

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Appeal from Dorchester County

Diane Schafer Goodstein, Circuit Court Judge

\_\_\_\_\_  
DANIEL BRIAN MONTY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000225

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

WANDA H. CARTER  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
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ATTORNEYS FOR RESPONDENT

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S.C. SUPREME COURT

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1 STATE OF SOUTH CAROLINA

CIRCUIT COURT  
2008-GS-18-01105

2 COUNTY OF DORCHESTER

5 STATE OF SOUTH CAROLINA,

6 -vs-

TRANSCRIPT OF RECORD

7 DANIEL BRIAN MONTY,  
8 Defendant.

10 Heard on Friday, May 31, 2013

11 Saint George, South Carolina

13 BEFORE:

14 THE HONORABLE EDGAR W. DICKSON

16 APPEARANCES:

17 Counsel on Behalf of the State:  
18 Meghan Hall, Esq.

19 Counsel on Behalf of the Defendant:  
20 Henry R. Schlein, Esq.

21  
22 Cheri L. Young, RPR  
23 Circuit Court Reporter  
24 P O Box 5232  
25 Aiken, SC 29804-5232

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EXHIBIT INDEX

(NO EXHIBITS IDENTIFIED/INTRODUCED.)

1 ON MAY 31, 2013 AT 11:30 A.M.:

2 MS. HALL: State versus Daniel Brian Monty.

3 THE CLERK: Please raise your right hand. State your  
4 full name for the record.

5 THE DEFENDANT: Daniel Brian Monty.

6 (Defendant placed under oath.)

7 THE COURT: Mr. Schlein?

8 MR. SCHLEIN: Yes, Your Honor.

9 THE COURT: You represent Mr. Monty?

10 MR. SCHLEIN: Yes, Your Honor.

11 THE COURT: And you have, I know you've been  
12 representing him for a while; is that correct?

13 MR. SCHLEIN: Yes, Your Honor.

14 THE COURT: Because I notice this is a -- 2008-GS-  
15 18-05 is the indictment number; is that correct?

16 MR. SCHLEIN: Yes, Your Honor.

17 THE COURT: All right. You have gone over the  
18 evidence in this case with him?

19 MR. SCHLEIN: Yes, Your Honor; I have.

20 THE COURT: And you've advised him of the law?

21 MR. SCHLEIN: Yes, Your Honor.

22 THE COURT: And he knows he's facing a maximum  
23 sentence in this of up to 20 years if he were convicted at  
24 trial; is that correct?

25 MR. SCHLEIN: Yes, he does, Your Honor.

1 THE COURT: All right, sir. You have also advised him  
2 of his constitutional rights?

3 MR. SCHLEIN: Yes, sir.

4 THE COURT: He understands he has a right to remain  
5 silent?

6 MR. SCHLEIN: Yes, sir.

7 THE COURT: He understands he gives up that right if  
8 he pleads guilty here today?

9 MR. SCHLEIN: Yes, sir.

10 THE COURT: He also has a right to a jury trial.

11 MR. SCHLEIN: Yes, sir. And I'd like to point out  
12 that this is my trial notebook in front of me and we are  
13 prepared for trial next week if it comes to that, sir.

14 THE COURT: It's my understanding that the trial is  
15 scheduled to be done next week; is that correct?

16 MR. SCHLEIN: That's my understanding, too, Your  
17 Honor. We're noticed for trial on Monday.

18 THE COURT: In your discussions with Mr. Monty, he had  
19 indicated -- he's indicated to you that he wishes to plead  
20 guilty?

21 MR. SCHLEIN: Yes, Your Honor.

22 THE COURT: And he understands what he's doing here  
23 today?

24 MR. SCHLEIN: Yes, sir. And he wishes to plead guilty  
25 to take advantage of this plea offer today under North

1 Carolina versus Alford.

2 THE COURT: All right, sir. Now, he understands that  
3 this charge is both a violent and a most-serious offense?

4 MR. SCHLEIN: Yes, sir. I've advised him of that.

5 THE COURT: He understands this counts as a strike?

6 MR. SCHLEIN: I've explained the two strikes, three-  
7 strikes law to him, sir.

8 THE COURT: All right, sir. And you believe he  
9 understands that as well?

10 MR. SCHLEIN: Yes, Your Honor.

11 THE COURT: All right. Now you believe it's in his  
12 best interests to go forward and plead here today?

13 MR. SCHLEIN: Yes, sir. In order to take advantage of  
14 the deal.

15 THE COURT: Okay. All right. Mr. Monty, you are 51  
16 years old; is that correct?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And, Mr. Monty, what do you do for a  
19 living?

20 THE DEFENDANT: I was in construction. Carpenter.

21 THE COURT: Carpenter. How long have you been doing  
22 that?

23 THE DEFENDANT: I've done it pretty much since I was  
24 17.

25 THE COURT: Are you a finish carpenter?

1 THE DEFENDANT: Everything. ABC Builders. I work for  
2 a building contractor.

3 THE COURT: All right, sir. And Mr. Monty, have  
4 you -- how far did you go in school?

5 THE DEFENDANT: Two years college.

6 THE COURT: Where did you go?

7 THE DEFENDANT: McCollom Community College in  
8 Michigan.

9 THE COURT: You grew up in Michigan?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: How did you end up down here?

12 THE DEFENDANT: My aunt and uncle had time-share  
13 condos in Hilton Head and they used to come down every  
14 year for the 4th of July. And I came down on vacation  
15 with them once and I ended up moving down here.

16 THE COURT: Weather's better?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Except in the summer. All right.

19 Mr. Monty, have you ever been treated for any mental  
20 health issues?

21 THE DEFENDANT: No, sir.

22 THE COURT: Are you under the influence of any  
23 alcohol, any illegal drugs or any medication here today?

24 THE DEFENDANT: No, sir.

25 THE COURT: So you're thinking clearly?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Know exactly what you're doing?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: I'm told that you're pleading under North  
5 Carolina versus Alford; is that correct?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: It's my understanding that you have -- I  
8 know y'all are preparing for trial, but in preparing for  
9 trial you have gone over the evidence with your attorney  
10 and what the law is in South Carolina?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And you believe that if you went to trial  
13 on this case there's a substantial likelihood that you  
14 would be convicted of this charge; is that correct?

15 THE DEFENDANT: 50-50 chance.

16 THE COURT: But you want to take advantage of the plea  
17 offer?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. Now, your attorney has  
20 indicated to me that he did go over the evidence in this  
21 case with you?

22 THE DEFENDANT: Yes, he did.

23 THE COURT: He has advised you of the law, the  
24 possible sentence and your constitutional rights; is that  
25 correct?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You understand you have a right to remain  
3 silent?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You understand you give up that right if  
6 you plead guilty, even under North Carolina versus Alford?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand I'm going to have to ask  
9 you whether you're guilty or not, you're going to have to  
10 respond either guilty or not guilty and it will be under  
11 North Carolina versus Alford; do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Now do you understand, and I know because  
14 you're preparing for trial that you have a constitutional  
15 right to have a trial on this charge?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you want a jury trial on this charge?

18 THE DEFENDANT: Not at this moment; no, sir.

19 THE COURT: Well this is the only moment you're going  
20 to have.

21 THE DEFENDANT: I understand.

22 THE COURT: All right. Are you satisfied with the  
23 services of your attorney?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you need any more time to talk with

1 him?

2 THE DEFENDANT: I don't think so.

3 THE COURT: Okay. Okay. Mr. Monty, it's my  
4 understanding that you are pleading guilty to criminal  
5 sexual conduct with a minor in the second degree, the  
6 State is recommending a cap of six years?

7 MS. HALL: Yes, the State is recommending six years.

8 THE COURT: Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Other than that recommendation, has  
11 anybody promised you anything, threatened you, forced you  
12 in any way to plead guilty here today?

13 THE DEFENDANT: No, sir.

14 THE COURT: You're doing this freely and voluntarily?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. All right. Ms. Hall, if you'll  
17 tell me.

18 MS. HALL: Thank you, Your Honor. May it please the  
19 Court. This incident occurred on June 5th of 2008 at 207  
20 East Edgefield Drive which was the Defendant's residence.  
21 The Defendant came to know the victim, Noel Meyers. She's  
22 actually seated in the courtroom in the pink hoody on the  
23 Court's left. She had met the individual, or Mr. Monty at  
24 a bar slash restaurant in Summerville and had spent some  
25 brief periods of time with him on several occasions.

1 The night in question he took her to a pet store and  
2 took her to a bar and then took her back to his house  
3 where he cooked her dinner. He then started watching a  
4 movie with her and suggested that they start playing a  
5 card game.

6 And that card game was poker which she had never  
7 played before. He attempted to teach her how to play that  
8 game except he didn't explain the rules. And those rules  
9 were essentially strip poker.

10 She was 13 years old at the time. Ultimately she  
11 ended that game completely unclothed. He was unclothed  
12 and he forced anal sex upon the victim. She was able to  
13 stop the sexual assault by suggesting that she needed to  
14 use the restroom, then was able to call her mother and  
15 have the Defendant take her home.

16 She went to sleep that night. The next morning she  
17 reported to her mother and she reported to MUSC as well  
18 the next day where a rape kit was performed. There was  
19 some evidence of anal tearing, and those results were sent  
20 to SLED for comparison. There was no DNA profile actually  
21 developed that would match the Defendant. And those would  
22 be the facts as they would relate to this charge.

23 He does have a prior record, Your Honor. He has a  
24 prior conviction for felony DUI, a prior drug conviction,  
25 as well as a conviction for contributing to the

1 delinquency of a minor.

2       The victim is seated in the courtroom with her mother  
3 and her stepfather, and I believe she would like to be  
4 heard at the appropriate time.

5       THE COURT: Okay.

6       MR. SCHLEIN: I think that drug conviction was a  
7 simple possession.

8       MS. HALL: I'm looking that up right now.

9       MR. SCHLEIN: Okay.

10       MS. HALL: It is. Simple possession of marijuana.

11       THE COURT: Okay. All right. Mr. Monty, you heard  
12 what the solicitor told me about your prior record; is  
13 that correct?

14       THE DEFENDANT: Yes, sir.

15       THE COURT: Okay. And you've heard what she has told  
16 me about the allegations that led to your arrest on this  
17 charge?

18       THE DEFENDANT: Yes, sir.

19       THE COURT: Do you understand that those are, that is  
20 the evidence that will be presented at trial?

21       THE DEFENDANT: Yes, sir.

22       THE COURT: It's my understanding that you're pleading  
23 under North Carolina versus Alford?

24       THE DEFENDANT: Yes, sir.

25       THE COURT: And you understand that if you went to

1 trial in this case, there's a substantial likelihood you  
2 could be convicted of this charge; do you understand  
3 that?

4 THE DEFENDANT: Yes.

5 THE COURT: Yes or no?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. How do you plead to the charge  
8 of criminal sexual conduct with a minor second degree? I  
9 understand you're pleading under North Carolina versus  
10 Alford; guilty or not guilty?

11 THE DEFENDANT: Guilty, Your Honor.

12 THE COURT: Thank you, sir. Mr. Monty, you understand  
13 if I accept your guilty plea this will be a conviction on  
14 your record?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And you understand that you're facing a  
17 cap of up to six years?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And you also understand that you got 10  
20 days from today's date to appeal my decision?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. Do you want me to accept your  
23 guilty plea?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Mr. Monty, I find that your

1 decision to plead guilty under North Carolina versus  
2 Alford is freely, voluntarily, intelligently made. I find  
3 you've had the advice and counsel of a competent lawyer.  
4 I find that you're satisfied with the services of your  
5 lawyer. I find there's a factual basis for you to plead  
6 guilty to this charge so I will accept your guilty plea  
7 under North Carolina versus Alford.

8 Now, Mr. Schlein, before you do anything I'm going to  
9 let -- Ms. Hall has indicated that the victim wanted to  
10 address me.

11 MR. SCHLEIN: Yes, Your Honor.

12 THE COURT: So I'll be happy to hear from her.

13 MR. SCHLEIN: Your Honor, may I have a chair for my --

14 THE COURT: Yeah, yeah. Do you need a chair?

15 (Pause.)

16 MS. HALL: Your Honor, this is the victim, Noel  
17 Meyers. This is her mother, Patricia Meyers Shellfer  
18 (phonetically) and this is Kim Carter with the Dorchester  
19 County Sheriff's Department, she is a victim advocate.  
20 And I believe Noel would like to address you.

21 THE COURT: Noel, how are you?

22 THE VICTIM: I'm good. I'd like to say thank you for  
23 bringing this forward. It's been a long five years.

24 THE COURT: Yes, ma'am.

25 THE VICTIM: I've gone through a lot. I mean, I know,

1 I would -- I decided to make a plea today, make it shorter  
2 because I don't think I'm mentally or emotionally, right  
3 now, capable of going through a trial next week.

4 So I know the six years shouldn't be six years but I  
5 feel it's what's best for me and my family. I was only 12  
6 at the time, was going to be 13 that following October.

7 THE COURT: Yes, ma'am.

8 THE VICTIM: All I can just say is that no child  
9 should have to endure that. And, I mean, my sister was  
10 the next one but I saved my sister from being hurt as I  
11 am. But, it's just something no one should experience.  
12 And I know there's millions of cases every year.

13 And I just want to thank you for bringing this forward  
14 and understanding what it's like and -- see, I mean, it  
15 hurts my mom. My mom went through this when she was a  
16 child, too. Her mother never listened. So she's been  
17 here with me all the way and is, like, here standing next  
18 to me.

