

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

Honorable William A. McKinnon, Circuit Court Judge

CHRISTOPHER TISON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001723

APPENDIX

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ATTORNEYS FOR RESPONDENT

RECEIVED

Jun 29 2020

S.C. SUPREME COURT

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State of South Carolina.,)	In the General Sessions
)	Court of York
)	
)	Case No. 2016-GS-46-00215
County of York.)	2016-GS-46-00216

State of South Carolina.,)	
)	
Plaintiff.,)	
)	Transcript of Record
)	
Christopher David Tison.,)	
)	
Defendant.)	
_____)	
	July 13, 2016
	York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III, judge.

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Wanda S. Nelson, CVR-M
Official Court Reporter
Sixteenth Judicial Circuit
Union and York Counties
To The Honorable John C. Hayes, III

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

WITNESS

BY

PAGE NO.

No witnesses were called.

Court Reporter's Certificate Page

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I-N-D-E-X

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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No Exhibits were received into the record.

1 (COURT IN SESSION IN THE MATTER OF STATE V.
2 CHRISTOPHER TISON AT 01:03 PM.)

3 THE COURT: Take your seats. Ms. Shelton.

4 SOLICITOR SHELTON: Thank you, your Honor.
5 Christopher Tison.

6 THE COURT: All right.

7 SOLICITOR SHELTON: Your Honor, this is State versus
8 Christopher Tison. He is pleading guilty to contributing
9 to the delinquency of a minor. He's pleading guilty under
10 North Carolina versus Alford to an assault and battery
11 first degree. That is reduced from a criminal sexual
12 conduct with a minor. If the Court feels that he needs to
13 wave presentment he was indicted for the criminal sexual
14 conduct.

15 THE COURT: Okay. How old are you, Mr. Tison?

16 MR. TISON: I'm sorry.

17 THE COURT: Age?

18 MR. TISON: I'm thirty-two.

19 THE COURT: You represented by Mr. Dest?

20 MR. TISON: Yes.

21 THE COURT: You satisfied with his service?

22 MR. TISON: Yes.

23 THE COURT: The contributing to the delinquency of a
24 minor charge -- I'm sorry -- the assault and battery first
25 degree charge has not been before the Grand Jury of York

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1 County. You are actually charged with criminal sexual
2 conduct with a minor second degree. I don't know that this
3 is a lesser included offense. Do you wish to have the
4 assault and battery first degree charge reviewed by the
5 Grand Jury of York County or give up that right?

6 MR. TISON: I give up that right.

7 THE COURT: I'm gonna ask you to sign on the back of
8 the indictment where I marked in yellow and where I have
9 initialed on the front.

10 (DEFENDANT COMPLIES.)

11 MR. DEST: I apologize for that, your Honor. It's my
12 mistake.

13 THE COURT: It's okay. And it's a True Billed
14 Indictment. I don't think it's a lesser but it could be
15 but I'm not gonna take a chance.

16 All right. You're charged with contributing to the
17 delinquency of a minor. That carries up to three years in
18 jail.

19 What's the negotiation?

20 SOLICITOR SHELTON: Your Honor, the negotiation is for
21 probation for seven years suspended on three years
22 probation with a sex offender -- with a mandatory sex
23 offender registry.

24 THE COURT: State complied with the Victim's Rights
25 Act?

1 SOLICITOR SHELTON: The State has, your Honor. I've
2 had -- I've met with the victims several times. They did
3 indicate that they were going to be here today when I
4 called them earlier today. She had changed her mind. They
5 are in agreement with the plea negotiations. They above
6 all else wanted to see Mr. Tison register as a sex
7 offender.

8 THE COURT: All right. Going back to the assault and
9 battery of first degree, that charge is charged as a
10 contributing -- I'm sorry, as a criminal sexual conduct with
11 a minor second degree. It's alleged that that event
12 occurred on March 28th, 2015 here in York County when you
13 committed a sexual battery on a fourteen-year-old who was
14 between eleven and fourteen years of age.

15 This carries up to ten years in jail; it is a felony.
16 It requires that you be registered on the registry of child
17 abuse and neglect and could, if I so find, result in your
18 being placed on the sex offender registry.

19 Do you understand all that?

20 MR. TISON: Yes, sir.

21 THE COURT: How do you plead to that charge?

22 MR. DEST: Your Honor, this is guilty under North
23 Carolina -- I understand this is an Alford Plea with
24 respect to that charge and guilty on the neglect charge.

25 THE COURT: All right. As to this charge I understand

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1 that you're entering a plea under the rubrics of a case of
2 *North Carolina versus Alford*. That case allows an
3 individual -- and I'm asking if this is what you're doing
4 -- to plead guilty based on the fact -- Let me put it like
5 this -- maintain your innocence but plead guilty based on
6 your belief that the State's evidence is strong enough so
7 that if you went to trial there is a strong likelihood or
8 probability that you would be convicted.

9 And also in this case based on the fact that they are
10 reducing a criminal sexual conduct charge to an assault and
11 battery charge is that -- Do you agree?

12 MR. TISON: I agree.

13 THE COURT: Okay. So that's why you're -- So if you
14 say as to this charge you're pleading guilty I'll
15 understand it's under that doctrine.

16 MR. TISON: I plead guilty.

17 THE COURT: Okay. Now as to the contributing to the
18 delinquency of a minor that carries three years in jail,
19 its alleged that that occurred on March 28th, 2015 with
20 that same minor. You allowed him or aided and encouraged
21 him to report himself -- herself -- I'm sorry -- so as to
22 engage -- endanger their -- her morals.

23 Do you understand that charge?

24 MR. TISON: Yes, sir.

25 THE COURT: How do you plead to that?

1 MR. TISON: Guilty.

2 THE COURT: Other than the negotiation that the
3 Solicitor told me just a moment ago which I understand to
4 be seven years with -- How long on probation?

5 SOLICITOR SHELTON: Three years probation with sex
6 offender registry.

7 THE COURT: Other than that has anyone made any other
8 promise or threats to cause you to enter today your plea of
9 guilty to this set of charges, Mr. Tison?

10 MR. TISON: No.

11 THE COURT: Are you today under the influence of
12 anything that would cause you to be intoxicated?

13 MR. TISON: No.

14 THE COURT: Are you entering your plea today, Mr.
15 Tison, to this set of charges freely and voluntarily?

16 MR. TISON: Yes.

17 THE COURT: Mr. Tison, you have a right to a trial by
18 jury on these charge -- charges and you are presumed
19 innocent of these charges until such time as the State is
20 able to prove to a jury your guilt beyond a reasonable
21 doubt. As to the charges you have the right to remain
22 silent, the right to confront the witnesses against you;
23 you have the right to have your witnesses made to come to
24 court to testify on your behalf. Do you understand you
25 have these rights?

1 MR. TISON: Yes, sir.

2 THE COURT: Do you have any questions about them?

3 MR. TISON: No, sir.

4 THE COURT: I advise you that entering a plea of guilt
5 without *Alford* or under *Alford* that as to these charges
6 you're giving up all those rights I've gone over and also
7 giving up the possibility of any defense to the charge. Do
8 you understand that?

9 MR. TISON: Yes, sir.

10 THE COURT: Knowing those things how do you plead to
11 assault and battery first degree?

12 MR. TISON: Guilty.

13 THE COURT: And to contributing to the delinquency of
14 a minor?

15 MR. TISON: Guilty.

16 THE COURT: All right, listen while I'm given the
17 facts.

18 SOLICITOR SHELTON: Your Honor, there is one other
19 thing on the negotiations I just want to place on the
20 record. Mr. Tison has additional unrelated charges of a
21 burglary and a grand larceny that were charged months after
22 this event. Those charges will remain pending after this
23 plea. We have not gotten to a place where we're ready to
24 dispose of those charges.

25 THE COURT: Okay. You understand that? There's still

1 some charges from subsequent event pending.

2 MR. TISON: Yes, sir.

3 THE COURT: Do you understand that, Mr. Dest?

4 MR. DEST: That's correct, your Honor.

5 THE COURT: All right. Yes.

6 SOLICITOR SHELTON: Your Honor, these offenses
7 occurred on March 28th of 2015. The victim who was
8 fourteen years old at the time was spending the night with
9 the defendant's daughter at his home in York City which is
10 in the city limits of York in York County jurisdiction.

11 At some point during that evening at the defendant's
12 home he provided alcohol to both the -- to the victim. She
13 had two and a half Bud Lite raspberry drinks,
14 RAZ-BER-RITA's which he provided to her. At some point
15 during the evening the defendant's daughter went to bed.
16 The victim remained in the living room with the defendant.
17 He caged her on the couch began rubbing her leg and at some
18 point digitally penetrated her without her consent without
19 permission.

20 His wife was still in the room but asleep. After he
21 assaulted the victim he woke his wife up and he and his
22 wife went to bed. It was not an immediate report. There
23 was a three day delayed report. There were no forensic
24 evidence linking the defendant to the allegations. There
25 were some text messages between the defendant and the

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1 victim where he acknowledged doing something that evening
2 that could have made her feel weird and apologized for
3 making her feel weird. But other than that that would have
4 been the facts that the State would have presented.

5 THE COURT: Do you agree, Mr. Tison, that were you to
6 go to trial those would be the facts presented by the State
7 to the jury?

8 MR. TISON: I do.

9 THE COURT: I accept your plea to both of these
10 charges. I find they are freely voluntarily knowingly
11 intelligently entered, entered with the advice of competent
12 counsel with whom you are satisfied. The facts support
13 your plea and you signed pleas of guilt as to each the
14 assault and battery being under the Alford Doctrine.

15 I'll be glad now to hear from your attorney and then
16 from you.

17 MR. DEST: May it please the court. Your Honor, I've
18 represented Mr. Tison since the inception of his case which
19 is over a year now. He's always been game fully employed.
20 He works at installation services; in fact he came off the
21 job site today to be here for this plea.

22 Judge, he also has three children ages five, thirteen
23 and sixteen. As the Solicitor indicated he is married, his
24 wife I've had an opportunity to speak to her as well.

25 Most importantly, Judge, he has no prior criminal

1 record. He also serves in the Army reserves as a combat
2 engineer and he's been serving in that capacity for four
3 years. Based upon the lack of a criminal record and the
4 fact that we negotiated this case, your Honor, I
5 respectfully request the Court to go along with the
6 negotiated plea.

7 THE COURT: All right. Mr. Tison, anything you want
8 to say?

9 MR. TISON: No, sir.

10 THE COURT: What company are you in?

11 MR. TISON: 178 Engineers in Rock Hill.

12 THE COURT: Which company?

13 MR. TISON: 178 Engineer's, Rock Hill.

14 THE COURT: All right. The sentence on the assault
15 and battery first degree is seven years suspended. I'll
16 give you credit for one day in the event you violate
17 probation. I'm not assuming that you would. That seven
18 years is suspended with three years probation. Sex
19 offender registry, child abuse and neglect registry. In
20 addition to other fees and cost you owe Five Hundred
21 Dollars for having an appointed attorney.

22 On the contributing charge is three years suspended
23 with three years probation to run concurrent. Thank you.

24 MR. DEST: Thank you, your Honor.

25 SOLICITOR SHELTON: Thank you, your Honor.

CERTIFICATE OF REPORTER

State of South Carolina

County of York

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 13th day of July, 2016.

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

Wanda S. Nelson
Wanda Nelson, CVR-M
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: April 25, 2018

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 CHRISTOPHER DAVID TISON)
 Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

2017 644-1438
IN THE COURT OF COMMON PLEASAPPLICATION FOR
POST-CONVICTION RELIEF**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention N/A
2. Name and location of Court which imposed sentence York County Court of General Sessions
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) 2016-GS-46-00215- Contributing to the Delinquency of a Minor
 - (b) 2016-GS-46-00216- Assault and Battery 1st
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 7/13/2016- 3 ears s/o 3 years probation

Revised 3/2003

- (b) 7 years s/o 3 years probation with lifetime registry on the Sexual Offender's

Registry

- (c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Alford Plea

(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. n/a

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. n/a

ii. _____

iii. _____

(c) the date of each such result:

i. n/a

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. n/a

ii. _____

iii. _____

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

(a) Unaware and without proper legal representation for an appeal

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in

Revised 3/2003

custody unlawfully:

(a) Ineffective assistance of counsel

(b) _____

(c) _____

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

(a) was not made aware that a plea to assault and battery would result in being placed on the sex offender's registry since the plea charge was not listed as a sex crime.

(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

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

(a) the specific nature thereof:

i. n/a

ii. _____

iii. _____

iv. _____

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

i. n/a

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. n/a

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. n/a

ii. _____

iii. _____

iv. _____

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

i. n/a

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

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

(a) which grounds have been presented:

i. n/a

ii. _____

iii. _____

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

i. n/a

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) Ineffective assistance of counsel- I was not made aware that a plea to assault and battery 1st would result in having to be placed on the sexual offender's registry. This is my first

opportunity to appeal the sentence because I did not have proper representation to appeal before now.

(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? yes

(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. Harry Alfred Dest- Public Defender York County

ii. _____

iii. _____

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

i. Plea

ii. Sentencing

iii. _____

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

Set aside the Alford Plea

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

no

2017044-1438

STATE OF SOUTH CAROLINA)

VERIFICATION

County of YORK)

I, Christopher Tison, 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.

Christopher Tison

SWORN to and subscribed before me this 12
day of May, 2017.

Mark Dault (L.S.)
Notary Public

My Commission Expires: 10/9/23

FILED - RECEIVED
2017 MAY 17 AM 11:53
DAVID HAMILTON
J.C.P. & GS
YORK COUNTY, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	FOR THE SIXTEENTH JUDICIAL CIRCUIT
	)	
Christopher David Tison,	)	Case No.: 2017-CP-46-1438
	)	
Applicant,	)	
	)	RETURN AND MOTION TO DISMISS
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The State (Respondent), making its Return to the application for post-conviction relief filed by retained counsel William G. Yarborough, III, on May 17, 2017¹, would respectfully show this Court:

I. Procedural History

Christopher David Tison (Applicant) is not presently confined in the South Carolina Department of Corrections. In January 2016, the York County Grand Jury indicted Applicant for second degree criminal sexual conduct with a minor (2016-GS-46-0216) and contributing to the delinquency of a minor (2016-GS-46-0215). Sixteenth Circuit Public Defender Harry Dest represented Applicant. Assistant Solicitor Misti H. Shelton of the Sixteenth Circuit Solicitor's Office prosecuted the case.

On July 13, 2016, Applicant appeared in the York County Court of General Sessions before the Honorable John C. Hayes, III, where he pled guilty as indicted to contributing to the delinquency of a minor and waived presentment to the grand jury for first-degree assault and battery and pled guilty pursuant to Alford v. North Carolina, 400 US. 25 (1970). In exchange for his plea, the criminal sexual conduct indictment was dismissed. Pursuant to negotiations between the State and the Applicant, Judge Hayes sentenced Applicant to imprisonment for concurrent

¹ Respondent did not receive the PCR application until April 9, 2018.

terms of three years suspended upon service of three years' probation for contributing to the delinquency of a minor and seven years suspended upon service of three years' probation for first degree assault and battery. The negotiations also included mandatory sex offender registration. Applicant did not appeal his conviction or sentence.

II. Allegations Raised and Relief Requested

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

1. "Ineffective Assistance of Counsel"
 - a. "Was not made aware that a plea to assault and battery would result in being placed on the sex offender's registry since the plea charge was not listed as a sex crime"

As requested relief, Applicant has asked to "set aside the Alford Plea".

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

III. Response to Allegations of Ineffective Assistance of Counsel

Applicant's **sole** allegation is that his counsel was constitutionally ineffective for failing to advise him that he would be placed on the sex offender registry as a result of his Alford plea to first-degree assault and battery and asks the court to vacate his plea and sentence. This allegation is clearly refuted by the record, as the negotiation for Applicant to be placed on the sex offender registry was placed on the record **five** times during his guilty plea.

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

In a post-conviction relief action, an applicant bears the burden of proving the allegations

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

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

As discussed, previously, this allegation is clearly refuted by the record. When asked what the plea negotiation between Applicant and the State was, Assistant Solicitor Shelton informed the court, “Your Honor, the negotiation is for probation for seven years suspended on three years

probation with a sex offender – with a **mandatory sex offender registry**.” (Tr. p. 5, lines 20-23) (emphasis added). Immediately thereafter, Assistant Solicitor Shelton informed the court that the victims were in agreement with the plea negotiations, stating “They above all else wanted to see Mr. Tison **register as a sex offender**.” (Tr. p. 6, lines 4-7) (emphasis added). Shortly thereafter, the court advised Applicant he could be placed on the sex offender registry as a result of this plea and **Applicant responded that he understood**. (Tr. p. 6, lines 8-21). Assistant Solicitor Shelton again informed the plea court that the plea negotiations involved placement on the sex offender registry. (Tr. p. 8, lines 2-6). During mitigation, Applicant’s counsel informed the court that the plea was negotiated and asked the court to accept the plea as negotiated. (Tr. p. 12, lines 3-6). Additionally, the sentencing sheet for first-degree assault and battery clearly indicates “sex offender registry” and is signed by Applicant.

Accordingly, the record conclusively refutes Applicant’s sole allegation—that his attorney was ineffective for failing to advise him his plea would result in his placement on the sex offender registry. S.C. Code Ann. § 17-27-70(c) authorizes the court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, the State moves for summary dismissal of this application, as it fails to state a genuine issue of material fact. S.C. Code Ann. § 17-27-70; Rule 12(b)(6), SCRPC; Rule 56, SCRPC.

V. Response to Any Other Allegations

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

VI. Request for Summary Dismissal

WHEREFORE, Respondent moves to summarily dismiss the application as there is not genuine issue of material fact alleged in the application upon which relief can be granted, pursuant S.C. Code Ann. § 17-27-70.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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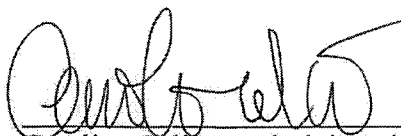
6/11, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	
	)	
	)	2017-CP-46-1438
	)	
CHRISTOPHER DAVID TISON,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

William G. Yarborough, III, Esquire
William G. Yarborough III, Attorney at Law, LLC
522 North Church Street
Greenville, South Carolina 29601

DATED this the 11th day of June, 2018.



Caroline Collins, Administrative Coordinator
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Christopher David Tison,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

Case No.: 2017-CP-46-1438

CONDITIONAL ORDER OF DISMISSAL

FILED-RECEIVED
JUN 21 PM 2:17
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

This matter comes before this Court by way of an application for post-conviction relief filed by retained counsel William G. Yarborough, III, on May 17, 2017 and received by Respondent on April 9, 2018. Respondent made its return and motion to dismiss, asking that this application be dismissed pursuant S.C. Code Ann. § 17-27-70 for failing to allege a genuine issue of material fact upon which relief could be granted.

I. PROCEDURAL HISTORY

Records before this Court establish that Christopher David Tison (Applicant) is not presently confined in the South Carolina Department of Corrections. In January 2016, the York County Grand Jury indicted Applicant for second degree criminal sexual conduct with a minor (2016-GS-46-0216) and contributing to the delinquency of a minor (2016-GS-46-0215). Sixteenth Circuit Public Defender Harry Dest represented Applicant. Assistant Solicitor Misti H. Shelton of the Sixteenth Circuit Solicitor's Office prosecuted the case.

On July 13, 2016, Applicant appeared in the York County Court of General Sessions before the Honorable John C. Hayes, III, where he pled guilty as indicted to contributing to the delinquency of a minor and waived presentment to the grand jury for first-degree assault and battery and pled guilty pursuant to Alford v. North Carolina, 400 US. 25 (1970). In exchange for his plea, the criminal sexual conduct indictment was dismissed. Pursuant to negotiations between

the State and the Applicant, Judge Hayes sentenced Applicant to imprisonment for concurrent terms of three years suspended upon service of three years' probation for contributing to the delinquency of a minor and seven years suspended upon service of three years' probation for first degree assault and battery. The negotiations also included mandatory sex offender registration. Applicant did not appeal his conviction or sentence.

II. ALLEGATIONS RAISED AND RELIEF REQUESTED

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

1. "Ineffective Assistance of Counsel"
 - a. "Was not made aware that a plea to assault and battery would result in being placed on the sex offender's registry since the plea charge was not listed as a sex crime"

As requested relief, Applicant has asked to "set aside the Alford Plea".

Before this Court are the records of the York County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, the application, and Respondent's return and motion to dismiss.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law:

This Court finds this application must be summarily dismissed pursuant to as there is no genuine issue of material fact based on its review of the application, return and motion to dismiss, and record of the general sessions proceeding. In his application for post-conviction relief, filed by retained counsel, Applicant's sole allegation is that his counsel was constitutionally ineffective for failing to advise him that he would be placed on the sex offender registry as a result of his Alford plea to first-degree assault and battery and asks the court to

vacate his plea and sentence. Respondent, in moving for summary dismissal, argues this allegation is clearly refuted by the record, as the negotiation for Applicant to be placed on the sex offender registry was placed on the record five times during his guilty plea and is indicated on the sentencing sheet that Applicant signed. This Court has reviewed the transcript from Applicant's guilty plea and the sentencing sheet and finds this allegation is conclusively refuted by the record and there is no material issue of fact that would necessitate any further proceedings on this issue. The transcript clearly reflects that Applicant was aware he would be placed on the sex offender registry as a result of his guilty plea. See Tr. p. 5, lines 20-23 (When asked what the plea negotiation between Applicant and the State was, Assistant Solicitor Shelton informed the court, "Your Honor, the negotiation is for probation for seven years suspended on three years probation with a sex offender – with a mandatory sex offender registry." (emphasis added); Tr. p. 6, lines 4-7 (Assistant Solicitor Shelton informed the court that the victims were in agreement with the plea negotiations, stating "They above all else wanted to see Mr. Tison register as a sex offender." (emphasis added); Tr. p. 6, lines 8-21 (the court advised Applicant he could be placed on the sex offender registry as a result of this plea and Applicant responded that he understood; Tr. p. 8, lines 2-6 (Assistant Solicitor Shelton again informed the plea court that the plea negotiations involved placement on the sex offender registry); Tr. p. 12, lines 3-6 (During mitigation, Applicant's counsel informed the court that the plea was negotiated and asked the court to accept the plea as negotiated. Additionally, the sentencing sheet for first-degree assault and battery clearly indicates "sex offender registry" and is signed by Applicant.

