

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County

Honorable John C. Hayes, Circuit Court Judge

RECEIVED

May 27 2020

S.C. SUPREME COURT

MALIKAIH TAYLOR,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-001466

APPENDIX

SARAH E. SHIPE
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

CHELSEY F. MARTO
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

TRANSCRIPT OF GUILTY PLEA HEARING HELD NOVEMBER 6, 20171

APPLICATION FOR POST-CONVICTION RELIEF15

RETURN.....23

TRANSCRIPT OF POST-CONVICTION RELIEF HEARING
HELD JUNE 18, 201930

ORDER OF DISMISSAL.....77

INDICTMENT93

SENTENCE SHEET.....95

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry) 2017-GS-26-02245

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

November 6, 2017

MALIKAIH TAYLOR, JR.,)

Defendant.)

B E F O R E:

Honorable Steven H. John
Horry County Courthouse
Conway, South Carolina

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

C. Leigh Andrew, Esquire
Attorney for State of South Carolina

W. Thomas Floyd, Esquire
Attorney for Defendant

REPORTED BY:

Dixie C. Eubank
Circuit Court Reporter

PREPARED BY:

Kay H. Richardson
Circuit Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

NOVEMBER 6, 2017

Pg.

| | |
|-------------------------------------|----|
| By the Court | 3 |
| Sentence of the Court | 13 |
| Certificate of Court Reporter | 14 |

E X H I B I T S

No.

ID

EV

(No exhibits were marked or admitted.)

State v. Taylor - 2017-GS-26-02245
BY THE COURT

3

1 NOVEMBER 6, 2017

2 MALIKAIH TAYLOR, JR., HAVING BEEN
3 DULY SWORN, TESTIFIED AS FOLLOWS:

4 MS. ANDREW: This is the matter of State of South
5 Carolina, County of Horry v. Malikaih Taylor, Jr. It's true-
6 billed indictment number 2017-GS-26-00 -- I'm sorry -- 02245.
7 The defendant is charged with criminal sexual conduct with a
8 minor in the first degree. He's present with his attorney,
9 Mr. Tom Floyd. It's my understanding he's going to plead
10 guilty as charged with no recommendation by the state.

11 May I approach?

12 THE COURT: Yes, ma'am, please.

13 BY THE COURT:

14 THE COURT: All right, Mr. Taylor, give me your
15 attention, sir. You are coming before the Court pleading
16 guilty to the crime of criminal sexual conduct with a minor
17 first degree; is that correct?

18 MR. TAYLOR: Yes, sir.

19 THE COURT: You understand that the potential sentence in
20 this case can be from minimum of 25 up to life in prison; do
21 you understand that?

22 MR. TAYLOR: Yes, sir.

23 THE COURT: Do you understand that sex offender registry
24 is required; do you understand that?

25 MR. TAYLOR: Yes, sir.

State v. Taylor - 2017-GS-26-02245
BY THE COURT

4

1 THE COURT: As well as the Central Registry of Child
2 Abuse and Neglect; you understand that?

3 MR. TAYLOR: Yes, sir.

4 THE COURT: You understand that this is the crime for
5 which you were indicted by the Horry County Grand Jury and a
6 true bill rendered on this matter on April 20th, 2017; you
7 understand that?

8 MR. TAYLOR: Yes, sir.

9 THE COURT: And you understand that the matter comes
10 before the Court without negotiations or recommendations as to
11 the sentence; you understand that?

12 MR. TAYLOR: Yes, sir.

13 THE COURT: This crime is also listed as a violent and
14 most serious offense by the State of South Carolina; you
15 understand that?

16 MR. TAYLOR: Yes, sir.

17 THE COURT: Regarding it being classified as violent, you
18 understand that it affects the amount of time that you must
19 spend in the Department of Corrections; do you understand
20 that?

21 MR. TAYLOR: Yes, sir.

22 THE COURT: And you've talked about that with your
23 attorney, correct?

24 MR. TAYLOR: Yes, sir.

25 THE COURT: And you understand it's ramifications to you

State v. Taylor - 2017-GS-26-02245
BY THE COURT

5

1 regarding the time that you must spend in the Department of
2 Corrections?

3 MR. TAYLOR: Yes, sir.

4 THE COURT: The -- it is also a most serious offense that
5 gives you, if the Court accepts your guilty plea, one strike
6 under the state's two-strike law. So, that a second most
7 serious the sentence is life in prison without the possibility
8 of parole. Do you understand that?

9 MR. TAYLOR: Yes, sir.

10 THE COURT: The -- you understand that there's upon
11 release, if that is to be, after the service of a sentence,
12 there's a mandatory GPS monitoring; you understand that?

13 MR. TAYLOR: Yes, sir.

14 THE COURT: All right, sir. So, understanding all of
15 these things, do you wish to go forward with your guilty plea
16 at this time?

17 MR. TAYLOR: Yes, sir.

18 THE COURT: Are you currently under the influence of any
19 drugs or intoxicants of any kind or currently have them in
20 your system?

21 MR. TAYLOR: No, sir.

22 THE COURT: Are you suffering from any kind of physical,
23 mental, emotional problem that would keep you from
24 understanding what you're doing here today?

25 MR. TAYLOR: No, sir.

State v. Taylor - 2017-GS-26-02245
BY THE COURT

6

1 THE COURT: Now, when you plead guilty, you give up
2 constitutional rights. Among those, right to remain silent;
3 you're talking to me, you're giving that right up. Do you
4 understand that?

5 MR. TAYLOR: Yes, sir.

6 THE COURT: Other rights are, presumption of innocence,
7 the right against self-incrimination at a trial. The state
8 has to prove you guilty beyond a reasonable doubt, you plead
9 guilty, you're giving up those rights; you understand that?

10 MR. TAYLOR: Yes, sir.

11 THE COURT: You're entitled to a jury trial. Twelve men
12 and women would look at the facts presented by the state to
13 see if there are indeed enough facts and evidence to prove you
14 guilty beyond a reasonable doubt. You plead guilty, you're
15 giving up your jury trial. Do you understand that?

16 MR. TAYLOR: Yes, sir.

17 THE COURT: In that jury trial, with your attorney, you
18 could question the witnesses and the evidence presented by the
19 state. If you wanted to, you could present a defense,
20 testify, call witnesses, present evidence. You plead guilty,
21 you give up those rights; you understand that?

22 MR. TAYLOR: Yes, sir.

23 THE COURT: You're coming before the Court and you're
24 pleading guilty to the crime of criminal sexual conduct with a
25 minor first degree. Are you pleading guilty to that crime

State v. Taylor - 2017-GS-26-02245
BY THE COURT

7

1 freely and voluntarily?

2 MR. TAYLOR: Yes, sir. I'm in front of Your Honor
3 voluntarily pleading guilty, yeah.

4 THE COURT: All right, sir. And you are pleading guilty
5 because you are guilty of this crime?

6 MR. TAYLOR: Yes, sir.

7 THE COURT: Did anybody promise you anything or threaten
8 you or force you in any way to get you to plead guilty?

9 MR. TAYLOR: No, sir.

10 THE COURT: You're here today with your attorney Mr.
11 Floyd; is that correct?

12 MR. TAYLOR: Yes, sir.

13 THE COURT: Did you tell him everything you wanted to
14 tell him about this case?

15 MR. TAYLOR: Yes, sir.

16 THE COURT: Have you had enough time to talk to him?

17 MR. TAYLOR: Yes, sir.

18 THE COURT: Do you need any more time to talk to him?

19 MR. TAYLOR: No, sir.

20 THE COURT: Are you satisfied with his help?

21 MR. TAYLOR: Yes, sir.

22 THE COURT: Any complaints about his help or
23 representation?

24 MR. TAYLOR: Say again?

25 THE COURT: Any complaints about his help or

State v. Taylor - 2017-GS-26-02245
BY THE COURT

8

1 representation?

2 MR. TAYLOR: No, sir.

3 THE COURT: All right. Mr. Floyd, do you represent the
4 interest of your client Mr. Taylor in this matter?

5 MR. FLOYD: Yes, sir.

6 THE COURT: He comes before the Court to tender his plea
7 of guilty to the offense named. Do you concur?

8 MR. FLOYD: Yes, sir.

9 THE COURT: Do you believe he's coming before the Court
10 of his own freewill and accord?

11 MR. FLOYD: Yes, sir.

12 THE COURT: And have you explained to him his
13 constitutional rights, any defenses he might have, as well as
14 the information and evidence in the possession of the state?

15 MR. FLOYD: Yes, sir.

16 THE COURT: Thank you very much.

17 All right. Solicitor, the facts of the case, please,
18 ma'am?

19 MS. ANDREW: Your Honor, the defendant, Malikaih Taylor,
20 between the dates, on or between the dates of January 1st,
21 2013 and November 30 of 2014 committed a sexual battery upon
22 his biological daughter, Victim. He raped her on an
23 almost weekly basis over a period of two years.

24 Victim is present today with her mother and her family and
25 she would like to address the Court before you sentence the

State v. Taylor - 2017-GS-26-02245
BY THE COURT

9

1 defendant.

2 THE COURT: All right. Thank you, ma'am.

3 Prior record of Mr. Taylor, if any?

4 MS. ANDREW: Mr. Taylor has a 1996 possession of a stolen
5 automobile; six counts of B&E auto; 2007, he had a possession,
6 a felon in weapon charge; he had manufacturing crack and
7 resisting arrest in 2000; and in 2004, a prostitution charge.

8 THE COURT: All right. Very good.

9 MS. ANDREW: And, Your Honor, we would -- the state would
10 just like to put on the record that we were about to call this
11 case for trial when the defendant made the decision to plead
12 guilty to the charge as charged. The jury is downstairs and
13 we were about to go pick and he decided to plead guilty to
14 this charge.

15 THE COURT: Yes, ma'am.

16 All right, Mr. Taylor. You heard the facts of the case
17 stated by the solicitor, and a brief summary of those facts
18 are set forth in your indictment. My question to you is, are
19 those facts true and correct?

20 MR. TAYLOR: Yes, sir.

21 THE COURT: And you understand when you engaged in that
22 kind of activity, you were committing a crime; you understood
23 that?

24 MR. TAYLOR: Yes, sir.

25 THE COURT: Have you understood my questions here today?

State v. Taylor - 2017-GS-26-02245
BY THE COURT

10

1 MR. TAYLOR: Yes, sir.

2 THE COURT: Have all your answers to me been the truth?

3 MR. TAYLOR: Yes, sir.

4 THE COURT: Anybody tell you how to answer my questions?

5 MR. TAYLOR: No, sir.

6 THE COURT: And you understand you have the right to
7 appeal your guilty plea within 10 days?

8 MR. TAYLOR: Yes, sir.

9 THE COURT: I find there's been a substantial factual
10 basis for the plea. I find the defendant's decision to plead
11 guilty has been done freely, voluntarily, knowingly, and
12 intelligently made. He's had the advice of competent counsel
13 with whom he's satisfied. Therefore, Mr. Taylor's decision to
14 plead guilty to criminal sexual conduct with a minor first
15 degree is accepted.

16 Before I turn to you, Mr. Floyd, Solicitor, you indicated
17 that the victim wished to address the Court; is that correct?

18 MS. ANDREW: I do, Your Honor. And for the record, the
19 victim's birthday is [REDACTED], 2003, which would make her
20 nine and ten years old when the crime occurred.

21 THE COURT: All right. Very good.

22 If you would just tell me your name, please, and then
23 I'll be glad to hear from you.

24 [REDACTED] Victim [REDACTED] Victim .

25 THE COURT: Yes, ma'am?

State v. Taylor - 2017-GS-26-02245
BY THE COURT

11

1 Victim ██████████: Okay.

2 THE COURT: Victim ██████████, it's your choice. I mean, I'm
3 glad to hear from you anything you would like to say to me and
4 please do that if you would like to. It's not required that
5 you do so. You don't have to, you know, if you would choose
6 not to but, please understand, I'm certainly here willing to
7 listen to what you would have to say. Okay?

8 Victim ██████████: I used to trust my dad when when like he
9 was with me, like I used to trust him, but now I don't trust
10 him.