19 THE COURT: Okay. And, Ms. Meyers, I believe Ms. Hall  
20 told me you graduated?

21 THE VICTIM: Yes, I have. I graduated from Fort  
22 Dorchester last Saturday.

23 THE COURT: Congratulations.

24 THE VICTIM: Thank you.

25 THE COURT: What are you going to do now?

1 THE VICTIM: I'm going to Winthrop to study political  
2 science. I'm going to become a judge.

3 THE COURT: Ms. Meyers, if that's what you want to do  
4 I really hope that. Let me tell you, it's tough. It's a  
5 tough job. I'm sure you'll do well in it, but you have to  
6 hear things like this.

7 THE VICTIM: This is, this case has -- I used to want  
8 to be a vet but this case has made me realize that to help  
9 others I'd rather be helping the law. And the law's  
10 supposed to help others and bring justice to people

11 THE COURT: Well, it's interesting that you said you  
12 wanted to be a vet. That's what I planned to do. I used  
13 to work with a veterinarian in high school but I couldn't  
14 do the science.

15 THE VICTIM: Well, with me I just couldn't have the  
16 heart to put down any animals. I've grown up with dogs  
17 all my life, so I just couldn't do it.

18 THE COURT: Anything else you want to tell me?

19 THE VICTIM: No, sir.

20 THE COURT: I hope you the very best at Winthrop.

21 THE VICTIM: Thank you.

22 THE COURT: Thank you, ma'am. All right. Ms. Hall,  
23 anything else?

24 MS. HALL: Nothing further from the State, Your Honor.

25 MR. SCHLEIN: Your Honor, may I ask for just a brief

1 recess so Mr. Monty can use the facilities?

2 THE COURT: No problem. We'll take a five, 10-minute  
3 break.

4 MR. SCHLEIN: Thank you, Your Honor. I'm very sorry.

5 (Break taken at 11:55 a.m., until 12:03 p.m.)

6 THE COURT: All right.

7 MR. SCHLEIN: Thank you, Your Honor. May  
8 Mr. Monty remain seated?

9 THE COURT: He may.

10 MR. SCHLEIN: Thank you, Your Honor.

11 THE COURT: Mr. Schlein, yes, sir.

12 MR. SCHLEIN: Thank you, Your Honor. May it please  
13 the Court.

14 As Daniel told you, he's 51 years old. He's been in  
15 South Carolina for the past 18 years. He's originally  
16 from Michigan graduated from Clintondale High School in  
17 Michigan back in 1980. He's got a high school diploma and  
18 he went to two years of college for auto body design at  
19 McCollom Community College in Michigan.

20 He's worked in construction for about the past  
21 20-some-odd years, however since the incident his ability  
22 to work has kind of went downhill. And he's -- it's  
23 almost like he's been disabled. His work has been very  
24 scanty.

25 He had a house or has a house but the house has been

1 in foreclosure. The problem is, I think there's so much  
2 foreclosure that they can't foreclose on them all but he  
3 still has his house but it's been in foreclosure. He  
4 hasn't been able to make any payments on it.

5 He has to rely on his friends and church, people that  
6 will still speak to him for, you know, for meals. And  
7 he's been living hand to mouth. Somebody helps him with  
8 his power bill. He never knows what he's going to have.  
9 He used to have a lot of animals.

10 He used to take in animals and he's found homes for  
11 all of his animals and recently he just found a home for  
12 his bird. That was his last pet.

13 He has some elderly parents who still live in  
14 Michigan, all of his family does. His father and mother  
15 both have health issues. His father has just fallen just  
16 the other day on concrete. He broke his fingers, hit his  
17 face, got bruised up pretty bad. It's kind of hard on old  
18 people when they fall. I know because my mama who just  
19 passed away just the beginning of April had fallen earlier  
20 in the year and, you know, falls are bad.

21 His mother is having to have hip and knee surgery.  
22 She's in the process of doing that. Because of their  
23 health issues they weren't able to come down here for his  
24 trial or even his plea.

25 Daniel has got health issues, too. He's got breathing

1 problems. He's been a smoker for a long time so obviously  
2 people who smoke, you know, are kind of making their own  
3 problems worse. But a lot of people who smoke got hooked  
4 on it when they're very young. It's now common knowledge  
5 that tobacco companies targeted young children and got  
6 them started at an early age.

7 So we have to take that into consideration but he's  
8 been diagnosed with emphysema. He was meeting with me  
9 several weeks ago and Mr. Cummings and we were going over  
10 his case, one of our numerous meetings, and we thought  
11 Mr. Monty was going to have a heart attack. He started  
12 palpitating or whatever that word is when you're heavy  
13 breathing and feeling faint. And he went directly to the  
14 hospital and they admitted him overnight, and that's when  
15 they diagnosed him with emphysema and gave him an  
16 inhaler.

17 They found a spot on his lung and gave him an MRI.  
18 And he had been at the hospital last year. They'd done an  
19 MRI for some reason and found a spot. This year, this  
20 particular time the spot was significantly bigger. It's  
21 possibly going to be lung cancer. He's supposed to have  
22 had a medical appointment next week and, where they would  
23 have determined what it was.

24 But I hope that that information will be in the record  
25 for the Department of Corrections.

1           Also, Your Honor, I've got a prescription here, I'm  
2 showing Madam Counsel, if the Court wants to see it. It's  
3 a prescription for his inhaler. I'd like to ask if Your  
4 Honor can please put it in the order that he's got some  
5 medication and he's got an inhaler. And I'd ask that he  
6 please be allowed to take that with him to the jail and  
7 that the nurse log it in and be sure to give that to him.

8           I think this whole past five years has been, you know,  
9 one devil of a time for Mr. Monty. He's not suffered  
10 lightly. In fact, he's suffered quite a bit. So it's  
11 almost like he's been punished quite a bit already.

12           I think based on what he's pleading guilty to and the  
13 facts that has been presented, the six-year cap is pretty  
14 fair in and of itself. But I'd like to ask the Court to  
15 consider in lieu of his health problems and what he's been  
16 through, that Your Honor please consider any leniency that  
17 Your Honor can see fit or find in your heart or the  
18 collective heart of the Court to put into your sentence  
19 and temper it with any kind of mercy that you could  
20 possibly give.

21           I know it's not easy to be a judge and it's not easy  
22 to listen to what we listen to and then find any mercy,  
23 you know, but justice is for everybody and there's always  
24 mercy for everybody and it's not like there's any life  
25 that's worth throwing away.

1           So thank you for taking the time to listen to me and  
2 for being patient with everybody and especially with  
3 Daniel, letting him stand at ease or sit at ease while we  
4 go through this. And please give it, you know, your best  
5 judgment and consideration.

6           Thank you very much, Your Honor.

7           THE COURT: Okay. Thank you, sir.

8           MR. SCHLEIN: Oh. Your Honor, if I may say?

9           THE COURT: Sure.

10          MR. SCHLEIN: Mr. Monty did spend approximately three  
11 weeks -- I don't have the exact number, I apologize, but  
12 approximately three weeks in pretrial confinement before  
13 he was able to be released on bond that was posted by his  
14 parents.

15          THE COURT: Thank you, sir.

16          MR. SCHLEIN: Yes, Your Honor.

17          THE COURT: Mr. Monty, I'm going to go along with the  
18 recommendation.

19          THE SENTENCE OF THIS COURT IS THAT YOU ARE COMMITTED  
20 TO THE STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF SIX  
21 YEARS. I WILL GIVE YOU CREDIT FOR THE TIME THAT YOU'VE  
22 SERVED. AND I HAVE PLACED IN THE ORDER THAT YOU'RE  
23 ALLOWED YOUR MEDICATION AND YOUR INHALER.

24          Good luck to you. Thank you, sir.

25          MR. SCHLEIN: Thank you, Your Honor.

1 END OF PROCEEDINGS: 12:11 P.M.

2

3

CERTIFICATE OF REPORTER

4

5 STATE OF SOUTH CAROLINA )

6 COUNTY OF AIKEN )

7

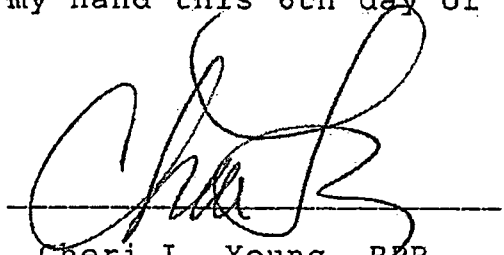
8 I, Cheri L. Young, Registered Professional Reporter  
 9 and Official Court Reporter for the State of South  
 10 Carolina, Second Circuit-At Large, do hereby certify that  
 11 the foregoing proceedings were written stenographically by  
 12 me using computer-aided translation; further, that the  
 13 foregoing is a true, accurate and complete record, to the  
 14 best of my skill and ability, of all the proceedings had  
 15 and evidence introduced in the hearing of the captioned  
 16 case, relative to appeal, in the Court of General Sessions  
 17 for Dorchester County, on the 31st day of May, 2013.

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

20 I have hereunder set my hand this 6th day of December,  
 21 2013.

22

23



Cheri L. Young, RPR  
 Official Court Reporter

24

25

FORM 5

STATE OF SOUTH CAROLINA )

County of DORCHESTER )

DANIEL BRIAN MONTY, 355627 )  
Full name and prison number (if any) of Applicant )

v. )

State of South Carolina )

IN THE COURT OF COMMON PLEAS

2013-CP-18-1687

APPLICATION FOR

POST-CONVICTION RELIEF

FILED - RECORDED  
2013 SEP 23 AM 10:30  
CHERYL L. ...  
CLERK OF COURT  
DORCHESTER COUNTY

**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention RIDGELAND CORRECTIONAL INSTITUTION (RCI), CHARLESTON 'A' UNIT, ROOM 12 (CA-12), POB 2039, RIDGELAND, S.C. 29936

2. Name and location of Court which imposed sentence COURT OF GENERAL SESSIONS FOR DORCHESTER COUNTY, 5400 EAST JIM BILTON BLVD., ST. GEORGE, S.C. 29177

3. Name(s) of co-defendant(s) (if any) NA

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2008-GS-18-1105; CRIMINAL SEXUAL CONDUCT WITH MINOR

(b) SECOND DEGREE (CSC 2ND)

- (c) \_\_\_\_\_
- 5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) 5-31-13: SIX (6) YEARS \_\_\_\_\_
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
- 6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty 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. NA \_\_\_\_\_
    - ii. NA \_\_\_\_\_
    - iii. NA \_\_\_\_\_
  - (b) the result in each such Court to which you appealed:
    - i. NA \_\_\_\_\_
    - ii. NA \_\_\_\_\_
    - iii. NA \_\_\_\_\_
  - (c) the date of each such result:
    - i. NA \_\_\_\_\_
    - ii. NA \_\_\_\_\_
    - iii. NA \_\_\_\_\_
  - (d) if known, citations of any written opinion or orders entered pursuant to such results:
    - i. NA \_\_\_\_\_
    - ii. NA \_\_\_\_\_
    - iii. NA \_\_\_\_\_
- 9. If you answered "no" to (7), state your reasons for not so appealing:
  - (a) ALTHOUGH, HE WAS ADVISED OF RIGHT TO APPEAL; APPLICANT DID NOT FULLY UNDERSTAND THE PROCEDURE ETC. \_\_\_\_\_
  - (b) \_\_\_\_\_

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

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

- I. DENIED THE ACTUAL EFFECTIVE ASSISTANCE OF CRIMINAL DEFENSE COUNSEL;
- II. COMMUNITY SUPERVISION PROGRAM (CSP) VIOLATES SEPARATION OF POWERS CLAUSE;
- III. CSP IS COLLATERAL CONSEQUENCE OF GUILTY PLEA THAT HE WAS NOT INFORMED ABOUT WHICH MAKES PLEA INVOLUNTARY AND BREACH PLEA AGREEMENT-DUE PROCESS VIOLATION. Padilla v. Kentucky, 130 S.Ct. 1473 (2010)

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

- (a) Criminal defense counsel failed to properly investigate the law(s) and fact of CSC2d indictment; he should have inform Monty whether the guilty plea was for a violent or non-violent offense; counsel gave appli-erroneous information about direct appeal right. CSP is not part of sentence of court or trial judge. Moreover, trial must have failed to inform Monty
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

12. Prior to this application have you filed with respect to this conviction, of the element of the offense and about what a

- (a) any petition in a State Court under South Carolina Law? NO  
reasonable doubt application therewith.
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? 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. NA
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

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

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

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

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

NO

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

(a) which grounds have been presented:

- i. NA
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. NA
- 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) ALL OF THE GROUND(S) SET FORTH IN (10) HAVE NOT BEEN PRESENTED IN ANY COURT(S), THIS IS FIRST APPEAL.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? YES (NA)
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NA
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NA

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. HENRY SCHLEIN, ST. GEORGE, S.C.
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. MR. SCHLEIN FUNCTIONED AT CRIMINAL DEFENSE TRIAL LEVEL.
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

19. State clearly the relief you seek in filing this application:  
~~APPLICANT PRAYS THAT THIS COURT EXERCISES ITS AUTHORITY OF JUDICIAL REVIEW, GRANTING HIM THE RELIEF THAT HE IS ENTITLED THERETO NEW TRIAL AND/OR SENTENCE RECONSIDERATION.~~

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

NO

STATE OF SOUTH CAROLINA )  
County of ~~NOTE~~ DORCHESTER )

VERIFICATION

FILED - RECORDS  
2013 SEP 23 AM 11:01  
SHERYL L. BARNETT  
CLERK OF COURT  
DORCHESTER COUNTY

I, DANIEL B. MONTY, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

  
\_\_\_\_\_

SWORN to and subscribed before me this 16 day of Sept, 2013.