Accordingly, this Court finds the record conclusively refutes Applicant's sole allegation—that his attorney was ineffective for failing to advise him his plea would result in his placement on the sex offender registry. S.C. Code Ann. § 17-27-70(c) authorizes the court to "grant a motion by either party for summary disposition of [an] application when it appears from

the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds this application must be summarily dismissed with prejudice for failing to state a genuine issue of material fact. S.C. Code Ann. § 17-27-70; Rule 12(b)(6), SCRPC; Rule 56, SCRPC.

CONCLUSION

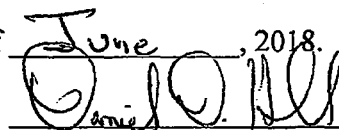
S.C. Code Ann. § 17-27-70(b) states in pertinent part:

When a court is satisfied, on the basis of the application, the answer or motion, and on the record, that the Applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and give reason for so doing. Applicant shall be given an opportunity to reply to the proposed dismissal.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant, through his counsel, provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant, through his counsel, is granted twenty days from the date of service of this order to show why this order should not become final. Applicant, through his counsel, shall file any reasons he may have with the York County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Megan Harrigan Jameson, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 14th day of June, 2018.



DANIEL D. HALL
Chief Administrative Judge
Sixteenth Judicial Circuit

York, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	2017-CP-46-1438
	)	
Christopher D. Tison,	)	
Applicant	)	
	)	RESPONSE IN OPPOSITION TO RETURN
v.	)	AND MOTION TO DISMISS
	)	
State of South Carolina,	)	
Respondent.	)	
_____	)	

NOW COMES the Applicant, Christopher D. Tison, by and through undersigned counsel, William G. Yarborough III, and hereby submits this Response in opposition to the Respondent's Return and Motion to Dismiss. As thoroughly discussed herein, the Applicant would show that the initial post-conviction relief application (APCR) and the amended grounds provided in the attached Motion to Amend both contain genuine issues of material fact unresolved by the record, and raise allegations for which relief can be granted. Therefore, the Respondent is not entitled to summary dismissal as a matter of law. Accordingly, the Applicant respectfully requests that this Honorable Court deny the Respondent's Motion to Dismiss.

INTRODUCTION

In January 2016, the York County grand jury indicted the Applicant for second degree criminal sexual conduct with a minor (2016-GS-46-0216) and contributing to the delinquency of a minor (2016-GS-46-0215). Sixteenth Circuit Public Defender, Harry Dest, represented the Applicant. Assistant Solicitor Misti H. Shelton of the Sixteenth Circuit Solicitor's Office prosecuted the case.

The charges arose following allegations from the minor C.M., that the Applicant had inappropriately touched her one evening. C.M. was a friend of Applicant's daughter, C.T. The

only statements taken in this case were taken from C.M. C.M. was not interviewed by a forensic interviewer at the Judy Valentine Center. C.M. told law enforcement that while at the Applicant and his family's home, Applicant had digitally penetrated her on the couch while his wife, Kim Tison, was sitting right next to them. C.M. also stated that she had visited the home many times prior to this night and nothing inappropriate had occurred. Despite her allegations, on the day following the alleged offense, C.M. tried to contact C.T. to hang out.

A few days following the incident, C.M. was examined at the Piedmont Medical Center. The examining physician noted that C.M.'s physical examination of her genitalia was a "normal exam" with "no evidence of trauma" noted. Moreover, it appears that no statements were taken from two other potential witnesses in the home on the night of the alleged incident, C.T. and Kim Tison. L.L., another minor, owned the cellphone that was alleged to have been used for texting between C.M. and the Applicant using C.T.'s cellphone. The text messages between L.L.'s phone and C.T.'s phone are largely unintelligible and vague, and Applicant denied using C.T.'s phone to contact C.M. and Applicant as the person sending these text messages from C.T.'s phone to L.L.'s phone was never verified. Further, L.L. was also not interviewed by law enforcement.

Underwear worn by C.T. during the alleged the incident were collected for forensic testing but may never have been tested, and if forensic testing did occur, plea counsel did not request them in discovery or communicate the results to Applicant. Pajama shorts worn by C.M. the night of the alleged offense conduct do not appear to have been collected or tested. Plea counsel did not have C.T. or Kim Tison interviewed or seek any and all results from forensic testing.

Due to the weight and reliability of the evidence, the State agreed to allow the Applicant to plead pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970). On July 13, 2016, the Applicant entered an *Alford* plea to contributing to the delinquency of a minor and first-degree assault and battery before the Honorable John C. Hayes. Pursuant recommendation by the State, Judge Hayes sentenced the Applicant to three years probation suspended over three years for contributing to the delinquency of a minor, and seven years suspended upon service of three years probation for first degree assault and battery. The assault and battery charge was to include registration as a sex offender.

The Applicant did not appeal his conviction or sentence due to the lack of sufficient advisement regarding his right to do so, and his consequent misunderstanding that appeals were only available to individuals that receive a sentence of imprisonment.

On May 17, 2017, Applicant filed an APCR raising the following ground: "Ineffective assistance of counsel. Applicant was not made aware that a plea to assault and battery 1st degree would result in having to be placed on the sexual offender registry." Respondent, represented by Assistant Attorney General Megan Jameson, made its Return and filed a Motion to Dismiss on June 14, 2018. A conditional order of dismissal was filed June 21, 2018. This Response follows.

I. THIS COURT SHOULD DENY THE RESPONDENT'S MOTION TO DISMISS BECAUSE THE INITIAL APCR RAISES AN INEFFECTIVE ASSISTANCE OF COUNSEL ALLEGATION FOR WHICH RELIEF CAN BE GRANTED AND GENUINE DISPUTES OF MATERIAL FACT UNRESOLVED BY THE RECORD EXIST.

Pursuant to the Uniform Post-Conviction Procedure Act ("PCR Act"), the dismissal of a PCR application is inappropriate if there is a genuine issue of material fact. S.C. Code Ann. § 17-27-70 (c). "When considering the State's motion for summary dismissal of an application for PCR, a judge must assume facts presented by an applicant are true and view those facts in the

light most favorable to the applicant.” *E.g., Wilson v. State*, 348 S.C. 215, 217, 559 S.E.2d 581, 582 (2002). Furthermore, summary dismissal without an evidentiary hearing is appropriate only when it is apparent on the face of the application that (1) an evidentiary hearing is unnecessary to develop any of the facts alleged and (2) the applicant is not entitled to relief. *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (citing S.C. Code Ann. § 17-27-70(b)–(c)).

The Sixth Amendment to the United States Constitution and Article I, Section 14, of the South Carolina Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; S.C. Const. art. I, §14; *Strickland v. Washington*, 466 U.S. 668 (1984). An allegation of ineffective assistance of counsel sets forth a *prima facie* violation of constitutional rights. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973). A petition that raises an ineffective assistance of counsel claim can be sufficient to entitle an applicant to a hearing. *See, e.g., Norman v. State*, 276 S.C. 278, 280, 277 S.E.2d 707, 707-08 (1981).

Here, the initial APCR and the amended application raise genuine issues of material fact and for which relief may be granted. Thus, the Applicant is entitled to an evidentiary hearing and this court should deny Respondent’s motion for summary judgment.

The record does not clearly refute the ground raised in the initial APCR. Rather, the record suggests a lack of clarity to the charges and terms of the plea for the purposes of evaluating plea counsel’s advisement to Applicant on the charges and terms of the plea, as well as evaluating Applicant’s understanding of same. In arguing for dismissal, Respondent offers examples in the record indicating the Applicant’s acknowledgment of the sex offender registry. However, the record does not reveal plea counsel’s insufficient advisement to Applicant, and the plea colloquy contains numerous confusing statements regarding the charges and terms of the plea. Due to plea counsel’s insufficient advisement to Applicant, Applicant was aware that the

CSC charge carried the sex offender registration, but understood that the CSC was to be dropped as a result of the plea, and thus misunderstood that the registration would be also be dropped. The plea colloquy between the Applicant and the court did not remedy plea counsel's advisement or Applicant's misunderstanding. For example, the court explained, "Going back to the assault and battery first degree, that charge is charged as a contributing – I'm sorry, as criminal sexual conduct with a minor second degree...This carries up to ten years in jail; it's a felony. It requires you to be registered on the registry of child abuse and neglect and could, if I so find, result in your being placed on the sex offender registry." (Plea Hr'g Tr., p. 6 lines 8-11, 15-18). The confusing, and at times conflicting, statements in the record about which charges and punishments applied to the Applicant, and how plea counsel's insufficient advice exacerbated Applicant's misunderstanding of his plea raise a genuine issue of material fact that requires an evidentiary hearing to resolve.

Moreover, although the court explained the sex offender registry, neither the court nor plea counsel informed Applicant that he would have to register as a sex offender for the rest of his life. From plea counsel's advisement, Applicant understood only that pursuant to the plea, he would be required to register as a sex offender only during the duration of his probation. Moreover, plea counsel failed to inform Applicant, and Applicant consequently did not understand the consequences and unique nature of an *Alford* plea. Applicant thus misunderstood that his *Alford* plea, which essentially preserves the Applicant's assertion of innocence, failed to affect his sentence and its collateral consequences. Had plea counsel sufficiently advised Applicant and Applicant understood the charges and plea, he would not have pled guilty and instead would have proceeded to trial. Thus, this case is distinguishable from cases like *Williams v. State*, 378 S.C. 511, 662 S.E.2d 615 (2008) because Applicant's plea was wholly affected by

plea counsel's insufficient advisement, rendering it not knowingly or voluntarily entered. *See Berry v. State*, 381 S.C. 630, 675 S.E.2d 425 (2009); *Hinson v. State*, 297 S.C. 456, 377 S.E.2d 338 (1989); *Ray v. State*, 303 S.C. 374, 401 S.E.2d 151 (1991). *See also e.g., Gustine v. State*, 325 S.C. 123, 127–28, 480 S.E.2d 444, 446 (1997) (“[W]aivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences”); *Anderson v. State*, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000) (“In the context of a guilty plea, the deficiency prong inquiry turns on whether the plea was voluntarily, knowingly, and intelligently entered”); *see also Hill v. Lockhart*, 474 U.S. 52, 56, 106 S.Ct. 366 (1985) (“To establish prejudice, the proper analysis is to determine whether there was a reasonable probability that, but for counsel's unprofessional errors, the defendant would not have pled guilty and would have insisted on going to trial.”).

II THE SUPPLEMENTARY AND AMENDED GROUNDS PRESENTED FOR THIS COURT'S CONSIDERATION WARRANT RELIEF AND RAISE GENUINE ISSUES OF MATERIAL FACT NOT RESOLVED BY THE RECORD, AND THUS THIS COURT SHOULD DENY THE RESPONDENT'S MOTION TO DISMISS.

Also in response to the Respondent's Motion to Dismiss, the Applicant submits that the allegations raised in the Applicant's Motion to Amend warrant denying the Respondent's motion. The amended and supplemental grounds raised are cognizable for relief and genuine issues of material fact not resolved by the record exist.

- A. Plea counsel failed to adequately investigate the facts of the case, seek material discovery, interview witnesses, and advise the Applicant accordingly. As a result, the Applicant lacked sufficient knowledge of the State's case against him as well as material, and potentially exculpatory evidence. Applicant was therefore deprived of an informed evaluation of his chances of proceeding to trial as opposed to entering a guilty or *Alford* plea. As a result of plea counsel's errors, Applicant's plea was not knowingly or voluntarily entered.**

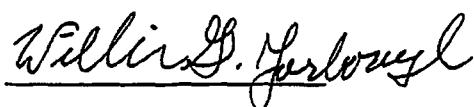
Plea counsel's error in failing to investigate and advise Applicant on the evidence accordingly impinges upon the issue that Applicant did not knowingly and voluntarily enter his *Alford* plea. "Criminal defense attorneys have a duty to conduct a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011). *See Porter v. State*, 368 S.C. 378, 629 S.E.2d 353 (2006) (finding counsel deficient for assuming that the information given to him in discovery was true despite the urging of the defendant to investigate further); *Walker v. State*, 397 S.C. 226, 723 S.E.2d 610 (Ct. App. 2012) (finding counsel deficient in failing to thoroughly and independently investigate a possible alibi witness, noting that counsel also did not provide a valid reason for failing to do at the PCR hearing), *reversed on other grounds*, *Walker v. State*, 407 S.C. 400, 756 S.E.2d 144 (2014); *Council v. State*, 380 S.C. 159, 175, 670 S.E.2d 356, 364 (2008).

In this case, plea counsel failed to investigate the facts of the case by failing to interview two key witnesses, C.T. and Mrs. Tison, both of whom did not give statements to law enforcement but were present on the night of the alleged incident. Plea counsel also failed to seek the forensic results from testing of C.M.'s underwear in discovery. Due to the lack of reliable evidence in this case, plea counsel's failure to investigate the State's case, request the testing results in discovery, and advise Applicant accordingly regarding his plea was deficient and prejudicial performance, in violation of Applicant's right to effective assistance of counsel. Consequently, Applicant's plea was not knowingly or voluntarily entered. *See Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999) ("When a defendant lacks knowledge of material evidence in the prosecution's possession, the waiver of constitutional rights cannot be deemed knowing and voluntary.")

CONCLUSION

In light of the foregoing, Applicant respectfully urges this Honorable Court to deny the Respondent's Motion to Dismiss and hold an evidentiary hearing on the APCR.

Respectfully submitted,

A handwritten signature in cursive script, reading "William G. Yarborough, III". The signature is written in dark ink and is positioned above a horizontal line.

William G. Yarborough, III
Attorney for the Applicant
522 North Church Street
Greenville, SC 29601
(864) 331-1612
SC Bar No.: 10271

Greenville, SC
June 29, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	2017-CP-46-1438
	)	
Christopher D. Tison,	)	
Applicant	)	
	)	MOTION TO AMEND APPLICATION
v.	)	FOR POST-CONVICTION RELIEF
	)	
State of South Carolina,	)	
Respondent.	)	
_____	)	

NOW COMES the Applicant, Christopher D. Tison, by and through undersigned counsel, William G. Yarborough III, and moves this Honorable Court for leave to amend the application for post-conviction relief (APCR). The Applicant respectfully requests this Honorable Court to consider both the amended and supplemental grounds for relief and while deciding Respondent's dismissal motion.

INTRODUCTION

Applicant filed his APCR *pro se* on June 30, 2017, raising the following ground:

- I. Ineffective assistance of counsel. Applicant was not made aware that a plea to assault and battery 1st degree would result in having to be placed on the sexual offender registry.

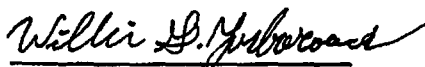
Respondent, represented by Senior Assistant Deputy Attorney General Megan Jameson, made its Return to the application and moved for summary dismissal on June 11, 2018. Respondent argues that the APCR raises no genuine issue of material fact upon which relief could be granted. The hearing on this application is scheduled for July 30, 2018.

In addition to the Applicant's response opposing the return and motion to dismiss, the applicant submits the supplemental grounds for relief :

- I. Trial counsel was ineffective for failing to adequately investigate the facts of the case and advise Applicant according in regards to entering the *Alford* plea. *See generally, Edwards v. State*, 392 S.C. 449, at 456, 710 S.E.2d 60, at 63 (2011); *Porter v. State*, 368 S.C. 378, 629 S.E.2d 353 (2006); *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999).
- a. Plea counsel failed to adequately investigate the facts of the case, such as: seek material discovery, *i.e.*, results from testing the minor's underwear; interview the other witnesses, Kim Tison and C.T., who were present for the offense conduct; and advise the Applicant accordingly. As a result, the Applicant lacked sufficient knowledge of the State's case against him. Applicant was therefore deprived of an informed evaluation of his chances of proceeding to trial as opposed to entering a guilty or *Alford* plea. As a result of plea counsel's errors, Applicant's plea was not knowingly or voluntarily entered.

WHEREFORE, Applicant respectfully requests this Honorable Court to grant Applicant leave to amend his APCR and to illicit testimony on the grounds raised herein at the upcoming evidentiary hearing.

Respectfully submitted,



William G. Yarborough, III
Attorney for the Applicant
522 North Church St., Greenville, SC 29601
(864) 331-1612
SC Bar No.: 10271

Greenville, SC
June 29, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	FOR THE SIXTEENTH JUDICIAL CIRCUIT
	)	
Christopher David Tison,	)	Case No.: 2017-CP-46-1438
	)	
Applicant,	)	
	)	AMENDED RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The State (Respondent), making its Return to the application for post-conviction relief filed by retained counsel William G. Yarborough, III, on May 17, 2017¹, and amended on June 29, 2018², would respectfully show this Court:

I. Procedural History

Christopher David Tison (Applicant) is not presently confined in the South Carolina Department of Corrections. In January 2016, the York County Grand Jury indicted Applicant for second degree criminal sexual conduct with a minor (2016-GS-46-0216) and contributing to the delinquency of a minor (2016-GS-46-0215). Sixteenth Circuit Public Defender Harry Dest represented Applicant. Assistant Solicitor Misti H. Shelton of the Sixteenth Circuit Solicitor's Office prosecuted the case.

On July 13, 2016, Applicant appeared in the York County Court of General Sessions before the Honorable John C. Hayes, III, where he pled guilty as indicted to contributing to the delinquency of a minor and waived presentment to the grand jury for first-degree assault and battery and pled guilty pursuant to Alford v. North Carolina, 400 US. 25 (1970). In exchange for

¹ Respondent did not receive the PCR application until April 9, 2018. In his amended application, counsel for Applicant states that Applicant filed his application *pro se*, which appears to be a Scrivener's error as the application was drafted and submitted by retained counsel based on the civil action coversheet and the application itself.

² Respondent received a unfiled copy of this amended application on July 9, 2018 and has not yet received a filed copy of this amended application.

his plea, the criminal sexual conduct indictment was dismissed. Pursuant to negotiations between the State and the Applicant, Judge Hayes sentenced Applicant to imprisonment for concurrent terms of three years suspended upon service of three years' probation for contributing to the delinquency of a minor and seven years suspended upon service of three years' probation for first degree assault and battery. The negotiations also included mandatory sex offender registration. Applicant did not appeal his conviction or sentence.

II. Allegations Raised and Relief Requested

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

1. "Ineffective Assistance of Counsel"
 - a. "Was not made aware that a plea to assault and battery would result in being placed on the sex offender's registry since the plea charge was not listed as a sex crime"

As requested relief, Applicant has asked to "set aside the Alford Plea".

On June 11, 2018, the State filed its Return and Motion to Dismiss, asking the Court to summarily dismiss the application for failure to raise an genuine issue of material fact alleged in the application upon which relief can be granted, pursuant S.C. Code Ann. § 17-27-70. On June 14, 2017, the Honorable Daniel D. Hall, acting in his capacity as Chief Administrative Judge for Common Pleas for the Sixteenth Judicial Circuit, signed a Conditional Order of Dismissal provisionally dismissing the application but allowing Applicant twenty days to provide specific reasons, either factual or legal, as to why the application should not be dismissed; the order was filed on June 21, 2018.

Thereafter, on June 29, 2018, Applicant, through counsel William G. Yarborough, III, filed a "Response in Opposition to Return and Motion to Dismiss" and "Motion to Amend Application

for Post-Conviction Relief.”³ In this amended application, Applicant sets forth the following additional grounds for post-conviction relief:

1. “Trial counsel was ineffective for failing to adequately investigate the facts of the case and advise Applicant according in regards to entering the *Alford* plea.”

a. “Plea counsel failed to adequately investigate the facts of the case, such as: seek material discovery, i.e., results from testing the minor’s underwear, interview other witnesses, Kim Tison and C.T., who were present for the offense conduct; and advise the Applicant accordingly. As a result, the Applicant lacked sufficient knowledge of the State’s case against him. Applicant was therefore deprived of an informed evaluation of his chances of proceeding to trial as opposed to entering a guilty or *Alford* plea. As a result of plea counsel’s errors, Applicant’s plea was not knowingly or voluntarily entered.

Applicant requests the Court “grant Applicant leave to amend his APCR and to illicit [sic] testimony on the grounds raised herein at the upcoming evidentiary hearing.”⁴

III. Response to Allegations of Ineffective Assistance of Counsel

In his amended application, Applicant alleges plea counsel was ineffective for failing to adequately investigate the facts of the case and advise Applicant according in regards to entering the *Alford* plea.”

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

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it]

³ In this motion, Applicant incorrectly states “A hearing on this application is scheduled for July 30, 2018.” As of the date of the submission of this amended return, a hearing date has not been scheduled and there is no hearing scheduled for July 30, 2018.

⁴ Again, no evidentiary hearing has been set at this time.

cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

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

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegations of ineffective assistance of counsel as set forth in his amended application probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing on the grounds set forth in his amended application to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCPP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCPP. 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), SCRCPP.

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.