11 THE COURT: Okay. Thank you. Thank you very much.
12 Anything else, Solicitor?

13 MS. ANDREW: That's all, Your Honor.

14 THE COURT: Thank you, ma'am.

15 All right, Mr. Floyd. I'll be glad to hear from you,
16 sir.

17 MR. FLOYD: May it please the Court, Your Honor.
18 Malikaih is 39 years old. He's a cook by trade. And I will
19 go ahead and say that he's been in jail for 573 days by my
20 count.

21 I have talked with Malikaih a lot about this case but
22 not just about this case. A lot of the conversation Malikaih
23 and I have had has been about life, about his life, about his
24 upbringing, about mistakes he's made in his life. And the
25 reasons behind those mistakes. We've talked about the

State v. Taylor - 2017-GS-26-02245
BY THE COURT

12

1 positive things he's been involved in since he's been out at
2 the jail. And this wasn't a snap decision on Malikaih's part
3 to plead guilty. A lot of the conversations that we've had,
4 especially more recently, has been over his desire not to put
5 his family through any more pain. An awful lot of those
6 conversations have been about that. This wasn't something
7 that he just showed up today and made this decision. It's
8 something that he has been thinking about for some time.

9 Judge, I'm going to ask you -- you've got a large
10 sentencing range here. I'm gonna ask you for the minimum
11 sentence. Twenty-five years is a substantial sentence. While
12 we say minimum sentence and it sounds soft, it's not in this
13 case. Under South Carolina sentencing scheme, 25 years is a
14 substantial sentence. I've talked with the state about my
15 request and I don't believe the state is opposed to that. The
16 plea offer that we missed out on was for 20 years and it was a
17 lesser offense than what we're pleading to now. So, he is
18 being punished a little bit for not exercising that earlier
19 on. But, we're also talking about a lot of time here and
20 Malikaih knows that. And at his age, 39 years old, a 25-year
21 sentence is in fact -- while we may use the phrase minimum, it
22 is in fact a substantial sentence, and I ask Your Honor to
23 consider that. Thank you.

24 THE COURT: Thank you.

25 SENTENCE OF THE COURT:

State v. Taylor - 2017-GS-26-02245
SENTENCE OF THE COURT

13

1 THE COURT: 2017-GS-26-2245, State of South Carolina,
2 County of Horry vs. Malikaih Taylor, Jr., regarding criminal
3 sexual conduct with a minor first degree. In this particular
4 sentence, the Court has heard from the victim, heard from the
5 state, heard from the defense counsel regarding this
6 particular matter, has previously indicated to Mr. Taylor
7 there's mandatory GPS monitoring, sex offender registry is
8 required, Central Registry of Child Abuse and Neglect is
9 required, it's a sexually violent offense and classified as a
10 violent and most serious offense by the State of South
11 Carolina. Taking all this into consideration, the sentence of
12 the Court is Defendant is committed to the State Department of
13 Corrections for a determinate term of 27 years. Defendant is
14 given credit for the time that he has already served.

15 Thank you very much.

16 MS. ANDREW: Thank you, Your Honor.

17 MR. FLOYD: Thank you, Judge.

18 **ADJOURNED.**

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina v. Malikaih Taylor, Jr., held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on November 6, 2017, as reported by Dixie C. Eubank.

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

Kay H. Richardson

Official Court Reporter

December 5, 2018.

FORM 5

STATE OF SOUTH CAROLINA)
)
 County of Horry)
)
Malikaih Taylor, Jr. # 235209)
 Full name and prison number (if any) of Applicant)
)
 v.)
)
 State of South Carolina)
)
)
)
)

IN THE COURT OF COMMON PLEAS

20 18 CP26 5445

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

2018 SEP 24 11:04
 FILED
 Horry County
 CLERK OF COURT

1. Place of detention McCormick Correctional Institution
2. Name and location of Court which imposed sentence 15th Circuit Court of Horry County
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) 17652602245 Criminal sexual conduct w/minor 1st degree
 - (b) _____

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) November 6, 2018 27 years in the Department of Corrections
 - (b) _____
 - (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty In sufficient Counseling
 - (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. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - 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. _____
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) After sentence was put in lock up, no access to phone or lawyer.
 - (b) _____

FILED
 Horry County
 2018 SEP 24 4M 11:04
 COURT CLERK
 Horry County, SC

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

- (a) In Sufficient Counseling
- (b) _____
- (c) _____

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

- (a) see attachment
- (b) _____
- (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

FILED
 Horry County
 2019 SEP 20 AM 11:04
 RECEIVED
 CLERK OF COURT
 Horry County

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. _____

(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 such disposition:

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

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

No

FILED
 Horry County
 2010 SEP 24 AM 11:04
 RECEIVED
 CLERK OF COURT
 Horry County

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) SCDC has been on statewide lock down, had no access to law library.
- (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? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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. Thomas Floyd
Horry County public Defender office.
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Guilty plea
 - ii. _____
 - iii. _____

FILED
 HORRY COUNTY
 2010 SEP 24 AM 11:04
 RENEE A. BLYN
 CLERK OF COURT
 HORRY COUNTY, SC 29501

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

sentence reduction

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

No

STATE OF SOUTH CAROLINA)
)
County of Horry)

20 18 CP26 5445
VERIFICATION

I, Malikah Taylor Jr., 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.

Malikah Taylor Jr.

SWORN to and subscribed before me this 6 day of Sept, 2018.

[Signature] (L.S.)
Notary Public

My Commission Expires: 9-30-26

FILED
HORRY COUNTY
2018 SEP 24 AM 11:04
RENEE J. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

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

20 18 CP26 5445

I, Malikah Taylor, Sr., 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.

Malikah Taylor, Sr.
Applicant

SWORN or affirmed to and subscribed before me this

6 day of Sept, 2018.

[Signature]
Notary Public

My Commission Expires: 9-30-26

FILED
HORRY COUNTY
2018 SEP 24 AM 11:04
FERRIS M. LEVINS
CLERK OF COURT
HORRY COUNTY

11. State concisely and in the same order the facts which supports each of the grounds set out (10): 2018 CP26 5445

- 1) I was not notify or served any indictment documents.
- 2) I was being taken to trial without being arraign.
- 3) I was offer a plea for 20 years and my lawyer Thomas Floyd never come to explain the plea offer to me. However, after the expiration of the plea he came and visit me concerning trial. when I question him about the plea offer, he stated that he was out sick.
- 4) Because Mr. Floyd was getting ready to retire I feel that there was no effort in representing my case.
- 5) on the first day of trial I was advise by Mr. Floyd to plea guilty. That if I was to take it to trial, I would probably set the maximum penalty if I lose. Therefore leading me to plea guilty out of fear. Rather than going to trial base on no tangible evidence.

FILED
 Horry County
 2018 SEP 24 AM 11:04
 RENEE M. BLAVIS
 CLERK OF COURT
 Horry County, SC

**LEGAL MAIL
 MAIL ROOM**

| | | |
|--------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | FOR THE FIFTEENTH JUDICIAL CIRCUIT |
| COUNTY OF HORRY |) | |
| Malikaih Taylor, Jr., |) | Case No.: 2018-CP-26-05445 |
| S.C.D.C. No. 235209, |) | |
| |) | |
| Applicant, |) | |
| |) | RETURN |
| v. |) | |
| |) | |
| State of South Carolina, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

In response to the application for post-conviction relief filed by Malikaih Taylor, Jr. (Applicant) on September 24, 2018, Respondent would show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the April 2017 term of the Horry County Grand Jury for criminal sexual conduct with a minor, first degree (2017-GS-26-02245). The underlying facts, as affirmed by Applicant, are as follows:

Your Honor, the defendant, Malikaih Taylor, between the dates, on or between the dates of January 1, 2013 and November 30 of 2014 committed a sexual battery upon his biological daughter, [Victim]. He raped her on an almost weekly basis over a period of two years.

[Victim] is present today with her mother and her family and she would like to address the Court before you sentence the defendant.

(Tr. 8-9). The State noted Applicant decided to plead immediately before a jury was set to be selected for trial.

William Thomas Floyd, Esq. represented Applicant, and C. Leigh Andrew, Esq., of the Fifteenth Circuit Solicitor’s Office, prosecuted the case. On November 6, 2017, Applicant pled guilty as indicted. Without negotiations or recommendations, the Honorable Steven H. John

sentenced Applicant to imprisonment for a term of 27 years. Applicant did not appeal his plea or sentence.

II.

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

1. "Insufficient Counseling"
 - a. "I was not notify or served any indictment documents."
 - b. "I was being taken to [trial] without being arraign."
 - c. "I was offer a plea for 20 years and my lawyer Thomas Floyd never came to explain the plea offer to me. However, after the expiration of the plea he came and visit me concerning [trial]. When I question him about the plea offer, he stated that he was out sick."
 - d. "Because Mr. Floyd was getting ready to retire I feel that there was no effort in representing my case."
 - e. "On the first day of [trial] I was advise by Mr. Floyd to plea guilty. That if I was to take it to [trial], I would probably get the maximum penalty if I lose. Therefore leading me to plea guilty out of fear. Rather than going to [trial] base on no tangible evidence."

Applicant requests relief as follows:

- "Sentence reduction"

Attached to and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

III.

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, 686 (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. First, Applicant must prove that counsel’s performance was deficient. Strickland, 466 U.S. at 686; 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). 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 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, 59 (1985).

Applicant can satisfy neither requirement of the Hill test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not

conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

In his prayer for relief, Applicant requests the Court (verbatim) “sentence reduction”. This relief is unavailable in a post-conviction relief action.¹ If this Court finds a defect in the original proceedings, the appropriate relief would be a new trial on the original indictments. Gilstrap v. State, 252 S.C. 625, 168 S.E.2d 88 (1969); see also Grant v. MacDougall, 244 S.C. 387, 391, 137 S.E.2d 270, 272 (1964) (relief of absolute release not available); Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999) (no constitutional right to plea bargain). Where an applicant seeks only relief to which he or she is not entitled, “it is not incumbent upon [the] court to pass upon what relief, if any, he [or she] might, perchance, be entitled to.” Young v. State, 250 S.C. 476, 479, 158 S.E.2d 764, 765 (1968). For these reasons, if the Application is not otherwise amended before the evidentiary hearing to reflect a desire for appropriate relief, Respondent would respectfully request this Court engage in a *thorough* colloquy with Applicant to apprise him of the relief available in a PCR. If at the evidentiary hearing Applicant indicates no desire in appropriate relief but a desire to proceed, Respondent will at that time move to dismiss the Application.

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

¹ Notwithstanding Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (where counsel failed to communicate a plea offer, remanding for a new sentencing hearing with the limitation that any new sentence imposed cannot exceed the original sentence, with emphasis upon consideration of the prior plea offer). Applicant is not entirely clear as to whether Counsel failed to communicate the plea offer, failed to advise him on it after communicating it to him, or failed in some other fashion. Nonetheless, a plain time cut is not available.

of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP; Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017). 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.

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.

VI.

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

[Conclusion and signature on following page]

VII.

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

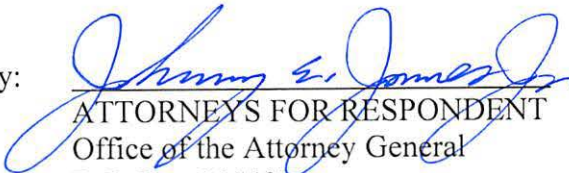
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

14 Dec., 2018

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Horry)
)
)
 MALIKAIH TAYLOR, JR., #235209,)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

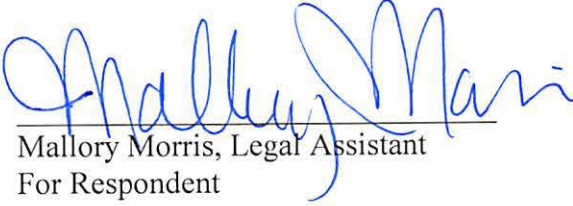
2018-CP-26-5445

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** on 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
PO Box 1058
Charleston, SC 29402

DATED this 14th day of December, 2018.



