one  
6 of these counts?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Now, you understand that while you may be  
9 pleading under North Carolina v. Alford, the Court still looks  
10 at it as a guilty plea?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And you understand that it's still going to  
13 be on your record as a guilty plea?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. Understanding that the Court is  
16 going to look at it as a guilty plea and it's still going to  
17 be on your record as a guilty plea, do you still want to go  
18 forward here today and plead guilty to these charges?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Now, were you in here this morning when I  
21 went through everybody's constitutional rights with them?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand those rights?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand that when you plead guilty,

1 you give up those rights?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Understanding your rights and understanding  
4 that when you plead guilty you give them up, how do you plead  
5 to these two charges here today? Guilty pursuant to Alford or  
6 not guilty?

7 THE DEFENDANT: Guilty.

8 THE COURT: All right. You're represented by Mr. Bell.  
9 Are you satisfied with his representation?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Have you talked with him enough?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you need any more time to talk to him?

14 THE DEFENDANT: No, sir.

15 THE COURT: Completely satisfied?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Any complaints whatsoever?

18 THE DEFENDANT: No, sir.

19 THE COURT: Anybody promised you anything or held out any  
20 hope of reward to get you to plead guilty?

21 THE DEFENDANT: No, sir.

22 THE COURT: Anybody used any threats, force, pressure or  
23 intimidation to get you to plead?

24 THE DEFENDANT: No, sir.

25 THE COURT: Anybody mistreated you in any way, whether it

1 be law enforcement or Solicitor's Office?

2 THE DEFENDANT: No, sir.

3 THE COURT: Have you had enough time to make up your mind  
4 as to whether or not you want to plead guilty or go to trial?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: What do you want to do?

7 THE DEFENDANT: I want to plead guilty.

8 THE COURT: As to each of these charges?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Are you doing so of your own free will?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Have you understood my questions?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Ms. Parr?

15 MS. PARR: Your Honor, at this time, we're going to ask  
16 Jennifer Floyd, the investigator on this matter, to -- to give  
17 the facts.

18 THE COURT: All right. Ms. Floyd, state your name for  
19 the record. I'll be happy to hear from you.

20 MS. LEE: Jennifer Floyd Lee, investigator with the  
21 Florence County Sheriff's Office.

22 THE COURT: Yes.

23 MS. LEE: This incident occurred at [REDACTED] Hemlock Road in  
24 Scranton, located in Florence County, approximately September  
25 -- October of 2010. The two victims involved in this case

1 were nine and eleven years old and they were the defendant's  
2 two children.

3       Since this incident, the two victims have been involved  
4 in counseling, as well as seeing their family firsthand fall  
5 apart. There has been many issues that the family has  
6 experienced since this incident and because this incident  
7 involved immediate family, there has been a lot of pressure  
8 put on the victims, which has had a significant impact on them  
9 and will impact them for the rest of their lives. Today I ask  
10 you for justice for the children and that this will be able to  
11 help get the incident behind them and they may begin with the  
12 healing process.

13       THE COURT: I need the facts ---

14       MS. PARR: He needs the facts.

15       THE COURT: -- to satisfy the elements of the offense for  
16 which he's standing before the Court on.

17       MS. PARR: I'll go ahead and give them. Your Honor,  
18 between October 1<sup>st</sup> and -- during October 2010, these minor  
19 children were spending the weekend with the defendant at his  
20 mother's home, but I don't think -- she wasn't there. They  
21 were on the floor in the living room asleep like on pallets  
22 when the first child indicated that the defendant penetrated  
23 here.

24       At that time he started fondling her, she got up off the  
25 floor and said she had to go to the bathroom and then she went

1 and laid on the couch. She said he told her not to say  
2 anything, that she better not tell her mother. The -- she  
3 actually saw him start kind of cuddling up to the -- the  
4 younger sister, who was also on the floor, and the younger  
5 sister also indicated that the defendant started fondling her  
6 as well in her vaginal area.

7 When they got home that weekend, her mom -- the mother  
8 noticed they were acting a little -- a little strange and, in  
9 any event, the younger one I believe indicated that, you know,  
10 she had started her menstrual cycle and it wasn't supposed to  
11 have been, but she indicated that it had come from the  
12 defendant messing with her. They told their mother. The  
13 mother contacted the Florence County Sheriff's Office.  
14 Investigator Floyd was assigned to the case and the children  
15 were taken to the Durant Center where they gave forensic  
16 interviews. They were pretty distraught with this matter.

17 They -- they did do an examination there. It indicated  
18 one of them looked like they may have had some -- you know,  
19 some abnormalities. The -- because the children were so upset  
20 when they gave their first forensic interview, they were  
21 subsequently seen at the Care House where, you know, they  
22 still disclosed that the dad had messed with them. And on the  
23 video, you can see they were very upset and had difficulty  
24 talking about it. They did see Gaye Allen Cook for counseling  
25 in this matter.

1 I've met with the girls as recently as maybe three weeks  
2 ago and they still indicate -- I know at one point they had  
3 come up and they -- because they had been pressured as to  
4 whether or not recantation in this matter and so Mr. Bell and  
5 I sat down and met with them together -- not -- the girls  
6 individually and they said that, you know, they really did  
7 feel pressured to come up in order to try to clear their dad  
8 because of pressure, but that it really did, in fact, happen.

9 In terms of a prior record, the defendant has a prior  
10 conviction for July 23<sup>rd</sup>, 2001, accessory after the fact of a  
11 felony E, two counts. CDV in 2002. DUS. Forgery in 2006 and  
12 2007 a forgery and grand larceny. A CDV second in 2009.  
13 Possession of a controlled substance. Also in 2011, giving  
14 false information. 2006, receiving stolen goods. 2006, petty  
15 larceny and DUS. And this assault and battery of a high and  
16 aggravated nature, I don't know when that was, for which he's  
17 on probation for now I understand.

18 THE COURT: All right. All right. Mr. Vanhooose, you've  
19 heard the facts as stated by the solicitor in this case. Do  
20 you believe that if your case were to go to trial that those  
21 are the facts that would be presented pertaining to these  
22 charges and that based upon those facts, there is a reasonable  
23 probability that you'd be convicted of these charges? Is that  
24 correct?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And that based upon that is the basis of your  
2 plea to each of these charges pursuant to North Carolina v.  
3 Alford?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And how do you plead to each of these  
6 charges? Guilty pursuant to Alford or not guilty?

7 THE DEFENDANT: I plead guilty.

8 THE COURT: All right. I find that there is a  
9 substantial factual basis for these pleas. I also find the  
10 defendant's decision to plead has been entered into freely,  
11 voluntarily, knowingly, and intelligently. That he has had  
12 the advice and counsel of an attorney with whom he's indicated  
13 he's completely satisfied. I'll accept his plea and be happy  
14 to hear from you, Mr. Bell.

15 MR. BELL: Your Honor, in our analysis of this case, if  
16 he were to go to trial, the only way he could beat this plea  
17 bargain would be to be found not guilty on all counts. My  
18 analysis of the facts of this, I do not believe that would  
19 happen. Obviously, it's a case we put a lot of work into.  
20 I've interviewed these children myself when they told me it  
21 didn't happen and I've been present with Ms. Parr when they  
22 said it did happen, and based upon my feelings of their  
23 credibility, I believe they would be believed at a trial and I  
24 think it's a very appropriate plea for him.

25 He's been in jail for 534 days, Your Honor, and his --

1 one thing that the children told with Ms. Parr, too, is that  
2 they had never told their grandmother, who stands with him,  
3 and never told their brother that it didn't happen. So  
4 they've always believed that it didn't happen and have been  
5 very supportive of him and they said they just didn't want to  
6 get into it with them. So a lot of times when you've got  
7 witnesses on a case, they'll oftentimes tell you what you want  
8 to hear, but what's important is what they're going to say  
9 when it comes D-Day and that's -- that's what we've all wanted  
10 to find out.

11 And after this long time and lots of work on it by their  
12 side and our side, I think this is the appropriate conclusion  
13 for it and I would ask you to accept this Alford plea and this  
14 negotiated sentence because I think it would be a fair way to  
15 handle this case and -- and probably what he's pleading to is  
16 what he'd be convicted of if he went to trial.

17 He has family members here that are supportive of him,  
18 Your Honor, his mother and -- what's your relationship?

19 MS. MANGUM: Friend.

20 MR. BELL: And he has a friend here and I think there's  
21 some other relatives that came in. But I would just ask you  
22 to accept this, Your Honor.

23 THE COURT: All right. Anybody else wish to say  
24 anything?

25 MS. MANGUM: Your Honor, I'd like to say something,

1 please.

2 THE COURT: Please tell me your name for the record.

3 MS. MANGUM: My name is Kathy Mangum.

4 THE COURT: Yes, ma'am.

5 MS. MANGUM: A friend of Thomas's and a friend of  
6 Nicky's. I don't believe he done this. The girls told me  
7 theirselves that it didn't happen and I believe the young  
8 ladies. They said they was put up to it. I don't think the  
9 -- I don't -- I don't think it was done completely correct.  
10 They wasn't put in counseling like they were supposed to.  
11 They didn't have a guardian ad litem for their protection.  
12 And when they did go to counseling, their mother was in  
13 counseling with them and that was not supposed to be. And so  
14 they stopped going to counseling, and if they were to continue  
15 the counseling in a correct way, I believe the counselor would  
16 have been able to speak for the children.

17 MR. BELL: What you're hearing obviously, Judge, is what  
18 I've told you that these children have told some -- one side  
19 of the family it didn't happen and the other side it did  
20 happen. And having had the opportunity to talk with them  
21 twice myself, I think this is the appropriate conclusion.