V. Response to Any and All Other Allegations

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

VI. Request for an Evidentiary Hearing

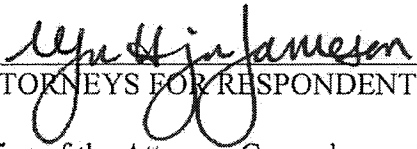
Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel on the grounds as set forth in Applicant's amended application.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: 
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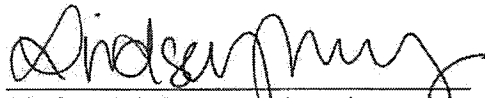
 July 10, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK.	)	
	)	
	)	2017-CP-46-1438
	)	
CHRISTOPHER DAVID TISON,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

William G. Yarborough, III, Esquire
William G. Yarborough III, Attorney at Law, LLC
522 North Church Street
Greenville, South Carolina 29601

DATED this the 10th day of July, 2018.


 Lindsey McCoy, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
CASE NO.: 2017-CP-46-1438

CHRISTOPHER DAVID TISON)
vs.) TRANSCRIPT OF RECORD
STATE OF SOUTH CAROLINA)

AUGUST 14, 2019
YORK, SOUTH CAROLINA

BEFORE THE HONORABLE WILLIAM MCKINNON

APPEARANCES:

JANELL H. GREGORY, ASSISTANT ATTORNEY GENERAL
COLUMBIA, SOUTH CAROLINA

ATTORNEY FOR THE STATE

WILLIAM G. YARBOROUGH, III, ESQUIRE
GREENVILLE, SOUTH CAROLINA

ATTORNEY FOR THE APPLICANT

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

WITNESSES:	DIRECT	CROSS	RE-DIRECT	RE-CROSS
Christopher Tison				
By Mr. Yarborough	6			
By Ms. Gregory		21		
By Mr. Yarborough			31	
Kimberly Tison				
By Mr. Yarborough	36			
By Ms. Gregory		46		
Harry Dest				
By Mr. Yarborough	47			
By Ms. Gregory		63		
By Mr. Yarborough			70	
Misti Shelton				
By Ms. Gregory	74			
By Mr. Yarborough		82		

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	EV.
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(NO EXHIBITS)

1 THE COURT - Whenever y'all are ready.

2 MS. GREGORY - Sorry about my voice. If you can't
3 hear me or understand me, let me know.

4 THE COURT - It's okay.

5 MS. GREGORY - Before is Christopher Tison. This
6 is case 2017-CP-46-1438. Applicant was indicted at the
7 January, 2016 term of York County Grand Jury for second
8 degree criminal sexual conduct with a minor, a contributing
9 to the delinquency of a minor. On July 13th, 2016, the
10 applicant appeared before Judge Hayes where he pled guilty
11 as indicted to contributing to the delinquency of a minor,
12 and after waiving presentment to the grand jury, he entered
13 a guilty plea pursuant to Alford v. North Carolina for
14 first degree assault and battery. In exchange for his
15 plea, the criminal sexual conduct indictment was dismissed.
16 Pursuant a negotiated sentence, applicant was sentenced to
17 imprisonment for concurrent terms of three years suspended
18 upon service of three years probation for first degree
19 assault and battery. The negotiation ---

20 THE COURT - Three years suspended on three?

21 MS. GREGORY - It might be a typo. Seven years
22 suspended on three years service, three years probation.
23 The negotiations also included mandatory sex offender
24 registration. Applicant did not appeal his conviction or
25 sentence. Applicant filed a Post Conviction Relief

1 application on May 17th, 2017 alleging ineffective
2 assistance of counsel, because he was not aware of the plea
3 to assault and battery first degree would have included the
4 sex offender registry. We filed a motion to dismiss for
5 failing to raise a genuine issue of material fact. On June
6 14th, 2018, Judge Hall signed a conditional order of
7 dismissal. Thereafter, through counsel, Mr. Tison's
8 application was amended on June 29th, 2018 alleging
9 ineffective assistance of counsel, because applicant was
10 not made aware that the plea to assault and battery first
11 degree would result in him having to be placed on the sex
12 offender registry, two, counsel, was ineffective for
13 failing to adequately investigate the facts of the case and
14 advise applicant in regards to entering an Alford plea, and
15 finally, counsel failed to investigate the facts, see
16 material, discovery, interview witnesses who were present
17 for the offense conducted and advise applicant accordingly.
18 Applicant lacked sufficient knowledge of the State's case
19 against him. Applicant was, therefore, deprived of an
20 informed evaluation of his chances at proceeding at trial,
21 and, therefore, deny entering knowing, voluntary guilty
22 plea. He is represented by Mr. Yarborough and is here
23 today.

24 THE COURT - All right. Yes, sir, Mr. Yarborough?

1 MR. YARBOROUGH - Court please, Your Honor, I
2 think she filled in accurately as reflected to the status
3 of the case, and we'd call Mr. Tison as a witness.

4 THE COURT - All right.

5 CHRISTOPHER TISON, AFTER BEING FIRST DULY SWORN,
6 TESTIFIES AS FOLLOWS -

7 DEPUTY CLERK - Thank you. You can have a seat.

8 DIRECT EXAMINATION

9 BY MR. YARBOROUGH -

10 Q Will you state your name for the record?

11 A Christopher David Tison.

12 Q And how are you, Mr. Tison?

13 A I am 35.

14 Q And where are you from?

15 A Originally Florida, Orlando, Florida.

16 Q And how long have you lived in the Rock Hill, York
17 County area?

18 A Since 2005.

19 Q Okay. And are you employed?

20 A Yes, sir.

21 Q Where are you employed?

22 A I'm full-time with The Army National Guard at the
23 moment and also with Insulating Services on leave for the
24 moment.

25 Q How long have you been with the guard?

1 A Six years.

2 Q And were you previously in the military or ---

3 A No, I joined right at 29, 30 years old.

4 Q Okay. And is that an important part of your life?

5 A Very important.

6 Q Okay. Can you tell the Court a little bit about that?

7 A I've always wanted to join the military. I, actually,
8 went to sign up in 2002, but we had our second daughter,
9 and I thought it was best that I stay and help raise her,
10 so I waited until she got a little older so I could go.

11 Q And do you presently live at the guard base here?

12 A Yes, I live at the armory in Rock Hill.

13 Q Are you married?

14 A Yes, sir.

15 Q And is your wife in the courtroom?

16 A Yes.

17 Q And do you have a daughter?

18 A Yes. I have two.

19 Q Two?

20 A (No response)

21 Q And the oldest girl, what is her name?

22 A K.T.

23 Q Was there a night that kind of changed your life at
24 some point several years ago?

25 A Yes.

1 Q Can you tell the Court a little bit about that?

2 A Um, well, my daughter had a friend staying the night
3 and, uh, my daughter -- both daughters were there watching
4 a -- watching a movie with me and my wife, and all was well
5 as far as I knew. We -- it was a normal night watching
6 movies, ate dinner, went to bed and, uh ---

7 Q Was your wife present the whole time?

8 A Yes.

9 Q And at some point did you learn that there had been
10 some kind of allegation that you had made some kind of
11 sexual advance towards one of the minors?

12 A Yes, three -- three days later I had the City of York
13 Police Department show up at my work and arrested me.

14 Q Okay. Did that surprise you?

15 A Very much so.

16 Q Do you know if -- do you know if your wife was
17 interviewed?

18 A No. She was not interviewed by the police.

19 Q And at some point did you -- did you get a lawyer?

20 A No, I couldn't afford one at the time, so I requested
21 a public defender.

22 Q Okay. And -- but I mean were you appointed a lawyer?

23 A Yes.

24 Q And who was that?

25 A Harry Dest.

CHRISTOPHER TISON - DIRECT BY MR. YARBOROUGH

9

1 Q Okay. And was he assigned to help you with this case?

2 A Yes.

3 Q Do you know, specifically, what you were charged with
4 at the time?

5 A I -- for a sexual assault or something like that.

6 Q Okay. Now, did you meet with Mr. Guest? (sic)

7 A Dest.

8 MR. DEST - Dest. D-e-s-t.

9 Q D-e-s-t. Okay. That's what I -- okay. Dest. Did
10 you meet with Mr. Dest?

11 A Numerous times.

12 Q Okay. And did y'all go over what's called the
13 discovery in this case?

14 A Yes.

15 Q Okay. Do you know what that is?

16 A Just went over what the charges were I believe.

17 Q Okay. And did you tell him that you -- you did not do
18 this?

19 A Yes.

20 Q Okay. Can you tell the Court a little bit about those
21 communications?

22 A So I let him know right away that, you know, I was
23 innocent, and, you know, there was no way I would do
24 something like that, and, uh, it just -- I don't understand

1 how it escalated to where I was felt -- made felt to be
2 like I -- like I did it when I know I didn't.

3 Q How long did that go on?

4 A A good year.

5 Q A year?

6 A About a year it felt like.

7 Q Did you feel pressured?

8 A Very much so.

9 Q Did he come to you with a -- did your lawyer come to
10 you with an offer?

11 A Yes.

12 Q Okay, tell -- tell the Court about that.

13 A Told me that if I took a plea, that I wouldn't have to
14 do five -- fifteen to twenty years in prison, because
15 that's most likely the outcome based off of the -- just the
16 -- the girl's word, that a jury could prosecute me for it
17 and I could spend my life in prison for something I didn't
18 do.

19 Q And how did you feel about that?

20 A Terrified.

21 Q How'd you feel about taking the deal?

22 A I didn't -- didn't want to take a deal at all.

23 Q Okay, and did you tell your lawyer that?

24 A Yeah.

1 Q Now, as time goes on, are y'all discussing back and
2 forth more about the possibility of entering a guilty plea?

3 A I don't remember a guilty plea.

4 Q Okay. How about a -- do you know what an Alford plea
5 is?

6 A No.

7 Q Okay. So you're not sure -- you're not sure what
8 North Carolina vs. Alford is?

9 A No.

10 Q Do you remember discussing that with your lawyer?

11 A All I remember is just this -- the plea.

12 Q Do you recall being in Court with -- with Judge Hayes
13 on July 13th, 2016?

14 A Yes.

15 Q Okay. And do you recall him telling you that you were
16 pleading under what's called North Carolina vs. Alford?

17 A Possibly.

18 Q Okay. But you're not sure what that is.

19 A Yeah, I'm not sure what it meant.

20 Q And so do you recall if you had talked to your lawyer
21 about that or not?

22 A No.

23 Q Okay. Did -- did you talk with your lawyer about what
24 this guilty plea would do about having to be on a register,
25 a sexual register?

1 A I was under the understanding that it was only while I
2 was on the probation.

3 Q Okay, now, you realize that's not correct at this
4 time.

5 A Yes.

6 Q Okay. So -- and where did you get the information
7 about the register and being on probation?

8 A I found that out -- I found the -- about the registry
9 when I left the courtroom to go sign up for the probation.

10 Q Okay, and so you went -- you came to the Court; you
11 pled guilty or you pled under North Carolina vs. Alford in
12 front of Judge Hayes and left the courtroom at that time
13 and went to see probation?

14 A Yes.

15 Q Okay, and -- and probation explained to you what being
16 on the register meant.

17 A Yes.

18 Q Okay. And how does -- how does that affect you at
19 this time?

20 A It affects me big time. I mean I can't live with my
21 family at the moment, because we're trying to build a home
22 and nobody can -- it's very hard to find a house that --
23 had -- does a six month lease, and I'm not allowed to be
24 near any parks or pools, and every apartment complex has
25 those.

1 Q Did you discuss that with your lawyer?

2 A Yes.

3 Q I mean you discussed that that's ---

4 A Well, ---

5 Q --- that was what was going to happen?

6 A No, I did not. No.

7 Q Okay. So you didn't discuss that ---

8 A I didn't know any of that.

9 Q Okay. And so when you found -- found out you were on
10 the register -- do you remember Judge Hayes talking to you
11 about being on the register?

12 A I remember him saying that it was a mandatory
13 registry, but I wasn't aware that it was a lifetime
14 registry.

15 Q Okay. Okay. I got you. Now, when -- after your
16 guilty plea, did your status at the guard change briefly?

17 A Very much so.

18 Q What happened?

19 A The probation officer constantly called up there.

20 Q Constantly called up where?

21 A To my chain of command at my armory constantly
22 harassing them about me still being in the military and on
23 sex offender registry and probation, and so they were
24 forced to put in a involuntary separation packet and to
25 kick me out.

1 Q Okay, and at that point were you able to go to the
2 guard and ask them to give you a status where you could
3 stay in?

4 A Yes.

5 Q Is that because of this pending PCR?

6 A Yes.

7 Q Okay, so the -- to your knowledge you took that up to
8 them and gave them the application and they put you back
9 in.

10 A Yes.

11 Q Okay. And so how long ago was that? Do you recall?

12 A Three years.

13 Q Okay. And when you were talking to your lawyer, Mr.
14 Dest, about -- about your status with your guilty plea, did
15 y'all also discuss your status with the guard?

16 A Yes.

17 Q Okay, and tell the Court what your understanding was
18 from your lawyer about your status with the guard pursuant
19 to this guilty plea.

20 A I was told that Mr. Dest was going to talk to somebody
21 that he knew at the VA and that once he did, he would let
22 me know, and then the following time we met, he told me
23 that his person at the VA said that it would not affect my
24 military career if I took the plea.

25 Q Okay, and did you rely on that information?

1 A I did.

2 Q And was that information incorrect?

3 A Yes.

4 Q Would you have ever entered any kind of deal that had
5 anything to do with the guard if you had known that that
6 was going to be the effect?

7 A No.

8 Q Okay, and ---

9 THE COURT - Mr. Yarborough, are there a law (sic)
10 -- I mean it seems to me that a conviction of assault and
11 battery first degree is going to be an automatic separation
12 from the military. Are there -- I mean -- isn't -- are
13 there laws on that? I mean I -- and the reason I ask,
14 because I -- when I was an assistant solicitor, I had a
15 young man who -- he had no -- he had -- put him in PTI and
16 they would not let him join based -- because he'd been in
17 PTI and he had an otherwise clean record. I mean it seems
18 to me assault and battery in the first degree is a fairly
19 serious charge.

20 MR. TISON - I thought it was assault and battery
21 third.

22 MR. YARBOROUGH - Well, I mean I -- Your Honor,
23 this is my understanding, okay, and I think it kind of
24 changes from where you are, but at -- as far as your
25 question about the PTI, once the PTI is completed and

1 dismissed and the record's expunged, the individual at that
2 point can join the guard.

3 THE COURT - They told me they could not. I mean
4 I ---

5 MR. YARBOROUGH - Okay. I -- yeah, I've had a guy
6 go in -- how about this -- I've had a guy go into active
7 military with that. Now, ---

8 THE COURT - But my question is this, given how
9 strict they are on that, I find it hard to believe that
10 they're going to allow someone with a assault and battery
11 first degree conviction to stay in the military.

12 MR. YARBOROUGH - I don't -- I don't disagree with
13 you, Your Honor, and -- but I think the question is what he
14 relied on and whether or not that affected his guilty plea
15 or not. Let me just ask him one more question.

16 Q Tell the Court what you'd have done if you'd have
17 known that it was -- that this deal would've ended you
18 military service?

19 A I would've taken it to trial a hundred percent.

20 Q Okay. And why is that?

21 A Because I'm innocent. I mean I ---

22 Q No, but what -- I mean let's talk about the guard.
23 We'll get to the innocence in a minute.

24 A I mean I -- I mean the military's a big part of me. I
25 mean I -- I love it and I've been denied two deployments

1 because of this, and it's all I want to do is serve my
2 country.

3 Q And did you have the expectation that you were going
4 to be able to serve your country after entering this guilty
5 plea?

6 A Yes.

7 Q And where did that expectation come from?

8 A Harry Dest.

9 MR. YARBOROUGH - Okay. I think that's the
10 allegations, Your Honor. I'm not saying it's correct or
11 incorrect. I'm just telling you that's -- that's the
12 allegation in the ---

13 Q Okay, let's -- let's get back to -- you -- you did not
14 know what North Carolina vs. Alford is. Is that correct?

15 A No.

16 Q Okay. And -- and you don't know if you pled under or
17 did not plead under it. Is that right?

18 A Right.

19 Q Okay. And you just told the Court that you were a
20 hundred -- I think you used the word a hundred percent
21 innocent in this case. Why did you enter a guilty plea?

22 A Because I was completely tired of coming up, losing
23 time at work and just frustrated and I mean it was -- I was
24 being told twenty years, I could get twenty years for

1 something I didn't do versus three years of probation for
2 something I didn't do.

3 Q Did you ask your lawyer to investigate certain allega
4 -- certain things that you knew about the case that would
5 help you?

6 A Yes.

7 Q Okay, and do you remember asking him to talk to your
8 daughter?

9 A Yes.

10 Q Do you know if he did or did not?

11 A I believe he did maybe with my wife; I know my wife
12 went in.

13 Q And she's in the courtroom. She can say that. Do you
14 know if you asked him to talk to your wife?

15 A Yes.

16 Q Okay, and both your daughter and your wife were
17 present at the time this alleged incident took place?

18 A Yes.

19 Q And did you ever provide anybody with -- or did you
20 ever have any sexual contact with this young girl?

21 A No.

22 Q Okay. And did you tell the investigators that?

23 A Yes.

24 Q Did you -- did you tell your lawyer that?

25 A Yes.

- 1 Q Did you ask your lawyer to check into DNA?
- 2 A Yes.
- 3 Q Okay, and do you know if that was done?
- 4 A I believe touch DNA was done.
- 5 Q You believe what?
- 6 A The touch DNA?
- 7 Q Okay. What is that? I'm sorry.
- 8 A From what I was told it was any kind of skin cells
- 9 were left on the victim or ---
- 10 Q Oh, you're talking about her.
- 11 A Yeah.
- 12 Q I see what you're saying. Yeah. You're -- as far as
- 13 you know, there was no sign of penetration. Is that
- 14 correct?
- 15 A Correct.
- 16 Q Okay. And that's because you didn't do it.
- 17 A Right.
- 18 Q Right? Now, what about the alcohol allegation?
- 19 A I have no idea about this girl with the alcohol. We
- 20 found out later that she had been taking and drinking and
- 21 while we were in bed and hiding them in my daughter's
- 22 bedroom in the corner which we later found.
- 23 Q And you found that out the next day or the day after
- 24 or whatever?
- 25 A I -- yeah.

1 Q Okay. And at any time were you alone with this ---

2 A Absolutely not.

3 Q Okay. And ---

4 A It was, actually, the only -- the second time I'd,
5 actually, ever met her, because I was always away with the
6 military.

7 Q Did you feel like you were represented properly?

8 A No.

9 Q Do you wish that someone would've helped you go to
10 trial? Is that what you were asking them to do?

11 A Yes.

12 Q And do you wish somebody would've explained to you the
13 sexual registry more importantly?

14 A Yes.

15 Q How about the allegations of what would've kicked --
16 gotten you kicked out of the military or not?

17 A Yes.

18 Q And you're not familiar with the term North Carolina
19 vs. Alford. Is that correct?

20 A No.

21 Q Okay. Did you go over your discovery with Mr. Dest,
22 your lawyer?

23 A We went over a few of the -- the paperwork and stuff
24 like that when -- every time I came to the office every
25 month.

1 Q All right. And would you have liked for your daughter
2 and your wife to have been called at trial?

3 A Yes.

4 Q And would you have liked to had the opportunity to
5 testify at trial?

6 A Yes.

7 Q Is there anything else you want the Court to know?

8 A You know, this has -- this has ruined my life for
9 something I didn't do and, you know, ruined the lives of my
10 kids and my wife. I just wish none of this would ever
11 happened.

12 MR. YARBOROUGH - Thank you. Answer any questions
13 the attorney general has.

14 MS. GREGORY - Thank you.

15 CROSS EXAMINATION

16 BY MS. GREGORY -

17 Q You realize that if you win this, you could still go
18 back to trial and still face 20 years. Right?

19 A Yes.

20 Q And the -- it will be CSC second degree, not assault
21 and battery first degree. Right?

22 A Yes.

23 Q Okay. And you said that you thought you were pleading
24 to assault and battery third degree?

25 A Yes.

1 Q How many times did you meet with your attorney prior
2 to your guilty plea?

3 A Every single month since the charge.

4 Q More than ten, less than ten, more than ten?

5 A More than ten.

6 Q More than ten. Okay. And you went over discovery
7 with him. Right?

8 A (Indicating yes)

9 Q And that included the videotaped statements that you
10 made?

11 A (Inaudible)

12 COURT REPORTER - He needs to answer verbally.

13 A Yes.

14 Q And text messages that were sent as well?

15 A Yes.

16 Q Okay. And you're saying that he did not adequately
17 investigate the case. What leads or witnesses should he
18 have gone to that he did not go to that you gave him?

19 A My wife, my kid.

20 Q And you're saying he did not interview your wife or
21 your child.

22 A He wasn't planning to use them from what I understood.

23 Q But did he talk to them? Did he interview them?

24 A I -- yeah.

CHRISTOPHER TISON - CROSS BY MS. GREGORY

23

1 Q He did? Okay. And weren't they sleeping during the
2 incident?

3 A No.

4 Q They were not sleeping ---

5 A No.

6 Q Okay. So those are the only two witnesses that you
7 feel like he should've looked into more was your wife and
8 your child.

9 A (Indicating yes)

10 Q Okay. And do you recall waiving your constitutional
11 rights?

12 A (No response)

13 Q Your right to a jury trial.

14 A No.

15 Q You don't recall any of that?

16 A (No response)

17 Q Okay.

18 MS. GREGORY - May I approach the witness, Your
19 Honor.

20 THE COURT - You may.

21 Q I'm going to hand you two things. I'm going to
22 reference these during my cross examination. That is the
23 waiver form and this is the transcript of your guilty plea
24 hearing, if you want to look through that, too.

