

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County

Honorable Larry B. Hyman, Circuit Court Judge

BILLY L. ALFORD,

PETITIONER

V.

STATE OF SOUTH CAROLINA (2),

RESPONDENT

APPELLATE CASE NO 2018-001430

APPENDIX

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S.C. SUPREME COURT

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ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2011-GS-26-02121

THE STATE OF SOUTH)
CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

November 9, 2011

BILLY LEON ALFORD,)

Defendant.)

B E F O R E:

Honorable Edward B. Cottingham
Horry County Courthouse
Conway, South Carolina

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

J. Stephen Grooms, Esquire
Attorney for Plaintiff

Paola C. Pinzon, Esquire
Attorney for Defendant

Kay H. Richardson, CVR
Circuit Court Reporter

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15 (There were no exhibits marked during the hearing.)

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State v. Alford - 2011-GS-26-02121 - (November 9, 2011) 3
BY MR. GROOMS

1 (November 9, 2011)

2 BILLY LEON ALFORD, HAVING BEEN SWORN:

3 MR. GROOMS: Your Honor, this is the State v Billy Leon
4 Alford, true billed, 2011-GS-26-02121. This was set for the
5 trial docket. As I understand, the Defendant is now ready to
6 plead. The victims in this case are here, Your Honor, and
7 they may wish to speak.

8 THE COURT: Is the victim here?

9 MR. GROOMS: Yes, sir, Your Honor.

10 THE COURT: She wish to be heard?

11 MR. GROOMS: Yes, Your Honor.

12 THE COURT: All right. Give me the allegations here
13 giving rise to the indictment, please.

14 MR. GROOMS: Your Honor, the victim in this case, Ms.
15 Miller, met the Defendant through an on-line dating site,
16 Christian on-line dating site. I believe they went out a time
17 or two, they did meet. The victim reluctantly but did meet
18 the Defendant as he asked her to do in the Riverwalk area
19 section of Conway. At that time, he confronted her about
20 stringing him along, whatever that meant, and became angry
21 with her for stringing him along, did strike the victim
22 several times in the face. She was able to flee at that
23 point. She did receive medical attention and we believe that
24 it's only through the grace of God that these injuries were
25 not more serious than they were.

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BILLY LEON ALFROD - BY THE COURT

1 THE COURT: You at pretrial -- we've had several
2 pretrials in connection with this. You presented to me some
3 photos. May I see those?

4 MR. GROOMS: Yes, sir, Your Honor.

5 THE COURT: And counsel for the defense, you've had an
6 opportunity to see these photographs?

7 MS. PINZON: I did, sir.

8 THE COURT: Mr. Defendant, as I look at these
9 photographs, let me make some inquiry of you, please.
10 You are charged with second offense, assault and battery
11 upon this victim whose photos I hold in my hand. Are you
12 pleading guilty to that charge?

13 MR. ALFORD: Yes, sir, Your Honor.

14 THE COURT: Talk a little louder can she can hear you,
15 please.

16 MR. ALFORD: Yes, sir, Your Honor.

17 THE COURT: You are pleading freely and voluntarily to
18 burglary -- to assault and battery in the second degree?

19 MR. ALFORD: Yes, sir, Your Honor.

20 THE COURT: And you are saying to me that it was your
21 actions that inflicted this severe bruise upon this
22 unfortunate victim; is that what I hear you say?

23 MR. ALFORD: Yes, sir, Your Honor.

24 THE COURT: All right. Do you understand that in my
25 discretion, I could've put you in jail for three years?

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BILLY LEON ALFROD - BY THE COURT

1 MR. ALFORD: Yes, sir, Your Honor.

2 THE COURT: You are saying to me in her presence and my
3 presence, that your plea is guilty?

4 MR. ALFORD: Yes, sir, Your Honor.

5 THE COURT: That you are guilty?

6 MR. ALFORD: Yes, sir, Your Honor.

7 THE COURT: That such a plea is freely and voluntarily
8 made?

9 MR. ALFORD: Yes, sir, Your Honor.

10 THE COURT: Nobody has threatened you to get you to
11 plead?

12 MR. ALFORD: No, sir, Your Honor.

13 THE COURT: Nobody has promised you anything other than
14 the fact that since you've been in jail for seven months, I'm
15 going to give you a time-served sentence?

16 MR. ALFORD: Yes, sir, Your Honor.

17 THE COURT: This is a serious charge. It will be on your
18 record, you understand that?

19 MR. ALFORD: Yes, sir, Your Honor.

20 THE COURT: Now, there was some indication that you
21 wanted a jury trial, which is perfectly proper. I brought a
22 jury, got a jury standing by to come up here and give you a
23 trial if you want one and you are presumed innocent and they
24 would have to prove you guilty beyond a reasonable doubt, you
25 understand that?

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BILLY LEON ALFROD - BY THE COURT

1 MR. ALFORD: Yes, sir, Your Honor.

2 THE COURT: If I accept your plea, you are saying to me,
3 I understand my presumption of innocence, I understand my
4 rights to trial by jury, I understand my right to confront the
5 witnesses against me, I understand my right to testify on my
6 own behalf but I wish to waive these proceedings and plead
7 guilty; is that what I hear you say?

8 MR. ALFORD: Yes, sir, Your Honor.

9 THE COURT: You understand fully now, if even at this
10 moment you said to me, Judge, I changed my mind, I want a
11 trial, I'd bring that jury up and give you a trial in the next
12 fifteen minutes. You understand that, don't you?

13 MR. ALFORD: Yes, sir, Your Honor.

14 THE COURT: You have any questions about what I'm saying
15 to you?

16 MR. ALFORD: No, sir, Your Honor.

17 THE COURT: I didn't think so.

18 Anything else you want to tell me?

19 MR. GROOMS: Your Honor, I just -- the victim would like
20 to speak.

21 THE COURT: I thought you said she did not?

22 MR. GROOMS: No, sir, she would. I apologize.

23 THE COURT: Okay. I'll be glad to hear from you. She's
24 entitled to it.

25 Let her speak in the microphone.

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STATEMENT BY MS. MILLER

7

1 MR. GROOMS: Your Honor, this is Ms. Miller.

2 THE COURT: Yes, ma'am?

3 MS. MILLER: I am scared to death of him. He -- that
4 night that this happened, I never seen evil before until I saw
5 it in his eyes.

6 THE COURT: Let me ask you this: Have you had any
7 difficulty with him since this occurred? He's been in jail,
8 has he not?

9 MS. MILLER: No. I'm talking about ---

10 THE COURT: Have you been in jail or not?

11 MS. PINZON: Yes, sir, for seven -- for what, seven
12 months, Your Honor.

13 THE COURT: I'm curious. This is the problem we have --
14 I see it all the time -- in young couples such as you two
15 getting together on the Internet. Is that what happened?

16 MS. MILLER: We started off talking on the Internet.
17 Then we realized that we had mutual acquaintance of friends so
18 we -- you know, I felt at that time, I felt okay because at
19 least, you know, I knew somebody, you know, a couple of people
20 that he knew so I wasn't -- I mean, I felt safe.

21 THE COURT: I'm gonna take care of the fact that he will
22 have no further contact with you in any way; is that your
23 concern?

24 MS. MILLER: Yeah.

25 THE COURT: You understand he's been in jail for seven

State v. Alford - 2011-GS-26-02121 - (November 9, 2011)
BY THE COURT

8

1 months.

2 MS. MILLER: Right.

3 THE COURT: Mr. Defendant, where do you live, please?

4 MS. MILLER: Where do I live? In Conway.

5 THE COURT: Pardon me?

6 MS. MILLER: Conway.

7 THE COURT: Conway?

8 MS. MILLER: Yeah.

9 THE COURT: And where is your home, please?

10 MR. ALFORD: Socastee, Surfside.

11 THE COURT: Socastee. Have you been in jail since this
12 incident occurred?

13 MR. ALFORD: Not since the incident. I was out -- I was
14 out -- I was out seven days prior to being arrested.

15 THE COURT: And he's been in jail about seven months?

16 MS. PINZON: Yes, sir, Your Honor.

17 THE COURT: Is there any reason on this earth that you
18 have to see or contact her in any way?

19 MR. ALFORD: No, sir, Your Honor.

20 THE COURT: If I accept this plea, do I have your
21 assurances that you will not contact her, write her, telephone
22 or remit anybody to do it on your behalf?

23 MR. ALFORD: I have no problem with that, sir.

24 THE COURT: Including in that, you would not ride by her
25 house, go by her place of employment?

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SENTENCE OF THE COURT

9

1 MR. ALFORD: I have no problem with that, sir.

2 THE COURT: All right. Now, I'm gonna tell you, if I
3 conclude -- I don't think you will, I believe what you're
4 saying but I've been mistaken before. If I find out that you
5 have contacted her or permitted anybody to contact her on your
6 behalf, I'm gonna bring you back in this courtroom, deal with
7 you for contempt of court and for other matters too, you
8 understand that?

9 MR. ALFORD: Yes, sir, Your Honor.

10 THE COURT: You are telling me under oath that you're
11 gonna leave her alone?

12 MR. ALFORD: Yes, sir, Your Honor.

13 THE COURT: If you conclude that you did not, that's
14 perjury; you understand?

15 MR. ALFORD: Yes, sir.

16 THE COURT: And it would be a most -- I don't suggest
17 that you will, don't misunderstand me, but in fairness to you,
18 I'm required to tell you the consequences of your disobeying
19 my order.

20 MR. ALFORD: Amen.

21 THE COURT: Does that -- do you understand what I've
22 said?

23 MS. MILLER: Yes, sir.

24 THE COURT: I don't anticipate frankly any further
25 problems but if you do in any way, you call that young

State v. Alford - 2011-GS-26-02121 - (November 9, 2011) 10
SENTENCE OF THE COURT

1 gentleman -- (To Mr. Grooms) Give her your card. (To Ms.
2 Miller) You call him and I'll deal with it.

3 MS. MILLER: Okay.

4 THE COURT: And I am concerned as I go around the state
5 seeing what's happening by young people getting together on
6 the Internet. Be careful with that.

7 Anything further?

8 MS. PINZON: No, sir, Your Honor.

9 MR. ALFORD: I would like to apologize for my actions and
10 ---

11 THE COURT: Well, I appreciate you doing that. That's --
12 thank you. I don't need to hear it but I ---

13 MS. PINZON: No, sir. We're fine with that.

14 THE COURT: Let me say this to you. I recognize this is
15 your first case.

16 MS. PINZON: Yes, sir.

17 THE COURT: And I've been impressed with your diligence
18 and going forward. We had a pretrial motion and she had a
19 pocketful of motions. I didn't grant any of them, but she had
20 them. But she had prepared and I was impressed with that.

21 SENTENCE OF THE COURT:

22 THE COURT: All right. I'll go on the sentence of
23 eighteen months. I'm gonna suspend it on time served.

24 MS. PINZON: Thank you, sir.

25 THE COURT: Tell you to have a good day and do not under

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SENTENCE OF THE COURT

1 any circumstances go about this young lady.

2 MS. PINZON: Thank you, sir, Your Honor. Thank you.

3 (Adjourned.)

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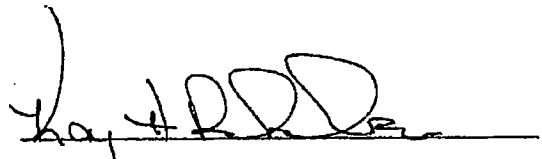
ORIGINAL

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CERTIFICATE OF COURT REPORTER

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the plea held in the case of The State versus Billy Leon Alford, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on November 9, 2011.

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



Kay H. Richardson, CVR

Official Reporter

September 21, 2012.

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Billy Leon Alford)

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2015 CP26 7716

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legally 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 Kershaw Corr. Inst.
2. Name and location of Court which imposed sentence Horry County Courthouse
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) 2012GS260222
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) November 9th, 2012 - 18 mon. - Time Served
 - (b) _____

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere ✓ _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Court of Appeals
- ii. Court of Common Pleas 15th Cir Post Conviction Relief
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied due to untimely response 11/12
- ii. Dismissed for Failure to Prosecute 3/12
- iii. _____
- (c) the date of each such result:
- i. See (b) i., ii.
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of PCR Counsel
- (b) _____
- (c) _____

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

PCR

- (a) Failure to protect my rights pursuant to the South Car.
- (b) PCR Act, 12-27-20-120. Specifically S.C. Code Ann §
- (c) 17-27-90 right to present all grounds in a PCR

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

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

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

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

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

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

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

(a) the name and address of each attorney who represented you:

i. Mr. Paola Pinzon, Public Defender 203 Laurel St. Conway SC.

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

Related Appeal

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

No

20¹⁵ CP26 7716

STATE OF SOUTH CAROLINA)

County of Lancaster)

VERIFICATION

I, Billy L. Alford, 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.

Billy L. Alford

SWORN to and subscribed before me this 19th
day of October, 2015.

Catherine A. Chmura (L.S.)
Notary Public

My Commission Expires: December 23, 2015

FILED
CLERK OF COURT
2015 OCT 27 AM 10:08
JANIE HUGHES-WARD
LANCASTER COUNTY

2015 CP26 7714

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

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

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

Billy L. Afford
Applicant

SWORN or affirmed to and subscribed before me this
19th day of October, 2015.

Cathie A. Emora
Notary Public

My Commission Expires: December 22 2018

FILED
HARRIS COUNTY
2015 OCT 27 AM 10:08
MELANIE HUGGINS-WARD
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
	)	2015-CP-26-7716
Billy L. Alford,	)	
S.C.D.C. No. 285850	)	
	)	RETURN AND MOTION TO DISMISS
v.	)	
	)	
State of South Carolina	)	
	)	
Defendant.	)	

In response to the application for post-conviction relief filed by Billy L. Alford (Applicant) on October 27, 2015 ("the Application"), Respondent would show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court on unrelated charges. On April 4, 2011, the Conway Police Department charged Applicant with Assault and Battery in the Second Degree (I-218434). Applicant was thereafter indicted by the Horry County Grand Jury on June 30, 2011 for the same (2011-GS-26-2121). Paola Pinzon represented Applicant on the charges. On November 9, 2011, Applicant entered a plea of *nolo contendere* to the charges as indicted. The Honorable Edward B. Cottingham sentenced Applicant to eighteen (18) months confinement.

Applicant filed a notice of appeal on December 2, 2011; the South Carolina Court of Appeals subsequently dismissed that appeal as untimely. Applicant filed a letter on February 21, 2012 requesting his appeal be reinstated, which was denied by the Court on March 26, 2012. The Remittitur was returned to the circuit court on June 12, 2012.

Applicant filed his first Application for Post-Conviction Relief from the 2011-GS-26-2121 on July 27, 2012 (2012-CP-26-5785). Respondent made its return on October 7, 2012. An

evidentiary hearing into the matter was convened on December 16, 2013 before the Honorable Steven H. John. Applicant was represented by Russell B. Long, Esq. Joshua Thomas, of the South Carolina Attorney General's Office, represented Respondent. Applicant failed to appear at the hearing and the matter was continued to permit Respondent to file a motion to dismiss. Respondent so moved, and Judge John denied and dismissed that application for PCR in an order dated April 10, 2014.

Applicant filed a notice of appeal from 2012-CP-26-5785 on April 15, 2015, but dated it April 9, 2014. Upon request for clarification from the South Carolina Supreme Court, Applicant submitted another certification of service dated May 7, 2015. On May 20, 2015, the Supreme Court denied the appeal as untimely. Alford v. State, S.C. Sup. Ct. Order dated May 20, 2015. The Remittitur was returned on June 5, 2015.

II.

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

1. "Ineffective Assistance of PCR Counsel"
 - a. "Failure to protect my rights pursuant to the South Car. PCR Act, 12-27-20 -120. Specifically S.C. Code ann. § 17-27-90 Right to present all grounds in a PCR

Applicant requests relief as follows (verbatim):

- "Belated Appeal"

Attached to and incorporated herein are the Horry County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the final order of Applicant's previous PCR action(s), and the records of this current PCR action. Respondent reserves the right to amend this Return upon receipt of relevant information.

