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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Orangeburg County

Honorable D. Craig Brown, Circuit Court Judge

IZELL D. HAIR,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000039

APPENDIX

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1 ASST. SOL. CORNWELL: The State calls Izell Hair. May
2 it please the Court, Your Honor? Before you is Izell Hair.
3 He is with his attorney, Belinda Davis-Branch, to plead
4 guilty to criminal sexual conduct with a minor, second
5 degree. That was originally charged as criminal sexual
6 conduct with a minor, first degree. The State is allowing
7 him to plead as a second degree offense. It is an open
8 plea. The State will be making its requests regarding
9 sentencing during mitigation.

10 THE COURT: All right. Please swear the defendant.

11 (Whereupon, the defendant, Izell Hair, is duly sworn.)

12 THE COURT: Ms. Cornwell, the criminal sexual conduct
13 with a minor, second, carries zero to twenty years?

14 ASST. SOL. CORNWELL: Up to 20 years, Your Honor. It
15 also has the GPS monitoring that's a lifetime monitoring.
16 With CSC, second, it is left up to the discretion of the
17 judge whether or not you want to include that in your
18 sentencing.

19 THE COURT: It's also a violent offense?

20 ASST. SOL. CORNWELL: It's violent, most serious, and
21 it is subjected to the sexually violent predator act.

22 THE COURT: All right. You represent Mr. Hair?

23 MS. DAVIS-BRANCH: Yes, sir, I do.

24 THE COURT: Have you had an opportunity to meet with
25 him and review with him the evidence that the State has

1 against him regarding this charge that originated, it says,
2 January 1st, 2014 to January 5th, 2015?

3 MS. DAVIS-BRANCH: Yes, Your Honor.

4 THE COURT: Have you explained the law to him?

5 MS. DAVIS-BRANCH: I have.

6 THE COURT: Have you advised him of his constitutional
7 rights?

8 MS. DAVIS-BRANCH: Yes, Your Honor.

9 THE COURT: Originally, the indictment I have was
10 prepared for criminal sexual conduct with a minor, a victim
11 under 11 years of age, first degree, and I see he is waiving
12 presentment of this to the grand jury based on a plea to
13 criminal sexual conduct with a minor, second?

14 MS. DAVIS-BRANCH: Yes, Your Honor.

15 THE COURT: Based on your conversations with him, do
16 you believe he understands the seriousness of the charges
17 facing him?

18 MS. DAVIS-BRANCH: Yes, I do, Your Honor.

19 THE COURT: And at some point, have you explained to
20 him that by pleading guilty to CSC with a minor, second,
21 this is still a violent, most serious offense, and counts as
22 a strike against him?

23 MS. DAVIS-BRANCH: Yes, Your Honor.

24 THE COURT: Have you advised him that if he ever had
25 another violent and most serious offense, he's facing life

1 without possibility of parole?

2 MS. DAVIS-BRANCH: Yes, Your Honor, he knows that.

3 THE COURT: Based on your conversations with him, do
4 you believe it's in his best interests to go forward and
5 plead to this charge?

6 MS. DAVIS-BRANCH: Yes, Your Honor.

7 THE COURT: I believe you mentioned to me that he's
8 going to plead under North Carolina v. Alford?

9 MS. DAVIS-BRANCH: That's correct, Your Honor.

10 THE COURT: Okay. He understands and you've explained
11 to him that he may be pleading under North Carolina v.
12 Alford and it's still just like a guilty plea?

13 MS. DAVIS-BRANCH: Yes, Your Honor.

14 THE COURT: Okay. The only thing he's telling me is he
15 wants to take advantage of the plea opportunity and
16 hopefully get some consideration by the State and the Court
17 of not going through a trial?

18 MS. DAVIS-BRANCH: That's correct, Your Honor.

19 THE COURT: Mr. Hair, my sentencing sheet says you are
20 29 years old; is that correct?

21 MR. HAIR: Yes, sir.

22 THE COURT: Okay. And Mr. Hair, tell me, how far did
23 you go in school?

24 MR. HAIR: Tenth grade.

25 THE COURT: Where were you going to school?

1 MR. HAIR: Edisto High School.

2 THE COURT: And why did you stop going to Edisto in the
3 10th grade?

4 MR. HAIR: I went to job corps.

5 THE COURT: And did you get your GED?

6 MR. HAIR: No, sir.

7 THE COURT: Before you got arrested, were you working
8 somewhere?

9 MR. HAIR: Yes, sir.

10 THE COURT: Where were you working?

11 MR. HAIR: Denmark Lumber.

12 THE COURT: And how long had you been at Denmark
13 Lumber?

14 MR. HAIR: Five month, seven months, six to seven
15 months.

16 THE COURT: Okay. And what were you doing at Denmark
17 Lumber?

18 MR. HAIR: Taking out the bad wood and placing them in
19 the right pallets.

20 THE COURT: Okay. Where did you work before you worked
21 at Denmark Lumber?

22 MR. HAIR: Burger King.

23 THE COURT: What did you do at Burger King?

24 MR. HAIR: Cooked.

25 THE COURT: Where did you learn to cook?

1 MR. HAIR: In training at Burger King.

2 THE COURT: Okay. Mr. Hair, have you ever been treated
3 for any mental health issues?

4 MR. HAIR: No, sir.

5 THE COURT: Have you ever been treated for any drug or
6 alcohol abuse or dependency?

7 MR. HAIR: No, sir.

8 THE COURT: Are you taking any prescription medication?

9 MR. HAIR: High blood pressure.

10 THE COURT: Okay. Today, are you under the influence
11 of any alcohol or illegal drugs?

12 MR. HAIR: No, sir.

13 THE COURT: Does the high blood pressure medicine
14 affect your ability to understand what you are doing here?

15 MR. HAIR: No, sir.

16 THE COURT: You're thinking clearly?

17 MR. HAIR: Yes, sir.

18 THE COURT: You know exactly what you're doing?

19 MR. HAIR: Yes, sir.

20 THE COURT: And one reason you know exactly what you're
21 doing is you have met with your attorney and she has
22 reviewed with you the evidence that the State has against
23 you regarding the criminal sexual conduct charge that goes
24 basically from the year of 2014; is that correct?

25 MR. HAIR: Yes, sir.

1 THE COURT: Okay. And the victim in this is [REDACTED]

2 [REDACTED].

3 MR. HAIR: [REDACTED]

4 THE COURT: Say it again.

5 MR. HAIR: [REDACTED]

6 THE COURT: [REDACTED]. And she has also explained to
7 you the law that applies in this situation and made you
8 aware of the fact that you are facing up to 20 years in jail
9 by pleading guilty to criminal sexual conduct with a minor,
10 second degree, do you understand that?

11 MR. HAIR: Yes, I do.

12 THE COURT: And I understand you are pleading under
13 North Carolina v. Alford?

14 MR. HAIR: Yes, sir.

15 THE COURT: And what you are telling me by that is that
16 in reviewing the evidence that the State has against you
17 with the law, you realize that if you go to trial there's a
18 substantial likelihood that you are going to be found
19 guilty; is that correct?

20 MR. HAIR: Yes, sir.

21 THE COURT: I'm assuming one reason you are doing this
22 is because you don't want to put the child through the
23 trial, but I'm assuming the other one is you hope to get
24 some benefit by pleading guilty rather than going through
25 trial; is that correct?

1 MR. HAIR: Yes, sir.

2 THE COURT: All right. Now, have you understood
3 everything Ms. Davis-Branch has told you?

4 MR. HAIR: Yes, sir.

5 THE COURT: Has she answered all of your questions?

6 MR. HAIR: Yes, sir.

7 THE COURT: Are you satisfied with her services as your
8 attorney?

9 MR. HAIR: Yes, sir.

10 THE COURT: I know she explained to you your
11 constitutional rights, one of which is you have a right to
12 have a jury trial on this charge. Do you want a jury trial
13 on this charge?

14 MR. HAIR: No, sir.

15 THE COURT: You want to go forward with this guilty
16 plea?

17 MR. HAIR: Yes, sir.

18 THE COURT: You understand if you plead guilty to this
19 charge under North Carolina v. Alford you give up your right
20 to remain silent, you give up your right to present any
21 defenses you may have to this charge, and you give up your
22 right to cross examine witnesses and present witnesses, and
23 you give up the right to require that the State can prove
24 you are guilty beyond a reasonable doubt at a trial; do you
25 understand all of that?

1 MR. HAIR: Yes, sir.

2 THE COURT: And you wish to give up those rights?

3 MR. HAIR: Yes, sir.

4 THE COURT: Now, you understand by pleading guilty to
5 this charge, you are facing up to 20 years in jail?

6 MR. HAIR: Yes, sir.

7 THE COURT: You understand that -- well, has anybody
8 promised you anything to get you to plead guilty here today?

9 MR. HAIR: No, sir.

10 THE COURT: Has anybody threatened you or forced you in
11 any way to get you to plead guilty here today?

12 MR. HAIR: No, sir.

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

14 MR. HAIR: Yes, sir.

15 THE COURT: You know exactly what you're doing?

16 MR. HAIR: Yes, sir.

17 THE COURT: And you think it's in your best interest to
18 go forward and resolve this matter?

19 MR. HAIR: Yes, sir.

20 THE COURT: Okay. Ms. Cornwell?

21 ASST. SOL. CORNWELL: Thank you, Your Honor. May it
22 please the Court? For purposes of the record, there was a
23 question of whether or not he is competent to stand trial.
24 A competency medical evaluation was done. That evaluation
25 came back that he was competent to stand trial.