25 (WHEREUPON, DOCUMENTS HANDED TO THE WITNESS)

1 Q If you'll look at page eight and nine, you'll see
2 constitutional rights that were gone over with you during
3 your plea. Do you want to look -- refresh your memory for
4 a moment?

5 A (Witness complies) Okay.

6 Q Do you recall waiving your constitutional rights?

7 A I mean it says I did.

8 Q Okay. And if you want to go to page five, do you
9 recall waiving presentment on the first degree assault and
10 battery charge? The Judge told you that you could have it
11 presented to the grand jury.

12 A Okay.

13 Q Do you recall waiving presentment on first degree
14 assault and battery charge?

15 A I mean I -- I didn't understand a lot of what a lot of
16 this meant.

17 Q Did you tell the Judge you didn't understand that?

18 A No.

19 Q Did you tell Mr. Dest that you didn't understand that?

20 A I was rushed into the courtroom after signing this
21 stuff, so I ---

22 Q Did you ---

23 A --- I mean I wasn't fully aware.

24 Q Okay. And the plea waiver form, do you want to look
25 at that? It goes over your constitutional rights as well.

1 Do you recall initialing -- are those your initials next to
2 each of those?

3 A Yes.

4 Q Okay. Do you recall telling the Judge that you are
5 pleading freely and voluntarily?

6 A Yes, with the ---

7 Q Okay, and do you recall ---

8 A --- the direction of Harry ---

9 Q --- agreeing with the facts that the State put
10 forward, and that's on page 11 of the transcripts.

11 THE COURT - Well, it's an Alford plea, though.
12 Right?

13 MS. GREGORY - It was, um, yes, sir, but it was a
14 guilty plea to the solicitation ---

15 MR. TISON - It was very rushed.

16 MS. GREGORY - --- or I'm sorry, to the
17 contribution -- contributing to the delinquency of a minor.
18 That was a straight-up guilty plea. The Alford plea
19 pertained to the assault and battery first degree. And the
20 Judge I believe said something of the effect, like when you
21 say you're pleading guilty, I understand it's under Alford,
22 so I believe his response was still guilty under Alford.

23 Q Did you -- do you recall agreeing with the facts that
24 the State presented at the guilty plea hearing? And that's
25 page 11.

1 A (Pause) I don't remember this.

2 Q You don't? Okay, is your response on the transcript
3 that you do agree with the facts?

4 A (Pause) Yeah. All it's got -- I did.

5 Q Okay. And do you recall agreeing with the Judge that
6 the State's evidence was strong enough that if you were to
7 proceed to trial, there was a strong likelihood you would
8 be found guilty? That's on page seven.

9 A With the direction of Harry Dest.

10 Q Do you recall telling the Judge no one had made you
11 any promises or threatened you in exchange for your plea?

12 A (No response)

13 Q You don't recall that? That's on page eight if you'd
14 like to look at it.

15 COURT REPORTER - He needs to answer verbally.

16 MR. TISON - Sorry.

17 A (Pause) No, I don't.

18 Q You don't recall that? Okay. Do you recall telling
19 the Judge you were satisfied with your attorney? On page
20 four if you want to refresh your memory.

21 A (Pause) It shows I did say yes.

22 Q Okay. And you've also alleged that you were unaware
23 they could (sic) plea required sex offender registration.
24 It is mentioned numerous times throughout that transcript,

1 but you're indicating your testimony was that you didn't
2 know it was lifetime?

3 A Correct.

4 Q What did Mr. Dest tell as far as the sex offender
5 registry? What was your conversation?

6 A All it was is that it would be mandatory with
7 probation.

8 Q Mandatory with probation. Did he say mandatory
9 lifetime? Did he tell you it was only during probation?
10 What did he say that made you think it was only during
11 probation?

12 A Because the statement of with the probation I'm -- it
13 -- I was led to believe that it was only while I was on
14 probation.

15 Q But Mr. Dest never told you it was only while you were
16 probation?

17 A It's just the way I was led to believe.

18 Q Okay. On the plea waiver form, you said you didn't
19 know what Alford meant, and it's like the second page -- I
20 kind of put a star to it on the back, double-sided so it'd
21 be like on the back of the plea waiver form.

22 MS. GREGORY - May I approach, Your Honor.

23 THE COURT - You may.

24 Q These two, if you would look at those.

25 A (No response)

1 Q Are those your initials next to you pleading guilty
2 under NC vs. Alford?

3 A Yes.

4 Q And the one above it says it's a negotiated plea with
5 your initials next to it with mandatory sex offender
6 registration. Is that right?

7 A Right.

8 Q And when did you realize that it was lifetime
9 registration?

10 A When I got to the probation office directly after the
11 hearing.

12 MS. GREGORY - No further questions, Your Honor.

13 THE COURT - I do have a question.

14 MS. GREGORY - Sure.

15 THE COURT - Mr. Tison, I thought you testified
16 earlier this morning -- you're saying you did not provide
17 alcohol to the victim in this case?

18 MR. TISON - No, I did not.

19 THE COURT - The transcript reflects that you pled
20 guilty to that charge, not under Alford, meaning you
21 admitted that you did that.

22 MR. TISON - I didn't -- I thought that that
23 charge was also with the assault and battery, so I ---

24 THE COURT - What did you think -- what did you
25 think you think you were pleading guilty to?

1 MR. TISON - To the assault and battery third.

2 THE COURT - Okay, but what ---

3 MR. TISON - I didn't ---

4 THE COURT - Okay, but what actions ---

5 MR. TISON - We had ---

6 THE COURT - --- did you think you were pleading
7 guilty to doing?

8 MR. TISON - I -- the way he put it is it could be
9 as I punched someone or ---

10 THE COURT - I understand, but what did you do
11 that would make you guilty? What were you pleading guilty
12 to?

13 MR. TISON - Nothing. I honestly didn't do
14 anything, so it was -- I was a little nervous to ---

15 THE COURT - So your testimony is you pled guilty,
16 but you didn't do anything at all? There's no basis for
17 the guilty plea?

18 MR. TISON - I -- I thought I was being led in the
19 right direction, because I didn't want to get -- spend 15,
20 20 years in prison for something I didn't do.

21 THE COURT - Why did you plead guilty or why'd you
22 plead under Alford to one charge and straight-up guilty on
23 the other?

24 MR. TISON - I -- we didn't even discuss the plea,
25 uh, the contributing charge at all the entire time.

1 THE COURT - Okay, but the -- from the Judge
2 asking if you were guilty of it and you said yes ---

3 MR. TISON - With the direction of Harry.

4 THE COURT - What did you -- what did you think
5 you were admitting to doing?

6 MR. TISON - Honestly, I don't know, sir.

7 MS. GREGORY - May I ask just one more question,
8 Your Honor.

9 THE COURT - Yes, ma'am.

10 Q Do you recall signing a consent order of restitu --
11 there is a burglary charge that you were also charged with
12 that was not disposed of on the day of your guilty plea
13 hearing. Do you remember that?

14 A (Indicating yes)

15 Q And it was dismissed later because of the guilty plea
16 and the Alford plea -- they dismissed that and ---

17 A And also the six thousand dollars tacked onto my
18 probation.

19 Q Right, and you -- you were on probation at the time
20 that you signed the consent order for the restitution for
21 that burglary. Correct?

22 A (Indicating yes)

23 COURT REPORTER - He needs to answer verbally.

24 A Yes.

CHRISTOPHER TISON - CROSS BY MS. GREGORY

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1 Q Okay, and part of that restitution order indicates
2 that you are also ordered to register as a sex offender.

3 Is that correct?

4 A Yes.

5 Q And you signed that in January, 2017. Is that right?

6 A Yes.

7 Q Which was well after your guilty plea hearing.

8 A Because it was redone and I was already on it.

9 Q Right, but you didn't complain at that point that you
10 were on it for lifetime. You knew at that point that you
11 were on for lifetime. Is that correct?

12 A Yes, because I was already working on trying to secure
13 a lawyer to do the Post Conviction.

14 MS. GREGORY - No further questions, Your Honor.

15 THE COURT - Yes, sir, Mr. Yarborough?

16 RE-DIRECT EXAMINATION

17 BY MR. YARBOROUGH -

18 Q You know, did they have a -- they discussed with you
19 further about the register after you entered your guilty
20 plea?

21 A The lawyer didn't, no.

22 Q Okay, what about the Judge in the trial? (sic)

23 A No.

24 Q Okay. When you took your guilty plea, did you think
25 that they -- ask you to read ---

1 Q Okay, and part of that restitution order indicates
2 that you are also ordered to register as a sex offender.
3 Is that correct?

4 A Yes.

5 Q And you signed that in January, 2017. Is that right?

6 A Yes.

7 Q Which was well after your guilty plea hearing.

8 A Because it was redone and I was already on it.

9 Q Right, but you didn't complain at that point that you
10 were on it for lifetime. You knew at that point that you
11 were on for lifetime. Is that correct?

12 A Yes, because I was already working on trying to secure
13 a lawyer to do the Post Conviction.

14 MS. GREGORY - No further questions, Your Honor.

15 THE COURT - Yes, sir, Mr. Yarborough?

16 RE-DIRECT EXAMINATION

17 BY MR. YARBOROUGH -

18 Q You know, did they have a -- they discussed with you
19 further about the register after you entered your guilty
20 plea?

21 A The lawyer didn't, no.

22 Q Okay, what about the Judge in the trial? (sic)

23 A No.

24 Q Okay. When you took your guilty plea, did you think
25 that they -- ask you to read ---

1 MR. YARBOROUGH - I'm referring to page six, Your
2 Honor, down about three-quarters of the way down where it
3 say's ---

4 A It carries up to ten years in jail; it is a felony; it
5 requires you to be registered on the registry of child
6 abuse ---

7 Q And neglect.

8 A --- and neglect and could, if I so find, result in
9 your being placed on the sex offender registry.

10 Q All right, did you ever have a discussion with anybody
11 after that about ---

12 A No.

13 Q All right. And did your lawyer talk to you about it?

14 A No.

15 Q And did -- she asked you about -- I guess Your Honor --
16 -- he asked about the contributing to the delinquency of a
17 minor. Did you understand what that charge was about?

18 A No.

19 Q Do you understand now?

20 A Yes.

21 Q Okay. And if you would've understood it, would you
22 have asked for a jury trial?

23 A Yes.

24 Q Okay, and with the assault and battery, as well?

25 A Yes.

1 Q Okay. And you keep referring to a third. Where did
2 you get that number, assault and battery third?

3 A That's -- not exactly sure, but I'm -- I'm -- I
4 believe it's from when we were pulling it all -- all the --
5 we were going over all the paperwork at that -- he was
6 going to try for the third.

7 Q Okay. And she asked you about the probation and
8 register. Have they ever -- if you didn't sign that
9 probation document, would they have -- would they have put
10 you in jail?

11 A I believe so.

12 Q Okay. Do you recall any of that?

13 A No.

14 Q Do you remember meeting with your probation officer at
15 some --

16 MR. YARBOROUGH - Was that 2017? Was that the
17 document

18 MS. GREGORY - Yes, 2017.

19 Q Yeah, a year later about the register?

20 A Yes, because I had to sign the new rules.

21 Q And have you had to do it since then?

22 A No.

23 Q Okay. And did you complain about it at that time?

24 A I did.

1 Q And did you understand at the time of your plea that
2 this was a lifetime registry?

3 A At the time of the plea, no, I didn't.

4 Q Okay, now you do.

5 A Yes.

6 Q Okay, and there again, just going back to she asked
7 you about it, but would you have pled if you had know it
8 was a lifetime ---

9 A No.

10 Q Okay. And throughout this process, were you relying
11 not only on your lawyer but your wife trying to help you
12 through this, too?

13 A Yes.

14 MR. YARBOROUGH - Okay. Thank you, Your Honor. I
15 don't have any further questions.

16 THE COURT - State have any further questions?

17 MS. GREGORY - No, sir.

18 MR. YARBOROUGH - Call Mrs. Tison.

19 DEPUTY - You can step down.

20 THE COURT - I may have a couple more questions.
21 Give me just a second.

22 MR. YARBOROUGH - Oh, okay, I'm sorry, Your Honor.

23 THE COURT - No, there's no worries, Mr.

24 Yarborough.

1 MR. Tison, so your testimony -- and I'm looking
2 at the plea waiver form, it very clearly says assault and
3 battery in the first degree, and the Judge says -- and you
4 signed and initialed right next to that, and the Judge in
5 the transcript said assault and battery in the first
6 degree, and your testimony today is you thought you
7 pleading to assault and battery in the third degree?

8 MR. TISON - I did.

9 THE COURT - Why did you initial next to assault
10 and battery in the first degree?

11 MR. TISON - When I initialed that paperwork, five
12 minutes later we were in the courtroom and everything was
13 being told to me and honestly really fast.

14 THE COURT - Okay, but I mean you -- your
15 initials, it says what you are pleading to, assault and
16 battery first degree, and your initials are next to it. I
17 mean did you ---

18 MR. TISON - I didn't read it, honestly, sir.

19 COURT REPORTER - He needs to speak up. I'm
20 having trouble hearing him.

21 MR. TISON - I didn't read it completely and fully
22 understand it, sir.

23 THE COURT - Did you ask your lawyer about the
24 part you didn't understand?

KIMBERLY TISON - DIRECT BY MR. YARBOROUGH

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1 MR. TISON - We -- he said we would go over it
2 after, which we didn't.

3 THE COURT - All right, thank you, sir.

4 Unless any -- counsel wants to follow-up on it?

5 MS. GREGORY - No, sir.

6 KIMBERLY TISON, AFTER BEING FIRST DULY SWORN,
7 TESTIFIES AS FOLLOWS -

8 DEPUTY CLERK - Thanks. You can have a seat.

9 DIRECT EXAMINATION

10 BY MR. YARBOROUGH -

11 Q Will you state your name for the record?

12 A Kimberly Tison.

13 Q And where are you from?

14 A Florida.

15 Q And how long have you been in South Carolina?

16 A Since 2005.

17 Q And are you employed?

18 A Yes, I am.

19 Q Where do you work?

20 A American Trusler. (phonetic)

21 COURT REPORTER - She needs to speak up.

22 Q Excuse me?

23 A American Trusler.

24 Q Yeah, I'm having trouble hearing -- I think the voice
25 doesn't -- try to speak in ---

1 A American Trusler. Can you hear that?

2 Q Okay. And are you married to Chris Tison?

3 A Yes, I am.

4 Q And how long have y'all been married?

5 A Eighteen years.

6 Q And you have how many children?

7 A Two.

8 Q Do you recall -- going back to 2014, 2015 this
9 incident allegedly happening?

10 A Oh, I sure do.

11 Q Yeah. Could you tell the Court a little bit about it?

12 A Well, ---

13 Q How -- what -- what you heard, what -- when you were -
14 --

15 A You want that whole night?

16 Q Well, let's -- let's don't start there. Let's go to
17 when you first knew there was some kind of allegation
18 against your husband.

19 A Well I had gotten a call from him from the jail that
20 he'd already been arrested.

21 Q He'd been arrested.

22 A Yeah.

23 Q And that was about a month after, uh ---

24 A It was a few days after the incident.

1 Q Okay. And did he -- I think he just testified it was
2 33 days. It that not correct?

3 MR. DEST - Two to three.

4 A No, he said two to three.

5 Q Oh, two to three.

6 A Yeah.

7 Q Okay. I'm sorry. I'm not ---

8 A Sorry.

9 Q I'm sorry, my hearing ---

10 A It's okay.

11 Q So it was two to three days afterwards and you had --
12 you were called from the jail.

13 A (No response)

14 Q And is that the first time you had heard any
15 allegations about this?

16 A The first time.

17 Q Okay, were you ever interviewed at that point by the
18 police?

19 A No, I was not.

20 Q Okay. And were you present at the home that entire
21 night?

22 A The entire night.

23 Q Okay, and just tell the Court a little bit about what
24 happened that night, what you saw. What was the normal
25 family dynamics, you know, just lay it out.

1 A It was just our normal family movie night, and we only
2 had one couch and a dining table, and so we were all -- it
3 was me, my husband and our two daughters and the girl, and,
4 um ---

5 Q And who was the girl? She was a friend of your
6 daughter's?

7 A C.M. . Her name's C.M. .

8 Q And she was a friend of your daughter's?

9 A Yes. They were ---

10 Q At the time.

11 A --- just recent friends. It wasn't like a long-time
12 friend. We'd only met her maybe a few times before that
13 and ---

14 Q Okay, and did you know her family?

15 A No. I know her mom when she had brought over
16 previous, she walked her to the door to make sure there was
17 an adult there, because she's had an incident where she's
18 dropped her off before to a party and wasn't aware, but,
19 um, so we were all having our family movie night, sitting
20 there watching movies, and there was nothing out of the
21 norm. We -- nobody moved -- I mean the movie was over, we
22 all went to bed.

23 Q Okay. And did -- when you went to bed, did Chris go
24 to bed at the same time you did?

25 A Yes, he did.

1 Q And any -- anything odd happen?

2 A I had told my daughter that I thought that when we
3 were all going to bed that C.M. seemed a little off, and
4 she said she's just that way, a buff (sic), but come to
5 find out the next morning after she had abruptly left, I
6 guess she ---

7 Q Okay, well, let's go to the morning. Just tell that -
8 --

9 A She called her father to come get her and, um, so he
10 showed up, got her, and my daughter was cleaning and
11 picking up her -- the bedding and everything and found a
12 few cans of my rasbaritas (sic) from my refrigerator.

13 Q Your what?

14 A Rasbaritas, the little ---

15 Q Little drinks.

16 A --- drinks, yeah, alcohol drinks.

17 Q Had you provided those to the girls?

18 A No, sir.

19 Q Had your husband?

20 A No.

21 Q Okay. And what did -- at that point did you realize
22 the girls had gotten in to the alcohol?

23 A The girl, yes.

24 Q The girl?

25 A Just the girl.

1 Q Okay. Your investigation at your house led you to
2 believe it was ---

3 A Yes, ---

4 Q Okay.

5 A --- because that's not a norm for my daughters.

6 Q Okay, and how old was your daughter at that point?

7 A She's fourteen? Fourteen, maybe 15, because she's, I
8 think, two years old than her.

9 Q Okay, and how hold was the visitor?

10 A Thirteen.

11 Q Thirteen?

12 A (Indicating yes)

13 Q Okay. And did your daughter go to bed at the same
14 time that ---

15 A She did.

16 Q --- she did, as well?

17 A (Indicating yes)

18 Q And you're positive at that point that -- that you and
19 Chris had been together the whole time?

20 A Yeah, and we went to bed and I -- we closed our door.

21 Q And did -- did he ever get up during the night or
22 anything?

23 A No, and if he did, there's a bathroom in our room, so.

24 Q Okay. Was there a point in time that you talked to
25 the police about this?

1 A Not at all.

2 Q They never tried to interview you?

3 A Me nor my daughters, nope.

4 Q And would you have told them what you just told the
5 Court?

6 A Sure would have.

7 Q Okay, now, did you -- were you aware that -- well, you
8 were, obviously, aware that Chris had been charged -- and
9 did you help him get a public defender or ---

10 A I -- I met Harry, and I was pretty confident in Harry.
11 I had confidence that he would see him through to the end.

12 Q Okay, and did you -- did you meet with Har -- um --
13 with Mr. -- about this case?

14 A There was only one time that I got -- twice that I got
15 to go. It was when me and daughter gave him a brief
16 statement, I mean, and that was about it, and then the one
17 time I went with Chris.

18 Q And gave him a statement about what?

19 A The incident.

20 Q About the incident?

21 A (No response)

22 Q And so you told him that you were there?

23 A Yep.

24 Q And you were present when ---

25 A Same thing I told you today.

1 Q --- your daughter did the same.

2 A Yep.

3 Q At that point did -- were y'all preparing for trial?

4 A We were prepared for whatever steps needed to be taken
5 to make it go away.

6 Q Okay. I guess -- that would mean going to ---

7 A Whatever means necessary.

8 Q Okay, but you were prepare to testify.

9 A (Indicating yes)

10 COURT REPORTER - She needs to answer verbally.

11 A Yes.

12 Q And did you -- did you help your husband prepare for
13 trial?

14 A The best I could. I wish I could've been with him
15 every time he went and met Harry, but I had to work.

16 Q Okay, and so, but he did -- he went down there and met
17 with him and, eventually, did you learn that your husband
18 had entered this guilty plea?

19 A Only after he called me after it had been already said
20 and done.

21 Q Okay. At that point did you learn that he had agreed
22 -- or was on the register or did you learn that later?

23 A No, uh, he had told me about everything that he was
24 gonna have to do.

25 Q Okay, and was that ---

1 A Part of the registry and everything else.

2 Q But he told you that after he had ---

3 A After all this was said and done.

4 Q Okay. And at that point were you concerned about the
5 guard or ---

6 A Oh, yes, definitely. I was concerned about that the
7 whole time.

8 Q Yeah, but -- okay, well, you concerned about the whole
9 thing, but one of those things that you were concerned
10 about was the guard?

11 A He had worked very hard to get there.

12 Q And do you know if anybody had done any -- how about
13 this -- based on your understanding, what was your
14 husband's impression of what was going to happen with the
15 guard after he entered a guilty plea?