III.

A.

The Application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(a).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, 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.”

The Applicant was convicted on November 9, 2011 and that conviction remitted from the South Carolina Court of Appeals on June 12, 2012. The current application was not filed until October 27, 2015 – well after the one-year statutory filing period expired. Therefore, the Application should be summarily dismissed as barred by the statute of limitations.

B.

The Application for Post-Conviction Relief should also be summarily dismissed because it is successive to Applicant’s previous PCR application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent

application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised ... in the previous application." Id. at 450, 409 S.E.2d at 394. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Ineffective assistance of PCR counsel is not a ground for relief and not a sufficient claim to warrant a successive application. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722 (1991). Once a PCR applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of PCR counsel. Aice, 305 S.C. at 452, 409 S.E.2d at 395.

The South Carolina Supreme Court held the PCR rules “contemplate an adjudication on the merits of the original petition, one bite at the apple as it were.” Aice, 305 S.C. at 452, 409 S.E.2d at 395 (citing Gamble v. State, 298 S.C. 176, 178, 379 S.E.2d 118, 119 (1989)). The court also noted, “[f]inality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice.” Id. at 451, 409 S.E.2d at 395. Aice further held that “the contention that prior PCR counsel was ineffective is not *per se* a ‘sufficient reason’ allowing for a successive PCR application under § 17-27-90.” Id. at 452, 409 S.E.2d at 394. Applicant’s contention that prior PCR counsel was ineffective is not a sufficient reason warranting a successive PCR application. Thus, Applicant has failed to show that a successive application is appropriate.

Furthermore, Applicant’s current allegations were or could have been raised in the proceedings based on Applicant’s prior applications for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous applications for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him. *See again* Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

Therefore, the Application should be summarily dismissed as successive to Applicant’s previous PCR applications.

IV.

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

V.

WHEREFORE, Respondent moves to summarily dismiss the application because it is successive to his previous application.

Respectfully submitted,

ALAN WILSON
Attorney General

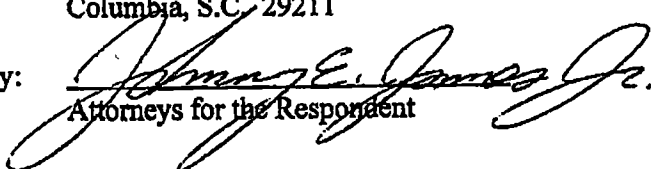
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By:


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Columbia, South Carolina

May 5, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

BILLY L. ALFORD, #285850)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2015-CP-26-7716

AFFIDAVIT OF SERVICE BY MAIL

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

**Billy Lee Alford, #285850
Kershaw Corr. Inst.
4848 Goldmine Highway
Kershaw, SC 29067**

DATED this 5TH day of May, 2016


Norma Bigbee, Legal Assistant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	2015-CP-26-07716
BILLY L. ALFORD,	)	
Applicant,	)	Transcript of Record
vs.	)	(Post-Conviction Relief)
	)	May 24, 2018
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	

B E F O R E:

Honorable Larry B. Hyman, Jr.
Horry County Courthouse
Conway, South Carolina

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

James K. Falk, Esquire
Attorney for Applicant

Johnny E. James, Jr., Esquire
Attorney for Respondent

Kay H. Richardson
Circuit Court Reporter

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BY THE COURT

3

1 MAY 24, 2018 - 10:37 A.M.

2 BY THE COURT:

3 MR. JAMES: All right. Your Honor, this may take a
4 moment, because some of the procedural history in this matter
5 is a bit circuitous.

6 THE COURT: All right.

7 MR. JAMES: Just to bring to opposing counsel's
8 attention, in the packet of materials handed up, I have also
9 included the original application of Mr. Alford's first
10 application for relief in 2012-CP-26-5785, as well as the
11 state's original return to that application and I'll explain
12 everything now.

13 Your Honor, this is the matter of Billy Leon Alford v.
14 State of South Carolina, 2015-CP-26-07716. Mr. Alford is
15 present here in the courtroom today and is represented by Mr.
16 James K. Falk, Esquire. This arises out of the April 2011
17 charge for assault and battery in the second degree, followed
18 up by an indictment for the same on June 2011. Paola Pinzon,
19 who is present here in the courtroom today, represented Mr.
20 Alford on that charge. On November 9th, 2011, Mr. Alford
21 entered a plea of no contest to the charges as indicted and
22 the Honorable Edward B. Cottingham sentenced him to 18 months
23 confinement. He thereafter filed a notice of appeal, which
24 was then dismissed as untimely. He sought to reinstate this
25 appeal but that was denied by the Court in March 2012. The

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BY THE COURT

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1 matter was remittited of June 12, 2012. He filed his first
2 application for post-conviction relief on July 27th 2012.
3 That was docket number 2012-C-26-5785.

4 THE COURT: When was the remittitur?

5 MR. JAMES: The remittitur was June 12, 2012.

6 THE COURT: Okay. And he filed his first application
7 when?

8 MR. JAMES: October 7th, 2012.

9 THE COURT: Okay. So, that was within the statutory
10 time, right?

11 MR. JAMES: That was timely filed, Your Honor, yes.

12 THE COURT: Okay. And how are we now here in 2018?

13 MR. JAMES: I'm getting there, Your Honor.

14 THE COURT: Okay.

15 MR. JAMES: An evidentiary hearing into that matter was
16 convened on December 16 before the Honorable Steven H. John.
17 At that time, Mr. Alford was represented by Russell Long,
18 Esquire. Mr. Alford failed to appear at the hearing and the
19 matter was continued to permit the state to file a motion to
20 dismiss. State did so move and, at a subsequent hearing,
21 Judge John denied it, dismissed the application for relief in
22 an order dated April 10, 2014. Mr. Alford thereafter filed a
23 notice of appeal. It was later thrown out as untimely and the
24 remittitur was returned on June 5th, 2015.

25 Your Honor, at the previous term of court before the

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BY THE COURT

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1 Honorable Steven H. John -- give me just one moment so I can
2 find my proper record on this -- in this regard. Mr. Alford
3 followed up by filing a second application for relief on
4 October 27th, 2015. The state thereafter filed a return and
5 motion to dismiss made by myself on May 5th, 2016 and that
6 resulted in a conditional order of dismissal dismissing the
7 application as untimely and successive.

8 THE COURT: All right. Now, what was that dated? That
9 was ---

10 MR. JAMES: The return and motion to dismiss was made May
11 5th, 2016.

12 THE COURT: Okay.

13 MR. JAMES: The conditional order of dismissal was
14 clocked May 23rd, 2016 and that was signed by the then Chief
15 Admin Judge for Common Pleas, William H. Seals, Jr.

16 Mr. Alford thereafter replied to the conditional order of
17 dismissal to set forth reasons why it should not be made
18 final.

19 THE COURT: After the final order was signed?

20 MR. JAMES: After the conditional order was signed.

21 THE COURT: All right. Okay.

22 MR. JAMES: Before any proposed final order was ever
23 submitted.

24 THE COURT: Okay. In that response to the conditional
25 order, he stated in part that on the day when he was found to

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BY THE COURT

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1 not be present and the motion for failure to prosecute was
2 first raised, he was actually in fact at the courthouse but he
3 was in lockup at the time and that nobody had come back to
4 retrieve him for his hearing and that he was thereafter
5 returned to the prison without ever having had his hearing.

6 On follow-up on that at a much later date, Your Honor, I
7 managed to get in contact with J. Reuben Long and they
8 provided a copy of the jail log book from March 20th, 2014,
9 which was the first day where he was alleged to have not
10 appeared. And much to my considerable surprise, a -- that log
11 book indicated that Mr. Alford was in fact in custody at that
12 time unbeknownst to his counsel or the state, was transported
13 to the courthouse and then was transported back from the
14 courthouse. Accordingly, at the last term of court before the
15 Honorable Steven H. John, the state moved to vacate the
16 conditional order of dismissal as it was not appropriate to
17 find the application was untimely and successive where he was
18 previously dismissed to failure to appear when he actually was
19 here. And the Honorable Steven H. John signed that order
20 vacating the conditional order of dismissal and appointed Mr.
21 Falk as counsel.

22 So, Your Honor, this has been a long and winding road ---

23 THE COURT: So, we go back to the 2014 PCR?

24 MR. JAMES: We are still under the docket number for the
25 2015 PCR, Your Honor. However, the state's position is that

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BY THE COURT

7

1 ---

2 THE COURT: But that would've been ---

3 MR. JAMES: --- is most procedurally efficient to simply
4 recognize that the time bars and the successive bars are not
5 appropriate where he was prevented from actually arguing his
6 original claims at his first PCR. So, my understanding today
7 is that he wishes to go forward on the allegations from his
8 first application for post-conviction relief.

9 THE COURT: And that would be 2014?

10 MR. JAMES: That would be the 2012, I believe.

11 THE COURT: Okay. The remittitur wasn't until ---

12 MR. JAMES: The remittitur was returned June 5th ---

13 THE COURT: --- 2012, June of 2012, right?

14 MR. JAMES: The remittitur from the original direct
15 appeal was June 2012; yes, Your Honor.

16 THE COURT: Okay. And he filed ---

17 MR. JAMES: He timely filed the first application for
18 relief.

19 THE COURT: In Oct ---

20 MR. JAMES: In October 2012.

21 THE COURT: Yeah, October 2012. All right. So, that was
22 the one that he appeared but somehow they lost him, right?

23 MR. JAMES: He was, I guess, back there and nobody
24 realized.

25 THE COURT: Okay. So, now, we are essentially

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BILLY ALFORD - DIRECT BY FALK

8

1 disregarding what's transpired in the meantime and we're going
2 back to that original PCR?

3 MR. JAMES: Under the current PCR docket number, yes,
4 Your Honor.

5 THE COURT: Is that right, Mr. Falk?

6 MR. FALK: That's my understanding, Yes, Your Honor.

7 THE COURT: Okay. All right.

8 MR. JAMES: And so with that procedural history set
9 forth, Your Honor, I would give the floor over to Mr. Falk.

10 THE COURT: All right, Mr. Falk.

11 MR. FALK: One moment, Your Honor.

12 I'd call Mr. Alford to the stand.

13 CLERK: Raise your right hand.

14 MR. ALFORD: I don't swear, I don't do that but I do
15 affirm to tell the truth, the whole truth and ---

16 CLERK: Raise your right hand.

17 BILLY ALFORD, HAVING BEEN DULY SWORN,

18 TESTIFIED AS FOLLOWS:

19 MR. ALFORD: I affirm to tell the truth; yes, ma'am.

20 CLERK: Have a seat and state your name for the Court.

21 MR. ALFORD: Billy Alford.

22 DIRECT EXAMINATION OF BILLY ALFORD BY MR. FALK:

23 Q: Mr. Alford, would you spell your last name?

24 A: A-L-F-O-R-D.

25 Q: Okay. Can the court reporter hear?

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BILLY ALFORD - DIRECT BY FALK

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1 Can you maybe speak -- come a little closer to the mic.

2 All right. Mr. Alford, just because of the sort of the
3 elaborate procedure as to how we got here, why don't you
4 explain what your claims for ineffective assistance of
5 counsel, why don't you just tell me specifically what you
6 think your trial -- let me back up with one question. Who
7 represented you on these charges?

8 A: I'm not familiar with the first -- I can't remember the
9 first attorney, but they had ---

10 Q: Were you represented by the public defender's office?

11 A: Yes, yes, sir.

12 Q: Okay. And so now, and that's the Horry County Public
13 Defender's office; is that correct?

14 A: Horry County, yes, sir.

15 Q: Okay. And what did they do that felt was ineffective in
16 representing you prior to your plea?

17 A: Well, first of all, I filed for a motion for dismissal
18 due to the fact that they had initially charged me with a
19 simple assault. And then like five or six days later they
20 enhanced the charge to a second degree assault. In their
21 enhancement, they never stipulated the reasons for ---

22 THE COURT: What did your attorney do? Not what the
23 state did.

24 A: Well, that's what I'm trying to explain.

25 THE COURT: Okay.

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BILLY ALFORD - DIRECT BY FALK

10

1 Q: Did you ask your attorney to try and quash the second
2 indictment?

3 A: The second indictment?

4 Q: You said there was another indictment ---

5 A: No, that was the initial was a -- it was a misdemeanor
6 charge and then they enhanced it to a criminal ---

7 THE COURT: He was indicted on the greater offense.

8 A: Right.

9 Q: I'm sorry. Did you ask them to quash the indictment?

10 A: Yes, sir. Which there was never an indictment. There
11 wasn't an indictment till later one, but I asked for a motion
12 for dismissal.

13 Q: Okay.

14 A: And they refused to file for a motion of dismissal. I
15 filed for a ineffective attorney and they first denied it and
16 then after they seen that they was up against a daggone
17 whatever, they ended up giving me Orrie West, which was the
18 head of the public defender's office. Then once they
19 discovered that they had made error, they went outside of the
20 public defender's office and appointed an outside counsel so
21 that they could put all their, you know what they had already
22 done conjunctive, they put it in her hands.

23 Q: Without trying to describe any motives here, I just want
24 to sort of focus on so you had concerns about their handling
25 of your charges and not motion to dismiss?

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BILLY ALFORD - DIRECT BY FALK

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1 A: Yes, sir.

2 Q: Did you have any concerns about the investigation they
3 did on the case?

4 A: Yes, sir.

5 Q: And what are those concerns?

6 A: Well, there was never an investigation. I mean, they --
7 once they discovered -- had the evidence to prove that the
8 accusations against me was false, they went and ---

9 THE COURT: Who is they, Mr. Alford?

10 A: The public defender's office.

11 Q: Okay. Now, you're saying the accusations are false and
12 that's because you had a -- in effect an alibi or some sort;
13 is that not correct? You were actually on the telephone
14 actually with the victim at the time of the alleged incident?

15 A: Right.

16 Q: That's what I'm trying to get to.

17 And, Your Honor, if I may just lead him just a little
18 bit?

19 THE COURT: Please.

20 Q: And so it is really your belief that had they properly
21 gotten your Verizon phone records -- did you ask them to get
22 your phone records?

23 A: They had subpoenaed the phone records, had received those
24 phone records.

25 Q: And that was at your request?

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BILLY ALFORD - DIRECT BY FALK

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1 A: At my request.

2 Q: Okay. And why did you want your phone records? What did
3 you think that would show?

4 A: Because I knew that my phone records would prove that the
5 -- the affidavit against me was false. It was a fake ---

6 Q: And how would it show that?

7 A: Due to the fact that what was written in the statement
8 was contrary to what phone records would show as far as the
9 location of each ---

10 Q: Okay. And then -- so let's -- so, what was -- so, she
11 alleged that she assault you [sic] in what city? When did the
12 assault supposedly take place?

13 A: It was supposed to have been around 9:30 on March the
14 29th at the Conway Riverwalk.

15 Q: Okay. That's here in town?

16 A: Yeah, that's right here.

17 Q: And where were you at that time? Were you in Conway or
18 ---

19 A: I was in Socastee.

20 Q: Okay.

21 A: I was off on Forestbrook Road at my nephew's house.

22 Q: Okay. And what -- who was your accuser? Who is the
23 alleged victim in this case? What's her name?

24 A: Melissa -- I can't remember. I don't ---

25 Q: And how did you think that the phone records were going

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13

- 1 to show that the people weren't in the same place at the time,
2 because you're saying that the phone records would show that
3 you were in one city and your accuser was in the other city?
4 Is that fair?
- 5 A: Yes, sir.
- 6 Q: Okay. And -- how would they show that? How would that
7 be on your phone record?
- 8 A: Well, in the readout of the phone record, it's ---
- 9 Q: Were you on the phone with her at the time?
- 10 A: Well, I had been on the phone with her successive times
11 at that time.
- 12 Q: Do you recall what her telephone number was?
- 13 A: No, sir.
- 14 Q: Okay. What's your telephone -- what's your cell phone
15 number?
- 16 A: At that time it was 843 ---
- 17 Q: Would your phone records help refresh your memory?
- 18 A: Was ---
- 19 MR. FALK: May I approach, Your Honor?
- 20 THE COURT: Yes.
- 21 A: 26 -- 62 -- 843-625-2523.
- 22 Q: All right. Now, you recently sent me your Verizon
23 telephone records; is that correct?
- 24 A: Yes, sir.
- 25 Q: How did you get those?

