

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_

Certiorari to Spartanburg County

Honorable G. Thomas Cooper, Jr., Circuit Court Judge

\_\_\_\_\_

FRANCISCO R. RODRIGUEZ,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000882

\_\_\_\_\_

APPENDIX

\_\_\_\_\_

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ATTORNEY FOR PETITIONER

**RECEIVED**

**Dec 03 2020**

**S.C. SUPREME COURT**

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STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA, )  
 )  
 PLAINTIFF, )  
 )  
 -VS- )  
 )  
 FRANCISCO RODRIGUEZ, )  
 )  
 DEFENDANT. )  
 \_\_\_\_\_ )

2015-GS-42-03397

TRANSCRIPT OF RECORD

APRIL 12, 2016  
SPARTANBURG, SOUTH CAROLINA

B E F O R E:

THE HONORABLE R. KEITH KELLY

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

ATTORNEY FOR PLAINTIFF:

LINDSEY OVERBY, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

JOSEPH BALDWIN, ESQ.

SUSAN W. HUDGINS  
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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(No exhibits were produced during this hearing)

1 (Whereupon court convened at 11:10 am)

2 **THE COURT:** Solicitor.

3 **MS. OVERBY:** Your Honor, do you want me to swear the  
4 interpreter first or do I go ahead and call the case?

5 **THE COURT:** You can go ahead and ---

6 **MS. OVERBY:** Okay.

7 **THE COURT:** --- call it and then we'll -- well, let's  
8 go ahead and do that. Madame Clerk, you want to swear the  
9 ---

10 **MADAME CLERK:** Yes, sir.

11 **THE COURT:** --- interpreter. And you might as well  
12 swear him, too, ---

13 **MADAME CLERK:** Raise your ---

14 **THE COURT:** --- while we're at it.

15 **MADAME CLERK:** --- right hand, please. Do you solemnly  
16 swear that you will accurately interpret the language  
17 requested in this courtroom of the Defendant without  
18 additions thereto or detractions therefrom or any other  
19 amendments of your own interpretation so help you God?

20 **INTERPRETER:** Yes, ma'am.

21 **MADAME CLERK:** If the Defendant would raise his right  
22 hand, please. Do you solemnly swear that the testimony  
23 you're about to give will be the truth, the whole truth and  
24 nothing but the truth so help you God?

25 **MR. RODRIGUEZ:** Yes.

1           **MS. OVERBY:** May it please the Court, Your Honor?

2           **THE COURT:** Yes, ma'am.

3           **MS. OVERBY:** This is indictment 2015-GS-42-3397, the  
4 State versus Francisco Rodriguez. This is a true billed  
5 indictment for criminal sexual conduct with a minor in the  
6 third degree. He is pleading to the same. There is no  
7 recommendation as to this charge.

8           By way of background, he was also charged with criminal  
9 sexual conduct with a minor in the first degree. And the  
10 State is dismissing the first degree upon a plea to the  
11 third degree today. This plea is entered under Alford  
12 versus North Carolina. And Mr. Rodriguez is represented by  
13 Joe Baldwin.

14           **THE COURT:** Sir, you are Francisco Rodriguez?

15           **MR. RODRIGUEZ:** Yes, sir.

16           **THE COURT:** Mr. Rodriguez, you are in custody. Have  
17 you taken any prescription medication, drug or other  
18 substance that affects your thinking and reasoning ability?

19           **MR. RODRIGUEZ:** No.

20           **THE COURT:** Do you know what you're doing here today?

21           **MR. RODRIGUEZ:** Yes.

22           **THE COURT:** Okay. She's recording. So you'll have to  
23 give me answers, okay?

24           **MR. RODRIGUEZ:** Yes.

25           **THE COURT:** Mr. Baldwin represents you?

1           **MR. RODRIGUEZ:** Yes, sir.

2           **THE COURT:** The Government says in 2015-3397 that you  
3 did in Spartanburg County, South Carolina on or between the  
4 dates of September 6th, 2012 and June 30, 2014 being over  
5 the age of fourteen years wilfully and lewdly committed or  
6 attempt to commit a lewd or lascivious act upon or with the  
7 body of one **Minor**, a minor under the age of sixteen years,  
8 with the intent of arousing, appealing to or gratifying the  
9 lusts, passions or sexual desires of yourself or the minor  
10 child in violation of State law.

11           That matter has been true billed by the grand jury.  
12 You're pleading as indicted. It is violent. It is most  
13 serious. It carries with it up to fifteen years. Mandatory  
14 sex registry. I understand that you are offering to plead  
15 under the Alford case. You understand what I've told you?

16           **MR. RODRIGUEZ:** The dates are not correct. It was  
17 between three months. The dates aren't right.

18           **THE COURT:** What are the dates?

19           **MR. RODRIGUEZ:** April, June.

20           **THE COURT:** Of?

21           **MR. RODRIGUEZ:** 2014.

22           **THE COURT:** April and June. Okay. So it's still  
23 between 2012 and June 30 of 2014?

24           **MR. RODRIGUEZ:** Okay.

25           **THE COURT:** It's between those dates. The true dates

1 are April and June of 2014.

2 **MR. RODRIGUEZ:** Yes. Correct.

3 **THE COURT:** All right. You have certain rights you  
4 must waive and give up to plead guilty or to plead under  
5 Alford. You have a right to remain silent under the State  
6 and Federal Constitution. Do you give up that right?

7 **MR. RODRIGUEZ:** When? Now?

8 **THE COURT:** Do you give up that right, yes?

9 **MR. RODRIGUEZ:** Well, ---

10 **THE COURT:** Do you want to talk to your lawyer?

11 (Whereupon the Defendant was speaking with his  
12 attorney)

13 **THE COURT:** Do you give up your right to remain silent?

14 **MR. RODRIGUEZ:** Yes.

15 **THE COURT:** You have the right to a trial by jury. Put  
16 twelve folks in the box and try your case. The jury is  
17 here. Do you want a trial by jury?

18 **MR. RODRIGUEZ:** No. I want an Alford.

19 **THE COURT:** Okay. You have the right to call any  
20 witness you choose. And you have the right to confront any  
21 witness who testifies against you. Do you give up that  
22 right?

23 **MR. RODRIGUEZ:** Witnesses in favor or against me?

24 (Whereupon the Defendant was speaking with his  
25 attorney)

1           **MR. RODRIGUEZ:** No.

2           **THE COURT:** You don't give up that right?

3           **MR. BALDWIN:** No, he ---

4           (Whereupon the Defendant was speaking with his  
5 attorney)

6           **MR. RODRIGUEZ:** Yes.

7           **THE COURT:** Yes, you give up the right to call and  
8 confront witnesses?

9           **MR. RODRIGUEZ:** Yes.

10          **THE COURT:** Okay. Sir, do you offer to plead under  
11 North Carolina versus Alford?

12          (Whereupon the Defendant was speaking with his  
13 attorney)

14          **MR. RODRIGUEZ:** Yes.

15          **THE COURT:** Do you understand this Court will treat  
16 that plea the same as if you pled guilty?

17          **MR. RODRIGUEZ:** Yes.

18          **THE COURT:** Isn't it true you are receiving a  
19 beneficial result by being allowed to plead under Alford?

20          **MR. RODRIGUEZ:** Yes.

21          **THE COURT:** Okay. Whatever evidence the prosecutor has  
22 I have not seen. But whatever she has, if she were to put  
23 that before a jury, isn't it true there is a substantial  
24 likelihood you would be convicted?

25          **MR. RODRIGUEZ:** Yes.

1           **THE COURT:** Okay. Did anyone force you, threaten you,  
2 make you enter this plea?

3           **MR. RODRIGUEZ:** No.

4           **THE COURT:** Did anyone talk you into it such as a  
5 family member or a friend?

6           **MR. RODRIGUEZ:** No.

7           **THE COURT:** Have you had plenty of time to speak with  
8 your lawyer?

9           **MR. RODRIGUEZ:** Yes.

10          **THE COURT:** Has he done everything he can for you?

11          (Pause)

12          **MR. RODRIGUEZ:** Maybe ---

13          **THE COURT:** Do you want -- do you know of anything you  
14 would like for him to do that he has refused to do?

15          **MR. RODRIGUEZ:** I asked him to investigate that the  
16 victim went to Mexico with someone that wasn't her parents.  
17 She went and came back during the months that they're  
18 saying. So I asked him to investigate this.

19          **THE COURT:** Well, did he do that?

20          **MR. RODRIGUEZ:** I don't know.

21          **THE COURT:** Well, ask him.

22          (Whereupon the Defendant was speaking with his  
23 attorney)

24          **THE COURT:** Do you know what he -- do you know whether  
25 or not he did?

1           **MR. RODRIGUEZ:** I don't know.

2           **THE COURT:** Okay. Mr. Baldwin, you want to -- you want  
3 to sit him down and talk to him for a minute or something?

4           **MR. BALDWIN:** Yes. Your Honor, I -- I'll try to do  
5 that. The problem is they make these indictments so broad,  
6 and he wants to take it literally. I'll -- I'll talk to him  
7 for a minute.

8           **THE COURT:** Okay. Go talk to your lawyer, sir.

9           (Whereupon court was in recess at 11:22 am)

10          (Whereupon court reconvened at 11:25 am)

11          **THE COURT:** Did you get your questions answered, sir?

12          **MR. RODRIGUEZ:** Yes.

13          **THE COURT:** Okay. Have you -- are you satisfied with  
14 the services of your lawyer at this time?

15          **MR. RODRIGUEZ:** Yes.

16          **THE COURT:** Has he now done everything that he can for  
17 you?

18          **MR. RODRIGUEZ:** Yes.

19          **THE COURT:** Is there anything else that you would like  
20 for him to do that he has not done or refused to do?

21          **MR. RODRIGUEZ:** No.

22          **THE COURT:** Okay. Sir, you have ten days to appeal  
23 your sentence or the plea. If you do so, you must file it  
24 in writing with the Clerk of Court. Do you understand?

25          **MR. RODRIGUEZ:** Okay.

1           **THE COURT:** Please listen to the solicitor.

2           **MS. OVERBY:** Thank you, Your Honor. In November of  
3 2014 the Spartanburg County Sheriff's Office received a  
4 report of a sexual offense. The report was made to law  
5 enforcement by the victim's parents upon the victim's  
6 disclosure of sexual abuse in a letter.

7           The victim had attended a church program regarded  
8 Inappropriate Touching, and then based on that program she  
9 wrote her parents this letter. The victim was nine years  
10 old at the time of the report. The Defendant in this case  
11 is the victim's former babysitter's husband. Basically the  
12 letter to the parents the victim left on the sofa so that  
13 she knew her parents would read it.

14           She described that while at the babysitter's house when  
15 the babysitter had gone to Wal-mart, the Defendant touched  
16 the victim. The victim was referred to the Children's  
17 Advocacy Center for a forensic interview. She also  
18 disclosed the sexual abuse to a law enforcement officer who  
19 responded to the residence on the day of the report.

20           In essence, the victim disclosed at least one instance  
21 of oral sex that occurred at the babysitter's home on Cody  
22 Street in Spartanburg County. The victim described this as  
23 occurring in a room with a bed, lots of movies and a  
24 computer.

25           She described that the Defendant removed her pants.

1 She described her pants as her black stretchy pants. And  
2 she described the Defendant put a pillow that was on the bed  
3 over her eyes. The victim said that this occurred at a time  
4 when the babysitter had gone to Wal-mart and the victim was  
5 left in the home with the Defendant.

6 The victim also disclosed multiple incidents that the  
7 Defendant would fondle her genitals on -- basically skin to  
8 skin and also some incidents of digital penetration. Those  
9 occurred in the living room at the babysitter and the  
10 Defendant's house and also in an outbuilding where the  
11 victim described the Defendant and the babysitter kept old  
12 things.

13 The victim described this sometimes would occur when  
14 the babysitter was there but not paying attention and other  
15 times when she wasn't there. There was one other incidence  
16 of oral sex that occurred at an unknown location believed to  
17 be in Greenville County.

18 A search warrant was executed at the Defendant's  
19 residence. Photos were taken upon execution of that search  
20 warrant. It showed the outbuilding that is on the residence  
21 there. Also seized were multiple movies and electronic  
22 devices to include cameras from a bedroom as the victim  
23 described.

24 I offer that not to say that there was any illegal  
25 material on the cameras. I just offer that to establish

1 that it corroborates where the victim said this occurred.  
2 She described it as the room with the cameras. There was a  
3 room with cameras.

4 The Defendant was interviewed by law enforcement. He  
5 did acknowledge that his wife babysat the victim for about a  
6 three to four month period.

7 Just so we're clear, the indictment period before Your  
8 Honor, it's a case of sexual abuse and it does often involve  
9 an unclear date range. The first date that's used is the  
10 victim's seventh birthday. She described one incident  
11 occurring when she was in second -- she defines things in  
12 grades.

13 And so the overbroad time period is probably -- it  
14 resulted -- that probably could be more narrow. It's pretty  
15 -- the victim was pretty clear this happened in the  
16 Spring/Summer when it was warm outside of 2014. And that's  
17 all, Your Honor.

18 **THE COURT:** Sir, did you hear what the solicitor told  
19 me?

20 **MR. RODRIGUEZ:** Yes.

21 **THE COURT:** Would she be able to show that to a jury?

22 **MR. RODRIGUEZ:** Yes.

23 **THE COURT:** And you've already told me you believe that  
24 if she did that would -- that the jury would in all  
25 likelihood convict you, is that true?

1           (Whereupon the Defendant was speaking with his  
2 attorney)

3           **MR. RODRIGUEZ:** They didn't find anything. They took  
4 my computer.

5           (Whereupon the Defendant was speaking with his  
6 attorney)

7           **MR. RODRIGUEZ:** Yes.

8           **THE COURT:** Okay. The Court accepts your plea as being  
9 freely, intelligently and voluntarily given with the sound  
10 advice of an excellent lawyer with whom this Court is  
11 familiar. Mr. Baldwin, good to see you.

12           **MR. BALDWIN:** Thank you, Your Honor. As you can  
13 probably tell from the plea, it's a very difficult case.  
14 Even though he is entering this plea that is based, I  
15 believe, solely on the word of the -- of the victim who did  
16 go through a forensic interview. There's a lot of points  
17 that we could have argued to the jury.

18           For instance, there's absolutely no physical evidence  
19 this occurred. The allegation occurred some months after  
20 the alleged abuse.

21           But when you get right, you know, there were items  
22 seized which the police believed would corroborate her story  
23 such as they thought that there might be videos, things of  
24 this nature, which would illustrate his guilt. To our  
25 knowledge, nothing like that exists. Even though the search

1 warrant was executed, there's no other evidence other than  
2 the word of the victim.

3 I would point out to the Court that I believe that the  
4 parents of the victim might have some type of ulterior  
5 motive to make allegations in that they're not legally in  
6 the country and they might be looking for a new visa. But  
7 in looking at the statement of the little girl who was only  
8 eight or nine years old, it's hard to believe that she could  
9 go into the detail that she did concerning this if her  
10 parents or anybody else had put her up to this.

11 I would also indicate to the Court that I've heard a  
12 lot of good things about this particular Defendant from many  
13 different people. Four of them are in the courtroom today,  
14 Your Honor. His father came all the way from Mexico to be  
15 with his son today. His boss is here. A friend is here.  
16 I'd just like to note if the father would like to say  
17 anything to this Court before he makes his decision.

18 (Pause)

19 **MR. BALDWIN:** But his boss is here. Some of his  
20 friends are here. And all of them believe him to be a  
21 person of good character.

22 It's a very hard decision for me because he turns to me  
23 and asks me what he should do. And it's his life, it's not  
24 mine. It's one of those cases. And a nightmare for a  
25 defense attorney because you really can't tell your client

1 what he should do. You can only lay out the options. And  
2 after considering all the options this was the decision that  
3 he made.

4 **THE COURT:** I'd be happy to hear from his father or  
5 anyone else you'd like, Mr. Baldwin.

6 **MR. BALDWIN:** Okay. I'd like for his father to address  
7 the Court. As I indicated, he's from Mexico. And he made  
8 the trip up here to be here today.

9 **THE COURT:** Sir, do you speak English?

10 **INTERPRETER:** No.

11 **THE COURT:** You mind? Yes, sir. Tell us your name  
12 please and then I'll be happy to hear from you.

13 (Whereupon the answers of the father were given through  
14 the interpreter)

15 **MR. RIVERA:** Monsemino (phonetics) Rodriguez Rivera.

16 **THE COURT:** Yes, sir.

17 **MR. RIVERA:** Okay, Judge. I came here from Mexico to  
18 be with my son. It was difficult for me. I had to get help  
19 from different people so that I could make here, but I did.

20 And the news of it came to great surprise for my wife  
21 and me because we've never known him to be a drug or do  
22 drugs. And we feel bad. We feel sad, my wife and I. And I  
23 ask you, Judge, that you touch your heart and really I don't  
24 know what to say. I don't have the words so that you can  
25 have mercy on my son.

1           **THE COURT:** Thank you, sir.

2           **MR. BALDWIN:** And I believe his employer is here also.

3           **THE COURT:** Certainly, Mr. Baldwin.

4           **MR. SANCHEZ:** Good morning.

5           **THE COURT:** Yes, sir. Good morning. Tell me your name  
6 please for my court reporter.

7           (Whereupon the following speakers on behalf of the  
8 Defendant were not translated by the interpreter)

9           **MR. SANCHEZ:** My name is Hugh Sanchez (phonetics).

10          **THE COURT:** Okay.

11          **MR. SANCHEZ:** I know him like from the first five, six  
12 years. He worked for me. I run a cell phone business. He  
13 do a lot of stuff at my house with the trees. He fix  
14 lights, security alarm, he do everything in my business.

15          He go to my house -- went to my house like a lot of  
16 times every two weeks for the backyard and the front yard.  
17 My kids, my daughter, she's outside. She's almost eleven  
18 years old. He's very nice with my kids, with Bianca and  
19 with Nicholas, my other son or he brings his son to my house  
20 when he have to do jobs at my house.

21          And he's a hard worker. He's very honest. He help  
22 people, not only me, it's a lot of customers he helps too,  
23 other customers.

24          And I know this he didn't -- it's not true because when  
25 he called me, hey, the police arrest me, I can't believe it

1 because I know him very well, very well. We talk two or  
2 three times a week for jobs. But always we talk about -- we  
3 talk about his own life. But I think he's very -- very  
4 nice, very nice person. And I can't believe that he did it.  
5 That's all.

6 **THE COURT:** Thank you, sir.

7 **MR. SANCHEZ:** Thank you.

8 **THE COURT:** Yes, sir. Tell me your name, please.

9 **MR. RAMIREZ:** Jorta Ramirez (phonetics).

10 **THE COURT:** Yes, sir.

11 **MR. RAMIREZ:** I don't speak very well English, but you  
12 can translation, please?

13 **THE COURT:** Yes.

14 **MR. RAMIREZ:** Okay. Francisco, I know for four months.  
15 He work with me too. He a good worker. He work -- he can  
16 work. And all the time he working for his family. I know  
17 what he doing, you know.

18 But I am a -- true Christian. We work for the  
19 Christian church. He work for the church. He bring his  
20 kids. He have two kids -- two boys and one girl, all in the  
21 church for a month.

22 But I concerned for his -- I know how the police has  
23 taken to the jail. And but the time I know he working  
24 straight and hard working. That's only I can say.

25 **THE COURT:** Thank you, sir.

1           **MR. BALDWIN:** The other person that came would merely  
2 be repetitive, Your Honor.

3           **THE COURT:** Okay. Sir, anything you would like to say?

4           **MR. RODRIGUEZ:** No, just to have some mercy on me. And  
5 my wife, just to earn ten extra dollars, would take her off  
6 the bus. And that was just our way of trying to help those  
7 people.

8           **THE COURT:** Okay. Thank you.

9           **MS. OVERBY:** I do have something from the victim, Your  
10 Honor, whenever you would like.

11          **THE COURT:** Yes, ma'am, ready.

12          **MS. OVERBY:** The victim's parents were notified of  
13 today's guilty plea. They're not present, but they did want  
14 Your Honor to know just some of the behavioral issues that  
15 they've seen with the victim. She's a bit more rebellious  
16 and she's going through a period of blaming her parents for  
17 the situation she was placed in.

18               They're in agreement with the offer to allow the  
19 Defendant to plead to third degree. They're in agreement  
20 with that.