22 THE COURT: All right. Anything else, Mr. Bell?

23 MR. BELL: Nothing else, Your Honor.

24 MS. PARR: Did you want to say anything?

25 THE COURT: I'd be happy to hear from you, ma'am. Please

1 state your name for the record.

2 MS. VANHOOSE: My name is Elizabeth Vanhooose.

3 THE COURT: Yes, ma'am.

4 MS. VANHOOSE: I'm Thomas Vanhooose's wife. We have five

5 children together. As of right now, we're still married.

6 This has been very difficult on myself and my children. I

7 would never make my two daughters say such a thing because

8 September the 9<sup>th</sup> of 2010, my son was picked up on a murder

9 charge. This happened a month and three days later. I mean

10 my daughters were devastated to start with because of losing

11 their brother, somebody that they looked up to as being a

12 daddy because their daddy was in and out of prison most of the

13 time.

14 I mean I have had them in counseling. Yes, they've had

15 -- went back and said it didn't happen, this and that, because

16 of other family members. At this point in time, my son

17 doesn't even have anything to do with me. I don't even have

18 anything -- they won't even let me have anything to do with my

19 grandchildren because of this altercation right here. I mean

20 all I know is I just want justice to be done so I can build my

21 kids and my family back together.

22 THE COURT: All right. Thank you, ma'am. Mr. Vanhooose,

23 anything you want to tell me?

24 THE DEFENDANT: No, sir. I'm -- I'm being quiet.

25 THE COURT: Do you need to serve the citation on him?

1 PROBATION: Yes, sir.

2 (Whereupon, the deputy serves the probation violation  
3 citation on the defendant in the courtroom.)

4 PROBATION: Do you need the document number?

5 THE COURT: Yeah, I need it for the record.

6 MR. BELL: Judge, I've advised him before it would  
7 violate his probation so he's aware of that. I don't need any  
8 further time to talk with him about that and, obviously, this  
9 plea is the basis for his violation.

10 THE COURT: All right. Give me the indictment number?

11 PROBATION: This is a violation of Mr. Vanhose's  
12 probation on Indictment 2010-GS-21-00591. The citation CC-21-  
13 1346 was served on him.

14 THE COURT: Mr. Bell, you represent him on the probation  
15 matter, too?

16 MR. BELL: Yes, sir.

17 THE COURT: All right. Does he admit willfully violating  
18 the probation?

19 MR. BELL: He does, Your Honor.

20 THE COURT: Based upon his plea here today, I do find a  
21 willful violation of the terms and conditions of probation.  
22 Anything else you want to say, Mr. Bell?

23 MR. BELL: Nothing, Your Honor. I think we've covered it  
24 all.

25 THE COURT: All right. On the probation case, just

1 terminate. Close it, terminate. Fines and fees, civil  
2 judgment. No monitoring.

3 PROBATION: Thank you, Your Honor.

4 THE COURT: On Indictment 2012-GS-21-991 as it pertains  
5 to each of these charges, the defendant is committed to the  
6 State Department of Corrections for a period of ten years --  
7 for ten years. Give him credit for 534 days. As to each  
8 count. It will run concurrent. Anything else?

9 MR. BELL: Nothing further, Your Honor.

10 THE COURT: Good luck to you, sir.

11 MS. PARR: Your Honor, how many days credit?

12 THE COURT: 534.

13 (Whereupon, the proceedings end at 11:20 a.m.)

14

15 --- END REQUESTED TRANSCRIPT ---

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1 STATE OF SOUTH CAROLINA )  
2 ) CERTIFICATE.  
3 COUNTY OF FLORENCE )  
4

5 I, the undersigned, Krystal J. Smith, Official Court  
6 Reporter for the Twelfth Judicial Circuit of the State of  
7 South Carolina, do hereby certify that the foregoing is a  
8 true, accurate, and complete Transcript of Record of all the  
9 proceedings had and evidence introduced in the hearing of the  
10 above captioned case, relative to appeal, in the Court of  
11 General Sessions for Florence County, South Carolina, on the  
12 6th day of September, 2013.

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

15  
16 Krystal J. Smith

17 Court Reporter

18  
19 Florence, South Carolina

20 January 9, 2014  
21  
22  
23  
24  
25

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Florence

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

Thomas VanHoose SR. # 292642

State of South Carolina

2013 NOV 18 9:11  
CONNIE REEL  
CCCP  
FLORENCE CO

IN THE COURT OF COMMON PLEAS

2013 CP-21-3023

APPLICATION FOR

POST-CONVICTION RELIEF

2013 NOV 18 PM 4:52  
CONNIE REEL  
CCCP  
FLORENCE COUNTY  
FILED

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 Evan's Correctional I.N.S.T. 610 Hwy #9 west Bennett'sville S.C. 29512
2. Name and location of Court which imposed sentence Florence county General Sessions
3. Name(s) of co-defendant(s) (if any) N.A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2012-65-21-00991 Lewd Act
  - (b) 2012-65-21-00991 Lewd Act
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) 9-6-2013
  - (b) Lewd Act 10 yrs

CERTIFIED: A TRUE COPY  
Clerk of Court  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere
7. Did you appeal from the 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. N.A.
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. N.A.
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. N.A.
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N.A.
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) once I Plead. I was taken to Columbia for Procession.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: INEFFECTIVE ASSISTANCE OF COUNSEL

(a) INEFFECTIVE ASSISTANCE OF COUNSEL

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

(a) UNProfessional Counseling; "Multi Errors"

(b) Credibility of Counsel was Poor "To much Discrepany Between Attorney and Client."

(c) Coerced me to Pleading guilty

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NA

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NA

(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. NA

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. NA

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(c) the disposition thereof:

i. NO

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. N.A.

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. N.A.

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?

N.A.

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

(a) which grounds have been presented:

i. N.A.

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. N.A.

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) N.A.

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

- (a) your arraignment and plea? \_\_\_\_\_
- (b) your trial, if any? \_\_\_\_\_
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
- (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. Michael Bell 180 N. Irby St Florence S.C 29501
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Plea of Nolo contendere.
  - ii. Sentencing
  - iii. \_\_\_\_\_

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

Trial

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

NA

STATE OF SOUTH CAROLINA )

County of )

VERIFICATION )

I, , 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.

Thomas VanHorn S.R.

SWORN to and subscribed before me this 15<sup>th</sup>  
day of November, 2013.

Danic [Signature]

(L.S.)

Notary Public

My Commission Expires: Feb 7<sup>th</sup> 2023

2013 NOV 18 PM 4:52  
CONNIE REEL-SHEARIN  
CCCP & GS  
FLORENCE COUNTY, SC

FILED

CERTIFIED: A TRUE COPY  
Danic [Signature]  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

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

I, \_\_\_\_\_, 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.

Thomas Varkase S.R  
Applicant

SWORN or affirmed to and subscribed before me this  
15<sup>th</sup> day of November, 2013.

Dhania [Signature]  
Notary Public

My Commission Expires: Feb 7<sup>th</sup> 2023

2013 NOV 18 PM 4: 52  
CONNIE REEL-SHEARIN  
C.C.C.P. & G.S.  
FLORENCE COUNTY, SC

FILED

CERTIFIED: A TRUE COPY  
Connie Reel Shearin  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA  
COUNTY OF FLORENCE

Thomas Vanhoose, Sr., #292642

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE TWELFTH JUDICIAL CIRCUIT

Case No. 2013-CP-21-03023

RETURN

FILED  
APR 25 AM 12:58  
JUDITH REEL-SHEARIN  
CLERK & GS  
FLORENCE COUNTY, SC

The Respondent, making its Return to the application for post-conviction relief (PCR) filed November 18, 2013, would respectfully show this Court:

**I.**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. The Florence County Grand Jury indicted Applicant in July 2012 for First Degree Criminal Sexual Conduct with a Minor, two counts of Lewd Act on a Minor, and Second Degree Criminal Sexual Conduct with a Minor (2012-GS-21-991). Michael Bell, Esquire represented Applicant. On September 6, 2013 Applicant entered a negotiated Alford<sup>1</sup> plea to two counts of Lewd Act on a Minor. The Honorable D. Craig Brown sentenced Applicant to concurrent terms of ten (10) years for each count. Applicant did not appeal his plea or sentence.

**II.**

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

<sup>1</sup>North Carolina v. Alford, 400 U.S. 25 (1970).

1. "Ineffective Assistance of Counsel";
  - a. "Unprofessional counseling: 'mul-ti error's.'"
  - b. "Credibility of counsel was poor. Too much discrepancy between attorney and client."
  - c. "Coerced me to pleading guilty."

Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRPC.

Attached to this return and incorporated herein are the records of the Florence County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

### III.

Respondent submits Applicant's allegation of ineffective assistance of counsel is without merit. 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, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner

v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove trial counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

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

#### IV.

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

V.

WHEREFORE, having made its Return, Respondent requests an evidentiary hearing be held.

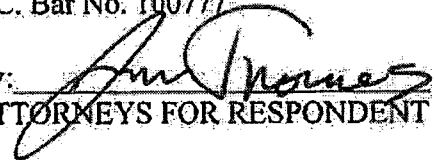
Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS  
Assistant Attorney General  
S.C. Bar No. 100777

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
Telephone: (803) 734-3737

4/23, 2014

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF FLORENCE )  
 )  
 )  
 )  
 THOMAS VANHOOSE, SR., #292642 )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS

2013-CP-21-3023

AFFIDAVIT OF SERVICE BY MAIL


2014 APR 25 AM 12: 58  
 CONNIE DEEL-SHEARIN  
 CLERK OF COURT  
 FLORENCE COUNTY, SC

FILED

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 by depositing same in the United States mail, postage prepaid:

**Jonathan D. Waller, Esquire**  
 1720 Main St., Suite 104  
 Columbia, SC 29201

DATED this 23<sup>rd</sup> day of April, 2014.