1 THE COURT: Okay. And before you go forward with that,
2 Ms. Davis-Branch, have you received a copy of this?

3 MS. DAVIS-BRANCH: Yes. The solicitor did provide me
4 with a copy.

5 THE COURT: Okay. And you don't have any conflicting
6 evidence?

7 MS. DAVIS-BRANCH: No, I do not.

8 THE COURT: And you agree?

9 MS. DAVIS-BRANCH: Yes.

10 THE COURT: Okay. I'm going to make this evaluation by
11 Dr. Court's Exhibit One.

12 (Court Exhibit Number One, Mental Health Evaluation, is
13 received into evidence.)

14 ASST. SOL. CORNWELL: Thank you, Your Honor. This
15 incident occurred between January 1st, 2014 and January 4th
16 of 2015. On January 4th of 2015, officers responded to the
17 Orangeburg area of Orangeburg County in reference to a
18 sexual assault on a minor. The minor in this case was
19 **MINOR VICTIM**, which is this defendant's biological daughter.
20 She was seven years old at the time. The officers met with
21 the victim's mother who stated that her son, **MINOR**,
22 who is age six years old, came to her and told her, "Daddy
23 be making **MINOR VICTIM** suck his thing." When the mother asked the
24 victim about it, the victim said the same thing.

25 The victim's mother then asked the victim to show her

1 what she meant using her finger. At that time, the victim
2 took her mother's finger and began sucking on it, moving her
3 mouth up and down the mother's finger. The victim said,
4 "That's what daddy makes me do." The victim's mother also
5 said that the victim said that daddy also puts his thing in
6 my butt and it hurts me. The officer asked the victim how
7 many times this had happened, and the victim said that it
8 happened many times. The victim's mother said that the only
9 time this could have happened were when the children were
10 spending the night at their father's house.

11 A forensic interview was done on the child. During the
12 forensic interview, the victim did disclose that the
13 defendant "put his wee-wee in her butt several times" in
14 several locations of the house. She identified the house,
15 the locations in the house, and then she said that her
16 brother had seen it one night. I believe that was the night
17 where the children were all in a room, supposedly asleep,
18 and the brother has indicated that his dad thought he was
19 asleep, but he was not asleep, and that's when he woke up
20 and saw what **MINOR VICTIM** was doing with her dad.

21 There is also in this case, allegations of this
22 defendant doing this to another child of his. The State,
23 because it is an Alford plea, if this case were to go to
24 trial, the State would be prepared to present witnesses in
25 the form of the victim, **MINOR VICTIM**, who is seven years old,

1 who has disclosed anal penetration, as well as the oral.
2 There is also another daughter, MINOR VICTIM, that also
3 disclosed the same thing. MINOR VICTIM is around the same age;
4 I believe MINOR VICTIM is six years old. She stated that it was
5 also in her rear-end, as well as her mouth. No vaginal
6 penetration was ever alleged.

7 The State would also present MINOR, the victim's
8 brother, who was the witness, to all state that this
9 occurred. Given the facts of this case, Your Honor, as well
10 as the prior record, which I will go into, the State does
11 feel like a maximum sentence is appropriate. If Mr. Hair
12 was going to go to trial on this, he would have been facing
13 a CSC with a minor under 11 in the first degree. That
14 carries a mandatory minimum of 25 years up to life. The
15 State made it clear on the record in the last term of Court
16 that should he be found guilty, we would have been asking
17 for a life sentence in this case.

18 His prior record, I think, reflects a lot of this and
19 the reasoning behind the life punishment and why we were
20 asking for a maximum sentence on the second degree offense.
21 He's got a 2004 assault and battery of a high and aggravated
22 nature. That was originally charged CSC with a minor in the
23 second degree. In that case, which he pled guilty to, he
24 admitted having sex with a 14 year old.

25 After that, he had a couple of drug possessions. He

1 had in 2007, two counts of marijuana, one count of cocaine
2 base. He has a 2009 shoplifting. 2010 false information to
3 police. 2011 burglary second and two counts of burglary
4 third. A 2013 shoplifting. It also looks like he also had
5 a tampering with a vehicle and petty larceny for back in
6 2010.

7 In addition to this charge, which is the CSC with a
8 minor, he was also arrested and charged with indecent
9 exposure. The date of that offense was October 23rd, 2014.
10 The State is dismissing that case as part of this plea,
11 however, I do think the facts of the case also go into the
12 reasons the State is asking for a maximum sentence.

13 In that case, he is alleged to have been masturbating
14 in a Dodge dealership parking lot. There is video of this
15 that the officer saw that the manager of the Dodge
16 dealership tried to make a copy of. We have the CD's.
17 However, I think the viewing of them, based on the program,
18 has been difficult, which is why we are going to dismiss
19 that as part of this plea. However, I do believe that it
20 goes to a sexual deviancy.

21 Additionally, with that, there is a Family Court
22 hearing regarding this case. When the DSS social worker
23 went to meet with Mr. Hair regarding that family court case,
24 she informed our office, as well as the jail, that during
25 that meeting, Mr. Hair, again, dropped his pants, pulled his

1 penis out, and began, in her words, shaking it at her.

2 I think all of this goes to the defendant's state of
3 mind, to a sexual deviancy, coupled with the charge of 2004,
4 and the fact that two children have disclosed since then,
5 one being **MINOR VICTIM**, which he is pleading guilty to, the
6 State thinks that 20 years is the appropriate sentence in
7 this case.

8 THE COURT: All right. Mr. Hair, you've heard what the
9 solicitor has told me about the circumstances that led to
10 your arrest?

11 MR. HAIR: Uh-huh (affirmative), yes, sir.

12 THE COURT: And she told me about your prior record.
13 Any corrections that I need to know about as far as his
14 prior record? MR. HAIR: At the time when I was -- when I
15 had that charge, I was 17 and the victim was 14. So when
16 she turned 15, because her birthday in August, too, her
17 birthday come before mine, she turned 15 and that's when I
18 turned 18. Her aunt pressed charges on me for the sexual
19 conduct, and I ---

20 THE COURT: That was an ABHAN charge from '04?

21 MR. HAIR: That's what I'm talking about.

22 THE COURT: Okay.

23 MR. HAIR: And her aunt is the one who pressed charges
24 on me. It wasn't her moma. Her moma was cool with it,
25 because we was young at the time. We both were minors.

1 THE COURT: Okay. That's the only correction you need
2 to make?

3 MR. HAIR: Yes, sir.

4 THE COURT: The part that Ms. Ashley Cornwell is
5 talking about with my other daughter or whatever she is
6 talking about ---

7 THE COURT: I'm not asking about that. I'm asking you
8 about your prior convictions.

9 MR. HAIR: Oh, no, sir.

10 THE COURT: Okay. Is he on probation?

11 PROBATION AGENT: Yes, sir. We have him for burglary
12 second, non-violent. He was sentenced in Calhoun County on
13 June 30th, 2011. He has a sentence of 10 years, upon the
14 service of three years and 18 months probation. It began
15 November 12th of 2012 and was set to end November 11th of
16 2015. His case is currently open because of a citation that
17 was served in 2015 with regards to his case. He does owe
18 restitution in this case of \$490, as well as fines and fees.

19 THE COURT: Okay. And you said it was due to end when?

20 PROBATION AGENT: It was subsequently due to end on
21 February 11, 2015.

22 THE COURT: Did he report at all?

23 AGENT: I need to look.

24 THE COURT: Okay.

25 ASST. SOL. CORNWELL: And Your Honor, while she is

1 looking that up, I forgot to mention that in addition to
2 asking for 20 years, we are asking for the lifetime
3 monitoring.

4 THE COURT: Okay.

5 AGENT: Your Honor, it looks as if he did, Your Honor,
6 up until his last report -- it was November 17th of 2014.

7 THE COURT: Okay. Sir, were you arrested in November
8 of 2014?

9 MR. HAIR: No, sir.

10 ASST. SOL. CORNWELL: He was arrested January 2015.

11 MR. HAIR: No, sir, in January of 2015.

12 THE COURT: And you've been in jail ever since?

13 MR. HAIR: Yes, sir.

14 THE COURT: All right. Mr. Hair, you heard what the
15 solicitor told me about the circumstances that led to your
16 arrest?

17 MR. HAIR: Yes, sir.

18 THE COURT: And it's my understanding that based upon
19 the evidence that the State is prepared to present and based
20 upon the law as it now stands as far as the circumstances
21 and the evidence that the State has, you believe that if you
22 went to trial there is a substantial likelihood that you
23 would be found guilty; is that correct?

24 MR. HAIR: Yes, sir.

25 THE COURT: Okay. So you want to go forward and take

1 advantage of any plea opportunity in the hopes of saving
2 some time; is that right?

3 MR. HAIR: Yes, sir.

4 THE COURT: Okay. So as to the charge of criminal
5 sexual conduct with a minor, victim under 16 years of age,
6 so it's a second degree charge, are you pleading guilty
7 under North Carolina v. Alford to that charge?

8 MR. HAIR: Yes, sir.

9 THE COURT: Okay. And Mr. Hair, you understand about
10 pleading guilty to this charge, it will be a conviction on
11 your record?

12 MR. HAIR: Yes, sir.

13 THE COURT: You understand that you have 10 days from
14 today's date to appeal my sentence?

15 MR. HAIR: Yes, sir.

16 THE COURT: Do you want me to accept your guilty plea?

17 MR. HAIR: Yes, sir.

18 THE COURT: Mr. Hair, I find your decision to plead
19 guilty is freely, voluntarily, knowingly and intelligently
20 made. I find that you've had the advice and counsel of a
21 competent attorney. I find you are satisfied with the
22 services of your lawyer. I find there is a factual basis on
23 which to base your guilty plea. And I also find that based
24 upon the information that the State has given me about the
25 evidence that they would present at trial, I do believe that

1 if you went to trial, there is a substantial likelihood that
2 you would be convicted at trial. So I believe that you have
3 made a reasonable decision to plead in this matter to the
4 lesser charge. Do you understand that?