16 A That they were going to discharge him.

17 Q Okay, so at that point you learned that he was going
18 to be discharged. Is that right?

19 A Right.

20 Q How old was your daughter at the time?

21 A The oldest?

22 Q The girl that was present throughout this.

23 A Okay, well, they were both present, but K.T. , which
24 is our oldest, was 15.

1 Q Okay. And was she pretty -- was she around with you
2 that night?

3 A Yes.

4 Q So she was present?

5 A Yes.

6 Q And was she ever interviewed by the police?

7 A Nope.

8 Q To your knowledge was there -- they ever come to the
9 house?

10 A Nope.

11 Q Did -- was there any investigation done other than the
12 -- to your knowledge the arrest of your husband?

13 A No, sir.

14 Q Have you ever had any conversations with the girl's
15 family or anything along those lines?

16 A Nope.

17 Q But your -- do you feel like your husband understood
18 what was going on when all this happened?

19 A Not at all, not at all. And he's too stubborn to
20 admit that he's just not the brightest.

21 Q And do wish you could've helped him more?

22 A I do.

23 (WHEREUPON, WITNESS CRYING)

24 MR. YARBOROUGH - I don't have any further
25 questions.

KIMBERLY TISON - CROSS BY MS. GREGORY

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1 MS. GREGORY - You need a minute?

2 MRS. TISON - No, I'm good.

3 MS. GREGORY - Mrs. Tison, there's tissues right
4 there. You want some water?

5 MRS. TISON - I'm okay.

6 CROSS EXAMINATION

7 BY MS. GREGORY -

8 Q How many conversations did you have with Mr. Dest?

9 A One.

10 Q You only met with him one time?

11 A No, I only had one conversation. The next time I met
12 with him was with my husband, and that was just to go over
13 what he had laid out.

14 Q Okay. Did you see the evidence against your husband?

15 A Saw the claim -- the so-called evidence, yes.

16 Q Did you see his statements?

17 A His statements?

18 Q Yes.

19 A Yes.

20 Q Okay, did you see the text messages?

21 A I did.

22 Q Okay. And what's his current status with the
23 military?

24 A He is a specialist.

25 Q No, his current status. Is he discharged?

KIMBERLY TISON - CROSS/GREGORY; DEST - DIRECT/YARBOROUGH 47

1 A No, he is in.

2 Q And your one conversation with Mr. Dest, you said you
3 had confidence in him that he would see it through. What
4 did you mean by that?

5 A That he would get him off of this.

6 Q What in your conversation led you to believe that?

7 A That he -- there was nothing against him to go any
8 other way to even be guilty at all.

9 Q Even despite the statements he made and despite the
10 text messages?

11 A Because those text messages were from my daughter, not
12 from him, and that was told.

13 MS. GREGORY - No further questions, Your Honor.

14 MRS. TISON - Thank you.

15 THE COURT - Mr. Yarborough?

16 (WHEREUPON, NO RESPONSE)

17 THE COURT - Thank you, ma'am.

18 MR. YARBOROUGH - Mr. Dest.

19 HARRY DEST, AFTER BEING FIRST DULY SWORN,

20 TESTIFIES AS FOLLOWS -

21 DEPUTY CLERK - Thank you. Have a seat.

22 DIRECT EXAMINATION

23 BY MR. YARBOROUGH -

24 Q Good morning.

25 A Good morning.

HARRY DEST - DIRECT BY MR. YARBOROUGH

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1 Q State your name for the record.

2 A My name is Harry Alford Dest.

3 Q And were you Mr. Tison's lawyer?

4 A Yes, sir, I was.

5 Q And how long have you been practicing law?

6 A I've been with the public defender's office since
7 1990. In 1994 I was made the deputy public defender and in
8 1996 I became chief public defender, and then in 2008 I
9 became the Sixteenth Circuit Public Defender for both York
10 and Union counties.

11 Q And so you've been doing it for ---

12 A Close to 30 years, close to, yes, sir.

13 Q And, um, did -- you represented Mr. Tison? You did
14 rep ---

15 A Yes, I did.

16 Q And you want to tell the Court about that
17 representation?

18 A Yes. Obviously, Mr. Tison was charged with criminal
19 sexual conduct second degree. He was also charged with
20 contributing to the delinquency of a minor. From the
21 outset of this case, certainly it was one of those
22 situations where it was he said/she said, in other words,
23 she was claiming that she was the victim of digital
24 penetration that occurred that night, that Saturday night,
25 and the other allegation with respect to the contributing

1 to the delinquency of a minor was because Mr. Tison was
2 alleged to have served alcohol to a 13 year old girl who
3 was in his custody in terms of being taken care of because
4 she was spending the night. My understanding that K.T. ,
5 his daughter, was in middle school with C.M.
6 , and that's the reason for her being at the
7 house that night. In looking at the case, I think it's
8 important to kind of take a step back and really talk about
9 the evidence, because the evidence, basically, would've
10 been the testimony of C.M. and -- versus the
11 testimony of Mr. Tison. And, initially, as part of the
12 discovery process, we received videotaped statements that
13 Mr. Tison made to the police shortly after being arrested.
14 What concerned me most about those statements were that
15 there were some omissions that he left out during the
16 initial interrogation. What I mean by that is that when
17 the officer asked him about did he ever do anything
18 improper, he adamantly denied it from the very beginning.
19 He said I never touched that girl; I didn't do anything to
20 that girl; I didn't do anything improper. Upon further
21 questioning, the officer asked, well, what about kissing
22 her, and he acknowledged kissing her on the forehead when
23 she went to bed. On further interrogation on the
24 videotape, the testimony then changed to, well, didn't you
25 kiss her on the lips and she -- he had to admit that, yes,

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1 he did kiss her on the lips. Now, this is a 13 year old
2 girl, and he kissed a 13 year old girl who he had never
3 kissed before on the lips, and that occurred, based upon
4 the discovery, the Friday that she went to the house. She
5 was there from Friday, Saturday and Sunday. So Friday she
6 -- he kisses her on the lips, which he then admits to on
7 the tape saying, yes, that was a mistake, and then also
8 admits, I did serve her alcohol, as well, on the following
9 Saturday. So you had two facts that were omitted,
10 initially, by him, there's omissions, and upon further
11 interrogation did he reveal, yes, I did, in fact, kiss her
12 on the lips the Friday; I served her alcohol on Saturday
13 night while we were watching a movie in the room where his
14 wife and his daughter, K.T. , they were sitting on the
15 couch. At some point in time on the videotape he tells the
16 police that K.T. went to bed, and that the wife fell
17 asleep. And, of course, he denies having touched her.

18 Q Right.

19 A Now, it's important to note that Ms. Montgomery,
20 obviously, gave the very same statement that K.T. did go
21 to bed and that the wife was on the couch and fell asleep,
22 and that at that point in time came over and touched her,
23 was digital penetration.

24 Q Wasn't the -- but the evidence was there was not ---

1 A Right, and let me talk about that a minute. There's
2 medical evidence, as you know, counselor, when you're
3 talking about digital penetration, it can sometimes be
4 present and sometimes it's not present, ---

5 Q Right.

6 A --- and in this case, the young lady did go to the
7 hospital on the 31st of March of 2015 and was examined by a
8 nurse, a SANE nurse believe, and she complained of some
9 type of pain in the perineum area, which is below the anus
10 and between the vagina and the anus, however, there were no
11 -- there was no indication of trauma from that particular
12 medical diagnosis, so ---

13 Q No -- the report said no -- no markings or anything
14 like that.

15 A Right, there's no stretching, no tearing, no trauma
16 based upon it. Now, in cases that I have tried over the
17 years, when you have digital penetration, sometimes it's
18 present and sometimes it's not. Obviously, as a defense
19 lawyer we would harp on that point to the jury by claiming
20 that there's no physical or medical evidence that the
21 person was assaulted, but as you know, the testimony of a
22 victim or alleged victim can be enough to convict somebody.

23 Q And -- but you also -- did you interview his wife?

24 A I did interview his wife, and his wife, basically,
25 told me that -- first of all, they did serve them alcohol,

1 and I told her that she was lucky she wasn't charged,
2 because she also could've been charged but wasn't, and she
3 also said that she fell asleep, which is consistent with
4 what the victim said, which is consistent with what Mr.
5 Tison said, and she also told me that the daughter went to
6 bed, so at some point in time, obviously, we're negotiating
7 this case or trying to go to trial, so I would've used her
8 potentially as a witness ---

9 Q Right.

10 A --- to tell the jury that she didn't see anything or
11 hear anything that night, although she did fall asleep, so
12 she was a potential witness. The daughter also would've
13 been a potential witness, because the young lady never told
14 her about the alleged sexual assault.

15 Q Did you go to the house?

16 A I did not go to the house, no.

17 Q I mean it's a small place. Right?

18 A It's a small place. Right. And all of those things
19 would've been pointed out to a jury at trial in addition to
20 the fact there was no medical evidence. So those were
21 things that we discussed, and so for a year we were in a
22 trial posture, a potential ---

23 Q Okay, and you say you were in a trial posture. Y'all
24 were getting ready to go to trial.

1 A We -- we put -- yes, if -- if -- if we could not work
2 out a deal.

3 Q Right.

4 A All right, so -- but it's also important to note that
5 on that Monday, which would've been the Monday after the
6 incident, there were text messages sent not to C.M. but to
7 her friend, L.K. .

8 Q Okay, that -- that's where I get confused.

9 A Okay, L.K. is the friend that she was a friend to
10 both K.T. and a friend of C.M. . So what
11 I understand in looking at the discovery in the case is
12 that -- and, first of all, L.K. did speak to the police,
13 because it's her phone that they got the text messages
14 from. They ripped -- they ripped her phone, and the text
15 messages on that Monday, which was the following Monday ---

16 THE COURT - Mr. Dest, how do you spell that
17 witnesses' name? Ka --

18 MR. DEST - Ka -- I believe it's C-a- -- K-a-l-e.

19 THE COURT - Thank you, sir.

20 Q Just to get them straight. K.T. is who?

21 A K.T. is Chris's daughter. L.K. is the friend of --
22 of C.M. and K.T. .

23 Q Okay, and how did L.K. -- how did that ---

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1 A Because C.M. told the police in her
2 videotaped statement that on the Monday they were trying --
3 L.K. and C.M. were trying to get K.T. to come visit her.

4 Q Okay. That's the Monday after ---

5 A Yes. And then Monday after their text messages on
6 L.K. 's phone -- and I'll read those to you, because the
7 number is then traced back to Christopher Tison's phone ---

8 Q That would've been his daughter's phone.

9 A No, that was his phone. It was the phone that he
10 listed on the bond paper and it's the number that we had
11 him -- or it's his phone, and the text messages on that
12 following Monday, this is Chris, um, who is this? -- you
13 can't be around L.K. to know, I'm not -- I'm not -- she's
14 washing mud off, I will delete it if you tell me who this
15 is, bye for now, call me, did I freak you out, yeah, why
16 can't I -- why can't L.K. know, because I don't know what
17 she would do if she knew I was talking to you like, like
18 any, like telling anyone, well, she's my best friend and
19 she already knows, she? -- really? -- yes, well okay, then,
20 what does she think about it? -- she's not mad, but she
21 thinks it's not okay, not a good idea, why do -- what do
22 you think? -- I want to stop, because it's not right, I
23 want -- I wasn't -- I wasn't thinking, okay, that's fine,
24 let's just act like it didn't happen. Now, you take the
25 combination his videotaped statement to the police where he

1 admits to giving a 13 year old girl -- admits to giving a
2 13 year old girl alcohol, where he admits to giving a 13
3 year old girl a kiss on the lips, followed by these text
4 messages, those -- that piece of evidence is something that
5 I was very concerned about, because when you get in front
6 of a jury, and even if you don't have medical evidence to
7 substantiate a claim, that type of testimony would be
8 devastating.

9 Q He still told you he didn't do it.

10 A They still told me he didn't do it, and that's why we
11 pled under Alford, because ---

12 Q Okay, did you explain to him what Alford was?

13 A I did. I explained to him that an Alford plea was a
14 plea where you could still maintain your innocence, but you
15 could waive your right to a jury trial, and that even
16 though you're maintaining your innocence and not admitting
17 to the facts, you agree that there's a substantial
18 likelihood that a jury would find you guilty of the charge.
19 Based on these facts, that's why he would plead under
20 Alford, even though he still maintained his innocence.
21 That seemed to really resonate with him, because he would
22 not have to admit guilt, and my experience has been over
23 almost 30 years of practicing law, it is very difficult for
24 people to admit to sexual assault, regardless of the
25 circumstances, and most of the times in my experience has

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1 been that Alford plea is used a great deal when it comes to
2 sexual assault cases, so I used that as a potential way out
3 of this where he didn't have to admit in negotiating with
4 the prosecution. Now, I will tell you, in the very
5 beginning of this case that Ms. Shelton, the prosecutor,
6 was adamant about that he had to be on the sex offender
7 registry. She was adamant, initially, that he'd be exposed
8 to time but leave it up to the Judge. On the other side of
9 the ledger, our client was not willing to admit it. My
10 client -- my client did not -- wanted to go to trial but
11 also was concerned about, obviously, the potential of going
12 to prison for 20 years. Now, he admitted to the
13 contributing, because he admitted to the police that he did
14 it, so there was no question that that wasn't a part of the
15 Alford plea, but when you get down to the basic facts of
16 the case, what I had to be concerned about in advising him
17 was whether or not the jury would convict him, either of
18 the sexual assault or some type of assault case, based upon
19 the evidence that I just outlined for you. As his lawyer,
20 I told him, look, you can never -- no lawyer -- no lawyer
21 should ever guarantee the result of a jury trial, and I
22 said I cannot do that, but I can tell you this, if you're
23 found guilty, the Judge, in my opinion, will not give you
24 probation, ---

25 Q Right.

1 A --- so then the conversation changed, well, Mr. Dest,
2 can -- can I get probation? I said I -- I can go back and
3 talk to the prosecutor in terms of negotiating a plea where
4 possibly we can put that on the table. I knew that the
5 guard was important to him, and I never advised him that he
6 would not -- that his status would not change; I didn't
7 know.

8 Q Did you talk to somebody at the guard for him?

9 A I -- I did talk to a friend of mine who was with the
10 guard, and his opinion was he couldn't tell me; he didn't
11 know. My understanding was that he went back to his
12 supervisor at the guard -- talking about Mr. Tison -- and
13 said that even though we had a conviction for a felony,
14 they would not discharge him. I did not get into that. I
15 did not get into specifics of whether or not he would be
16 discharged, because I could not advise him of that. I
17 didn't know. Even after talking with people who I knew at
18 the VA, they weren't clear as to whether or not he would be
19 dismissed, so, essentially, that was not part of the advice
20 that I gave him, but I did advise him that if we go trial
21 and if we lose, that he was facing significant time. I did
22 advise him that we could possibly get out of this with
23 probation, so I went back to Ms. Shelton. Ms. Shelton then
24 renegotiated and said we'll do a negotiated plea where he
25 pleads to the contribution, because he's guilty of that by

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1 his own admission, but pleads under Alford to A&B first
2 which is a felony. Based upon that, I went back to him and
3 explained to Christopher, that look, if we go to trial, all
4 deals are off about probation, I can't guarantee what a
5 jury's going to do, no good lawyer can, but what I can
6 guarantee is that if you take this plea, you will not go to
7 jail today, that you'll be placed on probation, because
8 it's a negotiated plea, if the Judge accepts it. And so
9 the second time that I met his wife, you know, she was
10 concerned about the plea, and I did show her those text
11 messages, and had also have shown her the videotape of his
12 testimony, so again, with his permission, that's where we
13 were, and I left it totally up to him, but I -- it was my
14 advice that based upon my experience, this was a reasonable
15 resolution, very reasonable resolution to a very serious
16 case.

17 Q Did y'all discuss the -- the register with the Judge?
18 It appears that the Judge ---

19 A I don't -- you talking about during the colloquy or
20 prior to the colloquy?

21 Q Prior to.

22 A I don't recall talking to the Judge, specifically,
23 about the registry, but I did, obviously, have it as part
24 of the negotiated plea, which is in the Plea Affidavit that

1 I signed, that my client signed, so the Judge was aware
2 that that was part of the negotiated plea.

3 Q Okay, so that's what -- you think that's what the
4 Judge is talking about when he says, if I so find resulting
5 in you being placed on the registry?

6 A I don't -- I don't know what was going through the
7 Judge's mind, because -- let me go back to Ms. Shelton --
8 Ms. Shelton was adamant from my recollection that that
9 would not be left up to the Judge. In fact, she
10 conditioned the plea offer of probation based upon the fact
11 that he would be placed on the registry.

12 Q Okay, but it -- well, the Judge does tell him that if
13 he finds, he'll place him on it. Right?

14 A And I don't -- I don't know why the Judge said that.
15 I can't answer that question, because that was never a
16 question, because the plea was a negotiated plea with the
17 sex offender registry as part of -- of it.

18 Q Okay, but you -- and the registry -- I mean you -- you
19 probably do a lot of those. I mean are you aware of any
20 that gets off after he's on probation?

21 A No.

22 Q And did you lead him to believe that?

23 A No.

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1 Q You think the Court could've -- could've led him to
2 believe that with the way the colloquy's termed by the
3 Court?

4 A I can't speak to his statement on the -- I can tell
5 you that that was not part of my advice to him. I never
6 suggested that the Judge would have the opportunity to not
7 put him on registry.

8 Q Did you feel like Mr. Tison wanted to go to trial?

9 A Certainly during the course of my representation we
10 talked about going to trial, yes.

11 Q But did you think he wanted to go to trial?

12 A I think, initially, he did; of course, he did, because
13 he was -- he was always saying he didn't do it, but,
14 however, he had to acknowledge the evidence against him
15 once he understood it and he viewed all of it, the
16 videotapes -- and I explained to him what my strategy would
17 be if we went to trial, what I would attack, how would I
18 attack it, how I'd try to raise reasonable doubt, but in
19 the end we know he would've been found guilty of
20 contributing, and if he would've been found guilty of the
21 CSC, he would've been in jail for a long time, ---

22 Q Right.

23 A --- and that's what I told him.

1 Q And there -- I mean there -- there certainly were ways
2 to challenge the case. I mean you could argue that those
3 text messages dealt with the alcohol. Right?

4 A Sure. I mean you -- but I mean there's different ways
5 to interpret it, but ---

6 Q Interpret, sure.

7 A --- I certainly ---

8 Q And you could've called both the witnesses to trial, -
9 --

10 A Sure, absolutely.

11 Q --- his wife and ---

12 A And ---

13 Q And there was no medical evidence.

14 A Right, and that was all explained to him when talking
15 about what we would try to do at a trial, and then he did
16 not want to go to jail. Obviously, he was concerned about
17 that. He was concerned about leaving his family, and he
18 asked me what I thought, and I told him, again, like I tell
19 all my clients, I can tell you what we're going to do, but
20 I can't guarantee what a jury's going to do, and risking --
21 -

22 Q Did you think his daughter would make a pretty good
23 witness?

24 A She really didn't say -- I mean ---

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1 Q Do you think his wife would make a pretty good
2 witness?

3 A Not her, no, I didn't.

4 Q Did you think he -- he would be a good witness?

5 A No.

6 Q Now, you ran it up ---

7 A The reason why is because of his statements and the
8 inconsistencies of his statements and how they evolved and
9 how it made him look guilty.

10 Q Did you advise him of all that?

11 A I sure did.

12 Q Going back to the thing about the thing about the
13 guard, I'm just a little confused. You did make some phone
14 calls for him. That was correct.

15 A I don't remember if I spoke with somebody
16 specifically. I know that I had a friend of mine at the
17 guard that may have said, look, I think it's possible he
18 could stay in, and I didn't feel comfortable advising that
19 he would, and that's why I told Chris, hey, Chris, you need
20 to check with them, because that is a felony, and I -- I
21 don't know if we'll (sic) be kicked out or not, so it
22 wasn't part of my advice to him was whether or not he'd be
23 kicked out of the guard or not. I just didn't know.

24 Q Okay.

1 A I just did not. And, you know, quite frankly, it's
2 surprising he's still in the guard even with a felony
3 conviction. I mean I -- I just don't know. I can't speak
4 to that.

5 Q Right.

6 MR. YARBOROUGH - I don't have any further
7 questions. Thank you, Your Honor.

8 THE COURT - Yes, ma'am.

9 CROSS EXAMINATION

10 BY MS. GREGORY -

11 Q You've answered a lot of my questions, so I'm just
12 going to skip around a little bit. When you discussed the
13 evidence against Mr. Tison, you said in evidence he
14 admitted to serving alcohol to the victim?

15 A Yes.

16 Q And ---

17 A On videotape evidence, yes.

18 Q Okay. And when you talked to the wife, were her
19 statements to you consistent with her testimony here today?

20 A No.

21 Q Okay. And regarding the national guard, I understand
22 that you're saying that Mr. Tison went back and talked to
23 somebody within the national guard. What did he report
24 back to you?

HARRY DEST - CROSS BY MS. GREGORY

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1 A That he wouldn't be kicked out as a result of -- and I
2 didn't know. I just did not know.

3 Q So that was his assumption based on what he
4 researched, not ---

5 A Yes.

6 Q --- based on your assessment of the situation?

7 A Yes. And I -- and if I did make a call, it was just
8 up in the air. I could not advise him clearly one way or
9 the other whether he'd be kicked out or not.

10 Q Okay.

11 A But again, I think it -- it's important to understand
12 what you're looking at when you're talking about a case
13 like this.

14 Q Sure.

15 A You know, that is a collateral consequence, obviously,
16 but ---

17 Q Sure.

18 A --- it's not the main thing that I'm focusing on when
19 I'm advising a client on whether to take the plea or not.

20 Q Did you think it was in his best interest to take the
21 plea?

22 A Yes.

23 Q Whose decision was, ultimately, to take the plea?

24 A His decision.

1 Q Did you negotiate this with Ms. Shelton? Did you
2 offer a counter-offer, because I think, initially, you said
3 in your testimony that the State is adamant for the sex
4 offender registry and expose him to time. Was there a
5 counter-offer that was made that allowed him to not be
6 exposed to time that was only probation?