 Mallory Morris, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF Horry) 2018-CP-26-5445

Malikaih Taylor, Jr.,)

Applicant,)

Versus)

June 18, 2019

State of South Carolina,)

Respondent.)

_____)

B E F O R E:

Honorable John C. Hayes, III
Horry County Courthouse
Conway, South Carolina

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

James K. Falk, Esquire
Attorney for Applicant

Jacob A. Isenberg, Esquire
Attorney for Respondent

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

Malikaih Taylor - Direct by Mr. Falk

2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

Malikaih Taylor, Jr.

Direct by Mr. Falk. 3

Cross by Mr. Isenberg 11

Redirect by Mr. Falk. 18

W. Thomas Floyd

Direct by Mr. Falk. 20

Cross by Mr. Isenberg 28

Redirect by Mr. Falk. 38

Certificate 47

(There were no exhibits marked during the hearing.)

Malikaih Taylor - Direct by Mr. Falk

3

1 (On the record, June 18, 2019.)

2 MR. ISENBERG: And, Your Honor, with that we could call
3 Malikaih Taylor, and this is going to be a full evidentiary
4 hearing.

5 THE COURT: All right. Have you got a packet for me?

6 MR. ISENBERG: Yes, Your Honor. May I approach?

7 THE COURT: Yes.

8 Mr. Falk, you ready to proceed?

9 MR. FALK: Yes, we are, Your Honor.

10 THE COURT: All right. Call your first witness.

11 MR. FALK: I'd call Mr. Taylor to the stand.

12 THE COURT: All right.

13 Whereupon, Malikaih Taylor, Jr., is called to the stand,
14 duly sworn by the clerk and testified as follows:

15 THE CLERK: Please have a seat and state your name for
16 the Court and please spell it. Okay. Thank you.

17 MR. TAYLOR: My name is Malikaih Taylor, M-A-L-I-K-A-I-H,
18 Taylor, T-A-Y-L-O-R.

19 DIRECT EXAMINATION

20 BY MR. FALK:

21 Q Mr. Taylor, who represented you on these charges?

22 A Mr. Thomas Floyd.

23 Q And how did Mr. Floyd become your lawyer?

24 A He was appointed to me by the court.

25 Q Okay. And so tell me a little bit about your

Malikaih Taylor - Direct by Mr. Falk

4

1 interactions with Mr. Floyd.

2 A Well, he came to see me once when the case was assigned
3 to me, and then after he came to see me he never really
4 discussed the case over with me and then it took like a
5 another whole year before I was able to see him and a plea had
6 came to me in the mail.

7 Q Let me just, let me just kind of -- let's break this up
8 in little pieces. So you were in the Horry County Detention
9 Center?

10 A Yes, sir.

11 Q And how long were you there?

12 A I was there for 19 months.

13 Q So you never made bond on this case?

14 A No, sir.

15 Q Okay. And did you have a preliminary hearing?

16 A No, sir.

17 Q Okay. And did you ever have a chance prior to when you
18 pled to review the discovery in this case?

19 A No, sir, not in detail.

20 Q Okay. Did you have a chance to see any of the victims'
21 statements?

22 A No, sir.

23 Q Okay. So how many -- and you said that you met with your
24 lawyer one time?

25 A Yes, when the case was assigned to him.

- 1 Q And so how long -- so that was, let's see, when, when was
2 the date of your plea was, November 6, 2017?
- 3 A Yes, sir.
- 4 Q So you saw him sometime in 2016?
- 5 A Yeah. I saw him --
- 6 Q I'm just trying to get an idea.
- 7 A I saw him once then and --
- 8 Q Okay. And what did he tell you about the case?
- 9 A He didn't say nothing at the time.
- 10 Q And literally nothing or, or --
- 11 A Not that -- he just, he just came in there and told --
- 12 Q Did you know what you were charged with?
- 13 A Yes, sir.
- 14 Q Okay. And what was that?
- 15 A Criminal sexual conduct on the first degree.
- 16 Q Okay. And did you know the name of your alleged victim?
17 Do you know who your alleged victim was?
- 18 A Yes, sir.
- 19 Q Okay. But you never saw any of their -- any of the
20 victim's statements; is that correct?
- 21 A No, sir, never discussed with --
- 22 Q Okay. Well, now, at this initial meeting did you all
23 talk about going to trial, trying to get a plea, sort of did
24 you all discuss any type of strategy?
- 25 A No, sir.

Malikaih Taylor - Direct by Mr. Falk

6

1 Q What kind of written communication did you have with him
2 during this time?

3 A Really mostly when I, when I talked to him mostly about
4 just life, what --

5 Q How would you talk to him?

6 A I just tell him about --

7 Q No. Let's back up. You said he came once?

8 A Uh-huh.

9 Q Did he call or, I mean, you said --

10 A He came to see -- he came down to the county jail and see
11 me and we sat and talked in the little conference room
12 probably like no more than five minutes.

13 Q So he came a second time to see you?

14 A No. That's the first time.

15 Q Okay.

16 A And then the next time he came and see me that's when he
17 was trying to talk to me about a trial and that was in 2017.

18 Q Okay. And so you're saying that you didn't really have
19 any contact with him from that first meeting until he came in
20 and said this case is ready for trial.

21 Q Right.

22 Q What kind of strategy did you all talk about?

23 A No strategy.

24 Q Okay. Did you ever talk to him about a possible plea?

25 A Yeah. I explained to him that I had got a plea in the

1 mail and I tried calling down to the office. I had no
2 opportunity to get in touch with him. They say they was going
3 to leave a message with him and this and that third.

4 Q So you -- the solicitor's office mailed you a copy of the
5 plea?

6 A Yes.

7 Q And what was the plea?

8 A The plea was for 20 years.

9 Q All right. And did it have some kind of deadline on it?

10 A Yes.

11 Q And so when about after your first meeting with your
12 lawyer, when about did you receive this letter about the plea?

13 A I received the, the plea in July of 2017.

14 Q Okay. And what did you know about the plea?

15 A Didn't really understood it. I read it, and I was trying
16 to comprehend it and I'd been trying to call down to the
17 office and see if he could come and talk to me, give me a
18 little understanding, a little clarity, and I never had the
19 opportunity to get in touch with him about it.

20 Q But it was a plea for 20 years; is that correct?

21 A Yes.

22 Q What kind of stuff did you not understand about the plea?

23 A I didn't understand whether there's going to be any
24 eligibility for parole, whether there was going to be an 85
25 percent or 65 percent or, you know, basically nothing. All I

Malikaih Taylor - Direct by Mr. Falk

8

1 just know it just says 20 years.

2 Q Well, if it had been 85 percent would you have taken it?

3 A Possibility.

4 Q If it had been 65 percent would you have taken it?

5 A Most definitely.

6 Q But you might not have taken the plea if it was 85
7 percent?

8 A I had to really kind of look at it a little bit more in
9 detail and think about it a little bit more.

10 Q What would you have needed to know, the strength of the
11 evidence?

12 A Yes.

13 Q What else did you need to know about the plea? Were you
14 going to be subject to GPS monitoring?

15 A Yeah. See, I didn't know nothing about no GPS
16 monitoring. It ain't say nothing on there. It just said that
17 I had to register when I got out. I understood that part, but
18 the GPS monitoring they ain't never, never made mention of
19 anything about that on that.

20 Q So when did he come back and talk to you and say that we
21 were going to trial?

22 A Probably like the plea ended, the expiration ended on
23 August, I think August 21st and then he came to me in the month
24 of September and said something about trial then or getting on
25 the trial docket for October and --

1 Q Uh-huh. So this was in September then. Did you talk to
2 him again prior to the start of the trial?

3 A No. I didn't talk to him again till the day that they
4 came and got me for trial.

5 Q Okay. And what happened on that day?

6 A When I came, when I came down and to talk to him he, he
7 told me, he said that, that he believed that the jury was
8 going to accept the victim's or witness and that he advised me
9 to plead guilty to 25 to life.

10 Q Do you think, was he saying it was kind of, maybe lawyers
11 use a term, it was he said, she said kind of case, they're
12 either going to believe you or they're going to believe her?

13 A Yes.

14 Q And that the jury could go either way. Did he say
15 anything -- I mean, did anything happen? So when did the
16 trial start? Did you all pick a jury?

17 A No, sir.

18 Q Okay. So this was just day of trial, then you went in to
19 plea?

20 A Yes, sir.

21 Q And that's when he came in and told you that it's going
22 to be he said, she said, you might as well take 27?

23 A Twenty -- 25 to life.

24 Q Twenty-five to life, and then the Judge sentenced you to?

25 A Twenty-seven.

Malikaih Taylor - Direct by Mr. Falk

10

1 Q Twenty-seven. Had he told you -- had you known that when
2 you got that plea from the solicitor's office that this was a
3 he said, she said case and the jury may believe you or the
4 jury may believe her, if he told you that then what would you
5 have done with the 20-year offer?

6 A Well, the truth of the matter is I probably would have
7 went on and took the 20 years all because I wanted to do the
8 right thing.

9 Q Uh-huh. But basically he was saying when he told you
10 that on November 6th, 2017 to go ahead and plea, to try and
11 take life off the table, I guess, he said based on the
12 strength of the case the jury may believe her?

13 A Right.

14 Q Did he tell you anything specifically about the case? I
15 mean, was there any new fact? Did they find any DNA? Did
16 they find any --

17 A I, I --

18 Q Was there any forensic evidence? Was there any, you know
19 --

20 A I haven't -- had no, no knowledge of any of that, have
21 not seen no DNA, haven't seen no forensic evidence. None of
22 that was presented to me.

23 Q Well, when you saw him on November 6th did you ask him
24 why he hadn't gotten back to you about the plea offer?

25 A Say that again.

1 Q All right. So you said there was this one time very
2 beginning and he comes back November 6th and says, "Suit up,
3 we're going to trial," did you, did you have any conversations
4 with him at that time about a plea offer, that there was this
5 plea offer that was out there?

6 A That's during that time when he came and talked to him
7 about the, about the trial I had made mention to him, to him
8 then, I said, "You haven't even came and talked to me about
9 this," and, and when I made mention to him about that he said,
10 "Oh, yeah, I was out. I'm sick at that time," and so I'm
11 like, "Okay", and then he was like and that's when he kept
12 telling me to go ahead and plead guilty to the 25 to life.

13 Q Is there anything else you want to say?

14 A No.

15 Q No further questions.

16 MR. ISENBERG: May it please the Court?

17 THE COURT: Yes, sir.

18 MR. ISENBERG: Beg the Court's indulgence just a moment.

19 CROSS EXAMINATION

20 BY MR. ISENBERG:

21 Q Good morning, Mr. Taylor. How are you doing today?

22 A I'm doing wonderful. Thanks for asking.

23 Q Good. Glad to hear that. You mentioned at the very
24 beginning of your testimony that you only met with your
25 attorney one time before trial?

Malikaih Taylor - Cross by Mr. Isenberg

12

1 A I met to him one time before. He came and talked to me
2 about the trial thing.

3 Q Okay. So after his appointment to your case, all the way
4 until September, which he -- when he came and talked to about
5 trial --

6 A Right.

7 Q -- you only met with him one time?

8 A Right.

9 Q All right. When was that one time?

10 A It was that one time like probably like I was appointed
11 to him in I think May and it was in like, I think, July he
12 came and talked to me then.

13 Q Okay. So in July what conversations did you all have?

14 A Nothing really basically.

15 Q Okay. And you didn't receive the plea letter until after
16 that July meeting?

17 A Yeah. I didn't plea -- I haven't seen the plea until
18 July of 2017.

19 Q Okay. So you all met in July and then you received a
20 letter in July as well?

21 A July I told him -- we met in July of 2016.

22 Q Okay. And then you received the plea letter in July of
23 2017?

24 A Yes.

25 Q Okay. So during that July 2016 meeting did you all talk

1 about your case?

2 A No, sir. Because he didn't have my motion or nothing at
3 that time.

4 Q So what did you all talk about?

5 A He just came and introduced himself, said that his, his
6 name was Thomas Floyd, he's going to be representing my case
7 and I asked him about a bond here and he tried to get him off
8 a bond and that was it.