5 MR. HAIR: Yes, sir.

6 THE COURT: Okay. And I am going to accept your guilty
7 plea under North Carolina v. Alford. All right, Ms. Davis-
8 Branch?

9 MS. DAVIS-BRANCH: Thank you, Your Honor. As the facts
10 have been indicated by Ms. Ashley Cornwell, my client is
11 certainly not a choir boy, but there are some redeeming
12 factors about him. And one redeeming fact, Your Honor, is
13 the fact that he is young, 29, with the rest of his life
14 ahead of him. A second factor, Your Honor, is he is the
15 father of seven children, and while there may be allegations
16 relative to the criminal sexual conduct, he loves his kids
17 and I have seen the love coming from the children back to
18 him.

19 Standing behind me is his brother, Latroy Hair, who may
20 or may not want to say something on his brother's behalf.
21 Your Honor, there have been many people who drop out of high
22 school and who have become successful, so I am not
23 suggesting to you the fact that he dropped out of high
24 school is the reason why we are standing before you. Izell
25 is one person who needed to complete high school. I think if

1 he had finished high school, he would be in a lot better
2 shape than he is today and with all the things that are
3 contained on his record.

4 Secondly, Your Honor, he was married to his wife who
5 died at a very young age. She passed in 2014. They were
6 married for seven years, and I think that's where a lot of
7 Izell's problems began when he began to get in trouble. He
8 still thinks about her a great deal and has not been able to
9 fully function without her since her death.

10 Your Honor, at the time that he was arrested, he was
11 arrested and has been in jail for a year and a half I
12 believe. And one other thing I wanted to share with you,
13 Your Honor, is the fact that under North Carolina v. Alford,
14 as you explained to him, there's just so much against him
15 and we've talked about it back and forth as to whether or
16 not he should plea or not plea, and I did not want him to
17 take the risk -- although it is his decision, I do believe
18 that this jury would have found him guilty.

19 But I want to share with you the fact that one of the
20 dates, even though Ms. Ashley said the allegation was from a
21 year, one of the dates in the paperwork that was presented
22 to me by the solicitor was that the incident occurred in the
23 last weekend in December of 2014. Your Honor, my client at
24 the time was in Charlotte, North Carolina, and had we gone
25 to trial, we would have used Mr. Latroy Hair as a witness,

1 as well as his brother and the brother's wife as a witness.
2 They were prepared to come forward to indicate that Izell
3 was with them in North Carolina, but again, there was other
4 evidence against him and I didn't think that would be
5 sufficient to sway the jury. So I'm glad he made the
6 decision that he did.

7 And as far as the monitor is concerned, Your Honor, we
8 would just like to remind the Court that the Sexually
9 Violent Predator Act kicks in six months before the person
10 is ready to be released from incarceration and the question
11 at that time is, is there probable cause that the inmate has
12 a mental abnormality that he is likely to commit the crime
13 again for whatever crime it was. So he will be subject to
14 that, and if the Court finds that there is probable cause,
15 he will have to go into a program and that program will
16 probably last from four to five -- maybe, he could be there
17 for the rest of his life.

18 Secondly, Your Honor, he is going to have to register
19 as a sexual registry. Which means, everywhere you go, the
20 law enforcement people will know where you are. Those two
21 reasons should be sufficient enough that he shouldn't have
22 to wear a monitor, because he is already going to be
23 constrained twice already. Once he serves his time, pays
24 his debt to society, he has to go into another program and
25 he will also continuously register sexual registers.

1 So we're asking Your Honor for a sentence of 10 years,
2 if the Court would see so, and perhaps maybe the Court would
3 see a suspended sentence. We just want you to take into
4 consideration that he is young, 29 years old, hasn't been a
5 choir boy, but he needs to be able to spend some time with
6 his children who will probably be adults or at least young
7 adults when he graduates (sic). I'm not sure whether or not
8 his family wants to say anything. They can if they want. I
9 think his brother is uncomfortable with speaking, so he will
10 pass on that. I hope I haven't missed anything, and if I
11 did, Your Honor, please charge me and not my client for my
12 presentation of him.

13 THE COURT: Thank you, ma'am. I appreciate it. Do you
14 have the date he was arrested?

15 ASST. SOL. CORNWELL: He did bond out on the indecent
16 exposure charge, so he was arrested on this charge on
17 January 22nd, 2015, and bond was denied at that time. He
18 has been in since that time. He has been in over a year and
19 a half.

20 THE COURT: Mr. Hair, the sentence of this Court is you
21 are committed to the State Department of Corrections for a
22 period of 18 years. I give you credit for the time you have
23 served since January 22nd, 2015. I'm noting on the Order
24 that you will be reporting on the sex offender registry and
25 requiring GPS monitoring. Thank you, sir.

26

FORM 5

STATE OF SOUTH CAROLINA)
)
 County of Orangeburg)
)
IZELL D. HAIR # 211486)
 Full name and prison number (if any) of Applicant)

v.

State of South Carolina)
)
)
)

IN THE COURT OF COMMON PLEAS
2017 CP 3800032

APPLICATION
 POST-CONVICTION RELIEF
 S.C. Code Ann. §

FILED FOR RECORD
 WINNIE B. CLARK
 2017 JAN 19 2 52
 CLERK OF COURT
 ORANGEBURG, SC

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 McCormick Corr. Inst. 386 Redemption Way
McCormick, S.C. 29899
2. Name and location of Court which imposed sentence Orangeburg Court at
General Session, P.O. Box 1949, Orangeburg, S.C. 29116
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015-GJ-38-00370 - 18 years Criminal Sexual
 - (b) Conduct 2nd

(9) _____
5. The date upon which sentence was imposed and the terms of the sentence:

- (a) August 11, 2016
- (b) _____
- (c) _____

6. Check whether a finding of guilty was made:

- after a plea of guilty North Carolina v. Alford
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes

8. If you answered "yes" to (7), list:

- (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeal
 - ii. _____
 - iii. _____

- (b) the result in each such Court to which you appealed:
 - i. Dismissed
 - ii. _____
 - iii. _____

- (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____

- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. Appellate Case No. 2016-001712
 - ii. _____
 - iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) Was not ripe for review
- (b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: The plea in this case was ignorant because:

- (a) ineffective assistance of counsel, lack of counsel,
- (b) misadvice, failure to share or explain the evidence,
- (c) Failure to interview exculpatory witnesses - - -

11. State concisely and in the same order the facts which support each of the grounds set out in (10): To extensive for the spot, see next page

- (a) This case does arise out of a North Carolina
- (b) v. Alford guilty plea to criminal sexual
- (c) conduct and, 12 years - The claim is IACB - - -

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

- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

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

This case does arise out of a North Carolina v. Alford guilty plea to criminal sexual conduct 2nd, 18 years. The claim is ineffectiveness of counsel, lack of communication, failure to share or explain the evidence, failure to interview witnesses, particularly a witness that may have been exculpatory in this particular case, not following through with a trial.

An interesting thing in this case is that in Ms. Belinda Davis Branch, Esquire (Branch) examination relied, there is no confession without the benefit of the evidence has been Branch advising him of the value of the evidence at trial, there was no other evidence other than what Ms. Branch indicated was his understanding of the evidence as interpreted by the state, which is kind of interesting. Applicant (Hair) would argue that Ms. Branch was ineffective and that it prejudiced his case. There is a lack of foundation, underlying foundation to the charge of ESC, based on the evidence. Applicant relied on Ms. Branch to interpret that evidence and give him an intelligent platform from which to make a decision. Certainly there was a decision made in this case. The question is whether or not Ms. Branch afforded him a platform to make that decision before he stood up in front of the bench.

The plea in this particular case was ignorant because of the admitted lack of communication and also because Ms. Branch is telling him what the

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CLERK OF COURT
BRANFORD, SC

evidence is in this case but Mrs. Branch is going on the interpretation by the State of what the evidence is and not even analyzing it for herself. Applicant find that kind of interesting in this particular case because, Applicant know it's not the same standard, but in a civil case if a counselor represented a client and counsel didn't call them after 26 phone calls, and counsel only called them a couple times and if counsel had relied on what the defense told her about what the evidence was — that Applicant "did not cause the accident" and have the case dropped, counselor would be brought, if they found out what Applicant said was true — counselor Branch would be brought up for malpractice.

There is an element of ignorance in this case leading up to the plea because of the way Mrs. Branch handled this case and admittedly she is an experienced defense lawyer handling a lot of cases and the claim in this particular case, the evidence is clear she did not give Applicant a chance because she didn't give the case the time it needed. We're dealing with a CSC charge, This isn't a case of petty larceny. Applicant contends she relied on the State's interpretation. It certainly is due its independent analysis, test that evidence and not rely on what the solicitor says they have.

If there was any confession, then, appears to be basically a springboard for some determination, that the State had determined at the very least

Applicant was guilty, before he even pled or get in its mind the Applicant is guilty without even testing the evidence, though. And the claimant would argue and ask the Court to review this evidence and agree that Mrs. Branch was not only ineffectual, but her ineffectiveness in helping Applicant make a knowing decision before he pled guilty before a judge, that that prejudiced his case.

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

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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?

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) _____
 (b) _____
 (c) _____

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

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

no

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. Belinda Davis Branch, Esquire

 ii. Pro-se no

 iii. _____

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

- i. Arraignment

 ii. Appeal

 iii. _____

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

Reverse, vacate and Demand for a New trial.
As an alternative vacated sentence and conviction.

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

NO.