7 A Yes.

8 Q Okay, what was your counter-offer?

9 A Counter-offer was for probation.

10 Q Okay, and the sex offender registry.

11 A Negotiated -- and she would make that a part of it,
12 but I ---

13 Q Okay.

14 A I mean I was trying to keep him out of jail.

15 Q Okay, so he pled, basically, under your counter-offer.

16 A Yes.

17 Q Okay.

18 A That's my recollection of ---

19 Q Okay.

20 A Yes, because, initially, I think Ms. Shelton wanted --
21 definitely wanted him on sex offender registry but wanted
22 to leave it up to the Judge regarding the amount of time.

23 Q Okay. Did you discuss the assault and battery first
24 degree charge with him?

25 A Yes.

1 Q Did he understand it was first and not third?

2 A Yes.

3 Q Okay.

4 A Third was never a part of it.

5 Q Okay. Did you discuss what an Alford plea was?

6 A Yes.

7 Q Okay. And he seemed to understand those discussions?

8 A Yes.

9 Q And -- sorry, I know I'm jumping around a little bit,
10 but going back to the evidence, would you expect medical
11 evidence in this case?

12 A Sometimes ---

13 Q Would it surprise you?

14 A I mean, you know, that was a point that we would've
15 emphasized, and I've done it both ways, it -- you know,
16 certainly at trial, you would attack the lack of evidence,
17 the lack of medical evidence, what could be found as a
18 result of an examination.

19 Q Sure.

20 A I would go through a litany of questions regarding
21 that, and I told him that that was a strong point that we
22 could make, however, my -- again, my experience has been
23 that many times experts will get on the stand and say
24 sometimes it's present and sometimes it's not.

25 Q Right, so ---

1 A And then my response would be, you're looking for it,
2 aren't you doctor, yes, you didn't find anything, yes, you
3 didn't find anything to indicate trauma, correct?

4 Q Okay.

5 A That's how that cross examination would go.

6 Q Sure. And even knowing that the medical evidence was
7 not present in this case, you still believe it was in his
8 best interest to take the plea?

9 A I did.

10 Q In the sex offender registry discussions, did you tell
11 him it was lifetime, ---

12 A Yes.

13 Q --- or did you tell him it was only during the plea or
14 during the probationary period?

15 A It was lifetime.

16 Q Okay. Do we have non-lifetime sex offender registry
17 in this state?

18 A Not that I'm aware.

19 Q Okay. At what point did you go from a trial posture
20 to a plea posture? Was it after the discussion regarding
21 all the evidence?

22 A I mean I -- it's hard to say exactly when, but I mean
23 certainly as the case evolved and the closer we got to a
24 trial date, ---

25 Q Okay.

HARRY DEST - CROSS BY MS. GREGORY

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1 A --- which Ms. Shelton was certainly thinking about a
2 potential trial, and, you know, that's when we're -- our
3 negotiations sped up, ---

4 Q Okay.

5 A --- obviously, and I -- I certainly had to advise him
6 of both the good facts that we would try to present at
7 trial and the bad facts, so in looking at the bad fact
8 category and the facts that concerned me, I thought the
9 risk was too great.

10 Q Okay. In looking at the allegations that he has
11 alleged in his application, he has said that he lacked
12 sufficient knowledge of the State's case against him, and
13 therefore, was deprived an informed evaluation. Did you go
14 -- you filed a Rule 5 and discovery motion in this case?

15 A Yes.

16 Q And do you feel the State complied with those?

17 A Yes, ma'am.

18 Q Do you -- did you go over all of that? Did he
19 understand his discussions?

20 A Yes, ma'am.

21 Q Do you think there was anything that you had left out
22 that didn't provide him a full assessment of his case?

23 A No, ma'am, I -- again from the very beginning it's a
24 he said/she said case, and so then it comes down to an

1 issue of credibility. I had great concerns about his
2 credibility.

3 Q I understand. He's also alleged that you failed to
4 investigate the facts and interview witnesses. Now, you
5 testified that you talked to the wife and his daughter?

6 A Yes.

7 Q Okay, and did he provide you any other witnesses to
8 investigate or any other leads to investigate, any defenses
9 that he might have regarding that?

10 A Not that I recall.

11 Q Is there any investigation that you wish you would've
12 done in this case or you did not do?

13 A (Inaudible)

14 COURT REPORTER - He needs to speak up.

15 A I don't think so.

16 Q Okay. And if he had wanted to continue with trial, if
17 had never wanted to take a plea, would you have continued
18 to trial?

19 A Absolutely. We would've gone to trial and emphasized
20 the lack of medical evidence; we would've emphasized the
21 lack that there was no -- no forensic evidence; we would've
22 put the wife on the stand and the daughter to say that
23 nothing was told to them that night and then ---

24 Q Okay.

HARRY DEST - RE-DIRECT BY MR. YARBOROUGH

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1 A --- harp on those points, and, you know, that the
2 alcohol consumption would've been a double-edged sword,
3 because, obviously, it substantiates contributing to the
4 delinquency of a minor charge, but could've attacked -- you
5 want to attack a 13 year old on drinking alcohol and how
6 impaired she was. That would've been something that
7 would've been pursued at trial, although extremely risky.

8 Q Okay. And, again, Mrs. Tison's testimony today was
9 not consistent with what you would believe she would've
10 testified to at trial? Is that right?

11 A Yes.

12 MS. GREGORY - No further questions, Your Honor.

13 THE COURT - Mr. Yarborough?

14 RE-DIRECT EXAMINATION

15 BY MR. YARBOROUGH -

16 Q As far as the evidence was concerned, did Mr. Tison
17 explain to you what he thought about the videotape and
18 stuff, he told you that he was talking about his daughter
19 when he was talking about kissed and he got confused
20 talking to the officers when they were interviewing him.
21 Is that correct?

22 A I don't recall that. In fact, my recollection is that
23 on questioning of the officer, he admitted to kissing Miss
24 Montgomery on the forehead and then admitted on further
25 questioning kissing her on the lips and then admitted to

1 the officer that was a big mistake, that was a mistake, I
2 shouldn't have done that, about Miss Montgomery, not ---

3 Q I mean he had always denied any involvement -- right?
4 -- as far as ---

5 A For the sex, yes, that's true.

6 Q Yeah. And there wasn't any -- I mean -- in the big TV
7 drama-type thing, there's no DNA, there's no -- no proof,
8 there's nothing, it was just her -- his word against hers.
9 Right?

10 A And his inconsistent statements and the text messages.

11 Q Right, and then -- and then to counteract that, you
12 had two witnesses and then ---

13 A Hence the plea under Alford.

14 Q Did -- did you go and look into the background of the
15 young girl?

16 A I did not, no.

17 Q Okay. And you didn't go to the house. Did you talk -
18 --

19 A I -- I didn't have any information that the young girl
20 was -- I mean that she'd ever made this allegation before.

21 Q Right. Well, the wife told you that the young girl
22 had -- had had some problems. Right?

23 A I don't remember had problems, no.

24 Q Okay. Did you ever talk to the -- the victim?

1 A No, I didn't. I mean whatever -- if I may say,
2 whatever I would've cross examined her on would come from
3 the videotape.

4 Q Sure.

5 A I mean the main emphasis in attacking her credibility
6 would've been consumption of alcohol ---

7 Q Right.

8 A -- and how that affected her ability to talk.

9 Q And you can argue that the -- the text messages were
10 dealing with the alcohol versus any kind of sexual ---

11 A It could, but I think it's a little disturbing that --
12 I mean I -- I think -- not a little disturbing, greatly
13 disturbing to me. If I'm -- if I'm trying this case and
14 those text messages come in, that's devastating.

15 Q I mean at that point you had the alcohol and his
16 daughter and -- I mean you could've overcome that.
17 Correct?

18 A (Inaudible)

19 COURT REPORTER - Please speak up.

20 A I don't think I -- talking about a not guilty verdict
21 at trial? No.

22 Q Not guilty on the criminal sexual conduct.

23 A I -- no, no.

24 Q Did you share that with him, with Mr. Tison?

1 A Of course I did. I told him, I said, look, this is --
2 it could go either way on this. I can tell you how I can
3 attack it, but I can't assure you that you would be found
4 not guilty based upon the text messages, based upon your
5 inconsistent statements, based upon kissing a 13 year old
6 girl who you have custody over, based upon the acts --
7 serving -- serving her alcohol and those text messages; it
8 looks bad. It looks bad, and when it looks bad, juries
9 will go against you.

10 Q Right. But he still told you he didn't do it. Right?

11 A He did, and that's why he pled under Alford.

12 MR. YARBOROUGH - I don't have any further
13 questions. Thank you, Your Honor.

14 THE COURT - Anything from the State?

15 MS. GREGORY - No, Your Honor.

16 THE COURT - Thank you, Mr. Dest.

17 Mr. Yarborough?

18 MR. YARBOROUGH - Your Honor, if I could be heard
19 on the application?

20 THE COURT - Okay.

21 MR. YARBOROUGH - I don't have any other
22 witnesses. I don't ---

23 MS. GREGORY - We have a witness, Your Honor.

24 MR. YARBOROUGH - Oh, I'm sorry. I didn't ---

25 THE COURT - Yes, ma'am.

MISTI SHELTON - DIRECT BY MS. GREGORY

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1 MS. GREGORY - The State would call Ms. Shelton.

2 MISTI SHELTON, AFTER BEING FIRST DULY SWORN,

3 TESTIFIES AS FOLLOWS -

4 DEPUTY CLERK - Thank you. Have a seat.

5 DIRECT EXAMINATION

6 BY MS. GREGORY -

7 Q Good morning.

8 A Good morning.

9 Q Where do you work?

10 A The Sixteenth Circuit Solicitor's office.

11 Q And how long have you been there?

12 A I started in 2002, briefly went out with Mr. Pope when
13 he left the office for a couple years. I was then a public
14 defender for a couple years and then I came back in 2010.

15 Q Okay. And so most of your practice has been in
16 criminal law?

17 A All of my practice has been in criminal law.

18 Q How did you get involved with Mr. Tison's case?

19 A Our office is set up on a rotation schedule. I think
20 at that time I was purely an ABC felony attorney doing two
21 weeks of rotation every eight weeks or something like that.
22 No, I would've been on the sex crimes unit. So I was on --
23 at that time I was doing -- was on the sex crimes unit
24 getting a rotation every six weeks, and his case came in
25 during that rotation.

1 Q Were you the only solicitor on this case?

2 A Yes.

3 Q Okay. And were -- Rule 5 and Brady motions were filed
4 based on Mr. Dest's testimony.

5 A Yes.

6 Q Did you comply with those?

7 A Yes.

8 Q And I know we -- you've been in the courtroom the
9 whole time, so we've gone over a bit of the facts of the
10 case. Can you describe the evidence against Mr. Tison that
11 you believed was very strong?

12 A So I had -- I met with the victim, I believe, three
13 times. My meetings with her and her -- both of her parents
14 were there. I believe her mom -- mom was there on one of
15 the meetings, but kind of the same meeting that Mr. Dest
16 was having with the defendant going over the strengths and
17 weaknesses of the case, our initial meetings talking about
18 plea offers. My perception of the strengths of the case
19 were the text messages, were her demeanor and consistency.
20 Every time I spoke with her she was very consistent with
21 what she said happened. To me she was very believable.
22 That is always important. The fact that she was willing to
23 come and sit in this chair and testify is always an
24 important in evaluating a sex case. The -- in addition,
25 the one fact that has not been discussed and I believe that

MISTI SHELTON - DIRECT BY MS. GREGORY

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1 this happened when she was receiving the text messages from
2 the defendant, she called to confirm it was him, so she,
3 actually, had a phone conversation with him in addition to
4 those text messages, recognized his voice, knew it was him
5 that was sending the text messages, and in tying the phone,
6 the phone number, Mr. Tison's phone number, we, ultimately
7 -- I -- were -- felt that we could definitively tie that
8 phone number to those text messages when he was arrested
9 for the burglary, I believe, in January of 2016. Part of
10 that arrest involved his cell phone, and he in his
11 interview acknowledged that that was his cell phone number.

12 Q So those -- all of those phone numbers were consistent
13 ---

14 A Yes.

15 Q --- across the board, and he -- when she called that
16 number, he answered.

17 A Yes.

18 Q Okay.

19 A The -- the lack of medical evidence was not a
20 particular concern to me. I think the way she described
21 the event was not a particularly traumatic, as far as, like
22 digital penetration ---

23 Q Correct.

24 A --- it wasn't like a full down forcible where you
25 would expect to see a lot of trauma, and so I think that

1 the nurses' testimony would be that the medical evidence
2 would not be inconsistent with her explanation of the
3 digital penetration, that -- and typically, they will
4 testify that the human body is meant to -- to receive ---

5 Q Okay.

6 A --- and that you can have sex and you can be digitally
7 penetrated, there can be -- without any sign of tears or
8 force or bruising, and that it -- it is not inconsistent
9 with what she detailed.

10 Q Okay.

11 A So that was not a particular concern of mine, so for
12 me the strengths of the case were -- and then also, I had
13 the same -- the same opinion of his videotaped testimony or
14 his videotaped statement of the inconsistencies in it and
15 where he told one story and then another story. I thought
16 the jury would find it highly offensive that he was kissing
17 a 13 year old girl and offering a 13 year old girl alcohol.
18 I also believed from my memory that he made a statement
19 that he was asked about the digital penetration. I believe
20 there's a statement in there that he said he may have put
21 his hand on her thigh close to the top of her -- like to
22 the -- to the bottom of her shorts, but ---

23 Q Okay.

24 A --- and I think take -- between that and the things
25 that he did admit on that and with the text messages and

1 with what I thought would be her strong testimony, my -- my
2 kind of take on it, just as Mr. Dest -- Mr. Dest -- I
3 explained to him that I thought it was a 50/50 case.

4 Q Okay.

5 A Um, because it -- there -- there was no physical
6 evidence; there was -- there was no video; there's no DNA;
7 there's no recorded conversation, so, ultimately, it would
8 have been her testimony and then the circumstantial
9 evidence, but it was, as far as a sex case, a very strong
10 sex case from the State's perspective.

11 Q Okay. And so how did the plea offer come about?

12 A When I, initially, met with the victim, um, their main
13 concern was that he be a registered sex offender.

14 Q Okay.

15 A And I remember the parents saying we don't want to
16 ruin his life, we don't want to take him -- like we don't
17 want him to have to go to prison for a really long time,
18 but we -- we don't want him to do this to other girls.

19 Q Okay.

20 A And so that was a concern for them. I discussed with
21 them doing an offer of like a cap of five years, where I
22 would -- where I would advocate for a prison sentence and
23 also advocate for the sex offender registry, and that was
24 my initial plea offer. And I believe that was probably
25 made by June of 2015. And then I made a -- notes in my

1 file, 180 note -- we made 180 day notes in our file -- in
2 November of that year that I had conveyed the offer to Mr.
3 Dest that Mr. Dest at that point -- so the case is in a
4 trial posture -- that he would like some additional time to
5 review everything with Mr. Tison, to continue this
6 conversations with Mr. Tison and to, ultimately, hopefully
7 work out a plea agreement. I again at that point
8 maintained to him that I was adamant about the sex offender
9 registry, but that I was flexible on the amount on the
10 time. Mr. Dest and I -- I remember this case very well,
11 because Mr. Dest and I spoke about this case at least once
12 a week, whether it was a question he had about the
13 evidence, a question he had about the text messages,
14 confirming that he had all the evidence, following up with
15 him with the medical report, following up with him with the
16 cell phone rip once a week, got the phone into -- into --
17 into custody from Mr. Tison, so there was constant
18 conversation about this case. Then, I believe, in February
19 of 2016 after Mr. Tison was arrested for the burglary, I
20 had another meeting with the victim and her parents. At
21 that point I was ready to call this case to trial, and they
22 asked if I would wait until the school year's over, and so
23 that them to do it in the summer, and at that point I
24 indicated to Mr. Dest that I would intend to call to trial
25 in June, July or August of that summer. He met -- per my

MISTI SHELTON - DIRECT BY MS. GREGORY

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1 notes -- because he said, well, I'm going to schedule
2 another meeting -- he -- some time between April, May of
3 2016 and June, 2016, Mr. Dest, per my notes, met with Mr.
4 Tison, re-reviewed all of the evidence and then Mr. Dest
5 came to me with the counter-offer ---

6 Q Okay, what was that?

7 A A&B first for probation with sex offender registry. I
8 brought the victims back in, again, kind of went over the
9 strengths and weaknesses of the case. I kind of left it up
10 to them whether or not we took the counter-offer or took
11 the case to trial. They were in agreement with doing --
12 with accepting the counter-offer, and I believe the plea
13 was scheduled for that -- some time that summer. It
14 happened some time in the summer of 2016. As part of those
15 negotiations, I agreed to dismiss the burglary if Mr. Tison
16 would agree to pay restitution for -- I believe, it was a
17 lawnmower, an industrial lawnmower that was stolen -- if he
18 agreed to pay restitution for that. At the time of the
19 plea he was not in a position to agree to any of that. I
20 believe it was in January of 2017 that, ultimately, he did
21 agree to pay the restitution on the burglary, and I agreed
22 to dismiss it as continuing part of plea negotiations for
23 the -- for the initial case.

24 Q Okay. And so he ended up pleading to his counter-
25 offer.

1 A He did end up pleading to the counter-offer that was
2 proposed to me by Mr. Dest.

3 THE COURT - Ms. Shelton, I'd like to ask one
4 question. The burglary case is totally unrelated to this
5 case.

6 MS. SHELTON - It's completely and totally
7 unrelated. It happened, I believe, in January of 2016 and
8 the -- I kind of -- from the State's perspective, it was a
9 strong case. I used it as leverage as part of the plea
10 negotiations. I was attempting to use it as leverage, as I
11 will dismiss this one, because that's how strongly the
12 State felt and how strongly the victims felt about having
13 Mr. Tison on the sex offender registry. I met with the
14 victims in the burglary and they were -- they were also in
15 support of the State dismissing the case if -- if that was
16 what the State was using it for. They -- their main
17 concern was -- was the restitution.

18 Q So the sex offender registry was never not part of
19 discussions for a plea negotiation.

20 A No. We would've gone to trial.

21 Q Okay. And was there ever any indication that it
22 wasn't a lifetime sex offender registry?

23 A No. I mean I would never have indicated that to Mr. -
24 - I got -- because it's -- it's not - it doesn't exist to
25 my knowledge, so, no, not in any conversation I had with

MISTI SHELTON - CROSS BY MR. YARBOROUGH

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1 Mr. Dest. I never had a conversation with Mr. Tison to be
2 able to ---

3 Q Okay. Right, absolutely.

4 A --- one way or the other -- and certainly did not
5 elude to that on the record at any point in time.

6 MS. GREGORY - Okay. No further questions, Your
7 Honor.

8 MS. SHELTON - Thank you.

9 THE COURT - Mr. Yarborough?

10 CROSS EXAMINATION

11 BY MR. YARBOROUGH -

12 Q Did you -- was it my understanding you to say y'all
13 were negotiating a length of time on the sex registry?

14 A No.

15 Q Okay.

16 A No.

17 Q I didn't you said that. Did -- do you recall the
18 Judge asking -- telling Mr. Tison that during the plea that
19 if he so finds I'll put him on the sexual registry?

20 A I did recall that. I did see that in the -- in the
21 transcript. I -- and, again, like Mr. Dest, I can't speak
22 to what Judge Hayes was thinking, if it was just --
23 sometimes Judges get in the groove of their colloquy and
24 say things and sometimes I will catch it and I will correct
25 it and sometimes I don't, but I do know in the same

1 transcript before Judge Hayes was going over the -- I put
2 my -- the negotiations on the record, and on the record my
3 negotiations were before Judge Hayes made that statement
4 was that it was a mandatory sex offender registry. I would
5 not have gone forward with any negotiation that did not
6 involve sex offender registry, and if Judge Hayes had
7 indicated at any point in time during the plea he was not
8 going to order sex offender registry, I would have
9 withdrawn the plea negotiations.

10 Q But he did say it, though ---

11 A It ---

12 Q -- if it's in the ---

13 A I can't disagree with the transcript, so I mean I --
14 but I also don't recall him saying that.

15 Q And you never -- you never met with Mr. Tison.

16 A I, typically, don't meet with defendants, no.

17 Q And did you ever meet with -- or did -- were you ever
18 given statements by Mr. Tison's daughter or by his wife?

19 A No, but, typically, defense attorneys do not share
20 with me their witness statements because they ---

21 Q Did they -- he ever tell you about them being at the
22 house?

23 A I -- Miss Montgomery told us that they were at the
24 house. And the defense attorneys don't, typically, share
25 with us ---

MISTI SHELTON - CROSS BY MR. YARBOROUGH

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1 Q Right.

2 A --- what their investigations show, whether they're
3 good or bad, but no. So, but Miss Montgomery was never
4 inconsistent with what she said as far as where everyone
5 else goes, which per Mr. Dest's testimony they (sic) was
6 not -- was not inconsistent with what he was told when he
7 interviewed the witnesses.