9 Q So you all talk about the case and a bond hearing and
10 that was it?

11 A No. We didn't talk about the case.

12 Q Okay. You -- so you're saying that you received a letter
13 from the solicitor in July of 2016 offering you 20 years?

14 A Right.

15 Q And that letter had an expiration date on it?

16 A Yes.

17 Q Okay. When was that expiration date?

18 A I believe it was August 21st of 2017.

19 Q Okay. So between July and August you didn't communicate
20 with your counsel that you wanted to accept it?

21 A Nah. I've been trying to call to the office and asked to
22 speak with him but they said he wasn't there and they was
23 going to leave a message and I still never heard from him. I
24 been calling like every day of the week, that we was out.

25 Q Okay. But you were in jail; right?

- 1 A Yes.
- 2 Q So you would use your phone call every day to call your
3 counsel about the plea?
- 4 A Yeah. Call him to talk to him about asking him to come
5 and talk to me and explain it to me so I can have a better
6 understanding --
- 7 Q Okay.
- 8 A -- before I make my decision.
- 9 Q Okay. And so you never got to talk to him before the
10 plea expired?
- 11 A No.
- 12 Q Okay. And after the plea expired you met with him to
13 talk about the upcoming trial in September?
- 14 A No. He came out there and told me that my name was
15 placed on the trial docket and I was supposed to be going up
16 for trial.
- 17 Q Okay. And what did he explain to you about trial?
- 18 A Nothing basically.
- 19 Q Okay. So he didn't talk to you -- he came to talk to you
20 about trial but he never actually talked to you about it?
- 21 A No.
- 22 Q Okay. So you would say that by the end of it when you
23 pled you were pretty unsatisfied with everything?
- 24 A Say that again.
- 25 Q Said by the end of it, the day of your plea hearing you

1 were not satisfied with the way he represented you?

2 A No, sir.

3 Q Okay. So why did you tell the judge you were?

4 A I was being dishonest to be honest.

5 Q So you, you lied to the judge in your plea hearing?

6 A Sadly to say, yes.

7 Q Okay. You realize you were under oath during that plea
8 hearing?

9 A Yes.

10 Q Okay. And you remember the judge asking you if you
11 needed any more time to talk to your attorney; right?

12 A Yes.

13 Q Or if you had any issues with your attorney that you
14 wanted to talk about; right?

15 A Yes.

16 Q And you remember telling the judge, "I don't -- no, I
17 don't have any issues with my attorney"; right?

18 A Yes.

19 Q So you, you said that then at the plea hearing and now
20 you're saying you had -- there were all these things wrong
21 with the case. You understand that that's sort of a
22 contradictory statement?

23 A Well, during the, during the time of the plea hearing
24 when he was talking to -- when he was asking me all these
25 questions, in my mind I was wanting to say the right thing,

Malikaih Taylor - Cross by Mr. Isenberg

16

1 but out of my mouth I wasn't saying what my heart was really
2 feel.

3 Q Okay. So you're saying you were thinking it but you
4 didn't say it?

5 A Right.

6 Q Okay. Well, you remember the judge asking you if you
7 were, in fact, guilty of this crime and you said yes.

8 A Yes.

9 Q And you remember the solicitor giving the facts and you
10 said you agreed with them; right?

11 A Yes.

12 Q Okay. And you remembered saying that you weren't under
13 any drugs, alcohol influence or anything like that?

14 A Right.

15 Q Okay. So there were no issues concerning your mental
16 health. You just thought something and then said the exact
17 opposite?

18 A Right.

19 Q And at the same time with no issues with mental health
20 you admitted to everything that you had done at the plea
21 hearing; right?

22 A Pretty much.

23 Q Okay. So you understand where I'm coming from saying
24 that if you had any issues with the plea offer then you would
25 have brought them up at the plea hearing; right?

- 1 A Which plea offer you talking about?
- 2 Q The one that expired?
- 3 A See the -- that, that plea offer at the hearing wasn't
- 4 being discussed at the hearing.
- 5 Q But you would have brought it up if, if you had an issue
- 6 with it then; right?
- 7 A If I had understood what I was doing.
- 8 Q You didn't understand what was going on?
- 9 A I didn't, I didn't understand the legal, the legal
- 10 aspects of, of --
- 11 Q What -- so you didn't understand the difference between a
- 12 plea offer of 20 years and 25 years?
- 13 A No. That's not what I'm saying. What I'm saying is that
- 14 I didn't understand the fact that I could really voice how I
- 15 feel in court without actually being reprimanded from speaking
- 16 my mind, so to speak.
- 17 Q Okay.
- 18 MR. ISENBERG: Beg the Court's indulgence for a moment,
- 19 Your Honor.
- 20 BY MR. ISENBERG:
- 21 Q Mr. Taylor, you indicated earlier that you might have
- 22 taken an 85 percent plea?
- 23 A Yes. I mean, I want to do the right thing.
- 24 Q Okay. And by doing the right thing is serve the time for
- 25 doing the crime?

Malikaih Taylor - Redirect by Mr. Falk

18

1 A Yeah. Taking more responsibility.

2 Q Okay. So you realize that 85 percent of 27, 20, 27 years
3 is right around the 20; right?

4 A That's an awful lot of time.

5 Q Eighty-five percent of 27 years that comes out right
6 around 20?

7 A I guess. I don't, I don't know the, the math of it.

8 Q Right. So in reality you ended up with a 20-year
9 sentence regardless. Okay. Well, in any event it doesn't
10 matter because you're doing the right thing, you're serving
11 your sentence for committing crimes; right?

12 A Yes.

13 Q Okay.

14 MR. ISENBERG: No further questions.

15 THE COURT: Redirect.

16 MR. FALK: Yes.

17 REDIRECT EXAMINATION

18 BY MR. FALK:

19 Q So on November 6th your choice at that time was go to
20 trial or take the plea; is that -- or plea; is that right?

21 A Right.

22 Q Did you want to go to trial?

23 A No. I didn't.

24 Q Did you ever want to go to trial?

25 A No, sir.

1 Q Did you know who the victim was in this case?

2 A Yes.

3 Q Did you want to make that victim take the stand and
4 testify and go through all of that?

5 A No. I didn't want to put her through the pain or the
6 hurt.

7 Q So you always wanted to take a plea; is that right?

8 A Yeah. I mean, I -- yes. I mean, I wanted to do -- I
9 wanted to take my responsibility because --

10 Q So when the judge was asking you are you satisfied at
11 that time because you didn't want to go through a trial, so
12 this was a way out; is that right?

13 A Yeah. A way of, of not trying to put her through anymore
14 pain.

15 Q And although the Attorney General is trying to make a
16 comment that 85 percent of 27 might be close to 20, I guess 85
17 percent of 20 might be close to 17; is that right?

18 A I'm guessing.

19 Q So there is still a --

20 A A chance.

21 Q -- considerable difference between being able to take a
22 20-year plea at 85 percent versus a 27 year-sentence at 85
23 percent; is that correct?

24 A Yes, a big difference.

25 Q And you really didn't have an opportunity to accept that

Malikaih Taylor - Redirect by Mr. Falk

20

1 plea; is that right?

2 A No, sir.

3 Q Did you know that you could have said something about the
4 plea at your plea hearing?

5 A No, to be honest, because I felt like if I were to open
6 my mouth and, and, and say something there would be some type
7 of repercussions to my action.

8 Q You'd go to trial?

9 A And I been in a worsen [sic] situation.

10 Q No further questions.

11 THE COURT: You can step down. Thank you, Mr. Taylor.

12 A All right. Thank you.

13 THE COURT: All right. Any other witnesses?

14 MR. FALK: We'll call Mr. Floyd.

15 THE COURT: Okay. Mr. Floyd, please come up and be
16 sworn.

17 Whereupon, W. Thomas Floyd is called to the stand, duly
18 sworn by the clerk and testified as follows:

19 THE CLERK: Please have a seat and state name for the
20 court.

21 MR. FLOYD: And spell it?

22 THE CLERK: And spell it, your last name, spell your last
23 name for the Court. Thank you.

24 MR. FLOYD: William Thomas Floyd, F-L-O-Y-D.

25

DIRECT EXAMINATION

- 1 BY MR. FALK:.
- 2 Q Good morning, Mr. Floyd?
- 3 A Good morning.
- 4 Q Do you practice here in Horry County?
- 5 A Well, I'm kind of semiretired right now.
- 6 Q So when you were representing Mr. Taylor was that on a
7 608 contract or were you with the public defender's office?
- 8 A I was with the public defender's office.
- 9 Q Okay. Were you kind of semi-retiring -- were you easing
10 out of practice in November of 2017?
- 11 A No, sir.
- 12 Q Okay. Did you get a copy of the plea transcript? Do you
13 have one up there with you?
- 14 A Oh, the -- yeah, take me a second to find it because it's
15 --
- 16 Q When you get a chance if you could go to page 12 of it
17 and look around lines 14 through 20?
- 18 A Excuse me. That was page 12?
- 19 Q Yeah. Yes, sir, and then lines 14 through -- in about 14
20 through 20 or so?
- 21 A 12, 14 through 20. You want me to read those?
- 22 Q No. Just read it to yourself just sort of refresh.
- 23 A Okay.
- 24 Q So where is it -- you were telling the Court about a 20-
25 year plea that expired; is that right?

Thomas Floyd - Direct by Mr. Falk

22

1 A Correct.

2 Q What was your understanding about the plea?

3 A It was a lesser offense, a 20-year plea offer and it had
4 expired.

5 Q And what kind of conversations have you had with your
6 client about it?

7 A About the plea?

8 Q Yeah.

9 A I had explained to him what the plea was.

10 Q When was that?

11 A I don't recall the exact date. Some of my notes are in
12 the file, some of them are not.

13 Q Well, if he says that he received a copy of it from the
14 solicitor's office does that sound right?

15 A No. It came from our office.

16 Q Okay.

17 A And that was mailed out -- I thought I saw it here just a
18 few minutes ago -- July 24th of '17.

19 Q Okay. And did you have a discussion with him about the
20 plea? Did you go to the jail and talk to him about the plea?

21 A I did but I do not recall the date and it is not recorded
22 in my file.

23 Q And what did you discuss with him about the plea?

24 A I would have just explained to him the charge that he'd
25 be pleading to, the sentence, the potential parole

1 eligibility, whether that be 85 or the violent which back then
2 I believe was 65 for the -- well, his plea offer wasn't on
3 nonviolent. So I wouldn't have discussed that.

4 Q Did -- on the day of the trial, he sort of -- I sort of
5 maybe put some words in his mouth but he sort of
6 characterizing your view of the trial that it was the jury
7 could easily believe her or they could believe him; is that
8 accurate?

9 A That would be accurate.

10 Q Because there wasn't a lot of -- this wasn't a case that was
11 going to hinge on a lot of forensic evidence; is that right?

12 A That's correct.

13 Q So by the time he got that plea offer was -- had you read
14 all the statements from the victims?

15 A I had.

16 Q What, what was the age of the victim? Was this -- was there
17 a forensic interview in this case?

18 A There was and I believe I went over that with him again. I
19 know that some of my notes in this file are not, not there,
20 but I believe I went over that with him. I don't believe we
21 mailed him a copy of that. We did mail him a copy of the
22 original discovery. I think the forensic came in as
23 supplemental discovery, and according to the notes that are in
24 here, there's not a note that the, that the forensic interview
25 was mailed to him.

Thomas Floyd - Direct by Mr. Falk

24

1 Q Okay. In '17 would they have -- they would have -- they
2 would have given you a video of that; would they not, is that
3 usually how it works?

4 A I don't recall if there was a video or if it was just the
5 transcript.

6 Q Oh, okay.

7 A I do not have a disk in this file.

8 Q Uh-huh.

9 A But when they close the file they put these in the
10 computer and then just print it back out --

11 Q I see.

12 A -- if it's needed, but there is not a disk in this file.

13 Q Okay. So your testimony is different from Mr. Taylor's
14 testimony because he's saying that he tried to reach out to
15 you, he had some questions about the plea and that you never
16 spoke with him about that?

