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OCT 13 2017
S.C. SUPREME COURT

October 11, 2017

The South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

RE: Anthony D. Briggs #267080 v. State of South Carolina
Docket No.: 2014-CP-42-3214

Dear Sir or Madam:

Enclosed please find for filing an Original and a copy of a Notice of Appeal, along with a Certificate of Service. As of this date, I have not been retained to represent Mr. Briggs regarding this Appeal. As soon as I receive Mr. Briggs Affidavit of Indigency, I will forward it to Appellate Defense for their consideration.

Kindly return a clocked copy to me in the enclosed envelope. Thank you and should you have any questions, or need any additional information, please do not hesitate to contact me.

Yours truly,

Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: Valerie Giovanoli, Esq.
Anthony Briggs #267080

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Post-Conviction Relief

Edward W. Miller, Circuit Court Judge

Case No.: 2014-CP-42-3214

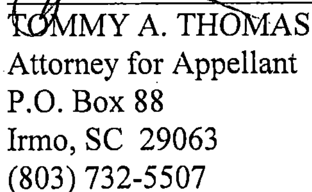
Anthony D. Briggs #267080,.. Appellant,

vs.

State of South Carolina, ...Respondent.

NOTICE OF APPEAL

Anthony D. Briggs #267080, appeals the Order Granting Post-Conviction Relief of the Honorable Edward W. Miller, dated June 26, 2017 and filed on July 10, 2017. A timely Notice of Motion and Motion to Alter or Amend the Judgment was filed and on September 6, 2017, the Honorable Edward W. Miller, signed an Amended Order of Dismissal with Prejudice, which was filed on September 11, 2017. Appellant received written notice of entry of this order on September 12, 2017.



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Irmo, South Carolina
October 11, 2017

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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OCT 13 2017
S.C. SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Post-Conviction Relief

Edward W. Miller, Circuit Court Judge

Case No.: 2014-CP-42-3214

Anthony D. Briggs #267080,.. Appellant,

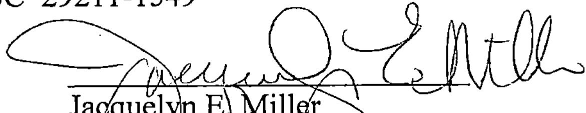
vs.

State of South Carolina, ...Respondent.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Appellant, hereby certify that I placed in the United States Mail, a copy of an Notice of Appeal, with postage prepaid and the return address clearly shown on said envelope to the Attorney General's Office, at:

Valerie Giovanoli, Esq.
Attorney General's Office
P.O. Box 11549
Columbia, SC 29211-1549



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October 11, 2017

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
COUNT OF SPARTANBURG	)	CASE NO.: 2014-CP-42-3214
Anthony D. Briggs #267080	)	
Applicant,	)	ORDER GRANTING POST-CONVICTION RELIEF
Vs.	)	
State of South Carolina,	)	
Respondent.	)	

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This matter is now before the Court pursuant to an Application for Post-Conviction Relief filed August 14, 2014. The State ("Respondent") filed a Return on February 19, 2015. An evidentiary hearing into the matter was convened on February 2, 2017, at the Spartanburg County Courthouse. Applicant was present at the hearing and was represented by Tommy A. Thomas, Esquire. The Respondent was represented by Caitlin B. Hastings, Assistant Attorney General.

PROCEDURAL HISTORY

Applicant is incarcerated in the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's Order of Commitment. The Spartanburg County Grand Jury indicted Applicant for Criminal Sexual Conduct with a Minor 1st Degree (2012-GS-42-4111) during the August, 2013 term of General Sessions Court. Applicant retained Mr. R. Scott Davis ("Davis") to represent him on the criminal sexual conduct charge. On October 9, 2013, Applicant entered a guilty plea pursuant to *North Carolina v. Alford*[1] to the lesser-included offense of Assault with Intent to Commit Criminal Sexual Conduct 1st Degree. Additionally, Applicant entered a guilty plea to two counts of indecent exposure for indictment numbers 2013-GS-42-0635/0636.