Virginia Rolisen (L.S.)  
Notary Public

My Commission Expires: May 20, 2021

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

I, DANIEL B. MONTY, 355627, 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.

  
 \_\_\_\_\_  
 Applicant

SWORN or affirmed to and subscribed before me this

16 day of Sept., 2013.

Virginia Rolensen  
 \_\_\_\_\_  
 Notary Public

My Commission Expires: May 20, 2021

FILED - RECORDED  
 2013 SEP 23 AM 10:30  
 CHERYL GRANICH  
 CLERK OF COURT  
 WORCHESTER COUNTY

COUNTY OF DORCHESTER

Daniel Brian Monty,

Plaintiff(s)

vs.

State of South Carolina,

Defendant(s)

CIVIL ACTION COVERSHEET

-CP -

2013-CP-18-1687

Submitted By: Daniel B. Monty, 355627
Address: RCI, CA-12, POB 2039
Ridgeland, S.C. 29936

SC Bar #:
Telephone #:
Fax #:
Other:
E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
NON-JURY TRIAL demanded in complaint.
This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case #, Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)

- Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Administrative Law/Relief: Reinstate Drv. License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (899)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Confession of Judgment (770), Petition for Workers Compensation Settlement Approval (780), Other (799)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Comm. (990), Employment Security Comm (991), Other (999)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Sexual Predator (510)

Submitting Party Signature:

[Handwritten Signature]

Date: September 14, 2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

30 Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

**You are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA )  
 COUNTY OF DORCHESTER )  
 Daniel Brian Monty, #355627, )  
 Applicant, )  
 v. )  
 State of South Carolina, )  
 Respondent. )

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IN THE COURT OF COMMON PLEAS  
 FOR THE FIRST JUDICIAL CIRCUIT

2013-CP-18-1687

**RETURN**

Respondent, making its Return to the application for post-conviction relief filed September 23, 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 Dorchester County Clerk of Court. Applicant was indicted during the September 2008 term of the Dorchester County Grand Jury for Criminal Sexual Conduct with a Minor, second degree (2008-GS-18-1105). Applicant was represented by Henry R. Schlein, Esquire. On May 31, 2013 Applicant pled guilty as indicted pursuant to North Carolina v. Alford<sup>1</sup> before the Honorable Edgar W. Dickson. Judge Dickson sentenced Applicant to six years imprisonment. Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Dorchester County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and guilty plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

---

<sup>1</sup> 400 U.S. 25 (1975).

## II.

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

1. Ineffective Assistance of Counsel, in that:
  - a. Counsel failed to properly investigate the law and facts of the indictment for Criminal Sexual Conduct;
  - b. Counsel failed to inform Applicant of whether the guilty plea was for a violent or non-violent offense;
  - c. Counsel "gave Applicant erroneous information about direct appeal right";
  - d. Counsel failed to inform Applicant of the elements of the offense and failed to explain that the State has the burden of proving the elements beyond a reasonable doubt.
2. Involuntary Guilty Plea, in that:
  - a. The Community Supervision Program is a collateral consequence of Applicant's guilty plea that he was not informed about, which breached the plea agreement, making Applicant's plea involuntary
  - b. Community Supervision Program "is not part of sentence of court or trial judge"
3. The "Community Supervision Program violates the separation of powers clause."
4. Due Process Violation

Any claims not specifically enumerated in the application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code Ann. §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

## III.

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 (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, 466 U.S. at 668. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

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

## IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In post-conviction relief cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that: (1) counsel was ineffective; and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. United States, 519 F.2d 347 (4<sup>th</sup> Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4<sup>th</sup> Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

## V.

Respondent interprets Applicant's third ground as an allegation that the Community Supervision Program violates the separation of powers doctrine found in the United States

Constitution. Respondent submits that this allegation is not a cognizable ground for relief. Accordingly, this Court should dismiss this allegation.

VI.

The Applicant alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent submits that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VII.

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

VIII.

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

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN  
Assistant Attorney General

By: Megan E. Harrigan  
ATTORNEYS FOR RESPONDENT

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

Jan. 3, 2014

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF DORCHESTER )  
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 DANIEL BRIAN MONTY, #355627 )  
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 Applicant, )  
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 vs )  
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 STATE OF SOUTH CAROLINA, )  
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 Respondent. )  
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IN THE COURT OF COMMON PLEAS

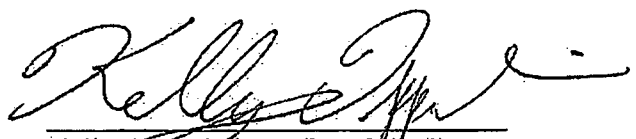
2013-CP-18-1687

AFFIDAVIT OF SERVICE BY MAIL

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

**Rodney D. Davis, Esquire**  
**Lowcountry Law Office**  
**4000 Faber Place Drive, Suite 300**  
**Charleston, South Carolina 29405**

DATED this 3<sup>rd</sup> day of January, 2014.

  
 \_\_\_\_\_  
 Kelly Oppenheimer, Legal Assistant  
 For Respondent



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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>
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NO EXHIBITS INTRODUCED

1 (The proceeding began at 12:06 p.m.)

2 THE COURT: All right. Mr. Neely?

3 MR. NEELY: Thank you, Your Honor. This is the case of  
4 Daniel Monty versus the State of South Carolina, case number  
5 is 2013-CP-18-1687. Applicant is currently confined due to  
6 orders of commitment by the Dorchester County Clerk of  
7 Court. He was indicted September 2008 in Dorchester county  
8 by the grand jury for criminal sexual conduct with a minor,  
9 second-degree. He was represented by Henry Schlein. And on  
10 May 31, 2013, applicant pled guilty as indicted pursuant to  
11 a North Carolina v Alford plea before the Honorable Edgar  
12 Dickson. Judge Dickson sentenced applicant to six years  
13 imprisonment in line with the State's recommendation.  
14 Applicant did not appeal his guilty plea or sentence.

15 THE COURT: Okay. Yes, sir, Mr. Davis?

16 MR. DAVIS: Thank you, Your Honor. May It please the  
17 Court?

18 THE COURT: Yes.

19 MR. DAVIS: There are two things, Your Honor. At the  
20 beginning before we began on the hearing, it is my practice  
21 to ask the Court, even though I've already reviewed with my  
22 client the potential risks and benefits, I would ask the  
23 Court in a moment to go over that with him. I will remind  
24 Mr. Monty and the Court that he was convicted on CSC with a  
25 minor, second, which is a zero to 20 year no-parole offense.

1 He did receive a six-year sentence. So obviously the only  
2 hope of improvement is to go forward but he does -- even if  
3 we're successful -- we can't see the future. He does expose  
4 himself to the remainder of that sentence up to 20 years.  
5 The additional unique thing about this case, Your Honor, and  
6 we approached the bench on a break, I was appointed to this  
7 case back in October of '13. Mr. Monty did inquire with a  
8 family friend who is an attorney in the Charleston area. A  
9 Mr. Green was notified about court today, but I do not see  
10 him in the courtroom. There was some question about  
11 representation, briefly. There were some documents that  
12 were an issue causing a little bit of a delay that we dealt  
13 with. All of that has been dealt with. And then most  
14 recently he was transferred to Allendale, which with my  
15 experience, is the only Department Of Corrections facility  
16 that I cannot easily arrange a professional phone call to.  
17 I just state all of that on the record to let you know that  
18 I've been preparing for this if he wanted to have the  
19 hearing on the issues he had about Mr. Schlein's  
20 representation. He's with us in the courtroom today. And  
21 I'm prepared to go forward.

22 This morning, for the first time -- and, of course, it  
23 may have come up during the time he's been at Allendale that  
24 I've kind of been out of communication with my client. He  
25 asked about a remedy of, if we're successful, a PCR remedy

1 being remanded for resentencing. I talked to him briefly  
2 about the theory, the policy, on that. I certainly recall  
3 the Thompson case, and I can give you a cite if I need to.  
4 I was able to look that up on the spur of the moment. But  
5 what I relayed to Mr. Monty -- and I'd ask that you go over  
6 this with him as well so that I'm not misquoting the law to  
7 him. I told him that if he wants to go forward on PCR, I'm  
8 ready with questions to call for him and Mr. Schlein. But  
9 it's my opinion based on my review of his case that this  
10 would be an all or nothing PCR. Certainly, one of his  
11 complaints, I think, as all PCR clients are, is the  
12 sentence; it's the length of their time. But to attack that  
13 directly without what's required under Thompson and other  
14 cases, I don't believe we would have the grounds to request  
15 for that specific remedy. I think the only remedy we would  
16 be able to receive if we're successful is the vacating the  
17 conviction and to start over.

18 As a -- to fill out that picture, the Thompson case  
19 dealt with a situation where the state had made a  
20 recommendation to get the agreement to the plea  
21 accomplished. But then in the courtroom, they did not  
22 follow through on what they had promised; on PCR, it was  
23 granted to resentenced in accord with what had been agreed  
24 upon prior to it being put on the record. Here we have the  
25 State recommending what they said they would. Now,

1 certainly, if we go forward, there's going to be testimony  
2 about some prior negotiations, some prior offers; but there  
3 was never an attempt in the courtroom to accept those prior  
4 offers. Based on that, I've advised my client that I don't  
5 believe we would have the standing to ask for that specific  
6 remedy. But if he wants to go forward to attempt a complete  
7 vacating of the sentence or, certainly, for me to ask for  
8 that specific relief, I will. But if you could -- I know  
9 it's a unique situation -- but if we can air that before we  
10 start because that may affect Mr. Monty's decision about  
11 whether he does want to go forward.

12 THE COURT: Okay. Okay. All right. Any objection,  
13 Mr. Neely, to me doing that?

14 MR. NEELY: None whatsoever, Your Honor.

15 THE COURT: Okay. Very well.

16 MR. DAVIS: Here at the table or . . .

17 THE COURT: He's fine. He's fine. He's absolutely  
18 fine. And he's fine to sit too, as well.

19 MR. DAVIS: Thank you, Your Honor.

20 THE COURT: He might be able to think and listen better  
21 if he's seated. Mr. Monty, I'm going to go over a couple of  
22 things with you. Please fill free to ask me or ask your  
23 lawyer questions, okay?

24 MR. MONTY: Yes, ma'am.

25 THE COURT: All right. Now, I don't know a thing about

1 your case. I don't know one thing other than what Mr. Davis  
2 has just shared with me and what Mr. Neely had just shared  
3 with me. So you need to know that, okay. You know  
4 everything about this case. You know absolutely everything  
5 about your case. And so I'm gonna go over a couple things  
6 with you, but please understand that you know your case.  
7 It's your life. You've lived it, moment by moment. I know  
8 very, very little about it. In fact, you know exactly what  
9 I know because you just heard it, okay?

10 MR. MONTY: Yes, ma'am.

11 THE COURT: The next thing I want to tell you is before  
12 I even mention anything, you are the captain of your ship.  
13 This is your ship. And you need to be satisfied at the end  
14 of the day that you stay captain of your ship. Do you  
15 understand what I'm saying? Because it's really important  
16 to me. I don't want to talk you in or out of anything  
17 because it's your life. It's not my life; it's your life.  
18 And so I have one intention, and one intention is to share a  
19 little bit of information with you. I have absolutely no  
20 interest whatsoever in changing your mind. I want you to  
21 stay the captain of your ship. That's first and foremost,  
22 okay?

23 MR. MONTY: Yes.

24 THE COURT: All right. We're good about that?

25 MR. MONTY: Yes.

1 THE COURT: Very well. All right. Now, it's an  
2 interesting creature, PCRs; they really are. They serve a  
3 marvelous purpose under our law. And under our law, it is  
4 an additional constitutional protection for citizens. And  
5 it exists for the purpose of allowing people, citizens, to  
6 collaterally attack their sentence; their conviction. And  
7 the basis of that collateral attack are constitutional  
8 issues. Now, you know, you hear about them and I'm sure  
9 that you've been learning a lot about them because you've  
10 been involved in probably the most popular one, if you will,  
11 is the Sixth Amendment violation. Because under the Sixth  
12 Amendment, you're entitled to counsel in a trial. And so  
13 the Sixth Amendment violation in a PCR is you were denied  
14 what is called effective assistance of counsel. You  
15 might've had a lawyer, but the allegation is if you had one,  
16 that lawyer was not effective and the failure to have that  
17 effective assistance of counsel was that your rights -- you  
18 were prejudiced. In other words, it made a difference. So  
19 it's a two-pronged task.

20 Number one, ineffective assistance of counsel, which  
21 means my lawyer was not effective, and prejudice or it  
22 mattered. In other words, at the end of the day when you  
23 have those allegations, you want the judge to believe that  
24 there ought to be concern about your trial such that the  
25 court lacks confidence in the verdict. So that's a little

1 bit of an explanation about what a PCR is using ineffective  
2 assistance of counsel, using the Sixth Amendment violation.  
3 The only way obviously to remedy that situation is to vacate  
4 the conviction and vacate the sentence also and grant a new  
5 trial. In other words, everybody goes back to go, and  
6 there's a redo. Are you with me up to this point?

