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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Charleston County

Honorable Jennifer B. McCoy, Circuit Court Judge

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ANTONIO YOUNG,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2019-000810

---

APPENDIX

---

TAYLOR D GILLIAM  
Appellate Defender

ALAN WILSON  
Attorney General

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

BENJAMIN LIMBAUGH  
Assistant Attorney General  
1000 Assembly Street, Room 519  
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

ATTORNEY FOR PETITIONER

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STATE OF SOUTH CAROLINA      COURT OF GENERAL SESSIONS  
COUNTY OF CHARLESTON      CASE NO. 2016-GS-10-3532

STATE OF SOUTH CAROLINA,	)	
	)	TRANSCRIPT OF RECORD
PLAINTIFF,	)	
	)	
VS.	)	APRIL 21, 2017
	)	CHARLESTON, SC
ANTONIO YOUNG,	)	
	)	
Defendant.	)	

B E F O R E:  
HONORABLE MARKLEY DENNIS, JUDGE.

A P P E A R A N C E S:  
TYLER WHITAKER, ESQUIRE  
Attorney for the State  
  
PATTY KENNEDY, ESQUIRE  
Attorney for the Defendant

\* \* \* \* \*

Ruth C. Weese, RDR  
Official Court Reporter  
Ninth Judicial Circuit

1 (The following proceedings were held  
2 April 21, 2017, Charleston County, South Carolina,  
3 @ 11:12 a.m.)

4 MS. WHITAKER: State calls Antonio  
5 Young.

6 THE COURT: Mr. Young is pleading to  
7 the charge of possession of a firearm convicted  
8 felon? And a violent crime? That's a mandatory  
9 five, day for day. Can't do three years on that.

10 MS. WHITAKER: Your Honor, I was under  
11 the impression that it was zero to five.

12 THE COURT: Maybe I misread.

13 MS. WHITAKER: If we could amend that.

14 THE COURT: We need the CDR for  
15 unlawful carry for a person convicted of a felony.

16 MS. KENNEDY: Patty Kennedy for Antonio  
17 Young.

18 THE COURT: While they are doing that,  
19 I will go through the first one. That will help  
20 and we will get that one done. You are Antonio  
21 Young? Indictment 2016-3532, Mr. Young, charges  
22 you with the offense of Criminal Sexual Conduct in  
23 the First Degree. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And your lawyer has

1 explained that charge to you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And explained a lesser  
4 included offense or is this really -- is that --

5 MS. WHITAKER: I believe so, Your  
6 Honor.

7 THE COURT: I need to check that box.  
8 Is that the 20 year?

9 MS. KENNEDY: Yes.

10 THE COURT: So this is an 85 percenter?

11 MS. KENNEDY: Yes, sir.

12 THE COURT: I just wanted to be sure.

13 MS. KENNEDY: Yes, sir.

14 THE COURT: Is it not a serious  
15 offense?

16 MS. KENNEDY: It's a serious and --

17 THE COURT: And a violent. I thought  
18 it was.

19 MS. WHITAKER: I apologize for that.

20 THE COURT: All right. Here to try to  
21 get it corrected. You understand that, sir?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And you have negotiated a  
24 three-year sentence which you are asking me to  
25 impose; is that right?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And you also have  
3 negotiated an Alford plea?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And your lawyer has  
6 explained that to you?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And basically an Alford  
9 plea says I either don't know whether I am guilty  
10 or not or I'm not guilty, but in either event I  
11 have been offered a benefit that I want to take  
12 advantage of and in order to do that I'm going to  
13 plead guilty to this charge. Is that true?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And the benefit is to --  
16 you may be right on the statute, I need to look at  
17 it, it's not more than five years, but it is a day  
18 for day sentence? If we plead to the unlawful  
19 possession that's not.

20 MS. KENNEDY: Okay.

21 THE COURT: I am talking about the  
22 firearm. You are right, I think it has discretion  
23 of up to five. I am glad to find that out too. I  
24 need to read the statute, but we are not going to  
25 deal with that statute. It changes the dynamics.

1 totally. Three years would be three years. And  
2 that's not what you all are contemplating?

3 MS. WHITAKER: No, Your Honor.

4 THE COURT: Do you understand that,  
5 sir?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And you're asking me to  
8 impose that sentence and you understand that you  
9 are giving that -- you believe it's a benefit to  
10 serve a three year -- negotiated three-year  
11 sentence at 85 percent; is that correct?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You still have to do a  
14 two-year community supervision program, do you  
15 understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Upon being released.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And that would be the --  
20 really going to have -- we are just going to have a  
21 straight three year sentence on the other. He will  
22 max that out before he maxes this out.

23 MS. KENNEDY: Your Honor, here's what I  
24 have explained. He spent 737 in jail on the gun  
25 charge and 771 days on the ABHAN.

1 THE COURT: And you all negotiated a  
2 three-year sentence?

3 MS. KENNEDY: Yes, sir.

4 THE COURT: If you want to negotiate  
5 time served on the gun I will be happy to do that,  
6 that way that takes that out of the hopper, but the  
7 three-year sentence on the gun charge, the gun  
8 charge, is that a violent offense? Certainly not  
9 an 85 percenter so he will max that out before he  
10 finishes this sentence. So whatever you want to  
11 do.

12 MS. WHITAKER: Your Honor, as long as  
13 the controlling charge is the ABHAN for which he is  
14 doing 85 percent.

15 THE COURT: That's all we need, all we  
16 need to do is just do a time served sentence on the  
17 gun charge.

18 MS. WHITAKER: Your Honor, that would  
19 be appropriate. Thank you, Your Honor. That just  
20 as long as -- thank you, Your Honor. Wish we would  
21 have come up with that solution earlier. Sorry for  
22 the inconvenience.

23 THE COURT: It's no inconvenience.  
24 That's again a good example we can batten these  
25 things around. I was educated about the zero to

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five so we have all learned something. Thank you. I appreciate that. You understand that I can sentence you up to 90 days on the gun charge?

THE DEFENDANT: Yes, sir.

THE COURT: We still have to get the CDR for that, because this is day for day. It's time served -- well, day for day, that's true.

MS. WHITAKER: You could put whatever days.

THE COURT: I will just put 90 days. Because it's zero to 90. We will leave it as is. That's fine.

MR. SMILEY: It's 3434, Your Honor, CDR 3434, possession of a firearm or ammunition by a person convicted of a violent offense.

THE COURT: That's what it says. Okay. Y'all were right to start with. I'm the stupid one. I knew that when I drove in this morning. I agree with you 100 hundred percent. That's what indicted. We are back to square one. Ninety days on that, you want 90 days, you are going to have a record for that, you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: You are pleading to Alford so you believe the State can prove that case?