[1] *North Carolina v. Alford,* 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed. 2d 162 (U.S. 1970).

Jane Cheek represented Applicant on the indecent exposure charges. The Honorable Frank R. Addy, Jr. sentenced Applicant to concurrent sentences of fifteen (15) years and nine (9) months imprisonment. Applicant did not appeal his conviction or sentence.

In this application for Post-Conviction Relief, Applicant alleges ineffective assistance of counsel and that he involuntarily entered into a guilty plea based upon incorrect representations of his counsel.

FINDINGS OF FACT

The Applicant testified that he is currently serving a jail sentence for Assault with Intent to Commit Criminal Sexual Conduct 1st Degree. He also stated that he understood the nature and consequences of a Post-Conviction Relief action, and in particular, the nature of relief granted should he prevail. According to his testimony, the Applicant was originally charged with Criminal Sexual Conduct with a minor 1st. Following his Alford plea, he received a fifteen (15) year sentence for the offense of Assault with intent to Commit Criminal Sexual Conduct 1st Degree.

Prior to entering a plea, Applicant stated that he retained Mr. Davis following Applicant's arrest. According to his testimony during this Post-Conviction Relief proceeding, Applicant did not fully discuss the discovery file or timeline of his offense with Mr. Davis. Furthermore, Applicant stated that Mr. Davis did not fully investigate the case against the Applicant. In particular, Applicant stated that he informed Mr. Davis that he was in Charlotte on the day of the offense, thereby offering an alibi. Applicant further noted that both his father and sister could validate this information. However, both the Applicant's father, Willie Briggs, and Applicant's sister, Sharnika Stephenson, testified that Mr. Davis did not speak with either of them regarding the Applicant's whereabouts on the date of the criminal sexual conduct offense. As such, Applicant

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alleges that Mr. Davis' efforts amount to ineffective assistance of counsel because he did not investigate this potentially exculpatory information.

Additionally, Applicant testified that he felt that the advice he received from his attorney regarding the potential consequences of entering a plea agreement was inaccurate and ineffective. According to the Applicant's testimony, three separate plea offers were extended for him to consider. Initially, the State offered Applicant a plea agreement whereby the Applicant would plead to Lewd Act. Next, the State offered Applicant the opportunity to plea to Criminal Sexual Conduct 3rd Degree. Finally, the State offered Applicant an agreement to plea to Assault with Intent to Commit Criminal Sexual Conduct 1st Degree.[2]

According to the Applicant's testimony at the Post-Conviction Relief hearing, he expressed his desires to plead to an offense that did not require GPS monitoring. In particular, Applicant stated that he informed Mr. Davis of his concerns regarding the financial burden that a mandatory GPS monitor would impose upon him.[3] Applicant testified that he was aware of the mandatory monitoring requirements associated with a conviction for Lewd Act. He also stated that Mr. Davis advised him that a conviction for Criminal Sexual Conduct 3rd Degree would also require GPS monitoring similar to a conviction for Lewd Act. Further, Applicant testified that Mr. Davis advised him that Criminal Sexual Conduct 3rd would carry 0-10 years.[4]

Applicant further stated that he was reluctant to take a plea offer because he wanted to go to trial, but Mr. Davis advised him that there was no evidence in his favor, and he may receive thirty years to life imprisonment after a guilty verdict.[5] The Applicant ultimately agreed to plead

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[2] PCR Transcript Pg. 15, line 21-25.
[3] PCR Transcript Pg. 14, lines 24-25, P. 15, lines 1-5.
[4] PCR Transcript Pg. 16 lines 13-17.
[5] PCR Transcript Pg. 16, lines 19-25.

to Assault with Intent to Commit Criminal Sexual Conduct 1st Degree with a recommendation of 0 – 15 years. Moreover, he reiterated that he understood that the offense he agreed to plead guilty to did not require GPS monitoring based upon his consolations with his attorney.[6]