21               I would also let Your Honor know I did contact ICE  
22 regarding this Defendant. And they did not tell me that he  
23 has, you know, regarding his immigration status. I'm not  
24 sure. I just know what they tell me is that deportation is  
25 not a real consequence unless this sentence is ninety days

1 or more. Just that information I would just like to pass  
2 along to Your Honor.

3 **THE COURT:** Okay. Mr. Rodriguez, this Court has in the  
4 past and will in the future continue to deal harshly with  
5 people who hurt children. 2015-3397, you're confined to the  
6 State Department of Corrections for the maximum fifteen  
7 years, credit for any time you have served, Sex Offender  
8 Registry. Good luck.

9 (Hearing Ended at 11:43 am)

10 (End of Requested Transcript of Record)

## Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Spartanburg County, South Carolina, on the 12th day of April 2016.

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

January 27, 2017

S/Susan W. Hudgins

---

Circuit Court Reporter

WITNESSES

Spartanburg County Sheriff's Office

- 1. SERVICE RETURN
- 2. REPORT MADE
- 3. CARD FILED
- 4. INDEXED
- 5. FILED
- 6. SERIALIZED

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

**True Bill**

*[Signature]*  
Foreperson of Grand Jury  
Date:

JUL 29 2015

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO. -

**15-GS-42-3397**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 03 2015

TERM

THE STATE  
vs.

Francisco Rodriguez

Indictment for

**CRIMINAL SEXUAL CONDUCT WITH A  
MINOR, THIRD DEGREE**

SC Code:16-3-0655 (C)  
CDR Code: 3661  
Class FEL/D

2015 JUL 31 AM 9:51

*W*



COUNTY OF SPARTANBURG

STATE VS. Francisco Roberto Rodriguez

AKA:

Race: HISPANIC Sex: M Age: 38

DOB: [Redacted] SS#: [Redacted]

Address: [Redacted]

City, State, Zip: [Redacted] S.C., 29651

DL#: [Redacted] SID#: [Redacted]

\*CDL Yes [ ] No [ ] CMV Yes [ ] No [ ] Hazmat Yes [ ] No [ ]

In disposition of the said indictment comes now the Defendant who was

TO: Sex/Criminal sexual conduct with minor, 3rd Degree - Commit/Attempt Lewd Act (victim <16 yrs, actor > 14 yrs) (0-15 years; mandatory sex offender registry)

in violation of § 16-03-0655(C) of the S.C. Code of Laws, bearing CDR Code # 3661

[ ] NON-VIOLENT [X] VIOLENT [ ] SERIOUS [X] MOST SERIOUS [X] Mandatory GPS(CSC w/minor 1st or Lewd Act) [ ] § 17-25-45

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

Lindsey H. Overby 29569 Francisco Rodriguez Joseph R. Baldwin 07527 OVERBY, LINDSEY H. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [ ] County Detention Center, for a determinate term of 15 days/months/years or [ ] under the Youthful Offender Act not to exceed \_\_\_ years and/or to pay a fine of \$ \_\_\_; provided that upon the service of \_\_\_ days/months/years and/or payment of \$ \_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

[ ] CONCURRENT or [ ] CONSECUTIVE to sentence on: [X] The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. [ ] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

[ ] RESTITUTION: [ ] Deferred [ ] Def. Waives Hearing [ ] Ordered Total: \$ \_\_\_ plus 20% fee: \$ \_\_\_ Payment Terms: [ ] Set by SCDPPPS

PTUP \_\_\_ days/hours Public Service Employment Obtain GED [ ] Attend Voc. Rehab. or Job Corp. \_\_\_ May serve W/E beginning \_\_\_ Substance Abuse Counseling [ ] Random Drug/Alcohol testing [ ] Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_ beginning \_\_\_ \$ \_\_\_ paid to Public Defender Fund Other: Sex offender registry

Recipient: \_\_\_\_\_

Table with 2 columns: Description and Amount. Includes items like 14-1-206 (Assessments 107.5%), 14-1-211(A)(1) (Conv. Surcharge) \$100, 14-1-211(A)(2) (DUI Surcharge) \$100, 56-5-2995 (DUI Assessment) \$12, 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, 14-1-212 (Law Enforce Funding) \$25, 14-1-213 (Drug Court Surcharge) \$150, 50-21-114(BUI Breath Test Fee) \$50, 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$3.90, TOTAL \$133.90

[ ] Appointed PID or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: C Tunaley Court Reporter: S Haddjino

Presiding Judge: R. Keith Buckley Judge Code: 172165 Sentence Date: 12 April 2014

Francisco Roberto Rodriguez  
Ridgeland Corr. Inst.  
Post Office Box 2039  
Ridgeland, S.C. 29936

November 15, 2016

Clerk of Court  
Spartanburg Common Pleas  
180 Magnolia Street, Ste.500  
Spartanburg, S.C. 29304

RE: Rodriguez v. State  
PCR filing

Dear Clerk,

Enclosed for filing please find my application for Post Conviction Relief. Once the Attorney General is served, please send me a copy of the certified receipt for my records.

Thank you for your attention to this matter.

Best regards,

Francisco Rodriguez  
Francisco Roberto Rodriguez

2016 NOV 21 PM 12: 22  
H. HOPE BLACKLEY

1. That counsel's representation fell below an objective standard of reasonableness before and during the plea proceeding, which prejudiced the Applicant. As a result, the Applicant entered an unintelligent and involuntary plea, which if not induced by counsel, the Applicant would have insisted on going to trial.

2. That the Applicant did not receive any disclosure from the prosecution, or his counsel, and this caused the entering of an unintelligent and involuntary plea. If disclosure would have been provided, the Applicant would have insisted on going to trial.

3. That the plea was induced by the Applicant's ignorance of the law, duress, and counsel's failure to advise the Applicant of his defense, constitutional right to trial, or the nature of the charge.

4. That the Applicant did not have an interpreter to explain the nature of the charge against him, his constitutional right to a jury trial, a defense, or of the exposure of time and consequence of the plea. If the Applicant had been advised in a manner that he could understand, he would have insisted on going to trial.

5. That the Applicant's state and federal constitutional rights were violated as a result of the foregoing.

Dated November 15, 2016

Ridgeland, south Carolina

Respectfully submitted,

Francisco Rodriguez

Francisco Roberto Rodriguez

NOV 21 PM 12:22  
HOPE CROCKETT

STATE OF SOUTH CAROLINA )  
 )  
 County of SPARTANBURG )  
 )  
FRANCISCO ROBERTO RODRIGUEZ )  
 )  
 Full name and prison number (if any) of Applicant )  
 )  
 v. )  
 )  
 State of South Carolina )  
 )  
 )  
 )

IN THE COURT OF COMMON PLEAS

**2016-CP-42-4153**

APPLICATION FOR  
 POST-CONVICTION RELIEF

**INSTRUCTIONS - READ CAREFULLY**

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

2016 NOV 21 PM 12:22  
 HOPE SPRING CHIEFY

1. Place of detention RIDGELAND CORR. INST., P.O. BOX 8989, RIDGELAND, S.C. 29936
2. Name and location of Court which imposed sentence GENERAL SESSIONS, SEVENTH JUDICIAL CIRCUIT
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 15-GS-42-3397, CSC 3rd DEGREE WITH A MINOR
  - (b) \_\_\_\_\_

- (c) \_\_\_\_\_
- 5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) **FIFTEEN YEARS** \_\_\_\_\_
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
- 6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty **\*\*\*\*\*** \_\_\_\_\_
  - (b) after a plea of not guilty \_\_\_\_\_
  - (c) after a plea of nolo contendere \_\_\_\_\_
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?  
**NO** \_\_\_\_\_
- 8. If you answered "yes" to (7), list:
  - (a) the name of each Court to which you appealed:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (b) the result in each such Court to which you appealed:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (c) the date of each such result:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (d) if known, citations of any written opinion or orders entered pursuant to such results:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
- 9. If you answered "no" to (7), state your reasons for not so appealing:
  - (a) **INEFFECTIVE ASSISTANCE OF COUNSEL** \_\_\_\_\_
  - (b) \_\_\_\_\_

2016 NOV 21 PM 12:22  
 M. HOPE BLACKLEY

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

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) INVOLUNTARY AND UNINTELLIGENT PLEA
- (c) STATE AND FEDERAL CONSTITUTIONAL VIOLATIONS

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

- (a) \_\_\_\_\_
- (b) SEE APPENDAGE
- (c) \_\_\_\_\_

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

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

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

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

2016 NOV 21 PM 12: 22  
 HOPE A. ASHLEY

(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. \_\_\_\_\_

2016 NOV 21 PM 12: 22  
 M. HOPE BLACKBERRY  
 CLERK OF COURT  
 SUPERIOR COURT  
 DISTRICT OF COLUMBIA

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) S.C. CODE SECTION 17-27-20, ET SEQ.
- (b) THIS IS PROCEDURAL EXHAUSTION
- (c) \_\_\_\_\_

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

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

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

- (a) the name and address of each attorney who represented you:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. PLEA PROCEEDING
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

2016 NOV 21 PM 12: 22  
 M. IDPE BLACKLEY

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

**VACATION OF THE CONVICTION AND SENTENCE**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

**NO**

\_\_\_\_\_  
\_\_\_\_\_

STATE OF SOUTH CAROLINA )  
County of SPARTANBURG )

VERIFICATION

I, FRANCISCO ROBERTO RODRIGUEZ, 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.

Francisco Rodriguez

2016 NOV 21 PM 12:22  
HOPE BLACKLEY

SWORN to and subscribed before me this 16 day of Nov., 2016.  
Virginia Robinson (L.S.)  
Notary Public

My Commission Expires: May 20, 2021

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

I, **FRANCISCO ROBERTO RODRIGUEZ**, 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.

Francisco Rodriguez  
Applicant

SWORN or affirmed to and subscribed before me this  
16 day of Nov., 2016.

Virginia Robinson  
Notary Public

My Commission Expires: May 20, 2021

2016 NOV 21 PM 12: 22  
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )  
 )  
 Francisco Rodriguez, #367766, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 IN THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2016-CP-42-4153

**RETURN**

2017 JUL -5 PM 3:38  
 H. HOPE BLACKLEY  
 SPARTANBURG COUNTY

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on November 21, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In August 2015, the Spartanburg County Grand Jury indicted Applicant for criminal sexual conduct ("CSC") with a minor, third degree (2015-GS-42-3397). Applicant was also charged with criminal sexual conduct with a minor, first degree, but that charge was dismissed pursuant to Applicant's agreement to plead guilty on the third degree charge. Joseph R. Baldwin, Esquire, represented Applicant. Assistant Solicitor Lindsey H. Overby prosecuted the case. On April 12, 2016, Applicant pled *nolo contendere* pursuant to Alford<sup>1</sup> to CSC with a minor, third degree before the Honorable R. Keith Kelly. Judge Kelly sentenced Applicant to imprisonment for fifteen years and required him to register as a sex offender. Applicant did not appeal his conviction or plea.

<sup>1</sup> North Carolina v. Alford, 400 U.S. 25 (1970).

## II.

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

1. Ineffective Assistance of Counsel – Involuntary Guilty Plea
  - a. “Counsel’s representation fell below an objective standard of reasonableness before and during the plea proceeding, which prejudiced the Applicant. As a result, Applicant entered an unintelligent and involuntary plea, which if not induced by Counsel, the Applicant would have insisted on going to trial.”
  - b. “The Applicant did not receive any disclosure from the prosecution, or his counsel, and this caused the entering of an unintelligent and involuntary plea. If disclosure would have been provided, the Applicant would have insisted on going to trial.”
  - c. “The plea was induced by Applicant’s ignorance of the law, duress, and Counsel’s failure to advise the Applicant of his defense, constitutional right to trial, or the nature of the charge.”
  - d. “The Applicant did not have an interpreter to explain the nature of the charge against him, his Constitutional right to a jury trial, a defense, or of the exposure of time and consequence of the plea.”
  - e. “If the Applicant had been advised in a manner that he could understand, he would have insisted on going to trial.”
  - f. “Applicant’s state and federal Constitutional rights were violated as a result of the foregoing.”

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

## III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for

counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

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

#### IV.

Applicant also asserts his plea was involuntary. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

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

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. This includes the fact that the guilty plea transcript clearly reveals the presence of a sworn interpreter. However, allegations regarding the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

## V.

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

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

## VI.

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

VII.

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

Respectfully submitted,

ALAN WILSON  
Attorney General

ROBERT BOLCHOZ  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

VALERIE GARCIA GIOVANOLI  
Assistant Attorney General

By: *Valerie Garcia Giovanoli*  
ATTORNEYS FOR RESPONDENT

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

July 3, 2017

CLERK OF COURT  
SPRINT  
2017 JUL -5 PM 3:30  
M. HOPE BLACKLEY

1 STATE OF SOUTH CAROLINA ) IN THE COURT OF  
2 ) COMMON PLEAS  
3 COUNTY OF SPARTANBURG ) OF THE SEVENTH  
4 ) JUDICIAL CIRCUIT  
5 )  
6 FRANCISCO ROBERTO RODRIGUEZ, )  
7 )  
8 The Applicant, ) TRANSCRIPT OF RECORD  
9 ) 2016-CP-42-04153  
10 vs. )  
11 )  
12 THE STATE OF SOUTH CAROLINA, )  
13 )  
14 The State, )  
15 )

---

10  
11 October 10, 2019  
12 Spartanburg, South Carolina

13  
14 B E F O R E :

15 HONORABLE G. THOMAS COOPER, Judge.

16  
17 A P P E A R A N C E S

18 LYDIA ANGELICA HERNANDEZ, ESQUIRE  
19 For The Applicant

20 JACOB A. ISENBERG, ESQUIRE  
21 For The State

22 Also present: Julianna Sucuchi,  
23 Interpreter

24 Julie A. Cendroski,  
25 Circuit Court Reporter  
Seventh Judicial Circuit

## I N D E X

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EXHIBITS

	<u>MARKED</u>	<u>ENTERED</u>
APPLICANT'S EXHIBIT NUMBER 1, Order of Dismissal	34	34

1 FRANCISCO ROBERTO RODRIGUEZ VS. STATE OF SOUTH CAROLINA

2 THE COURT: You may proceed.

3 MR. ISENBERG: Thank you, Your Honor. The first  
4 case we'll call out is Francisco Rodriguez.

5 THE COURT: All right.

6 MR. ISENBERG: And just so you're aware, Your  
7 Honor, I'm not sure how you do things with interpreters,  
8 but Mr. Rodriguez will have an interpreter today.

9 THE COURT: All right.

10 THE INTERPRETER: Good morning, Your Honor.

11 THE COURT: Good morning.

12 THE INTERPRETER: For the record, Julianna  
13 Sucuchi, Supreme Court certified interpreter.

14 THE COURT: All right. Raise your right hand.  
15 Do you solemnly swear or affirm that you will accurately  
16 translate all conversation between the State's attorney  
17 general, Mr. Rodriguez's lawyer without omitting  
18 anything and you will directly translate to me as the  
19 words are spoken; is that correct?

20 THE INTERPRETER: I do, Your Honor.

21 MS. HERNANDEZ: Good morning, Your Honor.

22 THE COURT: Good morning.

23 MS. HERNANDEZ: I will be appearing before you in  
24 court. My name is Lydia Hernandez, I'm the attorney for  
25 Mr. Rodriguez.

1 THE COURT: Ms. Hernandez?

2 MS. HERNANDEZ: Yes, Your Honor.

3 THE COURT: All right, thank you.

4 MR. ISENBERG: Your Honor, and I can proceed with  
5 the procedural ---

6 THE COURT: Sorry?

7 MR. ISENBERG: I can go ahead and do the  
8 procedural history whenever you're ready.

9 THE COURT: I'm ready.

10 MR. ISENBERG: Thank you, Your Honor.

11 THE COURT: I'd like the packet.

12 MR. ISENBERG: Yes, sir. (Hands packet to  
13 Court.)

14 THE COURT: All right. Just do it slowly.

15 MR. ISENBERG: Yes, sir. I'm gonna go ahead and  
16 apologize for speaking a little too fast. May it please  
17 the Court?

18 THE COURT: Yes.

19 MR. ISENBERG: My name is Jake Isenberg and I'm  
20 here with the Attorney General's Office representing the  
21 State. This case is Francisco Rodriguez versus The  
22 State of South Carolina. Docket Number 2016-CP-42-4153.

23 During its August 2015 term, Spartanburg County  
24 Grand Jury indicted applicant for third-degree criminal  
25 sexual conduct with a minor. Applicant was also charged

1 with CSC with a minor in the first degree, which was  
2 dismissed in exchange for a plea.

3 Joseph R. Baldwin ---

4 THE INTERPRETER: Your Honor?

5 MR. ISENBERG: -- represented him on this charge.

6 THE COURT: Hold on.

7 THE INTERPRETER: Slow down for the interpreter,  
8 please. Let me repeat.

9 (Pause in proceedings while interpreter speaks in  
10 Spanish to applicant to catch up.)

11 MR. ISENBERG: Okay. Joseph Baldwin represented  
12 him on this charge. The assistant solicitor, Lindsay  
13 Overby of the Seventh Circuit Solicitor's Office  
14 prosecuted the case.

15 On April 12th, 2016, he appeared before the  
16 Honorable R. Keith Kelly and pled guilty under  
17 North Carolina versus Alford to lewd act with a minor  
18 under the age of 16. Judge Kelly sentenced him to a  
19 term of imprisonment of 15 years. He did not appeal his  
20 plea or sentence.

21 On November 21st, 2016, he filed an application  
22 for postconviction relief alleging ineffective  
23 assistance of counsel for failing to provide him with  
24 discovery, failing to advise applicant of his defense,  
25 his right to a jury trial, and the nature of the charge,

1 and failing to have an interpreter present to explain  
2 the charges; applicant's constitutional rights, any  
3 defenses, and potential sentences.

4 Applicant also alleges his plea was involuntary  
5 due to his ---

6 THE INTERPRETER: Your Honor, one second, please.  
7 The interpreter needs to catch up.

8 THE COURT: Do your best.

9 (Pause in proceedings while interpreter speaks in  
10 Spanish to applicant to catch up.)

11 THE INTERPRETER: Go ahead.

12 MR. ISENBERG: Applicant also alleged his plea  
13 was involuntary due to his ignorance and due to the  
14 arrest. On January 3rd, respondent met our return  
15 requesting an evidentiary hearing be held.

16 He's present here today and represented by Lydia  
17 Hernandez. And I'll let her proceed with her case.  
18 Thank you.

19 MS. HERNANDEZ: Your Honor, may it please the  
20 Court?

21 THE COURT: Yes, ma'am.

22 MS. HERNANDEZ: The allocation presented on the  
23 application by the applicant is what we're going to  
24 present today is just as he described it, Your Honor.

25 THE COURT: All right.

1 MS. HERNANDEZ: Can I call my first witness?

2 THE COURT: Please do.

3 MS. HERNANDEZ: I call Francisco Rodriguez to the  
4 stand.

5 (Witness comes forward.)

6 THE COURT: Have him place his left hand on the  
7 Bible, raise his right hand. Do you solemnly swear or  
8 affirm you will tell the truth in this hearing?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Be seated.

11 FRANCISCO R. RODRIGUEZ,

12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. HERNANDEZ:

15 Q. Good morning, Mr. Rodriguez.

16 A. Good morning.

17 Q. Do you understand why we're here today?

18 A. Yes.

19 Q. Is that because we're here on your postconviction  
20 relief hearing?

21 A. Yes.

22 Q. Do you understand what will happen if this relief  
23 is granted?

24 A. Yes.

25 Q. What would that be?

1 A. A new trial or a reduction of the time.

2 Q. Okay. A new trial would happen if this was  
3 granted. Do you understand that?

4 A. Yes.

5 Q. Mr. Rodriguez, where are you from originally?

6 A. From Mexico, Veracruz.

7 Q. What is your primary language?

8 A. Only Spanish.

9 Q. Were you convicted on April 12th of 2015 of lewd  
10 act upon a minor under the age of 16?

11 THE INTERPRETER: The name upon a minor?

12 MS. HERNANDEZ: Lewd act upon a minor.

13 THE DEFENDANT: Yes, that's how it is.

14 BY MS. HERNANDEZ:

15 Q. What was your sentence?

16 A. A maximum sentence of 15 years.

17 Q. Who represented you on that charge?

18 A. Joseph Baldwin.

19 Q. Thank you. Who hired Mr. Baldwin to represent  
20 you?

21 A. My ex-wife retained him.

22 Q. Is she the one who paid him for his services?

23 A. She did start paying the down payment but then  
24 she did not finish paying.

25 Q. How much did she pay, do you know?

1           A.   At the beginning she told me she had paid her --  
2   paid him 1,000, and then she paid him 1,800.

3           Q.   How soon after Mr. Baldwin was hired you met with  
4   him?

5           A.   A week later he came to see me to tell me he was  
6   representing me.

7           Q.   Did he come alone?

8           A.   Yes, he came alone.

9           Q.   And what language did you and Mr. Baldwin spoke  
10   on that afternoon?

11          A.   In Spanish, the little bit I could understand  
12   because of the little bit he speaks of Spanish.

13          Q.   So Mr. Baldwin does not speak Spanish fluently?

14          A.   Um, a little bit cot [sic], not fluidly.

15          Q.   Did you fully understand your conversation with  
16   Mr. Baldwin?

17          A.   Not everything. He just would come for a few  
18   minutes at a time.

19          Q.   On that first meeting, what was the extent of  
20   what you understood of the conversation?

21          A.   Just that he was going to represent me and to  
22   trust that he would help me in my case.

23          Q.   Did Mr. Baldwin give you any papers on that  
24   occasion?

25          A.   He gave me six or eight pages, that was all.

1 Q. Were those documents in English or Spanish?

2 A. Every one was in English.

3 Q. Did Mr. Baldwin tell you what was in those  
4 documents?

5 A. I'm sorry?

6 Q. Did Mr. Baldwin tell you in Spanish what was  
7 written in those documents?

8 A. No, not at that moment.

9 Q. And on any other occasion, he didn't bring them  
10 translated in Spanish for you?

11 A. No, only in English.

12 Q. Can you tell me how many times you met with  
13 Mr. Baldwin in total?

14 A. Three times at the California Avenue and then the  
15 next time I just ask my wife to get rid of him.

16 Q. So in total how many times did you meet with him?

17 A. Three times at the California Avenue and perhaps  
18 twice in the Lennon [sic].

19 Q. In the Annex facility? Is that what you say?

20 A. In the Annex. That's how it is.

21 Q. During those meetings, were you and Mr. Baldwin  
22 alone?

23 A. Yes.

24 Q. Did you always try to communicate in Spanish with  
25 each other?

1 A. Yes, that's my only language.

2 Q. Was there ever an interpreter in any of those  
3 meetings?

4 A. No.

5 THE COURT: What was that question?

6 MS. HERNANDEZ? Excuse me?

7 THE COURT: Ask that again.

8 BY MS. HERNANDEZ:

9 Q. During those meetings, was there ever an  
10 interpreter?

11 A. No.

12 Q. What happened on the second time you met with  
13 Mr. Baldwin?

14 A. Just asked me not to get rid of him, that he  
15 would do what was possible for me. And that the rest of  
16 the money would be paid by my wife by selling a mobile  
17 home.

18 Q. So you intended to fire Mr. Baldwin on that  
19 occasion, is that what you're saying?

20 A. That's how it is.

21 Q. But that ended up not happening, right?

22 A. No. Because he promised me he would work towards  
23 the case duly.

24 Q. Okay, very well. On that occasion did Mr.  
25 Baldwin give you any more documents?

1           A.   No.  At the moment he only had some folders with  
2 him and a DVD.

3           Q.   Did you watch that DVD with Mr. Baldwin?

4           A.   No, never.

5           Q.   Did he tell you what was on the DVD?

6           A.   My wife told me because he lend them to her.

7           Q.   I'm asking you did Mr. Baldwin tell you what was  
8 on the DVD?

9           A.   He -- she -- he just told me that it was the  
10 testimony of the girl.

11          Q.   You mean the girl that was accusing you of that  
12 crime?

13          A.   That's how it is.

14          Q.   On any of the other occasions you met with  
15 Mr. Baldwin did you see that DVD?

16          A.   No.  Because he came to see me, let's say the  
17 first time, it was a year after.

18          Q.   Okay.  Let's not get ahead.  I'm gonna ask you  
19 about each time he came to see you, so...

20                 So you told me that another occasion you spoke  
21 about the payment; is that correct?  That your wife was  
22 gonna pay with the sale of a mobile home; is that  
23 correct.

24          A.   That's how it is.

25          Q.   Those three visits when you were housed in the

1 detention center in Spartanburg at the Carolina Avenue,  
2 right? Carolina Avenue[sic].

3 A. That's how it is.

4 Q. And you're telling me that the fourth and fifth  
5 time you met with him you were already transferred to  
6 the Annex facility; is that correct?

7 A. Yes, that's how it is.

8 Q. Once you were transferred to the Annex, how long  
9 a time had occurred since you had been incarcerated?

10 A. Perhaps 12 months, a year.

11 Q. Did you still think that Mr. Baldwin represented  
12 you on this case?

13 A. No. Because I had already written asking for the  
14 petition of the public defender.

15 Q. You're saying that there's a kiosk in the  
16 facility where you could write to request an attorney  
17 from the public defender's office; is that correct?

18 A. That's it.

19 Q. And what happened? You wrote to them and what  
20 did they write back?

21 A. They told me that they couldn't assign me a  
22 public defender because Mr. Baldwin was still  
23 representing me. It showed that he was still  
24 representing me.

25 Q. During your stay at the Annex, you stated that

1 you met with him twice, right?

2 A. That's it, at the library.

3 Q. Was he coming to see you?

4 A. The last occasion, those occasions, yes.

5 Q. Okay. And what did you talk about on those  
6 meetings?

7 A. He asked me, he said we read this book very short  
8 time.

9 Q. During the visit, did he bring you the discovery  
10 or the DVDs or any of this in your case?

11 A. No.

12 Q. So you're saying that you never went over all the  
13 evidence in your case with Mr. Baldwin; is that correct?

14 A. No, I did not see it.

15 Q. Isn't it true that when the police came to your  
16 house they confiscated many equipment containing  
17 cameras, DVD's, videos, computers, things of that  
18 nature?

19 A. That's it, they did confiscate all of that.

20 Q. Did Mr. Baldwin ever tell you what happened with  
21 those or what did they find in those?

22 A. He told me they didn't find the evidence and I  
23 asked him to return it back to me.

24 Q. Did they return it back to you?

25 A. No. He promised me he would return them to the

1 person I named as my represented [sic], my ex-wife.

2 Q. During those meetings that you had with  
3 Mr. Baldwin, Mr. Baldwin -- and I know the conversation  
4 was not very fluent but did you ever tell him to  
5 investigate any matters for you?

6 A. Yes. I ask him to interview my wife and probably  
7 a friend of mine, Louis.

8 Q. And you told him to interview your wife and  
9 Mr. Sanchez because they could testify to what?

10 A. My wife because she was the babysitter and  
11 the ---

12 THE COURT: She was what?

13 THE INTERPRETER: The babysitter.

14 THE COURT: Okay.

15 THE INTERPRETER: And when the investigators  
16 interviewed her, they said that she left her alone and  
17 that's not true.

18 MS. HERNANDEZ: Just allow her to interpret,  
19 please.

20 THE INTERPRETER: (Speaks in Spanish.) I'm so  
21 sorry, Your Honor. The interpreter was speaking in  
22 Spanish.

23 And only in one occasion when the girl was crying  
24 because she wanted to go with my son, 6 years old, and a  
25 friend, 11 years old, to go with me to cut Louis' lawn

1 at his house. And when we arrived to Louis' house, he  
2 was coming, he opened the door and the kids went to play  
3 at the pool and I went to mow the yard.

4 BY MS. HERNANDEZ:

5 Q. So to resume what you said, your wife could  
6 testify that you were never left alone with the girl  
7 that was accusing you; is that correct?

8 A. That's it.

9 Q. And this person, Louis Sanchez, was a friend or  
10 the person who called you to come and cut his lawn and  
11 he knows that when you were there, the girl was there,  
12 and two other kids were there and you were never alone  
13 with the girl also; is that correct?

14 A. That's it. That's correct.

15 Q. Was there anything else that you asked him to  
16 investigate?

17 A. During those months that things was happening it  
18 was because my wife volunteer to take care of the girl  
19 because she was being left home alone. She only watch  
20 her for three months, and during those three months  
21 vacations happened and she was sent to Mexico. When she  
22 returned, she came back pretty rebellious because her  
23 stepbrothers did not treat her well.

24 Q. So you asked him to investigate that for you; is  
25 that correct?

1 A. That's it. I asked him to investigate.

2 Q. Do you know if he investigated those things for  
3 you?

4 A. No. I don't think so because when he came I  
5 would ask him and said, no, he would do it because he  
6 had the way to find out if she left the country.

7 Q. So he never told you the result of any  
8 investigation; is that correct?

9 A. That's correct.

10 Q. During the visits that Mr. Baldwin had with you,  
11 did he ever tell you that there was an offer from the  
12 solicitor?

13 A. Yes. After I wrote at the kiosk he came on  
14 February 8th to drop off the offered paperwork.

15 Q. Was that paper in Spanish?

16 A. No.

17 Q. Did you understand what the papers said?

18 A. No.

19 Q. Did Mr. Baldwin tell you what the paper said in  
20 Spanish?

21 A. No.

22 Q. Before you went to the court did you know what  
23 the offer was for your case?

24 A. I just got me an English dictionary and it said  
25 third degree.

1 Q. Did it mention a possible penalty?

2 A. In the paper he brought me about sentencing we  
3 did discuss the equivalent of the charge.

4 Q. And what was that?

5 A. He said it was equivalent to 15 years, but he  
6 would do whatever was possible to reduce the time or get  
7 me served time.

8 Q. Okay. And your conversation for Mr. Baldwin, did  
9 he tell you that you were gonna plead to what is called  
10 an Alford plea?

11 A. No.

12 Q. He did not explain to you what Alford was?

13 A. No.

14 Q. On the day of the hearing, did you know what you  
15 were going to the court for?

16 A. No, not exactly.

17 Q. What did you think you were doing over there?

18 A. Well, I thought it was going to be a trial. I  
19 asked witnesses to come.

20 Q. Isn't it true that your father came from Mexico  
21 because you told him that you were gonna have a trial on  
22 that day?

23 A. Yes. He came from Mexico and finished paying Mr.  
24 Baldwin.

25 Q. Okay. On the day of the hearing, did Mr. Baldwin

1 give you any documentation?

2 A. No.

3 MS. HERNANDEZ: Your Honor, may I approach the  
4 witness?

5 THE COURT: Yes.

6 BY MS. HERNANDEZ:

7 Q. Do you recognize this paper?

8 A. Yes. It is the paper that I got five minutes  
9 before -- 5, 10, 15 minutes before the hearing.

10 Q. And can you tell me what this paper says?

11 A. I don't know how to speak. I don't know how to  
12 read English.

13 THE COURT: What is it?

14 MS. HERNANDEZ: It is under the PCR, sir.

15 THE COURT: Okay. All right.

16 BY MS. HERNANDEZ:

17 Q. Do you recognize your signature on that paper?

18 A. Yes.

19 Q. And did you sign that on that day?

20 A. Yes.

21 Q. And do you see this word over here?

22 A. Yes, Alford.

23 Q. And we spoke before about the Alford pleas,  
24 right?

25 A. That's correct.

1 Q. And you told me that you didn't know before what  
2 that was, right?

3 A. No. That's why during the court I interrupted  
4 the hearing to ask him what it was.

5 Q. Okay. When did Mr. Baldwin tell you what an  
6 Alford plea was?

7 A. He didn't explain it to me. He just said to  
8 accept it.

9 Q. Today can you tell me what an Alford plea is?

10 A. I studied a little bit at the prison's library.  
11 And I have some notion that it says that I'm pleading  
12 guilty due to the weight of the evidence, but I don't  
13 acknowledge being guilty.

14 Q. Did you and I also discuss the Alford plea?

15 THE INTERPRETER: I'm sorry, can you repeat that  
16 for the interpreter?

17 MS. HERNANDEZ: Yes. Did you and I also discuss  
18 the Alford plea?

19 THE DEFENDANT: Yes.

20 BY MS. HERNANDEZ:

21 Q. Wasn't it difficult for me to explain to you what  
22 it actually was?

23 A. Yes. Very difficult because I am pleading and at  
24 the same time I am not.

25 Q. And the conversations that you and I had, we had

1       them in Spanish; is that correct?

2           A.    That's it.

3           Q.    And did I tell you to that Spanish was my native  
4       language also?

5           A.    That's it.

6           Q.    And you also know that I am from Mexico, right?

7           A.    That's it.

8           Q.    So our language is pretty much equal?

9           THE INTERPRETER:   Your Honor, the interpreter is  
10       going to clarify the words iwual igual the same.

11          MS. HERNANDEZ:   Thank you.

12       BY MS. HERNANDEZ:

13          Q.    And even though we speak Spanish fluently and is  
14       our native language, we still had hard time for you to  
15       understand what an Alford plea was; is that correct?

16          A.    Yes.   I found it to be controversial.

17          Q.    You're right about that.   It's a hard concept to  
18       grasp.   So much so that even when I explained it to you  
19       in your mother tongue you still went to the library to  
20       look it up, correct?

21          A.    That's it.

22          Q.    Okay.   During the hearing did the judge ever ask  
23       you if you wanted to speak to the lawyer?

24          A.    Yes.

25          MS. HERNANDEZ:   Your Honor, I'm referring to the

1 transcript of the pleading -- of the plea date. Line 10  
2 on page 7.

3 On that page the judge asked you, do you want to  
4 talk to your lawyer. And there is a pause where the  
5 court reporter says that the defendant is speaking with  
6 his lawyer. And that is right after the Court asked you  
7 or said to you, you have certain rights. On line 3:  
8 All right.

9 You have certain rights you must waive and give  
10 up to plead guilty or to plead under Alford. You have a  
11 right -- sorry.

12 (Pause for interpreting.)

13 You must waive and give up to plead guilty or to  
14 plead under Alford.

15 He also said: You have a right to remain silent  
16 under the state and federal constitution. Do you give  
17 up that right?

18 And on line number 7 your response was: When,  
19 now?

20 The Court response: Will you give up that right?  
21 Yes?

22 And your response was: Well...

23 And there's a pause there. And that's when he  
24 asked you if you wanted to talk to your lawyer. It says  
25 you were speaking to your lawyer.

1           When you were speaking to your lawyer, the  
2 interpreter was translating what you were talking about?

3           A.   No.

4           Q.   Also the judge on line 23 is asking you if you  
5 are giving up your right also to present any witnesses  
6 in your favor.

7           And your answer on line 23:  Is witnesses in  
8 favor or against me?

9           And there's another pause where you speak to your  
10 lawyer.  That'd be another talk.  Were you speaking in  
11 Spanish to your lawyer?

12          A.   At that moment I asked him why was I giving up  
13 two of my witnesses if they were present?

14          Q.   And what was Mr. Baldwin's answer?

15          A.   He just said to say yes to continue on.

16          Q.   On page number 8 there's a third pause in the  
17 record.

18                On line 2 the court asked you again:  You don't  
19 give up that right?

20                And you -- and Mr. Baldwin says:  No, he...

21                There's a pause and then there's another  
22 conversation between you and Mr. Baldwin.  That's a  
23 third conversation you had in front of the judge with  
24 your lawyer and after that you answer yes.  Why did you  
25 answer yes again?

1 THE INTERPRETER: Why or when?

2 MS. HERNANDEZ: Why.

3 THE DEFENDANT: He told me to answer yes or to  
4 continue.

5 BY MR. HERNANDEZ:

6 Q. Okay. On that same page ---

7 THE INTERPRETER: Your Honor, hold on. The  
8 interpreter is going to clarify. The interpreter did  
9 clarify he did answer yes to continue.

10 BY MS. HERNANDEZ:

11 Q. On the same page 8 and line 10 the judge asked  
12 you: Okay, sir, did you offer to plead under  
13 North Carolina versus Alford?

14 You have another conversation with your lawyer  
15 there. You don't answer right away, why?

16 A. Because at that moment I wanted to clarify the  
17 meaning of Alford. I wanted him to explain it to me.

18 Q. And did he explain it to you at that time?

19 A. No.

20 Q. So then why did you answer yes?

21 A. To continue on with the hearing.

22 Q. Okay. Going on in the transcript on page number  
23 9, the judge is asking you if Mr. Baldwin has done  
24 everything he can do for you and there is a big pause  
25 before you answer. And then you answer maybe and then

1 there's another pause. Why did you have to say that  
2 there?

3 A. Because as I said at the beginning he never  
4 brought me the investigations I asked for.

5 Q. Okay. And so the judge says: Do you want -- do  
6 you know of anything you would like him to do that he  
7 had refused to do?

8 And you said exactly what you're telling me. I  
9 asked him to investigate.

10 THE INTERPRETER: And you asked him to  
11 investigate?

12 MS. HERNANDEZ: And you answer. I asked him to  
13 investigate that the victim went to Mexico with someone  
14 that wasn't her parents. She went and came back during  
15 the month that they are saying, so I asked them to  
16 investigate it.

17 And the Court is asking you if he did do that.  
18 And you said, I don't know. And the Court asked you  
19 again, well, ask him.

20 So there's another pause where you're speaking to  
21 your attorney. This is the fifth time that the hearing  
22 is interrupted because you need to speak to an attorney  
23 about what you're doing, right?

24 A. (No response.)

25 BY MS. HERNANDEZ:

1 Q. And the Court asked you again whether you know  
2 whether he did or not. And on page 10, line 1 you said  
3 I don't know again.

4 The judge then said: Okay, Mr. Baldwin, you want  
5 to, you want to sit him down and talk to him for a  
6 minute or something?

7 Mr. Baldwin's response: Yes, Your Honor, I'll,  
8 I'll try to do that. The problem is they make this  
9 indictment so broad and he wants to take it literally.  
10 I'll talk to him for a minute. And that is the sixth  
11 interruption. Do you hear it?

12 This interruption lasted for three minutes, from  
13 11:22 to 11:25. What did you talk to him about?

14 A. At that moment I asked him if he had done the  
15 investigations and if he had interviewed the witnesses I  
16 had asked him to. And since I saw he just had a yellow  
17 note pad with the names of my dad and friends, I noticed  
18 he didn't bring with him any evidence to my favor. So  
19 at that moment I was just thinking for the hearing to  
20 finish. But he told me, no, the moment will come for me  
21 to present your defense.

22 Q. So even when you asked him to stop, he said let's  
23 continue, I'm gonna have a chance to defend you later  
24 on; is that correct?

25 A. That's it.

1 Q. So when the Court goes back on the record, then  
2 you answered yes, he answered the questions. Why did  
3 you say yes again?

4 A. Because the attorney said to say yes to continue  
5 on.

6 Q. Okay. So on page 13 on line 23, the judge asked  
7 you: And you've already told me you believe that if she  
8 did that, that the jury will in all likelihood convict  
9 you; is that true?

10 A. Correct.

11 Q. And on that occasion there's another pause where  
12 you're talking to your attorney. This is the seventh  
13 time you had to talk to your attorney at that hearing;  
14 is that right?

15 A. (No response.)

16 Q. And your response was: They didn't find  
17 anything, they took my computer.

18 And they yet again one more pause for you to talk  
19 to your attorney. This is the eighth time you had to  
20 talk to your attorney during a plea hearing; is that  
21 correct?

22 A. Yes, that's it.

23 Q. When you finish speaking to your attorney you  
24 answer yes. Why did you do that?

25 A. When they just ask me if the prosecutor took the

1 evidence to the juror, I wanted to ask what evidence do  
2 they have about me if I wasn't ever brought to the  
3 police hearing of the girl or my witnesses.

4 Q. And what did he say?

5 A. And he said: Don't worry, say yes, we'll  
6 continue.

7 Q. It sounds to me like through the whole plea  
8 hearing you were confused about what was going on; is  
9 that correct?

10 A. Yes.

11 Q. Did you actually know what was going on in that  
12 hearing?

13 A. The truth? No.

14 Q. Did you understand what the judge told you, that  
15 he could sentence you up to 15 years?

16 A. The judge said it from the beginning. He read  
17 it, the charge. And the sentence it could apply.

18 Q. At that moment, even though he said that, did you  
19 think you were gonna get 15 years as the sentence?

20 A. I didn't even pay attention to the judge. I just  
21 wanted to clarify that the dates were not correct.

22 Q. Okay. Yes. On the transcript you clarified that  
23 for the judge or tried to clarify that the allegations  
24 were only for three months, not the whole two years. In  
25 your conversations with Mr. Baldwin, did he ever say

1 you're gonna get the maximum 15 years if we plead or did  
2 he promise you anything different?

3 A. He told me it could be less because there were no  
4 evidences against me. And the only witness was the  
5 girl.

6 Q. In the conversations that you had with Mr.  
7 Baldwin and what you understood of them, did you ever  
8 talk about that when you're sentenced you will be placed  
9 on the sexual offender's registry?

10 A. No, he did not explain it to me.

11 Q. Not even at that time of the hearing?

12 A. No.

13 Q. At the time of the plea when they sentenced you,  
14 did you know what the sexual offender registry was?

15 A. No.

16 Q. Do you know now what that entails?

17 A. Yes. That you lose a lot of privileges in the  
18 schools with your children.

19 Q. Anything else?

20 A. Schools, parks, all of that now I avoid.

21 Q. Did Mr. Baldwin know that you were originally  
22 from Mexico?

23 A. Yes.

24 Q. Did Mr. Baldwin know your legal status in the  
25 United States?

1 A. Probably.

2 Q. You never spoke about that?

3 A. He just told me that it would be possible for me  
4 to be deported.

5 Q. So when -- when did he say that?

6 A. During the visit at the Annex.

7 Q. Was that when he was explaining to you about the  
8 plea deal?

9 A. Yes.

10 Q. And did he tell you that a sexual crime against a  
11 minor is considered, as far as immigration is concerned,  
12 a crime involving moral turpitude?

13 THE INTERPRETER: (Indicating.)

14 BY MS. HERNANDEZ:

15 Q. A crime involving moral turpitude.

16 A. No.

17 Q. And did he tell you by pleading guilty to this  
18 charge you will be banned completely from ever reporting  
19 legal status in the United States?

20 A. No, he did not explain it to me.

21 Q. Did Mr. Baldwin know that you have children?

22 A. Yes.

23 Q. And your children are United States citizens?

24 A. Yes.

25 Q. And did he ever explain -- did Mr. Baldwin ever

1 explain to you that if you were deported you could never  
2 come back and be with your children or raise your  
3 children?

4 A. No, he didn't explain it to me.

5 Q. After the beginning of the hearing and the plea  
6 went on, did Mr. Baldwin file a notice of appeal in your  
7 case?

8 A. No.

9 Q. Did Mr. Baldwin ever visit you again in jail?

10 A. No. After the hearing was over and I was  
11 sentenced, after it all was over, my dad was present and  
12 Robert, who is here, he told them that there was nothing  
13 else to do; that I already had pled guilty, that there  
14 was nothing else to do.

15 Q. So you had no contact about this case with Mr.  
16 Baldwin ever again?

17 A. No. I was taken to pod six. I called my parents  
18 for them to hire another attorney and to appeal. The  
19 following morning I was taken to Columbia and I was  
20 locked in Columbia.

21 Q. Okay. But you did not see him again? That's  
22 what I'm asking.

23 A. Not anymore.

24 Q. Okay. Did you ever see him again? Not for this  
25 case but anywhere else?

1 A. No. No more. Only seven or eight months later.

2 Q. Where did you see him?

3 A. He was representing my wife to remove my legal  
4 custody of the children. And I had three hearings at  
5 family court.

6 Q. Just a second, please. Let him look at this.

7 Your Honor, may I approach the witness?

8 THE COURT: (Nods head up and down.)

9 BY MS. HERNANDEZ:

10 Q. So you're saying you were involved with your wife  
11 in a Family Court case?

12 A. That's it.

13 Q. And you said that was seven months after this  
14 happened?

15 A. Perhaps a little bit later.

16 Q. Okay. Mr. Baldwin was then representing your  
17 wife against you in that case?

18 A. That's it.

19 Q. Is this your name over here as the defendant on  
20 this order?

21 A. That's it.

22 Q. And did Mr. Baldwin represent your wife  
23 throughout the whole case?

24 A. In the three first hearings he represented her  
25 until Judge Karen fired him because I said that it --

1       there was conflict of interest.

2               MS. HERNANDEZ: Your Honor, at this time I would  
3 like to introduce the order of removal of Mr. Baldwin  
4 for the 2017-DR-42-0459 case.

5               THE COURT: What is it, termination of parental  
6 rights?

7               MS. HERNANDEZ: It was -- it is the custody  
8 battle, Your Honor.

9               THE COURT: Oh, custody.

10              MR. ISENBERG: Your Honor?

11              MS. HERNANDEZ: Court visitation.

12              MR. ISENBERG: For the record, at the very least,  
13 I'm gonna have to object to this for, number one, the  
14 relevance. This is something that happened way after  
15 his plea hearing; therefore, it has nothing to do with  
16 whether or not his plea was involved or whether his  
17 counsel was effective in his criminal case.

18              THE COURT: I understand.

19              MS. HERNANDEZ: Your Honor ---

20              THE COURT: I'll let her make a record.

21              MS. HERNANDEZ: Thank you.

22              (Applicant's Exhibit Number 1, Order of Removal,  
23 was marked for identification.)

24              (Applicant's Exhibit Number 1 was entered into  
25 the record.)

1 BY MS. HERNANDEZ:

2 Q. Were you representing yourself on that hearing?

3 A. That's it.

4 Q. Did you ever have a lawyer?

5 MR. ISENBERG: Your Honor, I'm just gonna have to  
6 object to this line of questioning.

7 THE COURT: I sustain all that. That is ---

8 MS. HERNANDEZ: Yes, thank you, Your Honor.

9 THE COURT: All right. Sustain the objection.

10 MS. HERNANDEZ: Thank you, Your Honor.

11 MR. ISENBERG: Thank you, Your Honor.

12 BY MS. HERNANDEZ:

13 Q. On the day of the plea, did you freely plead  
14 guilty to an Alford plea?

15 A. No.

16 Q. Did you make an intelligent decision on that day  
17 to plead to an Alford plea?

18 A. No. Because the first time I heard that plea  
19 through the prosecutor's voice.

20 Q. Did you feel under duress to plead to an Alford  
21 plea on that day?

22 A. Yes.

23 Q. If it wasn't for Mr. Baldwin telling you to go  
24 ahead and go on through the full eight interruptions,  
25 would you have gone on with that plea?

1 A. No.

2 Q. Would you have gone to trial on this case  
3 instead?

4 A. Yes.

5 Q. In fact, on that day you thought you were going  
6 to a trial; is that correct?

7 A. Yes. Because the judge said if I wanted to go to  
8 trial the jurors were there.

9 MS. HERNANDEZ: No more questions, Your Honor.

10 MR. ISENBERG: May it please the Court?

11 THE COURT: Cross-examination.

12 THE INTERPRETER: Your Honor, how long have we  
13 been going?

14 THE COURT: An hour and 15 minutes.

15 THE INTERPRETER: The interpreter is going to ask  
16 for a five or ten-minute break.

17 THE COURT: All right.

18 THE INTERPRETER: Thank you.

19 THE COURT: All right. Take a ten-minute break.

20 (Witness leaves witness stand.)

21 (A recess was had from 10:46 a.m. - 10:59 a.m.)

22 THE COURT: Okay. Let's proceed.

23 MR. ISENBERG: Thank you, Your Honor.

24 (Witness resumes witness stand.)

25 May it please the Court?

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. ISENBERG:

4 Q. Good morning, Mr. Rodriguez.

5 A. Good morning.

6 Q. You testified on direct examination that all your  
7 attorney's communications were in English, correct?

8 A. They were in Spanish.

9 Q. So your attorney's communications with you were  
10 in Spanish?

11 A. His Spanish is very not that understandable, but  
12 I tried to understand him.

13 Q. But right now your testimony is that your  
14 attorney communicated with you in Spanish?

15 A. That's it.

16 Q. Did you ever tell him that you couldn't  
17 understand his Spanish?

18 A. I did not tell him, but I had to pay a lot of  
19 attention to understand what he was saying.

20 Q. So after paying a lot of attention you understood  
21 what he was saying?

22 A. Not every time. They were very few minutes I  
23 would see him. I saw him with lack of interest and even  
24 yawning.

25 Q. That's not an answer to my question. The

1 question is, after paying attention, as you previously  
2 testified, were you able to understand his Spanish?

3 A. Not everything.

4 Q. Okay. So you weren't able to understand  
5 everything, but you didn't tell him you weren't able to  
6 understand, correct?

7 A. No, I did not tell him.

8 Q. Okay. And at your plea hearing you had an  
9 interpreter, correct?

10 A. That's it.

11 Q. Were you able to understand your interpreter at  
12 the plea hearing?

13 A. Yes.

14 Q. Okay. So at your plea hearing do you remember  
15 telling the judge through your interpreter that you  
16 understood why you were there that day?

17 A. I understood the things that the interpreter was  
18 saying.

19 THE COURT: Mr. Isenberg, would you clarify on  
20 that very subject whether the interpreter interpreted  
21 the conversation -- the off-the-record conversations he  
22 had with his lawyer during the plea.

23 MR. ISENBERG: I will have his lawyer testify  
24 about their conversations --

25 THE COURT: Okay.

1 MR. ISENBERG: -- that occurred off the record.  
2 I do plan to address that.

3 THE COURT: Yeah, because they're two different  
4 things.

5 MR. ISENBERG: Yes, Your Honor.

6 THE COURT: All right.

7 MR. ISENBERG: Thank you.

8 BY MR. ISENBERG:

9 Q. Okay. I'll re-ask. Do you remember telling the  
10 judge you knew what you were doing in court that day?

11 A. Yes.

12 Q. Okay. Do you remember telling the Judge that you  
13 wish to give up your right to confront witnesses?

14 A. After the attorney advise me because I did not  
15 want to give up the right to my witnesses.

16 Q. So your testimony is that your attorney gave you  
17 advice and you listened to that advice, correct?

18 A. To say the word say yes, it's easy to pronounce  
19 it.

20 Q. That's not an answer to my question. You  
21 testified that your attorney gave you advice and you  
22 listened to that advice, correct?

23 A. Every interruption was not even for one minute.  
24 The longest interruption in the hearing was maybe three  
25 minutes.

1 Q. Okay, we'll move on. Do you remember the  
2 solicitor giving the facts at your plea hearing?

3 A. Yes.

4 Q. Do you remember the solicitor saying there was at  
5 least one instance of oral sex that occurred at the  
6 babysitter's home on Cody Street in Spartanburg County?

7 A. Was the first time I heard it.

8 Q. But you, in fact, heard that?

9 A. Yes.

10 Q. And you remember telling the judge that you  
11 thought the solicitor would be able to show that fact to  
12 a jury, correct?

13 A. Yes, but it was evidence that was never given to  
14 me.

15 Q. If the evidence was never given to you, why did  
16 you tell the judge you believed the solicitor could  
17 prove that fact to a jury?

18 A. Because I turned to look at my attorney and he  
19 said to say yes.

20 Q. Are you alleging that after the judge asked you  
21 this question you turned and talked to your attorney?

22 A. That's it.

23 Q. Do you understand that this conversation that  
24 you're alleging is not in the record?

25 A. There was no interruption, I just said I turned

1 to look at him and he assented with his head.

2 Q. So you decide to interrupt eight other times, but  
3 on this occasion you did not decide to interrupt?

4 A. That's it.

5 Q. Okay. So you're saying that you answered yes to  
6 the question from the judge because your attorney told  
7 you to, correct?

8 A. That's it.

9 Q. Did you ever answer a question on your own at the  
10 plea hearing without turning to your attorney?

11 A. No.

12 Q. Okay. So it was common for you to turn to your  
13 attorney before answering a question?

14 A. I'm sorry?

15 Q. I'll withdraw that question.

16 Do you remember telling the judge that no one  
17 threatened, forced or made you enter into the plea?

18 A. For, for -- for threat it was in my mind the word  
19 death. And, yes, if it it's equivalent to pressure, I  
20 feel that I was pressured, the attorney was manipulating  
21 me.

22 Q. So are you now testifying that you were  
23 threatened or pressured to enter into the plea?

24 A. I didn't say pressured or threatened, I said  
25 manipulated.

1 Q. Okay. Now, you testified that your attorney did  
2 not sufficiently review discovery with you, correct?

3 A. Did not review it with me.

4 Q. And you tried to fire him, correct?

5 A. On the second or third week.

6 Q. Why did you tell the judge that you were  
7 satisfied with your attorney at your plea hearing?

8 A. Because before I had interrupted and he had said  
9 to me for him to give the version of the facts.

10 Q. That's not an answer to my question. Why did you  
11 tell the judge you were satisfied with your attorney?

12 A. Because the attorney said he was just going to  
13 give the defense to my favor.

14 Q. Do you remember the Court asking you if there's  
15 anything else you would like your attorney to do?

16 A. I didn't want to interrupt anymore because the  
17 attorney had said he was just going to give his version.

18 Q. That does not make any sense. I'm just asking a  
19 yes or no question. Do you remember the judge asking  
20 was there anything else you would like your attorney to  
21 do?

22 A. I said no.

23 Q. Okay. Would it surprise you if you told the  
24 judge you did not have anything else for the attorney to  
25 do?

1 A. It would surprise me? How is that?

2 Q. Why did you not tell the judge that your attorney  
3 had not reviewed discovery with you?

4 A. I truly did not have any experience in law, as I  
5 put it on the PCR.

6 Q. Okay. So you wanted your attorney to review a  
7 DVD with you; is that correct?

8 A. That's it.

9 Q. Did you know about the DVD before you pled  
10 guilty?

11 A. Not exactly.

12 Q. You knew it existed, correct?

13 A. It existed because he showed it to my wife.

14 Q. And your wife told you about it, correct?

15 A. She told me she saw it.

16 Q. And that was before your plea hearing?

17 A. That's it.

18 Q. And yet you didn't raise any issues with the DVD  
19 at your plea hearing, correct?

20 A. Yes. Because he said there was nothing against  
21 me.

22 Q. Are you saying that the attorney told you that  
23 the DVD was not evidence against you?

24 A. No.

25 Q. So your attorney did tell you that the DVD that

1 you reviewed was unfavorable to you?

2 A. He just left me some papers but did not give me  
3 all the documentation to review with me.

4 Q. So he never talked to you about the papers he  
5 left you?

6 A. No.

7 Q. And those papers were in English?

8 A. That's it.

9 Q. And you couldn't understand those papers?

10 A. No.

11 Q. So you had papers based upon a DVD and you did  
12 not raise any issues with not being able to understand  
13 those papers at your plea hearing, correct?

14 A. No, not there.

15 Q. Okay. And you testified on direct examination  
16 that your attorney told you that you could receive 15  
17 years before your plea hearing, right?

18 A. That's how it is.

19 Q. And you received 15 years, right?

20 A. When he told me about that he told me not to  
21 worry because he would either try to reduce the time or  
22 get me to have served time, credit for served time.

23 Q. So your attorney had conversations with you about  
24 your potential sentence but never had conversations with  
25 you about the discovery?

1           A.    That's how it is.

2           Q.    And you would like to go back to -- I'm sorry,  
3 I'll withdraw that question.

4                    You filed this PCR application to receive lesser  
5 time or go to trial, correct?

6           A.    That's how it is.

7           Q.    Okay.  But your attorney talked to you about the  
8 fact that you may be potentially deported upon release  
9 from prison, correct?

10          A.    Told me that there was a possibility that I was  
11 deported.

12          Q.    And you're testifying today that you understood  
13 everything the interpreter told you at the plea hearing,  
14 correct?

15          A.    The woman was a good interpreter, I did  
16 understand her.

17          Q.    So you're testifying that she interpreted  
18 everything the judge said accurately, correct?

19          A.    I understood everything.  What I didn't  
20 understand was what was going on in that hearing.

21          Q.    And you remember her interpreting the judge going  
22 over your constitutional rights, correct?

23          A.    Rights for which I interrupted because I didn't  
24 want to give up my witnesses because I thought it was  
25 going to be a trial.

1 Q. But you ultimately waived those rights, correct?

2 A. Yes, after the attorney advised me to do so.

3 Q. So why are you now alleging that you had no  
4 knowledge of those rights when you entered into a plea?

5 A. Excuse me?

6 Q. Why are you alleging that you did not have  
7 knowledge of your constitutional rights when entering  
8 into a plea agreement?

9 A. I don't have a criminal record. I have never  
10 been in court. I didn't know which one my rights were.

11 Q. Okay. But the judge also told you that you could  
12 receive 15 years, correct?

13 A. I did not pay attention. At that moment I just  
14 wanted to clarify the dates that were given.

15 Q. Okay. But you knew that you could receive 15  
16 years, correct?

17 A. Yes.

18 Q. Why are you now alleging that you did not know  
19 how much time you could receive?

20 A. Because the attorney told me that he was going  
21 get me credit for time served.

22 MR. ISENBERG: Okay. I have no further questions  
23 for this witness.

24 THE COURT: Redirect?

25 MS. HERNANDEZ: Just a few questions, Your Honor.

1 THE COURT: Yes.

2 REDIRECT EXAMINATION

3 BY MS. HERNANDEZ:

4 Q. During the interruptions in the court hearing,  
5 when you had side conversations with your lawyer, was  
6 the interpreter there interpreting there for both of  
7 you?

8 A. No.

9 Q. Was it just you and your attorney speaking in  
10 Spanish?

11 A. That's how it was.

12 Q. You ultimately said that you were, yes, you were  
13 happy with the services or satisfied with the services  
14 of your lawyer; is that correct?

15 A. Yes.

16 Q. But before you did that, you have to have a side  
17 conversation with your lawyer; is that correct?

18 A. Yes.

19 Q. When the judge asked you about the evidence and  
20 the likelihood of there be a percent that you could be  
21 convicted, isn't it true that you had another side  
22 conversation with your lawyer right there?

23 A. Yes.

24 Q. And after that you still answered: They didn't  
25 find anything, they took my computer.

1 A. That's it, yes.

2 Q. And there was another time when you spoke to your  
3 lawyer before answering again?

4 A. A few seconds.

5 MS. HERNANDEZ: No more questions, Your Honor.

6 THE COURT: All right.

7 MR. ISENBERG: Nothing on recross, Your Honor.

8 THE COURT: All right. Thank you very much.

9 You're done. Next witness?

10 MS. HERNANDEZ: No more witnesses, Your Honor.

11 THE COURT: All right. From the State any  
12 witness?

13 MR. ISENBERG: Yes, Your Honor. The State would  
14 call Joseph Baldwin.

15 THE COURT: Come around, Mr. Baldwin.

16 (Witness comes forward.)

17 Place your left hand on the Bible and raise your  
18 right hand, please. (Complies.)

19 Do you solemnly swear or affirm the testimony  
20 you're about to give in this hearing will be the truth,  
21 the whole truth, and nothing but the truth?

22 THE WITNESS: I do.

23 THE COURT: All right. Have a seat.

24 JOSEPH BALDWIN,

25 having been duly sworn, testified as follows:

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## DIRECT EXAMINATION

BY MR. ISENBERG:

Q. Good morning, Mr. Baldwin.

A. Good morning.

Q. How are you doing today?

A. I'd rather be somewhere else, but I'm doing fine.

Q. I get that a lot with PCR witnesses. How long have you been practicing law?

A. I've actually been a member of the bar since 1986, but I actually only practiced since 2010.

Q. Okay. And how long since 2010 have you been practicing criminal law?

A. Probably seven or eight years.

Q. How many child sex crime cases have you done?

A. I've probably had about five.

Q. Okay. Was Mr. Rodriguez's case your first one?

A. I think I had one or two before.

Q. Okay. And how did you come about representing Mr. Rodriguez?

THE INTERPRETER: I'm sorry, Your Honor. Do you mind, the solicitor kind of tilting this way so that the interpreter can hear?

MR. ISENBERG: Sure.

THE INTERPRETER: Thank you.

BY MR. ISENBERG:

1 Q. How did you come about representing Mr.  
2 Rodriguez?

3 A. Well, his live-in girlfriend, the mother of his  
4 children came to see me.

5 Q. Okay. And you're saying after she came to see  
6 you, you began to represent him?

7 A. I went and talked to him at the jail. At that  
8 time, of course, I didn't know much about his case. I  
9 just knew what she was telling me.

10 Q. And what did y'all talk about during that first  
11 meeting?

12 A. Well, just what she knew about the case. I, you  
13 know, I think I read the warrants that he had against  
14 him. And I asked him a little bit about, you know, why  
15 these people would be accusing him of this. What he  
16 knew about it, that type of thing. And I explained to  
17 him that I would be doing what Rule 5 in this case, that  
18 I would be getting the reports and evidence that the  
19 State had and that I would be -- and that I would be  
20 requesting a preliminary hearing. And that I would be  
21 talking to him once I knew a little bit more about,  
22 about the case.

23 Q. At this meeting did he give you his version of  
24 the facts?

25 A. Yeah. And it was basically that he didn't know

1 any, you know, that it was untrue. That he really  
2 didn't know -- the allegations were not true. That the  
3 girl that was accusing him was somebody that his live-in  
4 girlfriend was babysitting.

5 Q. Did he indicate to you that he had never been  
6 alone with the girl before?

7 A. I think -- I'm not sure exactly where I learned  
8 that she went to Wal-Mart and this occurred -- the  
9 allegation is that it occurred while his -- the  
10 girlfriend was at Wal-Mart and that he was alone with  
11 her at the time.

12 Q. Did you talk to her about that allegation?

13 A. Yes. And he, he did -- he did tell me that he  
14 was alone with her for a very short time. That that  
15 would be, you know, that early on in the investigation,  
16 that's really about the only time he said he was alone  
17 with the girl when she did go to Wal-Mart. Well, he was  
18 never alone with the girl. I think there were always  
19 other people around. There were other children around.

20 Q. But he indicated to you that at some point his  
21 girlfriend had gone to Wal-Mart, he had been with the  
22 victim?

23 A. Yes.

24 Q. Okay. So he's now testified that he was never  
25 alone with her and that he asked you to investigate two

1 witnesses, one being his girlfriend, the other being a  
2 friend. Did you ever investigate any of those  
3 witnesses?

4 A. Well, of course I talked to the girlfriend. And  
5 she basically confirmed that there would be very short  
6 periods of time when she wasn't watching -- when she  
7 wouldn't be there.

8 Q. Did you consider that to be unfavorable testimony  
9 or unfavorable statement?

10 A. Not, not really. But if it was gonna be a trial  
11 and she testified to that, it would, I mean, the  
12 evidence may be opportunity.

13 Q. Right.

14 A. I'm not -- I didn't consider it extremely  
15 unfavorable, but it wouldn't have helped.

16 Q. Right. Did you ever talk to the friend that he  
17 testified about today?

18 A. I don't ever recall talking to him, but...

19 Q. Did he ever ask you to talk to the friend? I  
20 believe the friend's name is Louis?

21 A. I think he did, but if I recall it was more about  
22 being that somebody could attest to his character. And  
23 the incident that he's talking about I am familiar with  
24 and it wasn't -- it didn't have anything to do with the  
25 charge in Spartanburg County. I never did let the

1 solicitor know about that because I was worried if they  
2 found out about it, they could possibly indict him in  
3 another county because it was an incident that did not  
4 occur in Spartanburg County.

5 Q. What county did that occur in?

6 A. Well, he told me it was in Simpsonville, so it  
7 would have been a Greenville County case.

8 Q. Okay. And he was never indicted in Greenville?

9 A. No. He was never indicted on that. But it was  
10 in discovery, you know, and I did talk to him about it  
11 and he did tell me about it. And I knew exactly where  
12 it occurred.

13 Q. Why was he never indicted in Greenville?

14 A. I don't think they knew about it. And the reason  
15 they didn't know about it was because the girl really  
16 couldn't -- the victim really wasn't very specific about  
17 where it occurred and couldn't really give much facts  
18 about where it occurred.

19 Q. Okay. Now, you received discovery in this case,  
20 correct?

21 A. That's correct.

22 Q. Okay. And you reviewed that discovery with the  
23 applicant?

24 A. I did on, really on more than one occasion. And  
25 we also had a preliminary hearing in the case, but I did

1 review the discovery with the defendant on really more  
2 than one occasion.

3 Q. And how did you communicate with him?

4 A. Well, I always thought he understood me. And he  
5 never said I don't understand, but I did go over the  
6 things that worried me about the case that were not good  
7 for him. And I think he was fully aware of them. For  
8 instance, I asked him -- where the body cam and the  
9 reports -- what he did not see was the video and the  
10 body cam, but what was in the body cam and the video was  
11 written in reports. And I gave him a copy of all the  
12 reports. Of course, the reports weren't in English.  
13 But I did ---

14 Q. Sorry, I did just want to go ahead and clear this  
15 up.

16 A. Yeah.

17 Q. What language did you verbally review everything  
18 with him in?

19 A. I told him what the report said in Spanish.

20 Q. Okay. So you reviewed the report in Spanish,  
21 correct?

22 A. Yes. I, I -- basically, I didn't go -- I don't  
23 think I ever went line-for-line over the reports, but I  
24 did tell him what the reports said in Spanish.

25 Q. And to the best of your knowledge, he understood

1 everything about the report after you went over it with  
2 him because you spoke to him in Spanish, correct?

3 A. That's correct. And he would ask me questions in  
4 Spanish also.

5 Q. So he cooperated with you during this discussion?

6 A. That, that's correct. He, he was cooperative and  
7 he would, he would ask me things in Spanish also. It  
8 wasn't a one-way conversation.

9 Q. Now, did you receive an actual copy of this DVD  
10 during discovery?

11 A. I did, and I reviewed. And I don't remember. I  
12 don't remember showing it to the girlfriend but, you  
13 know, maybe I did. But I did review the DVD, the video.

14 Q. Were you able to go over that DVD with the  
15 applicant?

16 A. Well, I told him what she said in the DVD. And  
17 what she said in the DVD was also written in reports  
18 that I was given by the solicitor.

19 Q. And you went over what she said in those reports  
20 with him during those conversations, correct?

21 A. That's correct.

22 Q. Okay. And he's alleging that you failed to give  
23 him advice about his potential defenses in this case.  
24 What, if any, defenses did y'all go over?

25 A. Well, I went over with him I was very concerned

1 about the fact that on the reports indicated and the  
2 body cam both indicated when the police first approached  
3 him that he told -- he wasn't truthful with the police  
4 about his identity. And I asked him about that and he  
5 said he was worried about some traffic tickets that  
6 might not have been paid. And he thought that might  
7 have been why the police were approaching him.

8 But it was my opinion, and I communicated this  
9 with him, that I thought it would make it very difficult  
10 for him to testify at trial because one of the first  
11 things that would have been mentioned was the fact that  
12 he wasn't being truthful right from the start.

13 Q. So are you indicating that you notified him of  
14 evidence of impeachment that the State had?

15 A. Yes.

16 THE INTERPRETER: Hold on. I'm sorry, go ahead.

17 THE WITNESS: And I was ---

18 THE COURT: What was your answer?

19 THE WITNESS: My answer? Yes, I did. I mean,  
20 that was something that I brought up to him on more than  
21 one occasion. You know, this doesn't look good that  
22 right from the start you weren't being truthful about  
23 your identity. And I indicated to him that I thought it  
24 would be a real problem for him to testify because that  
25 would be the very first thing they would probably want

1 to bring up.

2 Another thing that I was concerned about and I  
3 went over with him was that he actually gave a statement  
4 to the, to the police. And basically they asked him why  
5 the girl would be wanting to make up stories about him  
6 and he indicated because I make her watch scary movies.  
7 And I -- you know, didn't seem like a very good  
8 explanation to me.

9 But the other thing that disturbed me about it is  
10 that they could show, I believe, that he had a lot more  
11 access to this girl than he might have been trying to  
12 indicate to me because if she had actually watched  
13 movies with him or he had shown her scary movies, he had  
14 more access to this -- to the victim than he was trying  
15 to indicate that he really had.

16 Q. And so you communicated these concerns with his  
17 case going to trial with him, correct?

18 A. I did. And I will state that I did not think  
19 that it was a -- you know, I wasn't -- I would go to  
20 trial, but I did not want to guarantee him anything;  
21 that I thought his chances were probably a little bit  
22 less than 50 percent.

23 Q. Uh-huh.

24 A. And these were pretty big problems. You know,  
25 these two things were big problems, as well as other

1 things. Most of what she was saying could be  
2 corroborated.

3 Another defense -- you know, I basically tried to  
4 communicate to him, and I think he understood this, that  
5 I thought that being able to get a not guilty verdict,  
6 he couldn't really prove he was innocent. And I was  
7 concerned about him getting on the stand and denying it  
8 because of the things I was telling you about. But I  
9 basically communicated to him that I thought we could  
10 kind of impeach the State's witnesses to some extent and  
11 try to create a little reasonable doubt in their mind.

12 They did seize a lot of stuff out of his house.  
13 And I'm convinced, you know, I would have asked, of  
14 course, why did you seize all that stuff and what did it  
15 prove? And it really did prove nothing. They seized  
16 all these things and actually it didn't prove anything.

17 The medical proof was not, was not compelling in  
18 any way. A doctor was gonna say it could happen, but it  
19 -- they couldn't rule it out, but they didn't come up  
20 with anything that would indicate that it really did --  
21 that they came to a medical conclusion that it did  
22 happen.

23 And I also, I told him this, and I think I'm the  
24 one that raised an issue with him that the parents, even  
25 though the girl was a U.S. citizen, the parents might

1 try to apply for a U visa, and that I could bring that  
2 up as a way to try to impeach the case of the State.  
3 But the evidence to me seemed fairly strong in that it  
4 was kind of a hard case because the incidents occurred  
5 several months before.

6 And the little, the victim, it didn't come to  
7 anyone's attention until several months later when the  
8 girl sent a hand-written letter, which was in Spanish,  
9 it wasn't real good Spanish, informing her parents that  
10 he had touched her like that. And he only -- she only  
11 wrote this letter after she went to a seminar at the  
12 Catholic church or something indicating where they had  
13 talked about good touching and bad touching. And it was  
14 only after she went to that thing that all this came to  
15 light. And it was several months after the incident  
16 actually occurred.

17 But I went over all these things with him and I  
18 think he understood. And it was my opinion, and he  
19 never admitted that he was -- that he had done these  
20 things, and that's where the Alford plea came in. I  
21 told him the only way he could ---

22 Q. Yeah, I just wanted to ---

23 A. Yeah.

24 Q. So you, you're testifying that you went over the  
25 Alford plea with him before his plea hearing, correct?

1           A.    Yes.  And I don't know if it was the -- I can't  
2 remember the exact date.  It was a day or two before he  
3 actually went into court.  And ---

4           Q.    And you believe that he understood what you were  
5 saying when you went over the Alford plea?

6           A.    Yeah.  And he -- we went over -- I mean, it's not  
7 like it was a one-sided conversation.  It was a  
8 two-sided conversation.  And he went over -- he'd been  
9 keeping track of people that were accused of what he  
10 considered to be similar, similar crimes and he was  
11 advising me that so and so got seven years.  You know,  
12 another person got eight years for this.  And he was  
13 very much aware of what some of the judges were doing  
14 with other ---

15          Q.    So you're saying that he indicated to you that he  
16 had done some research on his case?

17          A.    Well, he actually had talked to people who -- I  
18 mean, you know, people in jail talk.  And he knew that  
19 the people that had been charged with similar crimes and  
20 he knew what the resulting sentence was.  And he talked  
21 to me about this.

22                   I can't remember how many times I talked to him  
23 at the end, but probably the last two times we talked he  
24 went over what some of these other defendants were  
25 getting, you know, for a similar type of crime.  What he

1 considered to be similar types of crimes.

2 Now, I tried to tell him no two cases are alike,  
3 of course, but the charges were very similar. They  
4 started out with charges that were very similar to his.

5 Q. Right. So I just want to summarize. You're  
6 saying that he indicated to you that he was competent  
7 that he could receive a similar sentence to the ones  
8 that he had discussed with others?

9 A. Well, we talked about it and, you know, I think  
10 that I, I told him, and this was just an opinion but I  
11 don't know if it came off as an opinion or more of a  
12 fact, that even though that maximum was 15 years, that  
13 judges do appreciate the fact that the victims don't  
14 have to testify and that generally the sentence is less  
15 than what the maximum is.

16 Q. And on the date of his plea hearing, did he know  
17 or had you communicated to him that he was going to  
18 plead?

19 A. I think he did. After listening to him today, I  
20 think he thought that we were gonna -- that the judge  
21 had a chance to say he was not guilty. I don't -- was  
22 convinced he understood and that he understood that, you  
23 know, we went over an Alford plea because he said he  
24 didn't do it and he wasn't gonna admit to it. And I did  
25 explain what an Alford plea was.

1 Q. And he indicated to you that he wanted to plead  
2 before he went to the hearing, correct?

3 A. He told me that he -- he did not -- I don't -- he  
4 told me he didn't want a trial. He did not want to have  
5 the possibility of 25 years -- well, a 25-year minimum.  
6 I explained to him that if he went to trial it could  
7 very well be more than 25 if he was guilty.

8 Q. Did you ever go over any potential deportation  
9 consequences of his plea?

10 A. I, I told -- well, I told him that immigration  
11 was probably gonna come and get him when his sentence  
12 was over no matter when it ended. You know, whether it  
13 was, you know, at -- and that they would use this  
14 conviction against him as a reason to deport him.

15 Q. Okay. Did you ever follow up on whether  
16 immigration put him on a potential deportation list  
17 after he pled?

18 A. Well, I haven't checked, but he had a hold on him  
19 the whole time he was in Spartanburg County. So, you  
20 know, I'm sure the Department of Corrections probably  
21 has a hold on him as well, but...

22 Q. Can you explain what a hold is for the Court.

23 A. Well, they -- what it basically means is that the  
24 State will notify immigration, ICE, as soon as his  
25 sentence is over.

1 Q. Uh-huh.

2 A. And they're gonna tell me you have -- and the  
3 jail is 48 hours. I don't know if it changes with the  
4 Department of Corrections, but you have a certain amount  
5 of time to come and begin a deportation case on him.  
6 It's their decision whether they're gonna come and get  
7 him, but based on his conviction and all that, I'm sure  
8 that they're probably gonna come and get him. And this  
9 conviction will certainly be used against him.

10 And he'll have a hard time raising any defense to  
11 deportation because one of the things you do have to  
12 show is good moral character and they would use this  
13 against him and say you're not a person of good moral  
14 character because of this conviction.

15 Q. Now, at the plea hearing y'all had several  
16 discussions off the record, right?

17 A. Yes.

18 Q. Were those discussions in Spanish?

19 A. They were. I believe all my communications with  
20 him were in Spanish.

21 Q. Okay. Now, to the best of your knowledge, what  
22 questions was he asking you during the plea hearing off  
23 the record?

24 A. He seemed very confused.

25 Q. Okay.

1           A. I, you know, for instance, you know, most  
2 Americans don't -- a lot of native people don't  
3 understand their rights, but when they were asking about  
4 do you understand you're giving up your right to  
5 cross-examine witnesses, I don't know if he understood  
6 that because there were some people that came to court,  
7 you know, his father and I believe somebody else who  
8 could, who could talk to the judge prior to sentencing.

9           But, you know, he seemed very confused. And I  
10 think I basically -- I can't remember the conversations  
11 but I think I said do you want a trial or do you want to  
12 enter a plea. And, you know, I think he -- we agreed,  
13 you know, a day or two before court that he was gonna  
14 enter a plea and it was gonna be an Alford plea. And I  
15 don't think he -- I don't know if he really -- I think  
16 he said he wanted to go -- continue to go forward, but I  
17 just cannot remember the, the conversations during the  
18 breaks that we had, but I ---

19           Q. Did ---

20           A. He was more concerned about what he was gonna  
21 get, the amount of time he was gonna get, than whether  
22 -- than the trial. That's what I vaguely remember about  
23 the conversations.

24           Q. But to the best of your knowledge, he never told  
25 you he wanted to go to trial during those conversations,

1 correct?

2 A. No. He never said let's, let's not go forward  
3 with the plea, you know, I've decided I'd rather have a  
4 trial.

5 Q. And you weren't looking at him during the plea  
6 hearing and telling him what to say, correct?

7 A. No. I just said you have to answer the judge's  
8 questions if you want to go forward with the plea. But,  
9 you know, looking back, maybe I should have just taken a  
10 lot more time with him to make sure he understood that  
11 it wasn't a trial. I, I have a hard time believing he  
12 understood that it wasn't a trial. I -- you know, the  
13 solicitor wasn't there. The little, you know, the  
14 victims weren't there. Nobody was there that day.

15 Q. Let me ---

16 A. The solicitor was there to read off the facts.

17 Q. Let me ask you this, you never told him there was  
18 a trial, right?

19 A. No, I never told him that we're gonna have a  
20 trial. That the witnesses that, you know, that the  
21 victim's gonna testify, the police are gonna testify,  
22 I'm gonna cross-examine them. And I told him it's only  
23 gonna take -- you know, it's not gonna be an all-day  
24 thing.

25 Q. Right.

1           A.   Of course, a trial would have been a two-day  
2 affair probably.

3           Q.   But you had had a full conversation with him days  
4 prior about pleading guilty, correct?

5           A.   That's right.

6           Q.   And when you left that conversation, you were  
7 confident that he wanted to plead guilty, correct?

8           A.   I believe so.

9           Q.   And it was around that point that you told him  
10 you were going to court to take care of the situation,  
11 correct?

12          A.   No.  I told him -- I can't remember if I told him  
13 the exact date, but it was only a day or two before we  
14 actually went that I, that I went and talked to him a  
15 final time about it.

16          Q.   Right.  And at that final time when you left, you  
17 believe he knew he was going to plead, correct?

18          A.   Yes.

19          Q.   And at the plea hearing, you did your best to  
20 handle any of the confusion that he had about the  
21 hearing, correct?

22          A.   Yes, I did.

23          Q.   Okay.  And all of those conversations were in  
24 Spanish, right?

25          A.   They, they all were.

1 MR. ISENBERG: Okay. No further questions, Your  
2 Honor. Thank you.

3 THE COURT: Ms. Hernandez.

4 MS. HERNANDEZ: Thank you, Your Honor. May it  
5 please the Court?

6 THE INTERPRETER: Your Honor, this interpreter is  
7 very tired and --

8 THE COURT: I'm sorry?

9 THE INTERPRETER: -- please understand that the  
10 interpreter is saying everything all this time. I need  
11 a five-minute break. My apologies.

12 THE COURT: Well, you need to step aside?

13 THE INTERPRETER: So you realize, when we do  
14 hearings that are one hour or longer, we use two  
15 interpreters to help each other.

16 THE COURT: We'll take five minutes.

17 THE INTERPRETER: Thank you, Your Honor.

18 THE COURT: Do you need to step out?

19 THE INTERPRETER: Yes, always.

20 THE COURT: We'll wait for you.

21 THE INTERPRETER: Thank you, Your Honor.

22 (A recess was had from 11:57 a.m. - 12:01 p.m.)

23 THE COURT: Is the interpreter ready to proceed?

24 THE INTERPRETER: Yes, Your Honor.

25 THE COURT: I don't think it will be too much

1 longer, but we'll see.

2 All right, Ms. Hernandez, you may proceed.

3 MS. HERNANDEZ: Thank you, Your Honor. May it  
4 please the Court?

5 THE COURT: (Nods head up and down.)

6 CROSS-EXAMINATION

7 BY MS. HERNANDEZ

8 Q. Good afternoon Mr. Baldwin. I know we wish we  
9 were under other circumstances, but today we're in this  
10 one.

11 THE INTERPRETER: I'm sorry, Your Honor. Could  
12 you, please, step this way so the voice travels this  
13 way?

14 MS. HERNANDEZ: Yes.

15 THE INTERPRETER: Thank you.

16 MS. HERNANDEZ: I'm sorry.

17 BY MS. HERNANDEZ:

18 Q. So you came into this case because his wife or  
19 live-in girlfriend hired you?

20 A. Yes.

21 Q. And ---

22 A. I went to see him afterwards.

23 Q. Yes. Did she pay you any of your fees?

24 A. I can't remember how much they paid. I know that  
25 to go see him, she paid me \$1,000 and I would tell her

1 whether I would take the case. And I think they -- she  
2 paid more after that.

3 Q. And ---

4 A. You know, that was a while back. I was sort of  
5 by myself back then and I don't remember exactly how  
6 much was paid now.

7 Q. Okay. Did they finish paying you all your fees?

8 A. I think they did.

9 Q. Okay. When you decided to handle this case, did  
10 you know if he only spoke Spanish?

11 A. Yes.

12 Q. Did you know he was original to Mexico?

13 A. I'm not sure I did, but I suspected -- I  
14 suspected it.

15 Q. Did you know ---

16 MR. ISENBERG: Your Honor, I'm just gonna have to  
17 object to the relevance of that. Him being from Mexico  
18 has no bearing on this case.

19 THE COURT: It's -- I'm gonna allow it cause  
20 there's no jury here.

21 MR. ISENBERG: All right.

22 BY MS. HERNANDEZ:

23 Q. Did you know about his immigration status in the  
24 United States?

25 A. Yes. I think I asked him about it. I asked a

1 friend about it. And I think I was able to determine  
2 that there was a hold on him, so I knew that he wasn't  
3 legally in the United States.

4 Q. Okay. You testified that you handled a few other  
5 cases involving criminal sexual conduct, right?

6 A. That's correct.

7 Q. Did you ever go to trial on any of those cases?

8 A. Yes.

9 Q. Were you successful?

10 A. No, I was not. But I will also state, though,  
11 that the evidence was even stronger than it was in his  
12 case.

13 Q. Are you handling any criminal sexual conduct  
14 cases right now?

15 A. I think I may have -- I think I may have two  
16 still pending. One got Nolle prossed recently. I think  
17 I may have two still pending.

18 Q. I understand you work at the Grek Law Firm; is  
19 that correct?

20 A. I do now, yeah.

21 THE COURT: What's the name of it?

22 MS. HERNANDEZ: Grek Law Firm.

23 BY MS. HERNANDEZ:

24 Q. Are you aware that on the website for the firm  
25 there's a statement that quotes: Please note at this

1 time ---

2 MR. ISENBERG: Objection, Your Honor.

3 THE COURT: You don't have -- I haven't heard the  
4 question.

5 MR. ISENBERG: Sorry.

6 BY MS. HERNANDEZ:

7 Q. Please note at this time our firm does not accept  
8 cases involving the following: Sex offenses of any  
9 kind, assault, including sexual assault, battery, rape,  
10 and domestic assault.

11 THE COURT: All right. What's the ---

12 MR. ISENBERG: And I'll -- should I re-raise my  
13 objection?

14 THE COURT: Are you testifying?

15 MS. HERNANDEZ: No. I was asking him if he's  
16 aware that that is on the website for ---

17 THE COURT: Well, what's the relevance?

18 MS. HERNANDEZ: Your Honor, he's not actively  
19 aware of those cases.

20 THE COURT: All right. That's impeachment and  
21 I'll allow it.

22 THE WITNESS: I wasn't aware of that. I haven't  
23 even looked at our website.

24 BY MS. HERNANDEZ:

25 Q. Okay, fine. So during the meetings with Mr.

1 Rodriguez, did you ever think I probably need an  
2 interpreter?

3 A. I thought I understood him fine and I thought he  
4 understood me fine.

5 Q. So there was no interpreter any of the weeks?

6 A. No.

7 Q. And you always communicated in Spanish?

8 A. That's correct.

9 Q. How well do you speak Spanish, Mr. Baldwin?

10 A. Well, my wife's from Mexico, I communicate with  
11 her in Spanish. I communicate with her family in  
12 Spanish. I mean, it's just Spanish that I've learned  
13 from her basically. It's not my native language.

14 Q. Have you ever had any formal training in Spanish?

15 A. I took it two or three years in high school. And  
16 I forgot it until I, until I start -- until I got  
17 married again -- until I got married.

18 Q. Have you ever taken a proficiency exam of the  
19 Spanish language?

20 A. No, not recently. I took tests in high school of  
21 course.

22 Q. Okay. In your opinion, when you were speaking  
23 Spanish to Mr. Rodriguez, the conversations were  
24 completely understood by him?

25 A. I, I think so. You know, I know in your direct

1 examination about the Alford plea and he didn't  
2 understand it when you -- you know, it's not an easy  
3 concept to explain. I, I told him that what it meant  
4 that more likely than not if it went to trial there was  
5 enough evidence you could lose the case. I tried to  
6 explain it to him in that way. And I think he  
7 understood because he wasn't -- he'd never admit that he  
8 was guilty.

9 And I explained the concept of an Alford plea to  
10 him. And, of course, that was in Spanish. Some people  
11 don't understand it in English, of course, but...

12 Q. Yes. That's a conversation that I had with him  
13 before --

14 A. Yeah.

15 Q. -- about the Alford plea. And that is what I am  
16 referring to, Mr. Baldwin. If you went to talk to him  
17 and all these issues legally is complicated, how could  
18 you be sure that he understood everything?

19 A. Well, I'm not -- I think he understood the  
20 weaknesses of his case. And, you know, he understood  
21 the strengths of his case. And he testified, you know,  
22 in his direct examination he said there was no evidence.  
23 Well, there was very little evidence except that what  
24 this victim testified to. I think he fully understood.  
25 It seems like he testified to a lot. And the only --

1 and he was able to testify as to what was said. And the  
2 only way that he would know that is because of what I  
3 told him in Spanish.

4 Q. So you were satisfied with him understanding the  
5 weaknesses and strength of the case, even if he  
6 understands everything completely?

7 A. I think he understood. I think he understood his  
8 case. And as I indicated earlier, I was very concerned  
9 about the untruthful statements he made at the start.  
10 And I'm pretty clear he understood that. And the fact  
11 that he gave a declaration to the police officers when  
12 he was first arrested. He understood that.

13 He was at -- we actually had a preliminary  
14 hearing. And I can't remember if there was an  
15 interpreter there or not, but it was clear from the  
16 preliminary hearing that the evidence pretty much rested  
17 on the testimony of the victim.

18 Q. That's really my experience, the evidence was not  
19 all there, right?

20 A. I think I had, I think I had the discovery at the  
21 preliminary hearing. It was several months after his  
22 arrest, so I think I already had it. And I was able  
23 to -- you know, basically it was the police officer that  
24 testified, the arresting officer that testified. And,  
25 you know, he -- I basically got him to admit that the

1 whole case hinged on -- basically hinged on the, on the  
2 testimony of the, of the victim that they had not been  
3 able to come up with other corroborating evidence.

4 Q. Okay. And knowing that the whole case rested on  
5 the testimony of the victim, you did not think that you  
6 needed to share that with him and --

7 A. Well, I had ---

8 Q. -- show him the video?

9 A. Well, I had notes of what the video said. They  
10 were in the reports, and I went over the reports with  
11 him. So, I don't know if he's ever actually ever seen  
12 the video. I probably -- you know, but it's hard to  
13 show somebody a video in the jail.

14 Q. But you said there were written records of that,  
15 right?

16 A. Yeah. The video was summarized, and I was able  
17 to go over the summary of what was in the video to him.  
18 And I would ask him questions. Like I remember asking  
19 him what's all this about this pool house? And he told  
20 me, you know, it was in Simpsonville and that type of  
21 thing. So, I mean, it's not like -- I mean, I would ask  
22 him questions, he would respond to me, so I think he  
23 understood what I was telling him.

24 Q. Did you know that he didn't have any prior  
25 criminal record before?

1           A. I knew that. Well, I -- he mentioned something  
2 about traffic tickets, but as far as a criminal record I  
3 don't think he had a criminal record. And that was  
4 pointed out to the judge also.

5           Q. So did that have -- be a reason he wasn't  
6 familiar with any of the court proceedings or any legal  
7 matters?

8           A. Well, I mean, I assume he was -- I mean, most  
9 people really aren't until they get caught up in court.  
10 And especially him being from Mexico, you know, they  
11 even have less familiarity with what's going on.

12          Q. Yes. And him not speaking the language, right?

13          A. That, that's correct.

14          Q. The documents that you gave him as far as  
15 discovery is concerned, all of them were in English; is  
16 that correct?

17          A. That's correct.

18          Q. And you said you only gave him a summary of what  
19 was in it?

20          A. That's right. I don't know if I ever went over  
21 it line for line. I mean, I went into some detail about  
22 what was in each one of them.

23          Q. When did you get the offer from the solicitor?

24          A. I can't remember. It was, maybe it was a month  
25 or two before, before the plea hearing.

1 Q. And then you went and talked to him about that?

2 A. That's right. And I'm not sure he wanted to  
3 accept it the very first time or not or if it was the  
4 second time I went and actually talked to him about it.  
5 He -- I think, if my discussion with him the first time  
6 was, you know, to try to get maybe a recommendation from  
7 the solicitor, you know, it was an open-ended plea  
8 offer.

9 THE COURT: What was the offer? Ask him.

10 BY MS. HERNANDEZ:

11 Q. What was the offer?

12 A. It was reduced from criminal sexual conduct in  
13 the first to the charge he entered the plea to which was  
14 lewd act on a minor.

15 Q. But there was no recommendation so it --

16 A. No.

17 Q. -- was a straight-up sentence?

18 A. It was a possible 15-year sentence, which is what  
19 he got.

20 Q. Is it true you discussed with him the fact that  
21 you thought that it could possibly be reduced?

22 A. No. I didn't think that that could be reduced.  
23 I thought that, you know, I told him that I did not  
24 think he would get 15 years for the charge. And I, I  
25 really believe that if the sentence would have been

1 maybe 10 years or something like that we probably  
2 wouldn't be here today because I think he thought that  
3 he was gonna get less than 15 years and it would be 10  
4 years. And maybe even if it was 12 it might be  
5 different. But I did leave the impression with him that  
6 very seldom is the maximum given.

7 Q. So you thought that was a good offer for Mr.  
8 Rodriguez?

9 A. No. I remember him asking me should I do this or  
10 not. And I said it's your life, its not my life. I  
11 remember telling him that. And I remember telling him  
12 that in my opinion he could win the case, but there was  
13 more than -- you know, that there was sufficient  
14 evidence that he could -- that there was probably even  
15 better than a 50 percent chance that he, that he would  
16 lose the case, and if he did, the lewd act on a child  
17 wouldn't be what he went to trial on. It would be the  
18 criminal sexual conduct in the first degree, which would  
19 carry a minimum of 25 years.

20 Q. The day of the plea hearing, there was an  
21 interpreter for Mr. Rodriguez; is that correct?

22 A. There was.

23 Q. If the court needs an interpreter for any  
24 defendant, wouldn't you think that you also needed an  
25 interpreter when you were meeting with him?

1           A. I've never used an interpreter just to talk to  
2 somebody. You know whenever there's a deposition, of  
3 course there's an interpreter. I, I felt that he  
4 understood everything I was saying. Every time I go to  
5 talk to somebody in jail, I don't take an interpreter.  
6 I don't know if I've ever taken one with me.

7           Q. So you're very confident with your Spanish?

8           A. I, I couldn't run for -- I couldn't pass a  
9 college course in Spanish, but I can certainly converse  
10 with people.

11          Q. If you were to rate your Spanish fluency in a  
12 percentage, how would you rate it?

13          A. Well, I don't know how you would do that --  
14 exactly how I can answer that question. My wife  
15 understands me when she wants to.

16          Q. I understand that. I do the same thing.

17          A. And her mother-in-law understands me when she  
18 wants to also.

19          Q. Yes, sir. Mr. Rodriguez testified that he asked  
20 you to investigate some issues; is that correct?

21          A. Yeah, he did. The one had to do with the girl.  
22 She went to Mexico like in that summer. And the  
23 allegations was that it occurred in March or April. She  
24 went to Mexico subsequent to the allegations that were  
25 being made.

1 Q. So you thought there was no need to investigate  
2 her in person?

3 A. I, I didn't see what the relevance of it was.

4 Q. And you testified that you spoke to the wife or  
5 the live-in girlfriend; is that correct?

6 A. That's correct.

7 Q. Did Mr. Rodriguez ever tell you that she could be  
8 an alibi witness for her -- for him?

9 A. Yeah. He -- well, he did. Yeah, and I did talk  
10 to her about it. It's like we talked about, she wasn't  
11 in the house all the time. She did go to Wal-Mart. I  
12 -- you know, she was there most the time, but she wasn't  
13 there all the time.

14 Q. On direct examination you testified that she did  
15 go out for short periods of time, but isn't it true that  
16 he also testified that he never was alone, alone with  
17 the minor girl?

18 A. That's correct. Other children were there.

19 Q. In fact ---

20 A. Not -- besides for the victim.

21 Q. And so there were his children and also another  
22 boy that was around 11 years old. Do you remember this?

23 A. I don't remember that. I remember the discovery  
24 talking about the little girl accusing him of looking  
25 kind of strange at a five-year old boy. And, of course,

1 you know, the police were probably gonna look into that.  
2 And, of course, that didn't -- there was nothing in the  
3 discovery indicating that there was -- that they had  
4 discovered anything there either.

5 Q. On the discovery you testified on direct  
6 examination that there was -- that incident in  
7 Simpsonville was there in discovery?

8 A. Yes. It -- they didn't know where it was. The  
9 little girl talked about that place in Simpsonville, that  
10 pool house. And I asked them. What are you talking  
11 about here? And he explained to me that it occurred in  
12 Simpsonville. And I can't remember how many occasions  
13 it happened in his house, but this was the only occasion  
14 out away from his place in Spartanburg County where  
15 anything allegedly happened.

16 Q. Did you not think that it was relevant for you to  
17 investigate further into this friend that asked him to  
18 come and do the work for him, Mr. Louis?

19 A. Well, I don't -- I did not look -- I don't think  
20 I did talk to Louis, and I'm not sure. Of course, the  
21 incident in Simpsonville wasn't what the charge was all  
22 about. And I don't remember talking to Louis. And the  
23 other thing is I really didn't want to bring it up to  
24 anybody for the simple reason I didn't want him to be  
25 charged in a different county.

1 Q. On the day of the plea, you told him exactly what  
2 he was going to do in court that day?

3 A. I probably didn't go over it well enough with him  
4 because he did act kind of confused, but I did basically  
5 -- I went over it with him.

6 Q. Isn't it true that his father came all the way  
7 from Mexico because he thought he was going to have a  
8 trial?

9 A. I ---

10 MR. ISENBERG: Objection, Your Honor. Asking him  
11 to speculate about the father's intentions.

12 THE COURT: Well, if he knows. Do you know?

13 THE WITNESS: No. I, I think he was told, he was  
14 aware that he was going to court, but I don't, I don't  
15 believe he knew -- he shouldn't have been told by  
16 anybody that it was gonna be a trial.

17 BY MS. HERNANDEZ:

18 Q. Do you think that he was confused about that  
19 because he didn't understand parts of the conversations  
20 that he had with you in Spanish?

21 A. No. I, I think he understood he was gonna enter  
22 a plea. And I think he thought he was gonna get less  
23 time than he ended up getting, but that the only way to  
24 get that would be to go through a plea. I think he  
25 fully understood if he went to a trial he was facing a

1 minimum of 25 years if he was convicted.

2 Q. Did you go over with him the rights, the  
3 constitutional rights that he was giving up by pleading?

4 A. Well, like a judge does, I don't think I did.  
5 But I explained to him that we, you know, that I wasn't  
6 gonna -- that the victim wouldn't be there, the police  
7 were probably wouldn't be there. You know, nobody would  
8 actually testify as to any facts.

9 Q. During the hearing, as we already went over,  
10 there were eight times when you had side conversations  
11 with Mr. Rodriguez; is that correct?

12 A. Well, I can't remember how many times but there  
13 were several times.

14 Q. At any time during the third, fourth, fifth time,  
15 did you think he's not understanding, let's just back up  
16 and do this plea some other day so that he can  
17 understand with certainty what we're doing?

18 A. I didn't. That actually didn't go through my  
19 mind, but it, you know -- because we had talked about it  
20 like a day or two, a night or two earlier.

21 Q. Did you actually go to the Annex to talk to him  
22 about it?

23 A. Yeah. The last two or three times I talked to  
24 him he was here at the Annex.

25 Q. But the day that you talked to him about the

1 plea?

2 A. It was in the Annex.

3 Q. Was it one day before, two days before, or was it  
4 right before the day of the plea?

5 A. It was one or two days before it. It was like  
6 after 5 o'clock, I believe.

7 Q. When Mr. Rodriguez answered so many questions and  
8 he looked confused, did you think about let me take some  
9 time, get the interpreter to make sure that he  
10 understand what we're doing, and then we can proceed?

11 A. I don't recall thinking that.

12 Q. Did you and Mr. Rodriguez before the plea talk  
13 about the sex offender's registry?

14 A. No.

15 Q. But he -- part of the sentence was that he was  
16 gonna be placed on the sex offender registry, right?

17 THE INTERPRETER: Can you repeat that question  
18 for the interpreter?

19 BY MS. HERNANDEZ:

20 Q. Part of the sentence was that he was gonna be  
21 placed on the sex offender registry, right?

22 A. I, I can't remember talking to him about the sex  
23 offender registry, but I also didn't think it was  
24 extremely relevant because I thought that he was gonna  
25 be in Mexico after he was released.

1 Q. Are you familiar with the 2010 Vehicular  
2 Assistant Traffic Case?

3 A. That's correct. Yeah, I'm very familiar with it.

4 Q. And you feel that you advised Mr. Rodriguez to  
5 comply with the holding on that case?

6 A. I may not have told him that -- I told him that  
7 it would be used against him in ---

8 MR. ISENBERG: Your Honor, may I object, just so  
9 we can get some foundation on what the awarding of that  
10 case is?

11 THE COURT: Padilla?

12 MR. ISENBERG: Yes, Your Honor. I would just  
13 like for there to be some foundation laid on the holding  
14 before we ask him to discuss his client's compliance  
15 with it and their discussion about it.

16 MS. HERNANDEZ: He says he's familiar with it.

17 THE COURT: He says he's familiar with it.

18 MR. ISENBERG: Okay.

19 THE COURT: So go ahead and proceed.

20 BY MS. HERNANDEZ:

21 Q. For the record, can you and I talk about what the  
22 particulars of the Padilla case entails?

23 A. Basically when somebody enters a plea and they're  
24 not legally in the United States that you have to -- the  
25 defense attorney is supposed to advise that the plea can

1 affect their immigration status in the United States.

2 Q. Thank you for that. And did you explain those  
3 consequences to Mr. Rodriguez about pleading to these  
4 crimes?

5 A. Yes, I'm sure I did. I told him that it would be  
6 used against him in a deportation proceeding if there  
7 was one.

8 Q. So you were familiar that any crime against a  
9 minor would completely ban him from ever being legally  
10 here in the United States?

11 A. He'd be inadmissible.

12 Q. Yes. Did you know that he had children that were  
13 United States citizens?

14 A. Yes.

15 Q. By pleading to these charges, did you ever  
16 discuss that if he was gonna be deported, he could never  
17 come back and raise those children?

18 A. Well, if I -- I think I had asked him if there  
19 were any -- if there was anything about the children  
20 that was exceptional or unusual in any regard. And I  
21 don't think there was, but I don't know if I ever told  
22 him he'd never be able to come back to the United  
23 States. I may not have gone over that with him, but he  
24 was very much aware that the immigration court would --  
25 you know, this would be used against him and he would

1 probably be deported.

2 Q. After the plea, did you file a notice to appeal  
3 in this case?

4 A. No.

5 Q. Why not?

6 A. Why?

7 Q. Why didn't you?

8 A. Well, like he said, the parents said they were  
9 gonna get somebody else. But I thought that if there  
10 was an appropriate remedy it would be postconviction  
11 relief. And I wasn't sure that he actually wanted a  
12 trial. You know, he had never told me he wanted a  
13 trial. Nobody ever communicated to me that he wanted a  
14 trial, so I'm not exactly sure what I could have  
15 appealed on.

16 Q. On the day of the hearing -- bear with me. On  
17 page 14, do you remember the judge saying that he had  
18 the right to appeal; that he had ten days to appeal?

19 A. That's correct.

20 Q. On page 10, line 22 the judge says: Okay. So  
21 you have 10 days to appeal your sentence or the plea.  
22 If you do so, you must file it in writing with the clerk  
23 of court. Do you understand? Do you remember that?

24 A. Yeah. Uh-huh. Yes, I do.

25 Q. And you didn't think a notice to appeal needed to

1 be filed then?

2 A. No, I didn't file an appeal notice.

3 Q. Did you have any contact about this case with Mr.  
4 Rodriguez after the plea?

5 A. I don't think it was with him. I think somebody  
6 came to see me a day or two later.

7 Q. Did they tell you they were gonna handle the  
8 appeal with someone else?

9 A. That's correct. And, frankly, I was under the  
10 impression that if he was gonna do this that somebody  
11 else would have to do it.

12 Q. Is it true that after you represented his wife in  
13 a Family Court case against Mr. Rodriguez?

14 A. That's right. His wife came to see me and the  
15 only ---

16 MR. ISENBERG: Objection, Your Honor. If this is  
17 talking about the --

18 THE COURT: I understand.

19 MR. ISENBERG: -- post-representation, then this  
20 is irrelevant.

21 THE COURT: All right. I'll sustain the  
22 objection. I don't see the relevance.

23 MS. HERNANDEZ: Your Honor, it goes to the  
24 evidence that I presented about the conflicts of  
25 interests.

1 THE COURT: I understand that, but that's not,  
2 that's not why we're here.

3 MS. HERNANDEZ: Thank you, Your Honor. No more  
4 questions.

5 Thank you, Mr. Baldwin.

6 THE WITNESS: Thank you.

7 THE COURT: Anything further?

8 MR. ISENBERG: No further witnesses from the  
9 State, Your Honor.

10 THE COURT: Thank you. You may be excused.

11 (Witness leaves witness stand.)

12 THE COURT: Any final argument? Any final  
13 argument?

14 MS. HERNANDEZ: Yes, Your Honor, please.

15 THE COURT: All right.

16 FINAL ARGUMENT

17 MS. HERNANDEZ: Your Honor, I think the applicant  
18 has demonstrated that there was ineffective assistance  
19 of counsel; that counsel's representation failed below  
20 the objective standard, and that it prejudiced the  
21 applicant. That if he would have gone to trial, the  
22 result could have been different and that is what the  
23 applicant was going for.

24 That the counsel failed to advise of the  
25 applicant of his constitutional right that the applicant

1 needed an interpreter to communicate at all times for  
2 this case, not only on the court proceedings but also  
3 during the communication with his lawyer. And that if  
4 he would have understand everything, as the counsel  
5 stated, he wouldn't have entered this plea. He did not  
6 enter this plea freely, voluntarily or intelligently,  
7 Your Honor. Thank you.

8 THE COURT: Thank you. From the State.

9 FINAL ARGUMENT

10 MR. ISENBERG: Your Honor, I'm not going to go  
11 through every single claim. I'm just gonna state  
12 frankly for the record, it seems a little too convenient  
13 that the applicant is now claiming he couldn't  
14 understand everything through the process of this case  
15 with his attorney and that it in effect makes his guilty  
16 plea involuntarily.

17 He had an interpreter at his plea hearing. His  
18 interpreter, as he testified, communicated everything  
19 adequately and effectively. He still waived his  
20 constitutional rights after they were explained. He  
21 said he was satisfied with counsel. He said he didn't  
22 need anything else from counsel.

23 He said the solicitor had enough -- had enough  
24 evidence to convict him of the facts. Those facts were,  
25 in fact, the crimes that he was accused of. He even

1 testified that counsel went over the sentence with him  
2 beforehand. The judge also went over the sentence with  
3 him. So if there was noth -- if there was anything  
4 counsel didn't go over with him beforehand, the judge  
5 cured that in his colloquy.

6 As for the discovery, there's ample testimony  
7 from his counsel that they discussed the discovery at  
8 length in Spanish. And he believed credibly -- counsel  
9 credibly believed that the applicant understood  
10 everything, so much so that he was talking back and  
11 communication, in cooperation, asking questions. So,  
12 based upon all that evidence, we would ask that you  
13 dismiss this application with prejudice.

14 THE COURT: All right, thank you.

15 MR. ISENBERG: Thank you.

16 THE COURT: Post orders in 30 days?

17 MR. ISENBERG: Your Honor, may I request more  
18 time than 30 days for this order? I'm gonna have to  
19 order the transcript on this and I'm not sure how long  
20 that's gonna take? And after that I'm gonna need,  
21 obviously, a little bit of time to write the order or  
22 the proposed order, I apologize.

23 THE: How about 30 days from receipt of the  
24 transcript?

25 MR. ISENBERG: That's perfect. I'll notify you

1 the day I receive the transcript, Your Honor.

2 THE COURT: But I'll have to report it to the  
3 Supreme Court.

4 MR. ISENBERG: Yes, Your Honor.

5 THE COURT: All right. Thank you very much  
6 Counsel.

7 MR. ISENBERG: Thank you, Your Honor.

8 THE COURT: Next case.

9 MS. HERNANDEZ: Thank you, Your Honor.

10 (Hearing concluded at 12:36 p.m.)

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--- THIS ENDS REQUESTED TRANSCRIPT ---

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COURT REPORTER CERTIFICATE

I, the undersigned Julie A. Cendroski, Court Reporter for the Seventh Judicial Circuit Court of the State of South Carolina, do hereby certify that to the best of my ability the foregoing is a true, accurate, and complete transcript of record of all the proceedings and evidence introduced in the hearing and/or trial of the captioned case, relative to appeal, in the Court of Common Pleas for Spartanburg County, South Carolina, on the 10th day of October, 2019.

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

s/Julie A. Cendroski  
Julie A. Cendroski  
Circuit Court Reporter  
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

IN THE FAMILY COURT )  
7th JUDICIAL CIRCUIT )

Beatriz Perez Campillo, )  
 )  
Plaintiff, )

ORDER

vs. )

Francisco Roberto Rodriguez Ceballos, )

Docket No.: 2017-DR-420459

Defendant. )

FILED  
2018 AUG -2 PM 9:44  
MILEY

DATE OF HEARING :  
HEARING JUDGE :  
PLAINTIFF'S ATTORNEY :  
DEFENDANT'S ATTORNEY :  
COURT REPORTER :

July 16, 2018 at 3:15 p.m.  
The Honorable Judge Rochelle Y. Combs  
Joseph Baldwin, Esq  
*Pro Se*  
Katherine Tibbs

This matter came before this Court on a Motion of Plaintiff's counsel requesting a motion to have him as counsel for the Plaintiff. Appearing in Court was the Plaintiff, Beatriz Perez Campillo, and attorney Joseph R. Baldwin. The Defendant, Francisco Roberto Rodriguez Ceballos, was present *Pro Se*.

Based upon a review of the pleadings, evidence, and testimony presented to this Court, as set forth above, I make the following findings of facts:

1. Attorney Joseph R. Baldwin has previously represented the Defendant in a criminal matter which resulted in an Alford Plea in April of 2016.
2. The Parties are not married; however, they were involved in a romantic relationship that resulted in the birth for two (2) minor children, to wit: A. F. R. P. and M. C. R. P. No other children are known or expected of this relationship.

EXHIBIT *ja*  
Applicants  
10.10.19

Unauthorized inspection or disclosure, printing, or publishing of any Federal return or return information, or of any information therein, may be punishable under the Internal Revenue Code, Title 26, Section 7213 and 7214A of the Internal Revenue Code and 18 USC Section 1303. In addition, Code section 1331 provides for civil damages for unauthorized inspection or disclosure of such information. Taxes should be considered after the manner served by the parties, although it is not necessary to disclose the same to the parties or return to the IRS.

3. In January of 2017, attorney Joseph R. Baldwin brought an action to obtain an order of custody on behalf of the Plaintiff so that she could obtain passports for the two minor children of the Parties.
4. At a hearing held on April 18, a different attorney attended a hearing in this matter on behalf of attorney Joseph R. Baldwin. At that hearing, the Defendant orally made a counterclaim for visitation and a hearing was scheduled for August 8, 2018.
5. Since there is now an issue in controversy between the Parties, attorney Joseph R. Baldwin has requested to be relieved as attorney of record to avoid a conflict of interest.

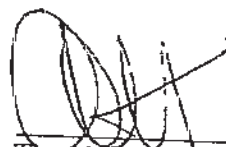
After considering the pleadings and the oral representations made to this court, the court believes that the motion is well taken **NOW, THEREFORE, BASED UPON THE**

**FOREGOING, IT IS ORDERED, ADJUDGED, AND DECREED**

- A. That the motion of the movant is granted and he is no longer counsel of record and will not participate as the attorney for either party at any future hearing;

**AND IT IS SO ORDERED!**

30  
 July 2, 2018  
 Spartanburg, SC

  
 The Honorable Rochelle Y. Conits  
 Presiding Family Court Judge  
 Seventh Judicial Circuit

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STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

Francisco R. Rodriguez, #367766,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS  
) FOR THE SEVENTH JUDICIAL CIRCUIT

)  
) Case No.: 2016-CP-42-4153

)  
) **ORDER OF DISMISSAL**

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2020 MAY 14 AM 9:  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

This matter comes before the Court by way of a post-conviction relief (hereafter "PCR") application filed by Francisco R. Rodriguez (hereafter "Applicant") on November 21, 2016. Respondent made its return on July 3, 2017. The Court convened an evidentiary hearing into the matter on October 10, 2019, at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by Lydia A. Hernandez, Esquire. Assistant Attorney General Jacob A. Isenberg, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Joseph Baldwin, Esquire (hereafter "Counsel") also testified. After a thorough review of all records and evidence before this Court, this Court finds Applicant has not met his requisite burden of proof in establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Specific findings of fact and conclusions of law are set forth below.

**Procedural History**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. During the August 2015 term, the Spartanburg County Grand Jury indicted Applicant for one count of first-degree

criminal sexual conduct (hereafter "CSC") with a minor (2015-GS-42-03396) and one count of third-degree CSC with a minor (2015-GS-42-03397). Joseph R. Baldwin, Esquire, represented Applicant. Assistant Solicitor Lindsey H. Overby, Esquire, of the Seventh Circuit Solicitor's Office prosecuted the case. On April 12, 2016, Applicant appeared before the Honorable R. Keith Kelly and pled guilty as indicted to third-degree CSC with a minor, without recommendation from the State, pursuant to *North Carolina v. Alford*.<sup>1</sup> In exchange for the guilty plea, the State agreed to dismiss the count of first-degree CSC with a minor, *nolle prosequi*. Judge Kelly sentenced Applicant to fifteen years' imprisonment and required him to register as a sex offender. Applicant did not pursue a direct appeal.

Statement of Facts

In November 2014, the Spartanburg County Sheriff's Office received a report concerning alleged unlawful sexual conduct with a minor involving Applicant and a nine-year-old child his ex-wife babysat. (Plea Tr. 11). Months after the incident occurred, the victim came forward by writing a letter to her parents after attending a church program regarding inappropriate touching. (Plea Tr. 11). In the letter, the victim alleged the babysitter, Applicant's ex-wife, went to Walmart, and during that time, Applicant inappropriately touched the victim. (Plea Tr. 11). When the report was submitted, the victim disclosed the abuse to a responding officer, after which she was referred to the Children's Advocacy Center for a forensic interview. (Plea Tr. 11).

The victim disclosed there were multiple incidents of abuse. (Plea Tr. 12). She disclosed that at least one incident involved oral sex at the babysitter's home, where Applicant removed her pants and put a pillow over her eyes. (Plea Tr. 12). Additionally, the victim disclosed multiple incidents where Applicant fondled the victim's genitals and digitally penetrated her.

<sup>1</sup> *North Carolina v. Alford*, 400 U.S. 25 (1970).

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(Plea Tr. 12). During these instances, sometimes the babysitter was present but not paying attention and other times she was out of the house. (Plea Tr. 12). There was one other incident of oral sex that occurred at an unknown location probably in Greenville County. (Plea Tr. 12). The date range of these incidents remains unknown, but one incident occurred around the victim's seventh birthday and another incident allegedly occurred when the victim was in the second grade. (Plea Tr. 13). The victim reported she was pretty sure everything happened during the spring and summer months of 2014. (Plea Tr. 13).

A search warrant was executed at Applicant's residence and photographs of the outbuilding on property were taken upon the warrant's execution. (Plea Tr. 12). Law enforcement seized multiple movies and electronic devices, including cameras from a bedroom the victim described as the location of the abuse. (Plea Tr. 12). Although though no illegal material existed on these videos, they corroborated the victim's story, primarily through showing footage from the bedroom that was set up like the victim described and where she said the abuse occurred. (Plea Tr. 12-13). Applicant was interviewed by law enforcement and, in the interview, stated that his wife babysat the victim for a three-to-four month period. (Plea Tr. 13). However, Applicant consistently denied the abuse throughout the case proceedings.

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 SOUTHERN DISTRICT OF  
 GEORGIA  
 ALBANY, GEORGIA

**Current Action before this Court**

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

1. Applicant alleges ineffective assistance of counsel rendering his guilty plea invalid because:
  - a. "Counsel's representation fell below an objective standard of reasonableness before and during the plea proceeding, which prejudiced Applicant. As a result, Applicant entered an unintelligent and involuntary plea, which if not induced by Counsel, Applicant would have insisted on going to trial."
  - b. "Applicant did not receive any disclosure from the prosecution, or his Counsel,

and this caused the entering of an unintelligent and involuntary plea. If disclosure would have been provided, Applicant would have insisted on going to trial.”

- c. “The plea was induced by Applicant’s ignorance of the law, duress, and Counsel’s failure to advise Applicant of his defense, constitutional right to trial, or the nature of the charge.”
- d. “Applicant did not have an interpreter to explain the nature of the charge against him, his Constitutional right to a jury trial, a defense, or of the exposure of time and consequence of the plea. If Applicant had been advised in a manner that he could understand, he would have insisted on going to trial.”
- e. “Applicant’s state and federal Constitutional rights were violated as a result of the foregoing.”

Regarding relief sought, Applicant requested “vacation of the conviction and sentence.”

At the evidentiary hearing, Applicant proceeded on the following allegations: 1) failure to communicate details of the plea agreement; 2) failure to inform Applicant about immigration consequences; 3) failure to investigate key witnesses; and 4) failure to review discovery. To the extent any of the allegations contained in the application can be construed as separate and distinct allegations from those enumerated above, this Court finds those claims were waived and are hereby dismissed.

Summary of Testimony Presented at the Evidentiary Hearing

*Applicant’s Testimony*

Because Applicant’s primary language is Spanish, an interpreter was sworn into translate between Spanish and English. (PCR Tr. 4, 9). Applicant confirmed he wanted to continue with the action after verifying he understood a new trial would occur if relief was granted. (PCR Tr. 8-9).

Applicant testified he met with Counsel five times, none of which included a translator. (PCR Tr. 11-12). Applicant testified three meetings occurred in the detention center in Spartanburg, and two meetings occurred after Applicant was transferred to the Annex facility. (PCR Tr. 14).

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potential witness who babysat the victim, claiming she could testify he was never alone with the victim. (PCR Tr. 17). Applicant testified that he also requested Counsel investigate a friend of his, who would testify that when Applicant went to his house with the victim, he was never alone with the victim. (PCR Tr. 17). Applicant also testified he asked Counsel to investigate potential sources of familial stress within the victim's family that would cause her to fabricate the allegations. (PCR Tr. 17-18). Applicant testified, to the best of his knowledge, none of this was done. (PCR Tr. 17-18).

Applicant stated Counsel notified him that the solicitor had extended a plea offer, but testified that the details of the offer were only presented to Applicant in writing and in English. (PCR Tr. 18). Thus, Applicant claimed he could not understand the offer, and Counsel made no attempt to explain it to Applicant. (PCR Tr. 18). Applicant testified he discovered he was pleading to a third-degree offense through use of an English-to-Spanish dictionary. (PCR Tr. 18-19). According to Applicant, Counsel told Applicant the plea would result in a sentence of fifteen years, but Counsel promised to do what he could to reduce the time. (PCR Tr. 19). Applicant testified, on the day of the plea hearing, he thought he was proceeding to trial and asked witnesses to come, including his father in Mexico. (PCR Tr. 19). Applicant stated he was handed a paper containing the details of the *Alford* plea several minutes before the plea hearing, which he ultimately signed. (PCR Tr. 20-21).

According to Applicant, at the plea hearing, he was hesitant to surrender his constitutional rights and, thus, the plea judge recommended he talk to Counsel before continuing. (PCR Tr. 23-24). Applicant testified no translator was used while speaking with Counsel privately at the hearing. (PCR Tr. 24). Applicant testified Counsel did not explain the rights he was giving up, and instead told Applicant to say yes and continue, which Applicant did. (PCR

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Tr. 25). Applicant testified although he paused and conferred with his attorney regarding the meaning of *Alford* before accepting the plea, Counsel never explained what *Alford* meant and only told him that he should accept the plea. (PCR Tr. 21, 25). Applicant explained when the plea judge asked if Counsel did everything he could for Applicant, he stated Counsel failed to investigate after Applicant requested he do so. (PCR Tr. 26). Applicant further testified that the plea hearing was interrupted approximately eight times, but during every interruption Counsel stated that Applicant should say yes, continue with the hearing, accept the plea, and after that Counsel would present a defense for him. (PCR Tr. 27-28). Applicant testified he was confused about what was happening throughout the entire plea hearing. (PCR Tr. 29).

Applicant testified that Counsel communicated with him in broken Spanish, and he understood parts of what Counsel stated, though not everything. (PCR Tr. 37). Applicant admitted he did not inform Counsel that he did not understand parts of what Counsel was saying. (PCR Tr. 38). Applicant further admitted he had an interpreter at the plea hearing, and he could understand everything the interpreter said throughout the hearing. (PCR Tr. 38). Applicant agreed he told the plea judge that he understood why he was at the hearing. (PCR Tr. 39).

Applicant testified that when the judge asked him if he thought the solicitor could prove the presented facts to a jury, Applicant said yes. (PCR Tr. 40). Additionally, Applicant agreed he stated at the plea hearing that no one threatened him into pleading pursuant to *Alford*, but he explained he thought a threat meant "threatened by death" into accepting, which did not happen. (PCR Tr. 41). Applicant testified he did, however, feel pressured and manipulated into pleading. (PCR Tr. 41). Applicant agreed he never raised the issue of Counsel's failure to review discovery or failure to explain paperwork during the plea hearing. (PCR Tr. 43-44). Applicant further testified he only informed the plea judge he was satisfied with Counsel's representation because

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Counsel told him he would present a defense thereafter. (PCR Tr. 42).

According to Applicant, Counsel told him the sentence may be less than fifteen years because the evidence against him was weak, but Counsel never promised that would happen. (PCR Tr. 30). Applicant testified Counsel never told Applicant he had to register as a sex offender. (PCR Tr. 30). Applicant also testified Counsel told Applicant of the possibility of deportation, but Counsel never told Applicant he was pleading to a crime of moral turpitude or that he could never claim legal status in the United States if he entered a guilty plea. (PCR Tr. 31). Applicant stated he did not listen to the judge when the judge said he could be sentenced to fifteen years, because he was distracted trying to clarify that the alleged abuse occurred over the course of three months, not two years. (PCR Tr. 46).

Further, Applicant testified, after the plea hearing, Counsel never filed a notice of appeal, visited him in jail, met with him, or contacted him again. (PCR Tr. 32-33). Applicant stated the next time he saw Counsel, Counsel was representing his ex-wife who wanted to remove Applicant's legal custody of his children. (PCR Tr. 33). Applicant stated Counsel represented Applicant's ex-wife in the first three Family Court hearings, until the judge directed Counsel to cease the representation because of the conflict of interest. (PCR Tr. 33-34).

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*Counsel's Testimony*

Counsel stated he has practiced criminal law for seven or eight years, and handled one or two child sex crimes cases before handling Applicant's. (PCR Tr. 49).

Counsel explained that Applicant's ex-wife visited him and requested he represent Applicant, after which Counsel visited Applicant at the jail. (PCR Tr. 50). According to Counsel, at their first meeting, Counsel read the warrants against Applicant, asked him why he thought he had been accused of the crimes, told him he would request the discovery on the case and

schedule a preliminary hearing, and would contact him again after reviewing the materials. (PCR Tr. 50). Additionally, Counsel testified that Applicant told him the allegations were untrue, and the girl accusing him was somebody that his wife babysat. (PCR Tr. 51). Counsel further testified Applicant told him he was alone with the victim one time for a short period while his ex-wife went to Walmart, but thereafter Applicant clarified the story and stated he was never alone with the victim because there was always other children present. (PCR Tr. 51-52).

Counsel testified he spoke with Applicant's ex-wife, who said there were short periods of time where she was not watching closely, and Applicant was left alone with the victim. (PCR Tr. 52). Based upon this, Counsel explained he decided the testimony she would give would not be helpful in presenting a defense. (PCR Tr. 52). Counsel confirmed Applicant requested he speak to his friend, but Counsel also testified he understood the friend to be a character witness, not someone who could provide a factual defense. (PCR Tr. 52). Additionally, according to Counsel, the incident Applicant's friend had knowledge of did not have anything to do with the Spartanburg charge, and Counsel was concerned that the information relayed by the friend could lead to another charge against Applicant arising in Greenville County. (PCR Tr. 52-53). Counsel testified he believed Applicant was never indicted in Greenville County because the victim was not specific about where the incident occurred and could not give specific enough facts about what occurred, but that might change if the friend was involved. (PCR Tr. 53).

Counsel testified he received and reviewed the discovery personally and with Applicant on more than one occasion. (PCR Tr. 53-54). Counsel testified he and Applicant discussed which parts of the discovery weakened their case, including the body camera video and reports. (PCR Tr. 54). Counsel stated he gave Applicant a copy of all the reports in the discovery. (PCR Tr. 54). Counsel testified Applicant was engaged and cooperative throughout the meetings when

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they reviewed the discovery. (PCR Tr. 54-55).

Counsel agreed Applicant was not shown pertinent law enforcement videos, including the forensic interview, because it is logistically difficult to show a video to someone in the jail, but Counsel explained the contents of the videos to Applicant, which were also summarized in the reports given to Applicant. (PCR Tr. 54). Counsel conceded the written documents given to Applicant were in English. (PCR Tr. 76). However, Counsel testified that the reports were explained to Applicant in Spanish, and, because they were explained in Spanish, Counsel thought Applicant understood the contents. (PCR Tr. 54-55). Counsel explained that although he never showed the video of the victim's forensic interview to Applicant, Counsel reviewed it himself, explained to Applicant the contents in Spanish, and discussed the reports regarding the video with Applicant as well. (PCR Tr. 55).

Counsel testified he informed Applicant it would be difficult for Applicant to testify at trial because he had lied to the police about his identity when they first approached him, and this would, in Counsel's opinion, lead a jury to believe Applicant was a dishonest person. (PCR Tr. 55-56). Additionally, Counsel explained that when the police asked Applicant why the victim would make up the allegations, Applicant said he made her watch scary movies, which Counsel thought was an inadequate answer. (PCR Tr. 57). Counsel further explained he believed the State would use that answer to show that Applicant had a lot more access to the victim than he wanted to admit. (PCR Tr. 57). Thus, Counsel stated he told Applicant the State would impeach him if he testified. (PCR Tr. 56). Further, Counsel believed Applicant would be found guilty at trial, so he did not want Applicant to testify. (PCR Tr. 57-58). Counsel testified he addressed these issues with Applicant, and concluded that Applicant's chances of winning at trial were under fifty percent. (PCR Tr. 57).

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Additionally, Counsel testified he discussed with Applicant the trial strategy he would have used if Applicant did not accept the plea. Counsel stated he would have shown the jury that the State seized a lot of items from Applicant's house that were largely irrelevant to the case. (PCR Tr. 58). Further, Counsel testified that, in his opinion, the State's medical proof remained inconclusive, with no evidence definitively indicating that the incident occurred. (PCR Tr. 58). Counsel explained he also planned to impeach the State's case by arguing the victim's non-citizen parents could apply for a U-visa based on the victim's allegations and that it took the victim months to come forward to say what happened. (PCR Tr. 59).

Counsel testified he explained what an *Alford* plea was to Applicant a day or two before the plea hearing. (PCR Tr. 59-60). During this discussion, according to Counsel, Applicant was engaged and told Counsel he had talked to people in prison charged with similar offenses and alerted him that some people were getting much less time than what Applicant was facing. (PCR Tr. 60-61). Counsel testified he told Applicant that no two cases are alike, but often judges appreciate it when defendants agree to plead guilty and not require a victim to testify, which can sometimes leads to more lenient sentencing. (PCR Tr. 61).

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Counsel further testified that Applicant told Counsel he did not want to proceed to trial because he did not want to risk the possibility of a twenty-five year sentence. (PCR Tr. 62). Counsel also stated he told Applicant that after service of the sentence, immigration officials would probably use the conviction to deport him from the country, regardless of whether he pled guilty or proceeded to trial. (PCR Tr. 62). Counsel stated he told Applicant that his conviction would be used against him as a reason to deport him. (PCR Tr. 62).

Counsel testified that the federal government put an immigration hold on Applicant when he was in Spartanburg County, meaning that the State will notify Immigration and Customs

Enforcement after Applicant serves the sentence, so that Applicant can be deported. (PCR Tr. 62). Counsel testified he believed that, although it is within the government's discretion whether Applicant is deported, Applicant's conviction would certainly be used against him for deportation purposes. (PCR Tr. 63). Counsel further testified that after conviction it would be incredibly hard to show that Applicant should not be deported because of good moral character. (PCR Tr. 63). Counsel testified he talked about the immigration consequences with Applicant in Spanish.<sup>2</sup> (PCR Tr. 62-63).

During cross-examination, Counsel stated he knew Applicant only spoke Spanish and was not in the United States legally. (PCR Tr. 69-70). Though Spanish is not Counsel's primary language, Counsel testified his wife is from Mexico, and he communicates with her side of the family in Spanish. (PCR Tr. 72). Counsel explained he did not feel an interpreter was needed for informal meetings and discussions with Applicant because of Counsel's proficiency in Spanish, but he also admitted he cannot communicate in Spanish at a collegiate level. (PCR Tr. 78-79). Further, Counsel testified all discussions with Applicant at the plea hearing were conducted in Spanish. (PCR Tr. 63). Counsel testified that during these discussions he told Applicant that he should answer the judge's questions if he wanted to go forward with the plea. (PCR Tr. 65). Beyond that, Counsel testified he did not remember the conversations he had with Applicant during the breaks at the plea hearing. (PCR Tr. 64).

Counsel agreed Applicant appeared to be very confused about the rights he was giving up, and Counsel stated he did his best to respond to Applicant's confusion about the hearing.

<sup>2</sup> Although Counsel offered testimony at the evidentiary hearing about Applicant's immigration situation, he did not make it explicitly clear that was discussed with Applicant, beyond telling Applicant that immigration authorities would probably use his conviction against him and deport him from the country as soon as he served his sentence.

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(PCR Tr. 64, 66, 82). Counsel testified he felt he should have spent more time confirming Applicant knew the hearing was not a trial, but Counsel stated he thought Applicant knew he was not going to trial, because the victim was not present. (PCR Tr. 65). Counsel testified he did not explain what rights Applicant was giving up by entering the plea, but he told him that the victim and police would not be present and no testimony would be given. (PCR Tr. 83). Counsel stated he never told Applicant it was a trial and based on his previous discussions with him, he believed Applicant wanted to plead pursuant to *Alford* because Applicant was concerned about facing twenty-five years' imprisonment if found guilty at trial. (PCR Tr. 65-66). Further, Counsel testified Applicant never indicated he wanted a trial while talking with Counsel at the hearing. (PCR Tr. 65). Additionally, Counsel testified, at no point during the hearing did he think he needed to postpone the plea so that he could confirm with Applicant that he still wanted to plead guilty. (PCR Tr. 83).

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Counsel explained the solicitor extended a plea offer a month or two before the plea hearing, which would involve Applicant pleading to the lesser included offense of lewd act on a minor<sup>3</sup> with a maximum sentence of fifteen years' imprisonment. (PCR Tr. 77). Counsel testified he did not think Applicant would receive less than fifteen years, but he stated he did leave Applicant with the impression that it is rare to receive the maximum sentence after entering a plea. (PCR Tr. 77-78). Counsel testified he did not think this was a very favorable plea offer, but told Applicant the decision was up to him and if he decided to go to trial, he would face up to twenty-five years for first-degree CSC as opposed to fifteen for lewd act on a minor. (PCR Tr. 78). Counsel testified that he never discussed the sex offender registry with Applicant, thinking it

<sup>3</sup> "CSC, third degree" was originally called "lewd act on a minor" under South Carolina law. S.C. Code Ann. § 16-3-655 (repealing S.C. Code Ann. § 16-15-140).

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was unimportant because Applicant would be deported as soon as he is released from prison anyway. (PCR Tr. 84). Counsel testified he thought Applicant understood him regarding his analysis of the case and the plea agreement, including the strengths and weaknesses of the case and what an *Alford* plea is. (PCR Tr. 72-74). Counsel conceded he initially represented Applicant's ex-wife in family court proceedings after representation of Applicant concluded. (PCR Tr. 88).

**Findings of Fact and Conclusions of Law**

This Court has reviewed the pleadings, the records of the PCR action submitted to it by the parties, and the applicable law. Before this Court are the Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and the records for this PCR action. Pursuant to sections 17-27-70 and -80 of the South Carolina Code, this Court denies relief and dismisses the application based upon the following findings:

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***Ineffective Assistance of Counsel***

Applicant's allegations of ineffective assistance of counsel are rejected. In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, which the Supreme Court expanded upon through developing the two-pronged test outlined in *Strickland*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d

624, 625 (1989). To show deficiency, the applicant must prove by the preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRPC ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant" and the scope limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters "only in the rarest case" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

Regarding guilty pleas, specifically, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty

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but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). The applicant’s right to contest the validity of a plea is usually, but not invariably, foreclosed because of the solemnity and truthfulness inherent in the plea proceeding. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Absent valid reasons why the applicant is entitled to depart from admissions made at the plea hearing, sworn statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

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

Here, Applicant alleged ineffective assistance of counsel because Counsel failed to communicate the details of the plea, disclose immigration consequences of the plea, investigate and present witnesses, and show discovery to Applicant. This Court finds these allegations are without merit for the reasons outlined below.

***Failure to Communicate Details of the Plea***

Applicant alleges Counsel was ineffective for failing to adequately communicate the details of the plea offer with Applicant in Spanish – Applicant’s primary language. Applicant

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also alleges Counsel was ineffective for failing to inform Applicant of the waiver of constitutional rights inherent in the entry of a guilty plea.

Valid pleas are those which are knowingly and voluntarily entered into. *Dover v. State*, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991) (citing *Boykin v. Alabama*, 395 U.S. 238 (1969)). A valid plea requires the applicant to have a full understanding of the charges against him and the consequences of accepting a plea bargain. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000). This involves awareness of “the privilege against self-incrimination, the right to a jury trial, and the right to confront one’s accusers” and “the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citing *Boykin v. Alabama*, 395 U.S. 238 (1969)).

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A defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between the court and defendant, between the court and defendant’s counsel, or both.” *Roddy v. State*, 339 S.C. at 34, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). “[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874 (quoting *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). Further, “guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea.” *Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

This Court finds Counsel adequately communicated the details of the plea to Applicant,

and Applicant entered the plea voluntarily, knowingly, and intelligently. Though Applicant's primary language is Spanish, Counsel communicated with him in Spanish when discussing the discovery, evidence, and the details of the plea. (PCR Tr. 9-11). Further, although Counsel is not fully fluent in Spanish, he is comfortable with the language. (PCR Tr. 72). Though Applicant alleged that he did not understand everything Counsel told him, Applicant also admitted he never communicated to Counsel when he did not understand what Counsel was saying. (PCR Tr. 37-38). Additionally, an interpreter was used at the plea hearing, and Applicant testified at the PCR hearing that he understood everything the interpreter said and still went forward with the plea. (PCR Tr. 4). Counsel testified at the PCR hearing that he discussed Applicant's options and Applicant ultimately decided to plead because he did not want to face a twenty-five year sentence. (PCR Tr. 62). Applicant never disputed this. (PCR Tr. 18-19).

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At the plea hearing, where the interpreter translated everything being said on the record from English to Spanish, the plea judge advised Applicant he was waiving his right to remain silent, his right to a jury trial, and his right to call witnesses. (Plea Tr. 7-8). After briefly conferring with Counsel, Applicant unambiguously waived his right to remain silent. (Plea Tr. 7). When asked if he wanted to proceed to trial, Applicant, without prompting or conferring with Counsel, said, "No. I want an *Alford*." (Plea Tr. 7). He also waived his right to call and confront witnesses. (Plea Tr. 8). When asked if he wanted to enter an *Alford* plea, Applicant said he did. (Plea Tr. 8). When asked if he knew the plea would be treated like a guilty plea, Applicant said he did. (Plea Tr. 8). When the Judge asked if he was receiving a beneficial result by accepting the *Alford* plea, he conceded he was without conferring with Counsel. (Plea Tr. 8). He said no one forced him to plead, no one talked him into pleading, and that he had plenty of time to talk with his lawyer. (Plea Tr. 9). Though he initially voiced dissatisfaction with Counsel not

investigating witnesses, after conferring with Counsel, he stated that he thought Counsel did everything he could for him, and there was nothing else he thought that Counsel should have done but failed to. (Plea Tr. 10). When the solicitor read the facts, Applicant readily conceded that the solicitor could present those facts to a jury and the jury, based upon those facts, would likely convict him. (PCR Tr. 13). Applicant spoke to the judge himself at the plea hearing and, after having the entire hearing interpreted for him, never told the judge he did not want to plead. (Plea Tr. 8-10, 13-14).

Thus, this Court finds Applicant was aware of the details of the plea, including the rights he was giving up, the nature of the charge, the right to raise defenses, and what an *Alford* plea is. Additionally, based upon Counsel's credible testimony, this Court finds Applicant did not want to risk a possible conviction on the first-degree CSC charge and the twenty-five year maximum sentence that could result therefrom. (PCR Tr. 62). Thus, this Court finds Applicant would not have proceeded to trial. Accordingly, Applicant's request for relief on this issue is denied.

***Failure to Advise of Immigration Consequences***

Applicant alleges Counsel was ineffective for failing to ensure Applicant was fully aware of the immigration consequences involved in entering the plea. Specifically, Applicant testified that Counsel did not tell him that he was pleading guilty to a crime of moral turpitude and this would result in legal status disqualification and deportation without opportunity to return.

In *Padilla v. Kentucky*, the United States Supreme Court held that effective assistance of counsel inherently requires communicating the risk of deportation upon conviction to a non-citizen defendant. 559 U.S. 356, 367 (2010). Ineffective assistance of counsel is easily found if counsel falsely assures the applicant he will not be deported by taking a plea. *Id.* at 368; *Lee v. United States*, \_\_\_\_ U.S. \_\_\_\_, 137 S.Ct. 1958, 1964 (2017). In *Padilla*, the Supreme Court also

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held that there will “undoubtedly be numerous situations in which the deportation consequences of a plea are unclear.” *Padilla*, 559 U.S. at 367. When this is the case, the attorney only needs to “advise a noncitizen client that pending criminal charges may carry adverse immigration consequences.” *Id.* However, “when the deportation consequence is truly clear . . . the duty to give correct advice is equally clear.” *Id.* An applicant can establish prejudice if he shows that, if he knew about the deportation risk, he would not have accepted a plea bargain, but would have gone to trial. *Lee v. United States*, 137 S.Ct. at 1966-67.

However, “[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies. Rather, they should look to contemporaneous evidence to substantiate a defendant’s expressed preferences.” *Id.* at 1967. In *Lee*, the court granted applicant relief because counsel explicitly told Lee that he would not be deported if he pled guilty, and both Lee and counsel testified that deportation was the determinative factor in the decision-making process leading to the guilty plea. *Id.* at 1966-1967.

Here, because Counsel failed to explicitly state Applicant would be deported if he pled, Counsel acted deficiently. However, there is no indication Applicant was prejudiced by this deficiency. Applicant made clear the determinative factor in taking the plea was the shortened sentence, not any potential deportation consequences. (PCR Tr. 62). Applicant never testified that if Counsel told him deportation was mandatory in his case he would have proceeded to trial. Applicant never stated he would not have pled but for this deficiency. Thus, Applicant has not met his burden of proof in showing he was prejudiced by any lack of information given to him regarding immigration consequences. *See Taylor v. State*, 404 S.C. 350, 362, 745 S.E.2d 97, 103 (2013) (stating that to show prejudice, the applicant must show that but for Counsel’s error

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Applicant would have proceeded to trial).

Thus, this Court finds, based on the entirety of Counsel's testimony, Applicant still would have taken the plea if Counsel provided a more concrete answer regarding immigration consequences of the plea. Thus, Applicant has not met his burden of proof as to prejudice, and, consequently, is not entitled to relief on this ground.

*Failure to Review Discovery and Failure to Investigate*

Applicant claims that Counsel was constitutionally ineffective because Counsel did not review the discovery with him and because Counsel failed to investigate key witnesses.

Applicant alleges Counsel never reviewed the discovery with him, never showed him the video of the victim's forensic interview, and never discussed the reports he gave Applicant, which Applicant could not understand on his own because they were in English. (PCR Tr. 10-15).

However, at the plea hearing, Applicant agreed that if the evidence against him was presented to a jury, he would likely be convicted. (Plea Tr. 8). Applicant also clearly and unambiguously waived his right to call witnesses. (Plea Tr. 7-8). Most importantly, Applicant further informed the plea court there was nothing Counsel could have done on the case that he failed to do. (Plea Tr. 10).

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According to Counsel, he and Applicant discussed the charges and the discovery in Applicant's case several times. (PCR Tr. 54-55). Applicant disputed the allegations and gave explanations for his conduct that Counsel felt were inadequate. (PCR Tr. 57). Specifically, Counsel explained, when the police asked Applicant why the victim would make up the allegations, Applicant said he made her watch scary movies, which Counsel thought was an inadequate answer. (PCR Tr. 57). Counsel explained he believed the State would use that answer to show that Applicant had a lot more access to the victim than he wanted to admit. (PCR Tr.

57). Additionally, Applicant lied to the police about his identity when they approached him, and this would, in Counsel's opinion, lead a jury to believe he was a dishonest person. (PCR Tr. 55-56). Thus, Counsel stated he told Applicant the State would impeach him if he testified. (PCR Tr. 56). Counsel testified he felt Applicant understood everything because was engaged and cooperative throughout the meetings when they reviewed the discovery. (PCR Tr. 54-55). He also stated that the discussions concerning the plea deal were two sided and Applicant appeared to understand everything and remained engaged throughout the discussion. (PCR Tr. 59-60).

Applicant gave Counsel the name of a friend to investigate, which Counsel did, along with Applicant's ex-wife. Counsel decided not to use Applicant's ex-wife's testimony because she said there were short periods of time where she was not watching closely, and he was alone with the victim, which would not have been helpful in presenting a defense. (PCR Tr. 52). Counsel confirmed Applicant requested he speak to his friend, but Counsel testified he understood the friend to be a character witness only, and that the incident the friend had knowledge of did not have anything to do with the Spartanburg charge, but a separate incident in Greenville County he was concerned Applicant would be charged for if he explored the witness further. (PCR Tr. 52-53).

This Court finds Applicant and Counsel discussed the case thoroughly and attempted to come up with a viable defense. Specifically, if the case went to trial, Counsel would have shown the jury that the State seized a lot of items from Applicant's house that were largely irrelevant to the case, that the State's medical proof remained inconclusive, and would have impeached the State's witnesses by arguing the victim's non-citizen parents could apply for a U visa based on the victim's allegations and that it took the victim months to come forward and say what happened. (PCR Tr. 58-59). However, Applicant still chose to plead guilty.

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This Court finds Counsel's testimony credible over Applicant's. When Applicant entered his guilty plea he waived any constitutional rights he had, including his right to remain silent, right to trial by jury, and right to call and confront witnesses. (Plea Tr. 7-8). This Court finds Applicant has failed to present a sufficient reason why this Court should disregard his sworn testimony and waiver given at the plea hearing. Further, to demonstrate prejudice, Applicant was required to present the evidence or witnesses he alleges Counsel did not properly investigate. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Applicant failed to present any evidence or witnesses at the PCR hearing and, thus, this Court finds that Applicant has failed to meet his burden of proof. Therefore, because Applicant has failed to meet his burden of proving either deficiency or prejudice, relief is denied on this ground.

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 PCR application must be denied and dismissed with prejudice.

This Court notifies Applicant he must file and serve a notice of appeal, through counsel, within thirty days from the counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), 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. PCR counsel's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

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

AND IT IS SO ORDERED this 15 day of May, 2020.



G. THOMAS COOPER, JR.  
Presiding Judge  
Seventh Judicial Circuit

Camden

, South Carolina

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