7 MR. MONTY: The only -- I mean, as far as the time that  
8 I've already served, I mean, that's just forgotten about?

9 THE COURT: You are like four steps ahead of me. Hold  
10 up, but hold onto that. Okay. Now, if a person is granted  
11 a PCR, typically and normally, they go back for a new trial.  
12 Let me give you an example of when that doesn't happen.  
13 Sometimes when judges are sentencing people a couple of  
14 things can happen. What can happen is that you're  
15 sentencing somebody to a number of different charges. And  
16 maybe you're sentencing somebody to an offense that carries  
17 ten years and another one that carries ten years and another  
18 one that carries ten years and then there's a failure to  
19 stop for blue light and siren, and you're sort of trucking  
20 along and lo and behold, you're know you're gonna run  
21 everything current. And lo and behold, you sentence  
22 somebody to ten years for a failure to stop for blue light  
23 and siren and the maximum sentence was three years. Well,  
24 that one, you don't back for a new trial on that one. You  
25 go back for a sentencing and you just -- and you go back and

1 the judge says it's not ten, it's three; it runs concurrent.  
2 I mean, it doesn't -- if you will, it doesn't make a  
3 difference because the person has other sentences. It can  
4 make a difference. But that's an example of when you would  
5 go back to sentencing.

6 And there's another instance of when you can go back  
7 for sentencing. And I think that's where your lawyer was  
8 referring to, Mr. Davis was referring to earlier, under  
9 Thompson and those are pretty unique. And those are the  
10 instances where you had a deal with the solicitor's office  
11 on a sentence. It could be the attorney general too if they  
12 were handling the case, the prosecution of the case. And  
13 you had a deal. Typically, those are in writing. They  
14 don't have to be. But there's like a contract, if you will.  
15 In other words, there's a deal; there's an agreement. And  
16 that agreement is that this person is going to receive a  
17 particular sentence. Certainly, the defendant thought so;  
18 counsel thought so. And there were things that perhaps were  
19 done just to make that so. A change of condition, if you  
20 will. For example, it may be that -- and I know I'm making  
21 this up because, again, I know very little about your  
22 particular circumstance. But it might be that they had a  
23 deal for let's say attempted murder. And there's a deal  
24 that this person believed that they would receive a  
25 particular sentence if they were willing to testify. And

1 so, let's say they did. And the person then goes on the  
2 record and that person testifies. So they're under oath and  
3 they talk about what they did was maybe somebody else did as  
4 well, and they expressed their willingness to testify. And  
5 they've actually under oath put on the record what occurred.  
6 Well, the solicitor would be kind of creepy if the solicitor  
7 said, "Ha, ha, ha. No longer going to agree to that amount  
8 of time. I'll only agree to the larger amount of time."  
9 Well, that would be kind of creepy. So if that was to  
10 happen and go forward, that's the kind of thing where  
11 Thompson said no, no, no. We're going to go back; we're  
12 going back just for resentencing and the person gets the  
13 benefit of the deal, if you will. That's what Thompson is  
14 talking about. It's to right the wrong and give the person  
15 the benefit of the deal. But those are very rare. I think  
16 I've actually had only one of them in 19 years because  
17 they're rare. And the reason that they're rare is because  
18 typically in the realm of the private practice of criminal  
19 law, there will be offers that will go back and forth a lot.  
20 And nothing -- it is very rare that something gets tied down  
21 to that extent. And also, also, often times they're  
22 recommendations. And a recommendation can't bind the judge.  
23 It's only that; it's a recommendation. You have to have a  
24 negotiated sentence to be more binding on the judge.  
25 So that's just -- what I've just given you is just

1 information, and only for information purposes because your  
2 lawyer has asked me to do that. So I would tell you that  
3 the normal and typical case is that even if I would want to  
4 do otherwise, the law says that if I grant a PCR what I am  
5 in fact doing is granting a new trial, which means you go  
6 back for a new trial. Everybody goes back to go. And what  
7 that means is -- and this is where I tread on ground, and I  
8 want to be real clear with you that I don't want to force  
9 you to do anything. I, again, tell you be the captain of  
10 your own ship. But it's just reality if there's another  
11 trial, there's another judge, there's another prosecutor,  
12 may or may not be another defense lawyer. And at the end of  
13 the day, it's a new trial. You know, you may receive the  
14 same sentence; you may receive an acquittal; you may receive  
15 a greater sentence. And my understanding is that you  
16 received a sentence of six years. If you went back to trial  
17 on the same charges and you were convicted, you can receive  
18 a sentence of up to the maximum, which as I understand is 20  
19 years. Having said that, you could also be acquitted. So,  
20 again, I'm sharing that information with you. And I want  
21 you to know that based on what your lawyer has told me, I do  
22 not believe that this is a Thompson situation -- we just do  
23 that for sentencing. Just based on his representation, you  
24 can testify and it will be something totally different. You  
25 understand? But it's important that you simply understand

1 the remedy that I can offer.

2 Now, what happens if you go to trial? All right.  
3 Let's don't do you; let's make up Mr. Doe. Let's say that  
4 Mr. Doe went to trial on attempted murder. And he receives,  
5 at the end he is convicted, he receives a sentence of ten  
6 years and he files his PCR. First of all, he files his  
7 appeal and then he files his PCR. And the PCR was handled  
8 promptly. He's successful. The PCR is granted; a new  
9 trial. The State says, harumph, we're going to appeal; and  
10 they appeal. And let's say that the court that granted the  
11 PCR is upheld. Everything has clicked along right on time.  
12 But lo and behold, five years has gone by. My how time fly  
13 -- but let's say that Mr. Doe goes back and he has a new  
14 trial and, unfortunately, he is convicted again of attempted  
15 murder. And the judge says I'm going to sentence Mr. Doe to  
16 ten years in prison. So does Mr. Doe, does he have to go  
17 back to go? Or does he get credit for the time that he has  
18 served? He gets credit -- by statute, he gets credit for  
19 the time that he has served. Got it?

20 MR. MONTY: (Affirms.)

21 THE COURT: Any other questions? That was a very good  
22 question, by the way. And you can ask Mr. Davis and you can  
23 ask -- he's still there. You can see your lawyer. I have  
24 the Attorney General's office on -- any additions? Any  
25 corrections? Any suggestions?

1 MR. NEELY: Not from our office, Your Honor.

2 THE COURT: No? Yeah? Like a B+? What do you think?  
3 B, B+?

4 MR. HUNTER: I thought it was great summary of PCR.

5 THE COURT: Oh, he is so smooth.

6 MR. DAVIS: Judge, here in a moment, I'm gonna ask just  
7 some more of my client just review that. One thing I will  
8 say is I want to handle my PCRs with these gentleman in  
9 every circuit. I, for the record, have to tell you that the  
10 State -- the assistant attorney generals that I've dealt  
11 with previously have taken the position that pretrial  
12 detention time is absolutely credited, but that prison time  
13 served, the State could oppose credit for that time. That's  
14 the position I've been told by assistant attorneys who I got  
15 along with terrifically. But they have -- I was expecting  
16 one of these gentlemen to do that. They have taken the  
17 position that the statute applies to pretrial -- county jail  
18 time only. I can tell the Court though in my research of  
19 that issue, I have not found a single case dealing with the  
20 issue which suggests to me that the judge has always given  
21 it because as I tell my clients, if the judge didn't, the  
22 first thing I would do is appeal and we'd have a ruling on  
23 that; have an appellate decision on that. So just to have  
24 the record complete, in Ninth Circuit and First Circuit,  
25 prior assistant attorney generals I've dealt with have

1 always taken the position that county jail time would count,  
2 that prison time would not. If I can have just a moment to  
3 chat with my client about ---

4 THE COURT: Absolutely. You know, it would be my  
5 position that -- you know, because we got the new -- well,  
6 it's not new anymore. We got the case that says that  
7 once -- if you are locked up on something else and another  
8 warrant is issued, you get credit for that as well. My  
9 position is a loss of freedom, is a loss of freedom. The  
10 rest of it is just geography.

11 MR. DAVIS: I understand, Your Honor. I understand.  
12 And the Blakely case certainly is a benefit to us. Thank  
13 you.

14 (Brief pause.)

15 MR. DAVIS: Your Honor, thank you for the extra time.

16 THE COURT: Do you need any more time?

17 MR. DAVIS: I do not believe we do.

18 THE COURT: Okay.

19 MR. DAVIS: I will ask Mr. Monty. But I don't believe  
20 we need any more time to talk now. And he has advised me he  
21 does wish to go forward with the hearing.

22 THE COURT: Very well. All right. If you would please  
23 call your first witness.

24 MR. DAVIS: We would call Mr. Monty.

25 (DANIEL BRIAN MONTY, after being duly sworn, testified

Direct Examination of Mr. Monty by Mr. Davis

16

1 as follows:)

2 THE COURT: All right. And Mr. Monty, I'm just gonna  
3 ask you to state your name again. It really is a sound  
4 check.

5 THE WITNESS: Daniel Brian Monty.

6 THE COURT: Great volume. All right. Your witness.

7 MR. DAVIS: Thank you very much, Your Honor.

8 THE COURT: Yes.

9 DIRECT EXAMINATION

10 BY MR. DAVIS:

11 Q. Mr. Monty, how far did you go in school?

12 A. Two years of college.

13 Q. Okay. Are you currently on any medication?

14 A. Just the inhaler.

15 Q. And I believe you used that just a moment ago here at  
16 the table?

17 A. Yes, sir.

18 THE COURT: Just what now? He's on what?

19 MR. DAVIS: An inhaler, Your Honor.

20 THE COURT: Oh, an inhaler. Thank you. Okay.

21 Q. And that's for some breathing issues you have?

22 A. COPD.

23 Q. And does that affect you in any way in understanding  
24 what we're doing here today?

25 A. No, sir.

1 Q. Are you on any other medications?

2 A. No.

3 Q. Can you tell the Court who your attorney was on the  
4 case that we have complaints about?

5 A. Mr. Schlein.

6 Q. All right. And this was a criminal sexual conduct with  
7 a minor, second degree?

8 A. Yes, sir.

9 Q. And this was a -- it resolved itself in a guilty plea.  
10 Is that right?

11 A. Yes, sir.

12 Q. That was before Judge Dickson?

13 A. I assume so. I don't recall the judge's name.

14 Q. Do you recall though being with Mr. Schlein in the  
15 courtroom and entering the guilty plea?

16 A. Yes, sir.

17 Q. Was it a guilty plea or was it guilty plea under  
18 Alford?

19 A. It was under Alford. I think it was no contendo or  
20 whatever.

21 Q. Now, when this guilty plea happened, can you tell the  
22 Court about if there was a trial date scheduled or not?

23 A. For that Monday.

24 Q. This was on a Friday?

25 A. It was on a Friday, and the trial was scheduled to

1 start Monday.

2 Q. Okay. Can you tell the Court up until the date of your  
3 guilty plea, the Friday, May 31st of 2013, up until that  
4 point can you tell the Court how many times you would have  
5 met with Mr. Schlein?

6 A. The court roll calls and at his office, roughly 20.

7 Q. Okay. Now let's talk about some of those discussions.  
8 You just told the Court that this was scheduled, if need be,  
9 for a trial three days after your guilty plea. Had you  
10 spoke to Mr. Schlein about the preparations for trial?

11 A. Yes, sir.

12 Q. And is it fair to say that there was an offer from the  
13 State on the eve of trial that was a new offer?

14 A. Different from the original, yes.

15 Q. Okay. Really quickly, can you tell the judge about  
16 this original offer you just mentioned?

17 A. It was originally five years they offered me.

18 Q. And what action was taken on that?

19 A. I declined it at that point.

20 Q. Okay. And up until the offer right before the plea,  
21 had there been any other offers?

22 A. Yes. They offered me ten years.

23 Q. And what action was taken on that offer?

24 A. I told him I would see him at trial.

25 Q. What's your understanding about the offer that was

1 presented before the plea?

2 A. I'm old. Excuse me.

3 THE COURT: You have some water there?

4 THE WITNESS: Yes.

5 THE COURT: Okay, good. Do you need your inhaler?

6 THE WITNESS: No. I've got it. Thank you.

7 A. I'm old. And I thought that 20 years or ten years was  
8 the same.

9 Q. So what was the offer that was made prior to the actual  
10 plea?

11 A. Well, I left the courtroom. And Mr. Schlein came out  
12 of the courtroom and said that they were willing to talk.  
13 So they gave me another offer of six.

14 Q. Now we talked about this before you were called to the  
15 stand. Did you talk to Mr. Schlein about what the range of  
16 punishment for your charge was?

17 A. From 0 to 20; yes.

18 Q. Okay. Did Mr. Schlein talk about whether this was a  
19 violent or nonviolent offense?

20 A. At the time, no. I found that out -- in Kirkland.

21 Q. Did he talk about whether this was a parole or no  
22 parole offense?

23 A. No. I did not know that.

24 Q. Did he ever use the term 85 percent offense?

25 A. I vaguely remember him saying something about the six

1 years would end up being a five year and a month or  
2 something like that. So I'm guessing that that was  
3 mentioned.

4 Q. Okay.

5 A. At that time I was under duress.

6 Q. Okay. We'll get to that in just a second. Did he ever  
7 talk about community supervision following your sentence?

8 A. No.

9 Q. Okay. Did he ever talk about the possibility of you  
10 being designated as a sexual violent predator?

11 A. No, sir.

12 Q. Where discussions about the fact that this offer of a  
13 cap of six years was a recommendation to the judge? Did he  
14 discuss what that meant?