STATE OF SOUTH CAROLINA)
County of Orangeburg)

VERIFICATION

I, Izell D. Hair, 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.

Izell D. Hair

SWORN to and subscribed before me this 28 day of November, 2016.

J. Franklin (L.S.)
Notary Public

My Commission Expires: 12-16-2019

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

I, Izell D. Hair, 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.

Izell D. Hair
Applicant

SWORN or affirmed to and subscribed before me this

28 day of November, 2016.

J. Franklin
Notary Public

My Commission Expires: 12.16.2019

FILED FOR RECORD
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2017 JAN - 9 P 2:52
CLERK OF COURT
ORANGEBURG, SC

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	IN THE FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG)	
)	
Izell D. Hair, #311486,)	Case No.: 2017-CP-38-0032
)	
Applicant,)	
)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	

Respondent, making its Return to the application for Post-Conviction Relief ("PCR") filed on January 9, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. On August 11, 2016, Applicant waived presentment to the grand jury and pled guilty to second-degree criminal sexual conduct with a minor (2015-GS-38-0370) before the Honorable Edgar W. Dickson. Applicant pled guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). Applicant was originally charged with first-degree criminal sexual conduct with a minor arising from incidents between January 2014 and January 2015 in which Applicant sexually penetrated his daughter, under the age of eleven years old, anally and orally. The State was also prepared to show Applicant also sexually penetrated another of his daughters, also under the age of eleven, anally and orally. (Tr. p. 11, ll. 14-25 – p. 13, ll. 1-6). Belinda Davis-Branch, Esquire, represented Applicant. Assistant Solicitor Ashley Cornwell, Esquire, prosecuted the case. On August 11, 2016, Judge Dickson sentenced Applicant to imprisonment for eighteen years, required Applicant to register as a sex offender, and required GPS monitoring.

Applicant filed a timely notice of appeal from his guilty plea. The South Carolina Court of Appeals dismissed Applicant's appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR, by order filed October 26, 2016. The remittitur was returned to the circuit court on November 14, 2016.

Attached to this Return and incorporated by reference are the records of the Orangeburg County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the plea transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

- I. Ineffective assistance of counsel
 - a. "Lack of communication."
 - b. "Failure to share or explain the evidence."
 - c. "Failure to interview exculpatory witnesses."
 - d. "Not following through with a trial."
 - e. "The plea in this particular case was ignorant because of the admitted lack of communication and because Plea Counsel is telling [Applicant] what the evidence is in this case, but Plea Counsel is going on the interpretation by the State of what the evidence is and not analyzing it for herself."

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having

produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

In this case, Applicant testified under oath at his plea hearing that he was satisfied with Plea Counsel’s services, understood everything Plea Counsel told him, and Plea Counsel had answered all of his questions. (Tr. p. 9, ll. 2-9). Applicant testified he knew exactly what he was doing, wished to waive his rights, and understood he was facing up to twenty years of incarceration. (Tr. p. 10, ll. 2-

16). The State was prepared to call three of Applicant's children to testify at trial about Applicant's sexual assault of two of his young daughters, and planned to seek a life sentence if Applicant proceeded to trial on his original first-degree criminal sexual conduct with a minor charge. (Tr. p. 12, ll. 21-25 – p. 13, ll. 1-17).

Respondent therefore submits Applicant can satisfy neither requirement of the Strickland test. Nevertheless, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also asserts his plea was entered in "ignorance." In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong,

but on whether that advice was within the range of competence demanded of attorneys in criminal cases.” *Id.* at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. *Dalton v. State*, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Boykin v. Alabama*, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both.” *Roddy v. State*, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, “[a] guilty plea is a solemn, judicial admission of the truth of the charges” against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *Dalton*, at 137–38, 654 S.E.2d at 874 (citing *Blackledge v. Allison*, 431 U.S. 63 (1977)). Therefore, admissions “made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” *Id.* (citing *Crawford v. United States*, 519 F.2d 347 (4th Cir. 1975); *Edmonds v. Lewis*, 546 F.2d 566 (4th Cir. 1976)). “In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing.” *Id.* at 138–39, 654 S.E.2d at 874 (citing *Wolfe v. State*, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. Nevertheless, allegations regarding the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an

evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

VI.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VII.

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

[Signature block on following page]

VIII.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel.

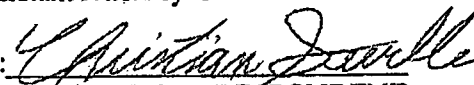
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

CHRISTIAN SAVILLE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

04/20, 2018

State of South Carolina)	In the Court of Common Pleas
)	First Judicial Circuit
County of Dorchester)	2017-CP-38-00032

Izell D. Hair,)
)
Plaintiff,)
)
vs.)
)
State of South Carolina,)
)
Defendant.)
)
)
)

October 3, 2018
St. George, South Carolina

B e f o r e:
The Honorable D. Craig Brown, Judge

A p p e a r a n c e s:
Jonathan Waller, Esquire
Attorney for the Plaintiff
Christian Saville, Esquire
Attorney for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

<u>WITNESS/DESCRIPTION</u>					<u>PAGE NO.</u>
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Mr. Saville		15			
	BELINDA DAVIS-BRANCH				
Mr. Saville	17				
Mr. Waller		22			
Closing Argument/Mr. Waller					25
Closing Argument/Mr. Saville					26
Decision by the Court					27
Certificate Page					28

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
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-- NO EXHIBITS ENTERED --

1 THE COURT: All right. Call your case, please.

2 MR. SAVILLE: Yes, Your Honor. This is the case of
3 *Izell D. Hair vs. the State of South Carolina*, docket No.
4 2017-Common Pleas-38-00032.

5 In August, 2016, Mr. Hair waived presentment to the
6 grand jury and pled guilty to second degree criminal
7 sexual conduct with a minor before the Honorable Edgar W.
8 Dickson. He pled guilty to *North Carolina vs. Alford*.

9 Mr. Hair was originally charged with first degree
10 criminal sexual conduct with a minor arising from
11 incidents, according to the indictment, between January,
12 2014 and January, 2015, for the sexual penetration of his
13 daughter, who was under the age of 11 years old, anally
14 and orally.

15 According to representations at the guilty plea, the
16 State was also prepared to show that he also sexually
17 penetrated another of his daughters under the age of 11
18 anally and orally.

19 Mr. Hair was represented by Belinda Davis-Branch,
20 Esquire; Assistant Solicitor Ashley Cornwell prosecuted
21 the case.

22 On August 11, 2016, Judge Dickson sentenced Mr. Hair
23 to imprisonment for 18 years, required him to register as
24 a sex offender, and required GPS monitoring.

25 Mr. Hair filed a timely notice of appeal from the

1 guilty plea. The Court of Appeals dismissed for failure
2 to provide a sufficient explanation. The remittitur was
3 returned on November 14, 2016.

4 Mr. Hair filed an application for PCR on January 9,
5 2017, alleging ineffective assistance of counsel for lack
6 of communication, failure to share or explain the
7 evidence, failure to interview exculpatory witnesses, not
8 following through with a trial, and also an allegation
9 that the plea was ignorant because of the lack of
10 communication and having to do with plea counsel's
11 communication of the evidence to Mr. Hair.

12 Mr. Hair is present in court today and represented by
13 Mr. Jonathan D. Waller, and I will hear from Mr. Waller.
14 Thank you.

15 THE COURT: Mr. Waller.

16 MR. WALLER: Thank you, Your Honor. Just for the
17 record, I've met with Mr. Hair on multiple occasions, and
18 he is aware that if -- if he is successful today, that --
19 that he will go back facing the criminal sexual conduct
20 with a minor first degree. Given the nature of the crime
21 and also his prior record, it would potentially subject
22 him a term of imprisonment for life without parole. We
23 have discussed that, and he does wish to go forward today.

24 So at this time, I would call Izell Hair.

25 THE COURT: Sir, if you'd come around and be sworn,

1 please.

2 CLERK OF COURT: Please state your full name for the
3 record.

4 THE WITNESS: Izell Dwayne Hair.

5 IZELL HAIR, having been first
6 duly sworn, testifies as follows:

7 THE COURT: Mr. Waller.

8 MR. WALLER: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. WALLER:

11 Q Good morning, Mr. Hair. How are you today?

12 A Fine.

13 Q All right. And Mr. Hair, as the judge told you, we
14 need you to speak up so the court reporter here can -- can
15 get down everything you say and everything, you know,
16 everybody in the courtroom says.

17 Mr. Hair, I want to take you back. When were you --
18 when you were first arrested on -- on these charges, okay,
19 what were you arrested for?

20 A CSC with a minor.

21 Q Okay. What degree, if you remember?

22 A First.

23 Q First degree. Okay. And did you have a bond
24 hearing?

25 A Yes, sir, the next following day.

DIRECT EXAMINATION BY MR. WALLER - IZELL HAIR 7

1 Q Okay. And was bond denied or -- or were you offered
2 a bond?

3 A It was denied.

4 Q Okay. And who was your lawyer on that charge?

5 A Douglas Mallard.

6 Q Okay. How -- did -- did he stay your lawyer?

7 A No, sir.

8 Q Okay. Did you get a different lawyer?

9 A Yes, sir.

10 Q All right. Who was -- who was your last lawyer?

11 A Ms. Belinda Davis-Branch.

12 Q Okay. How did she come to be your lawyer?

13 A I detained [sic] her from the county jail account.

14 Q Okay. All right. So you hired her to represent you.

15 A Yes, sir.

16 Q Okay. How many times you think you met with Ms.
17 Branch-Davis [sic]?

18 A Like maybe every month when I paid her.

19 Q Okay. You say every month, how long were you in the
20 detention center?

21 A Like -- least 18/19 months.

22 Q Okay. So did you meet with her 18/19 times or -- or
23 ...

24 A I only met her, like, several times. Maybe, like, at
25 least 4 -- 4, 5, maybe 6.

1 Q Okay. When you met with Ms. Branch-Davis, what did
2 y'all talk about?

3 A She asked me about the case.

4 Q Okay.

5 A And I tell her and I told her I had alibi witnesses.
6 I tell her I had lack of communication and comprehension
7 skills, and something about the mental health.