  
 Norma Bigbee, Legal Assistant

STATE OF SOUTH CAROLINA )

COUNTY OF FLORENCE )

COURT OF COMMON PLEAS  
2013-CP-21-3023

Thomas Vanhooose, Sr. )

vs. )

State Of South Carolina )  
DEFENDANT )

TRANSCRIPT OF RECORD

June 1, 2016  
Florence, South Carolina

B E F O R E:

THE HONORABLE JOCELYN J. NEWMAN, JUDGE.

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

JONATHAN D. WALLER, ESQ.  
Attorney for the Applicant

CROOM HUNTER, ASSISTANT ATTORNEY GENERAL  
Attorney for the State

KESHIA REED  
Official Court Reporter

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I N D E X

WITNESS                      DIRECT      CROSS              REDIRECT      RECROSS

Thomas Vanhoose

Mr. Waller                      4                                      21

Mr. Hunter                                      17

Michael Bell

Mr. Hunter                      24                                      43

Mr. Waller                                      32

Certificate of Reporter 45

1 THE COURT: Good morning. Yes, sir.

2 MR. HUNTER: Good morning. May it please the  
3 Court.

4 THE COURT: Yes, sir.

5 MR. HUNTER: This is Thomas Vanhooose, Sr., SCDC  
6 number 292642 vs. The State of South Carolina. The case'  
7 number is 2013-CP-21-3023. The applicant is present,  
8 confined with SCDC pursuant to the Florence County Clerk  
9 of Court's orders. The Florence County grand jury  
10 indicted him in July of 2012 for first degree criminal  
11 sexual conduct with a minor, two counts of lewd act on a  
12 minor and second degree criminal sexual conduct with a  
13 minor. That indictment number was 2012-GS-21-991. He was  
14 represented by Mr. Michael Bell on September 6th of 2013.  
15 Mr. Vanhooose entered a negotiated Alford plea to two  
16 counts of lewd act on a minor. Judge Brown sentenced him  
17 to concurrent terms of ten years for which he did not  
18 appeal. Filed this application for PCR on November 18th  
19 2013. And he's represented here today by Mr. Waller. The  
20 State is ready to proceed.

21 THE COURT: And where is Mr. Vanhooose?

22 MR. WALLER: I believe, he's in the holding  
23 cell, Your Honor. I think one of the deputy's bringing  
24 him down.

25 THE COURT: All right. Well, let's wait for

1 him.

2 (WHEREUPON, a pause in the proceedings.)

3 THE COURT: All right. Let's proceed,  
4 Mr. Waller.

5 MR. WALLER: Thank you, Your Honor. Your Honor,  
6 I would call Thomas Vanhooose.

7 THE COURT: Yes, sir.

8 THE CLERK: Raise your right hand much as  
9 possible. Do you swear to tell the truth, the whole  
10 truth, and nothing but the truth so help you God?

11 MR. VANHOOSE: Yes, ma'am.

12 THE COURT: All right. Have a seat, sir.

13 MR. WALLER: Thank you, Your Honor. May it  
14 please the Court.

15 THE COURT: Yes, sir.

16 WHEREUPON,

17 Thomas Vanhooose, Sr.

18 after first having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. WALLER:

21 Q Good morning, Mr. Vanhooose, how are you?

22 A Good morning.

23 Q Mr. Vanhooose, I'm going to ask if you can speak up a  
24 little bit, so the court reporter can hear you.

25 Mr. Vanhooose, I want to take you back if I can. You were

1 charged with four crimes; is that correct?

2 A Yes, sir.

3 Q Okay. And do you recall exactly what you were  
4 charged with originally?

5 A Yes, sir.

6 Q Okay. What were you charged with?

7 A Criminal sexual conduct first offense, criminal  
8 sexual conduct second offense, lewd act on a minor and  
9 lewd act, four charges.

10 Q Was it criminal sexual conduct first degree?

11 A One of them.

12 Q Okay. And was the other criminal sexual conduct  
13 second degree with a minor?

14 A Yes, sir.

15 Q Okay. And how were you arrested on these charges?

16 A Well, in -- you want me to tell the whole thing or  
17 just...

18 Q Yeah, how did you first come into contact with law  
19 enforcement about this?

20 A Jennifer Floyd came and ask me to come down to the  
21 station and give a statement.

22 Q Okay. Who is Jennifer Floyd?

23 A The investigator.

24 Q Okay. And was it before or after you were -- did you  
25 turn yourself in or were you arrested?

1 A No, turn myself in.

2 Q Okay. Before or after that, when did you speak with  
3 law enforcement about these allegations?

4 A Back in 2010 when the allegations first came up, I  
5 went down and made a taped statement and took a polygraph  
6 test.

7 Q Okay.

8 A I left. In 2012, she came and arrest me with the  
9 warrant or call me and ask me to come and turn myself in,  
10 that she had the warrant for my arrest.

11 Q Okay. So about two years went by from when you  
12 initially talked to law enforcement about these  
13 allegations and when you were actually arrested on them?

14 A Yes, sir.

15 Q Okay. After you were arrested or after you turned  
16 yourself in, did you get a lawyer?

17 A I had Michael Bell appointed to me.

18 Q He was appointed to represent you?

19 A Yes, sir.

20 Q Okay. When you and Mr. Bell first met, do you  
21 remember what y'all talked about?

22 A When we first met, we just went -- I just pretty much  
23 told him what happened.

24 Q Did y'all talk about the -- each of the charges that  
25 -- you had three different -- you had four charges, but

1 there three different offenses?

2 A Yes, sir.

3 Q Did y'all talk about each one of those?

4 A Yes, sir.

5 Q Did you talk about the penalties that each one of  
6 those carry?

7 A Yes, sir.

8 Q Did you talk about the elements of the crime that the  
9 State would have to show to prove you guilty?

10 A No, sir.

11 Q Okay. Did you understand what the State would have  
12 to show to convict you of each of those crimes?

13 A No, sir.

14 Q Did you understand what the State was alleging was  
15 their evidence against you?

16 A I requested it, but I never received anything.

17 Q Okay. You never saw any documentation or anything  
18 like that?

19 A No, sir.

20 Q Did you and Mr. Bell go over the evidence the State  
21 had against you?

22 A No, sir.

23 Q What was your understanding of the evidence they had  
24 against you?

25 A That they went and made a statement.

1 Q Who is they?

2 A Tiffany Vanhooose and Samantha Vanhooose.

3 Q Okay. If you know, when did they supposedly make a  
4 statement?

5 A In October of 2010.

6 Q Okay. Was that before or after you talked to law  
7 enforcement?

8 A About prior -- a week before.

9 Q When you and Mr. Bell met, how many times do you  
10 think y'all met?

11 A I say probably about 18 months probably six, seven  
12 times.

13 Q What did y'all talk about?

14 A Most of the time when he come in there, I mean, if I  
15 had anything new, we would talk about it, but nothing  
16 really.

17 Q How long do you think you met each time?

18 A Between five and ten minutes probably.

19 Q Okay. So the entire time you were represented by  
20 Mr. Bell, were all the meetings five or ten minutes?

21 A Pretty much. It wasn't long.

22 Q So the entire time you were represented by Mr. Bell,  
23 you met with him between 30 minutes and an hour total?

24 A Pretty much.

25 Q Okay. When you say y'all talked about if you had

1 anything new or if he had anything new, what new stuff  
2 would you have had?

3 A Like letters, have them going up and talking to them  
4 or whatever, want to know did I know anything.

5 Q What did you tell him?

6 A I have no contact with them other than, you know, I  
7 got a letter every now and then.

8 Q So you were receiving letters from the two victims in  
9 the case?

10 A Yes.

11 Q Okay. Did you share those letters with Mr. Bell?

12 A Yes.

13 Q What was his response to those letters?

14 A Well, he told me they was good, but that's about it.

15 Q Okay. What was your understanding of what the  
16 letters said?

17 A It would prove my innocence.

18 Q When you and Mr. Bell discussed those letters, what  
19 was his response to that?

20 A When I first started getting letters, I gave the  
21 letters to Thomas McKenzie.

22 Q Who is Thomas McKenzie?

23 A Thomas McKenzie was the investigator for the public  
24 defender's office.

25 Q Okay.

1 A I guess, he the one that transferred them to Michael  
2 Bell.

3 Q Okay.

4 A Well, Michael Bell came to see me he asked me about  
5 them and I told him that I received them in the mail. And  
6 he said he know it was good, but that's about it. He said  
7 he would address it.

8 Q Were those letters -- what was contained in the  
9 letters -- was that in kind of direct contradiction to the  
10 allegations for which you were arrested for?

11 A Yes, sir.

12 Q Did you and Mr. Bell discuss that that maybe a  
13 potential defense for you?

14 A I thought it was, but we never discussed it as far as  
15 going over and having conversation about it.

16 Q Did you tell him you thought it was a defense?

17 A That's why I was giving it to them.

18 Q Okay. What did he tell you as far as how he could  
19 potentially use those letters if you went to trial?

20 A He never did.

21 Q Okay. Did y'all discuss going to trial at all?

22 A The only thing we discussed about going to trial is  
23 he said that being they knew that they was minors, that  
24 they really couldn't be cross-examined. So there wouldn't  
25 be too much that he could do.

1 Q Okay. Hang on let me back you up to that again. He  
2 said what now?

3 A Being that they were minors that he couldn't really  
4 badger or -- well, cross-examine and badger the witnesses  
5 if they tried to recant their story or...