15 A. No. I mean, I see it's on the paper that it was a  
16 recommendation and not something that was agreed upon with  
17 the judge. That's all I know. I mean, I knew very little  
18 of the law.

19 Q. This went forward as an Alford plea. How much time did  
20 you and Mr. Schlein spend talking about what an Alford plea  
21 meant?

22 A. I'm not quite sure of any of that.

23 Q. Well, can you tell the judge why it was an Alford plea?

24 A. I was willing to go to trial on it. I wanted to go to  
25 trial, but I didn't feel that I had a chance of winning

1 because it was explained to me if I went to trial and lost,  
2 I would more than likely get 20 years. And the pretty much  
3 frightened me into accepting the plea.

4 MR. DAVIS: And Your Honor, I believe you have a copy  
5 of the transcript. Mr. Monty ---

6 THE COURT: I actually don't believe I have that  
7 packet. I've got Mr. Vereen's and Mr. Felder.

8 MR. DAVIS: Your Honor, if it helps, this was  
9 originally scheduled yesterday and got moved to today.

10 MR. NEELY: Your Honor, that's my mistake. I believe I  
11 handed up the wrong file.

12 THE COURT: That's okay. I'm just listening really,  
13 really carefully. And if you don't mind, when you go to the  
14 transcript if you'll just give me the pages and just state  
15 the words that were said, I'll be good to go.

16 MR. NEELY: Thank you, Your Honor.

17 BY MR. DAVIS (Continuing):

18 Q. Mr. Monty, do you remember telling Judge Dickson that  
19 you thought this was a 50/50 chance if you went to trial?

20 A. Yes, sir.

21 MR. DAVIS: And, Your Honor, that would page 7, line  
22 15.

23 THE COURT: Thank you.

24 Q. Mr. Monty, you had denied the allegations against you  
25 throughout the time that Mr. Schlein represented you,

1 correct?

2 A. I didn't understand that.

3 Q. Let me rephrase it. You had told Mr. Schlein all along  
4 that you wanted a trial on these charges, right?

5 A. Yes, sir.

6 Q. Okay. And it was his advice to you, and I believe you  
7 just said this a moment ago, it was his advice to you that  
8 you plead guilty rather than going to trial. Is that right?

9 A. Well, it was made to me that the one with the most  
10 money wins. I didn't have it.

11 Q. Okay. Let me ask the question again. Did Mr. Schlein  
12 advise you that he felt you should plead guilty rather than  
13 go to trial?

14 A. Well, that was his recommendation. I mean, he left it  
15 up to me. It was my decision. But, I mean, twenty years  
16 kept ringing in my ear. Every time I turned around, I kept  
17 hearing 20.

18 Q. So he advised that you plead guilty, correct?

19 A. I guess, yes.

20 Q. And he also indicated that if you did not plead guilty  
21 and went to trial, you'd likely be convicted, correct?

22 A. Yes. There was a good chance.

23 Q. Okay. And he also made a comment about what sentence  
24 he thought you would get if you went to trial?

25 A. Usually, if you fight the State and you lose, you get

1 the max.

2 Q. Now, Mr. Schlein was not hired by you. He was  
3 appointed to you. Is that right?

4 A. Yes, sir.

5 Q. Do you know why the public defender's office did not  
6 represent you?

7 A. The attorney they first appointed me was also the court  
8 appointed attorney for the mother of the victim that charges  
9 were brought up against.

10 Q. She was charged out of this incident as well, the  
11 mother. Is that right?

12 A. Yes. There was a conflict of interest. Yes, sir.

13 Q. If you'll wait until I finish the question and answer  
14 because the court reporter can't deal with us both talking  
15 at the same time, okay?

16 A. Yes.

17 Q. Thank you. All right. This was on the eve of a  
18 potential trial. Can you tell the Court what explanation  
19 Mr. Schlein gave to you about how a trial works in South  
20 Carolina? What discussions did he have with you about that?

21 A. He kind of explained what was going to happen about the  
22 jury selection and this and that. And he pretty much stated  
23 that it would probably take three days to a week before a  
24 decision was made, guilty or not guilty.

25 Q. Did he discuss the Rule 5, the discovery, the evidence,

1 in this case with you?

2 A. Somewhat.

3 Q. Did he review it with you or did he send a copy to you?

4 A. Well, he kind of went over it at his office. He went  
5 over some of the statement. They came back with there was  
6 no DNA evidence and what type of evidence they had. I  
7 really, myself, I had no expert witnesses or anything that  
8 could go on my behalf.

9 Q. Okay. Did he give you a copy of the evidence ---

10 A. I think so.

11 Q. If you'll let me finish with the question, please. Did  
12 he give you a copy of the evidence in discovery or did you  
13 just review it in his office?

14 A. Well, I think he gave me a copy of it all and we kind  
15 of went over some of it.

16 Q. Okay. Did you have discussions about the witnesses  
17 involved in this case?

18 A. Yes.

19 Q. Did you have discussions about how, if it went to  
20 trial, Mr. Schlein might handle or question those witnesses?

21 A. I'm not sure that any of the witnesses would be  
22 involved in trial. That's the way he made it. He said any  
23 witnesses that I had would be a character witness and he  
24 didn't want to go that route.

25 Q. I'm also talking about the State's witnesses. Did you

1 discuss those?

2 A. State witnesses? Said that the State had medical  
3 witnesses and this and that that we didn't have.

4 Q. You didn't have the witness names or you didn't have  
5 documents?

6 A. No. And I didn't have on my behalf to rebut what they  
7 were doing.

8 Q. I understand. My question to you is did you have  
9 discussions with Mr. Schlein about how he might handle those  
10 State's witnesses at trial?

11 A. Not really because -- if he did, it went right over  
12 mine.

13 Q. I want to turn directly to the child, the accuser.  
14 Where there any discussion you had with Mr. Schlein about  
15 how he might question her if this went to trial as she was a  
16 witness?

17 A. He stated that there wasn't really anything that he  
18 could question her because she was protected under the minor  
19 acts.

20 Q. So there were discussions about her testimony with  
21 Mr. Schlein. Is that right?

22 A. Yes, sir.

23 Q. And you were told that he could not question her at any  
24 length because of her age?

25 A. Yes, sir.

1 Q. Were there any discussions about medical records  
2 pertaining to the accuser?

3 A. No, sir.

4 Q. Were you ever provided or did you ever review any  
5 medical records with Mr. Schlein?

6 A. Of the victim?

7 Q. Yes.

8 A. No, sir.

9 Q. Now, did you have discussions with your client -- or  
10 with your attorney about any knowledge you had as to the  
11 accuser's prior accusations of conduct like this against  
12 someone else?

13 A. Yes, sir. I spoke to him about that.

14 Q. Can you tell the judge what Mr. Schlein's advice was  
15 about that information?

16 A. Pretty much that it's hearsay and that I can't bring  
17 that up in court.

18 Q. Do you know if there was any additional investigation  
19 on your part by Mr. Schlein other than what you provided  
20 him?

21 A. Not that I'm aware of.

22 Q. Did Mr. Schlein and yourself ever discuss what defenses  
23 you would have if this went to trial?

24 A. I really didn't feel that I had a defense. Because I  
25 didn't feel that I had witnesses to, you know, to speak for

1 me to help defend.

2 Q. Now you touched on this just briefly little while ago.

3 Can you tell the Court what was reviewed with you concerning  
4 any DNA evidence?

5 A. It took at least a year for them to even take DNA.

6 And, you know, roughly a year or so after for the paperwork  
7 to come back in stating that there was no DNA as far as any  
8 DNA evidence.

9 Q. Do you remember any documentation you reviewed with  
10 Mr. Schlein?

11 A. Yeah. There was some documentation.

12 Q. Is it fair to indicate that it was not conclusive?

13 A. Yes, sir.

14 Q. Do you remember going over a report with him, with  
15 Mr. Schlein?

16 A. No, sir.

17 Q. And so it was a mixture of individuals of some DNA that  
18 they found. Is that fair?

19 A. Yes, sir.

20 Q. And so while you're identified, it was a mixture?

21 A. And it was stated that it was a mixture of male.

22 Q. And that was on article of clothing of the accuser?

23 A. Yes. Yes, sir.

24 Q. Okay. So it was not found on her body that you recall?

25 A. No, sir.

1 Q. What other discussions about this report of DNA you  
2 recall having with Mr. Schlein?

3 A. I don't recall. It was a long time ago.

4 Q. Did he have discussions with you about how he might  
5 deal with that? I'm going to use my word, confusing  
6 evidence at trial?

7 A. He spoke something of somebody that he knew that might  
8 be able to help with deciphering that information. But it  
9 really didn't go any further.

10 Q. Okay. So he mentions someone he might talk to, but you  
11 got no more information about the person?

12 A. Yes, sir; correct.

13 Q. Mr. Monty, you were very reluctant to plead guilty.  
14 You wanted a trial on this charge, didn't you?

15 A. Yes, sir.

16 Q. You rejected a five-year offer from the State, correct?

17 A. Twice.

18 Q. And a ten-year offer from the State?

19 A. Once.

20 Q. I'm not sure if you answered this earlier, but when was  
21 the first time that an Alford plea -- Alford guilty plea was  
22 discussed? Was it prior to the date of the plea? On the  
23 day of the plea? When was the first time you had  
24 discussions with your attorney about an Alford plea?

25 A. Before I was sentenced, it was that day in court.

1 Q. The day of your guilty plea?

2 A. Yes, sir.

3 Q. We already talked about this briefly. But I want you  
4 to tell the judge, clearly, how did you feel about your  
5 options on May 31, 2013, the Friday before trial?

6 A. I was pretty much told that they gave me a plea of ten  
7 years, and I refused it. They called me back in and said  
8 that they were willing to talk. And it was just like he was  
9 the mediator between me and the solicitor.

10 Q. Let me pause you right there. He being Mr. Schlein?

11 A. Yes, Mr. Schlein. I'm sorry. And then when I agreed  
12 to -- he brought the papers back in that said six years on  
13 it; the paper that I signed, it was like they were agreeing  
14 six years. And then, you know, it was brought up again if  
15 you go to trial, I'm ready to go to trial, if we lose -- he  
16 said I'm ready to go to trial, but if you lose, they can  
17 give you 20 years. So I'm looking -- excuse me -- I'm  
18 hearing 20 years and I'm looking at six. And then he also  
19 said that, you know, the judge is getting ready to leave for  
20 the day, so you got to make this decision now or else we're  
21 going to trial Monday. So under the stress, I signed it.

22 Q. The trial could've started that next Monday. Can you  
23 tell the judge how you felt about whether Mr. Schlein was  
24 prepared to go to trial had you asked for it or not?

25 A. Well, he said he was, but I didn't feel I would be

1 properly defended.

2 Q. One last thing that I think will tie into that feeling.

3 What's your understanding about Mr. Schlein's appointment  
4 as far as what's your understanding that you conveyed to me  
5 about how he is compensated?

6 A. Well, the way I felt, he was employed by the State, not  
7 by me. I felt in my heart he was working for them.

8 Q. Were there any discussions about the extra work? The  
9 extra work if this had gone to trial.

10 A. Well, the fact is that he only got paid a certain  
11 amount for it because it was pretty much a prolonging for  
12 him. Because he wasn't even a court-ordered defendant -- or  
13 attorney, court-appointed attorney. I mean, he was  
14 outsourced. And that, you know, I felt like it was  
15 something on his desk that needed to be gotten rid of. And  
16 he didn't have the money to be able to properly defend me  
17 because the State had unlimited and I didn't have money to  
18 pay him to properly defend me.

19 Q. So were there any discussions about you or your family  
20 coming up with additional funds to help with the trial  
21 expense?

22 A. No, because they couldn't. They didn't have that kind  
23 of money.

24 Q. Let me rephrase. Were the discussions between you and  
25 Mr. Schlein about whether you or your family could come up

1 with funds for the extra expense of a trial?

2 A. No.

3 Q. All right. Just a few for more, Mr. Monty. Let's  
4 review. If Mr. Schlein had discussed how he might handle  
5 witnesses at a trial more fully with you, would you have  
6 pled guilty and taken this offer, or would you have asked  
7 for a trial?

8 A. I would have probably took on with the trial.

9 Q. If he had discussed more fully with you how he might  
10 have dealt with the DNA report and evidence at trial, if he  
11 had discussed that more fully with you, would you have pled  
12 guilty or would you have asked for a trial?

13 A. I would've went through with the trial.

14 Q. Had he talked to you more fully about someone he hired  
15 and spoke with about this DNA evidence, if you had been --  
16 if that information had been shared with you that an expert  
17 was involved in dealing with this DNA evidence, would you  
18 have pled guilty or asked for a trial?

19 A. If I was assured more of a defense, I would've went to  
20 trial.

21 Q. Ties right in to my next question. You had testified  
22 earlier that you felt because you had no witness on your  
23 side, you didn't really have a defense. Had Mr. Schlein  
24 talked to you about the State's burden of proof and that you  
25 didn't have to prove anything, would you have plead guilty

1 or asked for a trial?

2 A. I would've went to trial. My assumption was that they  
3 could have given me a sentence of 20 years regardless of no  
4 evidence on circumstantial or hearsay.

5 Q. If Mr. Schlein had made an effort to obtain and review  
6 medical records of the accuser and you had a chance to  
7 review those prior to May 31, 2013, would you have pled  
8 guilty or asked for a trial?

9 A. Asked for a trial.

10 Q. If you had felt that Mr. Schlein was prepared for trial  
11 on that Friday and not pressured you into this plea, would  
12 you have pled guilty or asked for a trial?