17 A We would disagree on that.

18 Q What did you tell -- did you -- what other advice did you
19 give him about the plea? Did you tell him about, you know,
20 prospects of going forward to trial?

21 A Yes. That's where I told him, you know, if they believe
22 her you could go to prison for the rest of your life.

23 Q And you -- and it's your testimony that you told him that
24 when you went -- when you contacted him at the jail to discuss
25 the plea?

- 1 A Malikaih was one of those cases where he didn't want to
2 plead guilty but he didn't want to go to trial, and eventually
3 we were on the trial roster.
- 4 Q Did you make any kind of efforts to get the plea put back
5 on the table?
- 6 A Absolutely.
- 7 Q What, can you describe those efforts?
- 8 A Pretty much getting down on your knees and begging the
9 solicitor.
- 10 Q But there was never -- I know in other circuits there may
11 be something that there was more recently, there was never a
12 time when he came in and rejected the plea on the offer, the
13 offer on the record; is that right?
- 14 A That is correct.
- 15 Q Do they do that now up here?
- 16 A They do it now --
- 17 Q Yeah. Okay.
- 18 A -- I believe, but I don't believe that was ever done in
19 Malikaih's case.
- 20 Q You think a 20-year offer was a good offer in this case?
- 21 A In my opinion that's a lot of time, but with what he was
22 charged with and what he was facing, yes, I believe a 20-year
23 plea offer was a --
- 24 Q But did you tell him he should take it?
- 25 A I don't think I did, but this is the kind of case like I

Thomas Floyd - Direct by Mr. Falk

26

1 think you characterized it he said, she said. The jury could
2 believe one or they could believe the other. You're talking
3 about 20 years, which is a substantial sentence, versus
4 potential of life, I'm not going to tell my client what he's
5 got to do on that. That's got to be his decision.

6 Q Sure. Did he, did he ask you any questions about what
7 the lesser included offense would be or what his parole
8 eligibility would be if he took the offer?

9 A I'm sure I went over that with him. I don't recall him
10 specifically asking those questions.

11 Q Did you -- how did the rejection of the offer get
12 communicated to the solicitor's office?

13 A By not accepting.

14 Q Okay. So you didn't write a letter saying you're going
15 to take or something like that?

16 A No. They sent out a plea offer and there's usually a
17 spot on it to mark accepted or rejected.

18 Q Uh-huh.

19 A I do not see the plea offer in here. I've got notes
20 where it came in and notes where it was mailed to him. I know
21 that I would've gone over the plea offer with him, but as far
22 as the physical plea offer I do not see it in the file when I
23 looked through it.

24 Q But there's no doubt that there was a 20-year offer to a
25 lesser included offense?

1 A Correct.

2 Q At least that's your testimony, right, that that is --
3 there is no doubt that there was a 20-year offer. Do you have
4 any recollection or any notes as to maybe how many times you
5 talked with him between when the offer was given or when he
6 got notice of the offer and when it expired?

7 A Our office has something they print out for us to make
8 notes on and I don't usually use this. I usually old-
9 fashioned legal pad.

10 Q Yeah.

11 A But according to this one, two, three, four, four times.
12 There was also, I believe, two bond hearings that we had. So
13 that would have been at least two more times that I talked
14 with him.

15 Q What are the dates of when those times were?

16 A August 24th, September 3rd or is that a seven, April 8th,
17 excuse me, September 8th. Excuse me, that wasn't a meeting.
18 That was where we just -- apparently we had the bond hearing
19 between there and that's where I faxed the bond order to the
20 jail, May the 30th.

21 Q So that's May the 30th of 2017?

22 A '17, and then it appears that another bond hearing was
23 held it looks like in June.

24 Q Let me -- I got confused on the timeframe. So you have a
25 letter in there where you said that you mailed the plea offer

Thomas Floyd - Direct by Mr. Falk

28

1 to him?

2 A Yes.

3 Q And what was that date?

4 A That date would have been -- I just saw it just a second
5 ago, July 24th.

6 Q July 24, '17?

7 A Yes.

8 Q Okay. So what records do you have of communications
9 with him after July 24th of '17?

10 A According to --

11 Q You wrote that log?

12 A -- this sheet.

13 Q Yeah.

14 A I don't have any written down.

15 Q Okay.

16 A I know I did but I don't have any and I don't see my
17 notes over on this side.

18 Q Okay. So those other dates that we're talking about were
19 prior to July 24th?

20 A Yes, sir.

21 Q Okay. I have no further questions.

22 THE COURT: All right. Anything from the State?

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

24

CROSS EXAMINATION

25 BY MR. ISENBERG:

1 Q Mr. Floyd, you indicated that you sent a letter to your
2 client concerning the plea offer?

3 A Yes.

4 Q Is that the type of letter you normally send to clients
5 when the solicitor communicates a plea offer to your office?

6 A Well, what we do is it's a cover letter. The solicitor
7 sends us a plea offer.

8 Q Uh-huh.

9 A What the original charge is, what the potential sentence
10 is, what they're willing to let him plea to, whether there's
11 any kind of recommendation and then a place for him to accept
12 or reject it. We make a copy of that and mail it to the jail.

13 Q And that's something you send every time the solicitor
14 communicates a plea offer to you and when your client's in --

15 A Well, my office does.

16 Q Yeah. Your office does.

17 A Yes, sir.

18 Q And did, based upon your review of that letter, did it
19 deviate from the standard letter you all sent out every time
20 that there's a plea offer?

21 A No. It would have been a copy of the plea offer that the
22 solicitor sent us, and again, when I looked through my file
23 this morning I did not see that.

24 Q Okay.

25 MR. ISENBERG: Your Honor, I'd like to enter that letter

Thomas Floyd - Cross by Mr. Isenberg

30

1 into evidence as State's Exhibit One.

2 THE COURT: Any objection?

3 MR. FALK: Your Honor, could I -- if I could just see it.
4 I'm sure I don't have an objection.

5 A I, I don't have it. I don't see it in my file.

6 Q You don't have the letter?

7 A I don't see it in my file. If you want me to I can sit
8 here and go through every bit of it.

9 Q That's perfectly fine. We, we can move on. Mr. Floyd,
10 that's, that's okay. We can, we can move on.

11 A Okay.

12 Q So you, you said when the solicitor communicates a plea
13 offer to you the first step you take is sending a letter to
14 the client?

15 A We send the actual plea offer to the client.

16 Q Okay. You send the actual plea offer. Okay. What's the
17 second step?

18 A After that we meet with them out at the jail.

19 Q Okay.

20 A We had it set up what we were doing back then and it
21 wasn't always a meet. Everybody that had plea offers we would
22 go out there to the jail, meet with them -- well, we'd be in
23 the courtroom out there and they'd have like six tables set
24 up.

25 Q Right.

1 A And so there would be six of us out there and we could
2 meet with individual clients and go over the plea offers.

3 Q Right. And you said that only the attorneys who had plea
4 offers would go out and make these jail visits?

5 A Well, sometime, not always. A lot of times I went over
6 plea offers with other people's clients --

7 Q Right.

8 A -- because they couldn't be there for one reason or
9 another.

10 Q So you all kind of have each other's back in terms of
11 covering when they didn't visit the jail, when your coworkers
12 didn't visit the jail that day.

13 A For the plea offers, correct.

14 Q Right. And is there any reason to think that that
15 wouldn't have happened in this case?

16 A None whatsoever.

17 Q Okay. So to the best of your knowledge this plea offer
18 was communicated by your office to your client?

19 A Yes, sir.

20 Q Okay. And I know you said that it's not in your notes
21 but you indicated that you believe you met or someone met with
22 Mr. Taylor about the plea offer after the -- it was sent;
23 correct?

24 A Yes.

25 Q Okay. To the best of your knowledge, do you have any

Thomas Floyd - Cross by Mr. Isenberg

32

1 recollection or in your notes of what was said to Mr. Taylor
2 verbally about the plea offer?

3 A I do not.

4 Q Okay. But you did say that you met -- you have notes of
5 a meeting with him from August 24th; correct?

6 A Correct.

7 Q Okay. What, to the best of your knowledge, based upon
8 the notes, what was that meeting about?

9 A I -- my notes are horrible. I've just got that I was at
10 the jail in his file.

11 Q Okay.

12 A That's what I was saying and I don't see my notes in
13 here. I used a legal pad to take notes with.

14 Q Right. Correct. But you, but you said -- you previously
15 indicated that it was your opinion that 20 years is a long
16 time. So you would have let him make a decision on whether he
17 wanted to plea or go to trial?

18 A Correct.

19 Q And so in this case your opinion on a plea offer was,
20 "It's your decision. I'm going to let you go with your gut"?

21 A Uh-huh.

22 Q Okay. And your -- but your legal opinion on the actual
23 merits of the case was a he said, she said; correct?

24 A Correct.

25 Q Did he ever indicate to you that he was innocent?

- 1 A No.
- 2 Q Okay. So he always accepted responsibility for it?
- 3 A Yes.
- 4 Q And so you would've -- you would have notified him that a
5 20-year plea offer was on the table and was the best route if
6 he accepted responsibility and wanted to avoid trial; right?
- 7 A Correct.
- 8 Q That's your custom when, when it, when it comes to these
9 kinds of cases?
- 10 A Correct.
- 11 Q Okay. And if a client indicates to you that they want to
12 accept the plea offer after receiving these types of letters,
13 how do they usually do it? I can rephrase the question. When
14 you send these offers to the jailhouse how do clients usually
15 communicate to you that they want to accept them?
- 16 A That's why we actually physically go out to the jail.
- 17 Q Okay.
- 18 A And they have to check off and sign.
- 19 Q Okay.
- 20 A And again, I don't see the plea offer in the file.
- 21 Q Okay.
- 22 A And what I would have had in my file would not have been
23 the signed plea offer anyway because we take that back to the
24 office and that's sent directly back to the solicitor.
- 25 Q Okay. So to the best of your knowledge if you would have

Thomas Floyd - Cross by Mr. Isenberg

34

1 accepted this in that one-on-one meeting that would have been
2 communicated to your office?

3 A Yes.

4 Q Okay. But and you said based upon your personal opinion
5 that Mr. Taylor was the kind of guy that did not want to plea
6 but did not want to go to trial?

7 A Every now and then you run into the client that they
8 don't want a trial but they don't want to plead guilty either,
9 and that was, from the best of my recollection, that was Mr.
10 Taylor.

11 Q So with that in mind, to the best of your knowledge, do
12 you believe or remember him indicating that he did not want to
13 accept this plea because he wanted to wait it out or anything
14 in that ballpark?

15 A I don't recall.

16 Q Okay. Well, you know the, the plea offer expired in late
17 August?

18 A Again. I don't have it --

19 Q That's --

20 A -- in front of me. So I don't remember when it would
21 have expired.

22 Q Do you remember in any of those meetings after it expired
23 him bringing up the 20-year offer?

24 A I don't recall.

25 Q Okay. So --

1 A I --

2 Q -- to the best of your -- go ahead. Sorry.

3 A I'm sorry. I think he did bring it up when we entered
4 the plea.

5 Q So when he realized he was getting 25 years instead of
6 what he could have originally got in 20 years that's when he
7 brought it up?

8 A I wouldn't phrase it that way. I'd phrase it in, you
9 know, "All right, we've hit it. We're up for trial." "Well,
10 I don't want a trial." "Well, let me see if I can get the
11 plea offer back. I can't get the plea offer back. So here we
12 are."

13 Q And that's when he affirmatively accepted the plea offer
14 you eventually got right before trial?

15 A I think it was the day that we were going to end up
16 drawing the jury.

17 Q Right. And how did he communicate that acceptance to
18 you?

19 A He just said, "I don't want a trial."

20 Q Okay.

21 A Actually, I believe because and I didn't say it in -- I
22 don't believe in the plea, but sometimes people say stuff and
23 as a defense attorney it just sticks with you.