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BILLY ALFORD - DIRECT BY FALK

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1 A: I had to contact Verizon and request that they send me a
2 copy of those phone statements from that time.
3 Q: And you have those?
4 A: Yes, sir.
5 Q: Okay. And what you had sent me was something that says
6 Page 40 of 68 and Page 41 of 68.
7 A: Yes, sir.
8 Q: Okay. And can you specifically point to me on these
9 records what you think is the proof that y'all were in
10 different places at the time?
11 A: Repeat that, please, sir.
12 Q: That was a bad question. You sent me these records and
13 what specifically on these records shows, do you think shows
14 that you were -- and the victim were in separate cities at the
15 time of the alleged event?
16 A: Well, if you notice on Page what is called 40 of 68, you
17 will see that on the 29th, let's see, the 29th of -- at
18 approximately 9:00, 9-something.
19 Q: All right. So, I'm looking at Page 40 of 68 and I see,
20 on 3/29, I see a call at 9:09, 9:10, 9:13; is that where you
21 are?
22 A: Yeah, 9:13, 9:20.
23 Q: Okay. And they are originating in Surfside?
24 A: Surfside.
25 Q: And is that where -- is that where Socastee is?

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BILLY ALFORD - DIRECT BY FALK

15

1 A: Well, no, sir. Socastee is where I was at.
2 Q: Okay. So, these are showing incoming calls?
3 A: Yes, sir.
4 Q: Okay.
5 A: Well, no, actually, that's right, I was in Surfside and I
6 end up later on in Socastee, but I was initially in Surfside,
7 that's right. Because I was trying to get a ride because I
8 was stuck at the time.
9 Q: So, if we look at the bottom of Page 40 to 48, this is
10 showing a string of telephone calls starting at about 9:09 and
11 continuing onto the next page. Well, I guess it's just at the
12 end of that page that's showing that you were in Surfside; is
13 that correct?
14 A: Well, all the way up until 9:40 -- let's see ---
15 Q: The last one I see on that page is at 9:26.
16 A: Okay. 9:26, yeah, 9:26, yeah, Surfside.
17 Q: Okay. And how do these telephone, how do these records
18 show where you're victim was at the time?
19 A: Well, it's got the origin of, which is where the call is
20 coming from, and then to the destination. So, there's a list
21 that divides that two.
22 Q: Okay. So, it shows calls to 907-0860, it shows two calls
23 to that number; is that correct?
24 A: Well, I think I see here -- I think I see here -- let's
25 see -- yeah, two calls there.

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BILLY ALFORD - DIRECT BY FALK

16

- 1 Q: And those were calls to Myrtle Beach?
- 2 A: They were -- let's see. It says West Myrtle Beach.
- 3 Q: Okay. And who was the -- who were you calling in West
- 4 Myrtle Beach or who was calling you from West Myrtle Beach?
- 5 A: Well, I was calling her and I think she might've been
- 6 calling me but it was either way, whatever, but I was calling
- 7 her and that was -- that was just the situation.
- 8 Q: Okay. So, you're saying that she was in West Myrtle
- 9 Beach, you were calling her, you were -- you were in Surfside,
- 10 she was in West Myrtle Beach at the time?
- 11 A: Right.
- 12 Q: And her is the victim ---
- 13 A: Right, Melissa.
- 14 Q: And why would you be calling her?
- 15 A: Like I said, I was, I was stranded at the time in
- 16 Surfside and so I was trying to call ---
- 17 Q: Were y'all in some type of relationship?
- 18 A: Not really. We was kind of like talking or whatever but
- 19 we wasn't in no relationship.
- 20 Q: Okay. Now, why didn't you show this information to your
- 21 public defender?
- 22 A: Because I didn't have the information. All I had was
- 23 that I knew that that I had phone records, but I didn't have
- 24 those phone records.
- 25 Q: Okay. And what time -- how do we come to know what time

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BILLY ALFORD - DIRECT BY FALK

17

1 the alleged event took place?

2 A: Through the affidavit. The warrant stated that it was
3 around 9:00, between 9:00 -- I think it was between 9:00 and
4 9:30; I can't remember exactly but I know it was somewhere in
5 the timeframe.

6 Q: Okay. Because it says that this happened at the
7 Riverwalk at Elm Street in Conway is where it -- supposedly
8 this took place?

9 A: (Indicates affirmatively.)

10 Q: Okay.

11 THE COURT: Is that a yes or a no?

12 A: Yes, sir. I'm sorry. I'm sorry.

13 Q: And you felt that that information would have certainly
14 shown that you were not guilty of the alleged offense?

15 A: Yes, sir.

16 Q: Okay. Then we came to a point where you then decided to
17 plead guilty; is that correct?

18 A: Well, it wasn't a decision. It was I was forced upon due
19 to the fact that whenever I had subpoenaed my evidence and
20 right before I go to trial, they bring me what is supposed to
21 be my copy of my phone statement. And when I read it ---

22 Q: And what's wrong with the evidence that they brought you?

23 A: Well, when they brought me what they say was my phone
24 evidence, I noticed that the date in question, which was the
25 29th is totally deleted from, from the statement. And so I'm

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1 just like, what, what is this? And so my attorney, Ms. Paola
2 Pinzon says, well, I guess the solicitor's office must've, you
3 know, must've had deleted it. And I said, well, I don't see
4 how that's possible when they didn't subpoena this
5 information, we subpoenaed it.

6 Q: So, what you're -- what you're saying is that your
7 attorney did not have the evidence showing that you were
8 making these telephone phones on 3/29; is that correct?

9 A: Yes, sir.

10 Q: Okay. But that they had -- they were showing you what
11 they were telling you were your telephone records; is that
12 correct?

13 A: Right.

14 Q: But what they were showing were you telephone records did
15 not have the records that you thought would have shown that
16 you were not guilty; is that correct?

17 A: Not what I thought, what I knew. It just ---

18 Q: Now, so you still plead guilty, and you said you felt ---

19 A: Well, I -- at the time, before I pled guilty or whatever,
20 I asked my attorney to file for a motion. And so, I guess she
21 stepped out and went to the judge and she made her request for
22 her motion. And ---

23 MR. JAMES: Objection, he's speculating.

24 A: No, I'm not speculating. It's on the record. It's on
25 the record. It's in the transcript.

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1 THE COURT: Hold it. I sustain the objection.

2 Thank you.

3 BY MR. FALK:

4 Q: What type of motion did you ask her to make?

5 A: There were several. It was -- it was for dismissal. I
6 can't exactly remember all the issues but she was supposedly
7 presented the motions to the judge and the judge in the ---

8 Q: Well, I just got to know what you know absolutely. So,
9 you asked her to make motions, and there was a conference with
10 the judge? Did she have a conference with the judge?

11 A: I'm assuming that's what she did.

12 Q: Okay. And then as a result, the motions didn't come out
13 your way; is that fair to say?

14 A: Well, that's what the judge said. The judge said he
15 denied my motion. That he respected her efforts in requesting
16 motions but that he just denied my motions.

17 Q: The Court respectfully denied the motions?

18 A: Right.

19 Q: So then what?

20 A: So, at that time, with me, you know, being stuck, I knew
21 that once I got out I could appeal because I know that you
22 have certain time after you are released or whatever that you
23 can appeal your conviction. So, me having that knowledge, I
24 said, well, I'll just go ahead and plead guilty and that way I
25 can redeem myself from jail. So, I'd already been in there

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BILLY ALFORD - DIRECT BY FALK

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1 seven months for something I didn't do, so I mean that was my
2 only option. That was the only way I could get out of jail
3 was to surrender to what these people had already concocted
4 against me.

5 Q: Okay. What other motions -- did you ask for a
6 continuance?

7 A: A continuance?

8 Q: Yes.

9 A: No, I didn't want no continuance. I mean, I -- I mean
10 ---

11 Q: Okay. That's my -- now, it says that you pled nolo, nolo
12 contendere?

13 A: I'm not sure what it was. I just know that I've ---

14 Q: All right. Let me ask you this. Was it your
15 understanding that you weren't gonna admit that you'd done
16 this or didn't do this but you were gonna go ahead and let the
17 Court go forward? Is that fair?

18 A: Right.

19 Q: And so you weren't necessarily admitting guilt or
20 innocence, but that the Court was gonna go forward and
21 sentence you, correct?

22 A: Right.

23 Q: Correct. And they probably explained to you along the
24 way that although you were not admitting your guilt, there was
25 evidence to show your guilt; is that sort of a fair ---

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BILLY ALFORD - DIRECT BY FALK

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1 A: Well, they just told me that, you know, that I'm standing
2 in the mercy of the Court because I can't prove otherwise.

3 Q: Okay. So, you had concerns about sort of handling of the
4 arrest warrants, then eventually it became the affidavits, and
5 you had concerns about them not investigating the case or at
6 least having this information what you thought could have
7 shown that you and the victim were not in the same place at
8 the same time at that time on the 29th. Is that correct?

9 A: Yes, sir.

10 Q: Is there anything else that you have any concerns about
11 how they represented you in this case?

12 A: Well, it was just the -- the indictment, when I had
13 requested my indictment, I noticed that it was not clocked
14 stamped by the clerk of court's office and so I questioned
15 that. And they had just, you know, that that's whatever,
16 whatever. And so I raised that issue whenever that was
17 another part of the -- one of the motions that I raised with
18 the -- with my attorney to have about the indictment.

19 Q: This is your opportunity and I just want to make sure --
20 is there anything else? I think this is what -- when you and
21 I talked, I think you'd gone over the three things that we
22 talked about, the concerns about the affidavit -- I mean,
23 excuse me, the concerns about the enhancement on the charge,
24 your concerns about them not having evidence which you
25 requested them to get, which it would appear that they got

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BILLY ALFORD - CROSS BY JAMES

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1 some of but would've shown that you were not guilty. And you
2 had concerns about whether or not the propriety of the way the
3 grand jury met, whether or not the indictment was on the day
4 that it was, those issues. Is that a fair ---

5 A: Well, if it was actually -- was actually presented to a
6 grand jury.

7 Q: Yes. Okay.

8 A: From the evidence that I've received there it was never
9 no grand jury.

10 MR. FALK: I have no further questions at this time,
11 Judge.

12 THE COURT: Mr. James?

13 MR. JAMES: Briefly, Your Honor.

14 CROSS EXAMINATION OF BILLY ALFORD BY MR. JAMES:

15 Q: You indicated that you pled guilty, correct? Or plead
16 pursuant to no contest, correct?

17 A: Yes, sir.

18 Q: All right. And you indicated that that was your strategy
19 to get on to the appellate stage, correct?

20 A: Yes, sir.

21 Q: All right. Did you discuss that strategy with your
22 counsel?

23 A: Well, I just told them that I would be appealing and ---

24 Q: And you didn't ask her for a continuance to figure out
25 what ---

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PAOLA PINZON - DIRECT BY FALK

23

1 A: Like I said, I was not trying to sit in jail. I'd
2 already been in there seven months. I wasn't gonna ask for a
3 continuance that could've took three or more months. I mean,
4 that's -- you know, if you on the street you can ask for a
5 continuance, but when you sitting up in jail, you not gonna
6 ask for a continuance.

7 MR. JAMES: No further questions, Your Honor.

8 THE COURT: You may step down.

9 THE COURT: Mr. Falk?

10 MR. FALK: Can you come up to the stand?

11 PAOLA PINZON, HAVING BEEN DULY SWORN,
12 TESTIFIED AS FOLLOWS:

13 CLERK: Please have a seat and state your name for the
14 court.

15 MS. PINZON: My name is Paola Pinzon.

16 DIRECT EXAMINATION OF PAOLA PINZON BY MR. FALK:

17 Q: Can you spell your last name, please?

18 A: P, as in Peter, I, N, as in Nancy, Z, as in zebra, O, N,
19 as in Nancy.

20 Q: How did you come to represent Mr. Alford in this case?

21 A: I was replacing Andrew Ritner. He was military service,
22 I believe. And so I was at the public defender's office, I
23 don't know, for maybe a few months. And I believe that file
24 was transferred to him from Ms. West.

25 Q: Okay. So, you were with the public defender at the time?

1 A: Yes.

2 Q: Okay. So, you were not a 608?

3 A: No.

4 Q: Okay. And when the file got transferred to you, do you
5 recall looking to see if there were any cell phone records in
6 it?

7 A: I reviewed all the discovery. It's been a long time, you
8 know, 2011, but I reviewed all the discovery and I went over
9 the discovery with Mr. Alford.

10 Q: Okay. And did he -- you were obviously here when he was
11 testifying, did you -- did you have a conversation with him
12 about what he thought these cell phone records were going to
13 show?

14 A: I guess. I mean, yes, I don't remember the conversations
15 I had with him, but yeah, I -- for sure I think, yes.

16 Q: Okay. And I think Mr. James handed you some papers up
17 there?

18 A: I actually handed him my phone records, the ones that I
19 had in my file.

20 Q: Okay. Do you have those phone records?

21 A: I did. I got a copy of the public defender's office,
22 yes.

23 Q: Okay. Do you have them with you?

24 A: I do.

25 Q: Can I approach?

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PAOLA PINZON - DIRECT BY FALK

25

1 A: Sure. Yes, sir. You -- okay.

2 Q: I just want to make sure that they're the same. Can you
3 take a minute to ---

4 A: Give me one second. I believe they are, just, you know,
5 by looking at it briefly, I'm not ---

6 Q: Sure. Let me grab my copy back. Thank you.

7 This looks like it's an Excel printout, doesn't it, or
8 some type of spreadsheet program?

9 A: Yes, sir.

10 Q: Do you know if you all generated this or this is the way
11 that the records came to you?

12 A: The -- I believe that our private investigator Jerome
13 subpoenaed these records from Verizon and this is what we got
14 we got from Verizon.

15 Q: So, that's Jerome Randall?

16 A: I -- yeah.

17 Q: Can you look at Page -- what looks to be Page 42 of 46 on
18 your records?

19 A: Yes, sir.

20 Q: If you look at the line -- you see that column in the
21 left that's got the four-digit numbers?

22 A: Yes, sir.

23 Q: So, if you go down to 2315.

24 A: Yes, sir.

25 Q: And then read cross to Column E.

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PAOLA PINZON - DIRECT BY FALK

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1 A: 2315, Column E, it says March 28, 2011 at ---

2 Q: Okay. And the heading of that column says seizure date
3 and time; is that right?

4 A: Yes, sir.

5 Q: And so 2315, and these are your records, show that -- it
6 had a date and time in there of 3/28/2011 at 22:41; is that
7 correct?

8 A: Yes, sir.

9 Q: Then can you read the same information for 2316?

10 A: Yes, sir. It says 3/30/2011 at 11.11, 011; I'm sorry.

11 Q: Is it fair to say that there's no telephone activity for
12 3/29 on these records?

13 A: That's correct.

14 Q: Do you have an explanation for that?

15 A: No, sir. This is what we got from Verizon.

16 Q: What kind of conversations did you have with him about
17 whether or not he should plead in this case?

18 A: I tried to -- like I say, it's been a long time, but I
19 was -- we were in the courtroom with co-counsel Tom Floyd and
20 we spoke to him about -- I went -- we went and presented the
21 pre-trial motions to Judge Cottingham and he denied all the
22 motions. He extended an offer for time served, 18 months
23 suspended to time served if he pled guilty. I don't think it
24 was nolo contendere. I'm not sure but I think it was he pled
25 guilty. And we spoke to Mr. Alford, explained everything to

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1 him, and he just freely and voluntarily chose to plead guilty
2 to the charge of A&B second. And the other charge was gonna
3 be dismissed also.

