

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Spartanburg County

Honorable Edward W. Miller, Circuit Court Judge

ANTHONY DARNELL BRIGGS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002105

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA ,)
)
PLAINTIFF,)
)
-VS-)
)
ANTHONY D. BRIGGS ,)
)
DEFENDANT.)
_____)

2012-GS-42-4111

TRANSCRIPT OF RECORD

October 9, 2013
SPARTANBURG, SOUTH CAROLINA

B E F O R E:

THE HONORABLE FRANK R. ADDY, JR.

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

ATTORNEY FOR PLAINTIFF:

WHITNEY WELBORN, ASSISTANT SOLICITOR

ATTORNEYS FOR DEFENDANT:

SCOTT DAVIS, ESQUIRE

JAMES CHEEK, ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

INDEXWITNESSPAGE NO.

CERTIFICATE OF REPORTER

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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(No exhibits were presented during this hearing)

1 MS. WELBORN: Your Honor, before you is Anthony
2 Briggs. He's before the Court on three indictments, 2012-
3 GS-42-4111. That was indicted for criminal sexual conduct
4 with a minor in the first degree. The State is allowing
5 him to plea to assault with intent to commit criminal
6 sexual conduct first degree. That charge carries between
7 zero and 30 years. The State is recommending a zero to 15
8 year sentencing range as part of his plea agreement. Your
9 Honor, he is represented by Scott Davis on that charge.
10 He's also before the Court for two indictments of indecent
11 exposure, 2013-GS-42-635 and 636. He's represented by
12 James Cheek on both of those indictments. The State is
13 also recommending concurrent sentencing.

14 THE COURT: Thank you. Okay, Mr. Davis, you're
15 representing Mr. Briggs on the assault with intent to commit
16 CSC first charge?

17 MR. DAVIS: Yes, Sir, Your Honor and he is entering
18 an Alford plea on that charge.

19 MS. WELBORN: Yes, Your Honor, he is. I failed to
20 mention that.

21 THE COURT: Okay. Would y'all approach briefly on
22 that then? Come on up too, Mr. Cheek.

23 (Whereupon, a bench conference was held.)

24 THE COURT: All right. Mr. Davis, you are
25 representing Mr. Briggs on the CSC or assault with intent

1 CSC first correct?

2 MR. DAVIS: That's correct, Your Honor.

3 THE COURT: That would carry up to 30 years. My
4 understanding is it is classified as a most serious
5 offense as well as an 85% offense and I believe a violent
6 offense. Is that right?

7 MR. DAVIS: That's correct, Your Honor. And I have
8 expressed that to Mr. Briggs. However, the State in this
9 case, is recommending that the sentence range go from zero
10 to 15. And if I can explain why we're doing that, Your
11 Honor, we -- the State had previously offered a lewd act
12 on a minor charge and that requires the ankle bracelet
13 upon the person's release and this charge does not.

14 THE COURT: Right.

15 MR. DAVIS: That's why we're -- why we've switched
16 charges.

17 THE COURT: I understand. Have y'all discussed sex
18 offender registry?

19 MR. DAVIS: Your Honor, I'm sure the State is going
20 to ask for that. We're going to ask that you not impose
21 that.

22 THE COURT: Okay.

23 MS. WELBORN: Your Honor, it's my understanding it's
24 mandatory.

25 THE COURT: That's kind of what I was thinking. I'm

1 happy to double check that, but I was thinking that
2 assault with intend CSC minor first, even under an Alford
3 plea, would require that.

4 MR. DAVIS: I think he's just pleading under the
5 assault with intent to commit criminal sexual conduct, not
6 necessarily with a minor.

7 MS. WELBORN: That is correct. My -- may we
8 approach, Your Honor?

9 THE COURT: Sure.

10 (Whereupon, a bench conference was held.)

11 THE COURT: Okay. If we could go back on the record
12 in Mr. Brigg's situation. My clerk and I, as well as the
13 other attorneys, have had a chance to look at this and my
14 understanding is, reviewing 23-3-430 subsection C9,
15 references assault with intent to commit criminal sexual
16 conduct or any assaults with intent to commit criminal
17 sexual conduct, my understanding is he would be required
18 to register as a sex offender. I don't know that it's --
19 I don't know that it's even discretionary and I don't
20 believe it is. Is that your understanding?

21 MR. DAVIS: That's my understanding, Your Honor.

22 THE COURT: Okay. You're client is now up to speed
23 on that?

24 MR. DAVIS: Yes, Sir. I've expressed that to him.

25 THE COURT: I do not believe that the ankle

1 monitoring is required under this particular plea. That's
2 my understanding of the law. Does anyone take a different
3 position?

4 MS. WELBORN: No, Your Honor.

5 THE COURT: Okay.

6 MS. WELBORN: That's correct.

7 THE COURT: Now Mr. Cheek, you are representing Mr.
8 Briggs on the two counts of indecent exposure, which I
9 think would carry up to 3 years?

10 MR. CHEEK: I am, Your Honor.

11 THE COURT: All right. I know that indecent exposure
12 use to be another one of those sex offender registry
13 things. I think they've deleted that from the list.
14 Haven't they or is it discretionary?

15 MS. WELBORN: Your Honor, it's discretionary now.

16 THE COURT: That was my understanding. All right.
17 You've explained to Mr. Briggs, then Mr. Cheek, that he's
18 looking at 3 years on the indecent exposure charges.
19 Clearly, that's not the most serious thing that he's
20 facing though. You understand?

21 MR. CHEEK: Yes, Sir. I have and he does understand.

22 THE COURT: All right. Gentlemen, do y'all -- you
23 have each explained to Mr. Briggs then the maximum
24 penalties involved and all his constitutional rights?

25 MR. DAVIS: Yes, Sir, Your Honor and also the State's

1 recommendation that the indecent exposure charges would be
2 run concurrent.

3 THE COURT: Is that right Mr. Cheek?

4 MR. CHEEK: That's correct, Your Honor.

5 MR. DAVIS: With -- with the charge I represent him
6 on.

7 THE COURT: All right. And Mr. Davis, Mr. Cheek,
8 both of you concur in his decision to plead guilty to
9 these charges?

10 MR. DAVIS: Yes, Sir, Your Honor. Again, he's
11 pleading under Alford on my charge.

12 MR. CHEEK: And I do agree with him entering a plea
13 on -- to indecent exposure, Your Honor.

14 THE COURT: All right. Is he pleading guilty on your
15 charges or is that also Alford?

16 MR. CHEEK: Guilty, Your Honor.

17 THE COURT: Okay. Mr. Davis, you have explained to
18 Mr. Briggs the ramifications on Alford plea, that for
19 purposes of sentencing, it's treated exactly the same way
20 as if he had admitted guilt or been convicted at trial?

21 MR. DAVIS: Yes, Sir, Your Honor.

22 THE COURT: All right. And gentlemen, from your
23 investigation of the facts and circumstances surrounding
24 these incidents, do you believe that the State possesses
25 sufficient credible evidence to prove Mr. Brigg's guilt to

1 a jury beyond a reasonable doubt, and that if he were to
2 proceed to trial his conviction would be probable?

3 MR. DAVIS: Yes, Your Honor.

4 MR. CHEEK: Yes, Your Honor.

5 THE COURT: All right, Mr. Briggs, if you could just
6 raise your right hand please.

7 ANTHONY BRIGGS, having been first duly sworn,
8 testified as follows:

9 DIRECT EXAMINATION

10 BY THE COURT:

11 Q. Are you Anthony Darnell Briggs?

12 A. Yes, Sir.

13 Q. Mr. Briggs, I'm told you want to plead guilty to two
14 counts of indecent exposure, each of those counts would
15 carry up to 3 years. You understand that, sir?

16 A. Yes, sir.

17 Q. The charge -- the most serious charge is the CSC or
18 assault with intent to commit CSC which carries up to 30
19 years. I'm told you want to plead guilty under Alford v.
20 North Carolina to that particular charge. You understand
21 that?

22 A. Yes, sir.

23 Q. In this case, the State has recommended a cap of 0 to
24 15. So 15 years is the most that I can give you on that
25 particular charge. You understand Mr. Briggs?

1 A. Yes, sir.

2 Q. You understand that offense is also listed as a most
3 serious offense? What that means is that if you were to
4 be release or when you get out of prison, if you commit
5 another most serious offense, and those offenses are like
6 murder, manslaughter, kidnaping, criminal sexual conduct
7 first, just to name a few. But if you were to commit
8 another most serious offense, the State could seek life
9 without the possibility of parole as a sentencing
10 punishment for you. The court would have no discretion
11 whatsoever but to impose that sentence if you're convicted
12 of that other most serious offense. Do you understand
13 that, sir.

14 A. Yes, sir.

15 Q. Additionally, assault with intent to commit CSC is
16 classified as an 85 percent offense. That means that you
17 will have to serve 85 percent of whatever sentence the
18 Court gives. For example, if I were to sentence you --
19 just, by way of an example, if I were to give you ten
20 years, you'd obviously have to serve eight and a half
21 years on that charge. You understand, sir?

22 A. Yes, sir.

23 Q. All right, now Mr. Briggs, in the last 24 hours have
24 you taken any medication or any substance that affects
25 your thinking?

1 A. No, sir.

2 Q. And do you suffer from any emotional or nervous
3 problems or mental illness issues that would keep you from
4 understanding what's going on here?

5 A. No, sir.

6 Q. Mr. Briggs, is it correct that you want to plead
7 guilty to two counts of indecent exposure?

8 A. Yes, sir.

9 Q. And is it accurate that you want to enter a plea
10 under North Carolina vs. Alford to the charge of assault
11 with intent to commit CSC -

12 A. Yes, sir.

13 Q. -- first? All right. Now, Mr. Briggs, I'm going to
14 ask that you listen very carefully to what the State
15 alleges happened, okay. Because after she's done
16 speaking, I'm going to turn back to you and with respect
17 to the indecent exposure charges, I'll ask you if you did
18 in fact become indecently exposed on these particular
19 dates. With regard to the other charge, the one that's
20 carrying up to 30 years, but you've got a cap of 15 on
21 that charge, I'm simply going to ask you is are those the
22 facts that the State would use to convict you. Okay, sir?