1 THE DEFENDANT: Gun charge case?

2 THE COURT: You believe they can put up  
3 witnesses who would if they hear that are going to  
4 believe that you had a gun?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. That's fine. That's  
7 all that Alford says. You don't have to say I did  
8 it, but you are going to have a record for it, do  
9 you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: I did learn about that  
12 other one, too. That's good. This indictment,  
13 though, assault and battery, you understand that  
14 you are going to have to do a two-year community  
15 supervision program?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And that means if you are  
18 returned whatever is left on your sentence up to  
19 the balance of that in increments of up to one  
20 year. Do you understand that? May not be a year  
21 though left. Probably won't be. But you can be  
22 returned, you could go back 30 days and start over  
23 another two years. That's the issue. Do you  
24 understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Is he going to be required  
2 to register as a sex offender?

3 MS. KENNEDY: Your Honor, he is already  
4 on the registry.

5 THE COURT: So it doesn't matter.  
6 Can't register twice. Understanding then that I  
7 would sentence you to three years and what's your  
8 plea?

9 THE DEFENDANT: Guilty.

10 THE COURT: Under Alford?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Totally satisfied with your  
13 lawyer; is that correct?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Solicitor, other than being  
16 totally confused by a judge that's not reading  
17 well, any other agreements that you have?

18 MS. WHITAKER: No, Your Honor.

19 THE COURT: I apologize to you. You  
20 were -- you absolutely both were correct from the  
21 get go. Ms. Kennedy, thank you for your patience  
22 as well. But you have had the opportunity to  
23 discuss this matter with your client?

24 MS. KENNEDY: Yes, Your Honor, I have.

25 THE COURT: He has been advised of his

1 rights and the consequences of his plea?

2 MS. KENNEDY: Yes, Your Honor.

3 THE COURT: Do you believe the  
4 negotiated sentence to be in his best interest?

5 MS. KENNEDY: I do, Your Honor.

6 THE COURT: Mr. Young, is that true,  
7 sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And you believe it's in  
10 your best interest as well?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand if I  
13 accept your plea you will not have a jury trial,  
14 you will not confront the witnesses and you give up  
15 the right to remain silent?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Anybody threaten you in any  
18 way to get you to plead guilty?

19 THE DEFENDANT: No, sir.

20 THE COURT: Any promises other than  
21 those promises contained in the negotiated  
22 sentence?

23 THE DEFENDANT: No, sir.

24 THE COURT: Listen to the facts as the  
25 solicitor tells me the facts. I need to ask you

1 some questions about it, sir.

2 MS. WHITAKER: Thank you, Your Honor.  
3 As to the firearm charge, that occurred September  
4 5th, 2103. Officers noticed that the Defendant  
5 appeared to be intoxicated while operating his  
6 moped. He was placed under arrest for public  
7 intoxication. During an inventory of the back pack  
8 they found on the moped they located a firearm.

9 Your Honor, as to the assault and  
10 battery of a high and aggravated nature, as Your  
11 Honor mentioned it started out as criminal sexual  
12 conduct. Your Honor, according to the victim she  
13 reported that she heard someone -- I am sorry, Your  
14 Honor, this was April 1st, 2014. She reported that  
15 she heard somebody knocking on her neighbor's door.  
16 She knew that her neighbor was not home so she  
17 opened the door to tell the individual hey, my  
18 next-door neighbor is not here. He forced his way  
19 into the home and forced himself on her. Your  
20 Honor, she did not know this individual. She did  
21 have a rape kit done and a DNA match came back. So  
22 there's a time lapse in between that when there was  
23 the window for the DNA match. So that accounts for  
24 2014 as to how we get to 2015.

25 Your Honor, the victim in this case I

1 believe we could best describe as very fragile.  
2 She has had a traumatic brain injury unrelated to  
3 this incident. She lives out of state. She does  
4 not wish to testify, does not wish to take the  
5 stand, very much wanted this case to be concluded  
6 in a guilty plea and that was her wish. And that  
7 is why we are here today.

8 I believe that it is in the best  
9 interest of everyone involved considering we have  
10 had many, many lengthy discussions with the victim  
11 in this case and I believe that it is in the best  
12 interest of justice in this case.

13 I can go over his prior criminal  
14 history. In the past ten years he has a 2006  
15 sexual registry violation, an '08 manufacture,  
16 distribution of cocaine base, 2011 manufacture or  
17 possession of another controlled substance, 2015  
18 possession of marijuana. Your Honor, of course he  
19 is already on the sex offender registry so that is  
20 not a consideration for today.

21 THE COURT: Let me ask a question.  
22 This witness lives out of state, who is going to  
23 testify in the trial if she doesn't come?

24 MS. KENNEDY: I think she was prepared  
25 to come.

1 MS. WHITAKER: Your Honor, she would  
2 be.

3 THE COURT: I heard you say she does  
4 not want to -- but if the case went forward she  
5 would be here to testify.

6 MS. WHITAKER: I am sorry. I phrased  
7 that inartfully.

8 THE COURT: I just want to be sure that  
9 for me to take the Alford plea, that's the only  
10 witness that could prove it.

11 MS. WHITAKER: Your Honor, she is  
12 prepared to testify. Her wish and desire is to  
13 avoid testifying.

14 THE COURT: I understand that. I  
15 concur with what you're doing to avoid that for  
16 that lady, no question about it. But I just wanted  
17 to be sure that from an Alford plea standpoint, if  
18 you admit guilt that's not a problem, but from an  
19 Alford plea I have got to have a witness.

20 MS. WHITAKER: Certainly, Your Honor.  
21 I am sorry if I phrased that inartfully.

22 THE COURT: You didn't. I just was  
23 asking a question. That was fine. Do you believe  
24 the State is prepared to present testimony that the  
25 solicitor just stated; is that correct, sir? If

1 you went to trial the State would call a witness or  
2 witnesses who would testify to those facts?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. That's what you want  
5 to avoid by entering an Alford plea.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Did you truthfully respond  
8 to that question, sir?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Because your facial  
11 expression didn't tell me that so I am just asking  
12 you because that's the absolute critical aspect of  
13 the Alford plea, that you have to believe that if  
14 you went to trial that a jury most probably would  
15 find you guilty based on the testimony the State  
16 presented. And in order to do that that person has  
17 got to come testify. Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And you believe that would  
20 happen?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Thank you. And you concur  
23 with that, Ms. Kennedy?

24 MS. KENNEDY: Yes, Your Honor.

25 THE COURT: Based on her testimony.

1 MS. KENNEDY: Yes, Your Honor.

2 THE COURT: Again I want to reiterate,  
3 I think we discussed this with all the confusion  
4 and I apologize that I was the author of that, but  
5 you understand that assault and battery of a high  
6 and aggravated nature is a violent offense?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand the  
9 significance of that term?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: From the Department of  
12 Corrections' perspective?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You understand it's a  
15 serious offense?

16 THE DEFENDANT: Yes.

17 THE COURT: And you know what that  
18 means, it's a strike?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: I will be happy to hear  
21 from you, Ms. Kennedy.