4 Q: Okay. Did you -- did he ask you to make some -- prior to
5 the plea ---

6 A: He did.

7 Q: He asked you to make some motions?

8 A: Yes.

9 Q: What were those?

10 A: I cannot remember. I think it was motion to dismiss and
11 -- I cannot remember; I'm sorry.

12 Q: And did he raise some concerns with you about how the
13 charges had gone from a misdemeanor to ---

14 A: Yes.

15 Q: And what was your response to that?

16 A: That was during the time that maybe, I think that Ms.
17 West had the file or was representing him. And I think one of
18 the explanations, but -- I'm just reading some notes, I can't
19 fully remember is that -- that was potentially a pretrial
20 motion and potentially a jury question.

21 Q: Okay. Had you had information that he and the victim
22 were not in the city at the same time or not in the same place
23 at the same time, would you have recommended him to plead
24 guilty?

25 A: He -- we gave him the information and he just pled guilty

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1 on his own. Nobody made him -- nobody makes him to anything.

2 Q: I appreciate that. My question to you though is if you
3 had the information that would've shown on the cell phone
4 records that he and the victim were in two different places,
5 would you have ---

6 A: I don't know the answer to -- really, I mean, I didn't
7 have that information so that's just ---

8 Q: Okay. And do you have any explanation why there's there
9 -- on the cell phone records that you have there's no
10 telephone activity for 3/29?

11 A: No, sir; I don't.

12 MR. FALK: I have no further questions. Wait -- I'm
13 sorry, Your Honor.

14 (REPORTER'S NOTE: Applicant consults with Mr. Falk.)

15 MR. FALK: Your Honor, may I approach?

16 THE COURT: Yes.

17 BY MR. FALK:

18 Q: If you could just -- you see that there's telephone
19 activity on that Verizon record?

20 A: I do. I do, sir. This is the first time I've seen
21 these, today.

22 Q: Okay. But did your -- and so when you got the
23 information from your investigator, it wasn't in that format?

24 A: It was -- no.

25 Q: Okay. One moment, Your Honor.

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1 (REPORTER'S NOTE: Applicant consults with Mr. Falk.)

2 BY MR. FALK:

3 Q: Did he talk to you about his concerns about the
4 indictment in this case?

5 A: I think so. That -- yeah, I think so.

6 Q: And I'm not sure, I may've asked this question before,
7 but did you move to dismiss the indictment?

8 A: I -- everything he requested, I requested -- I presented
9 to the judge and he just deny everything.

10 Q: And did you look to see whether or not the -- do you have
11 a copy of this record in this file?

12 A: I do have -- yeah, I do have a copy. I don't know if I
13 have ---

14 Q: Can you look and see if you have a copy.

15 A: One second, please. There's a lot of papers. I'm sorry.
16 I'm trying to -- I think I have it. I think he raise this
17 issue also with Ms. West prior to my representation.

18 Q: As part of your review, did you look to see if the
19 indictment was true-billed and that the grand jury met on the
20 date?

21 A: I'm trying to review my notes. Give me one second.

22 Q: Sure.

23 A: I'm sorry. I don't have any notes regarding to that so I
24 don't remember what I said or ---

25 Q: Okay. Can I grab my sheet back?

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PAOLA PINZON - DIRECT BY FALK

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1 A: Yes, sir.

2 Q: Do you recall in this case that he was originally
3 arrested for a misdemeanor and that it was enhanced to a
4 felony?

5 A: Yes, sir.

6 Q: And is there any affidavit or any proof in the record to
7 show what the justification is from going from a misdemeanor
8 to a felony in this case?

9 A: No, I don't have any record of that. I just have --
10 again, that was gonna be a pretrial motion or potentially a
11 jury question.

12 Q: Okay. And what was your decision not to take this case
13 to trial?

14 A: It was not my decision, sir. It was his decision. I was
15 ready to go to trial.

16 Q: Were you gonna go to trial that day?

17 A: Yes. With co-counsel Tom Floyd, yes, sir.

18 Q: You had a conversation with him about whether or not he
19 wanted to go to trial?

20 A: Whether he wanted to -- yeah.

21 Q: And what -- and what were the reasons that he gave you?

22 A: I don't remember he said -- him telling me that he would
23 just plead guilty and then he would appeal it. I don't
24 remember that at all. Because that would defeat the purpose
25 of -- I mean, this -- that would not seem ---

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1 Q: Do you recall at the time why he -- do you recall why at
2 the time he told he wanted to go -- he wanted to plead?

3 A: I get -- I have some notes that state that actually --
4 you know, that he called the office several times even before
5 my representation requesting to plead guilty if he was offered
6 time served. And I don't remember exactly what reasons he
7 gave me, but I do have several notes from different people
8 saying that if they give me time served, I will plead.

9 THE COURT: Ms. Pinzon, let me ---

10 A: I'm sorry.

11 THE COURT: --- make sure I understand. He didn't get an
12 18-month active sentence. He got 18 months suspended ---

13 A: Suspended to time served.

14 THE COURT: --- to time served?

15 A: Yes, Your Honor.

16 THE COURT: Time served.

17 A: Yes.

18 THE COURT: And that's why he didn't want a continuance?

19 A: Yes.

20 THE COURT: Okay. And I've looked at this sentencing
21 sheet, I've looked at his plea and it seems to me it's a
22 straight-up plea. I don't see anything about nolo contendere
23 or anything like that.

24 A: That's correct.

25 THE COURT: Which is it? I mean, I'm looking at -- I've

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PAOLA PINZON - CROSS BY JAMES

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1 looked at the plea transcript. I don't see anything in there
2 that would indicate that it was a nolo.

3 A: That's correct, Your Honor. I think it was a guilty
4 plea.

5 THE COURT: It was a straight-up plea. Okay.

6 Mr. Alford says he pled nolo contendere.

7 MR. ALFORD: I didn't say that, sir. I said I didn't
8 know -- I couldn't remember what it was. I said I pled guilty
9 if you'll rewind the tapes right there, you'll know that.

10 THE COURT: Okay. Well, counsel went through a big
11 detailed conversation about what it means.

12 MR. ALFORD: And I just said I didn't know. I didn't
13 know what it was. I said I thought I pled guilty and that's
14 what he asked ---

15 THE COURT: Okay. All right.

16 MR. FALK: I have no further questions.

17 THE COURT: All right, Mr. James.

18 MR. JAMES: If I may have just one moment, Your Honor,
19 based on your questioning just now.

20 CROSS EXAMINATION OF PAOLA PINZON BY MR. JAMES:

21 Q: Ms. Pinzon.

22 A: Yes, sir.

23 Q: About how long had you been admitted to the practice of
24 law at the time of your representation of Mr. Alford?

25 A: About two years.

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PAOLA PINZON - CROSS BY JAMES

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1 Q: And how much of that experience was criminal?

2 A: Really since I went with the public defender's office,
3 maybe just few months.

4 Q: So, suffice it to say you were a young new attorney at
5 the public defender's office?

6 A: That's correct.

7 Q: And is that why you had the assistance of Mr. Tom Floyd?

8 A: That's correct.

9 Q: Okay. Did you also have any assistance from other
10 attorneys within the public defender's office?

11 A: Ms. West and everybody at the office was very helpful.

12 Q: Now, did you subpoena the phone records or had they
13 already been subpoenaed by the time you came onto the case?

14 A: I believe they already -- they were already subpoenaed.
15 I came to the case probably, I'm thinking maybe a few weeks
16 before trial, officially. I don't know if I was made aware of
17 the case before then. I can't remember. But there was never
18 a trial, so ---

19 Q: If I may approach the witness?

20 THE COURT: Certainly.

21 Q: Do you recognize the piece of paper that I'm handing up
22 to you right now?

23 A: I do.

24 Q: Is that an accurate reflection of Page 42 out of 46 of
25 the records that your office obtained from Verizon Wireless?

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PAOLA PINZON - CROSS BY JAMES

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1 A: I believe so; yes, sir.

2 Q: And these records were obtained pursuant to a proper
3 subpoena?

4 A: I believe so; yes, sir. That's correct.

5 Q: And came directly from Verizon Wireless to your office?

6 A: I believe so.

7 Q: All right.

8 MR. JAMES: Your Honor, I would introduce this excerpt of
9 the Verizon Wireless records, Page 42 of 46 into evidence as
10 State's Exhibit Number 1.

11 THE COURT: Okay.

12 MR. FALK: Your Honor, I'll accept that if we introduce
13 the first two pages that he got from Verizon ---

14 THE COURT: Isn't that included?

15 MR. JAMES: No, Your Honor. We have two different sets
16 of records here.

17 THE COURT: Oh. Well, how did that come about?

18 MR. JAMES: That's the issue that I'm about to go into a
19 little bit, Your Honor.

20 THE COURT: Well, let's go into it. Let's hear it and
21 then I'll decide whether or not it's admissible or not. I
22 want to just know what I'm dealing with here.

23 MR. JAMES: If I may approach the witness again, Your
24 Honor?

25 THE COURT: Certainly.

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PAOLA PINZON - CROSS BY JAMES

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1 BY MR. JAMES:

2 Q: You went over this a little bit on direct examination
3 with Mr. Alford's attorney. If you'll look at Lines that I --
4 2315 and 2316. What do those lines reflect?

5 A: What ---

6 Q: If I may interrupt you, since this is cross examination,
7 I'll get to the point. Isn't it true that those two lines
8 reflect the last phone call from the phone number ending in
9 2523 on March 28th, 2011 and then the first phone call
10 occurring on March 30th, 2011?

11 A: Yes. I'm confused on that phone number. What was the
12 ending ---

13 Q: Ending in 2523.

14 A: 2523, yes; that's correct.

15 Q: All right. So, you recognize that March 29th day in
16 question is missing from the records, correct?

17 A: Yes, sir.

18 Q: All right. Did you alter these records in any way?

19 A: No, sir.

20 Q: Did you tamper with them to make them more concise for
21 trial purposes?

22 A: No, sir.

23 Q: Did you extract data from these records in order to just
24 have the 29th set out in a separate file?

25 A: No, sir.

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PAOLA PINZON - CROSS BY JAMES

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1 Q: Okay. Are you aware of any other individual at the
2 public defender's office tampering or altering these files?

3 A: No, sir.

4 Q: Or extracting this data into a separate file for purposes
5 of trial?

6 A: No, sir; no, sir.

7 Q: Okay. Did you ever receive any other phone records from
8 Verizon Wireless?

9 A: I believe that was it. I was looking through their
10 records and I think that's the only thing I found.

11 Q: Okay. Did your client Mr. Alford ever provide you any
12 other records from Verizon Wireless?

13 A: No, sir.

14 Q: And so the page that I showed 42 of 46 was the only phone
15 record you ever got?

16 A: Yes, sir, 46 pages, I got was, yeah, 42 of 46.

17 Q: All right.

18 MR. JAMES: And, Your Honor, I would move to introduce
19 this Page 42 of 46.

20 THE COURT: I'll allow it not for the truth of the matter
21 asserted but merely as part of the records received by trial
22 counsel. I think she can say that those were the records and
23 it's not being offered for whether or not there was a phone
24 call made or not. I'm gonna allow it.

25 MR. JAMES: Yes, Your Honor. Those are the only grounds

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1 that I would submit them on is that it was part of her file in
2 representing Mr. Alford.

3 THE COURT: It's the record that she received?

4 MR. JAMES: Yes, Your Honor.

5 STATE'S EXHIBIT NUMBER 1

6 ADMITTED INTO EVIDENCE

7 BY MR. JAMES:

8 Q: Ms. Pinzon, did you have an opportunity to review the
9 indictment with your client Mr. Alford?

10 A: I can't -- I can't remember. I don't have it in my notes
11 and it's been so long I -- I remember that being one of the
12 issues but I just don't remember exactly what we did about
13 that.

14 MR. JAMES: If I may approach the witness, Your Honor?

15 THE COURT: Certainly.

16 Q: Do you recognize this document that I'm showing you right
17 now?

18 A: Yes.

19 Q: All right. Does that appear to be a true and accurate
20 reflection of Indictment 2011-GS-26-02121?

21 A: Yes, sir.

22 Q: Do you have a copy of that in your records?

23 A: Yes, sir.

24 Q: Okay. Tell me, Ms. Pinzon, does that indictment indicate
25 whether or not it was true-billed?

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1 A: I think it was.

2 Q: Was that indictment true-billed by the Horry County Grand
3 Jury?

4 A: I believe it was.

5 Q: Does it indicate which arrest warrant that indictment was
6 pursuant to?

7 A: Yes, sir.

8 Q: And what arrest warrant was that? Was it 218434?

9 A: Yes, sir.

10 Q: And do you have a copy of that arrest warrant in your
11 file?

12 A: Yes, sir.

13 Q: Does that arrest warrant indicate that the offense is
14 assault and battery in the second degree?

15 A: Yes, sir.

16 Q: And does the indictment indicate that Mr. Alford was
17 indicted for assault and battery in the second degree?

18 A: Yes, sir.

19 Q: All right. And did you explain to -- explain that to Mr.
20 Alford?

21 A: I, I'm thinking I did, you know. I don't -- I think
22 that, like I said before, I think that issue was raised mainly
23 with Ms. West before my representation and he may have raised
24 the issue again with me. I don't remember exactly what the
25 conversation was but ---

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BY THE COURT

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1 BY THE COURT:

2 THE COURT: Let me ask you, Mr. Falk, what's your
3 client's issue on that? I see it very -- you know, what
4 you're arrested for, what you're indicted for, you know,
5 they're usually kind of close, but you can be indicted for a
6 whole lot more or a whole lot less, or nothing, or you can be
7 indicted without being arrested. I mean, the issue ---

8 MR. FALK: If I could, if I could ---

9 THE COURT: The charge is whatever the Grand Jury indicts
10 you for. I mean, what's the -- what was the issue?

11 (REPORTER'S NOTE: Applicant confers with Mr. Falk.)

12 MR. FALK: Your Honor, if I could just articulate my
13 client's arguments. He has concerns that the witness on the
14 warrant, on the outside of the indictment is William Adams,
15 Conway -- from the police department, but that's not the
16 signature on the indictment. He also has concerns that the
17 indictment was filed with the Horry County Clerk of Court's
18 office according to our records.

19 THE COURT: Well, the indictment probably has Mr.
20 Hembree's signature on it, doesn't it? The solicitor usually
21 signs the indictment -- the indictment or presents the
22 indictment.

23 MR. FALK: Gregory Hembree, yes.

24 MR. ALFORD: Can I please ---

25 THE COURT: No.

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BY THE COURT

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1 MR. ALFORD: My attorney is not speaking ---

2 THE COURT: Your attorney is -- you have an attorney. We
3 don't have hybrid representation, Mr. Alford. It's your
4 attorney's position to do this, not yours. I don't hear from
5 both of you. That's a ---

6 MR. ALFORD: Well, can I just state ---

7 THE COURT: No, sir. No, sir. No, sir. Mr. Alford, you
8 have an attorney.

9 MR. ALFORD: I understand that.

10 THE COURT: You can talk with your attorney all you want
11 to make sure he tells me right, but he is the one who speaks
12 in the court.

13 Now ---

14 MR. FALK: I was trying to articulate just additional
15 concerns that he had.

16 THE COURT: All right.

17 MR. FALK: Is that the indictment is signed -- is true-
18 billed on June 30th, 2011 but it doesn't show that it was
19 filed with the Horry County Clerk's office until November
20 18th, 2011. And, he has concerns about that. He has concerns
21 about what ---

22 THE COURT: What difference does that make whenever the
23 foreman of the Grand Jury presents it, that's when it gets,
24 gets filed. And they may be sitting on it.