Additionally, Applicant testified that he believed his plea was not entered into freely and voluntarily nor knowingly or intelligently.[7] During the plea colloquy, Applicant testified that he was asked by the sentencing judge if he understood the consequences of pleading guilty, and the Applicant stated that he responded in the affirmative. However, Applicant stated that he responded that way because he believed that he would not be required to submit to GPS monitoring based upon the information his attorney gave him.[8] Applicant testified that he believes he is subject to mandatory GPS monitoring upon his release from the Department of Corrections, and he would not have entered a plea had he been aware of that requirement.[9]

Attorney Scott Davis, Applicant's former defense counsel, also testified at the hearing. According to Mr. Davis, he began practicing law in 1983. He testified that he had met with the Applicant on numerous occasions, reviewed the discovery related to Applicant's case with the Applicant, and that the Applicant understood the seriousness of the allegations and punishment he faced. During his testimony, Mr. Davis corroborated the prior testimony pertaining to the State's plea offers and his discussions with Applicant about those offers. Also, Mr. Davis confirmed that Applicant expressed concerns about the costs of GPS monitoring and his desire to avoid such

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[6] PCR Transcript Pg. 21, lines 16-19.
[7] PCR Transcript Pg. 18, lines 7-16.
[8] PCR Transcript Pg. 18, lines 17-24.
[9] PCR Transcript Pg. 20, lines 21-25.

monitoring as a condition of his plea agreement.[10] During his testimony, Mr. Davis stated that he informed Applicant that two of the State's plea offers would require electronic monitoring.[11]

Mr. Davis further testified about his review of the case with the Applicant. In particular, he stated that the evidence in this case was mostly supported by a forensic video of the alleged victim.[12] However, according to Mr. Davis' testimony, he did not review the video with the Applicant but reviewed a written summary of that video with him.[13] Furthermore, Mr. Davis testified that he discussed possible defenses and no alibi defense was never brought up in his conversations with the Applicant. Finally, Mr. Davis stated that it was his recommendation that Applicant accept the plea offers and that, in his opinion, accepting the plea agreement was an intelligent decision. Throughout his testimony, Mr. Davis noted that Applicant wanted to plead to an offense that did not require GPS monitoring and the costs associated with monitoring.[14]

At the conclusion of his testimony, the Court inquired with Mr. Davis about the decision to enter a plea or take the Applicant's case to trial. The following exchange took place: the Court inquired, "That you all entered into the plea on this charge because you believed that it was not a requirement for ankle monitoring?" Davis stated "Upon release, that is correct." The Court further asked: "And you told him that?" Davis responded "Yes, sir."[15]

The Court also inquired about the two counts of indecent exposure that the Applicant pleaded guilty to. After reviewing the sentencing sheets, the Court pointed out that the statute listed

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[10] PCR Transcript Pg. 35, lines 6-19.

[11] Those offenses include Lewd Act Upon a Minor and Criminal Sexual Conduct 3rd degree. PCR Transcript Pg. 35, lines 22-25; Transcript Pg. 36, lines 1-2.

[12] PCR Transcript Pgs. 37-38, lines 20-25, 1-4.

[13] *Id.* at Pg. 38, lines 7-16.

[14] *See eg.* PCR Transcript Pgs. 37-42.

[15] PCR Transcript Pg. 43, lines 3-10.

on the Applicant's sentencing sheets pertained to Indecent Exposure by Breast Feeding.[16] At that time, Applicant's attorney moved to amend the pleadings to include the incorrect statute to the current application. The Court granted that motion.