22 MS. KENNEDY: Your Honor, if you could  
23 be kind enough to bear with me, and I have to do  
24 this for this man because he said he has been in  
25 jail 771 days. We have had numerous discussions

1 about this case. We have had numerous discussions  
2 about the evidence in the case. And we have gone  
3 back and forth. Quite frankly he has been  
4 frustrated with me and deservedly so as to the  
5 issue of whether or not the victim would come  
6 forward to testify. First he thought that because  
7 she lived out of state the solicitor's office  
8 wouldn't pay for transportation. So there were a  
9 lot of hurtles in communication.

10 I had to explain to him and give him  
11 the law about the limitations and complexities of  
12 the rules of evidence that apply to victim's prior  
13 sexual conduct. Because his position is that it  
14 was consensual and so we are left with a he  
15 said/she said. He says he has known her for a  
16 while, so the representation to the law enforcement  
17 was that he didn't know -- that she didn't know him  
18 was from his point of view absolutely incorrect.

19 Your Honor, he was confused by the fact  
20 that this incident occurred in 2014 and he didn't  
21 get arrested until 2015 because it took that long  
22 for the DNA results to come back. And he's been in  
23 the system. And there's no reason for him to trust  
24 the system frankly. So there were all these  
25 barriers to communication and for me to try and

1 explain to him exactly why quite frankly how  
2 treacherous it was given all that we were working  
3 with in terms of going to trial. I believe the  
4 State has weaknesses in their case. I know I have  
5 had weaknesses in my case. I just -- part of what  
6 I like to believe I do is I don't really like it  
7 when my clients have to go to prison. But when we  
8 get to the point where it's a certainty then I have  
9 to do what I can to control the amount of time they  
10 are going to serve. That's why we are here today.

11 He's 45 years old. He's a life-long  
12 resident of Charleston. He has four children. I  
13 found out this week he has grandchildren. When I  
14 asked him this morning how many he said seven. So  
15 he's at a point in his life that I think he's ready  
16 to the extent that the system will allow him to do  
17 that, to come out and still have enough time in his  
18 life to be with his children, be with his  
19 grandchildren.

20 I have talked to his -- the mother of  
21 his son, I talked to his sister. They are anxious  
22 to have him home and I think this resolution  
23 satisfies the legal system's requirement of him,  
24 but also gives him an opportunity to come out in a  
25 fairly short period of time and resume his life.

1 THE COURT: Anything you want to tell  
2 me, sir?

3 THE DEFENDANT: No, sir.

4 THE COURT: Does he have a record that  
5 would have been capable of being utilized under the  
6 rules of evidence if he testified?

7 MS. KENNEDY: Yes, sir.

8 THE COURT: Criminal sexual conduct  
9 within the time frame?

10 MS. WHITAKER: Yes.

11 MS. KENNEDY: I believe he was charged  
12 with CSC first and pled to a third.

13 THE COURT: In what year? Well, that's  
14 all right. Was he sentenced on that?

15 MS. KENNEDY: Court's indulgence.

16 THE COURT: Obviously one of the  
17 factors that I consider insofar as in assessing his  
18 agreement that he likely would be convicted.

19 MS. KENNEDY: It was in '95, Your  
20 Honor, but there was some other issues too.

21 THE COURT: Okay.

22 MS. WHITAKER: Your Honor, there was an  
23 '02 assault and battery of a high and aggravated  
24 nature, but I don't know the facts associated with  
25 that.

1 THE COURT: Did he serve time for that?

2 PROBATION OFFICER: I have that down as  
3 1998. Assault and battery, ABHAN.

4 MS. KENNEDY: He did serve time.

5 PROBATION OFFICER: He did a YOA.

6 THE COURT: That's fine. Anything else  
7 you want to tell me, sir?

8 THE DEFENDANT: Nothing other than I  
9 apologize for the court for the time, sir.

10 THE COURT: All right, sir. There's a  
11 significant risk and I understand that and that's  
12 always especially described and I have not seen the  
13 victim, but it sounds as though that would have  
14 also been an effect as well.

15 MS. KENNEDY: Your Honor, there's also  
16 the issue that she's 60 something years old.

17 THE COURT: Exactly. There's no  
18 question about all of the emotional aspects of  
19 this. You understand, sir?

20 THE DEFENDANT: Yes.

21 THE COURT: And that's one of the  
22 reasons you came to the conclusion that you did, if  
23 I went to trial I probably would be convicted. Not  
24 withstanding I believe it is consensual; is that  
25 correct, your assessment?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Well, it's probably fair.  
3 That is why I wish we had truth in sentencing in  
4 every respect because now I know. Three years is  
5 1,095 days. You have served 771. You have 159.75  
6 left to serve. So you will be out in less than a  
7 year. So good luck to you, sir. I will impose the  
8 negotiated sentence of three years and give him  
9 credit for 771 days.

10 (These proceedings were concluded at  
11 11:33 a.m., April 21, 2017, Charleston County,  
12 South Carolina.)  
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CERTIFICATE OF REPORTER

I, Ruth C. Weese, Registered Diplomate Reporter for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 24th day of May, 2018 at Charleston, Charleston County, South Carolina.

*Ruth C. Weese*

---

Ruth C. Weese  
Registered Diplomate  
Reporter

FORM 5

STATE OF SOUTH CAROLINA

County of Charleston

Antonio Young #287735

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2018 CP 10 1724

APPLICATION FOR

POST-CONVICTION RELIEF

FILED  
2018 APR -5 PM 2:38  
JULIE J. ALDRIDGE  
CLERK OF COURT

FILED

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention 3841 LEEDS AVE, N. CHAS., S.C. 29405,  
S.A.C.D.C.
2. Name and location of Court which imposed sentence COURT OF GS-9th Cir.  
100 BROAD ST. CHAS., S.C. 29401
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) A102121000456 (CSC)
  - (b) \_\_\_\_\_

- (c) \_\_\_\_\_
- 5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) GUilty PLEA 09/21/17
  - (b) CREDIT FOR 771 DAYS
  - (c) \_\_\_\_\_

- 6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty
  - (b) after a plea of not guilty \_\_\_\_\_
  - (c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?  
NO

- 8. If you answered "yes" to (7), list:
  - (a) the name of each Court to which you appealed:
    - i. \_\_\_\_\_
    - ii. N/A
    - iii. \_\_\_\_\_

- (b) the result in each such Court to which you appealed:
  - i. \_\_\_\_\_
  - ii. N/A
  - iii. \_\_\_\_\_

- (c) the date of each such result:
  - i. \_\_\_\_\_
  - ii. N/A
  - iii. \_\_\_\_\_

- (d) if known, citations of any written opinion or orders entered pursuant to such results:
  - i. \_\_\_\_\_
  - ii. N/A
  - iii. \_\_\_\_\_

- 9. If you answered "no" to (7), state your reasons for not so appealing:
  - (a) WAS NOT AWARE OF RIGHT UNTIL INQUIRY W/ COUNSEL
  - (b) \_\_\_\_\_

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

(a) WAS LEAD TO PLEADING DUE TO INEFFECTIVE COUNSEL

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

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

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

(a) RIGHT TO CONFRONT/ACCUSER NOT PRESENT

(b) NO PRESENTMENT OF TR. BILL OF INDICTMENT / IMP. DOX.