23 A. Yes, sir.

24 Q. Do you understand what's going on?

25 A. Yes, sir.

1 Q. All right, so listen to the Solicitor please. Go
2 ahead.

3 MS. WELBORN: Thank you, Your Honor. On February 21,
4 2012, officers from the Spartanburg County Sheriff's
5 office received a call from [REDACTED] Elementary School.
6 The six-year-old minor had told a teacher that she was
7 being sexually abused by the Defendant who was her
8 mother's boyfriend. The teacher contacted the guidance
9 counselor who then called law enforcement. The minor had
10 a forensic interview at the Children's Advocacy Center.
11 And had this case gone to trial, the minor would've
12 testified that the Defendant began to abuse her around
13 Thanksgiving in 2011. She would've testified the
14 Defendant would get in bed with her, digitally penetrate
15 her, make her touch his privates, and make her perform
16 oral sex on him. She said the incidents occurred in a
17 hotel room. She also said he had shown her naked pictures
18 of himself with a woman. She said the most recent abuse
19 was around Valentine's Day in 2012. She said she had told
20 her mother about the abuse around Christmas time but her
21 mother had still left her alone with the Defendant and let
22 him babysit her. The mother confirmed that she had
23 allowed the Defendant to babysit her at the College Inn on
24 February 11, 2012. The mother also confirmed that the
25 child had told her about the abuse, but said that she had

1 not had a chance to report the allegation yet when the
2 police removed her daughter. The child said that she told
3 her mother at Christmas time and this was mid-February
4 when the mother said she still had not had a chance to
5 report it. DSS did remove the child from the mother's
6 custody. The child is now in the custody of her maternal
7 aunt. Your Honor, he was arrested on June 13, 2012 for
8 this charge. On June 29, 2012 he was released on bond. A
9 condition of his bond was GPS home detention monitoring of
10 the highest level. The Defendant's residence for the home
11 detention was [REDACTED] Fair Forest Road in Spartanburg County.
12 On January 16, 2013, the Defendant's neighbor reported to
13 law enforcement that a black male later identified as the
14 Defendant, was coming outside on a regular basis
15 completely naked playing with his private parts and making
16 statements to her. She said this had happened five or six
17 times. That is was occurring on a regular basis while she
18 was waiting for her children at the bus stop. The
19 neighbor provided video of the Defendant on both the
20 occasions on January 11 and January 15 of 2013. The video
21 shows the Defendant walking around outside wearing nothing
22 but socks and work boots and masturbating. Two of the
23 Defendant's neighbors wrote voluntary statements that the
24 Defendant does this on a regular basis. Officers with
25 Spartanburg County checked the address of the house and

1 found that the Defendant resided there with his father and
2 that the Defendant was on home detention at that address.
3 They contacted home detention who viewed the video. Nancy
4 Vinson who is in charge of home detention watched the
5 video. She did identify the Defendant in the video and
6 verified that he was on home detention at that address.
7 She also checked the GPS monitor and verified that the
8 monitor was at the home during the date that both of these
9 incidents occurred. On January 18, 2013, the Defendant
10 voluntarily came to the Sheriff's Office and was
11 mirandized. Officers showed him the video. He became
12 visibly nervous. He initially stated that he was taking
13 out the trash and got locked out, but then admitted that
14 it was true that he had gone outside completely nude and
15 was masturbating in view of the neighbor. He said he does
16 this for himself and was not going to hurt anyone and that
17 he would never do it again. He also admitted to the
18 Officers that he had done this on more than one occasion.
19 Your Honor, I have viewed the video. It shows the
20 Defendant walking around the yard completely naked except
21 for socks and work boots. You can also see the school bus
22 stop that's right in front of the Defendant's house and
23 see the children get off the school bus, but the Defendant
24 does run and hide behind the house when the school bus
25 arrives. And it also shows the Defendant repeatedly walk

1 closer and closer to the neighbor and then he runs behind
2 the house when a car passes by. Your Honor, the Defendant
3 was arrested on these two counts of indecent exposure
4 January 18, 2013 and he's remained in jail since then.

5 THE COURT: All right, does Mr. Briggs have any prior
6 criminal history, Solicitor?

7 MS. WELBORN: Yes, Your Honor. 1996, possession of
8 cocaine, DUS times two, failure to stop for a blue light,
9 fraudulent check times two. 1997, failure to stop for a
10 blue light, DUS, burglary 3rd, petty larceny. 1999,
11 driving under suspension, failure to stop for a blue
12 light, habitual traffic offender, reckless driving. 2001,
13 receiving stolen goods, habitual traffic offender. 2002,
14 fraudulent check, trespassing, public disorderly conduct.
15 2008, reckless driving, driving under suspension. 2009,
16 fraudulent check times six. 2011, failure to stop for a
17 blue light and indecent exposure. Your Honor, the
18 Defendant was actually on probation for indecent exposure
19 when he was arrested for the criminal sexual conduct.

20 Q. All right, Mr. Briggs, you heard what the State
21 alleges happened in early January of this year.
22 January -- around January 18 where it's alleged that you
23 were outside your residence without clothing. Is that
24 what happened on that day -- on those dates?

25 A. Yes, sir.

1 Q. Okay. And with regard to the incident involving the
2 11-year-old and the allegation that you engaged in
3 relations with her, are those essentially the facts that
4 the State would use in their effort to convict you at
5 trial?

6 A. Yes.

7 Q. Okay. Mr. Briggs, I need to review with you rights
8 that you're giving up by pleading guilty okay?

9 A. Yes.

10 Q. If you have any question about anything I say, stop
11 and I'll let you talk to your attorneys. Okay, Mr.
12 Briggs?

13 A. Yes, sir.

14 Q. First of all, Mr. Briggs, you understand that you do
15 have the right to a jury trial on all of these charges.
16 You don't have to plead guilty or under North Carolina vs.
17 Alford. Do you understand that Mr. Briggs?

18 A. Yes, sir.

19 Q. In a jury trial, the State has the burden of proving
20 your guilt beyond a reasonable doubt. You could actually
21 have three different trials because we're dealing with
22 three different incidents. You understand that, sir?

23 A. Yes, sir.

24 Q. You and your attorneys would help in picking a jury
25 of 12 people from Spartanburg County that sit right over

1 there and one by one the State would have to bring in the
2 witnesses that they have against you. You understand
3 that, sir?

4 A. Yes, sir.

5 Q. You and your attorneys would have the ability to
6 confront, question and cross-examine those witnesses.
7 That means you could ask them any question that relevant
8 to any issue involved in these cases. You understand that
9 Mr. Briggs?

10 A. Yes, sir.

11 Q. And up until such time as the jury was convinced of
12 your guilt beyond a reasonable doubt, you would not be
13 punished in anyway for these offenses. You understand,
14 sir?

15 A. Yes, sir.

16 Q. And all 12 jurors would have to agree. All 12 would
17 have to agree that the State had met that burden. Now in
18 a trial, Mr. Briggs, even though you have no burden of
19 proof, if you wanted to you could call witnesses to
20 testify for you. You understand that?

21 A. Yes, sir.

22 Q. In a trial you could also subpoena witnesses who were
23 hesitant to come in here or refused to come in here. So
24 if you had witnesses that would help you or assist in your
25 defense, you could use the power of the Court to force

1 those people to come to Court. You understand, Mr.
2 Briggs?

3 A. Yes, sir.

4 Q. In a trial, Mr. Briggs, you would also be free to
5 take the stand in your own defense and testify yourself.
6 You understand that, sir?

7 A. Yes, sir.

8 Q. If however you did not want to take the stand, I
9 would explain to the jury they couldn't hold that against
10 you or use it as evidence of guilt. The reason for that,
11 Mr. Briggs, is really two-fold. You have a Fifth
12 Amendment right to remain silent. Additionally, if you
13 took the stand in your own defense, you'd be subject to
14 the same rules of cross-examination as any other witness.
15 So if you had certain convictions, which I believe you do,
16 you've got certain convictions that could affect your
17 credibility, if you decided you didn't want to testify,
18 again I'd tell that jury not to even talk about it. Don't
19 even discuss it in the jury room. You understand, Mr.
20 Briggs?

21 A. Yes, sir.

22 Q. Again, that's your Fifth Amendment right against self
23 incrimination. When you plead guilty or you plead guilty
24 under North Carolina vs. Alford, you give up that right.
25 You understand, sir?

1 A. Yes, sir.

2 Q. Additionally, Mr. Briggs, in a trial you would be
3 presumed innocent. The way that a presumption of
4 innocence works is very simple. Right now, in the eyes of
5 the law, Mr. Briggs, you're an innocent man because I
6 haven't accepted your guilty plea yet and obviously you
7 had not been convicted at trial. You understand that sir?

8 A. Yes, sir.

9 Q. And I would explain to the jury that the presumption
10 of innocence is like a robe of righteousness placed about
11 your shoulders and up until such time as the jury is
12 convinced of your guilt, beyond a reasonable doubt, no one
13 can strip it from you. You understand that?

14 A. Yes, sir.

15 Q. If you plead guilty though you waive your presumption
16 of innocence. You understand that, sir?

17 A. Yes, sir.

18 Q. Now, Mr. Briggs, in a jury trial you would be able to
19 present any defenses you might have to these charges. You
20 understand that, sir?

21 A. Yes, sir.

22 Q. I've got no way of knowing if you have any defenses
23 or not. I'm sure that's something that you've discussed
24 with both Mr. Davis and Mr. Cheek. Is that right?

25 A. Yes, sir.

1 Q. You understand that if you plead guilty or if you
2 enter a plea under North Carolina vs. Alford, you're
3 waiving your right to present any defense to any of these
4 offenses. You understand that, sir?

5 A. Yes, sir.

6 Q. Furthermore, Mr. Briggs, I really don't know what
7 evidence the State has against you. I'm told that they've
8 got a video on one case or the case that Mr. Cheek is
9 representing you on. I don't really know the totality of
10 the evidence though that they have against you. You
11 understand that?

12 A. Yes, sir.

13 Q. You understand that by entering this plea today,
14 you're waiving your right to challenge any of the evidence
15 that was seized, any confessions, any statements that were
16 given, any admissions that you made, any searches that
17 were conducted, you understand that by pleading today, you
18 are waiving your right to challenge that evidence or any
19 other evidence. You understand that, sir?

20 A. Yes, sir.

21 Q. And Mr. Briggs, all these are very important rights
22 guaranteed to you under the laws of our State and our
23 Country. Are you sure that you want to give them up and
24 enter these pleas?

25 A. Yes, sir.

1 Q. And are y'all satisfied with the discovery responses
2 from the State, Mr. Davis?

3 MR. DAVIS: Yes, sir, Your Honor.

4 Q. Mr. Cheek?

5 MR. CHEEK: I am, Your Honor.

6 Q. And you gentlemen have shared that with Mr. Briggs to
7 the extent he's wanted or needed to see it, Mr. Davis?

8 MR. DAVIS: Your Honor, I have up to the point where
9 I could not release the Children's Advocacy Center --

10 THE COURT: Material.

11 MR. DAVIS: -- to him --

12 THE COURT: Right.

13 MR. DAVIS: -- by Court Order.

14 THE COURT: Right. And you've given everything to
15 him?

16 MR. CHEEK: Yes, sir, Your Honor and I've described
17 to him what I viewed on video.

18 Q. Now Mr. Briggs, are you happy with the representation
19 that you've received from Mr. Cheek and Mr. Davis?

20 A. Yes, Sir.

21 Q. Have you met with them as often as you needed to for
22 as long as you've needed to?

23 A. Yes, sir.

24 Q. Do you need more time to talk to them about this?

25 A. No, sir.

1 Q. You sure?

2 A. Yes, sir.

3 Q. Have you understood all of your conversations with
4 them?

5 A. Yes, sir.

6 Q. And -- so you're totally satisfied with their
7 assistance to you, Mr. Briggs?

8 A. Yes, sir.

9 Q. Mr. Briggs, aside from the cap of 15 years, has
10 anyone promised you anything or held out any other hope of
11 reward to get you to enter these pleas today?

12 A. No, sir.

13 Q. Has anyone tried to threaten you, force you, coerce
14 you, or intimidate you in any way to make you to plead
15 guilty or under the North Carolina vs. Alford?

16 A. No, sir.

17 Q. Mr. Briggs, you understand that as part of this -- as
18 part of this plea, you will be placed on the abuse and
19 neglect registry that's operated by the State of South
20 Carolina? That would prevent you from ever having
21 employment with a daycare center or something like that.
22 You understand that, sir?

23 A. Yes, sir.

24 Q. Additionally, after you're released from any
25 incarcerative period, you could possibly be -- the State

1 could petition for you to be admitted to the sexually
2 violent predator program that's operated by the Department
3 of Mental Health. Do you understand that, sir?