25 MR. FALK: I think his position would be that the

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BY THE COURT

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1 indictment itself is not accurate, it's not an accurate
2 document, the fact that there was differences between who the
3 witness is and who signs the indictment, the fact that it was
4 filed with the clerk's office six months after it was true-
5 billed. And based on his research, he has no proof, and I can
6 confirm this, that -- can find no proof in the Horry County
7 Clerk's office that a Grand Jury ever met on June 30th, 2011.
8 So, with this three irregularities in the indictment, he has
9 questions about it.

10 THE COURT: But Mr. Falk, you know what happens when you
11 don't challenge the indictment prior to the case being called?

12 MR. FALK: Yes, Your Honor. I mean, I can ---

13 THE COURT: I mean, you waive any irregularity in the
14 indictment, and ---

15 MR. FALK: And it would be his concern that his, that his
16 lawyer didn't challenge ---

17 THE COURT: Well, I need then know specifically which
18 lawyer did what and what there was that was truly an issue.
19 Vague allegations that, well, there might be something fishy
20 about the indictment not actually being clocked until later,
21 or there might be something fishy about somebody else's
22 signature doesn't look the same. You know, that's not enough,
23 Mr. Falk. I need to know if there was an irregularity and the
24 attorneys ignored it. And, what is the effect of that
25 irregularity? You quash an indictment; what happens? They go

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BY THE COURT

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1 right back and the indictment is reissued.

2 MR. FALK: Yes, Your Honor.

3 THE COURT: We all know that. I mean, if you find an
4 irregularity on the Grand Jury's -- and would it make any
5 difference in the case? You know, what specifically,
6 specifically was a fatal flaw in the indictment?

7 (REPORTER'S NOTE: Applicant consults with Mr. Falk.)

8 MR. FALK: He has records of his concerns ---

9 MR. JAMES: I'm still questioning my witness and I
10 stopped politely for His Honor.

11 MR. FALK: I'm sorry.

12 MR. JAMES: I'm ---

13 THE COURT: I mean, you know, I'm just ---

14 MR. JAMES: I'm almost done.

15 THE COURT: In your return, Mr. James, let me just clear
16 some things up. You say you he pled nolo, but apparently he
17 didn't. So, we can agree that he -- and Mr. Falk asked him
18 specifically about his nolo plea and Mr. Alford says, well, I
19 never said that I pled nolo. Did he plead nolo or not?

20 MR. ALFORD: There was never a nolo plea.

21 THE COURT: Mr. Alford, please. I'm addressing your
22 attorney. Now, he can ask you if he needs information.

23 MR. JAMES: It appears that the -- there was a nolo plea
24 made but an error on my part, Your Honor.

25 THE COURT: And he didn't get 18 months; he got time

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BY THE COURT

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1 served, 18 months suspended to time served. Is that right?

2 MR. FALK: Yes, Your Honor.

3 MR. JAMES: Yes, Your Honor.

4 THE COURT: Well, then why -- I look at the original
5 application for post-conviction relief and it says he's in
6 Kershaw Correctional, and that was back in -- that was in --
7 what was he in Kershaw Correctional for if he got a time-
8 served sentence?

9 MR. JAMES: There were subsequent offenses for which he
10 later served incarceration.

11 THE COURT: Oh, he had subsequent convictions and he was
12 incarcerated for those convictions, right?

13 MR. JAMES: And that circuitous path is why we had an
14 unusual procedural history at the onset of this hearing today,
15 Your Honor, and why he was in jail. But his PCR attorney and
16 the state were not aware.

17 THE COURT: Okay. Well, I look at that application, and
18 it says, Number 19, state clearly the relief you seek and he
19 seeks a belated appeal. And I've heard nothing about appeal
20 issues. What are we seeking here?

21 MR. JAMES: My understanding, Your Honor, upon
22 consultation with Mr. Falk prior to this hearing and prior to
23 this term of court was that he was seeking vacation of his
24 conviction and a new trial based on the original application.

25 THE COURT: Well, is there an amended application for

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BY THE COURT

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1 post-conviction relief seeking that relief?

2 MR. JAMES: No, Your Honor.

3 THE COURT: Is there something that I'm missing here?

4 MR. JAMES: No, Your Honor. There was never a subsequent
5 amendment to the application.

6 THE COURT: Well, Mr. Falk, what is he seeking? He says
7 specifically the only relief he's seeking is a belated appeal.
8 Clear -- Number 19 clearly -- state clearly the relief you're
9 seeking. And after that it says, are you now under sentence
10 from any other court that you have not challenged, and that's
11 what has me confused because he says no. But you're telling
12 me he's actually incarcerated.

13 MR. JAMES: He was previously incarcerated. He is no
14 longer incarcerated at this time.

15 THE COURT: At the time he did this though he says he was
16 not, but apparently he is. Very confusing. What relief is he
17 seeking, Mr. Falk? Is he seeking a belated appeal?

18 MR. FALK: Your Honor, no, he is seeking a vacation of
19 his sentence based on the issues, the first ones, because the
20 procedure has got somewhat confused on this, and I spoke with
21 Mr. James saying that he is asserting problems with the
22 original plea.

23 THE COURT: Okay. Well, and that would be that it was
24 not free and voluntary?

25 MR. FALK: Right, that it was based on -- he was coerced,

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PAOLA PINZON - CROSS BY JAMES

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1 into the plea because he had counsel who had not done an
2 adequate investigation into the facts of this case.

3 THE COURT: Well, he just told me that -- under oath,
4 that the reason he did the plea was because he was in jail and
5 he wanted to get out. He did not want a continuance of the
6 case. Isn't that what he said?

7 MR. JAMES: Yes, Your Honor, and I was ---

8 THE COURT: Go on with your witness, Mr. James; I'm
9 sorry, I just ---

10 MR. JAMES: Maybe five or six more questions.

11 THE COURT: You know, just looking in, it's just hard to
12 tell exactly what Mr. Alford wants. Go ahead.

13 CONTINUATION OF CROSS EXAMINATION OF PAOLA PINZON BY MR.

14 JAMES:

15 Q: Isn't it true that an indictment is a notice document,
16 counsel?

17 A: Yes.

18 Q: All right. And did you have notice that your client was
19 going forward to trial on assault and battery second?

20 A: Yes.

21 Q: All right. And did you explain to your client that he
22 was going to trial on assault and battery second?

23 A: Yes.

24 Q: All right. And did you seek to have the indictment
25 dismissed in one of your pretrial motions?

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PAOLA PINZON - REDIRECT BY FALK

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1 A: Yes.

2 Q: All right. Did you make Mr. Alford plead guilty?

3 A: No.

4 Q: Did you tell Mr. Alford that he had to plead guilty?

5 A: No.

6 Q: Did Mr. Alford explain to you his strategy of pleading
7 guilty in order to move on to an appeal?

8 A: No.

9 Q: Okay. Did you explain to him his appellate rights?

10 A: Yes.

11 Q: If Mr. Alford had insisted that you take this matter to
12 trial, would you have been prepared to do so?

13 A: Yes.

14 Q: If Mr. Alford had asked you to seek a continuance in this
15 matter, would you have done so?

16 A: Yes.

17 MR. JAMES: No further questions, Your Honor.

18 THE COURT: Okay.

19 MR. FALK: May I?

20 THE COURT: Yes, you may.

21 REDIRECT EXAMINATION OF PAOLOA PINZON BY MR. FALK:

22 Q: You had said that -- it was your testimony that he always
23 wanted to plead guilty, was that ---

24 A: In the notes of the case, he called the office from J.
25 Reuben several times asking to -- saying -- telling the --

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PAOLA PINZON - REDIRECT BY FALK

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1 whoever answered that he would plead guilty if he was given
2 time served. And one of them was directed at me with I was
3 already representing him and then, of course, he chose to
4 plead guilty at the ---

5 Q: But is that -- then why did he ask for his medical
6 records to be subpoenaed -- I mean, his phone records to be
7 subpoenaed?

8 A: I'm sorry?

9 Q: I mean, he asked for his phone records to be subpoenaed?

10 A: Yes.

11 Q: Is it common for you to be representing people who say
12 they want to plead guilty but then are also at the same time
13 asking you to do discovery?

14 A: I mean, with all due respect to Mr. Alford, he's very
15 difficult. He goes -- yeah, that would be my answer.

16 Q: Did you have a difficult time working with Mr. Alford?

17 A: Yes. I was trying to be very nice to him and respectful
18 the whole time but, yes, I had a difficult time with him.

19 Q: Do you think there was a communication problem between
20 you and Mr. Alford prior to ---

21 A: He never told me there was a communication problem, so I
22 do not -- I don't think there was a communication problem.

23 (REPORTER'S NOTE: Applicant confers with Mr. Falk.)

24 MR. FALK: May I approach?

25 THE COURT: Yes.

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PAOLA PINZON - REDIRECT BY FALK

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1 BY MR. FALK:

2 Q: You've got the indictment up there? Is that the same
3 copy that Mr. James handed you ---

4 A: Yes, yes.

5 Q: And who is the witness on the indictment?

6 A: William Adams, Conway Police Department.

7 Q: And then if you can look at the warrant for the arrest
8 that's attached to there. Who was the witness on that?

9 A: Gregory Hembree.

10 Q: Did you discuss with him any concerns you had that those
11 were two different people?

12 A: I don't remember. Like I said, I think that was mainly
13 -- that issue was mainly raised with Ms. West. She -- I don't
14 -- I don't remember exactly the specifics of that but I do
15 remember that I took every pretrial motion and concern that he
16 has, we addressed that with Judge Cottingham that day.

17 Q: You had -- I know you don't have any specific
18 recollection, but if another client would've asked you that,
19 what would your response have been for an explanation? Or do
20 you have an explanation how that ---

21 A: No, I don't.

22 Q: You can see that that indictment is stamped by the
23 clerk's office in November?

24 A: Yes, sir.

25 Q: Is that a common practice in Horry County?

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PAOLA PINZON - REDIRECT BY FALK

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1 A: I don't know, sir.

2 Q: Okay. And did you look to see whether or not the Grand
3 Jury met -- there actually was a Grand Jury convened on that
4 June 5th?

5 A: I don't remember looking that up.

6 Q: Okay. Prior to him pleading, did you have an expectation
7 he was gonna get a time-served sentence?

8 A: Prior to him pleading?

9 Q: Yes.

10 A: No, I think the offer in the case was 18 months, the
11 initial offer. I can't remember that but rings a bell.

12 Q: You'd testify that you had a conversation with the Judge;
13 is that correct?

14 A: I did.

15 Q: And ---

16 A: And Mr. Grooms was the solicitor at that time.

17 Q: Okay. And you've been in court before when sometimes the
18 Judge has given you an indication as to what a sentence might
19 be?

20 A: Actually, I think it was Judge Cottingham that said --
21 that stated that he would give him time served.

22 Q: Okay. Was a jury trial set for that day?

23 A: Yes. The jury was ready that day, I believe.

24 Q: Were there other guilty pleas set for that day?

25 A: I don't remember.

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BILLY ALFORD - REPLY DIRECT BY FALK

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1 Q: Okay.

2 (REPORTER'S NOTE: Applicant confers with Mr. Falk.)

3 MR. FALK: Your Honor, if I could recall my client to the
4 stand and I'm done with Ms. Pinzon.

5 THE COURT: Mr. James, do you have any further ---

6 MR. JAMES: No, Your Honor.

7 THE COURT: You may step down.

8 MS. PINZON: Thank you.

9 THE COURT: Okay. Call him. I'll let you recall him.

10 MR. FALK: I'd call Mr. Alford back to the stand.

11 THE COURT: You're still under oath, Mr. Alford.

12 THE COURT: I assume this is gonna be relatively brief?

13 MR. FALK: Yes, Your Honor.

14 THE COURT: Okay. All right.

15 MR. FALK: If I may approach?

16 REPLY DIRECT EXAMINATION OF BILLY ALFORD BY MR. FALK:

17 Q: That's the document that you have gotten from Verizon; is
18 that correct?

19 A: Yes, sir.

20 Q: And what's the name on the top of it? Whose phone
21 records are they?

22 A: They're my phone records.

23 Q: I know, but what's the name on the account? Whose name
24 is on that Verizon account?

25 A: Emory Poston.

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BILLY ALFORD - REPLY DIRECT BY FALK

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1 Q: And who is Emory Poston?

2 A: That was my aunt.

3 Q: Okay. And so she got the account for you; is that
4 correct?

5 A: Yes, sir.

6 MR. FALK: Your Honor, we're gonna ask to ---

7 THE COURT: They're not even his records?

8 MR. FALK: But it's the phone that he's using.

9 THE COURT: Mr. James?

10 MR. JAMES: I respectfully object to he's not laid a
11 foundation.

12 THE COURT: You know, on one hand, I allowed Ms. Pinzon's
13 record in just to the extent that she -- to show that she had
14 a record, not whether it's correct or not. Now, Mr. Alford
15 has come up here with something that he wants to authenticate
16 that was not available at that time and it's not even his
17 phone record, not even his account. No, I'm not gonna admit
18 it.

19 Thank you.

20 BY MR. FALK:

21 Q: Can you look at those -- the telephone calls that are on
22 that page?

23 A: Yes, sir.

24 Q: Are those telephone calls that you have made?

25 A: Yes, sir.

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BILLY ALFORD - REPLY DIRECT BY FALK

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1 Q: And what is that telephone number?

2 A: The number is [REDACTED]-2523.

3 Q: Okay. And how did you come in contact with that piece of
4 paper?

5 A: Through Verizon.

6 Q: And they supplied that to you; is that correct?

7 A: Yes, sir.

8 Q: And can you look at that ---

9 THE COURT: How did he get it if it's someone else's
10 account?

11 A: Cause it's my aunt.

12 THE COURT: Can you go down and get my account?

13 BY MR. FALK:

14 Q: Did you aunt request the records or did you?

15 A: Yes, sir. My aunt, as I requested her to contact
16 Verizon, she gave me her information and I contacted Verizon
17 and I informed them that I needed records. And so, with her
18 approval, it was sent.

19 THE COURT: No, this is -- I'm not gonna allow this, Mr.
20 Falk. I mean, I'm not even sure I'd let her authenticate it,
21 but he's saying that she -- he told her to get it and she told
22 Verizon to give it to her -- no, I'm not going there with
23 this. I have sustained the objection and that's that. Okay?

24 MR. JAMES: Thank you, Your Honor.

25 MR. FALK: We would ask to proffer then.

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BILLY ALFORD - REPLY DIRECT BY FALK

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1 THE COURT: All right. You may proffer.

2 BY MR. FALK:

3 Q: When you went into court on the day that you pled, what
4 did you think was gonna happen?

5 A: Well, first of all, there was a statement that was just
6 made that I had been requesting for a guilty plea. Okay. Let
7 that be stated on there, that's been recognized on the record
8 that I had been calling the public defender's office to plead
9 guilty.

10 Q: Yes.

11 A: Now, if this is the case, then why was we set for trial
12 on the day that this thing went to court. See, there's a lot
13 of errors in what's being spoken here and due to whatever it
14 is we got going on here, ineffectiveness, these issues are not
15 being properly ---

16 THE COURT: Mr. Alford, let me help you out with that. I
17 hold terms of criminal court in this courtroom all the time.
18 We have trial terms, we have plea terms, we have terms for
19 motions. And it is not at all unusual to have a trial term
20 that turns into a plea term or vice versa. That's just how it
21 works.

22 A: I respect that.

23 THE COURT: I'm not -- I'm not impressed with that
24 argument.

25 A: But what I'm saying is if, if this was the case, if I had

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BILLY ALFORD - REPLY DIRECT BY FALK

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1 been requesting for guilty pleas, there was no way possible
2 I'm gonna be on the trial roster for a trial.