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

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

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

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

i. \_\_\_\_\_

ii. N/A

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

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

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

i. \_\_\_\_\_

ii. N/A

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

iv. N/A

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. N/A
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. N/A
- iv. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. N/A
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

N/A

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

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. N/A
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. N/A
- 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) LACK OF EFFECTIVE COUNSEL
- (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? N/A
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
  - i. PATRICIA KENNEDY  
101 MEETING ST., CHAS., SC. 29409
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. ARRAIGNMENT
  - ii. PLEA
  - iii. SENTENCING

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

DISMISSAL

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

no

STATE OF SOUTH CAROLINA )  
County of CHARLESTON )

VERIFICATION

I, Antonio Young, 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.

Antonio Young

SWORN to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
(L.S.)  
Notary Public

My Commission Expires: \_\_\_\_\_

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

I, Antonio Young, 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.

Antonio Young  
Applicant

SWORN or affirmed to and subscribed before me this  
day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

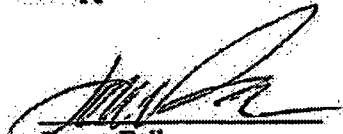
My Commission Expires: \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 Antonio Young 289735 )  
 Applicant )  
 Vs. )  
 State of South Carolina )  
 Respondent.)

COURT OF COMMON PLEAS  
 FOR THE 9th JUDICIAL CIRCUIT  
 2018-CP-10- 1724

CERTIFICATE IN LIEU OF NOTARY

The undersigned attorney is appointed to represent Applicant in the Charleston County case styled *In the Matter of the Care and Treatment of Antonio Young*, 2017-CP-10-3932. The undersigned attorney certifies as an officer of the Court that Antonio Young's signature appears on page 6 of the application as well as the Application to Proceed Without payment of Costs on page 7.

  
 James Falk  
 Counsel for Applicant

Charleston, SC  
 April 6, 2018

FILED  
 2018 APR -5 PM 2:38  
 JULIE J. ARMSTRONG  
 CLERK OF COURT  
 BY \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 COUNTY OF CHARLESTON )  
 Antonio Young, #289735, )  
 Applicant, )  
 v. )  
 State of South Carolina, )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2018-CP-10-1724

**RETURN AND MOTION FOR  
 MORE DEFINITE STATEMENT**

The State (Respondent), making its Return to the application for Post-Conviction Relief filed on April 5, 2018, would respectfully show this Court:

**I. Procedural History**

Antonio Young (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. In June 2016, the Charleston County Grand Jury indicted Applicant for first degree criminal sexual conduct. Patricia Kennedy, Esquire represented Applicant. Assistant Solicitor Tyler S. Whitaker, Esquire prosecuted the case. On February 21, 2017, Applicant pleaded guilty of the lesser included offense of assault and battery of a high and aggravated nature (ABHAN) before the Honorable R. Markley Dennis, Jr. Pursuant to a negotiated sentence between the State and the Applicant, Judge Dennis sentenced Applicant to imprisonment for three years. Applicant did not appeal his conviction or sentence.

**II. Allegations Raised and Relief Sought**

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

1. "Was lead to pleading due to ineffective counsel"
2. "Right to confront accuser not present"

3. "No presentment of true billed indictment/Imp. Dox."

As requested relief, Applicant states he is seeking "dismissal."

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

**III. Response to Allegations of Ineffective Assistance of Counsel**

Applicant alleges ineffective assistance of counsel, but has wholly failed to set forth any facts to support this allegation. Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668. 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, 466 U.S. 668. First, an 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 an 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, the 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).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, 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. Response to Allegations of Involuntary Guilty Plea

Applicant also asserts his plea was involuntary. Applicant has failed to state with any specificity the specific facts giving rise to this allegation. 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)).

In this case, the record refutes any allegation that Applicant did not knowingly enter his guilty plea. At the guilty plea hearing, Applicant was advised of the charges and testified that he wanted to plead guilty under North Carolina v. Alford. (Tr. pp. 4-5). Applicant was also advised of the rights he would waive by pleading guilty, including the right to a trial, which Applicant testified he understood. (Tr. p. 5). Furthermore, Applicant testified he was entering the plea of his own free will and accord, and that he was not promised anything in exchange for his guilty plea. (Tr. pp. 6-7).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, 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).

#### **VI. Motion for a More Definite Statement**

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing.

Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

#### **VI. Any Future Amendments**

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), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. 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), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

#### **VII. Response to Any and All Other Allegations**

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

**VIII. Request for an Evidentiary Hearing**


Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

By:   
ATTORNEYS FOR RESPONDENT  
Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211

June 7th, 2018

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 ANTONIO YOUNG, #289735 )  
 )  
                                   Applicant, )  
                                   ) )  
                                   vs )  
                                   ) )  
 STATE OF SOUTH CAROLINA, )  
 )  
                                   Respondent, )  
 \_\_\_\_\_ )


IN THE COURT OF COMMON PLEAS  
 2018-CP-10-1724

AFFIDAVIT OF SERVICE BY MAIL

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

James K. Falk, Esquire  
 Falk Law Firm, LLC  
 Post Office Box 1058  
 Charleston, SC 29402

DATED this the 7<sup>th</sup> day of June, 2018.

  
 \_\_\_\_\_  
 Jennifer Jennison, Legal Assistant  
 For Respondent



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PCR HEARING OF ANTONIO YOUNG

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TESTIMONY BY MR. ANTONIO YOUNG

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1           THE COURT: All right. Mr. Falk, do you have Mr.  
2 Antonio Young?

3           MR. FALK: I do, Your Honor.

4           THE COURT: It appears that Antonio Young pled guilty  
5 to assault and battery of a high and aggravated nature on  
6 April 21st of 2017 before Judge Markley Dennis; is that  
7 correct?

8           MR. FALK: Yes, Your Honor.

9           THE COURT: All right. He appears to have been  
10 sentenced to a term of three years with credit for the time  
11 he served in jail to the time of 771 days; is that correct?

12           MR. FALK: Yes, Your Honor.

13           THE COURT: Mr. Falk, have you informed Mr. Young what  
14 assault and battery of a high and aggravated nature carries?

15           MR. FALK: Yes.

16           THE COURT: And what was that?

17           MR. FALK: Your Honor, if I could stop and explain why  
18 we are here?

19           THE COURT: Sure.

20           MR. FALK: Okay. So I was appointed to Mr. Young's  
21 sexually violent predator case. When I went down to speak  
22 with him and this is the unusual situation where he actually  
23 had served out so quickly, there was still a year left, he  
24 would still have been in the window to file a PCR. And so,  
25 we filed a PCR based on the fact that I don't think he had

1 any idea that if he was pleading guilty that day, that he  
2 would wind up being caught up in a sexually violent predator  
3 proceeding. That's why we're here. Obviously, he knows  
4 that if he got found guilty of assault and battery of a high  
5 and aggravated nature, he could get more than the time he  
6 received and I did not tell him the second time.