24 Q Uh-huh.

25 A One of the things he said was, "I've hurt her enough. I

Thomas Floyd - Cross by Mr. Isenberg

36

- 1 don't want to hurt her anymore."
- 2 Q Right.
- 3 A And that just kind of stuck with me because it just did.
- 4 Q Right. Because he accepted responsibility --
- 5 A Uh-huh.
- 6 Q -- for everything and you, I guess you could appreciate
- 7 that. I think anybody could; correct?
- 8 A Uh-huh.
- 9 Q Do you -- so in that same context do you remember him
- 10 saying because you said he said, "I don't want a trial," do
- 11 you remember him saying specifically, "I don't want to plea"?
- 12 A No.
- 13 Q Okay.
- 14 A No. I don't ever remember him specifically saying, "I
- 15 don't want to plea".
- 16 Q Okay. I'm just trying to figure out and my question to
- 17 you would be what gave you the indication that he was dragging
- 18 his feet in terms of accepting a plea?
- 19 A I wouldn't call it dragging your feet. You do this a
- 20 long time and I don't how those boys do it in federal court
- 21 but in state court having somebody just stand up and jump at
- 22 the opportunity to go to prison for 20 years, that very rarely
- 23 happens.
- 24 Q Right.
- 25 A And so I wouldn't say that it was him dragging his feet.

1 I would just say it was him not wanting to go to prison.

2 Q Right. And so after that plea offer expired that's when
3 they set the case for trial?

4 A Correct.

5 Q Okay. And would that have anything to do with why you
6 started meeting with him more often?

7 A Well, I can't say that I did meet with him more
8 often than that, but at that point we probably -- we
9 would've gone over everything, all the evidence that was
10 out there. I'm certain I would have met with him at some
11 point prior to us really being in the throes of on the trial
12 roster.

13 Q Right.

14 A I don't have any notes for that, but it was not too often
15 that they caught me flat-footed on a serious case.

16 Q Right. I can, I can appreciate that, and so, just to
17 summarize and I know I'm, I'm circling around here, you said
18 it's sort of a community workload when -- in terms of the
19 public defenders from the 15th Circuit going out to the
20 jailhouse and talking to clients about plea offers?

21 A Yes. And we don't go or I didn't at least, I don't go
22 over the facts of the case with them.

23 Q Right?

24 A When I was doing it I'd specifically say, "I don't know
25 the facts, I don't know your situation, I'm just here to

Thomas Floyd - Redirect by Mr. Falk

38

1 explain this plea offer to you."

2 Q Right.

3 A And I would explain the plea offer.

4 Q And if it was your client though you would talk to them a
5 little bit more?

6 A I'd go into a little bit more detail if it was my client.

7 Q Okay.

8 A Because I'd be more familiar with the case.

9 Q So based upon that custom, you don't have any reason to
10 believe that it wasn't applied to this case in terms of either
11 you or somebody else going out and talking to him about the
12 plea offer?

13 A Correct.

14 Q Okay.

15 MR. ISENBERG: I beg the Court's indulgence for just one
16 moment. No further questions, Your Honor.

17 MR. FALK: A couple of redirect.

18 REDIRECT EXAMINATION

19 BY MR. FALK:

20 Q When we were talking about this August 24th contact, just
21 give me the date of that, what year? Was that in '16 or '17?

22 A August 24th was in '16.

23 Q Was in '16. Okay. And it's still your testimony that
24 you don't have any records of any contacts after July 24th,
25 2017?

- 1 A That is correct.
- 2 Q Okay. Now, what I don't understand about your prior
3 testimony, do you have any recollection of whether you went to
4 and talked to the plea offer with him or somebody else in your
5 office talked to him about the plea offer?
- 6 A I have no recollection whether it was me or someone else.
- 7 Q We talked a lot -- you talked a lot about what the
8 customs were in your office.
- 9 A Correct.
- 10 Q And this is not way back in the dark ages. This is just
11 two years ago because this is July --
- 12 A Uh-huh.
- 13 Q -- 2017. When somebody is facing a potential 25 to life
14 sentence and a plea offer is rejected or allowed to expire, do
15 you -- does your office not have any kind of mechanisms for
16 documenting that?
- 17 A If somebody's gotten a plea offer, usually we will make
18 them check that it has been rejected. I don't know where that
19 original plea offer is. I don't even see a copy of it in my
20 file. So I can't answer that.
- 21 Q But so your office practice is that they would initial
22 the document, check reject, something like that?
- 23 A Uh-huh.
- 24 Q And you would save the copy of the plea offer in the
25 file?

Thomas Floyd - Redirect by Mr. Falk

40

1 A Yes.

2 Q But you don't have that in this case?

3 A I, I do not see that.

4 MR. FALK: No further questions.

5 MR. ISENBERG: No re-cross, Your Honor.

6 THE COURT: You can step down. Thank you. Anything
7 else, Mr. Falk?

8 MR. FALK: No, Your Honor.

9 THE COURT: Anything else from the State?

10 MR. ISENBERG: No, Your Honor. I would just ask that the
11 record be left open so that we can acquire that document from
12 the public defender's office, enter it into the record.

13 MR. FALK: Which document are we talking about?

14 MR. ISENBERG: The letter from the public defender's
15 office.

16 THE COURT: Okay. I'll leave it, leave it open. How
17 long do you think it would take, Mr. Floyd, for you to get
18 that?

19 MR. FLOYD: Judge, I'll, I'll go sit somewhere right
20 now and go through this page by page.

21 THE COURT: All right. I'll leave it open. Just make
22 sure you get it to me at my home address.

23 MR. ISENBERG: Yes, sir.

24 THE COURT: That's 836 -- I tell you, just email it to me.

25 MR. ISENBERG: Yes, Your Honor. I'll, I'll email a PDF.

1 THE COURT: I, I can read it -- yeah.

2 MR. FALK: Your Honor, we're not really contesting him
3 being given notice of the plea offer and whether or not to --
4 I -- I'm just --.

5 THE COURT: Yeah. I, I don't think I need that, quite
6 frankly.

7 MR. ISENBERG: Okay.

8 MR. FALK: And if there's a piece of paper with his
9 checkmark on it says rejected that would be interesting, but I
10 mean --

11 MR. ISENBERG: He, he did indicate that there was a
12 checkmark on there. So for cautionary purposes I would like
13 to have the letter.

14 THE COURT: Mr. Floyd's getting my attention.

15 MR. ISENBERG: Sorry.

16 MR. FLOYD: Judge, I don't know if -- I would not have a
17 copy of the plea offer that was checked rejected or accepted.

18 MR. ISENBERG: The --

19 MR. FLOYD: I would just have a copy of the plea offer
20 that came into our office and that was mailed out to him.

21 MR. FALK: I'll stipulate that he received a copy of the
22 offer.

23 MR. ISENBERG: Your Honor, if it's, if it's -- as the, as
24 the testimony has indicated, if it's a community workload and
25 the public defender's office has a record on file even outside

Thomas Floyd - Redirect by Mr. Falk

42

1 of his, outside of his file that there's a checkmark of
2 rejection inside of a letter that they keep as a community
3 file, the, the State would just --

4 THE COURT: I'll, I'll leave it, I'll leave it
5 open.

6 MR. ISENBERG: Okay.

7 THE COURT: If you find that letter and get it, just
8 email it to me immediately.

9 MR. ISENBERG: Yes, Your Honor.

10 THE COURT: All right. Before we adjourn, Mr. Taylor, do
11 you understand you've asked in your post-conviction relief
12 application that you have your sentence reduced. Do you
13 understand that I cannot reduce your sentence? All I can do,
14 if I do anything in your favor, it would be to set aside your
15 plea and you'd be facing this charge and have to go to trial
16 and be facing a possible life imprisonment which, which a CSC
17 first with a minor carries. You understand that?

18 MR. FALK: Your Honor, if I may, I, I believe there's
19 case law that if we can prove that there was an, an offer that
20 was made and that for some reason of attorney negligence or
21 mistake or ineffectiveness that my client did not have the
22 opportunity to accept a fair offer.

23 THE COURT: Well, okay, well, I'll --

24 MR. FALK: That I, I believe there's case law in there
25 that he could get the -- he could get the benefit of the

1 bargain that he did not --

2 THE COURT: All right. Well, and I, I stand corrected
3 but in this particular case he, he said he got the 20-year
4 offer. So I --

5 MR. ISENBERG: Yeah. That --

6 THE COURT: I don't know that those cases would apply.

7 MR. ISENBERG: Your Honor, and if I --

8 THE COURT: But I -- but I'll, I'll allow you to
9 accumulate that. That's, that's not got anything to do with
10 the merits on this, it's just whether or not he wants me to --
11 I'm going to go ahead and rule. I've told him --

12 MR. FALK: Yes, Your Honor.

13 THE COURT: -- that, that -- I'll let your attorney
14 advise you. I, I, I may be wrong. The -- you may be entitled
15 to reduction of sentence if I rule in your favor based on what
16 your attorney tells me as far as some case law. I don't
17 really need that to, to reach a, reach a decision on the
18 merits because I can do that pretty quickly. In fact, I can
19 do it right now. You understand that, Mr. Taylor?

20 MR. TAYLOR: Yes, sir.

21 THE COURT: Do you want to -- do you want me to go ahead
22 and, and handle the case?

23 MR. TAYLOR: I really don't know what to say right now.

24 THE COURT: Beg your pardon?

25 MR. TAYLOR: I really don't -- I don't, I don't know what

Thomas Floyd - Redirect by Mr. Falk

44

1 to say as far as like it's -- yes.

2 THE COURT: All right. Well, let me do this. Let me --
3 I'm going to leave the -- not -- I'm not leaving the record
4 open, but I'm going to allow Mr. Falk to talk to you and see
5 if you want me to go forward, and then, Mr. Falk, I'm not
6 trying to talk him out of this, this matter. I just want him
7 to be clear what the options are if gets relief.

8 MR. FALK: Yes, Your Honor.

9 THE COURT: And it may be that he could get a reduction.
10 The record reflects that he understood he had a 20-year offer
11 and did not take it. I don't know how all that comes into
12 play, but I'm going to leave -- again, not leave the record
13 open, but I'm going to delay -- taking the case under
14 advisement until I hear from you.

15 MR. FALK: Yes, Your Honor. Can I talk to my client?

16 THE COURT: Yeah. I mean, if you can do that just today
17 or tomorrow that'd be fine and --

18 MR. FALK: I'll do it right now.

19 THE COURT: Okay. All right.

20 MR. FALK: We can just go back.

21 (Court gets bar numbers for all attorneys involved in case.)

22 THE COURT: All right. Well, I'll wait and leave this
23 till I hear back, Mr. Falk, whether or not your client wants
24 me to go ahead and rule or, or take some other action.

25 MR. FALK: Thank you, Your Honor.

1

OFF THE RECORD

2 (On the record.)

3 THE COURT: All right. Mr. Falk.

4 MR. FALK: Your Honor, I believe where we were is you
5 were sort of suggesting that the limited remedies that I
6 believe that you're accurate that if the remedy that we are
7 looking for here may be sort of expanding what the existing
8 law is, but my client still wishes to proceed with his PCR.

9 THE COURT: All right. Is that correct; Mr. Taylor?

10 MR. TAYLOR: Yes, sir.

11 THE COURT: All right. Well, I can go ahead and ask, you
12 know, you can be, you can be seated. After listening to the
13 testimony, I'm going to deny the -- Mr. Taylor's motion.
14 Under Strickland and Cherry I find that he has not carried his
15 burden of proof that the -- Mr. Floyd was in any way
16 ineffective in representing him. I'm going to ask the
17 Attorney General to prepare that order for me and how, how
18 soon can you have it?

19 MR. ISENBERG: Your Honor, the State would request two
20 weeks to prepare that order.

21 THE COURT: Okay. Two weeks will be fine.

22 MR. ISENBERG: Yes, sir.

23 THE COURT: Use your return as a template. You, you've
24 spelled out everything in there. The only caveat I have is
25 and I don't think it's going to be an issue in this particular

1 case, but the Supreme Court, the Chief Justice has talked to
2 the judges about orders prepared by the Attorney General's
3 Office sometimes not covering all of the issues raised in the
4 application, so.