6 Q Okay. So he said he wouldn't be able to  
7 cross-examine them because they were under 18 years of  
8 age?

9 A Minors, yes, sir.

10 Q What else did y'all discuss as far as trial and  
11 getting ready for trial?

12 A We never really discussed nothing as far as getting  
13 ready for trial.

14 Q Did you want to go to trial?

15 A Yes, sir.

16 Q Okay. Did you and Mr. Bell -- I mean, what questions  
17 did you ask him about why aren't y'all talking about  
18 trial?

19 A When Jennifer Floyd went and took my daughter from my  
20 mama's house and carried her to Kingstree, that's when  
21 they come and got me with telling me that they had ten  
22 years on the table or the Solicitor was about to take the  
23 ten years off if I went to trial. If they couldn't recant  
24 their story, I be getting 25 to life. My daughter  
25 couldn't have no contact with my mama, with her brothers

1 or nothing. My hands are tide. I ain't know what to do.

2 Q Okay. Who told you -- how did you find out that your  
3 daughter been taken to Kingstree by the investigator?

4 A My mother came and told me.

5 Q Do you know why she was taken to Kingstree?

6 A No, sir.

7 Q Okay. How did you find out that there was an offer  
8 of ten years on the table?

9 A Michael Bell came to me with the offer.

10 Q Okay. How did you hear that if you went to trial you  
11 would get 25 years?

12 A Michael Bell.

13 Q Okay. So you were under the impression that you were  
14 going to get 25 years if you went to trial?

15 A Yes, sir.

16 Q Did these letters -- was that before or after you  
17 received the letters?

18 A This was after.

19 Q Okay. Did those letters change your opinion of what  
20 evidence the State had against you?

21 A I felt it, but, I mean, like I say, once they came  
22 and took my daughters, it was like I ain't had no fight  
23 left.

24 Q Okay. Do you know if Mr. Bell or anybody from the  
25 public defender's office or on your behalf ever spoke to

1 your daughters?

2 A I know they had came and made a taped statement to  
3 Mr. Bell and I'm not sure who else was there.

4 Q Okay. Did you ever hear that statement?

5 A No, sir.

6 Q Okay. Did you and Mr. Bell ever talk about it?

7 A He told me that they had made one, but that they said  
8 that I didn't do it, but that's about as far as it went as  
9 far as us talking about it.

10 Q Do you know how long the statement was?

11 A No, sir.

12 Q Do you know what was said in the statement other than  
13 just kind of a general idea?

14 A I never heard it.

15 Q Okay. What discovery or what evidence the State had  
16 did you see it?

17 A Nothing.

18 Q Okay. Did you see your interview with law  
19 enforcement from 2010?

20 A That's it.

21 Q Since, you been in the department of corrections have  
22 you seen any more discovery?

23 A No, sir.

24 Q Have you asked Mr. Bell for any of the discovery?

25 A I haven't talked to Mr. Bell since I been in. I had

1 put in a motion Brady vs. Maryland for everything, but my  
2 Rule 5 was the 27 pages -- well, my interview with  
3 Ms. Floyd was all I received.

4 Q Okay. Did you and Mr. Bell discuss specifics of the  
5 allegations against you?

6 A What do you mean?

7 Q What was said -- what the State said actually took  
8 place like specifics, not just a general allegation, but  
9 what the State said took place on the particular night?

10 A No, sir.

11 Q Okay. Did you have an understanding of that before  
12 you entered your plea? Let me ask it this way, before you  
13 got into court and the Solicitor read out the facts, did  
14 you know what the Solicitor was going to tell the judge  
15 the State said the facts were?

16 A Yes, sir.

17 Q Okay. How did you know that?

18 A Because that's what was on my warrants.

19 Q Okay. But did you know it from talking to Mr. Bell?

20 A When we was here right before we in front of the  
21 judge.

22 Q Okay. Mr. Vanhooose, did you think you had valid  
23 defenses to these charges?

24 A Yes, sir.

25 Q Okay. Did you tell Mr. Bell that?

1 A Yes, sir.

2 Q What changed in your conversations with him that you  
3 ultimately end up pleading pursuant to North Carolina vs.  
4 Alford?

5 A Well, due to the fact that he said -- well, when he  
6 said he first tell me that he couldn't cross-examine the  
7 victims due to they were minors, I mean, that pretty much  
8 left it open for the State to pretty much say what they  
9 wanted to say.

10 Q When he said he couldn't cross-examine them, did you  
11 -- what did you understand that to mean?

12 A That pretty much the State say what they wanted to  
13 say and whether they took the stand whatever they said  
14 that he wouldn't be really a defense to it.

15 Q Did you think he couldn't ask them questions at all?

16 A Well, at the time due to they were minors, I didn't  
17 think he could.

18 Q Okay. So you didn't think he could ask any questions  
19 of them at all?

20 A No, sir.

21 Q So you thought that whatever questions the State  
22 asked, whatever answers they gave, that was it no matter  
23 what?

24 A Yes, sir.

25 Q Okay. Mr. Vanhooose, if Mr. Bell had in your mind

1     been to able to cross-examine the victims and had  
2     presented defense on your behalf, would you have gone to  
3     trial or would you have pled?

4     A     I believe I would have went to trial. I had put in a  
5     request for a suppression -- evidentiary hearing that I  
6     never received.

7     Q     Okay. You tried to file something on your own?

8     A     Yes, sir, a motion.

9     Q     Was that while you were represented by Mr. Bell or  
10    before?

11    A     I was being represented by Mr. Bell.

12    Q     Okay. Did you ask Mr. Bell about the motion that you  
13    filed?

14    A     Yes, sir, he had it.

15    Q     Okay. What was his response?

16    A     We was gone take this plea or she was fixing to take  
17    it off the table.

18    Q     Okay. But when you filed the motion to -- and I'm  
19    sorry I'm not exactly familiar with what you're talking  
20    about. When you filed your motion while you were  
21    represented by Mr. Bell, it never got heard?

22    A     No, sir.

23    Q     Did you ask Mr. Bell about it?

24    A     To be honest, I can't remember.

25    Q     Okay. You said he had a copy of it though?

1 A Yes, sir.

2 Q Did he ever file something similar?

3 A Not to my knowledge.

4 Q Okay. Did you ever ask him about why he didn't file  
5 it?

6 A No, sir.

7 Q Okay. Mr. Vanhooose, I've asked all the questions  
8 that I have for you. Is there anything that you think  
9 I've left out that the Court needs to be aware of  
10 Mr. Bell's representation of you?

11 A I think you pretty much covered it.

12 MR. WALLER: Please answer any questions  
13 Mr. Hunter has.

14 CROSS-EXAMINATION

15 BY MR. HUNTER:

16 Q Good morning, Mr. Vanhooose.

17 A Good morning.

18 Q So you're saying you pled guilty essentially because  
19 Mr. Bell told you he wouldn't be able to cross-examine the  
20 victims because they were minors?

21 A Due to that and they went and took my daughters.

22 Q Okay. Well, let's talk about the day you pled. Do  
23 you recall the judge telling you at your plea Judge Brown  
24 said that if you went to trial, you be able to -- you  
25 would have the right to question the witnesses against

1 you?

2 A Well, see due to the fact that they were minors, I  
3 was under the impression that we couldn't.

4 Q But you didn't ask Judge Brown about that?

5 A No, sir.

6 Q Okay. And this was a negotiated ten year plea,  
7 right?

8 A Yes, sir.

9 Q Okay. And you pled guilty because you were scared if  
10 you went to trial and were found guilty by the jury, that  
11 you would be facing a much stiffer sentence, correct?

12 A Yes, sir.

13 Q Okay. And a couple of charges were dropped as part  
14 of your plea, right?

15 A Yes, sir.

16 Q Okay. So you knew you were getting ten years  
17 concurrent the day you pled guilty?

18 A Yes, sir.

19 Q So you understood what was going on?

20 A Yes, sir.

21 Q Okay. And the judge asked you or let me go back a  
22 minute. Did Mr. Bell explain to you what an Alford plea  
23 was?

24 A He told me that it was like pleaing -- taking  
25 responsibility for the charge but not actually admitting

1 the guilt.

2 Q Okay. And then the judge explained it as well,  
3 correct?

4 A Yes.

5 Q So you knew what that meant?

6 A Yes.

7 Q Okay. And you told the judge that you did want to  
8 plead under Alford?

9 A Yes.

10 Q Okay. And you understood it would still be on your  
11 record as a regular guilty plea?

12 A Yes, sir.

13 Q Okay. You recall telling the judge that you were  
14 satisfied with Mr. Bell's performance as far as his  
15 representation?

16 A Yes, sir.

17 Q Okay. Now, you're saying that you were not satisfied  
18 -- well, let me ask you this, were you satisfied at the  
19 time and now you're not or were you not satisfied?

20 A I wasn't really satisfied then.

21 Q Okay. Why didn't you tell the judge that?

22 A Because I felt like my hands was tied.

23 Q Okay. But the judge asked you if you needed more  
24 time to consider what to do and you told him you didn't,  
25 right?

1 A I don't recall.

2 Q Okay. Would you agree that if it's in the transcript

3 ---

4 A I mean, I'm not saying he didn't. I just don't ---

5 Q Just don't recall, that's fine.

6 MR. HUNTER: Beg the Court's indulgence.

7 THE COURT: Yes, sir.

8 (WHEREUPON, a pause in the proceedings.)

9 BY MR. HUNTER:

10 Q So you're saying that Mr. Bell didn't go over  
11 essentially any of the evidence against you?

12 A No, sir.

13 Q Okay. Were you aware that the victims in this case  
14 gave multiple accounts of what happened?

15 A Yes, sir.

16 Q Okay. And so you were aware that if you had gone to  
17 trial, essentially the jury could have believed one story  
18 or the other?