8 MR. YARBOROUGH - I don't have any further
9 questions. Thank you.

10 THE COURT - Yes, ma'am?

11 MS. GREGORY - That's all, Your Honor.

12 THE COURT - Thank you, Ms. Shelton.

13 MS. SHELTON - Thank you.

14 MS. GREGORY - The State has no other witnesses,
15 Your Honor.

16 THE COURT - Mr. Yarborough?

17 MR. YARBOROUGH - Your Honor, just briefly, I -- I
18 think we've outlined a case before you where Mr. Tison was
19 not aware of the law, the issues involved, the registry.
20 He really wanted to go to trial. He -- you know, whatever
21 happened, and, you know, ended up at the end, I don't think
22 he understood the -- what an Alford plea was or not, still
23 doesn't, and as far as the registry's concerned, there's --
24 the Judge does tell him that he's -- I've got to make a

1 finding, and that finding was never made. There was
2 evidence that could've been used ---

3 THE COURT - He signed a plea waiver form
4 acknowledging he's going on the sex offender registry. I
5 mean what -- what -- what relevance does it have that Judge
6 Hayes misspoke or whatever?

7 MR. YARBOROUGH - Your Honor, I -- I mean I think
8 that the defendant has a right to rely on what the Court
9 tells him at that point, so there, obviously, was some
10 confusion as to what that -- Mr. Tison says that his
11 confusion was that he would get off at -- he testified that
12 he'd get off at the end of probation, and that's not the
13 case, so I think there is -- there is a question that, you
14 know, you could find that Mr. Tison did not understand the
15 registry ---

16 THE COURT - So your claim is ineffective
17 assistance of counsel, so -- I'm working on the assumption
18 that Judge Hayes misspoke, so it's clearly a negotiation
19 with the sex offender registry. What do you think Mr. Dest
20 should've done?

21 MR. YARBOROUGH - He could've asked the Judge at
22 that point to stop just to clear up the record.

23 THE COURT - But -- I mean how would have help his
24 client?

1 MR. YARBOROUGH - Well, I mean that -- that way
2 his client understands what ---

3 THE COURT - But if Judge Hayes mistakenly doesn't
4 put him on the registry, I mean I -- why would he stand up
5 and say, Your Honor, wait a minute, you said you might put
6 my client on the registry, don't you mean you have to? I
7 mean you say it was ineffective not to say that?

8 MR. YARBOROUGH - Well, I think at the end of the
9 day if -- once he was placed on the registry, that he
10 should've asked the Judge to make some type of finding.
11 What the -- the Judge says in there ---

12 THE COURT - Doesn't he make a finding?

13 MS. GREGORY - Yes, sir, page 12.

14 THE COURT - That's what I thought.

15 MR. YARBOROUGH - I think what he does is he
16 places him. I don't ---

17 MS. GREGORY - Line 18, 19, 20.

18 MR. YARBOROUGH - It just says sex offender
19 registry. It doesn't ---

20 THE COURT - I just -- I don't -- I'm not ---

21 MR. YARBOROUGH - I know I'm playing with terms,
22 Your Honor, but I -- what I'm trying to say is that -- that
23 the Judge tells him, I've got to make this finding and that
24 finding's never made.

1 THE COURT - No, I understand, but my question is,
2 how could it be ineffective assistance of counsel to not
3 stand up and challenge that when he's already agreed to sex
4 offender registry as part of the plea?

5 MR. YARBOROUGH - Mr. Tison said that he did not
6 understand that.

7 THE COURT - Even though he signed a plea waiver
8 form saying he understood it.

9 MR. YARBOROUGH - Correct, but I think many times
10 defendants stand before the Court and don't understand
11 exactly what's going on. They rely on what their lawyer is
12 advising them, and that argument also gets enhanced by the
13 fact that the Judge tells them something different. Maybe
14 I'm playing with a term of art, but I think that's -- it is
15 in the record.

16 THE COURT - There's no question it's in the
17 record. I'm just -- I'm struggling with how -- how you're
18 -- I mean I -- there's clearly a confusing statement by the
19 Judge in the record, but I -- I'm struggling with how we
20 get to the fact of ineffective assistance on Mr. Dest.

21 MR. YARBOROUGH - Okay, but I think the
22 ineffective assistance of counsel by Mr. Dest is that Mr.
23 Tison said he did not understand what -- he was -- he had a
24 couple of understand (sic) -- he didn't understand that --
25 he thought the register was something he got off of when he

1 got off probation, so, you know, might be the Judges'
2 statement confuses him even more and, okay, we're going to
3 have this issue come up later. It's still in the record,
4 and that was one of our allegations.

5 THE COURT - How do you score your client's
6 testimony today that he did nothing wrong, there was
7 nothing he was admitted doing, but that he, apparently,
8 told the police on the videotape that he kissed the victim,
9 as well as, provided her alcohol?

10 MR. YARBOROUGH - Your Honor, I think that at --
11 at some point my client did say that he felt he was under
12 pressure and he, you know, may have misspoke.

13 THE COURT - Oh, this morning?

14 MR. YARBOROUGH - Yeah. And further, Your Honor,
15 the -- the whole thing with the national guard, when we get
16 civil issues involved in criminal cases, it often gets off
17 track. I think that the intent to try to figure out the --
18 what was going on with the guard left a -- somewhat of a
19 misunderstanding in Mr. Tison's mind. Mr. Tison's always
20 been adamant ever since I've met him -- and he testified
21 today that he wouldn't -- if he thought the guard was gonna
22 be gone, he would not have ever pled. That was his
23 statement; it's always been his statement. And so I'd ask
24 you to consider that in the allegations, as well.

1 THE COURT - I mean I -- I understand that. It's
2 -- it's a credibility determination -- right? -- between
3 the two witnesses, and I just -- I have a tough time
4 believing that an intelligent adult could -- I mean I --
5 believe that they -- they could plead guilty to a felony
6 carrying ten years in prison and on -- in the sex offender
7 registry and believe they could stay in the national guard.
8 I just ---

9 MR. YARBOROUGH - Well, I don't think he believed
10 at that point he was going to be on the sexual registry. I
11 think that's what he testified to.

12 THE COURT - But I -- he said he would -- at least
13 if I understood, I thought what he said was he -- he
14 understood he'd be on the registry during his probation ---

15 MR. YARBOROUGH - Probation, that's correct.

16 THE COURT - Right. So I just -- I just find it
17 inconceivable that someone can believe that they can plead
18 could to a ten year felony and get put on the sex offender
19 registry and the army would keep them on the roll. I mean
20 I ---

21 MR. YARBOROUGH - And still are today.

22 THE COURT - But it -- your client's testimony was
23 because -- they're -- what he's described as the PCR
24 process.

25

1 MR. YARBOROUGH - Right.

2 THE COURT - Mr. Yarborough, just as concise as
3 you can, what did Mr. Dest do wrong here? I mean it's an
4 ineffective assistance of counsel claim. What should --
5 what fell so void in the constitutional standard that I
6 should grant this PCR?

7 MR. YARBOROUGH - Your Honor, I think that Mr.
8 Tison's outlined a very credible case for being found not
9 guilty of what he was charged with by having both his wife
10 and his daughter who were there at the time to be able to
11 testify in his behalf. Talking about an individual that
12 didn't have a prior record, who could testify at trial, and
13 he has stated from the beginning and clearly at the point
14 of his -- even at his guilty plea -- he's pleading under
15 Alford; he's maintaining his innocence, and I think there
16 was a high likelihood of success at trial. I know that he
17 -- Mr. Dest doesn't think that the likelihood -- he thinks
18 it's 50/50 and it balances more towards the State than it
19 does for him and he's got a lot of experience, but I just
20 think ---

21 THE COURT - I mean you think with the admission
22 that he served her alcohol and that he kissed her on the
23 lips that he -- your client has a -- has a high chance of
24 prevailing at trial?

1 MR. YARBOROUGH - Your Honor, I -- he has always
2 said that those were taken out of context, and I think that
3 clearly there is some context being taken, and Mr. Dest
4 admits that, you know, there were explanations always for
5 what was on those tapes, and he said that. He said -- you
6 know, he told me that it wasn't like that. My client says
7 he was talking about his daughter, that he wasn't talking
8 about the alleged victim, but I mean -- that's all -- those
9 would all be questions for the jury, and at this point
10 this Court's -- it's trying to make a determination of, you
11 know, what those facts were. I think there are very good
12 facts alleged that would've worked in his behalf, and then
13 there's some questions on top of that that maybe the
14 reasons why he pled weren't the best motives when you start
15 talking about his lack of understanding of the register and
16 when you start talking about the stuff with the national
17 guard.

18 THE COURT - I'm -- I'm stuck with the Strickland
19 tests, though. I mean that's -- that's where I -- I just -
20 - I'll be honest, I'm not -- I'm not seeing where Mr.
21 Dest's representation fell below ---

22 MR. YARBOROUGH - Well, I think that with the
23 Strickland test that what you would look at is go to what -
24 - forget about what Mr. Tisons (sic) would say, and go to
25 the only other adult that's present on that evening is Mr.

1 Tison's wife. Who testified -- that -- she was there awake
2 the whole time and there was no activity. That's what she
3 said when she testified from the witness stand. She was
4 there. She went to bed with her husband, and her husband
5 never left the room, so I -- I think that there is a real
6 question of the weight there that could get you around
7 Strickland.

8 THE COURT - Thank you, Mr. Yarborough.

9 MR. YAROROUGH - Thank you.

10 MS. GREGORY - Your Honor, based on the wife's
11 testimony today, Mr. Dest said it was inconsistent with
12 what he was told up until trial or up until the plea, so
13 the testimony that she gave today was not something that
14 they took into account because it wasn't consistent with
15 what she had been telling them. So I don't think that's
16 reasonable, and regarding the sex offender registry not
17 being lifetime, I think it's -- based on the testimony
18 today from not only the solicitor but Mr. Dest that the
19 waiver form in the record it is very clear that the sex
20 offender registry was always part of this, nobody indicated
21 it was only for the probationary period. I believe that
22 allegation is completely merit-less. Regarding his other
23 allegation that Mr. Dest failed to fully investigate the
24 case, as the testimony showed today and the record even
25 says that he went over discovery, he obtained all the

1 discovery, he went over all of that with Mr. Tison; Mr.
2 Tison understood those conversations. He believed it was
3 in his best interest to plead guilty because of his
4 exposure to time. He went from a lot of time exposure at
5 trial to probation only, which is a very favorable plea,
6 but I believe, as Mr. Dest testified, that it was
7 reasonable that he take and in his best interest. And
8 regarding his third allegation, I'm not really sure how
9 it's different, because it still alleges that he didn't
10 investigate, but I just would say that the testimony here
11 today in the record is very clear that this is a knowing,
12 intelligent and voluntary guilty plea and Alford plea that
13 was very beneficial, and based on his chances at trial
14 given the evidence that the State and Mr. Dest summarized
15 against him. So we agree that it fails the Strickland
16 tests, and we would ask you to dismiss his application.

17 THE COURT - Mr. Yarborough, I'll give you the
18 last word.

19 MR. YARBOROUGH - Your Honor, briefly going back
20 to what she just outlined, she said, you know, that it was
21 an Alford plea, and I think that's one of those crazy times
22 when Alford gets involved and there was a reason for the --
23 for the Alford plea, and it's clear he didn't understand
24 what an Alford was, and so there was, obviously, evidence
25 that would've supported a not guilty verdict and -- and I

1 think that this case should've been more properly handled
2 with a jury than opposed to a plea under Alford, Your
3 Honor.

4 THE COURT - Thank you, Mr. Yarborough. I'll take
5 this matter under advisement.

6 MR. YARBOROUGH - Thank you, Your Honor.

7 MS. GREGORY - Thank you, Your Honor.

8 (END OF TRANSCRIPT)

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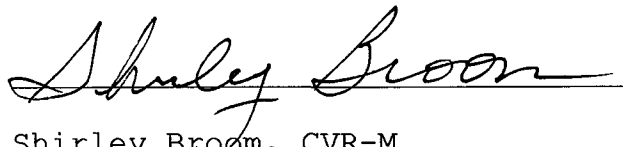
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C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 94 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Christopher David Tison vs. State of South Carolina, as taken by me in Court of Common Pleas for the Sixteenth Judicial Circuit on August 14th, 2019, and provided by me this the 6TH day of January, 2020.

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



Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
 FOR THE SIXTEENTH JUDICIAL CIRCUIT

2017-CP-46-1438

Christopher David Tison,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

DAVID HAMILTON
 C.J.C.P. & H.S.
 2019 SEP -5 PM 4:34

FILED-RECEIVED

This matter comes before the Court by way of an application for post-conviction relief filed by retained counsel, William G. Yarborough, III, on May 17, 2017. The State (Respondent) filed a return and motion to dismiss on June 14, 2018. The Honorable Judge Daniel D. Hall, acting in his capacity as Chief Administrative Judge, signed and filed a conditional order of dismissal on June 21, 2018. Thereafter, Applicant, through counsel, filed a response to Respondent's motion to dismiss and a motion to amend his post-conviction relief application on July 9, 2018. On July 16, 2018, Respondent filed an amended return requesting an evidentiary hearing.

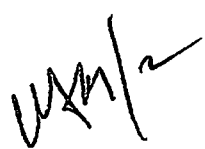
An evidentiary hearing into the matter was convened on August 14, 2019, at the Moss Justice Center. Christopher Tison (Applicant) was present at the hearing and represented by William G. Yarborough, III, Esquire. Assistant Attorney General Janell H. Gregory of the South Carolina Attorney General's Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. Applicant's wife (Wife), Assistant Public Defender Harry Dest (Counsel) of the Sixteenth Circuit Public Defender's Office, and Assistant Solicitor Misti Shelton (Shelton) of the Sixteenth Circuit Solicitor's Office also testified. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies and dismisses this application with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant appeared in the York County Court of General Sessions before the Honorable John C. Hayes, III, on July 13, 2016. Applicant pled guilty as indicted to contributing to the delinquency of a minor and waived presentment to the grand jury for first-degree assault and battery and pled guilty pursuant to Alford v. North Carolina, 400 US. 25 (1970) to that charge. Pursuant to negotiations between the State and Applicant, Judge Hayes sentenced Applicant to imprisonment for concurrent terms of three years suspended upon service of three years' probation for contributing to the delinquency of a minor and seven years suspended upon service of three years' probation for first degree assault and battery. The negotiations also included mandatory sex offender registration. Applicant did not appeal his conviction or sentence.

SUMMARY OF FACTS

On March 28, 2015, Victim was spending the night with Applicant's daughter. (GP Tr. 10.) Applicant provided alcohol to Victim that evening. (GP Tr. 10.) Victim had two and a half Bud Lite Raz-Ber-Ritas. (GP Tr. 10.) At some point that night, Applicant's daughter went to bed and Victim remained in the living room with Applicant. (GP Tr. 10.) Applicant was on the couch next to Victim and began rubbing her leg. (GP Tr. 10.) Applicant then digitally penetrated Victim without her consent. (GP Tr. 10.) Applicant's wife was in the room, but she was asleep. (GP Tr. 10.) After Applicant assaulted Victim, he woke his wife up and they went to bed. (GP Tr. 10.) Victim reported the incident three days later. (GP Tr. 10.) Although there was no forensic evidence linking Applicant to the incident, there were text messages between Applicant and Victim where he acknowledged doing something that evening that could have made her feel weird and apologized. (GP Tr. 10-11.)



ALLEGATIONS RAISED

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

1. Ineffective Assistance of Counsel

- a. "Was not made aware that a plea to assault and battery would result in being placed on the sex offender's registry since the plea charge was not listed as a sex crime."

Applicant, through counsel, amended his application on June 29, 2018, alleging:

2. Ineffective assistance of counsel

- a. "Applicant was not made aware that a plea to assault and battery 1st degree would result in having to be placed on the sex offender registry."
- b. "Counsel was ineffective for failing to adequately investigate the facts of the case and advise Applicant in regards to entering the Alford plea."
- c. "Counsel failed to investigate the facts, seek material discovery, interview witnesses who were present for the offense conduct, and advise Applicant accordingly. Applicant lacked sufficient knowledge of the State's case against him. Applicant was therefore deprived of an informed evaluation of his chances of proceeding to trial as opposed to entering a guilty or Alford plea. As a result of plea counsel's errors, Applicant's plea was not knowingly or voluntarily entered."

On August 14, 2019, an evidentiary hearing was convened. Applicant proceeded with the hearing on all of the allegations set forth in his amended application. Additionally, Applicant raised an issue during testimony alleging Counsel misinformed Applicant that his guilty plea would not have an effect on his ability to continue employment with the National Guard. Since this issue was raised during testimony, it will be addressed in this order.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant's Testimony

Applicant testified that he is thirty-five years old and originally from Florida. Applicant testified he has lived in Rock Hill / York area since 2005. Applicant testified he is employed full-

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time with the Army National Guard and Insulating Services. Applicant testified he lives on Rock Hill Army base and is married with two daughters.

Applicant testified the incident that led to his charges occurred when one of his daughters had a friend (Victim) stay the night. Applicant testified both daughters and Victim were watching a video with him and his wife. Applicant testified later that night Applicant and his wife went to bed. Applicant testified he was with his wife the whole time. Applicant testified he learned about three days later of the accusations when officers with York Police Department showed up at his work and arrested him. Applicant testified he was surprised. Applicant testified law enforcement did not interview his wife. Applicant testified he could not afford an attorney at that time so Counsel was appointed to represent him. Applicant testified he was originally charged with sexual assault or "something like that."

Applicant testified he met with Counsel numerous times. Applicant testified he reviewed discovery with Counsel and always maintained with Counsel that he did not commit this offense. Applicant testified, "I let him know right away I was innocent." Applicant testified the case lingered for a year and he felt pressured. Applicant testified Counsel told him if he took the plea he would not have to do fifteen to twenty years in prison. Applicant testified he felt terrified about that possibility. Applicant testified he did not want to take the deal at all and told Counsel that. Applicant testified he does not know what an Alford plea is and does not remember discussing that with Counsel. Applicant testified he just remembers the plea. Applicant testified he took the plea because he was frustrated with losing time at work and was being told by Counsel he could get twenty years in prison and he cannot do twenty years.

Applicant testified his understanding was that he would only be on the sex offender registry while he was on probation. Applicant testified he found out about the registry when he showed up for probation. Applicant testified the sex offender registry affects his life because he is trying

to build a home and it is hard to find a six month lease for a residence that is not near a park or a pool.

Applicant testified because of the probation officer informing the National Guard about his sex offender registry status, the National Guard was forced to put in an involuntary separation packet on him. Applicant testified he talked to Counsel about his status with the National Guard and Counsel told Applicant he would talk to someone he knew at the Department of Veteran's Affairs to see if the plea would affect Applicant's military status. Applicant testified the next time he met with Counsel, Counsel told him his contact at the Department of Veteran's Affairs said the plea would not affect his status. Applicant testified he relied on that information and, had he known it would have affected his status, he would not have taken the plea. Applicant testified he would have taken his case to trial had he known the plea would affect his military service. Applicant testified he loves the military and has been denied two deployments because of his convictions. Applicant testified he was under the impression he would be able to serve his country.

Applicant testified he told Counsel and the investigator that he did not have sexual contact with Victim. Applicant testified he asked Counsel to check for DNA and he does not believe that was done. Applicant testified he found out later that Victim had been taking alcohol and drinking it and hiding the cans in his daughter's bedroom. Applicant testified he was "absolutely" never alone with Victim. Applicant testified this was the second time he had ever met Victim because he had been away with the military.

Applicant testified he wishes someone would have helped him go to trial. Applicant testified he is not familiar with North Carolina v. Alford.¹ Applicant testified he would have liked

¹ 400 U.S. 25 (1970).

for his wife and daughter to be called as witnesses at trial. Applicant testified this is ruining his life.

On cross-examination, Applicant testified he understands he could face twenty years if he is successful on his post-conviction relief application. Applicant testified he thought he was pleading guilty to assault and battery third degree. Applicant testified he met with Counsel more than ten times. Applicant testified he went over the text messages and his recorded statements to law enforcement with Counsel. Applicant testified he did not recall waiving his constitutional rights. Once Applicant was able to review the guilty plea transcript, Applicant testified the transcript "says I did." Applicant testified he did not understand what waiving presentment on the first-degree assault and battery charge meant, but he never told the plea judge or Counsel that he did not understand. Applicant testified the transcript indicates he told the plea judge he was pleading freely and voluntarily; that he agreed with the facts the State recited in court; that he was satisfied with counsel; and that he was not threatened or coerced into pleading to his charges.

Applicant testified he also initialed next to the waiver of his constitutional rights on the plea waiver form. Applicant testified he also initialed the plea waiver form where it explained he was pleading under Alford and, based on the negotiated plea, would be on the sex offender registry. Applicant testified Counsel told him the sex offender registry was mandatory with probation. Applicant testified he was led to believe that he would only be on the sex offender registry while on probation. Applicant testified he did not know it was lifetime until he went to probation.

Applicant testified he recalled his burglary charge. Applicant testified part of the dismissal of that charge was that he pay \$6,000 in restitution. Applicant testified the order he signed dismissing that charge also indicated he would have to be on the sex offender registry.

On re-direct examination Applicant testified Counsel did not talk to him about the sex offender registry. Applicant testified he did not understand the contributing to the delinquency of

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a minor charge. Applicant testified if he had understood, he would have asked for a jury trial. Applicant testified he did not understand he was pleading to assault and battery first degree, he believed it was assault and battery third degree. Applicant testified he believes he got the assault and battery third degree from when he was going over all of the paperwork. Applicant testified he believes he would have been put in jail had he not signed the paperwork. Applicant testified he did not read the plea waiver form when he initialed next to assault and battery first degree. Applicant testified Counsel told him they would go over it after the plea.