5 MR. ISENBERG: Yes, Your Honor, we've been counseled on
6 that matter and just so you're aware we have at least one
7 superior review the order before we send it to opposing
8 counsel to make sure that they're, you know, content with it.
9 So I would just say that I will -- it will be adequately
10 prepared by the time it gets to your office.

11 THE COURT: Oh, I'm, I'm sure it will, but I just -- the
12 Chief just passed that on to us. Okay. All right. Thank
13 you.

14 MR. FALK: Thank you, Your Honor.

15 MR. ISENBERG: Thank you, Your Honor.

16 (Adjourned.)

17

18

19

20

21

22

23

24

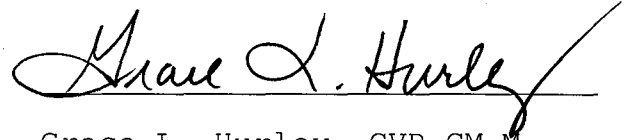
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the hearing held in the case of Malikaih Taylor, Jr. versus the State of South Carolina, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on June 18, 2019.

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



Grace L. Hurley, CVR-CM-M

Official Reporter

December 2, 2019.

| | | |
|--------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | FOR THE FIFTEENTH JUDICIAL CIRCUIT |
| COUNTY OF HORRY |) | |
| Malikaih Taylor Jr., |) | Case No.: 2018-CP-26-5445 |
| S.C.D.C. No. 235209, |) | |
| Applicant, |) | |
| |) | ORDER OF DISMISSAL |
| v. |) | |
| State of South Carolina, |) | |
| Respondent. |) | |

2019 AUG 22 PM 2:13
 COURT CLERK
 HORRY COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed by Malikaih Taylor Jr. ("Applicant") on September 24, 2018. Respondent made its return on or about December 14, 2018. The Court convened an evidentiary hearing into the matter on June 18, 2019, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by James K. Falk, Esquire. Jacob A. Isenberg and Johnny Jamcs, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, W. Thomas Floyd, Esquire ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, and records of the Horry County Clerk of Court regarding the subject convictions. After a thorough review of all the evidence and testimony in the record, this Court finds Applicant has not met his burden of establishing any constitutional deprivations or other grounds entitling him to relief and denies and dismisses this application with prejudice.

JTH

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the April 2017 term of the Horry County Grand Jury for criminal sexual conduct with a minor, first degree (2017-GS-26-02245). The underlying facts are as follows:

Your Honor, the defendant, Malikaiah Taylor, between the dates, on or between the dates of January 1, 2013 and November 30 of 2014 committed a sexual battery upon his biological daughter, [Victim]. He raped her on an almost weekly basis over a period of two years.

[Victim] is present today with her mother and her family and she would like to address the Court before you sentence the defendant.

(Tr. 8-9). The State noted Applicant decided to plead immediately before a jury was set to be selected for trial.

C. Leigh Andrew, Esq., of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On November 6, 2017, Applicant pled guilty as indicted. Without negotiations or recommendations, the Honorable Steven H. John sentenced Applicant to imprisonment for a term of 27 years. Applicant did not appeal his plea or sentence.

II. PRESENT APPLICATION

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

i. "Insufficient Counseling"

- a. "I was not notify or served any indictment documents."
- b. "I was being taken to [trial] without being arraign."
- c. "I was offer a plca for 20 years and my lawyer Thomas Floyd never came to explain the plea offer to me. However, after the expiration of the plca he came and visit me concerning [trial]. When I question him about the plca offer, he stated that he was out sick."
- d. "Because Mr. Floyd was getting ready to retire I feel that there was no effort in representing my case."

JEH/12

e. "On the first day of [trial] I was advise by Mr. Floyd to plea guilty. That if I was to take it to [trial], I would probably get the maximum penalty if I lose. Therefore leading me to plea guilty out of fear. Rather than going to [trial] base on no tangible evidence."

Applicant requests relief as follows:

- Sentence Reduction

At the evidentiary hearing, Applicant proceeded forward on the above-mentioned allegations. Additionally, Applicant proceeded forward on the allegation of ineffective assistance of counsel based upon failure to review discovery. Applicant did not offer any tangible evidence or testimony to support his allegation based upon the failure to arraign. Accordingly, this Court finds failure to arraign allegation is dismissed with prejudice.

III. SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING

Applicant

Applicant testified on his own behalf at the evidentiary hearing. He testified Counsel met with him one time over the first twelve months of representation. Applicant testified Counsel did not review anything relevant at their first meeting.

Applicant testified he received a plea offer from the Fifteenth Circuit Solicitor's Office in July 2017. Applicant testified the offer was for twenty years based upon second degree criminal sexual conduct with a minor. He further testified the offer was set to expire on August 21, 2017. Applicant testified he tried to contact Counsel about the initial plea offer to discuss parole eligibility possibilities. Applicant testified he wanted to know if there was exposure to sixty-five mandatory service, eighty-five percent mandatory service, whether he would be parole eligible, and whether he would have to wear a GPS monitor upon release. Thereafter, Applicant testified he called the Fifteenth Circuit Public Defender's Office daily to talk with Counsel about the above-mentioned issues. However, Applicant testified he did not get a response from Counsel

2017
11/3

on any of these issue before the initial offer's expiration date. Therefore, Applicant testified he failed to accept the offer on time. Applicant testified he would have taken the initial plea offer to do the right thing. He further testified he would have accepted an offer containing the sixty-five percent mandatory service of twenty years. However, Applicant testified he would not have accepted an offer with the eighty-five percent mandatory service of twenty years. Thereafter, Applicant testified he would have taken an offer with eighty-five percent mandatory service to do the right thing.

Subsequently, Applicant testified Counsel met with him to prepare for trial shortly after the plea offer expired. Applicant further testified Counsel claimed a long-term sickness prevented him from meeting about the initial plea offer. Applicant testified Counsel did not bring any DNA evidence or forensic evidence to review at this meeting. However, Applicant testified Counsel merely said a jury would probably believe the victim.

Additionally, Applicant testified he met with Counsel right before trial. Applicant testified Counsel assessed this case would come down to a he said, she said. Applicant testified Counsel advised him the jury would probably believe the victim. Thereafter, Applicant testified Counsel advised him to plead guilty to twenty-five to life. Applicant testified Counsel again did not produce any DNA or forensic evidence.

Thereafter, Applicant testified he was not satisfied with Counsel when entering a guilty plea. Applicant testified he lied at the plea hearing about being satisfied with Counsel. Applicant testified he lied at the plea hearing about needing time to talk to Counsel. Applicant testified he lied at the plea hearing about not having any questions for Counsel. Applicant testified he lied at the plea hearing because he was afraid of the repercussions of speaking out

against Counsel. Thereafter, Applicant testified he had no mental health issues when accepting the plea.

Finally, Applicant testified he never saw the victim statements. Applicant testified there was never strategy discussions in meetings with Counsel.

Counsel

Counsel testified on behalf of Respondent at the evidentiary hearing. Specifically, Counsel testified the Fifteenth Circuit Public Defender's Office mailed Applicant a plea offer on July 24, 2017. Counsel testified offers are physically delivered to jailhouse clients followed by the requirement to get their signature. Thereafter, Counsel testified he went to the jail and discussed this plea offer with Applicant on the same day or a couple days later.¹ Counsel testified they reviewed the initial plea offer of second degree criminal sexual conduct with a recommendation of twenty years. Counsel further testified they discussed the potential exposure to a heavier sentence at trial based upon the mandatory minimum of twenty-five years with first degree criminal sexual conduct. Counsel also testified they reviewed the potential sentencing range Applicant would be subject to under this lesser-included offense at the discretion of the plea judge. Counsel testified he reviewed the mandatory amount of incarceration before eligibility for release under community supervision based upon the sentence percentage.

Counsel testified he reviewed evidence with Applicant at the above-mentioned meeting. Counsel testified he reviewed the forensic interview transcript with Applicant. Counsel testified he advised Applicant twenty years was good offer based upon the lesser-included offense

¹ Counsel testified there are customarily lawyers at this jailhouse to handle emergency plea offer issues on behalf of the Fifteenth Circuit Public Defender's Office. Counsel testified he customarily notified clients to request assistance from the on-site lawyer if he was not available. Counsel testified the lawyers conducted a group effort to ensure offers could be considered and accepted. However, Counsel testified there was never a communication issue with Applicant.

preventing exposure to the sentencing range of twenty five to life. However, Counsel testified he did not force Applicant to take the plea offer since twenty years is also a long time. Finally, Counsel testified he told Applicant a decision to reject the plea offer would mean the trial would be put on the roster.

Thereafter, Counsel testified Applicant became indecisive on accepting the initial plea offer. Counsel testified he notified Applicant he needed affirmative permission to accept the plea offer before he was able to do so. Counsel testified Applicant would say he did not want to plead guilty then say he did not want to go to trial. Counsel testified he anticipated Applicant would plead guilty based upon accepting responsibility at the meeting. However, Counsel testified Applicant wanted to avoid going to prison as long as possible. Furthermore, Counsel testified Applicant wanted to delay his decision to make up his mind. Therefore, Counsel testified Applicant repeatedly asked for more time to decide. Counsel testified he does not remember the specific date of expiration. However, Counsel testified both parties were aware of the date this offer expired. Counsel testified he remembered having concerns Applicant did not appreciate the expiration date being the last step before scheduling trial. Therefore, Counsel testified he intentionally explained to Applicant the failure to accept by this set expiration date would result in the trial being put on the roster. However, Counsel testified Applicant did not make a decision on accepting the plea offer by the expiration date.

A couple days later, Counsel testified he met with Applicant to prepare for trial. Counsel testified Applicant acted surprised trial would be scheduled immediately after the plea offer expired. Counsel testified he reminded Applicant about the previous warning this trial would be put on the roster if the initial offer was rejected. Furthermore, Counsel testified Applicant did raise concerns about unanswered questions as well as the failure to accept this initial plea.

Thereafter, Counsel testified he moved on to discussing trial strategy. Counsel testified he reiterated his opinion this case would revolved around a he said, she said. Finally, Counsel testified Applicant did take responsibility for what happened again.

Shortly before trial, Counsel testified he met with Applicant to discuss strategy. Counsel testified he reiterated this case was a he said, she said. Counsel testified he said if they believe the victim then Applicant could receive a life sentence. Thereafter, Counsel testified he advised Applicant serving life is a lot of time. Counsel testified Applicant stated he hurt his daughter enough so he did not want to hurt her anymore. Counsel then testified Applicant requested to avoid trial. Counsel testified Applicant mentioned accepting the initial plea offer. Counsel testified this was the first time Applicant had brought it up in about three months. However, Counsel testified Applicant was aware it was too late to accept that offer.

Thereafter, Counsel testified the Assistant Solicitor only offered to allow Applicant to plea to first degree criminal sexual conduct with a minor in the first degree without recommendation. Counsel assessed the plea was not much of an offer since they were so close to trial. Finally, Counsel testified Applicant agreed to follow through to avoid forcing his daughter to testify.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

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, 686 (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. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; 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). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees

reasonable competence, not perfect advocacy judged with the benefit of hindsight.” Yarborough at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”). 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 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. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he/she would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Id. at 696-97.

1. Failure to Advise Consequences of Plea²

Applicant contends Counsel failed to properly advise him about consequences of accepting the initial plea offer before it expired. Plea counsel has no duty to inform an applicant about collateral consequences, which are defined as those having a direct, immediate, and automatic effect on the range of punishment. Page v. State, 364 S.C. 632, 637, 615 S.E.2d 740, 742 (2005) (finding future civil proceedings are not a direct consequence of pleading guilty); See Randall v. State, 356 S.C. 639, 641, 591 S.E.2d 608, 609 (2004) (reaffirming parole eligibility is a collateral consequence where counsel has no duty to advise); See Smith v. State, 329 S.C. 280, 286, 494 S.E.2d 626, 629 (1997) (finding the consequences of pleading to a violent crime are collateral so counsel had no duty to advise); See Jackson v. State, 349 S.C. 62, 64, 562 S.E.2d 475, 475 (2002) (finding release under community supervision is a collateral consequence where counsel has no duty to inform). However, counsel has a duty not to misadvise an applicant on collateral consequences. Coats v. State, 352 S.C. 500, 503, 575 S.E.2d 557, 558 (2003) (finding

² Applicant approached this claim as a failure to communicate a plea offer at the evidentiary hearing. However, the undisputed testimony indicates Applicant received this offer in the mail. The dispute is centered upon advice about collateral consequences of accepting the initial plea offer. Therefore, it is best addressed as a failure to give advice on the initial offer's collateral consequences.

advice which made applicant believe he would be eligible for parole could affect the validity of the plea entered).