13 A. Well, in my mind, I thought that he would be prepared  
14 because he was dealing with it for at least four years. But  
15 in my heart, I didn't feel it.

16 MR. DAVIS: Your Honor, can I have just one moment?

17 THE COURT: All right.

18 (Brief pause.)

19 MR. DAVIS: Thank you, Your Honor. Mr. Monty, that's  
20 all the questions I have. The Attorney General may have  
21 some questions.

22 THE WITNESS: Thank you.

23 THE COURT: Yes, sir.

24 MR. NEELY: Thank you, Your Honor. May it please the  
25 Court?

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. NEELY:

4 Q. Mr. Monty, it's your testimony today that you were  
5 presented with a six-year recommendation -- trial. Is that  
6 correct.

7 A. Pardon?

8 Q. You were presented with a six-year recommendation prior  
9 to trial? The day you pled.

10 A. On that Friday; yes, sir.

11 Q. And after being presented with a six-year  
12 recommendation, you took the guilty plea. Is that correct?

13 A. I did under duress; yes, sir.

14 Q. But you took the guilty plea after receiving the  
15 recommendation. Is that correct?

16 A. Yes, sir.

17 Q. The recommendation was for six years?

18 A. Yes, sir.

19 Q. And you received six years?

20 A. Yes, sir.

21 Q. And the six-year recommendation was placed on the  
22 record?

23 A. Yes, sir.

24 Q. And you agreed with the judge whenever she said that  
25 the only thing presented to you was a six-year

1 recommendation?

2 A. Yes, sir.

3 Q. And when the judge asked you if you wanted to plea,  
4 you advised the judge that you did want to plea?

5 A. Yes, sir.

6 Q. And when the judge again asked you whether you wanted  
7 to take the Alford plea, you again reiterated that you  
8 wanted to take the Alford plea?

9 A. Yes, sir.

10 Q. When the judge asked you if you were pleading freely  
11 and voluntarily -- freely, voluntarily, and intelligently,  
12 you said you were. Is that correct?

13 A. That's what came out of my mouth, yes.

14 Q. That's what you said?

15 A. That's what I said.

16 Q. And when the judge asked you if you understood the  
17 State's recommendation, you said you did?

18 A. Yes, sir.

19 Q. And when the judge told you on transcript page 5, line  
20 3, that the offense that you were pleading was a violent  
21 offense. Is that correct?

22 A. I didn't hear or understand. I was under so much  
23 duress at the time.

24 Q. Are you challenging what the judge said it in your  
25 presence?

1 A. No, I'm not. I'm just saying even right now I don't  
2 recall hearing it.

3 Q. And all of the duress you've spoken of, the only duress  
4 you've spoken of was the fact that if you went to trial you  
5 were scared of getting more time than you were getting in  
6 the plea deal?

7 A. No. I was scared of going that day.

8 Q. You were scared of going to what that day?

9 A. To prison. Anybody would be.

10 Q. So the fear that you're speaking of is a fear of going  
11 to prison for longer time than the plea deal?

12 A. No. It was a fear of going that day for one year.

13 Q. But you agreed that the recommendation from the State  
14 was six years. You agreed to that.

15 A. Yes, sir.

16 Q. And you pled to that.

17 A. Yes, sir.

18 Q. And your fear was that you would get 20 years if you  
19 went to trial. Isn't that correct?

20 A. No.

21 Q. Isn't that what you just told your attorney?

22 A. My fear was not being properly defended and I would end  
23 up with 20 years if I didn't take the six then.

24 Q. So you're scared of getting 20 years at trial?

25 A. Incarcerated for 20 years. I'd probably die behind

1 bars; yes.

2 Q. That was your fear? That you would get a greater  
3 sentence at trial.

4 A. Possibly a greater sentence. I didn't want to take that  
5 chance at the time.

6 Q. And your attorney told you it was a possibility?

7 A. Yes.

8 Q. And your attorney said according to you that he was  
9 ready to go to trial?

10 A. He said.

11 Q. And that he had prepared to go to trial?

12 A. He said.

13 Q. And he never once told you that he didn't have the  
14 money to properly defend you?

15 A. Yes, he did.

16 MR. DAVIS: Objection, Your Honor. Hearsay.

17 THE COURT: Sustained.

18 Q. You discussed the lack of defenses you had with your  
19 attorney. Is that correct?

20 A. Discussed with who?

21 Q. With your attorney, Mr. Schlein.

22 A. In a way, yes, I did.

23 Q. And you didn't feel like you had a defense?

24 A. I didn't feel that I would be properly defended.

25 Q. But you didn't feel like you had a defense is what you

1 just told your attorney. Isn't that correct?

2 A. In a way. If you're not going to properly be defended,  
3 you don't have a defense, no.

4 Q. Well, you told your attorney just now that you had no  
5 witnesses that were going to speak for you. Isn't that  
6 correct?

7 A. Exactly.. It was just going to be my attorney.

8 Q. Did your attorney tell you that had the right to  
9 testify as well?

10 A. Yes, but he recommended that I didn't.

11 Q. And why did he say that?

12 MR. DAVIS: Objection, Your Honor. Again, hearsay.

13 MR. NEELY: Your Honor, we're talking about  
14 attorney-client relationship here.

15 MR. DAVIS: Calls for speculation.

16 MR. NEELY: I can rephrase, Your Honor.

17 THE COURT: Okay.

18 Q. What were the reasons that he said that you shouldn't  
19 testify?

20 MR. DAVIS: Again, Your Honor, it would be what  
21 Mr. Schlein said to the client. They can call Mr. Schlein  
22 if they want to. It's hearsay.

23 THE COURT: Mr. Schlein can testify to what he told  
24 him.

25 MR. NEELY: Certainly, Your Honor.

1 Q. At the guilty plea, you told the judge you believed  
2 there's a 50/50 chance that you would be found guilty. Is  
3 that correct?

4 A. Yes.

5 Q. So that was your fear of rolling the dice?

6 A. (No verbal response.)

7 Q. If you went to trial, there was a chance that you would  
8 receive a significantly higher sentence. Isn't that  
9 correct?

10 A. Yes.

11 MR. NEELY: Your Honor, that's all the questions I  
12 have.

13 THE COURT: Very well. All right. Any redirect?

14 MR. DAVIS: Yes, Your Honor.

15 THE COURT: Okay.

16 REDIRECT EXAMINATION

17 BY MR. DAVIS:

18 Q. Mr. Monty, are there things that you know now that you  
19 didn't know when you entered the guilty plea?

20 A. Yes, sir.

21 Q. Does that affect some of the answers you gave Judge  
22 Dickson back then versus ---

23 A. No, sir.

24 Q. --- versus the information you're giving Judge  
25 Goodstein today?

1 A. Yes, sir.

2 MR. NEELY: Thank you, Your Honor. No other the  
3 questions.

4 THE COURT: Okay. Any recross?

5 MR. NEELY: Nothing from the State, Your Honor.

6 THE COURT: Very well. Yes, sir, you may come back  
7 down to your table. And we're going to take a lunch break.  
8 All right. And we'll do one hour. It's almost exactly one  
9 o'clock; I'll see you guys at two. Thank you.

10 (The proceedings in this matter recessed at 1:04 p.m.  
11 and resumed at 2:18 p.m.)

12 THE COURT: Call your next witness, please.

13 MR. DAVIS: Your Honor, that will be the applicant's  
14 presentation.

15 THE COURT: Okay. Yes, sir?

16 MR. NEELY: Thank you, Your Honor. The State would  
17 call Henry Schlein to the stand.

18 THE COURT: We're ready.

19 (HENRY R. SCHLEIN, after being duly sworn, testified as  
20 follows:)

21 THE COURT: All right. Your witness.

22 MR. NEELY: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. NEELY:

25 Q. Mr. Schlein, you've heard the testimony by your former

1 client, Mr. Monty. He claims that you didn't have enough  
2 money to defend him properly. Is that the case?

3 A. No, that is not correct.

4 Q. And why is that not correct?

5 A. Well, I was court appointed and we had the availability  
6 of indigent defense funds. So, consequently, I was allowed  
7 to have orders for funds from indigent defense. And we got  
8 funds for a private investigator, an expert for DNA  
9 purposes, a medical expert, and even a private investigator.  
10 Everybody got paid except me.

11 Q. And so you were actually able to go and hire potential  
12 witnesses for your client with court funding orders?

13 A. Professional witnesses, yes.

14 Q. And would those witnesses have testified at trial?

15 A. Yes and no. The private investigator did everything  
16 that he needed to do to help me run down some witnesses who  
17 were fact witnesses. The medical expert who reviewed the  
18 records from the examination of the victim would not have  
19 been able to contradict anything. And the biologist, who  
20 would've been able to testify at trial, provided me with  
21 questions and his testimony wouldn't have been necessary.  
22 They would've been available had we needed them, yes.

23 Q. And you also heard testimony from Mr. Monty that he  
24 received a five-year offer that he rejected. Was that the  
25 case?

1 A. Not to my knowledge.

2 Q. What offers did he received?

3 A. They were plea offers and they were -- I think I had  
4 four that were in writing that I was able to find in my  
5 file, and they were for ten years. I don't recall a  
6 five-year offer. I recall that Daniel wanted five years.  
7 Towards the end when he wanted to plea, he said that he  
8 would be receptive to a five-year offer. But I don't  
9 remember anything less than ten.

10 Q. So he indicated to you that he wanted to plea?

11 A. Well, when we were discussing a plea as we got closer  
12 to trial, and I think this was the day that he pled, that's  
13 when I recall that he told me that he wanted -- that he was  
14 looking for five years and that he would plead. I don't  
15 recall whether he indicated earlier that week when we were  
16 getting ready for trial. But at some point before the plea,  
17 he told me that he wanted to plead to five years.

18 Q. And did you discuss with him whenever he indicated that  
19 he wanted to plead, did you discuss North Carolina v. Alford  
20 to him?

21 A. Yes.

22 Q. And what were you discussions with him concerning the  
23 Alford plea?

24 A. I explained that an Alford plea was one that somebody  
25 makes when they're not pleading guilty because they're

1 guilty. They're pleading guilty to take advantage of the  
2 deal in short.

3 Q. And did you discuss the consequences of an Alford plea?

4 A. Yes, I did.

5 Q. And did you discuss the consequences of the plea that  
6 he was making with a six-year recommendation?

7 A. Yes; I discussed it with him.

8 Q. And what were your discussions about the consequences  
9 of pleading guilty?

10 A. I told him that he was facing a maximum of 20 years.  
11 The recommendation was for six. I expected that that would  
12 be the maximum that he would get. There was a cap of six.  
13 He can get anything up to six. I would argue for less. But  
14 it would be up to the judge, especially what the judge  
15 wanted to give him. And that's what we did.

16 Q. And did you tell him -- what did you tell him about his  
17 liability at trial?

18 A. May I refer to my notes?

19 Q. Certainly.

20 (Brief pause.)

21 A. Now, I've got my notes of previous plea offers. And  
22 what I advised in writing -- can you please restate the  
23 question so I can . . .

24 Q. What did you advise him as to his liability at trial?

25 A. Regarding trial? I told him that there was a good

1 chance he could be convicted. You know, the evidence was  
2 what it was; and what it wasn't, it wasn't. There was no  
3 DNA evidence to point to him. The evidence against him  
4 would be the victim witness and her testimony, the medical  
5 evidence that corroborated that to the extent that, you  
6 know, her examination was consistent with what she was  
7 claiming. And then it would be Daniel's -- Mr. Monty's  
8 testimony; he would his own witness basically. It would be  
9 his word against hers. But he did have the opportunity  
10 because, you know, the girl was there in his home with him  
11 and they were alone. So he couldn't deny that -- he  
12 couldn't claim an alibi. It would just be whether  
13 everything happened that she claimed or just so far as they  
14 were together. It would be up to a jury what would happen.  
15 But if he was convicted, he would be looking at 20 years.  
16 And it would be -- of course, it's up to the judge what to  
17 give him. But I believed he would get -- if he went to  
18 trial and convicted, he would probably get very close to 20  
19 years.

20 Q. And do you recall speaking with your client about  
21 whether he should testify if it did go to trial?

22 A. Yes; we had those discussions.

23 Q. And what were those discussions about?

24 A. I told him that he would have to testify in order to  
25 rebut the testimony of the victim. If he didn't testify, it

1 would be her unrebutted testimony. That would be the only  
2 evidence they would hear; the jury, I'm sorry. Of course,  
3 the downside was he couldn't, Daniel couldn't, deny that  
4 they were alone together in his home. And Daniel had a  
5 prior record for, among other things, contributing to the  
6 delinquency of a minor which every persecutor we had on the  
7 case kept telling me how they couldn't wait to bring that  
8 up. Of course, you know, it is what it is. But, you know,  
9 that would be his downside.

10 Q. Mr. Monty testified that you never reviewed the medical  
11 records with him. Did you review the medical records with  
12 him?

13 A. I believe we reviewed everything with him. And I don't  
14 specifically recall everything that we did. But my  
15 recollection is that we reviewed the entire file with him.  
16 I showed him everything. We had numerous meetings. I  
17 believe it was probably 20 something or more. We met  
18 several times in my office, especially as were getting ready  
19 for trial: going over testimony, witnesses, the witness that  
20 Daniel had that we would've called. We could have possibly  
21 corroborated something with certain phone calls that were  
22 initiated by the victim or that side of the family  
23 constantly calling him. In other words, Daniel wasn't  
24 coming on to the family, to the girl, but they were coming  
25 on to him. I don't mean coming on in a negative, but making

1 the advanced toward trying to get together. You know, that  
2 type of coming on.