3 THE COURT: Oh, yes there is, Mr. Alford.

4 A: I mean, but how would that happen? Who would put me on a
5 trial if I'm requesting to plead guilty?

6 THE COURT: Mr. Alford, don't argue with me. I'm telling
7 you ---

8 A: All right. It's on the record. It's on the record.

9 THE COURT: I'm trying to save you some time. I'm
10 telling you that's how it goes.

11 A: Okay.

12 THE COURT: It happens. You can be called up for a trial
13 and it turn into a plea in a heartbeat.

14 A: Yeah, I mean I understand it can be, but the point is if
15 what she's saying in her statement here is that I had been
16 requesting for a guilty plea. So, if I've been ---

17 THE COURT: Well, why don't you just say you didn't do
18 that, Mr. Alford ---

19 A: Yeah, but that's what I'm just trying to ---

20 THE COURT: It's your word against hers.

21 A: Right.

22 BY MR. FALK:

23 Q: Had you been requesting to plead guilty in this case?

24 A: Never requested, never ever. In my -- and her file will
25 prove that I requested for nothing but to have this case

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BILLY ALFORD - REPLY DIRECT BY FALK

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1 dismissed due to all the errors that was in the case. I mean,
2 the, the indictment that they tried to use has got a witness
3 on there that is Michael such-and-such, whatever, but the
4 affidavit is a whole different witness. So, how you gonna
5 have a Grand Jury with a witness that's not even on the, on
6 the affidavit. I mean, come on now.

7 THE COURT: All right. Let's go ahead.

8 Q: So, on that day, did they show you the telephone
9 information that they had?

10 A: They gave me what they said was from Verizon. And I knew
11 when I received it that that was not a Verizon phone
12 statement. And I told my lawyer that this right here is not
13 what come from Verizon. And she said that the prosecutor must
14 have somehow or another re-edited it.

15 Q: Okay. Let me ask you another question. On that day that
16 you were either gonna plead or go to trial, is it fair to say
17 that there were no phone records that said that you had
18 telephone calls on the 29th?

19 A: Right. And at that time, I realized that I did not have
20 any case to present to no trial.

21 Q: Exactly.

22 A: And so therefore, whenever she came to me and after she
23 had raised my motions, she came to me and said, well, listen
24 the Judge is willing to give you time served if you will plead
25 guilty today. And I said, well, I don't know. And then she

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BILLY ALFORD - REPLY DIRECT BY FALK

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1 voluntarily said, well, if you'll go ahead and plead guilty
2 today, I will take you out to dinner tonight. And I maybe
3 ain't supposed to tell it, but that's what she said, and if
4 she would probably be honest, she'll tell you that. As a
5 matter of fact, we even had a short relationship afterwards
6 and when she says that she didn't have any knowledge of this
7 phone statement right here, as soon as I got out of jail, I
8 received it and I give it to her.

9 Q: Could you have been on your phone on the 29th?

10 A: Yes, sir.

11 Q: And it looks like from the phone records that they
12 supplied you were on the phone all the time.

13 A: Right.

14 Q: And on the days that -- on the phone records that they
15 did have you've got telephone calls several times on the 30th,
16 several times on the 28th, several times on the 26th, several
17 times on the next day of the month; is that correct?

18 A: Right.

19 Q: But there was no explanation why there were absolutely no
20 telephone calls on the 29th; is that correct?

21 A: Right. And I would also like to state, too, that the you
22 know the questions about whether or not this is acceptable in
23 evidence and this is not acceptable in evidence, okay, the
24 fact is is that the state is saying that what they got from
25 Verizon, and they got it on record that stating that this is

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BILLY ALFORD - REPLY DIRECT BY FALK

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1 what -- the copy that they've got is from Verizon. Okay?

2 Now, there's evidence here today in the courtroom that's not
3 being presented and it's not being allowed into evidence that
4 is actually the actual document ---

5 THE COURT: Mr. Alford, answer his questions.

6 A: I'm trying to. That's what I'm trying to do, sir.

7 THE COURT: No, you're not, sir.

8 Q: Let me just explain what a proffer is. What it means is
9 that they're gonna be filed and if there's been -- if you want
10 to take this matter further and the case is reviewed, it'll be
11 part of the record. So, they are in -- they will become part
12 of the record in this hearing but not entered into evidence in
13 this hearing.

14 A: I understand. I just want to make sure that, you know,
15 this is the actual evidence. And if you can see the Court ---

16 THE COURT: Mr. Alford, answer his questions only. Okay?
17 Thank you.

18 MR. FALK: I don't believe I have any further questions.

19 THE COURT: Thank you.

20 Mr. James, do you have anything for Mr. Alford?

21 MR. JAMES: No.

22 MR. ALFORD: I didn't think you did.

23 THE COURT: Step down, Mr. Alford.

24 Mr. Falk?

25 MR. FALK: No further witnesses.

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CLOSING ARGUMENTS

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1 THE COURT: Mr. James?

2 CLOSING ARGUMENTS:

3 MR. JAMES: Won't call on anybody, Your Honor. I
4 respectfully motion for a directed verdict and testimony
5 provided on the stand shows fully and unequivocally that Billy
6 Alford knowingly, intelligently, and voluntarily pled in order
7 to no longer be in jail and in order to obtain a plea for time
8 served.

9 THE COURT: Mr. Falk?

10 MR. FALK: Your Honor, it's your contention that the
11 reason why he pled was because he was forced on that day to
12 either go to trial without the evidence that he felt would
13 exculpate him, being these telephone records. There's no
14 explanation why the telephone records were not provided. Even
15 on the records that the public defender had ---

16 THE COURT: Didn't the attorney testify that she had the
17 records and they did not support his position?

18 MR. FALK: Yes, Your Honor.

19 THE COURT: And didn't she -- didn't he testify that he
20 specifically did not want the case continued, did not want her
21 to ask for a continuance.

22 MR. FALK: Well, that was because he was in custody.

23 THE COURT: I understand. Isn't it more likely because
24 he wanted to get out?

25 MR. FALK: I have no doubt that he wanted to get out, but

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RULING OF THE COURT

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1 ---

2 THE COURT: Now, what could this attorney do when she's
3 faced with him saying, oh, there must be other records and she
4 moves for a continuance, which he doesn't want? I mean, she's
5 between a rock and a hard place at that point.

6 So, the choice was really Mr. Alford's. My client -- I
7 mean, my attorney can file for a continuance saying the
8 records that the solicitor has provided are not complete, or
9 he can enter a plea so that he can get out of jail. I mean,
10 it was -- those were his options, were they not?

11 (REPORTER'S NOTE: Applicant confers with Mr. Falk.)

12 MR. FALK: Your Honor, it would be our contention that he
13 felt at the time that he was forced to go forward with an
14 attorney who he did not believe was representing his interest
15 and had been ineffective up till that time, primarily not
16 getting adequate telephone records when they saw that there
17 was this big gap in the space for the whole day of the 29th,
18 why there was not additional inquiry and by -- and that she
19 refused for whatever reason to challenge the validity of the
20 indictment.

21 RULING OF THE COURT:

22 THE COURT: State's motion is granted.

23 Thank you.

24 MR. JAMES: Thank you, Your Honor.

25 THE COURT: Prepare an order, Mr. James.

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RULING OF THE COURT

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1 MR. JAMES: Respectfully request 30 days to prepare that
2 order, Your Honor.

3 THE COURT: Yes, sir.

4 APPLICANT'S EXHIBIT NUMBER 1

5 MARKED FOR IDENTIFICATION

6 ADJOURNED - 12:03 P.M.

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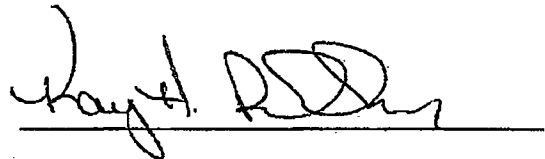
Alford v. State - 2015-CP-26-07716
CERTIFICATE OF COURT REPORTER

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Billy L. Alford v. State of South Carolina, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on May 24, 2018.

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

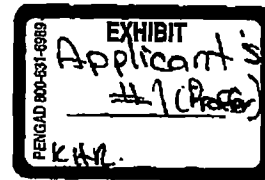
A handwritten signature in black ink, appearing to read "Kay H. Richardson", is written over a horizontal line.

Kay H. Richardson

Official Court Reporter

October 24, 2018.

	A				D	E	F	G	
1	Network Element Name	Mob	Number	Dis	Number	Call Direction	Seizure Dt Tm	Seizure Duration	Calling Party Number
2298	Charleston_MTX4		2523		0860	1	3/28/2011 18:09	496	-2523
2299	Charleston_MTX4		2523		0453	1	3/28/2011 18:17	652	-2523
2300	Charleston_MTX4		2523		0860	1	3/28/2011 18:32	361	-2523
2301	Charleston_MTX4		2523		0453	1	3/28/2011 18:38	563	-2523
2302	Charleston_MTX4		2523		2523	F	3/28/2011 19:10	56	-0860
2303	Charleston_MTX4		2523		0453	1	3/28/2011 20:11	493	-2523
2304	Charleston_MTX4		2523		0860	1	3/28/2011 20:25	1064	-2523
2305	Charleston_MTX4		2523		2523	F	3/28/2011 20:46	34	-0860
2306	Charleston_MTX4		2523		2523	F	3/28/2011 20:47	21	-0860
2307	Charleston_MTX4		2523		2523	F	3/28/2011 20:48	35	-0860
2308	Charleston_MTX4		2523		2523	F	3/28/2011 20:49	19	-0860
2309	Charleston_MTX4		2523		2523	F	3/28/2011 20:50	33	-0860
2310	Charleston_MTX4		2523		2523	O	3/28/2011 20:53	310	-0860
2311	Charleston_MTX4		2523		2523	F	3/28/2011 21:00	23	-0860
2312	Charleston_MTX4		2523		2523	O	3/28/2011 21:01	147	-0860
2313	Charleston_MTX4		2523		5259	1	3/28/2011 21:40	50	-2523
2314	Charleston_MTX4		2523		2523	F	3/28/2011 21:59	15	-5937
2315	Charleston_MTX4		2523		2523	O	3/28/2011 22:41	83	-5937
2316	Charleston_MTX4		2523		8932	1	3/30/2011 0:11	80	-2523
2317	Charleston_MTX4		2523		2523	O	3/30/2011 0:23	28	-0860
2318	Charleston_MTX4		2523		0860	1	3/30/2011 0:24	8	-2523
2319	Charleston_MTX4		2523		0860	1	3/30/2011 0:24	61	-2523
2320	Charleston_MTX4		2523		8932	1	3/30/2011 0:31	29	-2523
2321	Charleston_MTX4		2523		8932	1	3/30/2011 0:31	172	-2523
2322	Charleston_MTX4		2523		8932	1	3/30/2011 0:36	6	-2523
2323	Charleston_MTX4		2523		8932	1	3/30/2011 0:36	6	-2523
2324	Charleston_MTX4		2523		5370	2	3/30/2011 0:37	92	-2523
2325	Charleston_MTX4		2523		0860	1	3/30/2011 0:55	31	-2523
2326	Charleston_MTX4		2523		0453	1	3/30/2011 0:56	1773	-2523
2327	Charleston_MTX4		2523		0860	1	3/30/2011 9:32	51	-2523
2328	Charleston_MTX4		2523		1056	1	3/30/2011 10:08	186	-2523
2329	Charleston_MTX4		2523		2523	O	3/30/2011 10:09	132	-0860
2330	Charleston_MTX4		2523		1056	1	3/30/2011 10:11	24	-2523
2331	Charleston_MTX4		2523		2523	O	3/30/2011 10:28	4	-0280
2332	Charleston_MTX4		2523		2523	F	3/30/2011 11:08	29	-8932
2333	Charleston_MTX4		2523		8932	1	3/30/2011 11:08	7	-2523
2334	Charleston_MTX4		2523		2523	F	3/30/2011 11:08	9	-8932
2335	Charleston_MTX4		2523		8932	1	3/30/2011 11:08	7	-2523
2336	Charleston_MTX4		2523		2523	F	3/30/2011 11:09	11	-8932
2337	Charleston_MTX4		2523		8932	1	3/30/2011 11:09	5	-2523
2338	Charleston_MTX4		2523		2523	O	3/30/2011 11:09	211	-8932
2339	Charleston_MTX4		2523		1056	1	3/30/2011 12:46	37	-2523
2340	Charleston_MTX4		2523		*86	1	3/30/2011 12:50	195	-2523
2341	Charleston_MTX4		2523		*86	F	3/30/2011 12:50	195	-2523
2342	Charleston_MTX4		2523		5259	1	3/30/2011 12:54	81	-2523
2343	Charleston_MTX4		2523		2523	O	3/30/2011 12:59	1460	-1637
2344	Charleston_MTX4		2523		2523	O	3/30/2011 13:31	779	-0860
2345	Charleston_MTX4		2523		2523	O	3/30/2011 13:44	208	-0860
2346	Charleston_MTX4		2523		0860	1	3/30/2011 13:49	55	-2523
2347	Charleston_MTX4		2523		*86	1	3/30/2011 13:57	376	-2523
2348	Charleston_MTX4		2523		*86	F	3/30/2011 13:57	376	-2523
2349	Charleston_MTX4		2523		#768	1	3/30/2011 14:41	66	-2523
2350	Charleston_MTX4		2523		-611	1	3/30/2011 14:42	456	-2523
2351	Charleston_MTX4		2523		-1637	1	3/30/2011 14:50	114	-2523
2352	Charleston_MTX4		2523		-611	1	3/30/2011 14:52	1237	-2523
2353	Charleston_MTX4		2523		2523	F	3/30/2011 15:07	32	-1056



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Detail for Emmarie Poston: [REDACTED]-2523