19 A Pretty much, yes, sir.

20 Q Okay. So you felt like your best resolution was just  
21 to plead to the ten years rather than face something much  
22 longer?

23 A Yes, sir, at the time, yeah.

24 MR. HUNTER: Beg the Court's indulgence.

25 (WHEREUPON, a pause in the proceedings.)

1 MR. HUNTER: That's all I have. Thank you,  
2 Mr. Vanhooose.

3 MR. WALLER: Just briefly, Your Honor.

4 THE COURT: Yes, sir.

5 REDIRECT EXAMINATION

6 BY MR. WALLER:

7 Q Mr. Vanhooose, did you not ask Judge Brown about being  
8 able to cross-examine the victims because you already  
9 discussed that with Mr. Bell?

10 A Repeat that again.

11 Q You and Mr. Bell discussed cross-examining the  
12 victims if you had gone to trial?

13 A Yes, sir.

14 Q Okay. When Judge Brown talked to you about that  
15 during the plea and you said -- you thought that Mr. Bell  
16 wouldn't be able to?

17 A Yes, sir.

18 Q Did you not mention it to Judge Brown because you  
19 already discussed it with Mr. Bell?

20 A I didn't mention it because I thought that was it.

21 Q Okay. So based on your discussions with Mr. Bell,  
22 that's what you thought was the way?

23 A Yes, sir.

24 Q Mr. Hunter asked if you were satisfied -- if you were  
25 unsatisfied with Mr. Bell at the time or if you're

1     unsatisfied now, were you satisfied at the time because  
2     you didn't know any better or you didn't know?

3     A     I mean, I didn't know.

4     Q     Okay. You testified that you and Mr. Bell did not  
5     discuss the allegations against you or the evidence that  
6     the State had. Did you learn some of those things from  
7     when you spoke with law enforcement?

8             MR. HUNTER: Objection, that's outside the scope  
9     of cross.

10            THE COURT: It's also a pretty leading question.  
11     You can ask him about, you know -- he did testify about  
12     not knowing the evidence. You can ask him about what he  
13     knew or when he knew it.

14     A     I didn't know they could be cross-examined until  
15     after I was done in the penitentiary and I was doing law  
16     work myself.

17     Q     When you and Mr. Bell discussed the allegations  
18     against you, how in depth were those discussions?

19     A     I don't understand what you're saying, sir.

20     Q     Okay. How much did you and Mr. Bell discuss the  
21     allegations against you?

22     A     How much?

23     Q     Yes, sir.

24     A     Brief.

25     Q     Did you already -- at the time you talked about it

1 with Mr. Bell, did you already know some of the  
2 information?

3 A As far as ---

4 Q What the State was saying?

5 A As far as what the State was saying?

6 Q Yes, sir.

7 A I never really -- the only thing I knew that the  
8 State was saying was what was on my warrants.

9 Q Okay. Did you speak with the investigator in 2010?

10 A Yes, sir.

11 MR. WALLER: No further questions.

12 THE COURT: Any recross?

13 MR. HUNTER: No, Your Honor.

14 THE COURT: All right. Mr. Vanhooose, you can  
15 come down and sit back next to your lawyer.

16 (WHEREUPON, the witness leaves the witness  
17 stand.)

18 THE COURT: Have any other witnesses?

19 MR. WALLER: No other witnesses, Your Honor.

20 THE COURT: All right, Mr. Hunter.

21 MR. HUNTER: Your Honor, the State would call  
22 Mr. Bell.

23 THE CLERK: Do you swear or affirm that the  
24 testimony you give will be the truth, the whole truth, and  
25 nothing but the truth so help you God?

1 MR. BELL: I do.

2 THE CLERK: Please have a seat.

3 THE COURT: Good morning, Mr. Bell.

4 MR. BELL: Good morning, Judge, nice to meet  
5 you.

6 THE COURT: You as well.

7 Your witness, sir.

8 WHEREUPON,

9 Michael Bell,

10 after first having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. HUNTER:

13 Q Good morning, Mr. Bell. How long have you been  
14 practicing law?

15 A I graduated from law school in 1977 and passed the  
16 bar that year. I retired two years ago.

17 Q And how much of your practice has been devoted to  
18 criminal defense?

19 A I was a work -- I worked for the state department of  
20 social services child support enforcement division for  
21 nine years in between two different stints in the public  
22 defender's office here and the rest of my career was at  
23 the public defender's. I retired 34 years state  
24 retirement.

25 Q So you were appointed on this case?

1 A That's correct.

2 Q Did you file Rule 5 and Brady motions in this case?

3 A We did.

4 Q Okay. Did you have any trouble getting discovery  
5 from the State?

6 A No, as is typical, you got a bunch and then you had  
7 other things that trickled in over time.

8 Q Did go over the discovery material with Mr. Vanhoose?

9 A I did. I go went to the jail numerous times. He was  
10 in jail for 500 something days and I went to the jail with  
11 the Rule 5. I went over his statement, went over the  
12 children's statements, went over the reports from the Care  
13 House and the other place, investigators reports. And for  
14 the videos of the children, I had a laptop computer in the  
15 public defender's office, which I would take to the jail  
16 and show the videos of what the children had to say. And  
17 ultimately when we had the opportunity to interview these  
18 children, we also recorded a statement from them which I  
19 also had on disk which I took down there.

20 Q So you -- sorry I didn't mean to interrupt you.

21 A After that, the children went to the Solicitor's  
22 office the following week in which they related that they  
23 had been threatened or coerced by their brother to make  
24 those statements. And I don't remember whether I had a  
25 copy of that one to play or not or just told him what they

1 said at that time.

2 Q Now, did you discuss Mr. Vanhoose's possible defenses  
3 he be able to put up at trial?

4 A I did.

5 Q What -- would you kind of just briefly explain to the  
6 court what you saw as his defenses being?

7 A He passed a polygraph, but that wasn't admissible, so  
8 that was a strike that we couldn't use that. Always I  
9 suppose if you got in a trial and the State manage to open  
10 the door to that, you could have used it, but that would  
11 not have been beneficial. When the children had initial  
12 physical exam, the initial place they went to showed signs  
13 of some trauma. Fifteen days later went to another one,  
14 the test were normal, but the -- as regards to allegations  
15 of criminal sexual conduct, certainly you can make an  
16 argument that there wasn't penetration which would have  
17 been a way to try to defend the criminal sexual conduct  
18 charges. Alternatively, the State would have argued that  
19 just going in between the inner lips could and so forth  
20 could constitute penetration, so that was an iffy thing as  
21 far as the criminal sexual conduct charges went. As far  
22 as impeaching the children or cross-examining the  
23 children, certainly you can do that and I never told him  
24 we couldn't. I did tell him that in criminal sexual  
25 conduct cases there are a lot of protections for the child

1 and may not be in other cases, but the -- in some of the  
2 initial statements, one child vacillated some. The other  
3 one was always strong. They eventually -- they ended up  
4 talking to a whole bunch of different people, but they  
5 ultimately ended up telling that they had been touched and  
6 he had tried to penetrate them. And there were  
7 allegations about perhaps more than one time, but although  
8 they focused on this occasion. So when it came down after  
9 everything was in, ultimately the case would have been --  
10 try to argue that there's no criminal sexual conduct if  
11 you went to trial. And as far as the lewd act goes try to  
12 use any discrepancies in the earlier statement and the  
13 statement they had made to me. In my judgment, I think  
14 both of these young ladies were quite articulate and would  
15 have made good witnesses. It would appear that the  
16 situation was such that when the children were with his  
17 mother, brother and so forth, they kind of told them it  
18 didn't happen. When they were with other people, they  
19 told them it did happen. And even after they had done  
20 their statement saying it didn't happen, I did tell him at  
21 that stance before we with a second one that they could  
22 still try him. And sometimes the State will bring in  
23 these so-called experts that will say that victims often  
24 times will recant. So that didn't mean we were home free,  
25 but it did mean that we were at that point it look like we

1 were in a very very good situation to go to trial. But  
2 ultimately when they went back to the Solicitor's  
3 office -- and I will say this, when I interviewed the  
4 children, I interviewed them separately without any other  
5 family member there. And when I went up and sat with  
6 Mrs. Parr, she interviewed them separately without any  
7 other family member in there. And, you know, I don't  
8 fault the decision to take the negotiated plea at all  
9 because certainly there was a lot to lose here. And if he  
10 got convicted of the criminal sexual conduct charges, it  
11 would have been much much worse, probably would have been  
12 much worse than the 25 years. And certainly with the lewd  
13 acts, he could have gotten 15 on each. I think that that  
14 it was a very difficult case because we did have the past  
15 polygraph. We did have the children reneging, but at the  
16 same time the children seem very articulate. And they  
17 gave good reasons for why they would have told me a  
18 different story. And we got into a trial, it would have  
19 been interesting, but probably the best we could have done  
20 they could have compromised probably convicting on the  
21 lewd act and that's where he ended up any way. He didn't  
22 get the max on that. It's a case where I had a lot of  
23 sympathy for him, but this case kind of went back and  
24 forth on a roller closer for a long time. It was  
25 prolonged and unfortunately for a while because Mrs. Parr,

1 the prosecutor, got sick and was out for a while and that  
2 was very frustrating to him and to me. And one thing they  
3 did at the end in September I have the Rule 5 they sent in  
4 September, which was shortly before the plea. And after  
5 we had had this statement where they reneged where the  
6 investigator went out and followed up on some of these  
7 prior allegations that he had done something like this  
8 before and brought in some statements from a couple of  
9 people talking about how he had done some things when he  
10 was 15 and 16 years old. Now, whether the implied threat  
11 there was that they were trying to use that for  
12 impeachment evidence against him should he take the stand  
13 or whether that was an implied threat, having those  
14 statute of limitations that they might try and come back  
15 and indict him for more charges, but either way it was  
16 something to take in that balance of deciding whether  
17 you're going to have a trial or not. So I think that  
18 Alford was the appropriate situation in this.