7 THE COURT: Okay. So he is aware if the PCR went  
8 forward on those grounds then he might be facing a higher  
9 sentence than he was sentenced to by Judge Ness; is that  
10 correct?

11 MR. FALK: Yes, Your Honor.

12 THE COURT: Okay. And he wants to proceed anyway  
13 today?

14 MR. FALK: Yes, Your Honor.

15 THE COURT: Okay. All right. Do you want to call your  
16 first witness?

17 MR. FALK: We would call Pat Kennedy to the stand.

18 THE COURT: All right. Ms. Kennedy?

19 (Whereupon, Ms. Kennedy approaches the witness stand and is  
20 duly sworn.)

21 CLERK: Please begin by stating your full name and  
22 spelling your last name for the record.

23 MS. KENNEDY: Patricia Anne Kennedy, K-E-N-N-E-D-Y.

24 DIRECT EXAMINATION

25 BY MR. FALK:

## Direct examination of Ms. Patricia Anne Kennedy by Mr. Falk

1 Q Ms. Kennedy, can you tell me something about the  
2 discussions with Mr. Young as far as taking a plea in this  
3 case?

4 A In terms of reduction in sentence ---

5 Q Yes. How much time was he facing do you believe?

6 A On the ABHAN charge, 20 years.

7 Q Okay. He was denying that he committed the ABHAN, was  
8 he not?

9 A That is correct.

10 Q Because he actually pled guilty under Alford, did he  
11 not?

12 A He did.

13 Q Okay. And he was in the -- when I looked through the  
14 plea colloquy, there was a discussion about, you know, that  
15 he was on notice that he was going to be on the sex offender  
16 registry?

17 A Yes.

18 Q And I think your response to that was that he was  
19 already on the registry, so ---

20 A Yes, he was.

21 Q Okay. What were your discussions about his possible  
22 exposure to caught up in or being in an action for a  
23 sexually violent predator civil contempt trial?

24 A I can't honestly say we had those discussions. I have  
25 my notes, what we said on the phone, and it's unlikely that

1 would have happened, however, I don't have any independent  
2 recollection of it. The other issue in my mind is that it  
3 may have been that I didn't do it because of the charge he  
4 was pleading to.

5 Q Right, because it's not a sex ---

6 A Right. Because of the reduction in the charge. It's -  
7 - it's like, you know, either I didn't do it.

8 Q So he really got -- were you aware that somebody that  
9 has a prior sexually violent offense and he is found guilty  
10 and if he goes back up the road on any charge? That he is  
11 eligible for a new sexually violent predator proceeding  
12 being brought against him?

13 A Yes. I'm not aware necessarily -- I know what the  
14 process is, but again, he had a reduction in the charge, so  
15 that's probably ---

16 Q I just want to make sure you understood my question.  
17 Let's say somebody had a CSC, attempted CSC with a minor.

18 A Uh-huh.

19 Q Or an attempted CSC case 15 years ago and he served out  
20 on that and you're representing him on a possession of drug  
21 case. Did you realize that if he goes back on that, if he  
22 goes back to SCDC on that, that he could potentially  
23 reinitiate -- that that fact would reinitiate and sexually  
24 violent predator would ---

25 A Yes, I am aware of that. It's just like being put on a

1 registry after the fact.

2 Q So let me -- but did you explain that to him?

3 A I don't recall the specific conversation, no, sir.

4 Q Is it part of your process when you have somebody with  
5 a history of the sexually violent offense as defined under  
6 the SVP Act, is it part of your process to look to see  
7 whether or not any proceedings have been instigated in the  
8 past?

9 A No. I'm not aware of how exactly how you would be able  
10 to do that actually.

11 Q Let me just get to this point here. I guess I probably  
12 know the answer to this, but were you aware that in 2006,  
13 his case was reviewed by the multi-disciplinary committee?

14 A No.

15 Q Had you known that, would your advice have been any  
16 different, and you got -- because you already said that you  
17 knew having -- if you've committed a sexually violent crime  
18 in the past, anytime you get back up the road, you can --  
19 that can initiate a sexually violent predator proceeding.  
20 So I'm just saying that here you got a chance of not only,  
21 you know, he probably should have known that if he pleads  
22 guilty to anything going forward for the rest of his life,  
23 he can reinstitute civil commitment proceedings under the  
24 sexually violent predator act, but this is a gentleman that  
25 in 2006 a proceeding was started and dismissed.

1 A Had I known that, I would -- it certainly would have --  
2 my file would reflect it and discussions along that line.  
3 And most assuredly, I would have, in terms of making the  
4 record clean, made sure that the record would reflect that  
5 advice had been given to him.

6 Q Because it's no question that had he not had the prior  
7 charge, this was a good deal for him, wasn't it?

8 A Yes.

9 Q He had had 770 days or so in custody and he hardly  
10 served any time on the previous sentence?

11 A Yes.

12 Q But possibly the decision to decide to plea or not plea  
13 might have been influenced by the fact that he could get  
14 caught up in a sexually violent predator ---

15 A It could have been. It could have been.

16 Q And were you aware that if somebody is convicted under  
17 the sexually violent predator act, it's an indeterminate  
18 period of time that he is in the program.

19 A Absolutely. It's a different kind of life without  
20 parole.

21 Q Exactly. Exactly. No further questions.

22 THE COURT: Okay. The State?

23 MR. LIMBAUGH: May it please the Court, Your Honor?

24 CROSS-EXAMINATION

25 BY MR. LIMBAUGH:

## Cross-examination of Ms. Patricia Anne Kennedy by Mr. Limbaugh

1 Q Ms. Kennedy, would it have been your normal practice to  
2 go over these kind of things with your clients?

3 A I'm sorry; I can't hear.

4 Q Would it have been your normal practice to discuss  
5 these matters with your client?

6 A Yes, but as I said, I have no independent recollection  
7 that we did that.

8 Q And with Mr. Young having been involved in these SVP  
9 cases before, do you think he would have had any prior  
10 knowledge of how this would have worked before going into  
11 this plea?

12 A Mr. Young?

13 Q Yes.

14 A No.

15 Q Did Mr. Young ever indicate to you that he wished to  
16 proceed to trial?

17 A We had those discussions, yes; extensively.

18 Q Ultimately, whose decision was it to take the plea?

19 A It was his decision, as it is with all of my clients.

20 MR. LIMBAUGH: A moment's indulgence, Your Honor.

21 Q Did you advise him of all of his other constitutional  
22 rights before taking this plea?

23 A Yes.

24 Q And what the risk was that he was pleading to on its  
25 own -- let me rephrase that. What the sentence was for

## Redirect examination of Ms. Patricia Annie Kennedy by Mr. Falk

1 the charge he was pleading to, did you explain that to him?