Here, Applicant testified Counsel failed to answer any questions about parole eligibility, early release under community supervision, and GPS monitoring. These are collateral consequences where Counsel had no duty to inform. However, Counsel testified he may have advised Applicant the requirement would be to serve at least sixty-five percent of this initial offer's sentence. However, second degree criminal sexual conduct with a minor has a mandatory service requirement of eighty-five percent.³ Therefore, this Court finds Counsel deficiently misadvised Applicant about the initial offer's mandatory incarceration requirement.

Counsel contends Applicant failed to accept the initial plea offer based upon not being able to make up his mind before it expired. Here, Counsel credibly testified Applicant ultimately decided to plea to prevent the victim, his daughter, from having to testify. Similarly, at the plea hearing, Counsel stated Applicant pled guilty out of desire not to put his family through any more pain. (Tr. 12). Counsel then stated this decision came after a great deal of recent conversations with Applicant. (Tr. 12). Therefore, this Court finds Applicant decided to plea shortly before trial to avoid requiring his daughter to testify.⁴ Additionally, Counsel credibly testified Applicant always accepted responsibility. However, Counsel credibly testified Applicant tried to delay going to prison as long as possible. Counsel credibly testified Applicant did not want to plea and did not want to go to trial. Counsel credibly testified Applicant allowed the expiration date to pass without making a decision on the initial plea offer. Similarly, at the plea hearing, Counsel stated Applicant missed out on the initial twenty year offer based upon not

³ See S.C. Code Ann. § 24-13-125 (no parole offenses require eighty-five percent of actual sentence be spent incarcerated).

⁴ This Court notes the Assistant Solicitor stated Applicant pled right before jury selection. (Tr. 9).

exercising his ability to plead guilty earlier on. (Tr. 12). Therefore, this Court finds Applicant failed to accept the initial offer because he did not make a decision before the expiration date.⁵ Therefore; this Court finds improper advice on collateral consequences did not prejudice his decision to reject the initial plea.

Alternatively, Respondent contends the improper advice could not have impacted the failure to accept this offer. Counsel advised this sentence would contain a sixty-five percent mandatory incarceration despite no-parole offense requiring eighty-five percent service. However, Applicant conceded he would not have accepted the initial offer if it came with a mandatory of serving eighty-five percent. Therefore, this Court finds Counsel's error did not impact Applicant's failure to accept the initial plea offer.

As a result, Applicant has not overcome the burden to prove he suffered any prejudice from improper advice about the mandatory amount of actual incarceration required for plead guilty to the initial offer.

2. Failure to Indict

Applicant contends he was not indicted before pleading guilty. At the plea hearing, Applicant confirmed he remembered being indicted on April 20, 2017. (Tr. 4). The record

⁵ Additionally, Applicant would fail on the allegation of a failure to communicate a plea offer. When alleging plea counsel was deficient in his or her handling of a plea offer, an applicant "must demonstrate a reasonable probability he 'would have accepted the earlier plea offer had [he] been afforded effective assistance of counsel.'" Collins v. State, 422 S.C. 250, 262, 810 S.E.2d 871, 877 (2018) (citing Missouri v. Frye, 566 U.S. 134, 147 (2012)); see Lafler v. Cooper, 566 U.S. 156, 164 (2012) (stating "a defendant must show that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (i.e., that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed"). Here, the credible testimony reflects Applicant did not accept the plea offer based upon an inability to make up his mind. Accordingly, this Court finds Applicant has not provided sufficient evidence to show he would have accepted this initial offer with effective counsel.

J. H. 12

reflects he was indicted on that date. Applicant did not offer any testimony on this issue at his evidentiary hearing. Therefore, this Court finds he has not overcome the burden to prove a failure to indict had any impact on his case.

3. Involuntary Plea based upon Coercion

Applicant contends his plea was involuntary based upon advice from Counsel that going through with trial would guarantee a life sentence. To find a guilty plea voluntarily and knowingly, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000). Also, an applicant's statements during the plea hearing are considered "conclusive unless [he] presents valid reasons why he should be allowed to depart from the truth" of them. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007). Finally, the plea colloquy can cure any alleged deficiency if counsel not properly advise an applicant about the consequences of accepting it. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997) (stating that plea counsel's deficient performance can be cured by the plea court's colloquy).

At the plea hearing, Applicant testified nobody forced him in any way to plead guilty. (Tr. 7). Applicant also said Counsel answered all of his questions. (Tr. 7). Applicant further said he had enough time to talk to Counsel. (Tr. 7). Applicant then said he was satisfied with Counsel. (Tr. 7). At this evidentiary hearing, Applicant testified he lied to the plea judge during all of these questions about Counsel. Applicant testified he wanted to tell the plea judge he was dissatisfied, needed more time, and had several questions for Counsel. Applicant testified he lied because he was afraid of sentence repercussions. Applicant testified the truth was Counsel forced him to plead guilty after claiming a life sentence was almost certain if they went through with trial.

On the other hand, Counsel credibly recalled Applicant taking responsibility for the crime multiple times. Counsel credibly testified he advised Applicant this case would come down to which witness the jury believed. Counsel further credibly testified he warned Applicant if a jury believed the victim it could result in a life sentence.

Accordingly, it is undisputed Counsel advised Applicant the worst-case scenario at trial would have been a life sentence. Thereafter, Applicant was seemingly satisfied with Counsel at the plea hearing. However, he currently wishes to depart from those statements based upon the fear he had of sentencing repercussions. He wishes to replace them with extreme dissatisfaction of Counsel forcing him to plead guilty after threatening the trial would result in a life sentence. However, Applicant conceded he accepted the plea offer to do the right thing. Applicant then conceded he accepted the plea offer to take responsibility for his actions. This contradicts directly his assertion that Counsel played the primary role in his decision to plead guilty. Thus, this Court finds Applicant has failed to provide a valid reason to depart from his conclusive plea hearing statements about satisfaction with Counsel. Accordingly, this Court finds Applicant has failed to provide credible evidence to support his contention the plea was entered for reasons outside of accurate advice. That accurate advice being life in prison was a possible outcome at trial. Therefore, this Court finds Applicant entered in his plea agreement knowing and voluntary.

4. Failure to Review Discovery

Applicant contends Counsel failed to review victim statements or DNA evidence with him despite receiving them in discovery. However, Counsel credibly testified he reviewed all the evidence with Applicant on multiple occasions. Specifically, Counsel credibly recalled reviewing all the evidence when they discussed the initial plea offer, after the case was put on a trial roster, and a couple of days before trial was scheduled. Counsel credibly testified a

transcript of the victim's forensic interview was in the evidence he reviewed with Applicant. Additionally, Counsel credibly testified he could not recall any DNA evidence. However, Counsel credibly recalled labeling this a he said, she said case based upon the lack of physical evidence. Therefore, Counsel credibly testified he does not believe he received any DNA evidence in discovery. Accordingly, this Court finds Counsel produced a credible explanation about his process of reviewing discovery with Applicant. Therefore, this Court finds Applicant has failed to overcome the burden to prove Counsel was deficient in failing to review discovery with him.

Additionally, Applicant contends the failure to review victim statements prevented him from understanding the strength of evidence against him. An applicant cannot meet the prejudicial prong if he or she states they would have pled guilty in any event. Johnson v. Catoe, 336 S.C. 354, 358, 520 S.E.2d 617, 619 (1999) (finding an applicant could not satisfy the prejudicial prong, for a guilty plea, where they would have pled guilty again if granted a new trial). Here, Counsel credibly testified Counsel took responsibility for everything throughout this process. Furthermore, Applicant admitted twice pleading guilty was the right thing to do. Applicant also conceded he would plead guilty again to take responsibility for his actions. Applicant further testified his only desire is to plead guilty to a better offer. However, Applicant failed to provide any testimony to show he has reviewed previously undisclosed victim statements. Therefore, this Court finds a failure to review victim statements did not prejudicially impact his decision to plead guilty.

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his

ge A H 13

application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) 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, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention 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 must be denied and dismissed with prejudice; and
2. The Applicant must remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 14th day of August, 2019.

 JOHN C. HAYES
 Presiding Judge
 Fifteenth Judicial Circuit #16

Rob Hill, South Carolina

RECEIVED
 SEP 04 2019
 S.C. SUPREME COURT

WITNESSES

Justin Wyatt Horry County Police Department

J. Johnson

ARREST WARRANT NUMBER

2016A2610400005
CDR: 0385 16-03-0655(A)(1)
DOA: 4/12/2016

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury

Date: APR 20 2017

VERDICT

Foreperson of Petit Jury
Date:

C

DOCKET NO. 2017-GS-26- 02245

**The State of South Carolina
County of Horry**

C. Leigh Andrew 16H02011

COURT OF GENERAL SESSIONS

APRIL, 2017 TERM

THE STATE

vs.

Malikaih Taylor Jr
/ M
[Redacted] Busy Corner Rd
Conway, SC 29527-8601
[Redacted]
[Redacted]

ATTORNEY: W. Thomas Floyd

Indictment for

Criminal Sexual Conduct with a Minor, First Degree

Jimmy A. Richardson, II, Solicitor

**FILED
HORRY COUNTY**

17 APR 28 AM 8:45

**RENÉE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC**

DATE RECEIVED FROM
GRAND JURY

 **ORIGINAL**

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on April 20, 2017, the Grand Jurors of Horry County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

CDR: 0385 16-03-0655(A)(1)

That Malikaih Taylor Jr did in Horry County, State of South Carolina, on or between the dates of January 1, 2013 and November 30, 2014, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a Minor in the First Degree by engaging in sexual battery with a minor who is less than eleven (11) years of age, to wit: **Victim** whose date of birth is **██████████** in violation of Section 16-3-655(A)(1), [formerly Section 16-3-655(1)], S. C. 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.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

25 to life, sex offender registry IN THE COURT OF GENERAL SESSIONS 95

COUNTY OF Horry STATE VS. Malikaih Taylor Jr AKA: Race: B Sex: M Age: 39 DOB: SS#: Address: Busy Corner Rd City, State, Zip: Conway, SC 29527-8601 DL#: SID#:

INDICTMENT/CASE#: 2017GS2602245 A/W#: 2016A2610400005 Date of Offense: 1/1/2013 S.C. Code §: 16-03-0655(A)(1) CDR Code #: 0385

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No In disposition of the said indictment comes now the Defendant who was TO: Criminal Sexual Conduct w/ Minor 1st Degree

CONVICTED OF or PLEADS

in violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45 w/minor 1st or Lewd Act

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury (defendant's initials) The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Andrew, C. Leigh 72898 SC Bar# Malikaih Taylor, Jr Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 27 years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference. CONCURRENT or CONSECUTIVE to sentence on: The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 573 days of service The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135. Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition. Sex Offender Registry Required Equally Violent Offense

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms: Set by SCDRRPS Obtain GED Attend Voc. Rehab. or Job Corp.

Recipient: May serve W/E beginning Substance Abuse Counseling

*Fine: § 14-1-206 (Assessments-107.5) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 61.6 (Public Def/Probation) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$25.00 § 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114 (BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ 3.75

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 25.00 beginning 12-6-2014 \$ paid to Public Defender Fund

Other: Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

TOTAL \$ 128.75 + \$40.00 = \$168.75 Presiding Judge Judge Code: Sentence Date: 11/6/17

Clerk of Court/ Deputy Clerk Renee N. Elvis Court Reporter: Dixie Eubank

SCCA/217 (07/2016)