19 Q Did you go over the elements of the charges he was  
20 facing?

21 A Yes, I did. And, of course, we talked about the  
22 penetration of the criminal sexual conduct and what the  
23 doctors' reports thankfully did not show, you know,  
24 vaginal tearing or any of those things, which did leave  
25 that. And the lewd act all it required basically was the

1 touching and you can even have clothes on and do the  
2 touching. They said that they weren't.

3 Q Did you review Mr. Vanhoose's Constitutional Rights  
4 prior to this plea?

5 A I did.

6 Q Okay. You explain to him what an Alford plea was and  
7 what a negotiated plea was?

8 A I did. I also explained to him the outside chance of  
9 the Sexually Violent Predator's Act, which is a civil  
10 action that can follow someone convicted of a sexual crime  
11 whereas you perhaps can be declared to be a sexual  
12 predator, which is something you don't have any control  
13 over at the time you plea. It's a civil action. And you  
14 have certain rights to a trial and representation at that  
15 time should it ever occur hopefully it won't in this case.

16 Q Did Mr. Vanhoose ever indicate to you that he wasn't  
17 comfortable with the plea or didn't understand really what  
18 was going on?

19 A I think he was very frustrated and I think he did  
20 understand what was going on. And I think he made a tough  
21 choice and I think it probably was the appropriate one.  
22 Certainly, when you're going to the penitentiary for ten  
23 years, it's not a happy choice.

24 Q Did you ever tell him he would definitely get 25  
25 years if he was convicted at trial?

1 A No, but I believe he would have gotten more than that  
2 if he got convicted at trial.

3 Q Did Mr. Vanhoose file any motions that you're aware  
4 of while you represented him?

5 A I think he did, but, of course, if you're  
6 represented, your pro-se motions are not really allowed.  
7 And certainly, I mean, we filed Rule 5 and so forth and  
8 shared all that with him, went over it all with him. I  
9 understand his frustration in being in jail so long. I  
10 understand his frustration having passed a polygraph and  
11 having gone through where the children wrote in these  
12 letters and things, which initially I just told the  
13 Solicitor we had such letters or didn't share them with  
14 her until I had the chance to verify with the children  
15 that they wrote them. I didn't want to get put in a  
16 situation where sometimes I been put in where you hand  
17 letters over and then find out that some other inmate  
18 wrote them. And you got a lot of egg on your face. So  
19 after I verified that the children had indeed wrote those  
20 letters, I under reciprocal Rule 5 provided the Solicitor  
21 with a copy of those letters.

22 MR. HUNTER: That's all the questions I have.  
23 Thank you, Mr. Bell.

24 CROSS-EXAMINATION

25

1 BY MR. WALLER:

2 Q Mr. Bell, how did you come to interview the children?

3 A I will tell you this that it was -- when you have a  
4 criminal sexual conduct case, it's a very delicate matter.  
5 You don't try to do that any time soon. You wait. And  
6 then the situation was that the children is with the  
7 mother. Well, she was going to see the grandmother or  
8 something and they were saying maybe we'll bring them here  
9 while they have them. Well, we didn't want to get in the  
10 middle of a battle like that. We did set up an interview  
11 when they were with the mother and then the mother refused  
12 to bring them, but once they were out of the mother's  
13 care, then we were able to interview the children. These  
14 children went from one place to another. And that's how  
15 we were able to interview them. We weren't going to get  
16 into a dispute with mama with minor children interviewing  
17 them without her consent.

18 Q Okay. But is that something you would normally do in  
19 a CSC with a minor case is interview the victim?

20 A I have done it. It is a rare thing, but if you  
21 didn't have those letters, you never would have thought  
22 about doing it because all you can do is make things  
23 worse.

24 Q Okay. And that was my next questions is what -- was  
25 there something that gave you reason to believe that

1 interviewing them would be beneficial to you?

2 A Having the letters certainly made us want to verify  
3 them and we did as I said, I told the prosecutor about  
4 them earlier, but did not provide copies after we verified  
5 they had written them we provided her with copies of them.

6 Q Did you attempt to interview the children's mother at  
7 all?

8 A No, we knew that she was very hostile towards us. Of  
9 course, if she had assented to the initial interviews with  
10 the children, we probably would have talked to her because  
11 I'm sure she would have been present. And I think  
12 initially we had some assent and then that fell apart.

13 Q The letters essentially blamed her for the children's  
14 statement; is that your understanding?

15 A This one does not. This is one if you like to see  
16 one, there is nothing about blaming the mother in either  
17 one of these letters here. There's another one. Here's  
18 one. I'm not sure if this is a copy of one of those  
19 others or if it's a separate one. I do understand they  
20 been separated for maybe seven or eight years.

21 Q When you discussed with Mr. Vanhooose the letters and  
22 the interview you had done the interviews with -- the  
23 forensic interview and interviews with the Solicitor's  
24 office or law enforcement, there were obviously some  
25 discrepancies in statements they had given you in letters

1 or statements they given to law enforcement; is that  
2 right?

3 A Well, they told me that it didn't happen. I haven't  
4 gone back and listen to my tape to see exactly what they  
5 told me.

6 Q When you and Mr. Vanhose discussed how you could  
7 potentially use the discrepancies at trial, what did you  
8 talk about?

9 A Well, I mean, obviously if they took the stand and  
10 said he did do these things, we would try to impeach them  
11 by trying to introduce the interviews.

12 Q Okay. You testified that you -- that there are  
13 protections offered to child victims of CSC cases. Did  
14 you discuss those protections with Mr. Vanhose?

15 A I don't remember specifically what I did, but they --  
16 most of that comes in the context of bolstering testimony,  
17 bolstering a witness' testimony is generally improper.  
18 And it is improper with the children too, but the lines  
19 are drawn a little less dramatically, I think, with these  
20 experts. They allow such as someone coming in to say that  
21 it's not uncommon for someone to change their story and  
22 things like that.

23 Q Okay. But what -- particularly when the children are  
24 testifying, not an expert coming because I understand what  
25 you're talking about. Particularly the children are

1 coming in and testifying whether it's in another room or  
2 whatever the protections may be, did you and Mr. Vanhooose  
3 discuss how you could potentially use the defenses that  
4 you had when the children were testifying?

5 A You can impeach them just like anyone else. It's a  
6 delicate thing when you are cross-examining an alleged  
7 victim because you certainly don't want to make them cry,  
8 which makes them even more sympathetic. But certainly you  
9 can cross-examine them and certainly, you know, obviously,  
10 what I would have said is that you come to my office on  
11 such and such day and tell me this and haven't, you know,  
12 haven't you told your grandmother this or haven't you told  
13 your aunt this or things of that nature, that would have  
14 been what you would have.

15 Q Did you discuss those issues with Mr. Vanhooose?

16 A I think it's -- I mean, he was the one who was  
17 telling me these other people were saying things.

18 Q All right.

19 A I mean, obviously, it was on the table. I mean, you  
20 can present your witnesses to try to impeach.

21 Q Okay. You testified that he was in the county  
22 detention center for about 500 days?

23 A It was a little over 500 days.

24 Q Was his case on a trial roster at any point?

25 A I'm sure it was. When they moved him to the trial

1 roster, it doesn't necessarily mean a lot here or it  
2 didn't. But what happened in this case was Mrs. Parr got  
3 sick and a lot her cases kind of went on hold while she  
4 was out and I think some of those health considerations  
5 ultimately led to her retirement. But when she returned  
6 is when his case went back on the front burner. And  
7 certainly the delays were actually useful that it did last  
8 long enough that we were able to have the opportunity to  
9 interview the children, which made his case a lot better  
10 than it otherwise would have been. So it's not that it  
11 was necessarily prejudicial, it actually aided us in  
12 getting some information we didn't have.

13 Q Okay. Other than interviewing the children, what  
14 other preparation for trial had you done at the time that  
15 you pled?

16 A Well, I had talk with him at length. Some of his  
17 relatives had come in and different things. I mean,  
18 reviewing the -- all the reports for anything to try to  
19 impeach anybody else with is typical. I mean, the reports  
20 said what they said as far as, you know, the medical  
21 reports were not particularly damning. The first one was  
22 worse than the second.

23 Q Okay. Did you discuss the differences in the  
24 discrepancies in the medical of the two different medical  
25 reports?

1 A I explain to him in regards to criminal sexual  
2 conduct case that that makes a difference. Also that it  
3 don't prohibit the prosecution, but it is better to have a  
4 normal exam after that 15-day period than to not have a  
5 normal exam. It certainly aid you in trying to fight the  
6 CSC charges.

7 Q Okay. You testified that Mrs. Parr got sick and had  
8 to take, I guess, a leave of absence?

9 A She was out. I don't remember how long it was she  
10 was out, but she was out for a fairly extended period of  
11 time.

12 Q Did you ever consider filing a speedy trial motion?

13 A I would not have even considered filing any speedy  
14 trial motion until we had gotten those statements from  
15 those children because there was no rush to get him to the  
16 penitentiary. And after -- at the time we were able to  
17 finally get those interviews, she had returned.

18 Q When did you get the letters though?

19 A Well, the letters came fairly early and they were  
20 unverified until I could talk to the children. You would  
21 not have presented the letters being legitimate unless you  
22 had previously confirmed that. Because if you had tried  
23 to introduce a letter and a child sat up there and said I  
24 didn't write that, then that, you know, would be a real  
25 grounds for a PCR.