Wife's Testimony

Wife testified she has been married to Applicant for eighteen years. Wife testified she and Applicant have two daughters. Wife testified she heard about the allegations two or three days after Victim left their home. Wife testified she was never interviewed by police and she was present in the home the entire night. Wife testified her daughter was never interviewed by police and they never spoke to Victim's family. Wife testified she only met Victim a few times before the allegations came out and did not know her family. Wife testified they were having a family movie night and nothing was out of the norm. Wife testified she and Applicant went to bed at the same time. Wife testified nothing odd happened. Wife testified that Victim seemed off, but her daughter said Victim is just like that. Wife testified they found Razberitas in her daughter's room, which she did not supply. Wife testified Victim was thirteen at the time and her daughter was fourteen. Wife testified she is positive she and Applicant went to bed at the same time. Wife testified she does not believe Applicant woke up in the middle of the night.

Wife testified they were prepared to take whatever steps needed to be taken to address the accusations. Wife testified Applicant went to meet with Counsel. Wife testified Applicant only told her about the guilty plea after it was said and done. Wife testified Applicant's impression

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after the plea was that he was going to be discharged. Wife testified she feels Applicant did not know what was going on and she wishes she could have helped him more.

On cross-examination, Wife testified she only had one conversation with Counsel. Wife testified she met with Counsel again and was able to see the evidence the State had in the case. Wife testified she saw Applicant's statements to law enforcement. Wife testified she saw the text messages as well. Wife testified Applicant is currently in the military. Wife testified she thought Counsel was confident and would get Applicant off because there was nothing against Applicant.

Counsel's Testimony

Counsel testified he has been with the Sixteenth Circuit Public Defender's Office since 1990. Counsel testified he was appointed to Applicant's case. Counsel testified they were in a trial posture for about a year prior to Applicant's plea. Counsel testified the case was a "he said, she said." Counsel testified Victim accused Applicant of digital penetration and providing her with alcohol. Counsel testified looking at the evidence in the case, it would have been Victim's testimony versus the testimony of Applicant. Additionally, Counsel testified Applicant provided statements to law enforcement. Counsel testified what concerned him the most about the statements was that there were omissions left out. Counsel testified initially Applicant denied touching Victim or doing anything improper. Counsel testified, after further questioning, Applicant admitted to law enforcement to kissing Victim on the forehead when he went to bed. Counsel testified later Applicant admitted to law enforcement to kissing Victim on the lips and acknowledged that was a mistake. Counsel testified Victim is a thirteen year-old girl. Counsel testified Applicant also admitted to law enforcement to serving her alcohol.

Counsel testified Applicant told him that on the night of the incident his wife fell asleep on the couch and his daughter had gone to bed. Counsel testified it was important to note that Victim's story coincided with Applicant's statement that his wife fell asleep and his daughter went to bed

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at the time that he touched her. Counsel testified, for digital penetration cases, medical evidence may not be present. Counsel testified Victim went to the hospital, she complained about pain, but no evidence was found. Counsel testified had they proceeded to a jury trial he would have harped on the lack of medical evidence at trial, but Victim's testimony could be enough to convict Applicant.

Counsel testified the Monday following the incident, Applicant texted Victim's friend, Lilly. Counsel testified law enforcement interviewed Lilly and "ripped" her phone. Counsel testified the number that texted Lilly was traced back to Applicant. Counsel testified it was the same number Applicant put on his paperwork with Counsel's office. Counsel testified Applicant texted, "Let's pretend like it didn't happen," among other things. Counsel testified he was very concerned about this evidence. Counsel testified there are different ways of interpreting the text messages, but in the end it would have been up to the jury as to whether the text messages were referring to Applicant providing alcohol to Victim or whether they were referring to Applicant touching Victim.

Counsel testified he did interview Wife. Counsel testified Wife told him that she fell asleep and that Wife and Applicant had provided alcohol to Victim. Counsel testified he told Wife she was lucky she was not charged as well. Counsel testified Wife and Applicant's daughter would have been potential witnesses at trial. Counsel testified he did not believe Wife would have been a good witness. Counsel testified Applicant's daughter did not say much to him.

Counsel testified he explained what an Alford plea was to Applicant. Counsel testified Applicant would be able to maintain his innocence, but agree there is a substantial likelihood that a jury would find him guilty of the charge. Counsel testified in his experience he has found it is very difficult for people to admit to sexual assault regardless of the circumstances. Counsel testified the State was adamant about the sex offender registry from the beginning. Counsel

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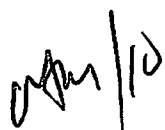
testified he did not guarantee Applicant any results, but he told Applicant he did not think a judge would give him probation. Counsel testified the State provided a negotiated plea where Applicant could plead guilty to contributing to the delinquency of a minor and then plead under Alford to first-degree assault and battery. Counsel testified he told Applicant about the negotiated plea. Counsel testified he met with Applicant and Wife and showed Wife the videotaped statements Applicant made to law enforcement and the text messages Applicant sent to Lilly's phone.

Counsel testified the judge was aware that the sex offender registration was part of the negotiated plea. Counsel testified the State was adamant about the sex offender registration being part of the plea. Counsel testified he is not sure why the plea judge said he would have to make a finding regarding the sex offender registry. Counsel testified he cannot speak to the plea judge's or Applicant's state of mind. Counsel testified he told Applicant that the sex offender registry was a lifetime registration. Counsel testified he is unaware of our state offering anything other than lifetime registration.

Counsel testified he did not get into specifics about the National Guard and whether Applicant would be discharged or not because he could not advise him about that. Counsel testified he did reach out to a friend of his at the Department of Veteran's Affairs and they did not know either, so he was unable to provide any information to Applicant regarding any collateral consequence that would affect his military career.

Counsel testified at the beginning of his representation Applicant wanted to go to trial, and always said he did not touch Victim, but Applicant had to acknowledge the evidence against him. Counsel testified in the end, if Applicant had been found guilty of criminal sexual conduct he would have been in jail for a long time.

On cross-examination, Counsel testified he filed Rule 5 and Brady motions in Applicant's case and the State complied with his discovery motions. Counsel testified Wife's testimony during



the post-conviction relief hearing was not consistent with her statements to Counsel during their meeting. Counsel testified Wife admitted to providing alcohol to Victim. Counsel testified Applicant made his own assumptions about what would happen to him with the National Guard after his plea. Counsel testified he did not advise Applicant regarding the National Guard. Counsel testified it was in Applicant's best interest to plead guilty. Counsel testified it was ultimately Applicant's decision to take the negotiated plea offer from the State. Counsel testified they provided a counter-offer to the State after the State's initial offer. Counsel testified Applicant pled to his own counter-offer, which included the sex offender registry. Counsel testified he discussed first-degree assault and battery with Applicant. Counsel testified there was never an offer or a discussion about assault and battery third-degree. Counsel testified if Applicant had wanted to proceed to trial, he would have taken Applicant's case to trial.

Counsel testified sometimes there can be medical evidence in cases like this, and, had Applicant elected to go to trial, he would have attacked the lack of medical evidence in this case. Counsel testified, however, in his experience medical experts will testify that sometimes medical evidence is present in these cases and sometimes it is not.

On re-direct, Counsel testified Applicant initially admitted to kissing Victim on the forehead and then later admitted to kissing her on the lips. Counsel testified it was his word against Victim's word and there was no DNA. Counsel testified he did not know of Victim making allegations of this nature before. Counsel testified the main emphasis in attacking her credibility would have been the consumption of alcohol. Counsel testified that based on Applicant's inconsistent statements to law enforcement, serving a thirteen year old alcohol, and the text messages that Applicant's case looked bad.

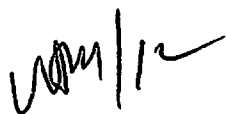
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Shelton's Testimony

Shelton, the assistant solicitor, testified she has been with the solicitor's office since 2002 and all of her practice has been in criminal law. Shelton testified she complied with Counsel's discovery motions. Shelton testified she met with Victim three times and believes the strongest evidence against Applicant would have been Victim's testimony and the text messages. Shelton testified Victim was consistent in her statements each time she talked with her. Shelton testified Victim called the number the text messages were coming from and Applicant answered the phone. Shelton testified the same phone number was also tied to Applicant in his burglary case. Shelton testified Applicant also told law enforcement he may have touched Victim's thigh. Shelton testified it was a fairly strong sex case.

Shelton testified Victim's main concern was that Applicant be on the sex offender registry. Shelton testified they did not want him to go to prison for a very long time, but they also did not want him doing this to other girls. Shelton testified she made a note in her file that she made an offer to Counsel and Counsel wanted some additional time to discuss the case with Applicant. Shelton testified she was adamant about the sex offender registration but flexible on the time Applicant would serve. Shelton testified she spoke with Counsel at least once a week regarding this case. Shelton testified they discussed the evidence against Applicant as well. Shelton testified at some point around June 2016, Counsel came back with a counter-offer for assault and battery first-degree with sex offender registration. Shelton testified Victim agreed to the counter-offer. Shelton testified the sex offender registration was always part of plea negotiations. Shelton testified she never indicated the sex offender registration would be temporary.

On cross-examination, Shelton testified her negotiations are on the record of the plea hearing. Shelton testified she does not know why the plea judge said he would have to make a finding for the sex offender registry. Shelton testified sometimes judges get in a groove with their



colloquy. Shelton testified defense attorneys typically do not share what their investigation shows. Shelton testified Victim was never inconsistent.

APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 300 S.C. 115. First, the applicant must prove counsel’s performance was deficient. Id. Under this prong, courts measure an attorney’s performance by its “reasonableness under prevailing professional norms.” Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 300 S.C. 115. With respect to guilty plea counsel, the applicant must show there is a reasonable probability that, but for counsel’s alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

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FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court viewed 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 Clerk of Court records regarding the subject convictions, guilty plea hearing transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

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

Applicant was not made aware that his plea to assault and battery first-degree would result in having to be placed on the sex offender registry.

Applicant alleges he believed he would only be on the sex offender registry while he was on probation. Applicant alleges the plea judge's colloquy confused him as the plea judge indicated he would have to make a finding regarding the sex offender registration. However, Counsel testified he went over the sex offender registration with Applicant and explained it was a lifetime registration. Shelton also testified there was never a discussion of a plea offer that did not include the sex offender registration and Applicant pled to his own counter-offer, which included the sex offender registration.

Upon review of this record, it is clear Applicant was informed by Shelton and the plea judge of the charges he was pleading to and the requirement that he be placed on the sex offender registry. (GP Tr. 5, 6, 8, 12.) It is also clear Applicant acknowledged the sex offender registration

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would be part of his plea as he initialed next to the terms of his negotiated plea on the plea waiver form. (Plea Waiver Form, p. 2.) Although Applicant testified he was confused by the plea judge's comments during his plea hearing, the record clearly shows the plea judge imposed the sex offender registration on Applicant at the conclusion of the plea and Applicant did not protest to Counsel or the plea judge or indicate to either that he was confused. (GP Tr. 12.)

This Court finds Applicant has failed to establish any deficiency on behalf of Counsel, as Counsel testified he informed Applicant he would have to be on the sex offender registry for life and Applicant still proceeded with his negotiated plea. Additionally, Applicant has failed to establish any resulting prejudice from any alleged deficiency as Applicant was clearly aware of his charges and the imposition of the sex offender registration as part of his negotiated plea prior to entering his plea. Based on the forgoing, Applicant has failed to meet his burden to establish deficiency or prejudice as set forth in Strickland and this allegation must be denied and dismissed with prejudice.

Involuntary Plea

Counsel failed to investigate the facts of the case, seek material discovery, interview witnesses that were present for the offense conduct, and advise Applicant in regards to entering the Alford plea. Applicant was deprived of an informed evaluation of his chances in proceeding to trial. Therefore, Applicant's plea was not knowingly and voluntarily entered.²

Applicant alleges Counsel was constitutionally ineffective for failing to take Applicant's case to trial. Applicant testified he met with Counsel numerous times³ and went over discovery with Counsel. Applicant testified Counsel told him if he took the plea offer he would not have to do twenty years in prison. Applicant testified he did not want to take the deal and only took it because he was frustrated with losing time at work and being told by Counsel that he could get

² This section combines #2 and #3 of Applicant's allegations.

³ On cross-examination, Applicant testified he met with Counsel more than ten times.

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twenty years in prison. Applicant testified he told Counsel and the investigator from Counsel's office that he did not have sexual contact with Victim. Applicant testified he asked Counsel to check for DNA and he does not believe that was done. Applicant testified he wished someone would have helped him go to trial. Applicant testified he wanted his wife and daughter to be called as witnesses at trial. Applicant testified this is ruining his life.

Counsel testified he filed discovery motions in this case and the State complied with those motions. Shelton also testified Counsel filed discovery motions and she complied with those motions. Counsel testified he went over discovery with Applicant and Wife. Counsel testified he would have taken Applicant's case to trial had Applicant wanted to proceed to trial. Counsel testified Applicant pled to the counter-offer they made to the State and it was Applicant's decision to plead rather than go to trial. Counsel testified there was no DNA or medical evidence in this case and, had they proceeded to trial, he would have argued that to the jury. Counsel testified it is his experience that medical experts will testify that sometimes there is medical evidence in this case and sometimes there is not. Counsel testified he believed it was in Applicant's best interest to take the plea in this case because the evidence did not look good. Counsel further testified Wife's testimony at the post-conviction relief hearing was not consistent with what she told Counsel and Counsel did not believe she would be a good witness.

A review of the record shows Applicant knew of his constitutional right to a jury trial and waived that along with his other constitutional rights during his plea. Applicant also initialed and signed a plea waiver form that further explained his right to a jury trial and other constitutional rights and Applicant, after initialing and signing the form, elected to proceed with his plea hearing.

In evaluating issues concerning guilty pleas, this Court will consider the entire record, including the transcript of the guilty plea proceeding and the evidence presented at the post-conviction relief hearing. Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000). Voluntariness of a

guilty plea is not merely determined by an examination of a specific inquiry by the plea court alone but rather is determined by the record of both the guilty plea proceeding and the post-conviction relief hearing. *Id.* In order to find a guilty plea was knowingly and voluntarily entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969). Further, “[a] guilty plea is a solemn, judicial admission of the truth of the charges” against the applicant; thus, an applicant’s right to contest the validity of such a plea is usually foreclosed. Dalton v. State, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions “made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” *Id.* (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975)); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Applicant entered a guilty plea to the contributing to the delinquency of a minor charge, but elected to enter an Alford plea to the first-degree assault and battery charge. Alford pleas are treated exactly the same as a standard guilty plea. State v. Herndon, 403 S.C. 84, 742 S.E.2d 375 (2013) (citations omitted). “A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights.” Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331–32, 737 S.E.2d 485, 485–86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)).

This Court finds Applicant has failed to establish any deficiency on behalf of Counsel as Counsel testified there was an investigator on this case and he did obtain and review discovery with Applicant and Wife. Counsel also testified he would have argued the lack of DNA or medical evidence in this case to the jury had Applicant wanted to proceed to a jury trial. However, Applicant ultimately chose to take the negotiated plea, which Counsel testified was in his best interest. Additionally, Counsel testified he did not believe Applicant had a good chance of being

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found not guilty at trial. According to Shelton's testimony, she also assessed this case as being a fairly strong case against Applicant. The record also establishes Applicant knowingly, intelligently, and voluntarily entered his plea as the plea court conducted a thorough colloquy with Applicant prior to accepting his plea and imposing the probationary sentence.

Applicant has also failed to establish any resulting prejudice from the alleged deficiency. Counsel testified he had prepared to take Applicant's case to trial for a year prior to the plea. Counsel testified it was Applicant's decision to enter his plea and, had Applicant wanted to proceed to trial, Counsel testified he would have taken Applicant's case to trial. Based on the forgoing, Applicant has failed to meet his burden to establish deficiency and prejudice as set forth in Strickland and these allegations must be denied and dismissed with prejudice.

Applicant's Military Status

Applicant testified Counsel told him he would talk to someone at the Department of Veteran's Affairs to see if Applicant's plea would affect his military status. Applicant testified the next time he met with Counsel, Counsel told him his plea would not affect his military status. Applicant testified he relied on that information and, had he known it would have affected his status, he would not have taken the plea.

Counsel testified he did reach out to a friend of his at the Department of Veteran's Affairs to see if Applicant would be discharged because of his plea and Counsel testified his friend did not know the answer. Counsel testified he did not provide Applicant any advice regarding the impact his plea would have on his military status because he did not know how the plea would impact his military career. Counsel testified whether the military was going to discharge Applicant or not was a collateral consequence of Applicant's plea and he provided him no advice on the matter. Counsel further testified Applicant told him he spoke to someone at the National Guard and assured Counsel he would be fine going forward with his plea. Counsel testified any

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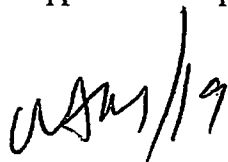
misunderstanding regarding Applicant's military status came from Applicant's own investigation into the matter with the National Guard.

Plea counsel is not required to specifically advise a defendant of a collateral consequence of a plea, but when counsel undertakes to give advice on a collateral consequence and that advice is erroneous, grounds exist for post-conviction relief. See Smith v. State, 329 S.C. 280, 283, 494 S.E.2d 626, 628 (1997); Hinson v. State, 297 S.C. 456, 458, 377 S.E.2d 338, 339 (1989) (finding plea counsel ineffective for giving incorrect advice regarding parole eligibility). However, the applicant must prove he relied on the misinformation to receive post-conviction relief. Frasier, 351 S.C. at 389, 570 S.E.2d at 174–75 (citing Smith, 329 S.C. 280, 494 S.E.2d 626; Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)).

This Court finds Counsel did not advise Applicant as to the impact his plea would have on his military status. Applicant has failed to show this Court any deficiency on behalf of Counsel as Counsel did not misrepresent the impact the plea would have on Applicant's military career. Additionally, Applicant has failed to show this court any resulting prejudice from the alleged deficiency as Applicant, who was currently in the National Guard at the time of his plea, researched the impact of his plea with the National Guard and told Counsel he would not be discharged as a result of his plea. Any misunderstanding regarding the impact of his plea on his military career was based on information Applicant obtained on his own from the National Guard, not Counsel. Therefore, this Court finds Applicant has failed meet his burden as set forth in Strickland and this allegation must be denied and dismissed with prejudice.

CONCLUSION

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



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

IT IS THEREFORE ORDERED THAT:

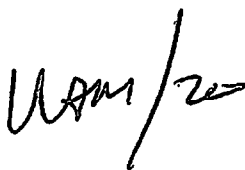
1. The application for post-conviction relief is denied and dismissed with prejudice.

AND IT IS SO ORDERED this 3 day of September, 2019.

 #2761

WILLIAM A. MCKINNON
Presiding Judge
Sixteenth Judicial Circuit

York, South Carolina



WITNESSES

YPD

Witnessing Officer: *Hoffman*

ARREST WARRANT NUMBER

2015A4620500075

ACTION OF GRAND JURY

TRUE BILL

Joseph Fawcett
Foreperson of Grand Jury
Date: *1-21-16*

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2016-GS46-00216

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JANUARY 21, TERM 2016

THE STATE

VS.

CHRISTOPHER DAVID TISON

INDICTMENT FOR

**CRIMINAL SEXUAL CONDUCT WITH A
MINOR, SECOND DEGREE**

SC Code: § 16-03-0655(B)(1)
CDR Code: 0396

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

[Signature]
Defendant

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

AFB
ASSAULT + BATTERY 1st

[Signature]
Defendant

Witness:

[Signature]
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

CERTIFIED TRUE COPY
2016 APR 24 PM 4:25

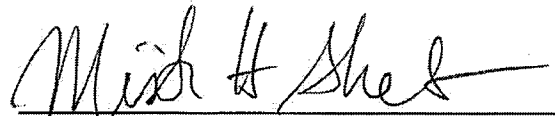
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on January 21, 2016, the Grand Jurors of York County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, SECOND DEGREE

The defendant, Christopher David Tison, did on or about March 28, 2015, in York County, South Carolina, commit the crime of Criminal Sexual Conduct with a Minor in the Second Degree by engaging in a sexual battery with a minor, [REDACTED] (D.O.B. [REDACTED] 2001) who is fourteen (14) years of age or less but who is at least eleven (11) years of age. All in violation of 16-03-0655(B)(1), *South Carolina Code of Laws* (1976, as amended).

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



MISTI H. SHELTON
ASSISTANT SOLICITOR

WITNESSES

YPD

Witnessing Officer: *Hoffman*

ARREST WARRANT NUMBER

2015A4620500074

ACTION OF GRAND JURY

TRUE BILL

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2016-GS46- 00215

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JANUARY 21, TERM 2016

THE STATE

VS.

CHRISTOPHER DAVID TISON

INDICTMENT FOR

**CONTRIBUTING TO THE DELINQUENCY
OF A MINOR**

SC Code: § 16-17-0490
CDR Code: 0048

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

Defendant

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

X [Signature]
Defendant

Witness:

[Signature]
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

CERTIFIED TRUE COPY INDICTMENT

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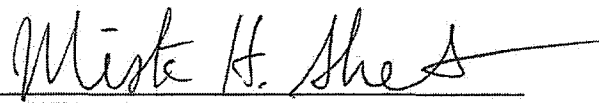
DAVID HAMILTON
CLERK OF COURT

At a Court of General Sessions, convened on January 21, 2016, the Grand Jurors of York County present upon their oath:

CONTRIBUTING TO THE DELINQUENCY OF A MINOR

The defendant, Christopher David Tison, did in York County, on or about March 28, 2015, knowingly and willfully encourage, aid, or cause [REDACTED] a minor, to so deport himself or herself as to willfully injure or endanger his or her morals or the health of others or violate a law or municipal ordinance, all in violation of Section 16-17-0490, *Code of Laws of South Carolina* (1976, as amended).

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


MISTI H. SHELTON
ASSISTANT SOLICITOR