CONCLUSIONS OF LAW

This court has had the opportunity to review the record, testimony and arguments presented at this Post-Conviction Relief hearing. Furthermore, this Court had the opportunity to observe each testifying witness and determine each witnesses' credibility. After weighing all of the evidence in this matter, I make the following conclusions of law as required by Section 17-27-80 of the South Carolina Code:

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application.[17] 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."[18] 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.[19] Applicant must overcome this presumption in order to receive relief.[20]

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. [21] First, the applicant must prove that counsel's performance was

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[16] S.C. Code Ann. § 16-15-130 (1976).
[17] *Bulter v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).
[18] *Strickland v. Washington,* 466 U.S. 668 (1984); *Butler,* 286 S.C. at 443, 334 S.E. 2d at 814.
[19] *Strickland,* 466 U.S. at 689.
[20] *Cherry v. State,* 300 S.C. 115, 118, 386 S.E. 2d 624, 625 (1989).
[21] *Id.* at 117, 625.

deficient.[22] Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms."[23] 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." [24]

An applicant 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 applicant would not have pled guilty and would have insisted on going to trial. [25] An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases."[26] To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.[27]

In reviewing the two indecent exposure pleas, I find that it is impossible for the Applicant to have been guilty of an offense which contains the element of breast feeding. While this may be the result of a clerical error, I still find that those were inappropriate and those convictions must be vacated. Additionally, a review of the sentencing sheets relating to the Criminal Sexual Conduct charge indicates a number of problems. Those sentencing sheets reference multiple states and CDR codes.[28] Again, this error may be a result of a clerical issue.

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[22] *Id.*
[23] *Id.* (quoting *Stickland v. Washington,* 466 U.S. 668, 688 (1984)).
[24] *Cherry,* 300 S.C. at 117-18, 386 S.E.2d at 625.
[25] *Roscoe v. State,* 345 S.C. 16, 20, 546 S.E. 2d 417, 419 (2001)(internal citations omitted).
[26] *Hill v. Lockhart,* 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985).
[27] *Boykin v. Alabama,* 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969).

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[28] The statutes referenced are S.C. Code Ann. §16-03-655 and §16-03-652. The CDR codes referenced are 253 and 385.

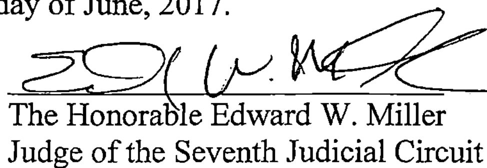
More concerning though is that the uncontroverted evidence before this Court is that Applicant pleaded guilty because he believed that he would not be placed on electronic monitoring upon his release from the Department of Corrections. The Petitioner entered an Alford plea understanding that the penalty would not include electric monitoring. However, the statutory punishment changed prior to his plea and required monitoring. This Court finds that Applicant's plea was not voluntary because it was made based on the incorrect advice from Counsel. Counsel was deficient in advising Applicant that he would not be required to submit to GPS monitoring. Moreover, based upon the testimony at the PCR hearing, there is also a reasonable probability that the Applicant would not have plead guilty and would have pursued a trial had he known of the monitoring requirements. Applicant testified that his main concern was the GPS monitoring requirements of several of the offered plea agreements.

The Court therefore grants the Petitioners Application for Post-Conviction Relief. As to indictments 2013-GS-42-635 and 2013-GS-42-636 for indecent exposure, those charges are vacated. The Court has considered Applicant's remaining grounds and denies relief on those grounds.

IT IS THERFORE ORDERED:

1. That the Application for Post-Conviction Relief be granted and that the Applicant's sentence be vacated, and
2. That the Applicant be released from the custody of SCDC and transferred to the custody of Spartanburg County pending the disposition of his case.

AND IT IS SO ORDRED this 26 day of June, 2017.