1 Q When did you first receive the letters?

2 A I don't remember, some of them are dated, but they  
3 were fairly -- this one -- one of them was in 2012.  
4 Obviously, they didn't come to me, they came to him.

5 Q Okay. When were you first made aware of them if you  
6 recall?

7 A I think, he passed them along to either me or one of  
8 the -- Mr. McKenzie was our investigator who was almost  
9 every day in the jail.

10 Q Okay. When you first received the first letter, how  
11 did you go about trying to verify its authenticity?

12 A I didn't do anything at that time. I was not going  
13 to be approaching a victim at that point.

14 Q Okay. But you just testified that you were not going  
15 to interview the victim until you could verify its  
16 authenticity. How did you verify its authenticity?

17 A By asking the children.

18 Q Okay.

19 A But I wasn't going to try to talk to those children  
20 immediately thereafter. And when I later did try to talk  
21 to the children, the mother denied us access to talk to  
22 them.

23 Q Okay. How did you get to talk to the children if you  
24 weren't going contact them?

25 A I got to talk to the children because they were no

1 longer in the mother's custody.

2 Q Okay.

3 A And I forget whether they had gone to a foster home  
4 or with grandma, but, I think, they been removed from  
5 mother's house, so therefore that impediment was gone and  
6 so we made arrangements to have them come up. And they  
7 came up separately on the same day and interviewed them.  
8 Didn't interview them together and didn't interview them  
9 with any family member there because what we were trying  
10 to do is was reduce the chance that anybody could claim  
11 that we had tried to influence those children in what they  
12 said because we made it very clear that we just wanted the  
13 truth from them.

14 Q Okay. Who did you speak to to be able to interview  
15 the children?

16 A I don't remember right now.

17 Q Okay. They were still minors at the time; is that  
18 right?

19 A Yes. One was very very pregnant, but she was still a  
20 minor.

21 Q Whose permission did you get to speak with them?

22 A I mean, it's been a number of years ago now probably  
23 was the grandmother.

24 Q Did you contact the grandmother or did she contact  
25 you or how did the whole thing take place?

1 A I don't know. It may have been through our  
2 investigator, but once we became aware of the situation,  
3 we thought we had an opportunity then to talk to them  
4 without having anything complicating the matter about  
5 whether we should or should not have talk to them.

6 Q Okay. Do you know when you talk to them?

7 A I don't have it in front of me right now, but it's  
8 on the tape that we made.

9 Q Okay.

10 A It was in the months before the end of the case.

11 Q Okay. How many months before if you recall?

12 A I don't recall.

13 Q Okay. After you spoke with them you had these  
14 letters that you now verified and you've had this  
15 statement, reported statement, did you file a speedy trial  
16 motion then?

17 A What I did right then was I filed reciprocal Rule 5  
18 and sent it to the Solicitor. And then the next week she  
19 invited me to her office where the children were there and  
20 I sat in while she interviewed the children.

21 Q Okay. Was it Mrs. Parr is that who you're talking  
22 about?

23 A Yes.

24 Q Was she back to work at this point?

25 A Yes, she was back to work, I think, when I

1 interviewed them. She had just come back, but the -- I  
2 waited to see how she was going to respond to my Rule 5.  
3 I always -- whenever I had anything positive, I always  
4 encouraged her to consider dropping the charges. And if  
5 she had just not and there not been that second interview  
6 there with the children, I would have filed a speedy trial  
7 motion at that point.

8 Q Okay. What did you -- when you got the letters, what  
9 if the children had stayed in the mother's care, how were  
10 you ever going to verify the letters?

11 A It might well be that we never would have and we  
12 might have had to use them in desperation. But when  
13 you're dealing with minor children that is a definite  
14 problem. I mean, the investigator wasn't going to set up  
15 an interview where we could talk to them. The Solicitor  
16 wasn't going to set up an interview we could talk to them  
17 at that point and the mother wasn't going to consent to  
18 it. We would have come across as strong arming the child  
19 which -- I mean, it just would have been one of those  
20 things where you would have probably had to if we went to  
21 trial ask them about it, but it would not be the most  
22 desirable situation and it was very fortunate that it did  
23 come that we had that opportunity.

24 Q Okay. Did y'all ever discuss other ways that you  
25 could verify the handwriting was the same without having

1 to interview the children?

2 A No.

3 Q Okay. Did you file a motion for a handwriting  
4 sample?

5 A No.

6 Q Did you file a motion for any other letters or  
7 communications the children had written to other people to  
8 try to just look at them and compare?

9 A Well, no, I haven't done that.

10 Q Okay. So until the children were transferred to the  
11 custody of the grandmother and she contacted y'all, you  
12 didn't do anything to try to authenticate these letters  
13 that you had saying that the allegations did not take  
14 place?

15 A Well, we had spoken with the grandmother who had said  
16 the children said they wrote the letters and that would  
17 have been -- we weren't going to go to them directly.

18 MR. WALLER: Beg the Court's indulgence.

19 THE COURT: Yes, sir.

20 (WHEREUPON, a pause in the proceedings.)

21 MR. WALLER: No further questions.

22 THE COURT: Any redirect?

23 MR. HUNTER: Briefly, Your Honor.

24 REDIRECT EXAMINATION

25

1 BY MR. HUNTER:

2 Q If you hadn't received the letters at all -- if the  
3 children never written the letters, would you have likely  
4 spoken to them at all?

5 A In most cases that answer would be no. In this case  
6 because he had passed a polygraph, we still might have  
7 tried to do that after the children were out of the  
8 mother's care.

9 Q I believe you said this, but you didn't think there  
10 would be any -- did you think there would be any benefit  
11 to a speedy trial motion?

12 A No.

13 MR. HUNTER: That's all I have. Thank you.

14 MR. WALLER: I have nothing further.

15 THE COURT: All right. Mr. Bell, you may step  
16 down.

17 MR. BELL: Thank you, ma'am.

18 (WHEREUPON, the witness leaves the witness  
19 stand.)

20 MR. HUNTER: And the State has no further  
21 witnesses.

22 THE COURT: All right. Gentlemen, would you  
23 like to make brief arguments? You don't have to.

24 MR. HUNTER: The State would rest on the record.

25 THE COURT: All right.

1 MR. WALLER: Your Honor, I'll just briefly  
2 Mr. Vanhooose testified that -- that he wanted to go to  
3 trial. That he was in a trial posture and that based on  
4 the things he was being told by Mr. Bell, that's why he  
5 did not go to trial. He was under the impression that he  
6 would not be able to -- that Mr. Bell would not be able to  
7 cross-examine the victims. I believe, Mr. Bell's  
8 testimony shows that he was in possession of some evidence  
9 that would have damaged the State's case and didn't do  
10 anything about it until -- it kind of fell in his lap.  
11 Your Honor, I believe that by waiting it prejudice  
12 Mr. Vanhooose who then felt that he had no choice but go to  
13 trial or excuse me -- but to plead. Your Honor, I would  
14 just -- I ask that you consider those things.

15 THE COURT: All right. Thank you, sir. I'll  
16 let you all know.

17 MR. WALLER: Thank you, Your Honor.

18 MR. HUNTER: Thank you.

19 THE COURT: Thank you.

20 END OF REQUESTED TRANSCRIPT  
21  
22  
23  
24  
25



STATE OF SOUTH CAROLINA )  
COUNTY OF FLORENCE )

Thomas Vanhooose, Sr., #292642, )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

IN THE COURT OF COMMON PLEAS  
TWELFTH JUDICIAL CIRCUIT

Case No. 2013-CP-21-3023

ORDER OF DISMISSAL

2016 JUL 22 PM 3:00  
DONNIE REEL-SHEARIN  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.  
FILED

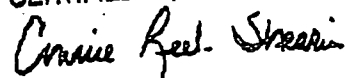
This matter comes before this Court by way of a post-conviction relief (PCR) application filed on November 18, 2013. Respondent made its return on April 23, 2014. An evidentiary hearing into the matter was convened on June 1, 2016, at the Florence County Courthouse. Applicant was present at the hearing and was represented by Jonathan D. Waller, Esquire. Respondent was represented by Assistant Attorney General J. Croom Hunter of the South Carolina Attorney General's Office.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. The Florence County Grand Jury indicted Applicant in July 2012 for First Degree Criminal Sexual Conduct with a Minor, two counts of Lewd Act on a Minor , and Second Degree Criminal Sexual Conduct with a Minor (2012-GS-21-991). Michael Bell, Esquire represented Applicant. On September 6, 2013 Applicant entered a negotiated plea pursuant North Carolina v. Alford, 400 U.S. 25 (1970) to two counts of Lewd Act on a Minor. The Honorable D. Craig Brown sentenced Applicant to concurrent terms of ten (10) years for each count. Applicant did not appeal his plea or sentence.



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CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

## ALLEGATIONS

At the post-conviction relief hearing, Applicant argued his confinement is unlawful based upon the following grounds:

1. Ineffective assistance of counsel.
  - a. Plea counsel did not go over discovery materials with Applicant and adequately prepare for the possibility of a trial.
2. Involuntary guilty plea.

At the evidentiary hearing, Applicant testified on his own behalf. This Court also heard testimony from plea counsel, Michael Bell, Esquire. This Court also had before it a copy of the plea transcript, the Florence County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

### INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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



counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

This Court finds Applicant failed to demonstrate that Counsel's performance was deficient in any way. This Court further finds that Applicant presented no evidence to show any prejudice resulting from Counsel's representation. Additionally, this Court finds Counsel's testimony credible and Applicant's testimony not credible.