4 A. Yes, sir.

5 Q. Now, Mr. Briggs, again, no one has promised you
6 anything else to get you to plead guilty?

7 A. No, sir.

8 Q. And you are pleading guilty then of your own free
9 will?

10 A. Yes. Yes, sir.

11 Q. Do you have any complaints to make against anyone
12 associated with this case, be it law enforcement, the
13 Solicitor's Office, victim's advocates, court personnel,
14 or anyone involved, do you have any
15 complaints?

16 A. No, sir.

17 Q. And Mr. Briggs, are you entering these pleas freely
18 and voluntarily, sir?

19 A. Yes, sir.

20 Q. You have any questions about anything we've talked
21 about?

22 A. No, sir.

23 Q. And have you understood all my questions to you?

24 A. Yes, sir.

25 Q. And you're certain that this is how you want to

1 proceed?

2 A. Yes, sir.

3 Q. All right, I do find there's a substantial factual
4 basis for all of these pleas. They are freely,
5 voluntarily, knowingly, and intelligently made and Mr.
6 Briggs is fully satisfied with the services of Mr. Davis
7 and Mr. Cheek. I will accept his pleas. I assume you'd
8 prefer to go first, Mr. Davis?

9 MR. DAVIS: That's fine, Your Honor. May it please
10 the Court, Your Honor. Mr. Anthony Briggs is 40 years of
11 age. He has a high school education. He served in the
12 air force from 1991 to 1994. He last worked until his
13 arrest on this latest charge at Spartanburg Meat Packing
14 Company here in Spartanburg. He lives in Spartanburg with
15 his father, Mr. Willie Briggs, who would be here today,
16 Your Honor, but he has a condition that he went to the
17 doctor for yesterday where his feet are swollen and he
18 can't stand on them for very long. Your Honor, we entered
19 this Alford plea on the charge of intent to commit
20 criminal sexual conduct first with a cap of 15 instead of
21 pleading under the lewd act or CSC third statute on a
22 minor which does require ankle monitor upon release
23 because this particular statute does not require that
24 condition of an ankle monitor to be worn upon release.
25 Your Honor, also the Alford plea is in reference to the --

1 my understanding, the minor child has made similar
2 accusations against several other men either family
3 members, a teacher and one was a cousin who earlier this
4 year plead guilty to lewd act on a minor and he was
5 sentenced to 15 years suspended to six years. Your Honor,
6 I'm asking you to consider that Mr. Anthony Briggs has
7 been incarcerated here in the Spartanburg County jail for
8 approximately nine months. We're asking that he be given
9 credit for that time served and he also served on home
10 detention for a period of six months, which is a total of
11 15 months that he had in active or either home detention
12 incarceration. Your Honor, I'm pleading with you today to
13 be as lenient as possible with Mr. Briggs in your
14 sentencing, accept the recommendations of the State for a
15 concurrent sentencing with the cases that Mr. Cheek
16 represents Anthony on. Your Honor, I've known Anthony for
17 five or six years now and he's one of the most mild
18 mannered people you would ever meet on the street. His
19 father's the same way and I'm just asking you to be
20 lenient and merciful upon him.

21 THE COURT: Thank you very much, Mr. Davis.

22 MR. DAVIS: Yes, sir.

23 THE COURT: Mr. Cheek.

24 MR. CHEEK: Your Honor, we respectfully ask the Court
25 to consider the State has made a recommendation of

1 concurrent sentence with whatever the sentence of the
2 Court would impose on the charge for which Mr. Davis
3 represents Mr. Briggs. I have had an opportunity to view
4 the video. Mr. Briggs would tell you that I've known him
5 for many years. We both worked during the summers at
6 Flower's Baking Company and I saw the video. I
7 immediately recognized Mr. Briggs on it. It's not
8 professional. It's done by a neighbor, but there's no
9 doubt it's clear and it shows Mr. Briggs and I've
10 discussed that in preparation for this matter. And we
11 just ask the Court to consider the fact that he's always
12 been a person of the community. He's held a job. He's
13 taken care of his father at home. He's otherwise enjoyed
14 a good reputation in the community. We ask the Court to
15 consider all of that as the Court prepares it's sentence.
16 Not only for the charges that I speak to Your Honor, but
17 certainly for the charges that Mr. Davis, because those
18 carry a much more substantial and lengthy sentence. We
19 just ask the Court to consider the collateral consequences
20 regarding his life from this point on with the
21 registrations and limitations that are being imposed. We
22 just ask the Court for mercy at this time, understanding
23 there will be other collateral matters that will impact
24 upon his life in the future, Your Honor.

25 THE COURT: Thank You, Mr. Cheek. Is -- before I ask

1 Mr. Briggs if he has to say anything, is there any input
2 from the minor or her family.

3 MS. WELBORN: My victim advocate spoke with the
4 minor 's aunt who now has custody of the child. She
5 didn't want to come here today. She just asked that I
6 call her once the plea is over with and tell her what
7 happened.

8 THE COURT: Okay. But they've been apprised of what
9 the recommendations are and what was going on here today.

10 MS. WELBORN: Yes, Your Honor. They are in agreement
11 with this.

12 THE COURT: Mr. Briggs, anything that you would care
13 to say, sir?

14 MR. BRIGGS: Yes, sir. Excuse me for being nervous.

15 THE COURT: It's okay. Take your time.

16 MR. BRIGGS: As far as the indecent exposure, I was
17 wrong for that and I accept whatever you give me on that.
18 And on the -

19 MR. DAVIS: You need to tell him about your medical
20 conditions.

21 MR. BRIGGS: Since I've been incarcerated, I've
22 developed gall stones and the pain sent me to the
23 emergency room. I spent five days in the hospital and at
24 that point they determined I also had acute hepatitis B
25 from receiving a cut since I've been incarcerated. I'm

1 going through treatment right now and they said it's going
2 to be six months of treatment and I'm only on my first
3 month. I also have an abdominal hernia which I have to
4 have surgery on and I'm gonna have to have my gall bladder
5 removed.

6 THE COURT: I'm sorry, sir. Is there anything else
7 that you would care to say, sir?

8 MR. BRIGGS: I apologize that I'm having to be in
9 front of you with this today, sir. Give me a chance and
10 you will never see me in your courtroom again.

11 THE COURT: Thank you, sir. Anything else? I didn't
12 mean to cut you off. Anything else, sir?

13 MR. BRIGGS: My mind is just jumbled right now. I
14 had so many things I wanted to say I just can't remember
15 it all.

16 THE COURT: All right, thank you Mr. Briggs. All
17 right, Mr. Briggs, I've taken everything into
18 consideration, sir. The sentence of the Court on
19 indictment 12-GS-42-4111, that's the assault with intent
20 to commit charge, it's the sentence of the Court that
21 you're committed to the Department of Corrections for 15
22 years. You're to receive credit for the nine months that
23 you have served in actual detention and you're to receive
24 no credit for any of the time that you served on home
25 detention. The statute makes that discretionary with me,

1 and in my discretion, I'm deciding that the conduct that
2 you engaged in while you were on home detention warrants
3 you not getting any credit for that. The sentences for
4 all the charges will be served concurrently. You will be
5 placed on the central registry of child abuse and neglect.
6 You will have to be registered as a sex offender upon your
7 release from prison and I'm ordering that you are to have
8 no contact with the young lady involved in these incidents
9 or any member of her family. On indictments 636 and 635,
10 those are the indecent exposure charges, the sentence of
11 the Court, Mr. Briggs, is that you are committed to the
12 Department of Corrections for three years again credit for
13 nine months in jail, concurrent with all charges that
14 you're entering to plea to today. I wish you luck, Mr.
15 Briggs.

16 MR. DAVIS: Thank you, Your Honor.

17 MR. WELBORN: Thank you, Your Honor.

18 (End of requested transcript of record)

19

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Certificate of Reporter

I, the undersigned, Tara T. Scott, CVR, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 9th day of October, 2013.

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

Tara T. Scott

Tara T. Scott, CVR

Circuit Court Reporter

June 27, 2014

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Spartanburg)
)
 Anthony D. Briggs, #267080)
)
 Full name and prison number (if any) of Applicant.)

IN THE COURT OF COMMON PLEAS

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Perry Correctional Institution, Pelzer, SC
2. Name and location of Court which imposed sentence Spartanburg County Courthouse
Spartanburg, SC
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which
sentence was imposed:
 (a) 2012-GS-42-4111
 (b) N/A
 (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) October 9, 2013; 15 years Violent
 (b) N/A

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 CLERK OF COURT
 SPARTANBURG COUNTY
 2014 AUG 14 AM 9:51
 MHOPE BLACKLEY

Revised 3/2003

- (c) N/A
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere XX
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. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. NA
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. NA
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NA
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Was unable to contact my Attorney after being transfered to the Department of Corrections. Attempt to contact by
- (b) mail was unsuccessful due to not having correct address.
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) ~~In~~effective assistance of counsel.
- (b) ~~In~~voluntary Guilty Plea
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See supplemental support attachment
- (b) See supplemental support attachment
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (c) the disposition thereof:
- i. N/A
- ii. N/A
- iii. N/A

- iv. N/A
- (d) the date of each such disposition:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
- 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. N/A
 - ii. N/A
 - iii. N/A
 - (b) the proceedings in which each ground was raised:
 - i. N/A
 - ii. N/A
 - iii. N/A
- 16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
 - (a) N/A
 - (b) N/A
 - (c) N/A
- 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? N/A
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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. R. Scott Davis, P.O. Box 5004, 184 Daniel Morgan Ave.
 - ii. Spartanburg, South Carolina 29304
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Arraignment, Plea, and Sentencing
 - ii. _____
 - iii. _____

19. State clearly the relief you seek in filing this application: Vacate or Sentence Reconsideration/Reduction of Sentence

20. Are you now under sentence from any other court that you have not challenged?
No

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

Anthony D. Briggs.
I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Anthony D. Briggs
Applicant

SWORN or affirmed to and subscribed before me this
11 day of August, 2014

Tamara Conwell
Notary Public

My Commission Expires: September 25, 2023

RECEIVED

AUG 11 2014

P.C.I. MAILROOM

FILED
CLERK OF COURT
SOUTHERN DISTRICT OF CALIFORNIA
2014 AUG 14 AM 9:52
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

County of Spartanburg

VERIFICATION

Anthony D. Briggs

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

Anthony D. Briggs

SWORN to and subscribed before me this 11
day of August, 2014.

Tamara Conwell (L.S.)
Notary Public

My Commission Expires
September 25, 2023

My Commission Expires: _____

RECEIVED

AUG 11 2014

P.C.I. MAILROOM

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 AUG 14 AM 9:52
M. HOPE BLACKLEY

THE STATE OF SOUTH CAROLINA
In The County of Spartanburg

Anthony D. Briggs, #267080
Applicant,

v.

State of South Carolina
Respondent.

) In The Court of Common Pleas

)

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CASE NO:

SUPPLEMENTAL IN SUPPORT OF
POST-CONVICTION RELIEF
APPLICATION

I, Anthony D. Briggs, #267080, the Petitioner in the above captioned matter, after being duly sworn upon his oath, depose and say the following:

This supplement is provided as part of a PCR application. The Petitioner declares that he has been deprived of crucial documents by my defense attorney, Mr. Scott Davis, Esq. ; specifically crucial pages of investigative notes taken for incident report. Therefore, the Petitioner has been deprived the opportunity to scrutinize the material, in order to make proper way to proceed. The Petitioner therefore prays this Honorable Court, in reviewing this PCR application and its supplement, grant and appoint counsel, and grant leave to further amend at such time that it may become necessary to do so, after Petitioner has had time for consultation with such attorney as the Court may assign.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 AUG 14 AM 9:52
M. HOPE BLACKLEY

In regards to question (11) on page [3] of the Application for Post-Conviction Relief:

A. Applicant was denied his Sixth and Fourteenth Amendment right to an effective assistance of counsel, Insofar as his trialcounsel failed to provide representation and these omissions were prejudicial to his defense.