The Honorable Edward W. Miller
Judge of the Seventh Judicial Circuit

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STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNT OF SPARTANBURG	)	
	)	CASE NO.: 2014-CP-42-3214
Anthony D. Briggs #267080	)	
	)	
Applicant,	)	*AMENDED*
	)	ORDER OF DISMISSAL
Vs.	)	WITH PREJUDICE
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

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This matter is now before the Court pursuant to an Application for Post-Conviction Relief filed August 14, 2014. A Return dated February 19, 2015 was filed by the State. An evidentiary hearing into the matter was convened on February 2, 2017, at the Spartanburg County Courthouse. Applicant was present at the hearing and was represented by Tommy A. Thomas, Esquire. Respondent was represented by Caitlin B. Hastings, Assistant Attorney General. This Court issued an order granting PCR on June 26, 2017 and filed July 10, 2017. Thereafter, Respondent made a Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRCP, dated July 10, 2017. After reviewing Respondent's Motion and the record, this Court grants Respondent's motion, reverses its decision to grant PCR and finds Applicant's application for PCR denied and dismissed with prejudice. This amended order follows.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's order of commitment. The Spartanburg County Grand Jury indicted Applicant at the August, 2013 term of General Sessions Court for criminal sexual conduct (CSC) with a minor- 1st Degree (2012-GS-42-4111). R. Scott Davis, Esquire, represented Applicant. On October 9, 2013, Applicant pleaded *nolo contendere* pursuant to N.C.

v. Alford to the lesser-included offense of assault with intent to commit (AICSC) - 1st degree. Applicant also pleaded guilty to two counts of indecent exposure 2013-GS-42-635 and 636.[1] He was represented by James Cheek, Esquire, on these charges. The Honorable Frank R. Addy, Jr. sentenced Applicant concurrent terms of imprisonment for fifteen (15) years for AICSC and three (3) years for each count of indecent exposure. Applicant did not appeal his conviction or sentence.

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

1. Ineffective assistance of counsel, in that;
   a. Counsel failed to properly investigate all facts leading up to Applicant's arrest,

2. Involuntary guilty plea, in that
   a. Counsel was "incompetent" and gave "erroneous" advice to Applicant, rendering Applicant's plea involuntary.

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SUMMARY OF TESTIMONY

Applicant stated he was serving time for assault with intent to commit criminal sexual conduct – 1st degree, and that he was originally charged with criminal sexual conduct with a minor – 1st degree. He testified he was sentenced to fifteen (15) years on an Alford plea. Further, he acknowledged that he understood the exposure of going forward with the Post Conviction Relief Action, that he was asking for a new trial and he wished to proceed.

Applicant stated that when he was arrested, he retained the services of Scott Davis (Counsel) and believed Counsel did not properly investigate the case on his behalf and did not completely discuss with him the discovery or the timeline regarding this offense. Applicant believes Counsel was ineffective in his representation and in his advice regarding accepting a plea in this matter.

[1] Applicant did not contest these convictions in his PCR application.

Applicant testified he was advised of three different plea offers he could choose from: 1. AICSC – 1st degree; 2. lewd act; or 3. CSC – 3rd degree. In consideration of these pleas, Applicant was concerned about being required to have GPS monitoring upon release from prison. Applicant ultimately accepted a plea to AICSC – 1st degree with a recommendation from the State of 0 – 15 years. Applicant also believed that Counsel was deficient regarding a potential alibi defense. Applicant was charged with a crime that was alleged to have occurred on February 11, 2013, a day Applicant alleges he was in Charlotte, North Carolina.

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Applicant testified that he was given several different plea offers. The first offer was to lewd act and the second offer was for CSC – 3rd degree. Applicant testified that he was concerned about the lewd act because it carried mandatory lifetime GPS monitoring. He was concerned about the cost of this requirement. (PCR Tr. P. 14, lines 24-25, P. 15, lines 1-5). Applicant further testified he was told by Counsel that both the CSC – 3rd degree and the lewd act would both require lifetime GPS monitoring. He was later offered a plea to assault with AICSC – 1st degree. (PCR Tr. P. 15, line 21-25). Applicant testified he was advised the CSC - 3rd degree, would carry 0-10 years. (PCR T. p. 16 lines 13-17). Applicant further stated he was reluctant to take the offer because he wanted to go to trial, but Counsel told him there was no defense and he could possibly get a sentence of 30 to life (PCR T. p. 16, line 19-25).