2 A Yes.

3 Q And all of the elements of that charge?

4 A Yes, I do that with every client.

5 MR. LIMBAUGH: That's all I have, Your Honor.

6 THE COURT: Mr. Falk, anything else?

7 REDIRECT EXAMINATION

8 BY MR. FALK:

9 Q Mr. Limbaugh asked whether or not you would typically  
10 go over -- that you might not have any independent  
11 recollection in this case.

12 A Right.

13 Q There might be something that you typically would do?

14 A Yes.

15 Q And you've been practicing for more than three years?

16 A I'm sorry, what?

17 Q I'm just joking. You've been obviously practicing  
18 criminal defense law for how many years?

19 A Oh, 33 in November.

20 Q But you did testify that it would not have been part of  
21 your practice to look and see if there were prior sexually  
22 violent predator proceedings?

23 A No, never, in all of that time.

24 Q Thank you.

25 MR. FALK: That's all I have, Your Honor.



1 Charleston County Detention Center since December of 20---

2 A Since October of 2017.

3 Q October of 2017. And you had a sexually violent  
4 predator commitment trial in ---

5 A --- in October of 2018.

6 Q 2018. And that case -- so there was a hung jury in  
7 that case, right?

8 A Yes, sir.

9 Q And so you got another trial beginning?

10 A Next month.

11 Q April -- the first week in April?

12 A Yes.

13 Q Okay. Now, can you describe your recollection of your  
14 conversations with Ms. Kennedy about what she told you about  
15 the potential of being a sexually violent -- getting caught  
16 up in this proceeding?

17 A We had no conversation concerning me having to face  
18 this after I was sentenced.

19 Q How about before you entered the plea agreement? Did  
20 she talk to you?

21 A We still had no conversations.

22 Q Okay. But you were on -- at the time you pled, you  
23 were on the sex offender registry, right?

24 A Yes, sir.

25 Q And there was a discussion during your plea when you

1 were talking to the judge and got sentenced, a mention was  
2 made about you being on the sex offender registry; isn't  
3 that right?

4 A Yes, sir.

5 Q But there was no mention during that period that you  
6 could be exposed to sexually violent predator proceedings  
7 being initiated against you, were there?

8 A Correct.

9 Q Okay. Now, were you aware that in 2006 the  
10 multidisciplinary committee was starting proceedings against  
11 you?

12 A No, sir.

13 Q Those proceedings were dismissed at a probable cause  
14 hearing. Do you remember that event?

15 A No, sir.

16 Q Do you remember if you were transported?

17 A I wasn't.

18 Q So you had no prior experience with this whole civil  
19 commitment proceeding, did you?

20 A No, sir.

21 Q All right. Now, you pleaded guilty under Alford; isn't  
22 that correct?

23 A Yes, sir.

24 Q And as Ms. Kennedy told you, you were facing 20 years  
25 on assault and battery of a high and aggravated nature;

1 isn't that correct?

2 A Yes, sir.

3 Q Okay. Now, what you have been advised as far as what  
4 could happen as far as sexually violent predator proceeding  
5 that is set to take place in April?

6 A Well, that I would have to go to some type of  
7 treatment.

8 Q And were you advised where the treatment would be?

9 A They said in Columbia.

10 Q And do you know how long you would be in treatment?

11 A They didn't give a time period.

12 Q And were you advised that you would be there until you  
13 were ready for release?

14 A Yes, sir.

15 Q Okay. Are you familiar with the term "indeterminate"  
16 period of time? Meaning you just don't know when you go in  
17 there when you could get out?

18 A Right.

19 Q Now, had you known that, what would you have done? How  
20 would your discussions with your lawyer been about accepting  
21 this plea deal?

22 A I would have went to trial.

23 Q But you have to admit that it was a pretty sweet deal?

24 A Yes, sir.

25 Q Because you were seven months up the road and, you

1 know, you were home again.

2 A Yes, sir.

3 Q And once you were home, how quickly after that did you  
4 get notice of these proceedings?

5 A Hmmm --

6 Q How quickly were you on the street before you got  
7 picked back up?

8 A Five years.

9 Q No, no, no, no, no, no. So when you pled and you got  
10 your three year sentence on the ABHAN ---

11 A I never been home.

12 Q You never went home?

13 A No, sir.

14 Q So you went right from prison back to the county?

15 A Prison back to the county, yes, sir.

16 Q I couldn't recall whether or not they picked you up  
17 from prison or it was because you were on the street?

18 A No, I wasn't.

19 Q They took you right from SCDC?

20 A Yes, sir. Yes, sir.

21 Q Okay. And you have never been in Court since 2006 at a  
22 proceeding like this before?

23 A No, sir.

24 Q And again, had you known that you had been -- and so I  
25 met you in the Charleston County Detention Center, right?

## Cross-examination of Mr. Antonio Young by Mr. Limbaugh.

1 A Yes, sir.

2 Q And I was talking to you about your sexually violent  
3 predator that I'm representing you on?

4 A Yes, sir.

5 Q And then you filed a PCR action; is that correct?

6 A Yes, sir.

7 Q And what you are saying is that had you known you would  
8 have this kind of exposure, you would have wanted a trial?

9 A Yes, sir.

10 Q Even though you could have gotten a 20-year sentence?

11 A Yes, sir.

12 Q Because how long would you have been in custody if you  
13 get convicted of a sexually violent predator in April? Do  
14 you know?

15 A No.

16 MR. FALK: No further questions.

17 MR. LIMBAUGH: May it please the Court?

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. LIMBAUGH

21 Q So you say you would have gone to trial had you known  
22 that you were being exposed as a sexually violent predator?

23 A Yes, sir.

24 Q Even knowing you would be facing 20 years going to  
25 trial?

1 A Yes, sir.

2 Q And if convicted at trial, you would be facing 20 years  
3 and still a possibility of a sexually violent predator?

4 A Yes, sir.

5 Q Okay. Has your attorney explained everything else to  
6 you about your proceeding, your constitutional rights,  
7 things of that nature?

8 A She usually be talked to me about pleading guilty. She  
9 ain't be telling me nothing else.

10 Q You don't recall any of those conversations with your  
11 attorney?

12 A We never had it.

13 Q So even with the risk of more time if convicted at  
14 trial, you still want a trial?

15 A Yes, sir.

16 MR. LIMBAUGH: That's all I have, Your Honor.

17 THE COURT: All right. Any redirect?

18 MR. FALK: None.

19 THE COURT: Okay. You can step down and have a seat  
20 back at your counsel table.

21 Anything else, Mr. Falk; any other witnesses?

22 MR. FALK: No, Your Honor.

23 THE COURT: Okay. I will be glad to hear from you.

24 MR. FALK: Your Honor, we are trying to make a record  
25 for this case. I would argue that this is a type of

1 collateral consequence, although it's not that specifically  
2 named in Padilla v. Kentucky, but this is the type of  
3 collateral consequence that somebody needs to know about  
4 before they plead guilty to a charge that could expose them  
5 to a sexually violent predator civil commencement  
6 proceeding.