The Applicant counsel's failure(s) to properly investigate the facts surrounding the circumstances that lead to his arrest. It has been clearly established that the amount of pre-trial research or the lack thereof, can most definitely affect the outcome of a criminal defendant's trial. Davis v. Alabama, 100 S.CT. 1827 (1980)

Effective assistance of counsel, i.e., will satisfy the requirements of the Sixth Amendment, is counsel "reasonable likely to render and rendering reasonably effective assistance given the totality of the circumstances?"

Strickland v. Washington, 693 F.2d, 1250. (CA5, 1980) (en banc) cert. granted, 466 U.S. 668, 104 S.CT 2052 (1984);

Lockhart v. Fretwell 113 S.CT. 838 (1993)

Would not justice best be served once a criminal defendant raised the issue of ineffective assistance of counsel, and the court determines there is a question of whether the defendant received effective assistance of counsel, should not the court allow the Applicant be granted a hearing regarding the issue?

B. The Applicant contends that his plea cannot be considered voluntary, due to him being denied effective assistance of counsel, and that the plea was brought about by ignorance, and the "lack" of competence on the part of his attorney, by issuing "erroneous" advise as to the plea entered by the applicant.

Hinson v. State, 377 S.E.2d 338 (1989)

For a plea to be entered knowingly and voluntarily, a criminal defendant must possess an understanding of the law in relation to the facts. McCarthy v. U.S., 89 S.Ct.1171 (1969). Providing this understanding of the law in relation to the facts, is the function of the accused's counsel.

In today's media driven society, even the most intelligent and educated laymen have little or sometimes no skill in the science of law. If charged with a crime, he is incapable, generally, of determining for himself whether the indictment is correct. He is unfamiliar with the rule of evidence. Left without the aid of adequate counsel, he could be put on trial without a proper charge, and convicted upon incompetent evidence or evidence irrelevant to the issues, or otherwise inadmissible. He would lack both the skill and knowledge adequately to prepare his defense, even though he may have a perfect one. He requires the guiding hand of counsel at every step in the proceeding against him without it, though he may not be guilty, he faces the dangers of conviction, because he does not know how to establish his innocence.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

41

COUNTY OF SPARTANBURG

STATE

VS.

Anthony Darnell Briggs

AKA:

Race: BLACK Sex: M Age: 40

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] Fairforest Clevedale Rd

City, State, Zip: Spartanburg, SC 29301

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADS

TO: Sex / Assault with intent to commit criminal sexual conduct - First degree (0-30 years)

SENTENCE SHEET

INDICTMENT/CASE#: 2012GS4204111

A/W#: N157772

Date of Offense: 11/15/2011

S.C. Code §: 16-03-0655(A)

CDR Code #: 0385

in violation of § 16-03-0652, 16-03-0656 of the S.C. Code of Laws, bearing CDR Code # 0253

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State, 0-15 yr sentenceATTEST: William C. Wellborn 78366 Anthony D. Briggs [Signature] [Signature]
WELBORN, HILLARY C. SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 13-GS-42-636/635
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Audit 9 months - jail (no credit for home detention)☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100 w
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25 w
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BU) Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5 w
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: Six Offender Registry. No contact w/ Victim or her family.☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.Clerk of Court/ Deputy Clerk [Signature]Court Reporter: [Signature]

SCCA/217 (03/2011)

Presiding Judge [Signature]Judge Code: 2159Sentence Date: 10/9/12

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE

VS.

Anthony Darnell Briggs

AKA:

Race: BLACK Sex: M Age: 40

DOB: -1973 SS#:

Address: Fairforest Cl

City, State, Zip: Spartanburg, SC 29301

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Sex / Indecent exposure (0-3 years and/or disc. fine)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS4200635

A/W#: 2013A4210100224

Date of Offense: 1/11/2013

S.C. Code § : 16-15-0130

CDR Code #: 0091

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-15-0130 of the S.C. Code of Laws, bearing CDR Code # 0091

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State. conc.

ATTORNEY: William C. Hillborn
WELBORN, HILLARY C.

78366 Anthony D. Briggs
SC Bar# Defendant

Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*, the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 12-GS-42-4111 and 13-GS-42-636

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. Credit 9 months - jail

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:
§ 14-1-206 (Assessments 107.5 %)
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00
3% to County (if paid in installments) \$ 3.90
TOTAL \$ 133.90

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Scott

SCCA/217(03/2011)

Presiding Judge

Judge Code: 2159

Sentence Date: 10/9/13

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG

STATE VS.

Anthony Darnell Briggs

AKA:

Race: BLACK Sex: [REDACTED] Age: 40

DOB: [REDACTED] 1973 SS#: [REDACTED]

Address: Fairforest Clevedale Rd

City, State, Zip: Spartanburg, SC 29301

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Indecent exposure (0-3 years and/or disc. fine)

INDICTMENT/CASE#: 2013GS4200636

A/W#: 2013A4210100225

Date of Offense: 1/11/2013

S.C. Code §: 16-15-0130

CDR Code #: 0091

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-15-0130 of the S.C. Code of Laws, bearing CDR Code # 0091

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State, conc.

ATTORNEY

WELBORN, HILLARY C.

78366 SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 13-GS-42-635 + 12-GS-42-411☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Credit 9 months - 1 year☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (DUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$ 390
TOTAL	\$	\$ 13390

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel.

§ 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: T. Scott

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2159

Sentence Date: 10/9/13

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Anthony D. Briggs, #267080,	)	2014-CP-42-3214
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed August 14, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's orders of commitment. The Spartanburg County Grand Jury indicted the Applicant at the August 2013 term of General Sessions for criminal sexual conduct with a minor – 1st degree (2012-GS-42-4111). R. Scott Davis, Esquire represented the Applicant on the criminal sexual conduct charge. On October 9, 2013, the Applicant pled guilty pursuant to N.C. v. Alford¹ to the lesser-included charge of assault with intent to commit criminal sexual conduct – 1st degree². The Honorable Frank R. Addy, Jr. sentenced the Applicant to fifteen (15) years imprisonment. The Applicant did not appeal his conviction or sentence.

¹ 400 U.S. 25, 91 S.Ct. 160 (1970).

² While released on bond, Applicant was charged with two counts of indecent exposure (2013-GS-42-0635, -0636). Applicant also pled guilty to those charges on October 9, 2013, represented by James Cheek, Esquire. Applicant received concurrent sentences of three year for each indecent exposure charge. However, Applicant does not raise any allegations against Counsel for those charges.

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

II.

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. 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.

III.

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

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

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

IV.

The Applicant’s assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). 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); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal 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." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

When determining issues relating to guilty pleas, the court will consider the entire record,

including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

The Respondent submits 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 that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248.

V.

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

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

Respectfully submitted,

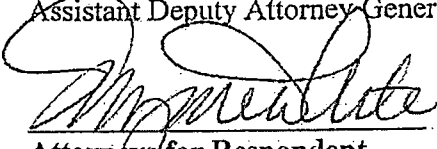
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

By:


Attorneys for Respondent
P.O. Box 11549
Columbia, S.C. 29211

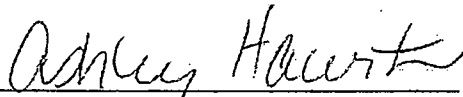
February 19, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
	)	2014-CP-42-3214
ANTHONY D. BRIGGS, #267080	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

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

Ms. Leah B. Moody, Esquire
 Law Office of Leah B. Moody, LLC
 PO Box 1015
 Rock Hill, SC 29730

DATED this 19TH day of February, 2015.


 Ashley Haworth, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	2014-CP-42-3214
COUNTY OF SPARTANBURG	)	
	)	
	)	
	)	
	)	
ANTHONY BRIGGS,	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
THE STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	
_____	)	

February 2, 2017
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, JUDGE

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

TOMMY A. THOMAS, ESQ.
Attorney for the Applicant

CAITLIN B. HASTINGS, ESQ.
Attorney for the Respondent

CHERYL A. SMITH
Circuit Court Reporter

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
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There were no exhibits introduced.

P R O C E E D I N G S

(WHEREUPON, proceedings convened at 10:35 a.m.)

MS. HASTINGS: May it please the Court. Your Honor, this is the case of Anthony Briggs vs. The State of South Carolina, Case Number 2014-CP-42-3214.

This application was filed on August 14, 2014. He is presently incarcerated with the South Carolina Department of Corrections and was indicted at the August 2013 term of General Sessions for criminal sexual conduct with a minor, first degree. He was represented by Mr. Scott Davis, and on October 9, 2013, he pled guilty pursuant to North Carolina vs. Alford to the lesser included offense of assault with intent to commit criminal sexual conduct, first degree.

Judge Addy sentenced him to 15 years, and he did not appeal his conviction or his sentence. And I will turn it over to PCR counsel at this time.

THE COURT: Okay.

MR. THOMAS: Your Honor, may it please the court. We call Anthony Briggs to the stand.

THE COURT: All right. Come on around. Place your left hand on the Bible and raise your right hand.

WHEREUPON,

ANTHONY D. BRIGGS

After having been duly sworn, testified as follows:

1 THE COURT: Please have a seat. When you get
2 comfortable, state your name for the record.

3 THE WITNESS: My name is Anthony Darnell Briggs.

4 THE COURT: All right. Thank you. Answer any
5 questions your counsel may have.

6 MR. THOMAS: Your Honor, may it please the Court.

7 DIRECT EXAMINATION

8 BY MR. THOMAS:

9 Q Mr. Briggs, you are serving time in the Department of
10 Corrections?

11 A Yes.

12 Q And what institution are you at?

13 A I'm at Kershaw.

14 Q All right. And what's your max-out date?

15 A October 2025.

16 Q 2025?

17 A Yes.

18 Q Now, you're serving time for what?

19 A Attempted CSC.

20 Q Okay. And do you remember how much time that
21 potentially carried? Was it 0 ---

22 A 0 to 30.

23 Q Okay. What were you originally charged with?

24 A CSC first.

25 Q Okay. And you pled to the assault with intent to

1 commit?

2 A Correct, yes.

3 Q And how much time did you receive?

4 A 15 years.

5 Q And was that pursuant to a plea deal?

6 A Yes sir. It was 0 to 15 with a cap.

7 Q Cap of 15.

8 A Cap of 15.

9 Q Okay. And this was an Alford plea?

10 A Yes.

11 Q All right. And you are on the registry, sexual
12 registry?

13 A Yes I have to be on it when I ---

14 Q You'll have to be on it? .

15 A Yes.

16 Q You're 85 percent?

17 A Correct.

18 Q And you're a no-parolable sentence?

19 A Correct.

20 Q All right. Now, you understand that you have filed a
21 postconviction relief application asking for a new trial.

22 A Correct.

23 Q You understand that should the Court grant that relief,
24 then, in essence, you could be -- instead of a plea, you
25 could be tried ---

1 A Yes.

2 Q --- on the original charge?

3 A Yes.

4 Q That you have exposure in that if you were tried and
5 convicted, you could receive more time?

6 A Correct, yes.

7 Q Understanding that, you wish to proceed today?

8 A Yes, I do.

9 Q Okay. Now, when were you arrested, Mr. Briggs? Do you
10 remember just roughly?

11 A June 13, 2012.

12 Q 2012?

13 A Correct.

14 Q Okay. And you were -- you retained an attorney or you
15 were appointed someone?

16 A A retained attorney.

17 Q All right. Did you get out on bond?

18 A Yes, I did.

19 Q How long did you stay in the county jail?

20 A 16 days.

21 Q All right. And you are out on bond until ---

22 A January 2013.

23 Q Okay. Now, how many times did you meet with your
24 attorney? Do you remember?

25 A Maybe four times.

1 Q Okay. And during those times that you met with him,
2 did you have an opportunity to go over the discovery? Do
3 you know what that means?