8 Q Okay. Now, you were evaluated at some point; is that
9 right?

10 A Yes, sir.

11 Q Okay. Do you -- do you recall the results of that
12 evaluation?

13 A They say I was competent, but when I detained Ms.
14 Branch, I didn't get no competency evaluation from her.

15 Q Okay. So you didn't have a private one done, just
16 one that was ordered by the Court?

17 A Yes, sir.

18 Q Okay. If you recall, when you were first arrested,
19 do you remember the allegations -- the specifics of the
20 allegations as far as when the incidents supposedly took
21 place?

22 A They say it supposedly took place on or about
23 December 13, 2014.

24 Q Okay. And that's what the arrest warrant said; is
25 that right?

DIRECT EXAMINATION BY MR. WALLER - IZELL HAIR

9

1 A Yes, sir.

2 Q Okay. When you went -- when you pled under *North*
3 *Carolina vs. Alford*, the State alleged some other
4 incidents. Do you remember that?

5 A The State said that between January the 1 -- January
6 2014 and January 2015. That's the only time when I heard
7 that on those dates ---

8 Q Okay.

9 A --- when I went to plea.

10 Q Okay. Did you and Ms. Branch-Davis [sic] have a
11 chance to discuss the -- the expansion of the dates?

12 A No, sir.

13 Q Okay. So when you went to court that day, what did
14 you think you -- you were pleading guilty for?

15 A I was pleading -- I can't -- I can't understand -- I
16 don't understand that question.

17 Q The -- the allegations against you, did you think
18 they were still the same as the warrant or did you know
19 that they had been expanded to last a whole year?

20 A No, I didn't know that they lasted a whole year.

21 Q Okay.

22 A It was just for the warrant.

23 Q Okay. And you were -- were present in the courtroom
24 when -- during the plea, obviously; is that right?

25 A Yes, sir.

DIRECT EXAMINATION BY MR. WALLER - IZELL HAIR 10

1 Q Okay. When the Solicitor went over the State's
2 version of the events, were -- were you listening and did
3 you understand what the State's version was?

4 A Sir?

5 Q When the State -- when the Solicitor went over what
6 they alleged took place, okay ---

7 A Uh-huh.

8 Q --- and they alleged that -- that it took place over
9 the course of many, many times, were you listening when
10 that took place?

11 A Yes, sir.

12 Q Okay. Did you say anything to Ms. Branch-Davis about
13 I thought it was only supposed to be one time?

14 A Huh?

15 Q When you pled --

16 A Uh-huh.

17 Q -- okay, did you realize the State had expanded the
18 time period?

19 A No, sir.

20 Q Okay. When you were handed a copy of the indictment
21 that had not been presented to the grand jury, did you
22 understand that -- that the time had been expanded?

23 A I never did receive the indictment to -- at the -- in
24 R&E, Kirkland R&E.

25 Q Okay. You never received a copy of it?

DIRECT EXAMINATION BY MR. WALLER - IZELL HAIR 11

1 A I never saw one, never --

2 Q Okay. All right. When you and Ms. -- I want to back
3 up a little bit. When you and Ms. Branch-Davis met, did
4 she go over your constitutional rights with you?

5 A No, sir.

6 Q Okay. Did y'all discuss your right to remain silent?

7 A No, sir.

8 Q Okay. Did you discuss your right to a jury trial?

9 A No, sir.

10 Q Did you discuss your right to challenge the evidence
11 the State may have against you?

12 A No, sir.

13 Q Okay. Did you discuss the -- your right to call
14 witnesses on your own behalf?

15 A Yeah. About the witnesses.

16 Q Okay. You said a minute ago you had -- you provided
17 her with some information about witnesses. Okay.

18 A (No audible response.)

19 Q Is that a yes?

20 A Yes, sir.

21 Q Okay. To your knowledge, did she do any
22 investigation as to those witnesses?

23 A To my knowledge, no, sir.

24 Q Okay. All right. Mr. May [sic], I want to -- I want
25 to ask you about the charge itself. Did y'all have a

1 chance to discuss the elements of the charge itself?

2 A What does "elements" mean?

3 Q What the State would have to -- to show the jury to
4 find -- for a jury to find you guilty, what the State
5 would have to prove.

6 A I can't recall.

7 Q Okay. Did y'all ever discuss going to trial?

8 A Yes, sir.

9 Q Okay. What did y'all talk about?

10 A I told her I had alibi witnesses and alibi statements
11 from when I was in North Carolina.

12 Q Okay. Did you tell her you wanted to go to trial?

13 A Yes, sir.

14 Q Okay. What changed? Why did you not go to trial?

15 A She said she thought it was in my best interest to go
16 ahead and plea.

17 Q Okay. And as far as you know, she had not followed
18 up with your alibi witnesses; is that right?

19 A As far as I'm concerned, no.

20 Q Okay. Well, let me ask it this way again: Why did
21 you ultimately plead?

22 A Because of my mother ---

23 Q Okay.

24 A --- she just told me go ahead and plead.

25 Q Okay.

DIRECT EXAMINATION BY MR. WALLER - IZELL HAIR 13

- 1 A And I feel like she wasn't doing her investigation --
- 2 Q Okay.
- 3 A -- on my case.
- 4 Q Okay. Was your case up for -- for trial, I mean, was
- 5 it -- was it going to be called soon?
- 6 A Yeah. It was supposed to be called on August th 23 -
- 7 --
- 8 Q Okay.
- 9 A --- of 2016.
- 10 Q Okay. So shortly after your plea.
- 11 A (No audible response.)
- 12 Q Is that a yes?
- 13 A Yes, sir.
- 14 Q Okay. You pled pursuant to *North Carolina vs.*
- 15 *Alford*. Did you understand what that meant?
- 16 A No, sir.
- 17 Q Okay.
- 18 A She told me -- she told me to plead to it.
- 19 Q Okay. Did you ask her what it meant?
- 20 A No, sir, not really.
- 21 Q Okay. Did you ask her about going to trial?
- 22 A Yes, sir.
- 23 Q Okay. After you decided to plead guilty or plea --
- 24 pursuant to *North Carolina vs. Alford*?
- 25 A No. It was before when I detain [sic] her.

DIRECT EXAMINATION BY MR. WALLER - IZELL HAIR 14

1 Q Okay. What did she tell you about going to trial?

2 A She think that I might don't win.

3 Q Okay. Did you say anything back to her then?

4 A I told her I had alibi witnesses.

5 Q Okay. All right. So your alleging here today that
6 she didn't follow up on your alibi witnesses, she didn't
7 conduct an investigation. You -- you mentioned in your
8 application that you -- she didn't go over discovery with
9 you. You didn't have a full understanding of all the
10 evidence against you.

11 What did you -- what did y'all talk about as far as
12 the evidence against you?

13 A She 'just said that -- that they were gonna put them
14 on the stand.

15 Q Okay. That's all y'all talked about?

16 A Yes, sir.

17 Q Okay. Mr. Hair, I've asked you all the questions
18 that I have for you. Is there anything you think I've
19 left out that the judge needs to be aware of of Ms.
20 Branch-Davis's representation of you?

21 A Not to my knowledge.

22 Q Please answer any questions Mr. Saville has.

23 THE COURT: Cross-examination.

24 CROSS-EXAMINATION

25 BY MR. SAVILLE:

CROSS-EXAMINATION BY MR. SAVILLE - IZELL HAIR 15

1 Q Good morning, Mr. Hair. How you doing?

2 A All right. Fine.

3 Q Now, Mr. Hair, do you remember, when you pled guilty
4 under *Alford*, telling the judge that you were satisfied
5 with your attorney?

6 A Yes, I remember that.

7 Q And do you remember twice telling the judge that you
8 knew exactly what you were doing that day?

9 A Yes, I remember.

10 Q And that part of the reason you knew exactly what you
11 were doing was because your attorney had gone through all
12 the evidence with you?

13 A I remember all that.

14 Q And do you remember telling the judge that you felt
15 it was in your best interest to plead guilty?

16 A Yes, sir.

17 Q Now, Mr. Hair, you testified a few minutes ago that
18 you felt your attorney did not look into some potential
19 alibi witnesses; is that correct?

20 A Yes, sir.

21 Q Are any of those witnesses present today to testify?

22 A No, sir.

23 Q Do you remember telling the judge when you pled
24 guilty that you would like to waive your constitutional
25 rights to a jury trial, to present witnesses, and to

1 remain silent?

2 A Yes, sir.

3 THE COURT REPORTER: Is that a yes?

4 A Yes, sir.

5 Q And do you recall that the -- the judge advised you
6 that you were pleading guilty under Alford, and that that
7 meant, in reviewing the evidence the State has against
8 you, you realize that there's a substantial likelihood you
9 would be found guilty?

10 A Yes, sir.

11 Q And do you remember telling the judge that part of
12 the reason you were pleading guilty was because you didn't
13 want to put the child through the trauma of a trial?

14 A Yes.

15 Q Do you now want a jury trial on these charges?

16 A No. To be honest, I -- I don't -- I don't -- I feel
17 like I'm not -- I'm not scared to go to trial. I feel
18 like it's not in my best interest. I don't have a lawyer
19 that will help me fight my case.