#### **1. Failure to Prepare**

Applicant alleges Counsel did not thoroughly prepare his case for trial, nor did Counsel review the evidence with Applicant. The Court finds this allegation is without merit. At the PCR hearing, Counsel testified he has been practicing law since 1977, with the majority of his work devoted to criminal defense. Counsel testified he filed the appropriate Rule 5 and Brady motions, received discovery materials from the State, and went over the evidence with Applicant. Counsel testified he went over the elements of the charges Applicant was facing with the Applicant, as well as the possible penalties he was facing. Additionally, Counsel testified he went over the constitutional rights Applicant was waiving prior to his guilty plea. Counsel testified that it was Applicant's decision to plead guilty. Although Counsel could not recall with specificity how



many times he met with Applicant, he testified he met with Applicant on multiple occasions. Counsel testified he explained how a negotiated Alford plea worked, and that Applicant understood.

The main issue of contention at the PCR hearing was that Counsel should have used letters written by the victims (his daughters) to the Applicant to impeach them at trial. However, the testimony before this Court, as well as the testimony before the plea judge, indicates Applicant was well aware that he waived his right to challenge the evidence against him by pleading guilty. Counsel testified that his strategy at trial would have been to argue that no criminal sexual conduct had occurred due to a lack of trauma and use discrepancies in the victims' statements to beat the lewd act charges. Counsel testified he met with the victims, who told him they were not molested, but then they told the solicitor's office they were molested. Applicant testified that Counsel told him he would be unable to cross-examine the victims because they were minors; however, Counsel testified he never told Applicant he could not cross-examine the victims. He merely explained to the Applicant that cross-examining minor victims is a very delicate process, and if they started to cry on the stand, it would be very bad for Applicant's defense. Counsel testified that while one of the victims vacillated with her story, the other victim never wavered in her allegation that Applicant had molested her. Additionally, Counsel also testified the solicitor's office approached him with additional allegations from other victims, on which they indicated they were considering indicting Applicant if he chose to proceed to trial. Counsel testified that he went over all of these factors and possible strategies with Applicant, and that after weighing his options, Applicant decided to plead guilty.

This Court finds Counsel's performance was well within the range required under Strickland and its progeny. Counsel's testimony indicated he was well informed regarding the



facts of Applicant's case and knowledgeable with respect to the relevant legal issues. Because this Court finds Counsel thoroughly investigated and prepared Applicant's case, it finds Applicant has failed to meet his obligations under Strickland, and the allegation is without merit.

### INVOLUNTARY GUILTY PLEA

The voluntariness of a guilty plea is determined in light of the entire record before the court. Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012) (citing Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000)). "To knowingly and voluntarily enter a plea of guilty, all that is required is that a defendant have a full understanding of the consequences of his plea and of the charges against him." Simpson v. State, 317 S.C. 506, 508, 455 S.E.2d 175, 176 (1995) (citing Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991)). Furthermore, a defendant must only be informed of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Roddy, 339 S.C. at 33, 528 S.E.2d at 421 (citing Boykin v. Alabama, 395 U.S. 238 (1969)). "When attempting to determine the voluntary and intelligent nature of a plea, the plea colloquy ordinarily serves as confirmation that a criminal defendant is waiving the right to raise certain constitutional claims by pleading guilty." Hyman, 397 S.C. at 44, 723 S.E.2d at 379 (citing Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97, 98 (1975)). However, the plea judge need not provide an "enumeration of specific rights waived ... where the record otherwise reveals affirmative awareness of the consequences of a guilty plea." State v. Lambert, 266 S.C. 574, 579, 225 S.E.2d 340, 342 (1976) (citing Stinson v. Turner, 473 F.2d 913 (10th Cir. 1973)). Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be



allowed to depart from the truth of his statements.” Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). Pleading guilty to avoid a possibly greater sentence, without more, does not render a guilty plea involuntary. Brady v. United States, 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed. 2d 747 (1970); Wicker v. State, 310 S.C. 8, 12, 425 S.E.2d 25, 27 (1992).

The record before this Court clearly shows that Applicant was fully informed of the consequences of entering his guilty plea. The record shows Applicant’s plea was not coerced, and it was Applicant’s decision to plead guilty. Additionally, this Court finds Applicant’s testimony not credible. Applicant was advised that by pleading guilty he gave up his right to challenge the evidence the State had against him, as well as his right to put up any affirmative defenses. Applicant has failed to present any compelling reasons why he should be allowed to depart from his valid plea of guilty. Accordingly, this Court finds Applicant’s plea was knowingly, intelligently, and voluntarily entered.

#### **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 sufficient evidence regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

#### **CONCLUSION**

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Plea counsel rendered effective assistance in regard to the claims raised by Applicant. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This 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), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

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

AND IT IS SO ORDERED this 18<sup>th</sup> day of July,

*Joelyn Newman*  
 THE HONORABLE JOEGLYN NEWMAN  
 Presiding Judge  
 Twelfth Judicial Circuit

2016 JUL 22 PM 3:03  
 CONNIE REEL-STREBIN  
 CLERK OF COURT C.P. & G.S.  
 FLORENCE COUNTY, SC

FILED

Columbia, South Carolina

CERTIFIED: A TRUE COPY  
*Connie Reel-Strebin*  
 CLERK OF COURT C.P. & G.S.  
 FLORENCE COUNTY, S.C.

**WITNESSES**

Jennifer Floyd

Florence County Sheriff

Patrica S Parr

**ARREST WARRANT NUMBER**

M274406      M274407      M274408

M274409

**ACTION OF GRAND JURY**

**TRUE BILL**

Foreperson of Grand Jury

Date:

*Kimberly Brumby*  
*7-19-12*

**VERDICT**

Foreperson of Petit Jury

Date:

**DOCKET NO. 2012-GS-21-00991**

The State of South Carolina

County of

**FLORENCE**

**COURT OF GENERAL SESSIONS**

**JULY**      **TERM**      **2012**

**THE STATE**

vs.

**THOMAS ELBERT VANHOOSE**

Indictment for

**CRIMINAL SEXUAL CONDUCT WITH A  
MINOR FIRST DEGREE**

**AND**

**LEWD ACT (2 COUNTS)**

**AND**

**CRIMINAL SEXUAL CONDUCT WITH A  
MINOR SECOND DEGREE**

*Make of Court C.P. & G.S.  
Florence County, S.C.*  
**CERTIFIED: A TRUE COPY**

**2012 JUL 19 AM 11:16**  
**CONNIE REEL-SHEARIN**  
**Clerk of Court**  
**C.P. & G.S.**  
**FLORENCE COUNTY, SC**

**FILED**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF FLORENCE )

INDICTMENT FOR  
CRIMINAL SEXUAL CONDUCT WITH A MINOR  
FIRST DEGREE  
AND  
LEWD ACT (2 COUNTS)  
AND  
CRIMINAL SEXUAL CONDUCT WITH A MINOR  
SECOND DEGREE

At a Court of General Sessions, convened on JULY 12, 2012 the Grand Jurors of FLORENCE County present upon their oath:

**COUNT ONE- CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE**

CDR: 0385 16-03-0655(A)(1)

That Thomas Elbert Vanhooose did in Florence County, State of South Carolina, between October 1, 2010, and October 3, 2010, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a Minor in the First Degree by engaging in sexual battery with a minor who is less than eleven (11) years of age, to wit: 10 years old victim , whose date of birth is [REDACTED] 1999, to wit: penetrated the vagina of victim, in violation of Section 16-3-655(A)(1), [formerly Section 16-3-655(1)], S. C. Code of Laws, 1976, as amended.

**COUNT TWO- LEWD ACT ON A MINOR CHILD**

CDR: 2468 16-15-0140

That Thomas Elbert Vanhooose, being over fourteen years of age, did in Florence County between October 1, 2010, and October 3, 2010, willfully and lewdly commit a lewd or lascivious act upon or with the body of a child, less than sixteen (16) years of age, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of said defendant or of the victim, including but not limited to: penetrated the vagina of a 10 year old and touched her vagina with his hand , in violation of Section 16-15-0140, S. C. Code of Laws, 1976, as amended.

**COUNT THREE - LEWD ACT ON A MINOR CHILD**

CDR: 2468 16-15-0140

That Thomas Elbert Vanhooose, being over fourteen years of age , did in Florence County between October 1, 2010, and October 3, 2010, willfully and lewdly commit a lewd or lascivious act upon or with the body of a child, less than sixteen (16) years of age, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of said defendant or of the victim, including but not limited to: penetrated the vagina of a 11 year old and touched her vagina with his hand, in violation of Section 16-15-0140, S. C. Code of Laws, 1976, as amended.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE, LEWD ACT ON A MINOR CHILD (2 COUNTS), CRIMINAL SEXUAL CONDUCT WITH A MINOR SECOND DEGREE WITH THE AFORESAID NAMES(S) OF THOMAS VANHOOSE SHOWN THEREON:

**COUNT FOUR- CRIMINAL SEXUAL CONDUCT WITH A MINOR SECOND DEGREE**

CDR: 0396 16-03-0655(B)

That Thomas Elbert Vanhooose did in Florence County, State of South Carolina, between October 1, 2010, and October 3, 2010, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a Minor in the Second Degree by engaging in sexual battery with a minor who was at least fourteen (14) years or less but who was at least eleven (11) years of age, to wit: 11 years old, whose date of birth is [REDACTED] 1999, to wit: penetrated the vagina of the victim and touched her vagina with his hand, in violation of Section 16-3-655(B) [formerly Section 16-3-655(2)], S. C. 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.



---

**E.L. Clements, III**  
TWELFTH CIRCUIT SOLICITOR