4 A Yes. We went over portions of the discovery, yes.

5 Q Okay. And how did counsel prepare your case? Was it
6 you were preparing it for trial?

7 A Actually, we never seen anything that I could prepare
8 for trial. That was -- it was -- said it wasn't defensible.

9 Q Okay. Now, it was your contention and still your
10 contention today that you're not guilty of this crime?

11 A Yes.

12 Q Okay. Now, in the discovery, did you see the evidence
13 that the State had against you?

14 A The only evidence I've seen was one statement.

15 Q All right. And that statement was from who?

16 A From the mother of the minor .

17 Q All right. And what was your relationship with the
18 mother of the minor ?

19 A We dated off and on.

20 Q She was a girlfriend?

21 A I guess you can consider it a girlfriend. We went out
22 maybe four times. But she called me her boyfriend, but also
23 I can say that she called four other people her boyfriend at
24 the time.

25 Q So she was seeing other people as well?

1 A Yes.

2 Q Okay. And your relationship with her, was it good?
3 bad? otherwise?

4 A Mostly -- mostly good, I guess.

5 Q Mostly good?

6 A Yeah.

7 Q Okay. Did you have some sort of disagreement prior to
8 all these accusations coming out?

9 A She would have episodes where she would just go off
10 about anything. For instance, one day she got mad because I
11 wouldn't let her in the bathroom when I went to the
12 restroom.

13 Q Okay. All right. Now, there was -- was there any DNA
14 evidence?

15 A No. There was no DNA evidence, and they never did an
16 exam.

17 Q All right. And that was my next question. Was there a
18 medical exam of the minor child?

19 A No. There was no exam. And from my understanding,
20 they scheduled two exams and she refused them.

21 Q Okay. Let me ask you this because I know, you know,
22 this case -- you know this case because, of course, you
23 lived it. What were you accused of?

24 A I was accused of inappropriate contact with the child
25 on several different occasions including times before I even

1 met this child.

2 Q Okay. Do you remember what the timeline was on the
3 arrest warrant?

4 A I believe it was from November 15th to February 16th.

5 Q And that was 2011 to 2012?

6 A Yes.

7 Q Okay. So that was the timeline that this inappropriate
8 activity was to supposedly occur?

9 A Yes.

10 Q Okay. And did you talk about that timeline with your
11 attorney?

12 A Yes.

13 Q Okay. And so you discussed that with him?

14 A Yes.

15 Q What evidence did they have that you saw against you
16 that ---

17 A The only thing that was ever showed to me was the
18 statement that the mother wrote, and that narrowed it down
19 to one day.

20 Q And what day was that?

21 A I later learned that it was February 11th. Yes.

22 Q Of what year?

23 A 2012.

24 Q 2012. Okay.

25 Now, so when you entered into this plea, the allegation

1 was that on February 11, 2012, that you had some
2 inappropriate contact with this young girl?

3 A Yes.

4 MR. THOMAS: Okay. Your Honor, just for the Court's
5 information, I'd like to make reference to the transcript,
6 page and line.

7 THE COURT: Go ahead.

8 MR. THOMAS: Just rather than go through it with him
9 and have him read it, and if it please the Court, I'll just
10 give you those notations.

11 THE COURT: Go ahead.

12 MR. THOMAS: All right, sir. That's transcript,
13 page 12, Your Honor, line 22 in regards to the dates of the
14 offense.

15 BY MR. THOMAS:

16 Q Now, in preparing your case with your attorney, was
17 there a video?

18 A I was told that there was a CAC video, I believe it
19 was.

20 Q Some sort of interview with the child?

21 A Interview with the child, yes.

22 Q Okay. Did you see that video?

23 A No. I never did get to see it. I had requested to see
24 it a few times, but it was always a situation where he was
25 explaining that how it couldn't be shown or -- or it

1 couldn't leave the office. I really wasn't in the full
2 understanding of it until after the plea.

3 Q Why?

4 A I only came under the understanding of that because he
5 sent me the letter that was -- that he had to sign to
6 receive the CAC.

7 Q Okay. All right. Did he tell you whether you could
8 see it or not see it?

9 A That was when I was always in confusion about it. I
10 wasn't understanding if I could watch the entire video or if
11 I could see portions of it. I had seen where someone else
12 told me they had gotten the written -- what was written
13 down, but it was supposed to have been a five-hour video,
14 so . . .

15 Q Okay. All right. But in reality, you never did see
16 any of it?

17 A I never did see any of it.

18 Q Okay. Now, in our discussions, you had indicated to me
19 that you had an opportunity, I guess, since you've been
20 incarcerated to look at the discovery and review your case;
21 is that correct?

22 A Yes.

23 Q And you had indicated to me that you thought there were
24 problems with what the minor said?

25 A Yes. In the initial time that my attorney sent me the

1 discovery when I requested it from him, I received 11 pages
2 of what was, I guess, supposed to be the investigator
3 notes ---

4 Q Right.

5 A --- and -- along with the statement. And after
6 receiving the discovery from my attorney after the plea
7 deal, it was supposed to have been 17 pages, and of the
8 11 pages, two of them were duplicates. So I really only
9 received nine pages, and there were only four pages of the
10 statement.

11 Q Okay.

12 A And when I got the entire statement, that's when I put
13 more of what was said together, and I felt like it could
14 have been a case that I could have defended myself.

15 Q All right. Because you thought it was inconsistent.

16 A Yes.

17 Q Okay. Now -- and you testified to this earlier. You
18 found out that -- or you knew that the **minor** 's mother was
19 dating other people ---

20 A Yes.

21 Q --- other than you.

22 A Yes. And ---

23 Q Okay. And you felt like that could have been used at
24 your -- at a trial?

25 A Yes, sir. Most definitely.

1 Q Okay. Now, you also discussed with me, you said that
2 the child made accusations against other men.

3 A Yes. There had been four other people before me that
4 she made accusations against.

5 Q And did any of those individuals, to your knowledge, go
6 to jail?

7 A To my knowledge, one was arrested and another was
8 arrested and convicted the year before.

9 MR. THOMAS: All right. Your Honor, just for the
10 Court's information, that information is on page 25, lines 1
11 through 5.

12 BY MR. THOMAS:

13 Q Now, so this was not the first time this young lady had
14 made accusations of the same nature against other people.

15 A No, sir.

16 Q Okay. And also, you and I discussed, you said that the
17 mother, there was a delay of her reporting this incident to
18 the police?

19 A Yes, sir. She -- actually, she never reported it. It
20 was reported by the school over two weeks later, but she
21 said that she told the school that she knew about her
22 daughter having the allegation -- making the allegations.

23 Q Okay. All right. And you felt like all of this would
24 potentially substantiate your argument that you were not
25 guilty of this crime?

1 A Yes, sir.

2 Q That this would have helped you at trial.

3 A Yes, sir.

4 Q Okay. Now, in talking with your attorney, did you know
5 what his theory of defense was? I mean how we was going to
6 defend you?

7 A From my understanding from what he was saying, there
8 was no defense to this. He said it was basically cut and
9 dried, that all she would have to do was make a statement
10 that I inappropriately touched her or anything.

11 Q Okay. And how about plea offers? Were you ever given
12 any kind of plea offers?

13 A On, I believe it was, the first appearance was when he
14 was telling me that he had received an e-mail for 15 years.

15 Q Right.

16 A And he didn't have the details at the time.

17 Q Okay. And what -- how, if any, were they willing to,
18 you know, modify what you were originally charged with?
19 They were going to change that and let you plead to
20 something else?

21 A They -- he said they were -- came later with a lewd
22 act ---

23 Q Yeah.

24 A --- and it carried the mandatory ankle monitoring,
25 lifetime ankle monitoring. At the time I had been on bond I

1 was on the ankle monitor and it was \$100 a week, and I could
2 not see affording that much for the rest of my life, so I
3 did not want that.

4 Q So the GPS monitoring was a big issue to you?

5 A Yes.

6 Q And so what offers did they make to you as far as the
7 crime?

8 A The first offer was the lewd act, and then he also
9 stated that they offered us CSC third, but he said it was,
10 in essence, the same thing as a lewd act ---

11 Q Right.

12 A --- which later I figured out they were not -- not even
13 close. And ---

14 Q What did lewd act carry?

15 A The lewd act carried 0 to 10 with the mandatory GPS.

16 Q All right. So it would have required GPS monitoring?

17 A Yes.

18 Q But it would have carried five years less than what you
19 got?

20 A Yes.

21 Q Okay. And you were also offered, which you ended up
22 pleading to, the assault with intent to commit CSC?

23 A Yes.

24 Q First degree?

25 A First degree, yes.

1 Q And that carried 0 to 30?

2 A Yes.

3 Q But did not require the GPS monitoring?

4 A Correct.

5 MR. THOMAS: Okay. Your Honor, if it please the Court,
6 that's on page 5, line 7 through 13 of the transcript where
7 they discuss those offers.

8 BY MR. THOMAS:

9 Q Now, in considering your plea, why don't you tell ---
10 how did you consider those pleas, those offers?

11 A I didn't even think about the -- the lewd act.

12 Q Why?

13 A I was also offered a CSC third which would carry 0 to
14 ten without mandatory GSP -- GPS, but at that time, I did
15 not understand that there was no mandatory because he told
16 me that they were the same and that it did carry mandatory,
17 which it didn't.

18 Q Okay.

19 A But in considering the plea offer that I did take, the
20 day that he came to me and made the offer, I was still
21 reluctant on taking the offer because I wanted to go to
22 trial. But he was in -- you know, basically telling me I
23 didn't have a defense. And then he's like, you know, we
24 either take this one or the 15 -- the 0 to 15 or I'll be
25 looking at 30 to life.

1 Q Right.

2 A And I wanted to speak with my family about it and have
3 my family there, so I asked if he could call my father and
4 my sister. And he told me that my father was sick that day
5 and his feet were so swollen that he couldn't get his shoes
6 on his feet.

7 Q Right.

8 A And no one could find my sister. And at that time, I
9 basically took the plea out of a panic. I mean, I was
10 scared, I didn't know what to do, and I was seeing that I
11 would be taking the same plea offer that was given to the
12 person that was -- that took the charge before me. The one
13 that took a year before, he was offered the same one.

14 And ---

15 Q And you knew this gentleman?

16 A I had only met him ---

17 Q Okay.

18 A --- from being incarcerated at the same time.

19 Q But you knew about his factual situation?

20 A Yes.

21 Q Okay.

22 A And understanding that the amount of time he got, I
23 figured by me taking the same amount, that that -- I mean
24 taking the same plea, that I would be -- when my attorney
25 asked for that plea, that I would get the same thing.

1 MR. THOMAS: All right. Your Honor, this is for the
2 Court's information. This is also discussed on page 24,
3 lines 18 through 24.

4 BY MR. THOMAS:

5 Q Now, you and I have talked about this, and we talked
6 about your plea and we talked about, you know, a plea needs
7 to be freely and voluntarily given, knowingly and
8 intelligently given. Based upon what you've been testifying
9 this morning to, do you believe that your plea was freely
10 and voluntarily given?