Applicant testified he was in a panic. He was scared and was unable to speak with his family. His sister and father were unable to attend the plea, and he eventually agreed to accept the plea offer. Applicant testified that he believed his plea was not entered into freely and voluntarily nor knowingly and intelligently. (Tr. P. 18, lines 7-16). When asked if he understood the questions asked by the Court regarding the rights that he was giving up, he stated he knew what he was doing and that he was satisfied with Counsel. He stated he pleaded guilty

because he believed information he received from Counsel was correct. Applicant claimed Counsel's advice was incorrect. (PCR Tr. P. 18, line 17-24).

Applicant testified he was concerned he would be required to submit to GPS monitoring upon the release from the Department of Corrections (DOC). It is Applicant's understanding from the DOC, that he will have to be monitored upon his release. (PCR Tr. P. 20, lines 21-25). He reiterated, at the time in which he pleaded, it was his understanding he would not be placed on GPS monitoring. (PCR Tr. P. 21, lines 16-19).

Applicant also testified he had an alibi defense. Applicant believed Counsel was deficient regarding his potential alibi defense. He was charged for a crime that was alleged to have occurred on February 11, 2013, a day he testified he was in Charlotte, North Carolina. Applicant testified his sister and father could have verified the fact that he was out of town at the time that the crime occurred.

At the conclusion of Applicant's testimony, the Court inquired about the two counts of indecent exposure to which Applicant pleaded. The Court pointed out the offense statute for indecent exposure, § 16-15-130, under which Applicant pleaded guilty, pertains to the indecent exposure by breastfeeding. The Court found Applicant was convicted under the wrong statute because Applicant could not have been convicted of a crime for which breastfeeding was an element. (PCR Tr. P. 22, lines 8-24). Upon the Court's instruction, Applicant made a motion to amend his application to include the indecent exposure convictions.

Applicant's father, Willie Briggs (Mr. Briggs), testified he remembered the day of the crime. Mr. Briggs testified Applicant was living with him at the time and Mr. Briggs was home most of that day. Mr. Briggs remembered he left for a short period of time, but came back and

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he believed the Applicant was home with him. However, Mr. Briggs indicated he did not bring this to the Counsel's attention.

Applicant's last witness was Sharnika Stephenson, who is the Applicant's sister. She testified that on February 11, 2013, she dropped Applicant off at the hotel where the victim's Mother was staying. She stated she had not been contacted by Counsel and had not given that information to Counsel.

Counsel also testified. Counsel met with Applicant on numerous occasions. Counsel reviewed the Discovery material with Applicant and Applicant understood the seriousness of the allegations against him. He stated he brought to the Court's attention at the plea hearing that Applicant chose the charge to which he was pleading because he believed there was no requirement for GPS monitoring. Counsel testified the State made a couple plea offers prior to the plea. Counsel discussed these with Applicant. Applicant's main concern was the GPS monitoring upon release from the DOC. (PCR Tr. P. 35, lines 6-19). Counsel testified that he believed the offenses of lewd act on a minor and CSC – 3rd both required mandatory electronic monitoring. (PCR Tr. P. 35, lines 22-25; Tr. P. 36, lines 1-2)

Counsel further testified he had not actually viewed the forensic video, but there was a written recap of the video and he discussed it with Applicant. He discussed possible defenses, and Applicant never brought up the alibi defense. Counsel also testified Applicant expressed interest in a trial and they weighed the possibility of a conviction and the likely sentence that would result from a conviction. It was Counsel's opinion that Applicant made an intelligent decision to accept the plea. Counsel recommended that Applicant accept the plea offer. (Tr. P. 39, lines 11-17)

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At this point the Court inquired, "you all entered into the plea on this charge because you believed that it was not a requirement for ankle monitoring?" Counsel stated, "Upon release, that is correct." The Court further asked, "and you told him that?" and Counsel responded, "yes, sir." (PCR Tr. P. 43, lines 3-10).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Bulter v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (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, 286 S.C. at 443, 334 S.E. 2d at 814. 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. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E. 2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 625. First, the applicant must prove that counsel's

performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Stickland v. Washington, 466 U.S. 668, 688 (1984)). 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.