3 Q. You were planning on calling witnesses as part of your  
4 defense?

5 A. Yes.

6 Q. And a way of background information, Mr. Schlein, when  
7 were you admitted to the bar in South Carolina?

8 A. November 15, 1999.

9 Q. And since that date, how much of your practice has been  
10 in the criminal sector?

11 A. More than 50 percent.

12 Q. So is it fair to say that you're experienced in  
13 criminal matters?

14 A. Yes. That would be fair.

15 Q. And you stated that you had roughly 20 meetings with  
16 Mr. Monty?

17 A. Daniel stated that there were roughly 20. I think it  
18 would be at least that, maybe more. I don't remember how  
19 many, but there were a lot.

20 Q. And did you have any trouble getting into contract with  
21 Mr. Monty?

22 A. Yes. Sometimes we couldn't get ahold of him.  
23 Sometimes my private investigator couldn't get ahold of him.  
24 But despite that fact, we were able to get together at least  
25 as we were preparing for trial, so I don't really consider

1 that a factor in our preparation. Because it wasn't -- as  
2 we were getting ready for trial, it was -- the case was  
3 along. It was like a five-year case. So if I couldn't get  
4 ahold of him in 2009 or something like that, nothing really  
5 came of it because we did get together.

6 Q. And when y'all did get together, did he seem able to  
7 understand all of your conversations?

8 A. Yes.

9 Q. And did he participate intelligently in those  
10 conversations?

11 A. Oh, yes.

12 Q. And when you went over the guilty plea with him, did he  
13 seem to understand your explanations of the guilty plea?

14 A. Yes.

15 Q. And did you go over all of his rights with him?

16 A. Yes.

17 Q. And it was his decision to take that guilty plea?

18 A. Yes.

19 Q. And you were prepared to go to trial?

20 A. Yes. I had my trial notebook, and I brought it with me  
21 today.

22 Q. So you had already done all the preparation work  
23 necessary for trial?

24 A. Yes.

25 MR. NEELY: I believe that's all the questions I have

1 for this witness, Your Honor. Please answer anything  
2 Mr. Davis has to ask you.

3 THE COURT: Cross-examination?

4 MR. DAVIS: May I have just a moment, Your Honor.

5 (Brief pause.)

6 MR. DAVIS: Thank you, Your Honor.

7 THE COURT: Yes.

8 CROSS-EXAMINATION

9 BY MR. DAVIS:

10 Q. Mr. Schlein, you did discuss Alford with Mr. Monty but  
11 that was the day of the guilty plea on May 31, 2013,  
12 correct?

13 A. We did discuss it that day, yes; that Friday before the  
14 trial.

15 Q. And I am a bit confused about one thing. You, first of  
16 all, testified that in discussing trial preparation that  
17 because this was a swearing match, the physical evidence  
18 didn't really come down to one side or the other; that I  
19 believe you testified that Mr. Monty would have to testify  
20 because otherwise the victim's testimony would be  
21 un rebutted. Is that what you testified a moment ago?

22 A. Mostly. I didn't say the -- I think there was medical  
23 evidence. When they did the medical exam, there was an anal  
24 tear ---

25 Q. You did ---

1 A. --- right, right. But other than that, yes.

2 Q. Forgive me; I apologize. You did testify that the  
3 medical exam was consistent with what was presented by the  
4 accuser. Is that right?

5 A. Yes. That would be correct.

6 Q. Okay. But the DNA was not conclusive?

7 A. That would be correct.

8 Q. So your testimony was because this was -- and I'm using  
9 the phrase swearing match ---

10 A. Sure.

11 Q. --- that Mr. Monty would have to testify to rebut the  
12 accuser's account of what happened?

13 A. In other words, if Mr. Monty didn't testify, yeah, her  
14 testimony would be unrebutted. So, obviously, no, Mr. Monty  
15 did not have to testify. That's his choice. But if he  
16 didn't, then we wouldn't really have somebody to present his  
17 side -- he couldn't deny it. He had to deny it or . . .

18 Q. So did you or did you not talk to him about his  
19 constitutional right to remain silent?

20 A. Yes.

21 Q. You did or did not?

22 A. I did. I did discuss that with him.

23 Q. And did you or did you not talk to him about how you  
24 would defend the case even without his testimony?

25 A. Well, I don't think we planned to defend it without his

1 -- I don't think there was any question that he wouldn't --  
2 that Daniel wouldn't testify. If he didn't -- I mean, I  
3 told him that.

4 Q. So despite the solicitor's eagerness to try to get into  
5 his prior record, which you've already testified about, you  
6 always told him that if this went to trial, his testimony  
7 would be incumbent?

8 A. Well, not that it was not his option. But that he  
9 would need to testify to rebut the testimony of the victim  
10 or they wouldn't hear his denial. So I told him that he  
11 probably would testify, but it would be problematic.

12 Q. I understand. There was never a discussion about how  
13 you might handle a trial without his testimony? That wasn't  
14 planned for?

15 A. I don't recall that we went there.

16 Q. Okay. You never told him you can't testify because of  
17 the prior record; it would be wrong for you testify?

18 A. Well, we told him that that would be a big problem. I  
19 can't tell somebody they can't testify, and I can't tell  
20 somebody they must testify.

21 Q. It's your testimony you have your file here with you  
22 today, correct?

23 A. Yes.

24 Q. And I think you -- in break, we talked -- you reviewed  
25 some yesterday in preparation for today's hearing?

1 A. Yes.

2 Q. And you don't have written documentation of an offer of  
3 five years from the State?

4 A. I do not. I have four offers here that I was able to  
5 find in writing. And the final offer was actually not in  
6 writing. It was all verbal. But the one that I have until  
7 then was a cap of ten years.

8 Q. So is it your testimony that the five-year amount that  
9 has been talked about, that that was of Mr. Monty's  
10 creation? An offer of five years.

11 A. Mr. Monty was interested in a plea of five years. And  
12 I think that's where the five years came from. It didn't  
13 come from me.

14 Q. Or the ---

15 A. I attempted to solicit one for five years.

16 Q. But it didn't come from you or the State; it came from  
17 Mr. Monty?

18 A. Correct.

19 Q. Okay.

20 A. There was even a, you know, one of the earlier plea --  
21 I have one dated -- forgive me, I don't want to talk over  
22 you. I have one from the 28th of May of 2013 that was -- I  
23 see here was either a negotiated ten-year cap. In which  
24 case, the sentencing range would be up to ten years with no  
25 recommendation and no cap; in which the latter case, the

1 sentencing range would be up to 20 years, which is not much  
2 of a plea offer but I was given that offer. I communicated  
3 it to Daniel and he signed it on May 29th. Yeah, 2013. The  
4 next day.

5 Q. The issue about the funding, again, you were  
6 court-appointed, correct?

7 A. Yes.

8 Q. Because of a conflict in the public defender's office?

9 A. Yes.

10 Q. And you submitted vouchers. Or you submitted funding  
11 orders to the court for a private investigator. Is that  
12 right?

13 A. Yes.

14 Q. For medical expert -- or I'm sorry -- A DNA -- a  
15 biologist. Is that correct?

16 A. Yes. And a medical expert.

17 Q. And finally, a medical expert, correct?

18 A. Yes. And a private investigator.

19 Q. Right. That was the first.

20 A. Oh, sorry.

21 Q. And so each of those submitted vouchers were actually  
22 paid by South Carolina Department of Indigent Defense?

23 A. Yes.

24 Q. Was there any unpaid to any of those three individuals?

25 A. I think -- as I recall, everybody got paid what I told

1 them they would get paid. And I told them that, you know,  
2 if they had -- I told them not to bill me for anything more  
3 because I couldn't get them paid except what was allowed by  
4 the judge in the order and what indigent defense would pay.  
5 So there was never a question of not getting paid. I wanted  
6 to get paid more. Somebody may have wanted me to guarantee  
7 a minimum of eight hours being tied up for the whole week.  
8 And I told them I can't pay you any more than I'm authorized  
9 to pay. This is it. You took the case based on what I  
10 promised you and that's all I can promise you.

11 Q. You recall what the funding order allowed for the  
12 private investigator?

13 A. I'm sorry? What about the ---

14 Q. Do you recall what the amount was allowed for the  
15 private investigator?

16 A. I recall seeing an amount last night. One amount was  
17 in the \$900 range. As far as I know, the private  
18 investigator was paid.

19 Q. Do you know with the funding order allowed for the  
20 biologist?

21 A. I don't remember. I'd have to look through . . .

22 Q. Do you recall what the funding order allowed for the  
23 medical expert?

24 A. I do not remember that amount.

25 Q. Tell me on this, I think you said they got paid but you

1 did not. Is that accurate?

2 A. Yes. That's correct.

3 Q. So you did not submit a funding order to the Department  
4 of Indigent Defense?

5 A. I didn't submit -- well, after the case was concluded,  
6 I think I was up in Orangeburg and I found Judge Dickson was  
7 the chief administrative judge at the time and I think I  
8 submitted an order to him, which he signed. And my office  
9 submitted the paperwork, I think. I didn't personally  
10 submit it. And I personally have not seen a check. And I'm  
11 sure if the office got one, they would've told me. I never  
12 got paid. It was not an issue for me anyway. The case was  
13 over.

14 Q. So you didn't request the funding, the actual payment,  
15 until after the case was done?

16 A. Yes.

17 Q. Okay.

18 A. And, you know, since you bring up that subject, if I  
19 can explain that. We all took an oath when we became  
20 lawyers and part of that is we probably got to defend people  
21 that can't afford to hire a lawyer. And you're not supposed  
22 to not defend just because they can't pay. If you get  
23 appointed, that's your job -- your assignment. You do that  
24 just like you would a paying client. So it was never an  
25 issue with me.

1 (Brief pause.)

2 MR. DAVIS: If I may have a moment, that may be it.

3 (Brief pause.)

4 Q. Mr. Schlein, there was no investigations of any prior  
5 allegations by this accuser because your belief was you  
6 would not be able to get into that at trial. Is that right?

7 A. Under the rape shield law, I consulted with my senior  
8 partner, Mr. Cummings, liberally on the case. And we  
9 understood the rape shield law would prevent us from getting  
10 into allegations about prior conduct on the part of the  
11 victim.

12 Q. So you understood that any prior sexual conduct would  
13 not be able to be addressed in the trial?

14 A. If there were any on her part.

15 Q. So you did not review at all whether you could attack  
16 her credibility by prior false allegations? You didn't even  
17 investigate them.

18 A. We didn't have access to any information, but no.  
19 That's as far as we went. There was no information that the  
20 there were false allegations to go look into.

21 MR. DAVIS: Thank you, Your Honor. Thank you, Mr.  
22 Schlein. No other questions.

23 THE COURT: Redirect?

24 MR. NEELY: Nothing from the State, Your Honor.

25 THE COURT: Very well. Is this witness free to leave?

1 Is that a yes?

2 MR. NEELY: No objection from the State.

3 THE COURT: All right. Very well. Thank you now.

4 MR. DAVIS: Your Honor, if we may as to just two small  
5 matters, we would ask to recall Mr. Monty as to testimony  
6 that was during -- I'm sorry, unless the State has another  
7 witness. I apologize. Jumping ahead of myself.

8 MR. NEELY: The State would rest, Your Honor.

9 THE COURT: All right. You want to call him for a  
10 couple more matters?

11 MR. DAVIS: Yes, Your Honor.

12 THE COURT: All right. If he can keep his voice up, he  
13 can just testify from there. And just remember, sir, that  
14 you are still under oath, okay?

15 MR. MONTY: Yes, ma'am.

16 THE COURT: All right.

17 MR. DAVIS: Thank you very much.

18 THE COURT: Got to keep your voice up, though.

19 MR. MONTY: Yes, ma'am.

20 DIRECT EXAMINATION

21 BY MR. DAVIS:

22 Q. Mr. Monty, as to the last issue we were just talking  
23 about, did you provide any information to Mr. Schlein or his  
24 office about any prior accusations by this accuser?

25 A. Yes, sir.

1 Q. And what was that information?

2 A. I was with a lady friend and an acquaintance of both  
3 mine and the victim's mother approached me in a restaurant  
4 and told me that there were prior allegations of somebody  
5 molesting and no charges were ever brought against him,  
6 whoever this man was.

7 Q. And you conveyed that information to Mr. Schlein?

8 A. I did; yes, sir.

9 Q. Did you provide him names and contact information for  
10 how you received that information?

11 A. I told him the gentleman's name that I heard, but I  
12 don't have an address or anything of that sort.

13 Q. Were you made aware at any point that Mr. Schlein had  
14 hired a public-- I'm sorry -- the private investigator?

15 A. Yes. I had spoken with him a couple of times.

16 Q. Let's return to the issue of plea negotiations. Did a  
17 five-year sentence for your charge originate from you or  
18 some other entity?

19 A. When the charges were first brought against me in 2008,  
20 after Mr. Schlein had become my attorney, it was brought to  
21 me. And I had it on paper -- and I can't remember if it was  
22 from the Solicitor's office to his office to me, but it had  
23 five-year plea deal that -- the very first one that I  
24 declined. And I had all that paperwork, every piece of  
25 paper, from this case in my residence that I had lost all my

1 possessions.