11 A Not at all.

12 Q And I think this is even more important: Do you think
13 that it was knowingly and intelligently given?

14 A No, it wasn't.

15 Q You were confused?

16 A Yes.

17 Q Now, I'm sure you've answered all the questions that
18 the judge asked you about whether or not you understood what
19 you were doing, and you told him what?

20 A I told him I understood at the time.

21 Q Why did you do that?

22 A Because I was thinking that all the information that I
23 had received was correct information, and I wasn't -- I
24 mean, it wasn't.

25 Q Okay. Now, you talked about this a little bit in your

1 previous testimony. You said that your dad and your sister
2 knew things about these allegations about where you were?

3 A Yes.

4 Q So you, in essence, had an alibi defense?

5 A Yes, I did.

6 Q And did you discuss this alibi defense with your
7 attorney?

8 A Yes, I did.

9 Q All right. And what, if anything, happened from that
10 discussion?

11 A He never could contact my sister, and he said that my
12 father -- that was at the time that he said my father
13 wouldn't be able to make it.

14 Q Right. And I know this was a number of years ago; is
15 that correct?

16 A Yes.

17 Q And how, if any way, were your testimony of your dad or
18 your sister going to help you?

19 A It would have given a timeline showing that at the time
20 that she said I was there, I was not at the hotel that she
21 claimed I was at, and at the time I was at the hotel, that
22 the child was not there.

23 Q Okay. Were you living in the hotel?

24 A I never lived at the hotel nor the museum that she said
25 we lived in. I never lived with the minor ever, even

1 though she put in her statement that we lived together. I
2 had lived with my father for about five years at the time.

3 Q Where were they staying, the mother and the child?

4 A They bounced from hotel to hotel on the weekends, and
5 she would stay with friends or in shelters.

6 Q Okay. So she was almost, in a way, homeless?

7 A Yes.

8 Q And do you know if your attorney spoke with your dad or
9 your sister?

10 A I know he spoke with my father, but I can't say that he
11 ever spoke with my sister.

12 Q Okay. And what date, if any, would they be able to
13 provide an alibi for you?

14 A On February 11th.

15 Q February 11th?

16 A Yes.

17 Q Which is the date that you ended up pleading to?

18 A Yes.

19 Q And this was an Alford plea?

20 A Correct.

21 Q Okay. One of the concerns -- and we haven't talked
22 about this recently. One of the concerns was that you
23 received -- it was your understanding from Corrections that
24 you had to be monitored on the charge that you have now?

25 A Yes.

1 Q Okay. And that was one of your concerns?

2 A Yes.

3 Q Because it was your understanding that you did not have
4 to be monitored?

5 A Correct.

6 Q That's not going to come to any kind of -- I guess
7 that's not going to happen until such time as you're ready
8 to be released; is that correct?

9 A Correct.

10 Q Okay. So that's an issue that is going to have to be
11 straightened out with Corrections or with Probation and
12 Parole ---

13 A Correct.

14 Q --- prior to your release?

15 A Yes.

16 Q Okay. But it's your understanding that you would not
17 have to be placed on GPS monitoring?

18 A Yes. In the sentence, it was under my understanding
19 that there was no GPS.

20 MR. THOMAS: All right. Your Honor, if it please the
21 Court, I have a copy of the statutes from this -- about the
22 electronic monitoring, Your Honor, and I'd be glad to pass
23 this up to the Court, 23-3-540. The attorney general has a
24 copy of these. I just -- what I did is I went by the
25 Supreme Court because they have a library there, and I was

1 able to get the statutes as they existed in 2011 and 2012.

2 And just for the Court's information, I'll hand it up.

3 BY MR. THOMAS:

4 Q Mr. Briggs, you and I talked about this as well.

5 You've waited a long time to be here today.

6 A Yes, sir.

7 Q And this is your case.

8 A Yes, sir.

9 Q I don't think I have forgotten anything, I don't think
10 I have left anything out, but I might. And if I have, this
11 is your opportunity to bring anything else to the attention
12 of the Court that you would like. I'm not saying that I
13 have forgotten something, but I would like for you to have
14 that opportunity. Is there anything else that you feel like
15 you should add?

16 A I think we covered it.

17 MR. THOMAS: Okay. Your Honor, may it please the
18 Court, that's all we have for this witness.

19 THE COURT: Do you want to cross-examine?

20 CROSS EXAMINATION

21 BY MS. HASTINGS:

22 Q Hi, Mr. Briggs.

23 A Hi.

24 Q I have some questions for you, okay?

25 A Okay.

1 Q On the date of your plea hearing, do you recall taking
2 an oath to tell the truth similar to the one you took
3 today?

4 A Yes.

5 Q And at this plea hearing, do you recall Judge Addy
6 discussing with you that by entering an Alford plea, you're
7 waiving your right to present any defenses?

8 A Yes.

9 Q And did you -- was it your decision to plead guilty?
10 Or to -- excuse me, I'm sorry -- to enter an Alford plea?

11 A Yes.

12 Q So it was your decision.

13 And do you recall -- for the Court's reference, this is
14 on page 18 to 20 of the transcript -- Judge Addy going over
15 all the rights you would be waiving such as your right to
16 confront the minor 's mother, to have a jury trial, to
17 remain silent at said trial if you were to have one? Do you
18 recall him going through those rights with you at this plea
19 hearing?

20 A I don't understand.

21 Q Sorry. Let me rephrase. At your plea hearing, do you
22 remember the judge going through the rights that you would
23 be waiving by entering an Alford plea, for example, a jury
24 trial?

25 A My understanding is that I would not be able to go

1 through the normal defense if I took the plea as far as over
2 going to trial, yes.

3 Q Okay. But you understood that you still had the option
4 to go to trial if you wanted.

5 A Yes.

6 Q Okay. And do you recall telling Judge Addy that you
7 were satisfied with Mr. Davis's representation of you?

8 A Yes.

9 Q Judge Addy also asked at the plea hearing if you had
10 any complaints that you wanted to bring up to the Court, and
11 you said "no"; isn't that correct?

12 A That was correct.

13 Q He also asked if you needed any more time to think
14 about your case or to do anything further on your case, and
15 you replied "no"; isn't that right?

16 A That's correct.

17 MS. HASTINGS: No further questions.

18 THE WITNESS: May I make a statement about that?

19 THE COURT: Yeah. Go ahead.

20 THE WITNESS: At the time I made that statement, I
21 wasn't aware of the rest of the information that I received
22 from my attorney later on, and I had just been through being
23 in the hospital for five days. And I know that I was more
24 so worried about my family at the time when I made the plea,
25 and I made that plea under -- under a panic.

1 BY MS. HASTINGS:

2 Q Lastly, do you remember Judge Addy discussing with you
3 that by entering an Alford plea, it functions the same as a
4 normal guilty plea?

5 A Yes.

6 MS. HASTINGS: No further questions, Your Honor.

7 MR. THOMAS: Nothing further, Your Honor.

8 THE COURT: You pled to two counts of indecent
9 exposure; is that right?

10 THE WITNESS: Yes.

11 THE COURT: Hang on a second. Did anybody bother to
12 look at the statute he pled to?

13 MR. THOMAS: Your Honor, I have -- I think I've looked
14 at that, but we've been concentrating on this one.

15 THE COURT: Let me see.

16 MR. THOMAS: Your Honor, I've looked at -- go back and
17 look at 5-40, which would be the registry or the monitoring
18 statute.

19 THE COURT: Well, I'm not talking about that right now.

20 MR. THOMAS: Oh, okay. I thought you were talking
21 about whether or not he would have to be monitored under the
22 indecent exposure.

23 THE COURT: 16-15-130, indecent exposure,
24 breastfeeding. Same -- that's the right CDR code.

25 MR. THOMAS: He would have pled under the wrong statute

1 then, Your Honor.

2 THE COURT: Oh. Okay. Any other questions of Briggs?

3 MS. HASTINGS: Your Honor, Mr. Davis did not represent
4 him on those charges. The public defender did, just for the
5 Court's ---

6 THE COURT: Okay. Well, is that part of his PCR
7 application?

8 MR. THOMAS: No, Your Honor.

9 MS. HASTINGS: No, Your Honor. It's only the ---

10 MR. THOMAS: He had -- I think he filed the
11 application, but he has always contended to me that he
12 elected to go forward on this charge, Your Honor.

13 MS. HASTINGS: And that's noted in the return footnote,
14 too.

15 THE COURT: Well, it's a great opportunity to correct
16 an error.

17 MR. THOMAS: Your Honor, if we could, I mean, it should
18 be corrected.

19 THE COURT: Not that it makes much difference.

20 MR. THOMAS: I'm not sure that it does either, Your
21 Honor. I think the biggest issue is whether or not -- for
22 him is whether or not he understood as far as the
23 consequences of the plea, and then also ---

24 THE COURT: We'll get to argument in just a few
25 minutes. Any other questions of Mr. Briggs?

1 All right. Thank you, Mr. Briggs. You can step down.

2 MR. THOMAS: Thank you, Your Honor.

3 THE COURT: Any other witnesses?

4 MR. THOMAS: Yes, Your Honor. If it please the Court,
5 we call his dad to the stand.

6 THE COURT: Who?

7 MR. THOMAS: His father.

8 THE COURT: Please place your left hand on the Bible,
9 raise your right hand.

10 WHEREUPON,

11 WILLIE BRIGGS

12 After having been duly sworn, testified as follows:

13 THE COURT: State your name for the record.

14 THE WITNESS: Name is Willie Briggs.

15 THE COURT: All right. Go ahead.

16 MR. THOMAS: May it please the Court.

17 DIRECT EXAMINATION

18 BY MR. THOMAS:

19 Q Mr. Briggs, you're related to Anthony Briggs?

20 A Yes.

21 Q And how are you related to him?

22 A I'm his father.

23 Q Okay. You understand you're here to tell the truth
24 today ---

25 A (Nods head affirmatively) I do.

1 Q --- to the best of your memory, to the best of your
2 knowledge?

3 A To the best of my ability.

4 Q Okay. All right. Mr. Briggs, you've heard your son
5 testifying in regards to the date of the 11th of February of
6 2012?

7 A Beg your pardon?

8 Q February the ---

9 A What about it?

10 Q --- the 11th of 2012.

11 You're a little hard of hearing?

12 A Yes.

13 MR. THOMAS: Your Honor, may I approach a little
14 closer?

15 THE COURT: Yes.

16 BY MR. THOMAS:

17 Q Mr. Briggs, you've heard your son testify about the
18 date of February the 11th of 2012?

19 A Yes.

20 Q Okay. And to the best of your knowledge, do you have
21 any memory of where he was on that day?

22 A Well, as near as I can remember, the first part of that
23 day he was with me because he was living with me at the
24 time.

25 Q All right. Okay. And I think that you said -- do you

1 know how you remember that?

2 A Well, the reason why I can remember, because I had a
3 relative, in fact, it was his brother, to be injured in a
4 home invasion.

5 Q Yes, sir.

6 A And he left for a short period of time, came back, and
7 then we found out about this. And, like I said, the reason
8 why it sticks in my mind, because he left the next day and
9 went where my other son was and stayed up there with him for
10 a week.