20 Q And do you remember swearing to tell the truth when
21 you pled guilty?

22 A Yes, sir.

23 MR. SAVILLE: That's all I have, Mr. Hair. Thank
24 you.

25 THE COURT: Any redirect?

REDIRECT EXAMINATION BY MR. WALLER - IZELL HAIR

REDIRECT EXAMINATION

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BY MR. WALLER:

Q Mr. Hair, you just testified about a trial I -- I guess going forward from today. When you were talking to Ms. Branch-Davis about trial back then, you testified earlier that you initially did want to go to trial; is that right?

A You talking about earlier?

Q Yes, sir.

Q When Ms. Branch-Davis represented you.

A Yeah. I had wanted to go.

Q Okay. All right. Nothing further. Thank you.

MR. SAVILLE: Nothing further. Thank you.

THE COURT: Sir, you may step down.

(The witness complies.)

MR. WALLER: Nothing further from the Applicant, Your Honor.

THE COURT: Okay.

MR. SAVILLE: Your Honor, the State would call Ms. Belinda Davis-Branch.

BELINDA DAVIS-BRANCH, having been first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. SAVILLE:

Q Good morning, Ms. Davis-Branch. Thank you for being

DIRECT EXAMINATION BY MR. SAVILLE - BELINDA DAVIS-BRANCH18

1 here today.

2 A Good morning.

3 Q Now, Ms. Davis-Branch, how long have you been
4 practicing criminal law?

5 A Since 2004.

6 Q And do you recall how many times you met with Mr.
7 Hair prior to the guilty plea?

8 A Probably more like 10 times. The detention center
9 would keep accurate records because we had to sign in.
10 But I'm thinking it was more like 10 times that I met with
11 him.

12 Q Yes, ma'am. Did you review the discovery with Mr.
13 Hair?

14 A Yes, sir. I did.

15 Q And speaking of the discovery, what was the evidence
16 that you felt the State was prepared to present at trial?

17 A Mr. Hair's daughter was 11 years old, and she was
18 interviewed by a young lady who's name I cannot remember
19 now. And that interview took place about two to three
20 hours, questioning the little girl as to what had happened
21 between she and her father. And the State was prepared to
22 present that evidence either by video or by personal
23 appearance.

24 Q Okay. So you think they were prepared to have the
25 little girl testify?

DIRECT EXAMINATION BY MR. SAVILLE - BELINDA DAVIS-BRANCH19

1 A Yes.

2 Q Now, did y'all discuss any possible defenses prior to
3 the guilty plea?

4 A Yes.

5 Q What were those defenses that y'all talked about.

6 A He claimed that he had an alibi. He has two
7 brothers. I believe one of them is a half-brother, and
8 that was the brother that I was much more in contact. He
9 would have been prepared to testify.

10 I can't recall whether that brother went to North
11 Carolina, as Mr. Hair alleges, but the other brother that
12 was in North Carolina that Mr. Hair and his brother in
13 South Carolina were visiting, I talked to him a couple of
14 times and I can't remember whether or not he had
15 difficulty getting -- but I -- I did speak with him a
16 couple of times as to whether or not Mr. Hair was there on
17 that weekend.

18 Q Did -- did you feel they provided a viable alibi?

19 A Not really.

20 Q Why -- why is that?

21 A Because of the time frame. Although I -- I -- I
22 think that they would have been prepared to come, and I
23 believe that brother in -- in North Carolina had some
24 difficulty with his work schedule. But -- but he -- he
25 was cooperative and prepared for his brother.

DIRECT EXAMINATION BY MR. SAVILLE - BELINDA DAVIS-BRANCH20

1 Q Yes, ma'am. And I think we heard testimony earlier
2 that the arrest warrant for CSC first stated that the
3 offense occurred on or around December 13, 2000 ---

4 A Right. That's correct.

5 Q So but not just specifically on that ---

6 A Yes, sir.

7 Q And did the indictment allege a year-long stand in
8 which the conduct had occurred?

9 A Yes. It was an -- yes.

10 Q Did you reach out to everyone that Mr. Hair asked you
11 to?

12 A I did. I spoke to the brother in Orangeburg several
13 times. He came by my office several times and we talked.
14 As a matter of fact, that particular brother reviewed the
15 video that was between the psychologist and the little
16 girl as well as his mother.

17 And I may have spoken to other members of the family
18 and the gentleman in North Carolina.

19 Q Yes, ma'am. And do you still feel there was a
20 substantial likelihood he would have been convicted at
21 trial?

22 A I do.

23 Q Did go over his constitutional rights before he pled
24 guilty?

25 A Yes. Absolutely.

DIRECT EXAMINATION BY MR. SAVILLE - BELINDA DAVIS-BRANCH21

1 Q Did he ever indicate that he did not understand those
2 rights?

3 A He never indicated he did not understand.

4 Q Did you have any concerns with his competency?

5 A No.

6 Q How did the -- how did the plea offer come about in
7 this case?

8 A Mr. Hair and I had been talking for awhile during the
9 course of my representation. And Ms. Cornwell -- if I
10 recall, she was going forward because, you know, we had a
11 certain time to accept -- accept the offer. And Mr. Hair
12 was told that, and had we gone to trial, then certainly
13 the offer would have been rescinded and we would have gone
14 back to the original charge.

15 Q Yes, ma'am.

16 A So if I'm not mistaken, again I recall talking to Ms.
17 Ashley several times, encouraging her to reduce, trying to
18 point out maybe some weaknesses in her case versus some
19 strengths in mine. And we finally -- I'm sure she gave me
20 the offer that he ultimately pled to.

21 Q Yes, ma'am. And did you explain to him what a Alford
22 plea is?

23 A Oh, yes.

24 Q Well, Ms. Davis-Branch, is there anything else you'd
25 like to tell the Court about your representation of Mr.

CROSS-EXAMINATION BY MR. WALLER - BELINDA DAVIS BRANCH22

1 Hair?

2 A No, sir.

3 Q That's all the questions I have for you right now.
4 Please answer any questions Mr. Waller may have. Thank
5 you.

6 MR. WALLER: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. WALLER:

9 Q Good morning, Ms. Davis-Branch.

10 A Good morning.

11 Q How are you today? And I apologize. I think I kept
12 saying "Branch-Davis."

13 A That's quite okay.

14 Q I apologize.

15 A That's okay. Thank you.

16 Q Ms. Davis-Branch, when -- when did the allegations, I
17 guess, kind of shift from when he was arrested on -- on
18 one -- or the allegations of one incident on or about
19 December 13. When -- when did it shift to the entire
20 year?

21 A I -- I don't recall.

22 Q Okay. Was it in advance of his plea or close in time

23 ---

24 A I would think in advance of his plea.

25 Q Did y'all have a chance to discuss the new

CROSS-EXAMINATION BY MR. WALLER - BELINDA DAVIS BRANCH23

1 allegations?

2 A We discussed everything about his case. Mr. Hair --
3 we -- you know, I went in the night before because he --
4 he was told that he could possibly -- he -- he knew that
5 there was an offer. And I said to him what we need to do
6 is you need to discuss this with your family; you need to
7 discuss it with your brother, who he was very close with;
8 and then you make a determination. So think that you have
9 to accept this offer today, whenever that was.

10 And so as time progressed, seeing the video with the
11 little girl, judging her veracity and her ability to
12 testify, and I even tried to show him, Mr. Hair, the
13 video, but the detention center would not allow me to
14 bring it in to show him. And that's probably why I showed
15 it to his brother.

16 But yes, we discussed everything. I'm not sure
17 whether -- if I'm answering your question. What was your
18 question again?

19 Q Did the -- were you made aware of the new allegations
20 or the expanded allegations in advance of his plea in
21 order to have enough time to discuss it with him?

22 A I'm -- I'm sure I was.

23 Q Okay. Would that have had any -- any change on your
24 discussions with the brother in North Carolina about an
25 alibi?

CROSS-EXAMINATION BY MR. WALLER - BELINDA DAVIS BRANCH24

1 A No.

2 Q Okay. Was it your understanding that the brother in
3 North Carolina could have been an alibi for multiple
4 incidents, or just that one that he was originally charged
5 with?

6 A The little girl alleged that her father had required
7 her to have anal sex with him over a period of time. And
8 if I'm not mistaken, there was another daughter that had
9 made the same allegations. Both of those people would
10 have come forward.

11 So the dates were not precise, but the -- the
12 allegation was the same. So the period of time would not
13 have been a definite.

14 Q Okay. Were you made aware of that after you spoke
15 with the brother in North Carolina about his alibi based
16 on the warrant?

17 A I really don't recall --

18 Q Okay.

19 A -- that. I'm sorry.

20 Q No. That -- that's fine.

21 The allegations of the second child, he was never
22 arrested or charged with those; is that right?

23 A That's correct.

24 Q Okay. Was that part of the plea negotiations, or did
25 the State just never ---

CROSS-EXAMINATION BY MR. WALLER - BELINDA DAVIS BRANCH25

1 A We talked about it, but I'm of the opinion that the
2 State felt that their case was solid with the first child.
3 There was no need to pursue the second child, and that
4 probably was a strategy on the State part -- I don't -- I
5 don't know for sure, but I would -- I would think that
6 would have been the case.

7 Q Okay. Did you discuss with Mr. Hair the -- what
8 *North Carolina vs. Alford* is?

9 A Yes, sir.

10 MR. WALLER: Beg the Court's indulgence, please.

11 (Brief pause.)

12 MR. WALLER: Thank you, Ms. Davis -- Davis-Branch. I
13 have no further questions. Thank you.

14 THE COURT: Any redirect?

15 MR. SAVILLE: No further questions. Thank you.

16 THE COURT: You may step down.

17 THE WITNESS: Thank you.

18 (The witness exits the stand.)