An applicant 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 applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State , 345 S.C. 16, 20, 546 S.E. 2d 417, 419 (2001) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969).

Indecent Exposure Convictions

In this Court's previous order granting PCR, this Court found Applicant could not have been convicted under a statute for which an element of the offense is breastfeeding. However, breastfeeding is not an element of § 16-15-130. § 16-15-130 of the South Carolina Code of Laws states, in relevant part,

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HOPE BLACKLEY
CLERK OF COURT
SPARTANBURG COUNTY

Indecent exposure; breastfeeding.

(A)(1) It is unlawful for a person to wilfully, maliciously, and indecently expose his person in a public place, on property of others, or to the view of any person on a street or highway.
(2) This subsection **<u>does not apply to a woman who breastfeeds</u>** her own child in a public place, on property of others, to the view of any person on a street or highway, or any other place where a woman and her child are authorized to be[...]

(Emphasis added).

Thus, the title for this section, includes the word breastfeeding because there is a specific exclusion for breastfeeding for this offense.

The factual basis for the indecent exposure guilty pleas was that seven months after he was released on bond from his arrest for criminal sexual conduct with a minor, 1st degree, he was seen outside by a neighbor five or six times completely naked, masturbating, playing with his private parts, and making statements while children were exiting the school bus at a bus stop. Other neighbors gave statements that Applicant did this on a regular basis. One neighbor filmed the event twice and provided the video to the police. Applicant also gave a voluntary statement to police admitting the misconduct. (Plea Tr. p. 13-14). Applicant's misconduct was exactly what was envisioned by our indecent exposure statute. Therefore, this Court erred in vacating Applicant's guilty pleas because breastfeeding is not an element of the crime to which Applicant pled guilty. Therefore, this Court denies and dismisses any allegations regarding the indecent exposure convictions.

M. HOPE BLACKLEY
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AICSC – 1st degree conviction

In this Court's previous order granting PCR, this Court found Applicant pleaded because he believed, based upon Counsel's advice, that he would not be placed on electronic GPS monitoring when he was released. This Court further found Applicant's <u>Alford</u> plea was involuntary because Counsel's advice was incorrect and there was a reasonable probability that

had Counsel given Applicant the proper advice, Applicant would not have pled guilty, but would have insisted on going to trial. However, the advice from plea counsel was in fact correct. § 23-3-540 of the South Carolina Code of Laws regulates the use of electronic monitoring for persons convicted of sex crimes. Specifically, § 23-3-540(B) states,

> (B) Upon conviction, adjudication of delinquency, guilty plea, or plea of nolo contendere of a person for any other offense listed in subsection (G), the court **may** order that the person upon release from incarceration, confinement, commitment, institutionalization, or when placed under the supervision of the Department of Probation, Parole and Pardon Services shall be monitored by the Department of Probation, Parole and Pardon Services with an active electronic monitoring device.

(Emphasis added).

Subsection (G) enumerates the offense to which the above section applies. Subsection (G)(1)(f) lists, "criminal sexual conduct: assaults with intent to commit (Section 16-3-656) involving a minor;" – the exact offense to which Applicant was convicted. GPS monitoring is discretionary for the plea court in cases of assault with intent to commit CSC, 1st degree. In this case, as evidenced by the sentencing sheet and the plea transcript, the plea court did not order electronic monitoring. The only sex crimes for which GPS monitoring is mandatory is CSC with a minor, 1st degree and CSC with a minor, 3rd degree. S.C. Code Ann. § 23-3-540(A) (1976). Therefore, plea counsel did not give Applicant incorrect advice. As such, counsel's advice was not deficient and Applicant's plea was not involuntary.

Additionally, no other evidence was presented that Applicant will be subjected to GPS monitoring upon his release other than Applicant's own testimony that "Corrections" told him he would have to be monitored "on the charge that [he] has now." (PCR Tr. p. 20). This testimony *alone* does not satisfy his requisite burden of proof. Moreover, the law certainly does not mandate GPS monitoring of Applicant and the plea court did not order GPS monitoring of

Applicant.

Lastly, in this Court's previous order granting PCR, this Court found the CDR codes on Applicant's sentencing sheets were incorrect. However, there are no errors on the sentencing sheet. The upper right corner contains the correct statute and CDR code of the offense for which Applicant was indicted. Applicant was indicted for CSC with a minor, 1st degree (§ 16-03-0655(A), CDR code 0385). Below, in the sections designated for the offense to which Applicant pleaded, the description of the offense, statutes and CDR code are correct. The description is, "Sex/Assault with intent to commit criminal sexual conduct – First degree (0-30 years)." There are two statutes listed – § 16-03-0652 and § 16-03-0656 – because assault with intent to commit CSC, 1st degree (§ 16-03-0656) simply cross references the CSC with a minor, 1st degree, statute for the purposes of sentencing. However confusing that may appear, the CDR code immediately following the statutes – 0253 – correctly references the exact offense and penalty section to which Applicant pleaded.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations that would require this Court to grant his application. This Court finds Applicant has failed to prove any deficiencies on the part of counsel and further, Applicant has failed to prove prejudice from any alleged deficiencies in counsel's representation of him. Therefore, as Applicant has failed to meet his burden of proof in this post-conviction relief action, his application is denied and dismissed with prejudice.

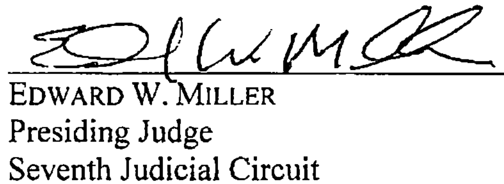
This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's

assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence; and
3. The Department of Corrections and/or the Department of Probation, Parole, and Pardon Services shall not submit Applicant to electronic GPS monitoring upon his release from the Department of Corrections.

AND IT IS SO ORDERED this 6 day of Sept., 2017.



EDWARD W. MILLER
Presiding Judge
Seventh Judicial Circuit

G'ville, South Carolina

SPARTANBURG
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M. Hope Blackley
Clerk of Court
September 11, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Anthony D. Briggs # 260080
Applicant

7TH JUDICIAL CIRCUIT

CASE# 2014-CP-42-3214

VS
State
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the Amended Order Dismissal w/prej,
In this action dated 9-6 2017 on 9-11-17

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Lindsey McCoy
Valerie Giovanoli
Anthony Briggs
Tommy Thomas

9-11-17
(Date)

[signature]
(Signature)

Tommy A. Thomas, P.C.
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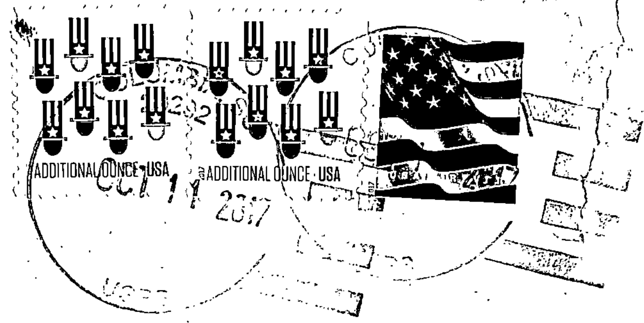

The South Carolina Supreme Court
Daniel E. Shearouse, Clerk of Court
P.O. Box 11330
Columbia, SC 29211