11 Q Okay. All right. Did you talk to the defense attorney
12 about it? Did you talk to his attorney about it?

13 A I don't remember for sure if we even approached that
14 part about it. Hu-uh.

15 MR. THOMAS: Okay. All right. Your Honor, I have no
16 further questions.

17 THE COURT: Cross?

18 MS. HASTINGS: No cross, Your Honor.

19 THE COURT: What did you talk to the defense lawyer
20 about?

21 THE WITNESS: Well, the only thing I can remember ever
22 telling him was the fact of what I was informed for the
23 allegations that was made against Anthony, that the same
24 person, it's the same girl had made the same allegation
25 against other people, his -- some other -- relatives or

1 friends or whatever, and that, you know, I'm thinking at the
2 time that he would probably get investigators to check it
3 out and see if it was true or not. And other than that, I
4 can't think of anything that we actually talked about.

5 THE COURT: Well, how many times did you meet with him?
6 Do you remember?

7 THE WITNESS: Did I meet with his attorney?

8 THE COURT: Yeah.

9 THE WITNESS: I never really met with him after we
10 hired him initially.

11 THE COURT: Okay. But you'd talk to your son and you
12 knew about what the allegations were; is that right?

13 THE WITNESS: Right.

14 THE COURT: Okay. And you never went forward and told
15 him about this other information; is that correct?

16 THE WITNESS: Well, like I said, I was -- I told him
17 that I had been informed that it was other people that was
18 being accused of the same thing, at least three to four
19 other.

20 THE COURT: Okay. But you never told him about what is
21 now being fashioned as an alibi defense? You never told him
22 about that?

23 THE WITNESS: No. Hu-uh. Not that I recall.

24 THE COURT: And just were your feet swollen on the day
25 he pled guilty so you couldn't come up?

1 THE WITNESS: Both feet were swollen and I couldn't
2 even get my shoes on, and they didn't call me until the day
3 of the hearing or whatever.

4 THE COURT: Yeah.

5 THE WITNESS: And it was like 30 minutes before it was
6 supposed to actually happen.

7 THE COURT: Okay. All right.

8 THE WITNESS: And I didn't have a chance to talk
9 to Anthony or to even tell him can you hold it off, you
10 know.

11 THE COURT: Right. Okay. Well, thank you for being
12 here.

13 Any other questions from anybody?

14 MR. THOMAS: No, Your Honor.

15 MS. HASTINGS: No.

16 THE COURT: Thanks very much. How fast will that thing
17 go?

18 THE WITNESS: I've ran it with two motorcycles.

19 THE COURT: Okay.

20 MR. THOMAS: Your Honor, if it please the Court, we
21 have one other short witness. Sharneka Stevenson, please.

22 THE COURT: All right.

23 WHEREUPON,

24 SHARNEKA STEVENSON

25 After having been duly sworn, testified as follows:

1 THE COURT: When you get comfortable, please state your
2 name.

3 THE WITNESS: Sharneka Michelle Stevenson.

4 THE COURT: Okay.

5 MR. THOMAS: May it please the Court.

6 DIRECT EXAMINATION

7 BY MR. THOMAS:

8 Q Ms. Stevenson, how are you related, if any, to
9 Mr. Briggs?

10 A He's my brother.

11 Q Your brother. You understand you're under the oath to
12 tell the truth?

13 A Yes.

14 Q You intend to tell the truth?

15 A Yes.

16 Q All right. In regards to February the 11th of 2012, do
17 you remember seeing your brother that day?

18 A Yes.

19 Q Okay. And how did you see him?

20 A I took him and dropped him off at the hotel that they
21 were staying at.

22 Q Okay.

23 A Where the young lady was staying at.

24 Q All right. And did you take him back home or ---

25 A No.

1 Q Okay. But you did take him?

2 A I did take him.

3 Q Okay. Did you talk to his attorney at all about what
4 you knew?

5 A No. No, sir, I didn't.

6 Q Did he make any attempts to contact you?

7 A If he did, I didn't recognize any phone numbers that
8 came through or anything like that. I didn't receive any
9 letters or anything.

10 MR. THOMAS: All right. Your Honor, I have no further
11 questions.

12 MS. HASTINGS: No cross, Your Honor.

13 THE COURT: All right. Thank you, ma'am. You can step
14 down. Thank you.

15 All right. Next witness.

16 MR. THOMAS: Your Honor, if it please the court, that
17 is all the witnesses, and that would be the applicant's
18 case.

19 THE COURT: All right. The State?

20 MS. HASTINGS: Your Honor, the State would like to call
21 Mr. Scott Davis to the stand.

22 THE COURT: Okay. Come on around.

23 WHEREUPON,

24 SCOTT DAVIS

25 After having been duly sworn, testified as follows:

1 THE COURT: All right. Please have a seat, get
2 comfortable. State your name for the record.

3 THE WITNESS: My name is Scott Davis.

4 THE COURT: All right.

5 DIRECT EXAMINATION

6 BY MS. HASTINGS:

7 Q Hi, Mr. Davis. Thank you for being here today.

8 First, how long have you been practicing law?

9 A Since 1983.

10 Q And what portion of that has been criminal?

11 A All of it.

12 Q All of it.

13 At the time of this plea, had you had pleas with
14 similar charges to Mr. Briggs before?

15 A Yes, ma'am.

16 Q Okay. So you felt that you were experienced to handle
17 this case?

18 A Yes, ma'am.

19 Q Okay. And how many times would you say that you met
20 with Mr. Briggs?

21 A We met on numerous occasions, mostly after he was
22 incarcerated. Prior to that, his daddy would bring him into
23 my office.

24 Q During these meetings, did you review your Rule 5
25 discovery materials?

1 A Yes, ma'am.

2 Q Did the applicant seem to understand all the materials
3 you went over, have any questions about them? Did you have
4 all the materials or did you feel that you had all the
5 materials?

6 A Yes, ma'am. I had all the discovery material provided
7 by the State and went over those with Anthony. He
8 understood what the allegations were and the seriousness of
9 them.

10 Q At the plea hearing, I believe on page 5 there is some
11 discussion that you chose that specific charge because you
12 believe there wasn't going to be any ankle monitoring; is
13 that correct?

14 A The State had made a couple of offers prior to the plea
15 hearing that we had discussed, Anthony and I, and he was
16 very concerned about being on the ankle monitor once he was
17 released from incarceration, and therefore, we tried to find
18 a plea that the solicitor would accept that would not
19 require that ankle monitoring once he was released.

20 Q Okay. So Mr. Briggs was very involved within the plea
21 negotiation process?

22 A He was.

23 Q Can you describe the other offers that were offered?

24 A I believe it was a plea to lewd act on a minor, which
25 did require, and also the possibility, I think we also

1 looked at CSC third, which also required the monitoring upon
2 release.

3 Q Okay. And how would you characterize the State's
4 evidence against Mr. Briggs? Was it overwhelming evidence?

5 A It was -- it was a case where the allegations were
6 made. They could bolster the allegations by the child
7 through the forensic interviews that were done with
8 Children's Advocacy Center along with the mother's testimony
9 that -- what the child had told her.

10 Q Going to that video, did you review that with
11 Mr. Briggs?

12 A We did not actually view the video. There was a
13 written recap of the video, what was contained on it, and we
14 went over that thoroughly.

15 Q Okay. And did you review his version of the facts of
16 the case?

17 A Yes.

18 Q Okay. And did you go over any potential defenses?

19 A We talked about possible defenses. To my recollection,
20 I don't believe alibi was ever brought up as far as him not
21 being present.

22 Q Okay. So he never provided you his father or sister as
23 potential witnesses for an alibi defense?

24 A Well, I believe his sister testified that she took him
25 to the hotel, so I -- if that's the case, I wouldn't have

1 used her as a witness anyway.

2 Q Okay. Was it always his decision to plead guilty or
3 did he ever express any interest in a trial?

4 A Yes, ma'am. He expressed interest in a trial, and we
5 weighed the possibility of a conviction and the likely
6 sentence that would result from that. And he made, in my
7 opinion, an intelligent decision to accept something that
8 had a cap of a lot less.

9 Q Okay. But had he decided to go to trial, you would
10 have prepared for that?

11 A Yes, ma'am. That's what we were negotiating with the
12 solicitor and talking about the possibility saying it was
13 coming to trial, and that's why the plea offer was made and
14 accepted.

15 MS. HASTINGS: Okay. No further questions, Your Honor.

16 THE COURT: Okay. Cross?

17 MR. THOMAS: If it please the Court.

18 CROSS EXAMINATION

19 BY MR. THOMAS:

20 Q Counsel, you said that as far as the evidence that they
21 had against Mr. Briggs was what? I'm sorry. What evidence
22 did they have?

23 A They had -- they would -- they would have been
24 presenting the child or the Children's Advocacy Center
25 forensic interview of the child as far as the child's

1 statements of what transpired between Mr. Briggs and her.

2 Q Right. And there was a video of that interview?

3 A Of the forensic interview, yes.

4 Q All right, sir. And you had an opportunity to review
5 that?

6 A Yes, sir.

7 Q Did you have an opportunity to review it with
8 Mr. Briggs?

9 A I asked -- I don't -- I can't remember if I asked him
10 if he wanted to see the video or if he -- we -- we -- I know
11 we went over the recap of it that was in writing. I don't
12 know that he wanted to see the actual video itself.

13 Q Okay. And at that time that you were -- that you had
14 the video and were looking at the video, did you have the
15 knowledge that the child had made accusations against a
16 number of other people?

17 A Yes. Anthony told me that, and that's one of the
18 things we looked into. And I brought that out in the plea
19 that there was at least one other person that was --
20 actually charges were brought against and he was convicted.

21 Q Okay. And was there any kind of DNA evidence or any
22 kind of forensic exam or anything?

23 A I don't -- I don't think so. I think the disclosure
24 came from the child to the mother sometime after the alleged
25 incident occurred.

1 Q So all the evidence that existed really was whatever
2 the child had said?

3 A And, like I said, bolstered through the forensic
4 interview and the statements of the mother.

5 Q All right. And do you remember how old the child was
6 at the time?

7 A I don't.

8 Q Okay. Did you discuss with Mr. Briggs, I guess, these
9 -- the difference between a trial and a plea?

10 A Oh, yes, sir. He understood that.

11 Q All right. And it was your recommendation that he
12 accept a plea?

13 A Well, it was my recommendation to him. Of course, any
14 time I represent someone, I tell them that they make that
15 ultimate decision. All I can do is make a recommendation.
16 It's up to them whether to accept that recommendation or to
17 go forward on something else.

18 Q All right. And when it fell down to consideration of a
19 plea ---

20 A Yes, sir.

21 Q --- I guess then it kind of subdivided into if he pled
22 to something, what was going to require GPS monitoring?

23 A That's right.

24 Q And he was concerned about GPS monitoring. I think one
25 of the reasons he testified was the expense?

1 A Well, he didn't -- I don't remember him saying that was
2 the deciding factor.

3 Q Right.

4 A But he didn't want the monitoring once he was released.

5 Q Okay. So they made a plea offer to lewd act; is that
6 correct?

7 A Well, lewd act on a minor.

8 Q On a minor?

9 A That's correct.

10 Q Okay. And what kind of time could he have gotten under
11 lewd act?

12 A I'm thinking the one that they were referring to
13 carried up to 15 years.

14 Q Okay. And you were able to determine that if he pled
15 to the lewd act, that he would be required to have GPS
16 monitoring?

17 A That's correct.

18 Q All right. Now, you also said that there was an offer
19 to a CSC third?

20 A With a minor under a certain age.

21 Q Okay. And do you know how much time that carried?

22 A I believe it carried up to 15 years also.

23 Q Okay. Because I was able to -- I did some research
24 into criminal sexual conduct, third degree, and it carries
25 ten. But is that not with a minor? Is there a difference

1 in those?

2 A I think the only thing that they were offering was --
3 had a 15-year limit on it.

4 Q All right. So even if -- say if they offered him CSC
5 third with a minor and it carried less than 15, would they
6 have gone along with that?