7 I do think that if you are representing a criminal  
8 defendant who has a prior sexually violent offense and they  
9 have already once gone through -- the multidisciplinary  
10 committee has already brought a proceeding against them, I  
11 would think that makes it even more likely that you need to  
12 advise that client. The multidisciplinary committee had an  
13 opportunity to commit a 2006 case and send it back up in  
14 2017. It would seem more likely they would commit this  
15 time. That may be pure speculation, but I do think that's a  
16 reasonable inference you could draw and I think that is the  
17 type of information that Mr. Young needed before he pled  
18 guilty.

19 I think you could contact the Attorney General's Office  
20 and find out whether or not proceedings have been dropped in  
21 the past because the information obtained is enough. There  
22 was a dismissal of the action at the initial probable cause  
23 stage in this case, so there was public record in Charleston  
24 County.

25 My client testified that he was never brought to Court

1 because it was dismissed at the early probable cause  
2 hearing. I'm not sure if you know the process how it works,  
3 there is an initial one and then they get their lawyer and  
4 they come back, but you know, it was even before that  
5 proceeding, so he was not brought to Court. I won't try to  
6 add anymore responsibilities. I'm a criminal defense  
7 lawyer, but I'm just ---

8 THE COURT: What you're seeking as far as in this  
9 particular set of facts that we're dealing with is that it  
10 was dismissed at the PC hearing and your client wasn't even  
11 brought over for that hearing. I'm not sure that the burden  
12 that you're placing on the defense attorney is pretty high.  
13 So you're suggesting that they take a look at your client's  
14 record of course, and then based on the nature of the  
15 offenses in the record, then that defense attorney should  
16 then take an additional step of contacting the AG's office  
17 without any other information to see if their client was  
18 ever instituted as a sexually violent predator at a sexually  
19 violent predator proceeding?

20 MR. FALK: That's my guess, Your Honor, because again,  
21 I don't see how much different that is than advising him to  
22 plead guilty to possession if they plead -- if somebody who  
23 was here illegally and they would plead guilty, you know, to  
24 PWID, possession with intent, and they get a great deal and  
25 they don't even go to prison, yet they could still be

1 exposed to deportation proceedings. I don't think anybody  
2 knew about it that counsel needed to be aware of that until  
3 the middle of the decision probably came down. But you have  
4 ---

5 THE COURT: Well, I think immigration status is one  
6 thing to discuss with your client. That's something that  
7 you can reasonably rely on your client to give you that  
8 information. So to me, there is a distinction here.

9 MR. FALK: Well, the ---

10 THE COURT: So my suggestion -- he wouldn't have  
11 necessarily known that the proceedings had been done against  
12 him; do you see what I'm saying? And so, it's taking that  
13 extra step -- rules of immigration status, that an attorney  
14 could get from their client relatively easy, but this other,  
15 you really, that's going above and beyond just discussing  
16 with your client. That's going to -- I'm not sure how you --  
17 -- you can expect an attorney to literally check the  
18 negative, if that makes sense.

19 MR. FALK: Well, I mean, they do have an opportunity to  
20 review the criminal record to know whether or not they were  
21 found guilty of a sexually violent offense.

22 THE COURT: And in this particular case, actually his  
23 prior, from my limited reading of the record so far is that  
24 he pled to the other ABHAN, I believe. I'm not sure that --  
25 in other words, his record isn't reflective of crimes of a

1 sexual nature. I'll look at it a little closer. So you're  
2 suggesting that maybe if the record reflects crimes of a  
3 sexual nature then they should contact the AG's office.

4 MR. FALK: Well, clearly, the statute looks for where  
5 crimes are sexually violent offenses, other than the  
6 sexually violent predator act.

7 THE COURT: Right. And he does have -- I noticed in  
8 the transcript that he has a prior violation?

9 MR. FALK: Well, yes, certainly in this case; he is on  
10 the registry.

11 THE COURT: Right.

12 MR. FALK: So even if we want to say anybody on the  
13 register, I mean, that's a red flag; that's like immigration  
14 status. I don't think that's that much greater of a burden  
15 to place.

16 THE COURT: All right. Anything else?

17 MR. LIMBAUGH: Just briefly, Your Honor. In terms of  
18 the greater burden on the defense attorney here, just  
19 looking at the deficiency at the time. I don't see many  
20 defense counsels calling our office or calling and asking  
21 about potential consequences for their clients. Also, I  
22 don't believe, if you're talking about collateral  
23 consequences, if you advise correctly, but if you don't  
24 advise your client at all, and please correct me if I've  
25 mis-spoken the law here, but I believe that's correct.

1 Counsel, even though she said it was her prior practice, she  
2 said she didn't talk about it. I believe, right or wrong,  
3 the law in the state currently is she didn't misadvise him,  
4 so therefore she didn't do it.

5 THE COURT: Okay. This is interesting. If you can  
6 send me an Order from both sides within 30 days and I will  
7 enjoy looking at case law you cite for further review. So  
8 this will be under advisement.

9 MR. LIMBAUGH: Thank you, Your Honor.

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1

STATE OF SOUTH CAROLINA )

)

CERTIFICATE

COUNTY OF COLLETON )

I, REBECCA H. HILL, Official Court Reporter for the Judicial Department of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had in the hearing of the captioned case, in the Court of Common Pleas for Charleston County, South Carolina, on the 20<sup>th</sup> day of March 2019.

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

August 24, 2019

Rebecca H. Hill

Rebecca H. Hill,  
Official Court Reporter

Cc  
AT  
RG  
SOL  
GO

STATE OF SOUTH CAROLINA )  
 COUNTY OF CHARLESTON )  
 )  
 Antonio Young, #289735, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2018-CP-10-1724

RECEIVED

MAY 17 2019

S.C. SUPREME COURT  
 ORDER OF DISMISSAL

FILED  
 2019 MAY -2 PM 3:38  
 JULIE J. ARMS, JR.  
 CLERK OF COURT

**I. Procedural History**

Antonio Young (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. In June 2016, the Charleston County Grand Jury indicted Applicant for first degree criminal sexual conduct. Patricia Kennedy, Esquire represented Applicant. Assistant Solicitor Tyler S. Whitaker, Esquire prosecuted the case. On February 21, 2017, Applicant pleaded guilty of the lesser included offense of assault and battery of a high and aggravated nature (ABHAN) before the Honorable R. Markley Dennis, Jr. Pursuant to a negotiated sentence between the State and the Applicant, Judge Dennis sentenced Applicant to imprisonment for three years. Applicant did not appeal his conviction or sentence.

**II. Allegations Raised and Relief Sought**

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

1. "Was lead to pleading due to ineffective counsel"
2. "Right to confront accuser not present"
3. "No presentment of true billed indictment/Imp. Dox."

At the evidentiary hearing Applicant amended his application to proceed solely on the

JBM/1

allegation that counsel was deficient for failing to advise Applicant that he would be potentially exposing himself to Sexually Violent Predator proceedings by pleading guilty.