Voice, continued

Date	Time	Number	Rate	Usage Type	Origination	Destination	Min.	Airline Charges	Long Dist/ Other Chgs	Total
3/28	5:11P	[REDACTED]-0860	Peak	M2MAIlow	Myrtle Bea SC	Wmyrtlebech SC	5	---	---	---
3/28	5:36P	[REDACTED]-0860	Peak	M2MAIlow	Myrtle Bea SC	Incoming CL	2	---	---	---
3/28	6:09P	[REDACTED]-0860	Peak	M2MAIlow	Myrtle Bea SC	Wmyrtlebech SC	9	---	---	---
3/28	6:17P	[REDACTED]-0453	Peak	PlanAllow	Myrtle Bea SC	So Conway SC	11	---	---	---
3/28	6:32P	[REDACTED]-0860	Peak	M2MAIlow	Myrtle Bea SC	Wmyrtlebech SC	7	---	---	---
3/28	6:38P	[REDACTED]-0453	Peak	PlanAllow	Myrtle Bea SC	So Conway SC	10	---	---	---
3/28	8:11P	[REDACTED]-0453	Peak	PlanAllow	Myrtle Bea SC	So Conway SC	9	---	---	---
3/28	8:25P	[REDACTED]-0860	Peak	M2MAIlow	Myrtle Bea SC	Wmyrtlebech SC	18	---	---	---
3/28	8:53P	[REDACTED]-0860	Peak	M2MAIlow	Myrtle Bea SC	Incoming CL	6	---	---	---
3/28	9:01P	[REDACTED]-0860	Off-Peak	N&W	Myrtle Bea SC	Incoming CL	3	---	---	---
3/28	9:40P	[REDACTED]-5259	Off-Peak	N&W	Myrtle Bea SC	Wmyrtlebech SC	1	---	---	---
3/28	10:41P	[REDACTED]-5937	Off-Peak	N&W	Myrtle Bea SC	Incoming CL	2	---	---	---
3/29	12:04A	[REDACTED]-0086	Off-Peak	N&W,CalVM	Myrtle Bea SC	Voice Mail CL	2	---	---	---
3/29	11:10A	[REDACTED]-0860	Peak	M2MAIlow	Myrtle Bea SC	Wmyrtlebech SC	2	---	---	---
3/29	11:18A	[REDACTED]-0860	Peak	M2MAIlow	Myrtle Bea SC	Incoming CL	7	---	---	---
3/29	1:22P	[REDACTED]-5259	Peak	PlanAllow	Myrtle Bea SC	Incoming CL	1	---	---	---
3/29	1:29P	[REDACTED]-5259	Peak	PlanAllow	Myrtle Bea SC	Wmyrtlebech SC	1	---	---	---
3/29	1:30P	[REDACTED]-5259	Peak	PlanAllow	Myrtle Bea SC	Wmyrtlebech SC	1	---	---	---
3/29	1:39P	[REDACTED]-6865	Peak	PlanAllow	Myrtle Bea SC	Incoming CL	2	---	---	---
3/29	2:58P	[REDACTED]-1138	Peak	PlanAllow	Myrtle Bea SC	Myrtle Bch SC	1	---	---	---
3/29	5:24P	[REDACTED]-5937	Peak	PlanAllow	Surfside B SC	Myrtle Bch SC	2	---	---	---
3/29	5:27P	[REDACTED]-3842	Peak	M2MAIlow	Surfside B SC	Florence SC	6	---	---	---
3/29	6:01P	[REDACTED]-0860	Peak	M2MAIlow	Surfside B SC	Incoming CL	8	---	---	---
3/29	6:08P	[REDACTED]-5937	Peak	PlanAllow	Myrtle Bea SC	Myrtle Bch SC	2	---	---	---
3/29	6:15P	[REDACTED]-5937	Peak	PlanAllow	Conway SC	Incoming CL	1	---	---	---
3/29	6:22P	[REDACTED]-5937	Peak	PlanAllow	Myrtle Bea SC	Myrtle Bch SC	2	---	---	---
3/29	6:39P	[REDACTED]-5937	Peak	PlanAllow	Conway SC	Myrtle Bch SC	2	---	---	---
3/29	6:50P	[REDACTED]-1056	Peak	PlanAllow	Conway SC	Incoming CL	1	---	---	---
3/29	6:53P	[REDACTED]-0860	Peak	M2MAIlow	Myrtle Bea SC	Incoming CL	3	---	---	---
3/29	6:56P	[REDACTED]-0860	Peak	M2MAIlow	Myrtle Bea SC	Incoming CL	3	---	---	---
3/29	7:00P	[REDACTED]-0860	Peak	M2MAIlow	Myrtle Bea SC	Incoming CL	4	---	---	---
3/29	7:04P	[REDACTED]-0860	Peak	M2MAIlow	Conway SC	Incoming CL	3	---	---	---
3/29	7:13P	[REDACTED]-0860	Peak	M2MAIlow	Myrtle Bea SC	Incoming CL	3	---	---	---
3/29	7:26P	[REDACTED]-0860	Peak	M2MAIlow	Surfside B SC	Incoming CL	6	---	---	---
3/29	8:17P	[REDACTED]-0860	Peak	M2MAIlow	Surfside B SC	Incoming CL	5	---	---	---
3/29	8:50P	[REDACTED]-0860	Peak	M2MAIlow	Surfside B SC	Incoming CL	4	---	---	---
3/29	9:09P	[REDACTED]-1056	Off-Peak	N&W	Surfside B SC	Myrtle Bch SC	1	---	---	---
3/29	9:10P	[REDACTED]-0860	Off-Peak	N&W	Surfside B SC	Wmyrtlebech SC	2	---	---	---
3/29	9:13P	[REDACTED]-0860	Off-Peak	N&W	Surfside B SC	Wmyrtlebech SC	8	---	---	---
3/29	9:20P	[REDACTED]-1056	Off-Peak	N&W	Surfside B SC	Myrtle Bch SC	1	---	---	---
3/29	9:22P	[REDACTED]-5259	Off-Peak	N&W	Surfside B SC	Wmyrtlebech SC	1	---	---	---
3/29	9:23P	[REDACTED]-1056	Off-Peak	N&W	Surfside B SC	Myrtle Bch SC	2	---	---	---
3/29	9:26P	[REDACTED]-7752	Off-Peak	N&W	Surfside B SC	Florence SC	4	---	---	---



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Date Due Page

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Detail for Emmarie Poston: [REDACTED]-2523

Voice, continued

Date	Time	Number	Rate	Usage Type	Origination	Destination	Min.	Airtime Charge	Long Dist. Other Chgs	Total
3/29	9:45P	[REDACTED]-5259	Off-Peak	N&W	Myrtle Bea SC	Wmyrtlebech SC	1	---	---	---
3/29	9:46P	[REDACTED]-5259	Off-Peak	N&W	Myrtle Bea SC	Wmyrtlebech SC	1	---	---	---
3/29	8:48P	[REDACTED]-1056	Off-Peak	N&W	Myrtle Bea SC	Myrtle Bch SC	1	---	---	---
3/29	11:13P	[REDACTED]-5259	Off-Peak	N&W	Myrtle Bea SC	Wmyrtlebech SC	2	---	---	---
3/29	11:15P	[REDACTED]-1056	Off-Peak	N&W	Myrtle Bea SC	Myrtle Bch SC	5	---	---	---
3/29	11:21P	[REDACTED]-1056	Off-Peak	N&W	Myrtle Bea SC	Myrtle Bch SC	1	---	---	---
3/29	11:21P	[REDACTED]-5259	Off-Peak	N&W	Myrtle Bea SC	Wmyrtlebech SC	1	---	---	---
3/29	11:22P	[REDACTED]-5259	Off-Peak	N&W	Myrtle Bea SC	Wmyrtlebech SC	1	---	---	---
3/29	11:22P	[REDACTED]-5259	Off-Peak	N&W	Myrtle Bea SC	Wmyrtlebech SC	3	---	---	---
3/29	11:31P	[REDACTED]-1056	Off-Peak	N&W	Myrtle Bea SC	Myrtle Bch SC	1	---	---	---
3/29	11:39P	[REDACTED]-1056	Off-Peak	N&W	Myrtle Bea SC	Myrtle Bch SC	3	---	---	---
3/29	11:57P	[REDACTED]-7-0850	Off-Peak	N&W	Myrtle Bea SC	Wmyrtlebech SC	14	---	---	---
3/30	12:11A	[REDACTED]-8932	Off-Peak	N&W	Myrtle Bea SC	Wmyrtlebech SC	2	---	---	---
3/30	12:23A	[REDACTED]-0860	Off-Peak	N&W	Myrtle Bea SC	Incoming CL	1	---	---	---
3/30	12:24A	[REDACTED]-0850	Off-Peak	N&W	Myrtle Bea SC	Wmyrtlebech SC	1	---	---	---
3/30	12:24A	[REDACTED]-0850	Off-Peak	N&W	Myrtle Bea SC	Wmyrtlebech SC	2	---	---	---
3/30	12:31A	[REDACTED]-8932	Off-Peak	N&W	Myrtle Bea SC	Wmyrtlebech SC	1	---	---	---
3/30	12:31A	[REDACTED]-8932	Off-Peak	N&W	Myrtle Bea SC	Wmyrtlebech SC	3	---	---	---
3/30	12:38A	[REDACTED]-8932	Off-Peak	N&W	Myrtle Bea SC	Wmyrtlebech SC	1	---	---	---
3/30	12:36A	[REDACTED]-8932	Off-Peak	N&W	Myrtle Bea SC	Wmyrtlebech SC	1	---	---	---
3/30	12:37A	[REDACTED]-5370	Off-Peak	N&W	Myrtle Bea SC	Myrtle Bch SC	2	---	---	---
3/30	12:55A	[REDACTED]-0860	Off-Peak	N&W	Socastee SC	Wmyrtlebech SC	1	---	---	---
3/30	12:56A	[REDACTED]-0453	Off-Peak	N&W	Myrtle Bea SC	So Conway SC	30	---	---	---
3/30	9:32A	[REDACTED]-0850	Peak	M2MAllow	Myrtle Bea SC	Wmyrtlebech SC	1	---	---	---
3/30	10:08A	[REDACTED]-1056	Peak	PlanAllow	Myrtle Bea SC	Myrtle Bch SC	4	---	---	---
3/30	10:09A	[REDACTED]-0860	Peak	M2MAllow,CallWait	Myrtle Bea SC	Incoming CL	3	---	---	---
3/30	10:11A	[REDACTED]-1056	Peak	PlanAllow	Myrtle Bea SC	Myrtle Bch SC	1	---	---	---
3/30	11:08A	[REDACTED]-8932	Peak	PlanAllow	Myrtle Bea SC	Wmyrtlebech SC	1	---	---	---
3/30	11:08A	[REDACTED]-8932	Peak	PlanAllow	Myrtle Bea SC	Wmyrtlebech SC	1	---	---	---
3/30	11:08A	[REDACTED]-8932	Peak	PlanAllow	Myrtle Bea SC	Wmyrtlebech SC	1	---	---	---
3/30	11:08A	[REDACTED]-8932	Peak	PlanAllow	Myrtle Bea SC	Incoming CL	4	---	---	---
3/30	12:46P	[REDACTED]-1056	Peak	PlanAllow	Myrtle Bea SC	Myrtle Bch SC	1	---	---	---
3/30	12:50P	[REDACTED]-0086	Peak	PlanAllow,CallVM	Myrtle Bea SC	Voice Mail CL	4	---	---	---
3/30	12:54P	[REDACTED]-5259	Peak	PlanAllow	Myrtle Bea SC	Wmyrtlebech SC	2	---	---	---
3/30	12:59P	[REDACTED]-1637	Peak	M2MAllow	Myrtle Bea SC	Incoming CL	25	---	---	---
3/30	1:31P	[REDACTED]-0860	Peak	M2MAllow	Myrtle Bea SC	Incoming CL	13	---	---	---
3/30	1:44P	[REDACTED]-0860	Peak	M2MAllow,CallWait	Myrtle Bea SC	Incoming CL	4	---	---	---
3/30	1:49P	[REDACTED]-0860	Peak	M2MAllow	Myrtle Bea SC	Wmyrtlebech SC	1	---	---	---
3/30	1:57P	[REDACTED]-0086	Peak	PlanAllow,CallVM	Myrtle Bea SC	Voice Mail CL	7	---	---	---
3/30	2:50P	[REDACTED]-1637	Peak	M2MAllow	Myrtle Bea SC	Florence SC	2	---	---	---
3/30	3:13P	[REDACTED]-1056	Peak	PlanAllow	Myrtle Bea SC	Myrtle Bch SC	3	---	---	---
3/30	4:36P	[REDACTED]-6176	Peak	PlanAllow	Myrtle Bea SC	Incoming CL	1	---	---	---
3/30	4:38P	[REDACTED]-0086	Peak	PlanAllow,CallVM	Myrtle Bea SC	Voice Mail CL	7	---	---	---

1	A				D	E	F		
1	Network Element Name	Mobile Number	Dial Number	Call Direction	Seizure Dt Tm	Seizure Duration	Call Number		
2298	Charleston_MTX4	2523	0860	1	3/28/2011 18:09	496	2523		
2299	Charleston_MTX4	2523	0453	1	3/28/2011 18:17	652	2523		
2300	Charleston_MTX4	2523	0860	1	3/28/2011 18:32	361	2523		
2301	Charleston_MTX4	2523	0453	1	3/28/2011 18:38	563	2523		
2302	Charleston_MTX4	2523	2523	F	3/28/2011 19:10	56	0860		
2303	Charleston_MTX4	2523	0453	1	3/28/2011 20:11	493	2523		
2304	Charleston_MTX4	2523	0860	1	3/28/2011 20:25	1064	2523		
2305	Charleston_MTX4	2523	2523	F	3/28/2011 20:46	34	0860		
2306	Charleston_MTX4	2523	2523	F	3/28/2011 20:47	21	0860		
2307	Charleston_MTX4	2523	2523	F	3/28/2011 20:48	35	0860		
2308	Charleston_MTX4	2523	2523	F	3/28/2011 20:49	19	0860		
2309	Charleston_MTX4	2523	2523	F	3/28/2011 20:50	33	0860		
2310	Charleston_MTX4	2523	2523	0	3/28/2011 20:53	310	0860		
2311	Charleston_MTX4	2523	2523	F	3/28/2011 21:00	23	0860		
2312	Charleston_MTX4	2523	2523	0	3/28/2011 21:01	147	0860		
2313	Charleston_MTX4	2523	5259	1	3/28/2011 21:40	50	2523		
2314	Charleston_MTX4	2523	2523	F	3/28/2011 21:59	15	5937		
2315	Charleston_MTX4	2523	2523	0	3/28/2011 22:41	83	5937		
2316	Charleston_MTX4	2523	8932	1	3/30/2011 0:11	80	2523		
2317	Charleston_MTX4	2523	2523	0	3/30/2011 0:23	28	0860		
2318	Charleston_MTX4	2523	0860	1	3/30/2011 0:24	8	2523		
2319	Charleston_MTX4	2523	0860	1	3/30/2011 0:24	61	2523		
2320	Charleston_MTX4	2523	8932	1	3/30/2011 0:31	29	2523		
2321	Charleston_MTX4	2523	8932	1	3/30/2011 0:31	172	2523		
2322	Charleston_MTX4	2523	8932	1	3/30/2011 0:36	6	2523		
2323	Charleston_MTX4	2523	8932	1	3/30/2011 0:36	6	2523		
2324	Charleston_MTX4	2523	5370	2	3/30/2011 0:37	92	2523		
2325	Charleston_MTX4	2523	0860	1	3/30/2011 0:55	31	2523		
2326	Charleston_MTX4	2523	0453	1	3/30/2011 0:56	1773	2523		
2327	Charleston_MTX4	2523	0860	1	3/30/2011 9:32	51	2523		
2328	Charleston_MTX4	2523	1056	1	3/30/2011 10:08	186	2523		
2329	Charleston_MTX4	2523	2523	0	3/30/2011 10:09	132	0860		
2330	Charleston_MTX4	2523	1056	1	3/30/2011 10:11	24	2523		
2331	Charleston_MTX4	2523	2523	0	3/30/2011 10:28	4	0-0280		
2332	Charleston_MTX4	2523	2523	F	3/30/2011 11:08	29	8932		
2333	Charleston_MTX4	2523	8932	1	3/30/2011 11:08	7	2523		
2334	Charleston_MTX4	2523	2523	F	3/30/2011 11:08	9	8932		
2335	Charleston_MTX4	2523	8932	1	3/30/2011 11:08	7	2523		
2336	Charleston_MTX4	2523	2523	F	3/30/2011 11:09	11	8932		
2337	Charleston_MTX4	2523	8932	1	3/30/2011 11:09	5	2523		
2338	Charleston_MTX4	2523	2523	0	3/30/2011 11:09	211	8932		
2339	Charleston_MTX4	2523	1056	1	3/30/2011 12:46	37	2523		
2340	Charleston_MTX4	2523	*86	1	3/30/2011 12:50	195	2523		
2341	Charleston_MTX4	2523	*86	F	3/30/2011 12:50	195	2523		
2342	Charleston_MTX4	2523	5259	1	3/30/2011 12:54	81	2523		
2343	Charleston_MTX4	2523	2523	0	3/30/2011 12:59	1460	1637		
2344	Charleston_MTX4	2523	2523	0	3/30/2011 13:31	779	0860		
2345	Charleston_MTX4	2523	2523	0	3/30/2011 13:44	208	0860		
2346	Charleston_MTX4	2523	0860	1	3/30/2011 13:49	55	2523		
2347	Charleston_MTX4	2523	*86	1	3/30/2011 13:57	376	2523		
2348	Charleston_MTX4	2523	*86	F	3/30/2011 13:57	376	2523		
2349	Charleston_MTX4	2523	#768	1	3/30/2011 14:41	66	2523		
2350	Charleston_MTX4	2523	-611	1	3/30/2011 14:42	456	2523		
2351	Charleston_MTX4	2523	1637	1	3/30/2011 14:50	114	2523		
2352	Charleston_MTX4	2523	-611	1	3/30/2011 14:52	1237	2523		
2353	Charleston_MTX4	2523	2523	F	3/30/2011 15:07	32	1056		

WITNESSES

William Adams Conway Police Department

ARREST WARRANT NUMBER

1218434

CDR: 3413 16-03-0600(D)(1)

DOA: 4/8/2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

JUN 3 0 2011

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011-GS-26-02121

The State of South Carolina

County of Horry

Lauree Richardson

11H01393

COURT OF GENERAL SESSIONS

June, 2011 TERM

THE STATE

VS.