7 A I don't know. I don't know if they would have or not.
8 I think 15 years was what they were looking at as far as the
9 time that he could receive on those other charges.

10 Q Okay. So he ended up pleading to the assault with
11 intent to commit criminal sexual conduct, first degree?

12 A Yes, sir.

13 Q But not on a minor?

14 A I believe that was the part that kept it from having to
15 be ---

16 Q GPS?

17 A --- GPS'd after his release.

18 MR. THOMAS: Your Honor, may I approach?

19 THE COURT: For what?

20 MR. THOMAS: Approach counsel. I just wanted to show
21 him something.

22 THE COURT: Oh, approach the witness. Yeah.

23 MR. THOMAS: Yes, sir.

24 BY MR. THOMAS:

25 Q Do you recognize that?

1 A (Reviews document) Yes, sir.

2 Q Did you send that to Mr. Briggs? Do you remember?

3 A I did. This was a charge that was -- that I found that
4 carried less than the 15 years ---

5 Q Yes, sir.

6 A --- and that I could not get the solicitor to agree to
7 that charge.

8 Q What statute is that? Do you know?

9 A That is third degree sexual exploitation of a minor.

10 Q All right. Okay. And it carries how much time?

11 A Up to ten years.

12 Q All right. But you were unable to get the solicitor to
13 go along with that?

14 A They -- they would not agree to let him plead to that
15 charge.

16 Q Okay. And that is something that you had spoken with
17 the solicitor about trying to get a plea to that charge?

18 A Yes, sir. That's something that I found when -- in my
19 exploration to try to find something that he could do that
20 was in the realm where he wanted it that did not require the
21 monitoring. Yes, sir.

22 MR. THOMAS: Your Honor, if I can beg the Court's
23 indulgence.

24 THE COURT: Yeah.

25 MR. THOMAS: Your Honor, I have no further questions.

1 THE COURT: Cross?

2 MS. HASTINGS: No, Your Honor.

3 THE COURT: Oh. No, you don't -- you've already -- all
4 right. I don't have any questions.

5 You did tell him -- and let me just be clear on this.
6 The reason that you all entered the plea to this charge was
7 because you believed it did not require ankle monitoring.

8 THE WITNESS: Upon release. That's correct.

9 THE COURT: And you told him that.

10 THE WITNESS: Yes, sir.

11 THE COURT: Okay. All right. Thanks. You can step
12 down. Thanks.

13 All right. Anything else from the State?

14 MS. HASTINGS: No, Your Honor.

15 THE COURT: All right. Well, I'm reviewing the two
16 indecent exposures. I mean, he pled to something -- I
17 presume it's a clerical error, right? This is you. How do
18 you defend that, breastfeeding?

19 MS. HASTINGS: Your Honor, I don't know anything about
20 that case. I only know what was ---

21 THE COURT: Okay. All right.

22 MS. HASTINGS: --- pled in this application, which was
23 the CSC charge.

24 THE COURT: Well, I'm presuming that Mr. Briggs wants
25 to amend his application to include these -- the, I presume,

1 evidence would support that.

2 MS. HASTINGS: All right.

3 MR. THOMAS: That's correct, Your Honor.

4 THE COURT: And how about, I mean, did anybody take a
5 look at the statutes, the sentencing sheet on the CSC case?
6 I mean, I'm amazed the Department of Corrections didn't send
7 this back to whoever the sentencing judge was. They've got
8 two different statutes, two different CDR codes contained on
9 the sentencing sheet. Is there any explanation for that?

10 MS. HASTINGS: Not that I know of, Your Honor.

11 THE COURT: Okay. Well, they're difficult, and having
12 handled the number of criminal cases that I've handled,
13 pleas, it's very difficult to keep up with the statutes and
14 the paperwork. And, of course, they are not lessening the
15 amount of administrative paperwork. But they're wrong.
16 They do not -- y'all take a look at the sentencing sheet on
17 the CSC case. Do you have it? You've got it?

18 MS. HASTINGS: Yes, Your Honor.

19 THE COURT: Look up in the upper right its code is
20 identified as 16-03-655(A), and then down in the left, it's
21 16-03-652, which I believe is the sentencing statute. Is
22 that -- and 16-03-656. So there's a definite clerical
23 error. Two CDR codes are different. One's 253, one is 385,
24 so there are errors on the sentencing sheets.

25 Most concerning, though, is that the whole reason that

1 Mr. Briggs -- or what -- the only uncontroverted evidence
2 that I've heard today is that he pled because he felt that
3 he would not be placed on electronic monitoring when he was
4 released. And I know and we all know it was a confusing
5 time because they were changing the laws. But I think
6 effective July of -- June of 2012, this statute required
7 monitoring.

8 MS. HASTINGS: Retroactively, I believe.

9 THE COURT: Retroactively. Check it out.

10 MS. HASTINGS: If the offense occurred within a
11 certain ---

12 THE COURT: Well, let's check it out. Let's find out.

13 MR. THOMAS: And I looked at that, Your Honor. I think
14 that's -- the way that statute reads is it says upon -- is
15 convicted or adjudicated, et cetera. So it would appear to
16 me that it's upon conviction.

17 MS. HASTINGS: Yes.

18 MR. THOMAS: Yeah. And it's in '12. That's why I
19 looked at '11 and '12 because I think there were some
20 allegations that it happened in '11, the statute was
21 modified again in '12.

22 MS. HASTINGS: But if they pled after the statute was
23 enacted, then it applies. I had a motions hearing with
24 Judge Gravely about this in March.

25 THE COURT: What did you have?

1 MS. HASTINGS: Last March I had a plea hearing with
2 Judge Gravely about this issue, and I believe we came to the
3 understanding that if they pled -- even if the charges
4 occurred before the enactment of the statute, if they pled
5 after the enactment of the statute, it applied.

6 THE COURT: Yeah. We don't -- I don't believe we have
7 retroactive application of an increased punishment. Only if
8 it decreases.

9 MS. HASTINGS: Right. Only -- I mean I meant
10 retroactively if it's -- if they pled after, even if the --
11 his argument at the time was that the offense occurred
12 before the statute was enacted. But he pled after.

13 THE COURT: Well, is there a reason I should not grant
14 this application? Tell me.

15 MS. HASTINGS: Your Honor, the State would show that --
16 or would argue that it only deals with the allegations that
17 is brought forth to it, you know.

18 THE COURT: Think about it this way. It was an Alford
19 plea. He was to accept conviction without admitting guilt
20 with the understanding that the penalty would not include
21 electronic monitoring. Is that a free and voluntary entry
22 of a guilty plea? That's all we're talking about. I'm not
23 going to retry the case whether he's guilty or not. But the
24 laws were changing back in those days. It was difficult to
25 keep up with. I'm not trying to throw -- cast dispersions

1 anywhere.

2 MS. HASTINGS: Well, this plea was October 9, 2013.

3 This charge is ---

4 THE COURT: He pled -- he ---

5 MS. HASTINGS: Well, he pled to the lesser included.

6 THE COURT: But we're not, you know, sure what he pled
7 to because the sentencing sheet's so confusing. There are
8 multiple problems with this.

9 MS. HASTINGS: So if you go by with what he was
10 charged, of course it would be electronic monitoring as the
11 statute -- as just this law reads, but I -- to be honest,
12 I'm not sure what assault with intent to commit criminal
13 sexual conduct requires.

14 THE COURT: The same penalty.

15 MS. HASTINGS: Then I would agree with you, Your Honor.
16 It was not voluntary.

17 RULING BY THE COURT

18 THE COURT: I'm not trying to force that out of you.
19 But I'm going to grant your application. Bring it back.
20 And, you know, you're going to be facing all the original
21 charges that you were. I'm going to vacate -- while we're
22 doing it, make the two -- how much time has he done on
23 the ---

24 APPLICANT BRIGGS: Four years.

25 THE COURT: You've done four years?

1 APPLICANT BRIGGS: Yes, sir.

2 THE COURT: On the breast-feeding I guess will require
3 -- I mean, that's got to be vacated, too. That's just an
4 inappropriate charge. It's really more as a clerical error,
5 but we need to get these things right.

6 All right. Are you going to prepare the order?

7 MR. THOMAS: Yes, Your Honor. Be glad to.

8 THE COURT: Share it with your adversary ---

9 MR. THOMAS: Yes, sir.

10 THE COURT: --- and then send it on. Okay.

11 MR. THOMAS: Thank you, Your Honor.

12 THE COURT: All right, Mr. Briggs.

13 APPLICANT BRIGGS: Thank you.

14 THE COURT: Well, you're welcome. Good luck to you.

15 (WHEREUPON, proceedings concluded at 11:37 a.m.)

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1
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3 CERTIFICATE OF REPORTER

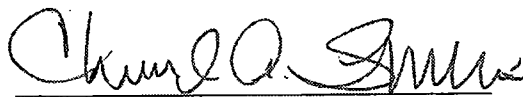
4 STATE OF SOUTH CAROLINA)

5 COUNTY OF GREENVILLE)
6

7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South Carolina,
9 do hereby certify that the foregoing is a true, accurate and
10 complete Transcript of Record of the proceedings had and
11 evidence introduced in the trial of the captioned case,
12 relative to appeal, in the Court of Common Pleas for
13 Spartanburg County, South Carolina, on the 2nd day of
14 February, 2017.

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

17
18 May 30, 2017
19

20
21 
22

23 Cheryl A. Smith, CVR-M

24 Court Reporter
25

STATE OF SOUTH CAROLINA)
COUNT OF SPARTANBURG)
Anthony D. Briggs #267080)
Applicant,)
Vs.)
State of South Carolina,)
Respondent.)

THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-42-3214

AMENDED
ORDER OF DISMISSAL
WITH PREJUDICE

FILED
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SPARTANBURG COUNTY
2017 SEP 11 AM 10:13
M. HOPE BLACKLEY

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), SCRCF, 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.

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.

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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.

Applicant testified that he was given several different plea offers. The first offer was for 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

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 minor'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)

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,

Indecent exposure; breastfeeding.

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(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 does not apply to a woman who breastfeeds 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.

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 Alford plea was involuntary because Counsel's advice was incorrect and there was a reasonable probability that

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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 monitoring upon his release other than Applicant's own testimony that "Corrections" 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

Quill, South Carolina

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 2017 SEP 11 AM 10:13
 M. HOPE BLACKLEY

WITNESSES

Spartanburg County Sheriff's Office

[Signature]

ARREST WARRANT NUMBER

N157772

ACTION OF GRAND JURY

[Signature]

True Bill

AUG 2 3 2012

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. -

12-GS-42-411
The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 27 2012

TERM

THE STATE

vs.

Anthony Darnell Briggs

Indictment for

**CRIMINAL SEXUAL CONDUCT
W/MINOR, FIRST DEGREE**

SC Code: 16-03-0655(1)

CDR Code: 0385

Class FEL-C(V)

FILED
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SPARTANBURG COUNTY
2012 AUG 30 PM 3:30
M. HOPE CLARKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on AUG 23 2012, the

Grand Jurors of Spartanburg County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

That Anthony Darnell Briggs, did in Spartanburg County, between the dates of November 15, 2011 and February 16, 2012, commit the crime of Criminal Sexual Conduct with a minor, in that the defendant did commit a sexual battery upon the minor [REDACTED], who was under eleven (11) years of age at the time of the said incident. Said incident occurred in Spartanburg County, South Carolina, in violation of §16-03-655 (1), *CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

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

Hillary C. Wellon
ASSISTANT SOLICITOR