***Statement of Facts from Plea***

As to the firearm charge, that occurred on September 5<sup>th</sup>, 2013. Officers noticed that the Defendant appeared to be intoxicated while operating his moped. He was placed under arrest for public intoxication. During an inventory of the back pack they found on the moped they located a firearm.

The assault and battery of a high and aggravated nature was originally charged as a criminal sexual conduct. The victim reported that she heard someone knocking on her neighbor's door on April 1, 2014. The victim knew that her neighbor was not home so she opened the door to tell the individual that the neighbor was not there. Applicant forced his way into the home and forced himself onto her. The victim did not know Applicant. The victim had a rape kit done and the DNA matched Applicant.

***Findings of Facts and Conclusions of Law***

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented, which allowed the Court to scrutinize the credibility presented. 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).

Applicant has alleged numerous instances of ineffective assistance of counsel against trial counsel, William Brunson. Each allegation is addressed fully below.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland does not guarantee perfect representation, only a "reasonably competent attorney." 466 U. S. at 687 (quoting McMann v. Richardson, 397 U. S. 759, 770 (1970)); Representation is constitutionally ineffective only if it "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair trial. Strickland, 466 U.S. at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities. See generally id.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an 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 an attorney provided representation within the range of competence required in criminal cases. Butler, 286, 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.

Although courts may not indulge "post hoc rationalization" for counsel's decision making that contradicts the available evidence of counsel's actions, Wiggins, 539 U.S. at 526-527, neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. There is a "strong presumption" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 8 (2003) (per curiam). After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind. Id. at 688; Harrington v. Richter, 562 U.S. 86 (2011)

With respect to prejudice, an applicant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694. It is not enough "to show that the errors had some conceivable effect on the outcome of the proceeding." Id. at 693. Counsel's errors must be "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Id. at 687; Harrington, 562 U.S. 86.

"Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S. 356, 371 (2010). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the Strickland standard must

be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve, Strickland, 466 U.S. at 689-690. Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings knew of materials outside the record and interacted with the client, with opposing counsel, and with the judge. It is "all too tempting" to "second-guess counsel's assistance after conviction or adverse sentence." Id. at 689; see also Bell v. Cone, 535 U. S. 685, 702 (2002); Lockhart v. Fretwell, 506 U. S. 364, 372 (1993). The question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Strickland, 466 U.S. at 690.

In assessing prejudice under Strickland, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. Wong v. Belmontes, 558 U. S. 15 (2009); Strickland, 466 U.S. at 693. Instead, Strickland asks whether it is "reasonably likely" the result would have been different. Id. at 696. This does not require a showing that counsel's actions "more likely than not altered the outcome," but the difference between Strickland's prejudice standard and a more-probable-than-not standard is slight and matters "only in the rarest case." Id. at 693, 697. The likelihood of a different result must be substantial, not just conceivable. Id. at 693; Harrington, 562 U.S. 86.

Based on this standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to any of his various allegations. Applicant's allegation is addressed fully below:

*Counsel was deficient for failing to advise Applicant of exposure to potential Sexually  
Violent Predator proceedings*

At the evidentiary hearing, Counsel testified that she did not remember explicitly reviewing with Applicant potential exposure to a new Sexually Violent Predator case if he were to plead guilty. Counsel testified that she doubts that she did not review it with him, but did not have an independent recollection of doing so. Applicant testified that counsel did not review any Sexually Violent Predator exposure with him.

This Court finds that counsel's performance was in accordance with "professional norms" and that Applicant has failed to establish any deficiency of counsel. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, although this Court does not make a finding as to whether or not counsel did inform Applicant of the Sexually Violent Predator Act and possible civil commitment pursuant to the Act, this Court notes that counsel is under no obligation to inform a client of the civil commitment process under the Sexually Violent Predator Act. See Page v. State, 364 S.C. 632, 637, 615 S.E.2d 740, 742 (2005) ("We conclude Petitioner's counsel had no duty to inform him about the civil commitment process under the SVPA. Although eligibility for civil commitment under the SVPA is triggered by conviction of a "sexually violent offense," civil commitment can be imposed only after testing, evaluation, a probable cause hearing, and a trial by either the court or jury. No one can be civilly committed as a "sexually violent predator" unless the State proves beyond a reasonable doubt the person suffers from a mental abnormality or personality disorder that makes the person likely to engage in sexual violence if not confined in a secure facility. Consequently, a person may be convicted of a predicate offense, and yet not be committed under the SVPA because the evidence is not sufficient to find that his or her present mental condition creates a likelihood of future sexually

violent behavior. Thus, any possible civil commitment of Petitioner would not flow directly from his guilty plea, but rather from a separate civil proceeding as a collateral consequence.”)

Therefore, in accordance with the standard set forth above, this Court finds that Applicant has failed to meet his burden and his application is summarily dismissed.

### **III. CONCLUSION**

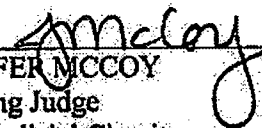
Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

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

#### **IT IS THEREFORE ORDERED:**

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 25 day of April, 2019.

  
 JENNIFER MCCOY  
 Presiding Judge  
 Ninth Judicial Circuit

TSW/0305793  
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER  
2014-010758

ARREST WARRANT NUMBER  
2015A1021000456

DATE OF ARREST

06/10/2015

ACTION OF GRAND JURY

**TRUE BILL**

*[Signature]* JUNE 4 2016  
Foreperson of Grand Jury Date:

VERDICT

Foraperson of Petit Jury Date:

DOCKET NO. 2016-GS-10-03532

The State of South Carolina  
County of Charleston

COURT OF GENERAL SESSIONS  
JUNE TERM

THE STATE

VS.

ANTONIO D YOUNG  
B/M DOB: [REDACTED]

Indictment for

CRIMINAL SEXUAL CONDUCT FIRST  
DEGREE

SC Code: § 16-03-0652  
CDR Code: 0160

**FILED**

6/30/2016 12:32:27 PM  
JULIE J. ARMSTRONG  
CLERK OF COURT

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened, the Grand Jurors of Charleston County present upon their oath:

**CRIMINAL SEXUAL CONDUCT FIRST DEGREE**

That in Charleston County, South Carolina, on or about April 1, 2014, the Defendant, Antonio D Young, did commit a sexual battery upon the victim, Susan Watters, accompanied by one or more of the following circumstances: the defendant used aggravated force to accomplish the sexual battery and/or the victim submitted to sexual battery under circumstances where the victim was also the victim of forcible confinement, kidnapping, trafficking in persons, robbery, extortion, burglary, housebreaking, or any other similar offense or act and/or the defendant caused the victim, without the victim's consent, to become mentally incapacitated or physically helpless by administering, distributing, dispensing, delivering, or causing to be administered, distributed, dispensed, or delivered a controlled substance, a controlled substance analogue, or any intoxicating substance. This is in violation of Section 16-3-652, 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.

  
\_\_\_\_\_  
TYLER S. WHITAKER  
ASSISTANT SOLICITOR