2 Q. So did that five-year potential sentence originate from  
3 you or from the State?

4 A. From the State or my attorney. That's when I came to  
5 find -- on that Friday before trial, I had -- when they said  
6 ten years, I said five years and walked out. And they said  
7 no, not a day less than ten. So I walked out then they came  
8 back with six.

9 Q. And finally, as to communications you would have had  
10 with your attorney about whether or not you would testify if  
11 there were a trial, can you tell the judge what your  
12 understanding about your testimony was?

13 A. I was recommended by my attorney, Mr. Schlein, at the  
14 time that it wouldn't be good for me to testify; that I may  
15 perjure myself because the solicitor may catch me up or try  
16 and twist my words. And so I was going on the whole thing  
17 is that I wasn't going to be testifying.

18 Q. Did he discuss the potential use of your prior  
19 conviction if you testified?

20 A. He made comment about that if I got on of the stand  
21 that they were going to attack me with that; yes, sir.

22 Q. Did he discuss at all about how he might try to get a  
23 judge's ruling to block your prior record from being  
24 presented to the jury?

25 A. No, sir.

1 MR. DAVIS: Thank you, Mr. Monty. Thank you, Your  
2 Honor. No other questions.

3 THE COURT: All right. Cross-examination?

4 MR. NEELY: Nothing from the State, Your Honor.

5 THE COURT: Very well. All right. Any additional  
6 reply?

7 MR. MONTY: No, ma'am. Thank you.

8 MR. DAVIS: Your Honor, no witnesses. If we can  
9 briefly summarize; a closing summary if you would hear  
10 argument. We have no other witnesses.

11 THE COURT: Oh, okay. I don't need closing.

12 MR. DAVIS: Okay.

13 THE COURT: I get it. I got it clearly.

14 MR. DAVIS: Thank you, Your Honor.

15 THE COURT: And I don't have any questions about any of  
16 that. Now, obviously, I will take the matter under  
17 advisement and let you know of my decision. Thank you so  
18 much.

19 MR. MONTY: Thank you, ma'am.

20 THE COURT: Yes, sir.

21 MR. DAVIS: Thank you, Your Honor.

22 MR. NEELY: Thank you, Your Honor.

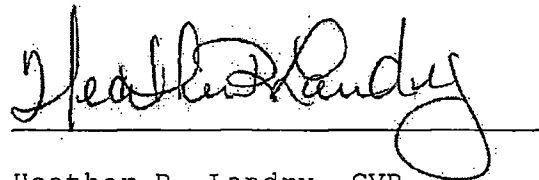
23 (The proceeding concluded at 2:49 p.m.)  
24  
25

STATE OF SOUTH CAROLINA            )  
  )     CERTIFICATE OF REPORTER  
COUNTY OF CHARLESTON            )

I, HEATHER R. LANDRY, Official Court Reporter for the Judicial Department of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had in the hearing of the captioned case, in the Court of Common Pleas for Dorchester County, South Carolina, on the 25th day(s) of October 2016.

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

April 19, 2017

A handwritten signature in cursive script, reading "Heather R. Landry", is written over a horizontal line.

Heather R. Landry, CVR  
Official Court Reporter

STATE OF SOUTH CAROLINA )  
COUNTY OF DORCHESTER )

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT

Daniel Monty, #355627, )

Case No. 2013-CP-18-1687

Applicant, )

v. )

ORDER OF DISMISSAL

State of South Carolina, )

Respondent. )

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CERTIFIED COPY  
DORCHESTER COUNTY

This Court convened an evidentiary hearing into the matter on October 25, 2016, at the Dorchester County Courthouse. Applicant was present at the hearing and represented by Rodney Davis, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant's plea counsel, Henry R. Schlein, Esquire (hereinafter "plea counsel") was present and testified. This Court had the opportunity to listen to the testimony of Applicant and plea counsel. This Court had before it a copy of the plea transcript, the records of the Dorchester County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter. This Court finds as follows:

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. Applicant was indicted during the September 2008 term of the Dorchester County Grand Jury for Criminal Sexual Conduct with a Minor, second degree (2008-GS-18-1105). Applicant was represented by Henry R. Schlein, Esquire. On May 31, 2013 Applicant pled guilty as indicted pursuant to North

Carolina v. Alford<sup>1</sup> before the Honorable Edgar W. Dickson. Judge Dickson sentenced Applicant to six years imprisonment. Applicant did not appeal his guilty plea or sentence.

## II. ALLEGATIONS

On October 25, 2016, Applicant alleged the following grounds in his application:

1. Ineffective Assistance of Counsel, in that:
  - a. Counsel failed to properly investigate the law and facts of the indictment for Criminal Sexual Conduct;
  - b. Counsel failed to inform Applicant of whether the guilty plea was for a violent or non-violent offense;
  - c. Counsel "gave Applicant erroneous information about direct appeal right";
  - d. Counsel failed to inform Applicant of the elements of the offense and failed to explain that the State has the burden of proving the elements beyond a reasonable doubt.
2. Involuntary Guilty Plea, in that:
  - a. The Community Supervision Program is a collateral consequence of Applicant's guilty plea that he was not informed about, which breached the plea agreement, making Applicant's plea involuntary;
  - b. Community Supervision Program "is not part of sentence of court or trial judge".
3. The "Community Supervision Program violates the separation of powers clause."
4. Due Process Violation

At the evidentiary hearing, Applicant asked for his case to be remanded for trial and moved forward with the following allegations:

1. Ineffective Assistance of Counsel
  - a. Plea counsel failed to inform Applicant of the collateral consequences of his guilty plea.
  - b. Plea counsel failed to properly advise Applicant of his rights and the elements of the offenses to which he plead guilty.
2. Plea counsel failed to properly investigate the case
3. Plea counsel did not properly investigate the case because he did not hire a DNA analyst due to lack of funding or review medical records with Applicant.

---

<sup>1</sup> 400 U.S. 25 (1975).

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

*had ample opportunity to do so*

This Court reviewed the record in its entirety, listened to the testimony given, and heard the arguments presented at the evidentiary hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his 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 plea counsel as a ground for relief, Applicant must prove plea counsel's "conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). A defendant

who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

As an initial matter, this Court finds the record fully supports the knowing and voluntary nature of Applicant's guilty plea. See Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (holding defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both"). In addition, Applicant has presented no evidence or valid reasons why he should be allowed to depart from the truth of his statements made at the plea. See Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) ("[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." (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975))).

A. Ineffective Assistance of Counsel

The Court uses a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this first prong, the proper measure of performance is whether trial counsel 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 trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.

Id. (citing Strickland, 466 U.S. at 690). 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). Second, any deficient performance must have prejudiced 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 688.

**1. Whether Plea Counsel Failed to Inform Applicant of the Collateral Consequences of His Guilty Plea**

At the evidentiary hearing, Applicant testified plea counsel did not advise him how his guilty plea would affect his parole eligibility, community supervision, or serving violent time. Plea counsel testified he advised Applicant of all his constitutional rights, the legal ramifications of an Alford plea, and the consequences of Applicant's guilty plea. This Court finds Applicant's testimony lacks credibility in this regard. This Court finds plea counsel's testimony credible in this regard.

In the instant case, plea counsel credibly testified he informed Applicant of the consequences of his guilty plea.

The imposition of a sentence may have a number of collateral consequences, however, and a plea of guilty is not rendered involuntary in a constitutional sense if the defendant is not informed of the collateral consequences. Parole eligibility typically is a collateral consequence of sentencing about which a defendant need not be specifically advised before entering a guilty plea. This is because parole eligibility is not a matter within the jurisdiction of the trial court, but falls within the province of the Board of Probation, Parole, and Pardon Services.  
Brown v. State, 306 S.C. at 382-83, 412 S.E.2d at 400-01

Smith v. State, 329 S.C. 280, 284, 494 S.E.2d 626, 628 (1997)

Because the consequences of a violent crime are collateral, Smith's guilty plea is not rendered involuntary due to counsel's failure to inform him of the consequences of a violent crime conviction.

Smith v. State, 329 S.C. 280, 286, 494 S.E.2d 626, 629 (1997)

Applicant has not raised a legal ground for which there is post-conviction relief remedy.

Applicant has also failed to satisfy his burden of proving prejudice. See Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (applicant must show "something that would have affected counsel's advice to [the applicant] to accept the plea bargain offered or that would have caused [the applicant] to decline to accept it"). It is clear from the plea transcript that Applicant knew he was pleading to a violent offense. With Applicant present, the plea transcript records the following interchange between the court and plea counsel:

All right, sir. Now, he understands that this charge is both a violent and a most-serious offense?

Yes, sir. I've advised him of that.

He understands this counts as a strike?

I've explained the two strikes, three strikes law to him, sir.

Plea Trans. Page 5:2-7

Applicant did not object at the time and replied in the negative when the court asked Applicant if he needed more time to speak with his attorney. Plea Trans. Page 8:25. Further, at his guilty plea, Applicant admitted that plea counsel went over his sentence, evidence, and constitutional rights, Plea Trans. Page 7:19-8:7.

This Court finds Applicant was correctly informed as to the consequences of his guilty plea. This Court finds that Applicant has failed to satisfy his burden of proving the alleged deficiency. Applicant also failed to prove the alleged deficiency of plea counsel caused his guilty plea to be involuntary or unknowing. Accordingly, Applicant has failed to satisfy his burden of proving ineffective assistance of counsel with regard to this allegation and it is therefore denied and dismissed.

**2. Whether Plea Counsel Failed to Properly Advise Applicant of His Rights and the Elements of the Offenses to Which He Plead Guilty**

Applicant claimed he felt like he didn't have any defenses or anyone to speak for him. Plea counsel testified he advised Applicant of all his constitutional rights, the legal ramifications of an Alford plea, and the consequences of Applicant's guilty plea. This Court finds plea counsel's testimony credible in this regard.

This Court finds Applicant was correctly informed as to the consequences of his guilty plea. This Court finds that Applicant has failed to satisfy his burden of proving the alleged deficiency. Applicant also failed to prove the alleged deficiency of plea counsel caused his guilty plea to be involuntary or unknowing. Accordingly, Applicant has failed to satisfy his burden of proving ineffective assistance of counsel with regard to this allegation and it is therefore denied and dismissed.

**B. Whether Plea Counsel Failed to Properly Investigate the Case**

Applicant testified plea counsel did not independently investigate his case and he did not feel like he had a defense. Applicant admitted to speaking with plea counsel's investigator concerning potential witnesses. Plea counsel testified his investigator attempted to track down all potential fact witnesses and allegations. No evidence of false allegations or useful fact witnesses were found. Plea counsel testified he was ready to go to trial that day. This Court finds Applicant's testimony lacks credibility in this regard. This Court finds plea counsel's testimony credible in this regard.

Based on the testimony and plea transcript, this Court finds plea counsel did adequately investigate Applicant's case. This Court finds that Applicant has failed to satisfy his burden of proving the alleged deficiency. Applicant also failed to prove the alleged deficiency of plea counsel caused his guilty plea to be involuntary or unknowing. Accordingly, Applicant has failed

to satisfy his burden of proving ineffective assistance of counsel with regard to this allegation and it is therefore denied and dismissed.

**C. Whether Plea Counsel Failed to Properly Investigate the Case Because Plea Counsel Did Not Hire a DNA Analyst Due to Lack of Funding or Review Medical Records with Applicant**

Applicant testified plea counsel failed to hire a DNA analyst for trial due to a lack of funding. Applicant also alleged plea counsel failed to review the medical records with Applicant. Plea counsel testified he hired two experts with funding from court orders. Neither expert would have been called to trial because they did not give opinions favorable to Applicant's case. Plea counsel testified there was never a problem obtaining expert testimony or opinion based on lack of funding. Plea counsel testified he went over all evidence with Applicant. This was also evidenced in the plea transcript. Plea Trans. Page 3:17-19. This Court finds Applicant's testimony lacks credibility in this regard. This Court finds plea counsel's testimony credible in this regard.

Based on the testimony and plea transcript, this Court finds plea counsel hired two experts, including a DNA expert, and reviewed the victim's medical records with Applicant. This Court finds that Applicant has failed to satisfy his burden of proving the alleged deficiency. Applicant also failed to prove the alleged deficiency of plea counsel caused his guilty plea to be involuntary or unknowing. Accordingly, Applicant has failed to satisfy his burden of proving ineffective assistance of counsel with regard to this allegation and it is therefore denied and dismissed.

**D. All Other Allegations**

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, this Court finds Applicant failed to present

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

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

**IT IS THEREFORE ORDERED THAT:**

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 9 day of January ~~2016~~ <sup>2017</sup>

*Diane S. Goodstein*  
 DIANE GOODSTEIN  
 Presiding Judge  
 1<sup>st</sup> Judicial Circuit

*A. Gray* South Carolina

**WITNESSES**

Bell, Kris

DCSO

Agency Case #: 08-005305

**ARREST WARRANT NUMBER**

M116344

Arrested: Jun 25, 2008

**ACTION OF GRAND JURY**

**TRUE BILL**

DATE 9/4/08  
*[Signature]*

Foreperson of Grand Jury  
Date: September 04, 2008

**VERDICT**

Foreperson of Petit Jury  
Date:

DOCKET NO. 2008GS18-1105

**The State of South Carolina**

County of

**DORCHESTER**

**COURT OF GENERAL SESSIONS**

**September 08, 2008 TERM**

**THE STATE  
vs.**

**Daniel Brian Monty**

**Indictment for**

**CRIMINAL SEXUAL CONDUCT  
WMINOR 2ND DEGREE (V 11-14)**

SC Code: 16-03-655(B)  
Class: FEL-C

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