19 MR. SAVILLE: That is all for the State, Your Honor.

20 THE COURT: All right. Anything by way of argument
21 by either.

22 MR. WALLER: Just briefly, Your Honor. Mr. Hair
23 testified that he wanted to go to trial, he had some alibi
24 witnesses. And Your Honor, based on -- on the testimony
25 of both Mr. Hair and Ms. Davis-Branch, she interviewed his

1 brother in North Carolina and I think at some point the
2 charges expanded, and I think it's -- it's -- it's reason
3 to believe that the charges expanded after she had those
4 conversations and after she discussed that with Mr. Hair.

5 So I don't think that he entered -- when he came to
6 court to plead guilty, I don't he was aware that the
7 charges had been expanded. That was his testimony. I
8 think he believed that he was pleading to one allegation,
9 which he says he didn't understand. He thought he had an
10 alibi witness.

11 So Your Honor, I would ask you to consider that. He
12 testified that he was uncomfortable going to trial with
13 his lawyer who he did not think had properly investigated
14 the case. I think it goes back to the expansion of the --
15 the date range for the -- the charges. Thank you.

16 THE COURT: Mr. Saville.

17 MR. SAVILLE: Very briefly, Your Honor. I -- I don't
18 think it is credible that the change in dates really had
19 anything to do with the guilty plea considering the fact
20 that he was already planning to plead guilty to start
21 with. Also we have heard no -- no evidence or testimony
22 as to what the purported alibi witnesses would have said.

23 I think the plea colloquy was thorough, and Ms.
24 Davis-Branch gave convincing testimony as to her diligence
25 in the representation; therefore, we ask that you deny the

1 application. Thank you.

2 THE COURT: All right. Based on what I have heard
3 here today, I am going to respectfully deny the
4 Applicant's application for post conviction relief.

5 I do not find counsel failed to render reasonably
6 ineffective or failed to -- has not proven counsel failed
7 to render reasonably effective assistance. Furthermore,
8 he's not proven that he was prejudiced by any deficient
9 performance.

10 With regards to the guilty plea, again, I do not find
11 he's proven ineffective assistance of counsel, nor has he
12 proven that there is a reasonable probability, but for any
13 errors on behalf of Ms. Davis-Branch he would not have
14 pled guilty.

15 Therefore, I'm going to respectfully deny his
16 application. The State will give me an order to that
17 effect, please.

18 MR. SAVILLE: Thank you, Your Honor.

19 MR. WALLER: Thank you, Your Honor.

20 -- END OF TRANSCRIPT OF RECORD --

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CERTIFICATE

1
2 I, the undersigned Bonnie H. Kelly, Official Court
3 Reporter for the Fifth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the hearing
7 of the captioned cause, relative to appeal, in the First
8 Circuit Court for Dorchester County, South Carolina, on
9 the 3rd day of October, 2018.

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

12
13
14 E/BONNIE H. KELLY

15 Bonnie H. Kelly, CVR

16 Official Court Reporter

17
18 Columbia, South Carolina

19 March 12, 2019
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STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

) IN THE COURT OF COMMON PLEAS
) IN THE FIRST JUDICIAL CIRCUIT

Izell D. Hair, #311486,

) 2017-CP-38-0032

) Applicant,

) v.

) ORDER OF DISMISSAL

) State of South Carolina,

) Respondent.

FILED FOR RECORD
WINNIE N. CLARK
2018 DEC 12 AM 11:29
ORANGEBURG, SC

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on January 9, 2017. An evidentiary hearing into the matter was convened on October 3, 2018, at the Dorchester County Courthouse. Applicant was present at the hearing and was represented by Jonathan D. Waller, Esquire. Respondent was represented by Assistant Attorney General Christian Saville of the South Carolina Attorney General's Office.

Before this Court were the records of the Orangeburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, Applicant's appellate records, the State's return, and Applicant's PCR application. Based on these records and the testimony presented, the Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. On August 11, 2016, Applicant waived presentment to the grand jury and pled guilty to second-degree criminal sexual conduct with a minor (2015-GS-38-0370) before the Honorable Edgar W. Dickson. Applicant pled guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). Applicant was originally charged with first-degree criminal sexual conduct with a minor arising from incidents between

January 2014 and January 2015 in which Applicant was alleged to have sexually penetrated his daughter, under the age of eleven years old, anally and orally. The record also reflects the State was prepared to show Applicant also sexually penetrated another of his daughters, also under the age of eleven, anally and orally. GP Tr. p. 11, ll. 14-25 – p. 13, ll. 1-6. Belinda Davis-Branch, Esquire (“Plea Counsel”), represented Applicant. Assistant Solicitor Ashley Cornwell prosecuted the case. On August 11, 2016, Judge Dickson sentenced Applicant to imprisonment for eighteen years, required Applicant to register as a sex offender, and ordered GPS monitoring.

Applicant filed a notice of appeal from his guilty plea. The South Carolina Court of Appeals dismissed Applicant’s appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR, by order filed October 26, 2016. The remittitur was returned to the circuit court on November 14, 2016.

II. ALLEGATIONS

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

1. Ineffective Assistance of Counsel

- a. “Lack of communication.”
- b. “Failure to share or explain the evidence.”
- c. “Failure to interview exculpatory witnesses.”
- d. “Not following through with a trial.”
- e. “The plea in this particular case was ignorant because of the admitted lack of communication and because Plea Counsel is telling [Applicant] what the evidence is in this case, but Plea Counsel is going on the interpretation by the State of what the evidence is and not analyzing it for herself.”

III. SUMMARY OF TESTIMONY PRESENTED

Plea Counsel testified at the PCR hearing, and Applicant testified on his own behalf.

Applicant

Applicant testified he was originally charged with criminal sexual conduct with a minor, first-degree. Applicant recalled he met with Plea Counsel numerous times prior to the plea. According to Applicant, he informed Plea Counsel he had alibi witnesses. Applicant testified Plea Counsel "did not do anything" with these witnesses. Applicant also recalled discussing his mental health with Plea Counsel, but the court ordered doctor found him to be competent.

Applicant also testified his arrest warrant stated the offense he was charged with occurred on December 13, 2014, but testified the State alleged the conduct occurred between January 2013 and January 2014.

According to Applicant, Plea Counsel did not review his constitutional rights prior to the plea. Applicant could not recall Plea Counsel going over the elements of his charge. Also, Applicant testified Plea Counsel did not go over the nature of an Alford plea with him.

According to Applicant, he pled guilty in part because Plea Counsel was not conducting an investigation.

Applicant conceded the plea transcript reflects he told the plea judge he was satisfied with Plea Counsel's representation. GP Tr. p. 9, l. 7. Applicant likewise acknowledged he told plea judge he knew exactly what he was doing and one reason he knew exactly what he was doing was because Plea Counsel had gone through all the evidence with him. GP. Tr. p. 7, l. 20. Applicant conceded he swore on the Bible to tell the truth at his guilty plea hearing. Furthermore, Applicant recalled telling the plea judge he was pleading guilty to spare his family the burden of trial and to enjoy the benefit of the State's plea offer. GP Tr. p. 8, l. 21.

Plea Counsel

Plea Counsel testified she met with Applicant approximately ten times prior to his guilty plea. Plea Counsel recalled Applicant's minor daughter alleged Applicant required her to have

anal sex over a period of time rather than an isolated date. Plea Counsel explained the date range for the allegations against Applicant shifted from a specific date to the entire year in advance of Applicant's guilty plea, and they discussed this as well as "everything" about Applicant's case to include his constitutional rights and the evidence against him.

Regarding the plea offer to CSC with a minor, second-degree, Plea Counsel testified she informed Applicant of the offer and told him to discuss it with his family. Plea Counsel felt it was in Applicant's best interest to take the plea deal, which is corroborated by her statement at the plea hearing that "there was just so much against" Applicant and she did not want him to take the risk. GP Tr. p. 20, l. 14. Plea Counsel opined the State would have brought Applicant's daughter to testify at trial and she would have been a good witness for the State.

Plea Counsel recalled Applicant gave her names of potential witnesses. Plea Counsel testified she spoke with everyone Applicant asked her to speak with, but there were no valid alibi defenses therefrom because the conduct was alleged to have taken place over the span of a year.

Plea Counsel also testified another daughter later came forward with allegations against Applicant prior to his plea. Plea Counsel testified she still agreed there was a substantial likelihood of conviction had this case proceeded to trial.

IV. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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 upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

V. 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 further had the opportunity to observe the witness presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

This Court finds Applicant has failed to meet his burden of proving he is entitled to post-conviction relief on any of his allegations of ineffective assistance of counsel. Applicant has failed to prove both deficiency on the part of Plea Counsel and any prejudice therefrom.

Moreover, this Court notes the record reflects the knowing and voluntary nature of Applicant's Alford plea. Furthermore, after observing the witnesses and passing on their credibility, this Court finds Plea Counsel's testimony to be credible. By contrast, this Court finds Applicant's testimony to lack credibility.

"Lack of communication"

Applicant alleges Plea Counsel was ineffective for lack of communication. This Court finds this allegation to be meritless. Plea Counsel credibly testified to discussing the evidence, Applicant's plea, and other relevant issues with Applicant. This is corroborated by her representations at the guilty plea hearing, in Applicant's presence, that she had reviewed the evidence, law, and Applicant's constitutional rights with Applicant prior to the plea. GP Tr. p. 4. Furthermore, Applicant himself told the plea judge under oath he had understood everything Plea Counsel had told him and Plea Counsel had answered all of his questions. GP Tr. p. 9. Moreover, Applicant also told the plea judge he knew exactly what he was doing and felt it was in his best interest to plead guilty pursuant to Alford. For these reasons, this Court finds Applicant has failed to satisfy his burden of proving Plea Counsel was deficient as to her communication with Applicant. Furthermore, Applicant has failed to prove he would have proceeded to trial had Plea Counsel communicated any differently. Accordingly, this allegation is dismissed with prejudice.