Billy Leon Afford

W/ M

MISTY PINE DRIVE

SURFSIDE BEACH, SC 29572

DOB: 1970-

SSN: -

ATTORNEY:

Indictment for

Assault And Battery, Second Degree

J. Gregory Hembree, Solicitor

ORIGINAL

Public Defender Office Of Horry County

Orrie E. West, Circuit Public Defender

P.O. Box 1666

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Georgetown Office
401 Cleland Street
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FAX

TO: VERIZON Wireless

FROM: F. JEROME RANDALL

DATE: SEPT. 6, 2011 PAGES: 02

RE: RECORDS

MEMO: REQUESTING that you Fax or Email Records
to Horry County Public Defender office. Phone Records
are being REQUESTED for a criminal trial scheduled
for this week. Thank you in Advance

F. Jerome



May 11th, 2018

Dear Mr. Falk,

Enclosed please find a copy of
my phone statement from Verizon.

If you could send me copies of
the enclosed with your initials
& the date you received them I'd
greatly appreciate it.

Thank you,
Billy Alford



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FOR THE JUDICIAL CIRCUIT

Billy L. Alford,) Case No.: 2015-CP-26-07716

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

HORRY COUNTY
2018 JUL 20 PM 1:35
KEENE L. ELLIS
CLERK OF COURT
HORRY COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed by Billy L. Alford ("Applicant") on October 27, 2015. Respondent made its return on or about May 5, 2016. The Court convened an evidentiary hearing into the matter on Thursday, May 24, 2018, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by James K. Falk, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Paola C. Pinzon, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant was confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the June 2011 term of the Horry County Grand Jury for assault and battery, second degree (2011-GS-26-02121). Paola C. Pinzon, Esq. represented Applicant, and J. Stephen Grooms, Esq., of the

Fifteenth Circuit Solicitor's Office, prosecuted the case. On November 9, 2011, Applicant pled guilty as indicted. The Honorable Edward B. Cottingham sentenced Applicant to imprisonment for a term of 18 years.

Applicant filed a notice of appeal on December 2, 2011; the South Carolina Court of Appeals subsequently dismissed that appeal as untimely. Applicant filed a letter on February 21, 2012, requesting his appeal be reinstated, which was denied by the Court on March 26, 2012. The Remittitur was issued on June 12, 2012.

First PCR Application: 2012-CP-26-05785

Applicant filed his first application for post-conviction relief on July 27, 2012 (2011-GS-26-02121). He alleged the following grounds for relief in his application:

1. "Rule 2 S.C.R.C.P."
 - a. "Filed for Preliminary Hearing, never granted through Public Defender"
2. "Rule 3(c) S.C.R.C.P. 1.2 File Stamping"
 - a. "Indictment Never filed through Clerk of Court"
3. "Ineffective Assistance of Representation"
 - a. "My attorney failed to contact my witnesses of which would have confirmed my defense of not being in Conway at the River-walk where the alleged incident was suppose to have occurred."
 - b. "My attorney tampered with evidence pertaining to my case which was in fact a copy of my cell phone records. The date of March 29th was complete deleted from the requested copy that was sent from [Verizon] Wireless, who was the provider of my phone service."
 - c. "My attorney failed to file motions of which I requested to be filed pertaining to my case. (A). I requested a motion to be filed for a dismissal of charges due to the fact my charge was upgraded from Simple Assault and Battery to Assault and Battery 2nd Degree, without any evidence or police report as to why the charge was enhanced. (B). I requested a motion e filed due to the fact I wasn't given a Preliminary Hearing of which I requested as is my right to Due Process of Law guaranteed me through the South Carolina Constitution as well as the United States Constitution. 1.9.2 Preliminary Hearings. To be held within 10 days of the dates of demand except for good cause shown."

- d. "My attorney was to inform the court, of my not being legally indicted as defined in the SCRPC Rule 3. (a)-(d) and Article 1 section 11 of the U.S. Constitution."
- e. "My attorney failed to represent me as defined in the law Client-Lawyer Relationships and was therefore ineffective in her representation in regards to my criminal defense. Based upon the above facts I had no option but to plead guilty, due to the fact my attorney ineffectively represented me in allowing the prosecution to maliciously prosecute me through her not filing the proper motions through the courts after discovering that the State tampered with requested evidence pertaining to my defense."

Respondent made its return on October 2, 2012, and an evidentiary hearing into the matter was convened on December 16, 2013, before the Honorable Steven H. John. Russell B. Long, Esq., appeared on behalf of Applicant, and Joshua L. Thomas, Esq., of the South Carolina Attorney General's Office, represented Respondent. Applicant did not appear at the hearing. Judge John continued the matter to permit Respondent to file a motion to dismiss for failure to prosecute, and Respondent so filed on February 21, 2014.

A hearing into Respondent's motion to dismiss was convened on March 20, 2014, before the Honorable George C. James, Jr. Mr. Long and Mr. Thomas again appeared representing their respective parties. Applicant was not present. Applicant's attorney informed the Court that Applicant failed to contact him regarding the action, and further informed the Court of his numerous efforts to contact Applicant. Respondent moved to dismiss the matter due to Applicant's failure to prosecute. Judge James, by written order dated April 2, 2014, and filed April 10, 2014, dismissed the application for failure to prosecute.

Applicant filed a notice of appeal on April 15, 2015, but dated it April 9, 2014. Upon request for clarification from the South Carolina Supreme Court, Applicant submitted another certification of service dated May 7, 2015. On May 20, 2015, the Supreme Court denied the

appeal as untimely. Alford v. State, S.C. Sup. Ct. Order dated May 20, 2015. The remittitur was returned on June 5, 2015.

Present Application

Applicant filed his second application for post-conviction relief on October 27, 2015. Respondent made its return and motion to dismiss on May 5, 2016, arguing the application should be dismissed as untimely and successive. The Honorable William H. Seals, Jr., issued a Conditional Order of Dismissal filed May 23, 2016, giving Applicant 20 days from the date of service to show why the Order should not become final. Applicant was served on June 16, 2016, and timely filed a reply on July 6, 2016. In that reply, Applicant claimed he was transported to the Horry County Courthouse for the March 20, 2014, hearing, but was detained in the holding cells at the courthouse until he was told his hearing was canceled and he was to be transported back to local detention.

A hearing was briefly convened before the Honorable Steven H. John on March 23, 2018. Applicant appeared *pro se*¹ and Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented the State. Respondent indicated evidence supported Applicant's response to the Conditional Order of Dismissal—to wit: a photographic copy of a log book from J. Reuben Long Detention Center indicating Applicant was transported to court on March 20, 2014, as claimed by Applicant. Respondent requested the Conditional Order be vacated and new counsel be appointed for Applicant. Applicant did not object. By written order signed March 15, 2018, and filed March 23, 2018, Judge John vacated the Conditional Order of Dismissal and directed the Horry County Clerk of Court appoint counsel to Applicant for this action.

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

¹ Applicant was present with counsel for a separate post-conviction relief matter, Daniel A. Selwa, II, Esq.

1. "Ineffective Assistance of PCR Counsel"

- a. "Failure to protect my rights pursuant to South Car. PCR Act, 12-27-20 - 120. Specifically S.C. Code ann. § 17-27-90 Right to present all grounds in a PCR"

At the evidentiary hearing, Applicant proceeded forward on certain allegations set forth in his original application for post-conviction relief in 2012-CP-26-05785, namely:

1. Ineffective Assistance of Counsel, in that:

- a. Counsel failed to file a motion to dismiss for being indicted on a greater offense than was originally charged; and
- b. Counsel failed to properly acquire phone records in order to present an alibi defense.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "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." Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry at 117, 386 S.E.2d at 625 (citing Strickland at 688). 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 at 117-18, 386 S.E.2d at 625 (citing Strickland at 694). With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

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

1. Failure to Move for Dismissal of Charges

Applicant alleges Counsel was ineffective in failing to seek dismissal of his indictment on the basis that he was indicted for more severe offenses than were originally charged by law enforcement. The basis for determining the sufficiency of the indictment is set forth by statute:

Every indictment shall be deemed and judged sufficient and good in law which, in addition to allegations as to time and place, as required by law, charges the crime substantially in the language of the common law or of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood and, if the offense be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided.

S.C. Code Ann. § 17-19-20. Generally, "guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses[.]" Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

Applicant did not present any legal authority to support his claim that a variance between the indictment and the original arrest warrant is a fatal defect, nor is this Court aware of any authority to support his proposition. To the contrary, "[b]oth the South Carolina Constitution and South Carolina case law place the unfettered discretion to prosecute solely in the prosecutor's hands." State v. Thrift, 312 S.C. 282, 291-92, 440 S.E.2d 341, 346 (1994). "Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety." Id., 312 S.C. at 292, 440

S.E.2d at 346-47. In fact, upon investigation subsequent to arrest and in the exercise of professional legal judgment, it is entirely common for prosecutors to bring additional charges against defendants by way of direct presentment to the grand jury, or to determine an act charged violates a more severe statute or common law than originally identified by law enforcement. In short, the premise of Applicant's allegation is without merit as a matter of law.

In any event, Counsel testified she moved to dismiss the indictment, and did everything Applicant asked of her. Counsel asserted nobody made Applicant plead guilty. The Court finds Counsel's testimony credible. Applicant testified at the hearing that he purposefully pled guilty in order to take his case to the appellate level.² Applicant additionally testified he did not wish to spend any more time in jail. Whichever strategic reasoning was the real motivator, this Court finds Applicant's plea was knowingly, intelligently, and voluntarily entered. As such, for all of these reasons, Applicant's demand for relief by way of this allegation is **DENIED**.

2. Failure to Investigate Phone Records

Applicant alleges Counsel was ineffective for failing to properly acquire accurate phone records which could have placed him in Surfside Beach at the time the victim was attacked in western Myrtle Beach. In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as

² Counsel denied ever being told of this strategic reasoning.

to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.*, 377 S.C. at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Applicant claimed at the evidentiary hearing that he was on the phone with the victim at the time of the alleged crime. Applicant testified he was in Surfside Beach, and later Socastee while the victim was in western Myrtle Beach. Applicant asserted he did not have cell phone records at the time of his plea, and that the records provided to him were missing the date in question: March 29, 2011.

Counsel testified that records were subpoenaed from Verizon Wireless by one of the public defenders who represented Applicant prior to her taking the case;³ the telecom responded by providing 46 pages of call data ("Verizon Records"). The Verizon Records in Counsel's file were introduced as an exhibit and, when asked why they conspicuously did not include any data from the date in question, Counsel testified she did not know. Counsel denied tampering with the Verizon Records. Counsel further denied extracting or manipulating data from the Verizon Records for trial purposes. Counsel was shown a separate set of call logs by Applicant's PCR counsel, but professed that it was the first time she had ever seen that call log.⁴ Counsel testified she reviewed all matters in discovery with Applicant.

The Court finds no deficiency on the part of Counsel, nor prejudice therefrom. First, the reasoning and conclusion set forth in II.A.1, above, is of equal force here—Applicant, for his

³ Applicant was initially represented by J. Andrew Ritner, Esq., and then Chief Public Defender Orrie West, Esq., before Counsel was appointed to his case.

⁴ A portion of the hearing revolved around competing sets of phone records: the Verizon Records and a printout produced by Applicant purporting to be a record of his phone activity from his aunt's Verizon Wireless account. Respondent moved the Verizon Records into evidence after Applicant repeatedly referenced them on direct examination of Counsel. This Court admitted those records not for the truth asserted, but as materials relied upon by Counsel in the course of her representation of Applicant. Applicant thereafter attempted to introduce the second set of logs, but in light of Counsel's professed unfamiliarity with the records, and the lack of any other foundation (neither Applicant's aunt nor any records custodian appeared at the hearing), this Court declined to admit the second set of logs from the record.

own reasons, knowingly, intelligently, and voluntarily entered his plea of guilty. Second, the Court finds Counsel *did* possess the Verizon Records demanded by Applicant, and reviewed them with Applicant prior to his guilty plea. Third, the Court finds Applicant has failed to present *competent* evidence to show what, if anything, additional investigation into Applicant's phone history would have revealed, leaving this Court with mere speculation as to what might have been discovered. For all these reasons, Applicant's demand for relief by way of this allegation is **DENIED**.

3. Improper Enticement to Plead Guilty

Although not raised in *any* prior filing before the Court, Applicant claimed at the very end of the evidentiary hearing that he was enticed to plead guilty by way of a promise by counsel to take him to dinner, resulting in a brief relationship. Excuse from procedural default in PCR matters is rare, but the courts are encouraged to exercise its own discretion to reach the merits of *substantial* issues within the flexibility of the Rules of Civil Procedure. Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017). Counsel was not recalled to testify to this improperly presented allegation, but was visible in the gallery and involuntarily reacted with tremendous, incredulous dismay. Those present, including attorney witnesses to other matters, court staff, and Applicant himself, struggled to maintain professional composure. The Court finds Applicant's claim lacks even a scintilla of credibility. The Court further finds this is not an appropriate case to excuse procedural default—desperate, outlandish claims launched in the final moments of a second trip to the witness stand, after adverse rulings and testimony, are not the appropriate basis for procedural flexibility. Accordingly, the Court declines to consider this allegation as not properly pled and presented.

III. CONCLUSION

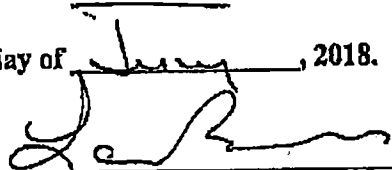
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 17 day of July, 2018.


 LARRY B. HYMAN, JR.
 Presiding Judge
 Fifteenth Judicial Circuit

Cowley, South Carolina

WITNESSES

William Adams Conway Police Department

DOCKET NO. 2011-GS-26-02121

C The State of South Carolina
County of Horry

Lauree Richardson

11H01393

COURT OF GENERAL SESSIONS

June, 2011 TERM

ARREST WARRANT NUMBER

I218434

CDR: 3413 16-03-0600(D)(1)

DOA: 4/8/2011

THE STATE

vs.

Billy Leon Afford
W/ M



ACTION OF GRAND JURY ...

TRUE BILL

Foreperson of Grand Jury
Date:

JUN 3 0 2011

ATTORNEY:

VERDICT

Indictment for

Assault And Battery, Second Degree

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury
Date:

☒ ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on June 30, 2011, the Grand Jurors of Horry County present upon their oath:

ASSAULT AND BATTERY SECOND DEGREE
CDR: 3413 16-03-600(D)

That Billy Leon Alford did in Horry County on or about March 29, 2011 commit, offer to commit or attempt to commit an unlawful act of injury with the present ability to do so to Melissa Miller and the act caused moderate bodily injury to the victim, in violation of Section 16-3-600(D), S. C. Code of Laws, 1976, as amended.

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


J. GREGORY HAMBREE
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

William Adams Conway Police Department

DOCKET NO. 2011-GS-26-02121

CR The State of South Carolina

County of Horry

Lauree Richardson

11H01393

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VS.

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Foreperson of Grand Jury
Date:

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VERDICT

ATTORNEY:

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Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

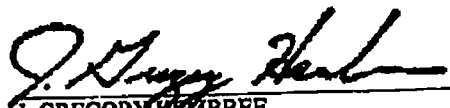
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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR