

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Laurens County

Honorable Debra R. McCaslin, Circuit Court Judge

TARA ANN MAHAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001347

APPENDIX

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EXHIBITS

MARKED

ENTERED

NO EXHIBITS PROFFERED

1 STATE OF SOUTH CAROLINA VS. TARA ANN MAHAN

2 THE COURT: Okay. We're gonna go on the record.
3 And in talking to Judge Hocker a few hours ago, it's my
4 understanding that this is a Laurens County case that I
5 think he was gonna do the plea this afternoon in
6 Newberry, but before it began he was concerned that he
7 may have a conflict or something to that effect. I
8 didn't get the specifics of it, but he asked if we could
9 hear it here in Greenwood. And we're now reconvened.

10 I just wanted to offer my and Judge Hocker's
11 apologies to everyone, of course, for you all to drive
12 all over the State here today. So I'm thankful that you
13 all can be here. Solicitor, do you want to go ahead and
14 proceed to call the case?

15 MR. MOWRY: Yes, sir, Your Honor. And thank you
16 for accommodating us this afternoon. We appreciate your
17 working with us. Your Honor, this is with regard to
18 indictments 2019-GS-30-1402 and 2019-1404, charging the
19 defendant in this case, Tara Ann Mahan, with felony
20 driving under the influence resulting in death, and
21 possession of methamphetamine.

22 There is no recommendation in this case. She is
23 entering this guilty plea represented by Mr. Tristan
24 Shaffer. There are two companion charges, both
25 magistrate level, simple possession of marijuana and a

1 DUS that the State is dismissing as a result of this
2 charge. We are going forward -- or as a result of this
3 guilty plea, we are going forward on the two
4 considerably more serious charges in this matter.

5 THE COURT: Okay. And I missed the first part of
6 that. Give me again the, the two charges that you are
7 dismissing.

8 MR. MOWRY: It's a simple possession of marijuana
9 and a DUS.

10 THE COURT: Okay. All right. Mr. Shaffer, you
11 are representing Ms. Mahan?

12 MR. SHAFFER: I am, Your Honor.

13 THE COURT: All right. The charges, obviously
14 the felony DUI is the most serious of the two. I
15 believe it carries a minimum of one year and a maximum
16 of 25 years, if I'm not mistaken.

17 MR. SHAFFER: That's correct, Your Honor.

18 THE COURT: A fine of approximately \$10,000 as
19 well is a potential ramification of this. The
20 possession of meth charge would be three years. You
21 have explained to Ms. Mahan the ramifications of these
22 pleas, the penalties involved and all her constitutional
23 rights?

24 MR. SHAFFER: I have, Your Honor. Perhaps I have
25 not gone over the fines, but I don't think that will

1 change anything.

2 THE COURT: From your investigation of the facts
3 and circumstances surrounding this incident,
4 Mr. Shaffer, do you believe that the State possesses
5 sufficient and credible evidence that if Ms. Mahan went
6 to trial that conviction would be likely?

7 MR. SHAFFER: That's correct Your Honor, I do.

8 THE COURT: Ma'am, if you could, just raise your
9 right hand, please.

10 THE DEFENDANT: (Complies.)

11 THE COURT: Do you swear or affirm the testimony
12 you're about to give is the truth?

13 THE DEFENDANT: Yes.

14 THE COURT: Are you Tara Ann Mahan?

15 THE DEFENDANT: Yes, I am.

16 THE COURT: Ms. Mahan, you can put your hand
17 down, thank you.

18 THE DEFENDANT: Okay.

19 THE COURT: Ms. Mahan, they tell me that you want
20 to plead guilty to felony DUI and possession of
21 methamphetamine. Do you understand that the felony DUI
22 charge carries a minimum of one year and a maximum of
23 25 years?

24 THE DEFENDANT: Yes, I do, Your Honor.

25 THE COURT: The meth charge carries up to three

1 years. Do you understand that whatever sentence you
2 receive is entirely up to me? I could give you anything
3 between 1 to 25 years, do you understand that, ma'am?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: And, Ms. Mahan, do you understand
6 that the felony DUI charge is classified as a most
7 serious and a violent offense? That means you're
8 prohibited from possessing a firearm in the foreseeable
9 future. It's serious, not most serious, am I wrong?

10 MR. SHAFFER: I think it's serious.

11 MR. MOWRY: I think it is serious, Your Honor,
12 yes, sir. But it is a violent.

13 THE COURT: All right. It is also a serious
14 offense. What that means is if you are in the future
15 convicted of two additional serious offenses, the third
16 time around the State could seek life without a
17 possibility of parole against you. Do you understand
18 that?

19 THE DEFENDANT: Yes, I do.

20 THE COURT: The violent nature of the offense
21 means that the programs that you're eligible for at the
22 Department of Corrections, that's gonna be a lot more
23 limited than your other inmates. Do you understand
24 that, ma'am?

25 THE DEFENDANT: Yes, I do.

1 THE COURT: Now, Ms. Mahan, in the last 24 hours
2 have you taken any medication --

3 THE DEFENDANT: No.

4 THE COURT: -- or any substance that affects your
5 thinking right now?

6 THE DEFENDANT: No.

7 THE COURT: Have you ever been treated for any
8 mental illness issues?

9 THE DEFENDANT: No, I have not.

10 THE COURT: Do you understand that the felony DUI
11 is also an 85 percent offense? That means that you'll
12 have to do 85 percent of whatever time is imposed by the
13 Court.

14 THE DEFENDANT: Yes.

15 THE COURT: Just by way of an example, if I were
16 to give you ten years, not that I'm gonna give you ten
17 years, but if I were to give you ten years, you'd be
18 looking at having to serve eight-and-a-half years before
19 you could be released from prison. Do you understand
20 that?

21 THE DEFENDANT: Yes, I do.

22 THE COURT: Knowing all that, Ms. Mahan, how do
23 you want to plead to these charges?

24 THE DEFENDANT: Guilty.

25 THE COURT: Okay. I'm going to ask Mr. Mowry to

1 give me an overview of the facts of what they're
2 alleging. I need you to listen closely because once
3 he's done speaking, I'm going to ask you if that's what
4 took place and if that's what you did wrong, okay,
5 ma'am?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Solicitor?

8 MR. MOWRY: Your Honor, this is a rather stark
9 illustration of what the State believes is gonna be a
10 coming scourge in our society and that is injuries and
11 deaths to innocent people who through no fault of their
12 own encounter not the drunk driver, but the drugged
13 driver. And that encompasses whether prescription
14 drugs, as with the case of State versus Pamela Tackett
15 that we tried in Laurens back in July earlier this year,
16 or illegal drugs, as in the case of this defendant. But
17 the victim, Chad Robinson, in this case was truly
18 innocent. And the defendant in this case was driving
19 drugged on marijuana and methamphetamine.

20 This case arose on June 14th of 2018, in Laurens
21 County. About a half hour before the collision that
22 claimed the life of Wesley Chad Robinson of Laurens, Ms.
23 Liz Ledlow (phonetic) of Greenville was a passenger in a
24 car driven on I-385 by her husband. They observed a
25 four-door Mercury Grand Marquis with a tag number

1 NEN-475 being driven quite slowly but very erratically
2 in the lane of travel on 385 North.

3 The Driving was so bad that Ms. Ledlow's husband
4 reported that he wanted the car behind him, rather than
5 have to deal with what he and Ms. Ledlow perceived as a
6 likely wreck in front of him. Even as their car got
7 past the Mercury, Ms. Ledlow observed the car still
8 swerving back and forth and she called 911 to report it.

9 She described the car in considerable detail,
10 including the tag, and she gave a contemporaneous report
11 of the car's lack of control. She reported that the car
12 left I-385 at mile marker 19, which is, I think as Your
13 Honor knows, Highway 14 up near getting towards Fountain
14 Inn.

15 Highway patrol began looking for the car, but
16 weren't able to locate it immediately. And a short time
17 later, about ten miles away, a little after 2:00 p.m.,
18 near the intersection of Fleming Mill Road and
19 Fieldcrest Drive in Laurens County, Mr. Robinson, who
20 was a 29-year-old Clemson graduate, was driving a Kubota
21 tractor with a large mower attachment. He was returning
22 from having mowed a field in preparation for haying and
23 was driving back to the dairy where he was going to park
24 the tractor.

25 At that same time, Ms. Peggy LeRoy of Gray Court

1 was driving in the opposite lane approaching the
2 tractor. She said the road is a pretty long straight
3 away at that point. And she was prepared to testify
4 that that same Mercury that had been reported by Ms.
5 Ledlow came out of nowhere at a high rate of speed. She
6 wasn't able to give any estimate as to how fast, but she
7 did believe it was well in excess of the posted 45 miles
8 an hour.

9 She saw the car have an impact with the left rear
10 of the mower, which not only broke the towing bar,
11 causing the mower to separate from the tractor, but also
12 caused the tractor to rollover to the right towards the
13 shoulder. Mr. Robinson was thrown from the driver's
14 seat. The tractor rolled over on top of him, crushing
15 his chest.

16 He died as a result, according to the
17 determination by Dr. Ward. He was prepared to testify
18 that his conclusion was the victim died of extensive
19 blunt force trauma force to the chest and to the abdomen
20 resulting in a fracture of the victim's sternum and a
21 separation of mid-thoracic vertebra.

22 The investigation by MAIT from the Highway patrol
23 found no problem, no mechanical problem with the Mercury
24 that would have accounted for the bad driving that had
25 been observed. And Sergeant Chad Edwards from the

1 Highway patrol is here if Your Honor has any questions
2 in that area.

3 After striking the tractor mower, the defendant's
4 car then went off the left-hand side of the roadway
5 striking a tree. Ms. LeRoy, who had been coming the
6 opposite direction, stopped her car and got out at once.
7 She indicated that where she parked was probably no more
8 than 50 to 75 feet from the defendant's car as she
9 approached the victim's tractor.

10 She said that she observed the defendant backing
11 out of the front seat on the passenger side of the car
12 and that the defendant loudly declared several times
13 that she hadn't been the driver and that the driver had
14 fled. But Ms. LeRoy was prepared to testify that she
15 saw nobody but the defendant in the car. And then later
16 the defendant did admit to highway patrol trooper that
17 she had been the driver.

18 Ms. LeRoy proceeded to check on Mr. Robinson, but
19 she found no signs of life. And Ms. Mahan was arrested
20 for felony DUI at the scene because she exhibited a
21 number of factors that led the officers to believe that
22 she was impaired. And she was transported for a blood
23 draw at the Laurens hospital.

24 At the scene before she was taken to the
25 hospital, a small quantity of marijuana was discovered

1 just outside the car door, along with a glass smoking
2 pipe with suspected meth residue. At the hospital the
3 defendant admitted to the highway patrol trooper that
4 she had smoked both meth and marijuana during the day
5 and turned over to the trooper a quantity of meth that
6 she had on her person. SLED analysis indicated that it
7 was .17 grams.

8 The trooper noted that Mahan kept dozing off at
9 the hospital and exhibited other indicators which led
10 him also to believe that she was under the influence and
11 appreciably impaired. SLED toxicology was done on the
12 blood sample that was taken from Ms. Mahan at the
13 hospital that day. It found no evidence of alcohol, but
14 did find concentrations of meth in the defendant's
15 submitted blood sample, along with tetrahydrocannabinol
16 from marijuana and two different types of THC
17 metabolites, indicating, according to the toxicologist,
18 extensive marijuana use over a lengthy period of time,
19 because not only was there the active component, but two
20 metabolites.

21 Your Honor, at the case that I referred to a few
22 moments ago, State versus Pamela Tackett, this same SLED
23 toxicologist did not offer a conclusion based on the
24 toxicology report as to the impairment in the Tackett
25 case, but she was fully prepared to testify that in her

1 expert opinion the levels of drugs that she found in Ms.
2 Mahan's system indicated to her that Mahan was
3 appreciably impaired.

4 I have included on the defendant's guilty plea
5 information sheet her criminal history and her driving
6 record, and those provide an extensive list of both.
7 The 10-year driving history, which we obtained in 2018,
8 show a conviction for DUS in 2008; too fast for
9 conditions in 2008; a DUAC in 2009. That the defendant
10 was declared an habitual traffic offender in 2009.

11 In 2014 she had a driving while intoxicated in
12 Missouri. Was arrested for DUI and had her license
13 suspended for implied consent in February of 2018. And,
14 in fact, was under suspension at the time this incident
15 took place when Mr. Robinson was killed.

16 Additionally, the defendant has a criminal record
17 for distribution of marijuana and distribution of
18 methamphetamines, the very same substances that were
19 found in her system in this case. Those stem from 2003.
20 She received a sentence of five years, suspended on six
21 months and five years probation in those cases. She
22 also has a felony conviction for forgery in 2012.

23 Your Honor, while this is a stand-up plea and is
24 made without any recommendations from the State, quite
25 frankly, Your Honor, I urge you to consider the Tackett

1 case, the sentence, as a baseline in this case. Ms.
2 Tackett was convicted of felony DUI primarily due to
3 intoxication from legal prescription drugs, drugs for
4 which she did have a prescription. She had no
5 appreciable criminal or driving history and she received
6 a sentence of 15 years.

7 This defendant was under the influence of illegal
8 substances, substances she had been convicted of
9 distributing in 2003. And then has the considerable
10 driving history and other felony records that I have
11 outlined.

12 Your Honor, the victim's family is present in the
13 courtroom, along with Ms. Christian, Mr. Downtin from our
14 office, the representatives from Mothers Against Drunk
15 Driving are also here. There are a number of friends
16 and supporters that are in the audience as well. I
17 would ask that the victim's family members be allowed to
18 speak when Your Honor deems appropriate.

19 THE COURT: Certainly. And typically the
20 procedure that I'll use is I'll talk to Ms. Mahan and go
21 through the colloquy with her and then as soon as I
22 accept her plea I'll turn it to you folks, okay?

23 Ms. Mahan, you've heard what the State has
24 alleged took place back on June the 14th of last year.
25 Is what they say true, ma'am?

1 THE DEFENDANT: Yes, it is.

2 THE COURT: So you were driving while your
3 ability to do so was impaired by narcotics or drugs; is
4 that correct?

5 THE DEFENDANT: Yes, I was. I, I fell asleep
6 driving.

7 THE COURT: Ms. Mahan, I need to review with you
8 rights that you are giving up by pleading guilty. If at
9 any time I say anything to you that you don't
10 understand, I want you to stop me and talk to
11 Mr. Shaffer as long as you need to. And you can also
12 ask me about it if you don't understand it, okay, ma'am?

13 THE DEFENDANT: Okay.

14 THE COURT: Do you understand, Ms. Maham, first
15 of all, you don't have to plead guilty, you can have a
16 jury trial? Do you understand that, ma'am?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: At a jury trial, you and Mr. Shaffer
19 would help pick 12 people from Laurens County who would
20 be the jury and the State would have the burden of
21 proving your guilt beyond a reasonable doubt and by
22 unanimous consent of all 12 of those jurors. All 12 of
23 them would have to agree that you are guilty before you
24 could be punished in any way for this. Do you
25 understand that, ma'am?

1 THE DEFENDANT: Yes, I do.

2 THE COURT: At the trial the State would try to
3 meet this burden, ma'am, by calling witnesses. They
4 would come forward, they'd be sworn, and you and
5 Mr. Shaffer would have the right to seek and confront
6 and cross-examination those witnesses. Do you
7 understand that, ma'am?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: You could ask them any question
10 relevant to any issue involved in this case. At the
11 trial you have no burden of proof. The burden is always
12 on the State to prove your guilt beyond a reasonable
13 doubt, but if you wanted to you could certainly call
14 your own witnesses to testify and use the subpoena power
15 of the court to force reluctant witnesses to come to
16 court. And, of course, you'd be free to take the stand
17 in your own defense.

18 THE DEFENDANT: Yeah.

19 THE COURT: If you decided not to take the stand,
20 though, I would instruct the jury they couldn't use that
21 as evidence of guilt, they couldn't hold it against you,
22 they could not even talk about that. Do you understand
23 that, ma'am?

24 THE DEFENDANT: Yeah.

25 THE COURT: It's your Fifth Amendment right

1 against self-incrimination. By pleading guilty you
2 waive that because you admit to me that you did, in
3 fact, commit these crimes. Do you understand that?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: Additionally, at trial, Ms. Mahan,
6 you would be presumed innocent. The way presumption of
7 innocence works is very simple. Right now in the eyes
8 of the law you're considered not guilty of these
9 offenses because obviously I haven't accepted your plea
10 yet and you haven't been convicted at trial. Do you
11 understand that, ma'am?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: If you plead guilty, though, you
14 waive that presumption of innocence. Additionally, at
15 trial you have a right to challenge all the evidence the
16 State receives in this case. I've only been given a
17 brief overview of what the State collected by way of
18 evidence. It sounds as if you gave statements to the
19 police at the scene. It sounds like there was also a
20 blood draw conducted at the hospital.

21 You understand that all of that evidence
22 conducted can be challenged at trial? It could have
23 been illegally obtained, improperly obtained, whatever
24 the case may be, it's entirely possible the court would
25 suppress that evidence, the jury would never even hear

1 about it.. Do you understand that?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: If you plead guilty, though, you
4 waive the right to challenge any evidence that is
5 collected or the manner in which it is collected. Do
6 you understand that?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: Finally, Ms. Mahan, at trial you get
9 to present any defenses to these charges. You
10 understand that I have no way of knowing if you have a
11 defense to this charge or not. I'm sure that's
12 something that you've discussed at length with
13 Mr. Shaffer, correct?

14 THE DEFENDANT: Yes, I have.

15 THE COURT: All right. A defense could be
16 something as simple as these drugs may have been in my
17 existence, I wasn't under the influence of these drugs
18 at the time of the collision, I was simply tired, I fell
19 asleep and that's how this accident happened, but I was
20 not under the influence of any of these narcotics. Do
21 you understand that's a defense you could offer?

22 THE DEFENDANT: Yes.

23 THE COURT: If you plead guilty, though, you
24 waive your right to present that or any other defense at
25 trial. Ms. Mahan, all these are very important rights.

1 Are you sure you want to give them up to plead guilty?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: You hesitated for a second here. Do
4 you need a moment to think about that?

5 THE DEFENDANT: Hmm.

6 THE COURT: No?

7 THE DEFENDANT: No. Huh-uh.

8 THE COURT: Do you need a moment to compose
9 yourself, ma'am?

10 THE DEFENDANT: Yeah, just a minute.

11 THE COURT: You and Mr. Shaffer just step over to
12 the side and just let me know when you're ready to
13 proceed, okay?

14 THE DEFENDANT: Okay, thank you.

15 THE COURT: Yes, ma'am. Again, Ms. Mahan, you do
16 want to waive all these rights and plead guilty; is that
17 correct?

18 THE DEFENDANT: Yes, I do, Your Honor.

19 THE COURT: And, Mr. Shaffer, from your
20 investigation or from your investigation from discovery
21 that's been provided to you, I presume that you're
22 satisfied with the State's response and you've shared
23 all this with Ms. Mahan, who has said she wanted to be
24 included?

25 MR. SHAFFER: Yes, Your Honor. I've given her a

1 . general overview of all the evidence the State would
2 have. I've talked about possible defenses to the case
3 and talked about the law and she wants to plead guilty,
4 Your Honor.

5 THE COURT: All right. Ms. Mahan, are you happy
6 with the way that Mr. Shaffer has represented you?

7 THE DEFENDANT: Yes, I am.

8 THE COURT: Has he done everything you've asked
9 him to do?

10 THE DEFENDANT: He has. He has.

11 THE COURT: Have you understood all your
12 conversations with him?

13 THE DEFENDANT: Yes, I have.

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

15 THE DEFENDANT: No, I do not.

16 THE COURT: And you're totally satisfied with his
17 decision to plead?

18 THE DEFENDANT: Yes, I am.

19 THE COURT: Do you have any complaints to make
20 against the solicitor's office, law enforcement, court
21 personnel or anyone involved in the prosecution of this
22 case?

23 THE DEFENDANT: No, I do not.

24 THE COURT: And has anyone promised you anything
25 or held out any hope of reward to try to get you to

1 plead guilty?

2 THE DEFENDANT: No.

3 THE COURT: Anyone tried to threaten you, force
4 you, coerce you in any way to plead guilty?

5 THE DEFENDANT: No. Huh-uh.

6 THE COURT: Ma'am, are you pleading guilty, then,
7 of your own free will because you are, in fact, guilty
8 of these charges?

9 THE DEFENDANT: Yes, I am.

10 THE COURT: And have you understood all my
11 questions?

12 THE DEFENDANT: Yes, I have.

13 THE COURT: Okay. Anything you want to ask me
14 about anything that we've gone over?

15 THE DEFENDANT: No, there's not. I just wanted
16 to say something to the family, but after, after ---

17 THE COURT: Okay. I'll be happy to hear anything
18 that you want to say, and I'm sure as soon as they
19 speak --

20 THE DEFENDANT: Okay.

21 THE COURT: -- I'll give you a full opportunity
22 to express any --

23 THE DEFENDANT: Okay.

24 THE COURT: -- regrets that you have, okay?

25 THE DEFENDANT: Yes. Yes, sir.

1 THE COURT: Very good. I do find there's a basis
2 for this plea. It's freely, voluntarily, knowingly and
3 intelligently made. Ms. Mahan, I'm satisfied with
4 Mr. Shaffer's assistance. I will accept this plea.

5 Solicitor, I don't know which members of Mr. --

6 MR. MOWRY: Mr. Robinson's.

7 THE COURT: Robinson, yes, I'm sorry --

8 Mr. Robson's family wants to speak first, but I'm more
9 than happy to hear from them.

10 MR. MOWRY: Ms. Christian's got them.

11 THE COURT: Sure.

12 MS. CHRISTIAN: This is Mrs. Robinson, Wesley's
13 mother.

14 MRS. ROBINSON: I'm Wesley's mom. He was my only
15 boy. He's been gone 501 days. And he was so good at
16 saying thank you and checking on me. He was saying
17 thank you for supper mom. Did you have a good day mom?
18 He called me the day before this happened and I was at a
19 doctor appointment. And his message was, I was
20 wondering where you're at, I'll see you in a little bit.
21 And, thankfully, I have that voicemail that I listen to
22 over and over.

23 We have not been able to make any sense out of
24 losing Wesley. We watch people over and over get second
25 chances to lose their license. Wesley didn't get a

1 second chance... He's gone forever. If he had survived
2 that day, he would have crawled across that road to
3 check on her to see if she was all right, and all she
4 tried to do was save herself with lies.

5 I want her to know that she killed a wonderful
6 boy. Please send her away as long as you can. She must
7 pay for this awful crime against our whole family.

8 MS. CHRISTIAN: This is Wesley's sister.

9 THE COURT: I'm sorry, your name again, please?

10 MS. CURTIS: Joy Curtis.

11 THE COURT: Ms. Curtis.

12 MS. CURTIS: I'm Wesley's little sister. I
13 looked up to my little brother, like everybody in
14 Laurens County and everybody he met did. He always
15 wanted to -- had obstacles that he couldn't overcome and
16 he would always do his best and he always found a way to
17 overcome them.

18 He wanted to own his own farm and teach the
19 younger generation about our farming system and our
20 dairy system and how important they are to our society.
21 He even started teaching my two-year-old son how to
22 start feeding the bottles to the babies and they had
23 finally started bonding when he died. And he's never
24 gonna get to make any more memories with him.

25 And then my three-and-a-half-month-old daughter

1 is never gonna get to see her uncle.... I'll have to take
2 them both to the cemetery just to see their uncle. I'm
3 just asking, please give her as much as you can because
4 she stole my big brother from me.

5 MS. CHRISTIAN: And Jennifer Robinson, Wesley's
6 other sister.

7 MS. JENNIFER ROBINSON: I'm Jennifer Robinson. I
8 will never forget June 14th, 2018, because that was the
9 day that my world turned upside down and my family was
10 shattered. I lost my brother, who was the kindest, most
11 hard working boy you would ever meet. Everyone loved
12 him. But I also feel like I've lost my dad because he
13 hasn't been the same since that day because my brother
14 Wesley was not just his son, he was his best friend.

15 And now what was a farming hobby is now kind of a
16 second full-time job for my dad because he's trying to
17 carry on Wesley's legacy by taking on all these farm
18 projects that my brother had. Him and my mom go to the
19 cemetery every single day, so we can't even take family
20 vacations because we can't go far away because we can't
21 make it back to see him and they cannot miss a day.

22 If fact, last night we saw that they had actually
23 started wearing a path in the grass and started turning
24 the dirt because they walked so many times from where
25 they parked their car to the grave sight. And as my

1 sister mentioned, we have two young lives, my niece and
2 nephew, who will never get know their amazing uncle.

3 So, I just beg you, please, she's had chance
4 after chance after chance and all she's done is take the
5 chance that my brother had of a full on life. And we've
6 seen no remorse in her, no apologies, so I don't think
7 this is an acceptance of responsibility. So I just ask
8 you, please, give my family some kind of justice by
9 giving her as much time as you can.

10 MR. ROBINSON: I'm Eddie Robinson, Wesley's
11 daddy. Wesley Chad Robinson is my son, is my only son.
12 He was only 29 years old. And to tell you a little bit
13 about him, he went to Clemson and graduated. He went to
14 Texas Tech, graduated with a master's degree in
15 agriculture education. Came back to South Carolina from
16 Texas, started working at Eastland Dairy because he
17 loves cows and stuff. And he also started working for
18 Stanley Penley (phonetic), managing his herd with him,
19 starting the herd.

20 Over time it became their herd together. And he
21 wanted to do -- he could see things he wanted to do in
22 the future, he had a vision. And he also started
23 working at Clemson not long before he got killed. And
24 they hired him as a -- on a grant. Because of the time
25 he had been there, they was wanting to get him on

1 full-time because they had plans for him also. They was
2 wanting to move him on up. And his plans was starting
3 to come together when had this wreck happened.

4 Everything seemed like it was just starting to go his
5 way. He forgot all the obstacles he always had.

6 And the lady who killed him had so many chances
7 come her way to change her ways. She was out on bond at
8 the time, shouldn't have been driving. She didn't have
9 no license. She had no reason to be on that road that
10 day. She has no respect for the law. And every time
11 she's been on bond or anything she's been out driving
12 anyway.

13 She deserves no leniency at all in my opinion.
14 She deserves a full penalty of 25 years for what she's
15 done to my son's life, but also what she's done to the
16 rest of our lives. I lost part of my world that day, I
17 can never get it back. I have a hard time finding
18 anything to be happy about.

19 I hope you can give her the max 25 years. We'll
20 never have any grandchild out of him because she took
21 him away from us. And I was looking forward to watching
22 his plans come together and find somebody and have kids
23 and watching the rest of his plans come together.

24 He works so good with every kid he run into. He
25 helped the FFA, the 4-H. In fact, the FFA crew come

1 through at his viewing and told us that he had coached
2 them that February of that year, right before he went to
3 the spring dairy show for a judging contest and coached
4 them and helped them learn how to Judge and stuff. And
5 they actually won the judging contest up there that
6 year. So he was good with working with a lot of people,
7 helping anybody that needed help. All they had to do
8 was call and let him know.

9 THE COURT: Thank you, Mr. Robinson.

10 Yes, sir.

11 MR. EASTER: Yes, Your Honor. I'm Glenn Easter,
12 owner of Eastglen Dairy Farms in Laurens. Obviously the
13 family and I come here today very saddened.
14 Circumstances were absolutely not needed. We understand
15 that your decisions today are not going to be easy ones.
16 We also know we will have to learn to live with whatever
17 decision the Court comes with.

18 I would like to take a few minutes to explain to
19 the Court who I am and who Wes is. My time in the AG
20 and the dairy world, we understand the value of faith.
21 We understand that there's a higher being, and we
22 believe in forgiveness when it's been earned. I ask the
23 Court's indulgence for me to take a minute to explain
24 who I am and who Wes was. Eddie's covered some of what
25 I had. I understand who I am and my feelings are

1 trivial as far as the Court's concerned.

2 Wes entered my world when he was nine years old.

3 Wes had just started a 4-H program. Wes is nine. He
4 heard at a 4-H meeting that my 35-year-old cousin, who
5 also worked for me, was diagnosed with leukemia. Wes
6 decided and convinced his folks that he needed to come
7 to the dairy to take Frank's place. There was no, in
8 Wes' world, there was nothing too big. At nine he was
9 going to fill the holes that I had at the farm. This
10 was Wes.

11 It was at this time I understood that I became
12 Wes' second dad. I say that not in disrespect to the
13 Robinson family. Wes became part of my family. And he
14 did so much explaining of who Wes was. Schooling did
15 not come easy to Wes. Schooling was tough.

16 He had a sister that had gone through the
17 University of South Carolina. And after Wes graduated,
18 he knew he was going on to school. He knew he was going
19 to make a big hole at the farm because he was going to
20 be leaving me. As Eddie said, he went and got a
21 bachelor's degree at Clemson. He got done there, he
22 came back to the farm, he'd talk with me. I was his
23 mentor, I know that. And Wes said, I want to get my
24 master's degree.

25 And so he went to Texas Tech. While he was at

1 Texas Tech for the master's degree, he got to go to
2 Central America, he got go to Argentina, he got to to
3 New Zealand, all to learn to take care of cows because
4 cows fed the world. This was Wes.

5 Wes gets his master's degree. By the time they
6 could drive back from Texas, he ends up in my yard at
7 the farm and said can I milk cows tonight. This is Wes.
8 This is Wes.

9 My favorite story about Wes. As I said, I was
10 his second dad and his mentor. Just five or six folks
11 work around the farm. Come evening time or come
12 lunchtime Wes would start looking uneasy and all he was
13 doing was waiting for everybody else to go home because
14 as soon as everybody else left -- and I knew what the
15 question was, I sure didn't know what the answer was
16 gonna be, the question was, Glenn, I've got a curiosity
17 question.

18 The curiosity could be anything from girls to
19 politics. He came to me one time and said, do you
20 suppose if I took those two old wagons out behind the
21 barn, if I took those frames and we reenforced them for
22 my little farm, could I, could I put on those wagon
23 frames a portable milking parlor? This was Wes. This
24 was his curiosity question. The kid dreamed. Dreamed.
25 And what a future he had. Absolutely. I just...

1 One of the curiosity questions one day was how
2 large a cement pad do I need to build at home to put six
3 heifers on? It's always cows. A kid with a master's
4 degree at 29 years old and his big concern was cows and
5 taking care of them the way they need to be taken care
6 of.

7 This 29-year-old, who was much, much farther in
8 wisdom than 29 didn't have a chance, did not have a
9 chance. And I know times can be tough on individuals.
10 They can be tough on the defendant, but in tough times
11 you make choices.

12 My family were immigrants from Canada, and when I
13 was five years old, the local methodist church provided
14 absolutely everything that my four -- my three brothers
15 and myself got for that Christmas when I was five years
16 old. So I understand about making hard choices in hard
17 times and things didn't come easy. Sometimes you make
18 your own luck.

19 And so I go back to what I said at the beginning.
20 I know the decisions today for you are not gonna be
21 easy, but I know Wes has no more choices. And the
22 defendant has had lots of choices and very seldom has
23 made a good one. And I hope it is a long time before
24 she can put somebody else's life in jeopardy, which she
25 obviously has done numerous times. Not -- it only took

1 one, but put other lives in jeopardy a good many times.

2 And with that, sir, thank you for your time.

3 THE COURT: Solicitor, I really was not able to
4 get a good view of that photo of Mr. Robinson. May I
5 hold that just for a brief second?

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

7 THE COURT: Anything else from the State?

8 MR. MOWRY: No, sir, that would conclude our
9 presentation.

10 THE COURT: Mr. Shaffer, I'll be happy to hear
11 from you and certainly anything Ms. Mahan may want to
12 say or her family or daughter way may want to say.

13 MR. SHAFFER: Yes, Your Honor. What I'd like to
14 do first, I prepared a sentencing video for this case
15 and would like to show it to the Court before we go any
16 further. There's a couple other things I'd like to say
17 afterwards. The State has it. I sent it to them, I
18 guess, last night or this morning, the final copy.

19 THE COURT: Sure. Do you want to go ahead and
20 play it?

21 THE SOLICITOR: Your Honor, may we stand down
22 while this is playing?

23 THE COURT: Yeah. By all means, make yourself
24 comfortable wherever you need to be.

25 (Plays video.)

1 MR. MOWRY:.. Your Honor, it occurred to Mr. Downtin
2 and me that while we were in Newberry we had mentioned
3 to Judge Hocker that this case -- the charges in this
4 case have been reindicted based on the, on the form
5 problems that, that had been indicated a few months ago.
6 We reindicted her in August or September, I believe, and
7 she has not been arraigned. It's my understanding that
8 Mr. Shaffer would waive the arraignment, but I wanted to
9 bring that to the Court's attention so that wasn't gonna
10 be an issue.

11 THE COURT: That's not an issue obviously?

12 MR. SHAFFER: That's not an issue.

13 THE COURT: Very good.

14 MR. SHAFFER: And, Your Honor, I think Tara had
15 prepared something that she wanted to read as well now.

16 THE COURT: Certainly. I'm happy to hear from
17 you now, ma'am.

18 THE DEFENDANT: Okay. Most importantly I want my
19 apologies to go out to the community for putting
20 people's lives in danger due to my driving. I want to
21 apologize to the Robinson family for taking his life. I
22 can understand why you would never want to forgive me,
23 but I ask you if you could please find it in your hearts
24 to forgive what I have done.

25 I would like sharing my testimony with others as

1 God's will. My only regret is I cannot change what has
2 happened, how it happened, and the devastation left to
3 everyone. Given the opportunity I hope, even if it's
4 only one person I can help in the future by educating
5 them from my mistake, it will make a difference in their
6 lives in troubled times. And I would like to thank the
7 Court for giving me this time to speak.

8 MR. SHAFFER: And, Your Honor, she's joined,
9 obviously, by her mother, her daughter, and other
10 friends and family who are here. And I, I think that
11 I'm gonna forego them actually saying or talking because
12 I think that we've, you know, the Court's heard about
13 this case. You know, my client is very sorry about
14 this. She is very sympathetic.

15 You know, one of the, one of the things that you
16 generally -- one of the bad byproducts of having an
17 attorney tell you, you know, handling a case and telling
18 them, you know, telling -- making arguments is that, you
19 know, you don't -- the family never actually gets to
20 hear how a real person feels. You know? We did a bond
21 hearing, I probably said some stuff, you know, in making
22 arguments that weren't the best things in the world to
23 say.

24 I had, you know -- I, to some degree I can
25 understand how the family feels. In 2012 I was hit by a

1 drunk driver personally with my family in the car. So I
2 understand to some degree how they feel. It was a
3 horrible experience. Your Honor, but the thing is,
4 there's absolutely nothing in this world that can bring
5 Wesley back. You're gonna have to come up with a
6 sentence that is just.

7 I know the State had mentioned that they
8 wanted a baseline based off of this Tackett case. And
9 I'm not sure if the Court's familiar with it or not.

10 THE COURT: I'm not. And that's something that I
11 was gonna perhaps follow up on --

12 MR. SHAFFER: Okay. I'm not.

13 THE COURT: -- with everybody, but go ahead if
14 you know something about it.

15 MR. SHAFFER: I just know that it went to trial
16 and it was a, I think it was a Xanax case or something
17 like that. And it went to trial six months to a year
18 ago. That's the only thing that I know about it. So I
19 can't very well make arguments for or against why this
20 is similar or why it's not similar.

21 Your Honor, there is, you know, there's nothing
22 that's gonna benefit anybody through any sort of
23 sentence in this case, but I understand that the Court
24 has to do something. My client understands that and her
25 family does too. We'd just ask for, for whatever mercy

1 you can give her.

2 THE COURT: Solicitor.

3 MR. MOWRY: And, Your Honor, I'd be happy to
4 answer anything about Ms., Ms. Tackett's case.
5 Mr. Bentley and I prosecuted that for the State.

6 I would like to say just a few things in response
7 to the video. The key here is acceptance of
8 responsibility. The defendant says that she fell asleep
9 at the wheel, and that may well be, but she does not
10 seem to accept the responsibility that she fell asleep
11 because of intoxication from illegal drugs.

12 She says that she started making bad decisions.
13 That is an eery echo of what some of the victims said in
14 their presentation. And she did. And she has continued
15 to make them. She says that she hung with the wrong
16 crowd.

17 I grew up with Judge Frank Epps when I was a
18 young attorney, and people would appear in front of him
19 and make the claim that they had hung with the wrong
20 crowd. And Judge Epps almost invariably would interrupt
21 them and retort that their momma's say you're the wrong
22 crowd. And I would submit that that's what Ms. Tackett
23 (sic) is.

24 In the video it said that she went to Missouri to
25 get a new start. While she was in Missouri she was

1 charged with driving while intoxicated.. There is a
2 statement by her of concern for seeing her children.
3 Well, Your Honor, I will just conclude by saying that
4 the Robinsons won't ever be able to see in this lifetime
5 their son, their brother, or the other folks that are
6 here, their friend ever again.

7 THE COURT: I do understand. I assume that she's
8 been in jail continuously since June the 14th?

9 MR. MOWRY: Yes, sir, 501 days.

10 THE COURT: Did I handle the bond hearing for
11 her?

12 MR. MOWRY: You did, Your Honor.

13 MR. SHAFFER: You possibly did.

14 MR. MOWRY: In December of last year.

15 THE COURT: Okay.

16 MR. SHAFFER: And, Your Honor, I know that you
17 keep impeccable notes and stuff. I said some -- I said
18 something stupid at the bond hearing because I was
19 presenting an argument for a defense that was not my
20 client's defense necessarily, it was my defense, and I
21 want to apologize to everyone. And please don't hold
22 that against any client.

23 THE COURT: I'm not gonna hold it against your
24 client. And the reason that I do ask my clerk to take
25 meticulous notes is that the time it's helpful and it

1 helps my recall. And what I did want to say before I
2 even put pen to paper as far as sentencing is I want to
3 try to explain to the family that, that the practice of
4 law is not an easy profession. I do consider it a noble
5 profession because you take upon yourself the problems
6 of others and you allow, like I said, other people to
7 make their problems your own.

8 And there's probably no other profession where
9 you deal with on a daily basis nothing other than
10 problems of other people's creation. And so that's what
11 we signed up for, Mr. Mowry, all the solicitor's here,
12 Mr. Shaffer, myself, we're all in the same boat in that
13 our job is to try to be problem solvers for others for
14 problems that we don't make, okay? Like the ambulance
15 driver, they might not be able to save someone who
16 they're called to the scene to save, but they still have
17 to show up and do their level best.

18 And so to the extent that something may have been
19 been said at the bond hearing, and I'm not even gonna
20 ask my clerk to look it up or show it to me, but to the
21 extent that something said which was insensitive to you,
22 that's because the lawyer who is given a problem to
23 solve is trying do his job and solve it, solve the
24 client's problem for his client, just the way that
25 Mr. Mowry was trying to solve your problem on your

1 behalf and the State's behalf... So that's where we will
2 leave that.

3 Mr. Mowry anything else? I always give the
4 defendant last word.

5 MR. MOWRY: No, sir, nothing further. Nothing
6 further from the State.

7 THE COURT: Or anything else further from Ms.
8 Mahan? Anything further she wants to state?

9 MR. SHAFFER: Nothing further, Your Honor.

10 ORDER OF THE COURT

11 THE COURT: Ma'am, let me start off by saying
12 that I really hate to have to impose sentences in cases
13 such as this, and I find them the hardest cases to
14 preside over because it's very easy to punish someone
15 who walks into a home or a convenience store and hurt
16 somebody else intentionally, okay? Fires a gun at them
17 or destroys their life in that way because there's that
18 intention, that desire, that malicious intent to do
19 something bad, something horrible.

20 THE DEFENDANT: Right.

21 THE COURT: And so these cases are always, always
22 very difficult for, I think, all judges. And they are
23 cases that we struggle with. One thing I do take into
24 account and I give you credit for, Ms. Mahan, is the
25 fact that you're accepting responsibility here.

1 I know that the State referenced that earlier
2 case where the person got 15 years for legally using
3 medication that they were prescribed, and I would never
4 suggest that perhaps there's some penalty for going to
5 trial, but I do think that most judges accept the
6 premise that if somebody comes up to the court and
7 accepts responsibility without any promises, without any
8 guarantees of what may happen and they made that
9 acceptance of responsibility openly and honestly and
10 spare the State the burden of going to trial, then that
11 person deserves some measure of reward for that
12 acceptance of responsibility. And I swear to you I've
13 tried to take that into account, Ms. Mahan.

14 One -- and I'm sure that Mr. Shaffer explained
15 this to you, the biggest problem that the Court has in
16 this case, ma'am, is that I've looked back over your
17 criminal history. And if this had been a case where
18 this is the first time that you were involved in a
19 driving offense that led to something tragic, then I can
20 understand that, okay?

21 And I've presided over cases and I know other
22 judges have where somebody does something really stupid
23 and people end up dead tragically, but it had never
24 happened before and maybe the blow was .08 or .10, or
25 maybe it's a kid who's injured a family, killed a

1 daughter. That's easier to understand when there's no
2 history there.

3 But when you come into court, what the Court does
4 have to take into account is your history. And I'm
5 looking at this and I did the math. At 19 years of age
6 -- and I have no doubt what I saw on the video was, was
7 troubling, that your upbringing was troubling. But at
8 19, that's apparently where you did that six months that
9 you talked about in the video, the distribution of the
10 meth and the marijuana.

11 Five years later a driving under suspension.
12 Don't have a license, not supposed to be driving. A
13 year after that, driving with unlawful concentration.
14 25 years of age. Same year, habitual traffic offender.
15 Forgery, I'm not worried about that.

16 But 2014 in Missouri, DWI only five years ago.
17 Driving under suspension then three years ago. And last
18 year, sometime in February, apparently you picked up a
19 DUI and your license was suspended because you refused
20 to give a breath test.

21 What this boils down is, ma'am, is that you, I
22 counted, one, two, potentially, three instances where
23 you're out on the road and you're driving and you're
24 ability to do so is impaired and there's only so much
25 the law can do to keep impaired drivers off the road.

1 There is not the first thing that I can do to stop
2 somebody from drinking way too much, even if think don't
3 have a license from getting behind the wheel of a car.
4 So there's nothing a judge can do. If your license was
5 suspended back in February of last year --

6 THE DEFENDANT: Yeah.

7 THE COURT: -- by law you should not have been
8 driving. I have to take into account when you get into
9 something like this only four-and-a-half months later on
10 the roads of Lexington -- Laurens County. So I'm taking
11 that into account.

12 I appreciate the family's position that they feel
13 like she has not accepted responsibility. I've been
14 doing this for a while. I can tell crocodile tears from
15 tears of pure remorse. I had a case over in Lexington
16 county. I can't go into the specifics of it, but it was
17 quite apparent in that case that the defendant when he
18 pled in front of me had no remorse, was only worried
19 about himself.

20 I'm not gonna give you the specifics. But the
21 fact that person's eyes were rolling when this victim
22 was talking to me, that's the kind of case that deserves
23 the maximum sentence. I have to take into consideration
24 the fact that she has accepted responsibility, but at
25 the same time, ma'am, I've got take into account this

1 prior record.

2 THE DEFENDANT: Okay.

3 THE COURT: Sooner or later the law just has to
4 defend the streets of this state against people, sorry
5 to say it, but people like you who have not learned a
6 lesson and just can't stay off the road. I can't let
7 this happen again to somebody else. I'm still being as
8 lenient as I can, I promise.

9 It's the decision of this Court that, ma'am, on
10 the felony DUI charge that you be incarcerated for a
11 period of 22 years, ma'am. You'll get credit for the
12 501 days that you have served in jail. The sentence
13 will be concurrent with the meth charge. On that case
14 you get three years. Again, credit for 501 days in
15 jail.

16 You have 22 years to serve, Ms. Mahan. Hopefully
17 that will be enough time to dry out. You pose too much
18 of a danger to the community at large. I wish you luck.
19 Take care of yourself.

20 MR. MOWRY: Thank you, Your Honor.

21 THE COURT: Solicitor, if you -- I know you need
22 to brief the family. You might need to take them across
23 the street to the solicitor's office.

24 MR. MOWRY: Yes, sir.

25 THE COURT: Because I know security needs to lock

1 up in here.

2 MR. MOWRY: Yes, sir, we can take care of that.

3 Thank you, Your Honor.

4 THE COURT: We will be at ease.

5 (Court concluded at 2:48 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 General Sessions for Laurens County, South Carolina, on the 17th 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

WITNESSES

B. Walker

South Carolina Highway Patrol

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

September Term, 2018

Indictment # 2019CS30- 1402

WARRANT NUMBER

DIRECT INDICTMENT

True BillSam Davis

Foreman of the Grand Jury

Date: 10/4/19

VERDICT

Foreman

I hereby waive presentment to the Grand Jury.

Laurens County CCLP & GS
Lynn W. Lancaster

Defendant

A TRUE COPY OF ORIGINAL

Witness:

THE STATE

vs.

TARA ANN MAHAN

INDICTMENT FOR

Felony Driving under the Influence
Resulting in Death
§56-05-2945(A)(2)

CDR: 0395

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

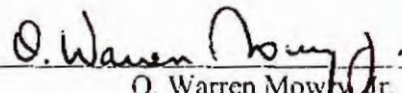
INDICTMENT FOR

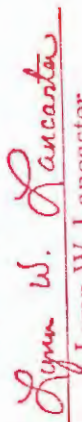
Felony Driving under the Influence
Resulting in Death
§56-05-2945(A)(2)

At a Court of General Sessions, convened on the 14th day of September, 2018, the Grand Jurors of Laurens County present upon their oath:

The defendant, Tara Ann Mahan, did on or about June 14, 2018, in Laurens County, South Carolina, while driving a vehicle under the influence of alcohol, drugs, or a combination thereof, perform an act forbidden by law or neglect a duty imposed by law in the driving of the vehicle. The Defendant committed one or more of the following unlawful acts and/or neglected one or more of the following duties imposed by law while driving under the influence of alcohol and/or drugs causing the deadly collision: The defendant drove at excessive speed and without due care, failed to keep lookout, failed to maintain her lane of travel, and followed too closely for safe travel. The Defendant's unlawful act or neglect proximately caused the death of Wesley Chad Robinson, and was in violation of 56-05-2945(A)(2), South Carolina Code of Laws (1976, as amended)..

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


O. Warren Mowbray Jr.
Deputy Solicitor

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Laurens County CCCP & GS

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

September Term, 2018

Indictment # 2019GS30-

1404

THE STATE

vs.

TARA ANN MAHAN

INDICTMENT FOR

Possession of Methamphetamine

§44-53-375(A)

CDR: 3009

WITNESSES

B. Walker

South Carolina Highway Patrol

WARRANT NUMBER

DIRECT INDICTMENT

True Bill

Sam Davis

Foreman of the Grand Jury

Date: 10/4/19

VERDICT

Foreman

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

Laurens County CCCP & GS
Lynn W. Lancaster

A TRUE COPY OF ORIGINAL

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

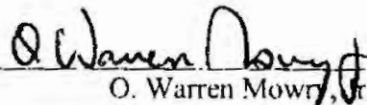
INDICTMENT FOR

Possession of Methamphetamine
§44-53-375(A)

At a Court of General Sessions, convened on the 14th day of September, 2018, the Grand Jurors of Laurens County present upon their oath:

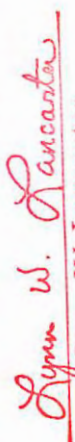
The defendant, Tara Ann Mahan, did on or about June 14, 2018, in Laurens County, South Carolina, knowingly or intentionally possess methamphetamine as defined in Section 44-53-110, all in violation of Section 44-53-375(A), Code of Laws of South Carolina (1976, as amended).

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



O. Warren Mowry, Jr.
Deputy Solicitor

A TRUE COPY OF ORIGINAL


Lynn W. Lancaster
Laurens County CCCP & GS

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LAURENS

STATE VS.

TARA ANN MAHAN

AKA: _____

Race: WhiteSex: F

Age: _____

DOB: _____

SS#: _____

Address: 110 Village Pk. Dr. #123City, State, Zip: Simpsonville, SC 29681

DL# _____

SID# _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

☐ CONVICTED OF or☒ PLEADSTO: Felony DUI, DeathIn violation of § 56-05-2945(A)(2) of the S.C. Code of Laws, bearing CDR Code # 0395INDICTMENT/CASE#: 2019GS30-1402

A/W: _____

Date of Offense: 06/14/2018S.C. Code §: 56-05-2945(A)(2)CDR Code #: 0395

SENTENCE SHEET

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation.☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

O. Warren Mowry, Jr. 4124
O. Warren Mowry, Jr., Deputy Solicitor SC Bar #Tara Mahan
Defendant[Signature] 77565
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 22 months 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 Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 19-GS-30-1404☒ 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. Credit for 501 days in jail.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

*Fine: _____ \$ _____

Substance Abuse Counseling ☐

§14-1-206 (Assessments 107.5%) _____ \$ _____

Random Drug/Alcohol Testing ☐

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ _____

Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ 100

pmts. of \$ _____ Beginning _____

§56-5-2995 (DUI Assessment) \$12 \$ 12

\$ _____ Paid to Public Defender Fund

§56-1-286 (DUI Breath Test) \$25 \$ 25

Other: _____

Proviso (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 \$ _____

3% to County (if paid in installments) \$ \$ 4.11TOTAL \$ 141.11☐ Appointed PD or appointed other counsel.

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before any other fees.

Clerk of Court/Deputy Clerk: Charity Campbell-GreenwoodCourt Reporter: Julie CendreskiPresiding Judge: [Signature]Judge Code: 2159Sentence Date: 10-28-19

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LAURENS

STATE VS.

TARA ANN MAHAN

AKA:

Race: White Sex: F Age: 31DOB: 01/14/1987 SS#: ██████████Address: 110 Village Pk. Dr. #123City, State, Zip: Simpsonville, SC 29681DL# ██████████ SID# ██████████*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

☐ CONVICTED OF or☒ PLEADSTO: Possession of Methamphetamine 1st OffenseIn violation of § 44-53-375(A) of the S.C. Code of Laws, bearing CDR Code # 3009INDICTMENT/CASE#: 2019GS30-1404A/W: DIRECT INDICTMENTDate of Offense: 06/14/2018S.C. Code §: 44-53-375(A)CDR Code #: 3009

SENTENCE SHEET

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, ☐ (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

O. Warren Mowry, Jr. 4/24
O. Warren Mowry, Jr., Deputy Solicitor SC Bar #Tara Ann Mahan
Defendant[Signature] 77565
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 3 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 Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 19-GS-30-1402☒ 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. Audit for 24 501 days - jail.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives HearingTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Ordered PTUP days/hours Public Service EmploymentObtain GED ☐☐ Set by SCDPPPS 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 FundOther: Recipient: *Fine: \$ §14-1-206 (Assessments 107.5%) \$ §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ §56-5-2995 (DUI Assessment) \$12 \$ §56-1-286 (DUI Breath Test) \$25 \$ Proviso (Public Def/Prob) \$500 \$ §14-1-212 (Law Enforce. Funding) \$25 \$ 25§14-1-213 (Drug Court Surcharge) \$150 \$ 150§50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ 8.25TOTAL \$ 283.25☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before

any other fees.

Clerk of Court/Deputy Clerk: Christina Capehart-GreenwoodCourt Reporter: Julie CendrowskiPresiding Judge: [Signature]Judge Code: 2159Sentence Date: 10-28-19

CLOCK IN TIME CANCELLED

Filed CP 8th Jud Cir Greenwood, SC
2020 MAR 18 PM 1:42

STATE OF SOUTH CAROLINA

County of Greenwood Laurens

In the Court of Common Pleas

Mara Mahan 294750

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

vs.

Atty. Gen. A. Wilson

Name of Respondent.

State of South Carolina

2020 CP30-283

APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS — READ CAREFULLY

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

Since every application must be sworn to 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 applicant was convicted.

- Place of detention Leath Corr. Inst. 2809 Airport Rd. PA room 111-A
Greenwood S.C. 29649
- Name and location of Court which imposed sentence Greenwood Co.
General sessions Court
- The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - Felony DUI with death
 - N/A
 - N/A
- The date upon which sentence was imposed and the terms of the sentence:
 - Oct. 28th 2019- 22yrs.
 - N/A
 - N/A

2020 MAR 18 PM 3:07
LAURENS COUNTY
CLERK OF COURT

LYNN W. LANCASTER

5. Check whether a finding of guilty was made
- (a) after a plea of guilty yes
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
6. Did you appeal from the judgment of conviction or the imposition of sentence?
- N/A
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) Atty. did not file appeal
- (b) I did not know how to file an appeal
- (c) Atty. told me to write him about an appeal
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Delayed defect on indictment/ Denied pretrial
- (b) 14th amendment U.S.C.A./Denied Discovery
- (c) 6th amendment U.S.C.A/ False representation
10. State concisely and in the same order the facts which support each of the grounds set out in (9):
- (a) 5th amendment/U.S.C.A./S.C.R.C.P rule 1&2
- (b) denied due process/ confrontation clause
- (c) ineffective counsel/Denied appeal

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law? N/A

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? N/A

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? N/A

(d) any other petitions, motions or applications in this or any other Court?

N/A

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

15. If any ground set forth in (9) 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) Atty. did not raise any of these issue 5th amendment U.S.C.A

(b) Atty. did not raise any of these issues 14th Amend U.S.C.A.

(c) Atty. did not raise any of these issues

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

(a) your arraignment and plea? N/A

(b) your trial, if any? N/A

(c) your sentencing? Guilty plea sentence

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

17. If you answered "yes" to one or more parts of (16), list:

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

i. Tristan Shaffer/ Public Defender

Greenwood S.C.

ii. N/A

N/A

iii. N/A

N/A

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

i. guilty plea sentence

ii. N/A

iii. N/A

18. State clearly the relief you seek in filing this application.

Rule 60 a new trial/ Injunction relief/breach of guilty plea
Modification in my sentence/ guilty plea invalid

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

N/A

STATE OF SOUTH CAROLINA

County of Greenwood Lawrens }

VERIFICATION

I, Tara Mahan, 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.

Tara Mahan

SWORN to and subscribed before me this 30

day of Jan, 19 2020

Mandy Holcomb (L.S.)
Notary Public

My Commission Expires: 2-13-2029

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

I, _____, 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 therefor.