"Failure to share or explain the evidence"

Applicant alleges Plea Counsel was ineffective for failing to share or explain the evidence in this case. This Court finds this allegation to be meritless. As Plea Counsel testified, the evidence presented at trial in this case would have been the testimony of at least one of Plea Counsel's victim daughters as well as a forensic interview. Trial Counsel opined she would have made a good witness for the State and felt Applicant faced a substantial likelihood of conviction

if he proceeded to trial. Plea Counsel credibly testified to reviewing all the pertinent materials in this case with Applicant to include discussions of the victim. This is corroborated by Plea Counsel's statement at the plea hearing that she had reviewed the evidence with Applicant. Furthermore, Applicant himself told the plea judge under oath that one reason he knew exactly what he was doing at his guilty plea was because Plea Counsel had gone through the evidence with him. GP Tr. p. 7, l. 20. Applicant even told the plea judge he believed there was a substantial likelihood of conviction given the evidence the State was prepared to present. GP Tr. p. 17, l. 24. The record reflects Plea Counsel did thoroughly review and explain the evidence in this case to Applicant. Therefore, Applicant has failed to establish deficiency as to this allegation as Plea Counsel did in fact adequately share and explain the evidence to him. Moreover, this Court finds Applicant has failed to satisfy his burden of proving he would have chosen to proceed to trial had Applicant better shared or explained the evidence to him. Accordingly, this allegation is dismissed with prejudice.

Failure to interview exculpatory witnesses

Applicant alleges Plea Counsel was ineffective for failing to interview exculpatory witnesses. This Court finds this allegation to be meritless. First, Applicant has failed to prove Plea Counsel was deficient as to this allegation because Plea Counsel credibly testified she spoke with all witnesses Applicant asked her to speak with. Plea Counsel credibly testified these witnesses would not have provided an alibi, as the allegations against Applicant were said to have taken place over the timespan of a year. To establish an alibi defense and thus be entitled to an instruction of alibi, a defendant must present some evidence that he was at another place at the time of the crime and could not therefore have committed the crime. State v. Diamond, 280 S.C. 296, 297, 312 S.E.2d 550 (1984). A simple denial of one's presence at the scene does not

constitute an alibi. Id. Plea Counsel was correct in her assertion these witnesses would not have provided an alibi for the timespan throughout which Applicant was alleged to have anally raped his daughter. Nevertheless, this Court finds Plea Counsel's testimony credible that she looked into all potential witnesses provided and therefore Applicant has failed to satisfy his burden of proving deficiency as to this allegation.

Notwithstanding, in order to show prejudice from the alleged failure to call a witness, the Applicant must provide competent evidence of the testimony the alleged alibi witness would provide. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992). Here, Applicant failed to present any testimony at the PCR hearing from an alibi witness, and no purported alibi witnesses were present at the PCR hearing. This Court can only speculate as to what these alleged alibi witnesses could have testified to. Applicant has therefore failed to establish prejudice from Plea Counsel's alleged deficiency as the witnesses she investigated would not have been exculpatory and Applicant failed to evidence what their testimony would have been and how their testimony would have changed the outcome of the proceedings. Accordingly, this allegation is dismissed with prejudice.

Not following through with a trial

Applicant alleges Plea Counsel was ineffective for not following through with a trial. This Court finds this allegation to be meritless. Plea Counsel credibly testified it was Applicant's decision to enter an Alford plea. This is corroborated by Applicant's own statements at the plea hearing that he was entering his plea freely and voluntarily and was not promised anything nor threatened in order to plead guilty. GP Tr. p. 10.

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an

individual, [an Applicant's] right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Statements made during a guilty plea should be considered conclusively, unless an [Applicant] presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975) overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985). This Court finds that the Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

Applicant informed the plea judge he did not want a jury trial but rather wanted to plead. GP Tr. p. 9, l. 14. In fact, Applicant explained at his plea hearing he wished to plead in order to spare his family the burden of a trial and also enjoy the benefit of the plea deal. GP Tr. p. 8, l. 21. Applicant expressly waived his rights to a trial at the plea hearing. GP Tr. p. 10, l. 1. The record and testimony reflects that while Plea Counsel adequately prepared and investigated this case, it was Applicant who decided to enter an Alford plea rather than proceed to trial. Applicant has failed to satisfy his burden of proving Plea Counsel was deficient regarding his entering of a plea rather than proceeding to trial. Moreover, Applicant has failed to satisfy his burden of proving he was prejudiced by Plea Counsel not following through with a trial, as evidenced by Applicant's own admission he believed there would be a substantial likelihood of conviction at trial given the State's evidence. GP Tr. 17, l. 24. Accordingly this allegation is dismissed with prejudice.

"The plea in this particular case was ignorant because of the admitted lack of communication and because Plea Counsel is telling [Applicant] what the evidence is in this case, but Plea Counsel is going on the interpretation by the State of what the evidence is and not analyzing it for herself."

Applicant alleges the plea he entered in this case was ignorant due to Plea Counsel's representation regarding her analysis of the evidence in this case and her explanation of the

evidence to Applicant. This Court finds this allegation to be meritless. Plea Counsel credibly testified she reviewed the evidence with Applicant in this case, and this testimony is corroborated by her representation at the plea hearing she had reviewed the evidence with Applicant. GP Tr. p. 4, l. 4. In fact, Applicant informed the plea judge he knew *exactly* what he was doing because, for one reason, Plea Counsel had gone through all the evidence with him. GP Tr. p. 7, l. 20. Applicant later reaffirmed to the plea judge that he knew exactly what he was doing and felt the plea was in his best interest. GP Tr. p. 10, l. 15. Applicant has presented no probative evidence to contradict this representations to the plea judge. Furthermore, Applicant has presented no evidence Plea Counsel failed to adequately analyze the evidence or failed to adequately represent this evidence to Applicant. As Plea Counsel testified, the evidence in this case essentially consisted of victim testimony and the forensic interview. Furthermore, Applicant has failed to satisfy his burden of proving that he would have instead proceeded to trial but for Plea Counsel's representation regarding the evidence in this case. Accordingly, this allegation is dismissed with prejudice.

[Conclusion and signature on following page]

VI. CONCLUSION


Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.


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

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice in regard to all allegations; and
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 6 day of Dec, 2018.


D. CRAIG BROWN
Presiding Judge
First Judicial Circuit

 , South Carolina

WITNESSES

DOCKET NO. 2004GS38-0748

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

Izell Hair
Defendant

The State of South Carolina

County of

ORANGEBURG

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

DEPUTY JAMES S. GREEN

COURT OF GENERAL SESSIONS

June 14, 2004 TERM

Arresting Agency:

Orangeburg Co. Sheriff Dept.

Defendant

ARREST WARRANT NUMBER

H662038

Arrested: Mar 27, 2004

Witness:

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

ACTION OF GRAND JURY

THE STATE
vs.

Izell Hair

Foreperson of Grand Jury
Date: June 17, 2004

Indictment for

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

VERDICT

SC Code: 16-03-655(2)
CDR Code: 0396
Class: FEL-C(V)

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

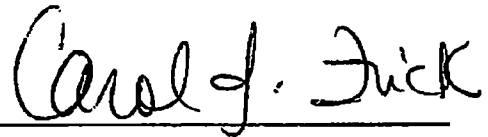
INDICTMENT
2004GS38-0748

At a Court of General Sessions, convened on June 14, 2004 the Grand Jurors of Orangeburg County present upon their oath:

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

That Izell Hair, did in Orangeburg County, on or about September 6, 2003, willfully and unlawfully engage in criminal sexual conduct with a minor in the second degree in that the defendant did engage in sexual battery with the victim who was 14 years of age. This offense being a violation of Section §16-3-655(2) of the South Carolina Code of laws, (1976 as amended).

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



Carol J. Frick SOLICITOR

WITNESSES

Lakesha Gillard

Orangeburg County Sheriff

2015-0099

ARREST WARRANT NUMBER

2015A3810700074

Arrested: January 22, 2015

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: August 17, 2016

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015GS38-0370

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

August 17, 2016 TERM

THE STATE

vs.

Izell Hair

Indictment for

**CRIMINAL SEXUAL CONDUCT WITH
MINOR - VICTIM UNDER 11 YRS OF
AGE - FIRST DEGREE**

SC Code: 16-3-655(1)

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

Izell Hair
Defendant

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

CSC w/ Minor 2nd Degree

Defendant

Witness:

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

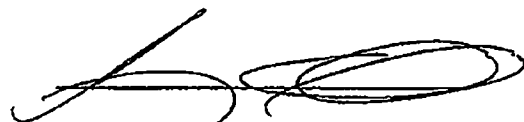
INDICTMENT
2015GS38-0370

At a Court of General Sessions, convened on August 22, 2016 the Grand Jurors of Orangeburg County present upon their oath:

**CRIMINAL SEXUAL CONDUCT WITH MINOR - VICTIM UNDER 11 YRS OF
AGE - FIRST DEGREE**

That in Orangeburg County, South Carolina, between January 1, 2014 and January 5, 2015, the Defendant, Izell Hair, did engage in sexual battery upon a minor who was less than eleven (11) years of age in that the defendant did force victim, [REDACTED] who was approximately six years old, to perform felatio and/or engage in anal intercourse. This offense in violation of Section 16-3-655 of the South Carolina Code of Laws, as amended.

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



Ashley B. Cornwell, Solicitor