Tara Mahan
Applicant

SWORN or affirmed to and subscribed before me this

30 day of Jan, 19 2020

Mandy Holcomb
Notary Public

My Commission Expires 2-13-2029

STATEMENT OF FACT

Judge Hawker disqualified himself because he knew the victim Special Judge in the absence of a disqualification of the regular judge of otherwise provided by standard venue was changed because of the matter

Defense Atty. Mr. Shaffer failed to put on record to Judge Addie that a plea agreement was entered with Judge Hawker for 10-15yrs. cap. Defense Atty. Tristan Shaffer failed to put on record that the applicant did not have a preliminary hearing

Defense Atty. Tristan Shaffer failed to acquire an expert on the subject matter of the DNA test in this case at bar.

Defense Atty Tristan Shaffer failed to have an expert testify in open court as to how much alcohol and or other drugs were in the applicants bloodstream and the victim.

The Supreme Court held that medical record of the applicant is part of the discovery Evidence which cannot be denied, which will be in violation of 5th and 14th Amendment U.S.C.A. for the prosecution to conceal physical evidence if her DNA is in violation ((Brady Evi)). The applicant did not waive her right to appeal her guilty plea. The applicant was denied a right to confront the medical opinion, being that she was charged with DUI absent any medical expert testimony, in open court.

The State violated the S.C.R. Crimp rules of pretrial matters 1,2 paragraphs (A)(B) action on the warrant and preliminary hearing within (10) ten days after arrest. The applicant could have appeared or atty. or both the applicant was denied a preliminary hearing. There is No Valid Waiver showing the signature of the applicant waiving her rights to a preliminary hearing and No Valid Waiver of Rights showing that she waived her rights to appeal her guilty plea conviction. Applicant was denied Discovery Documents; the medical of the victim and applicant's CDC, DNA, Toxology report was (Limine out of court). Arrestin officer video camera recording was also Limine out of court. Confrontation of the witness was denied.

57
IN TIME CANCELED
Filed CP 8th Jnd Cir Greenwood, SC
2020 APR 6 AM 10:47

The (applicant) states the following facts on the merits of this (P.C.R.) claim

Ground(1)

Prosecution atty. in acting over this case revoked the rules of the court pursuant to article 6

Clause 2 to the U.S. const. amendment he can be stripped of the court and immunity is not granted to them for failing to correct an act they knew or should have known in relations to the disposition of the warrant and delayed defect of indictment.

Denial of indictment

Denial of preliminary hearing

Depriving the applicant of due process of law guaranteed to her by the U.S. constitution.

Ground 2)

The (applicant) did not wave her rights to appeal guilty plea.

The guilty plea was enter invalid

Ground (3)

breach of guilty plea agreement

(4) The defense Atty. Tristan Shaffer conspired with the solicitor to deprived the (applicant) of preliminary hearing, discovery evidence and failed to provide an expert opinion to testify in open court about (applicant) CBC, DNA, & toxicology medical records in lieu of failing to show the arresting officer body camera showing that a alcohol test was preformed and all other issues relating to the arrest.

The discovery evidence was kept from the (applicant). Defense Atty. prejudiced the applicants case and deprive the applicant of due process and failed to file an appeal.

CLOCK IN TIME CANCELLED

Filed CP 8th Ju
2020 MAR 15 11:47

State of South Carolina

Court of Common Pleas

County of ~~Greenwood~~ ^{Lawrence}

2020-CP-

Tara Ann Mahan

Motion For A
Writ of Mandamus
Affidavit of Service

- VS -

The State

The above captioned (applicant) hereby moves upon the Court for a Writ of Mandamus to order the Clerk of Court to Stamp, file and date the P.C.R. Claims and the statement of fact and Exhibit A, the (applicants) brief.

The (applicant) states that the clerk of Court return her (P.C.R. Claim and exhibits) without placing the Clerk of Court official stamp and Seal on the P.C.R. claim in lieu of failing to give a docket number for the P.C.R.

Quoting → Tool, ET'AL Appellate Practice in South Carolina, P.129, Citing → Wilben-V-Long, AS S.C.R.A.P Rule 77 A Writ of Mandamus is order A Administrative official, to conduct a duty in which he/she has been assigned to do

Respectfully
Submitted,

Tara Mahan

March 2nd, 2020

Clerk of Court
Chastity Copeland



Telephone
864-942-8546

Greenwood County Courthouse
528 Monument Street – Room 114 – Greenwood, SC 29646

March 6, 2020

Tara Ann Mahan

This PCR will need to be filed in Laurens County. That the county your charges are from, even though you may have plead guilty in Greenwood County, the correct jurisdiction for your PCR is Laurens.

Thanks
Common Pleas Clerk
Greenwood County Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

Tara Mahan, SCDC #294750

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Case No.: 2020-CP-30-0283

RETURN

The State (Respondent), making its Return to the application for Post-Conviction Relief filed on March 16, 2020, would respectfully show this Court:

I. Procedural History

Tara Mahan (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Laurens County Clerk of Court. During its September 2018 term, the Laurens County Grand Jury indicted Applicant for possession of methamphetamine, first offense (2019-GS-30-1404) and felony DUI resulting in death (2019-GS-30-1402). Tristan M. Shaffer, (Counsel) represented Applicant. Former Deputy Solicitor Owen Warren Mowry, Jr., of the Eighth Circuit Solicitor's Office, prosecuted the case. On October 17, 2019, Applicant pleaded guilty as indicted before The Honorable Frank R. Addy, Jr. Judge Addy sentenced Applicant to twenty-two years' imprisonment for the felony DUI charge and a concurrent term of three years' imprisonment for the drug charge. Applicant did not appeal his conviction or sentence.

II. Current Application

In his application for post-conviction relief, Applicant alleges he is being held in custody

unlawfully for several reasons, which Respondent interprets as the following:

1. Ineffective Assistance of Counsel
 - a. "Counsel failed to put on the record to Judge Addy that a plea agreement was entered with Judge Hocker for 10-15 years."
 - b. Failure to ensure that Applicant had a preliminary hearing
 - c. "Counsel failed to put on the record that Applicant did not have a preliminary hearing."
 - d. Counsel failed to acquire an expert regarding the DNA evidence
 - e. Counsel failed to acquire an expert regarding Applicant's alcohol and drug levels at the time of the crime.
2. Prosecutorial Misconduct
 - a. Brady Violation

As requested relief, Applicant seeks a new trial. Attached to this Return and incorporated by reference are the records of the Laurens County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the PCR application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III. Response to Allegations of Ineffective Assistance of Counsel

Applicant asserts several allegations of ineffective assistance of counsel. 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 "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, 466 U.S. 668. First, Applicant must prove 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). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. 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 (1985).

With respect to Applicant’s allegation that Counsel was ineffective for ensuring that Applicant received a preliminary hearing, Respondent submits this allegation is without merit as a matter of law. There is no constitutional right to a preliminary hearing. State v. McClure, 277 U.S. 432 (1982); State v. Keenan, 278 S.C. 361 (1982). Furthermore, a preliminary hearing shall not be held if the defendant is already indicted by a grand jury. Rule 2(b), SCRCrimP; see also State v. Hawkins, 310 S.C. 50 (Ct. App. 1992). Applicant was indicted for the above-referenced charges by the Laurens County Grand Jury during its September 2018 term. Accordingly, this allegation is without merit.

With respect to Applicant’s remaining allegations of ineffective assistance of counsel, Respondent submits Applicant can satisfy neither requirement of the Strickland test for any of his allegations of ineffective assistance of counsel. However, these allegations of ineffective

assistance of counsel probably raise questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. Response to Allegation of Prosecutorial Misconduct

Applicant also alleges a Brady¹ violation. Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 268 (1993). A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) that the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)). Respondent submit this argument is without merit. However, this allegation 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).

VII. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. *Pro se* filings will not be considered at the

¹ Brady v. Maryland, 373 U.S. 83 (1963).

PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to Love v. State, Op. No. 27921 (S.C. Sup. Ct. filed Oct. 2, 2019) (Shearouse Adv. Sh. No. 39 at 14), or, alternatively, the State will request a continuance in the matter. See Love, at 24 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

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

VIII. Response to Any and All Other Allegations

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

IX. Request for an Evidentiary Hearing

WHEREFORE, having made its return, Respondent requests that an evidentiary hearing be held on the allegations of ineffective assistance of counsel and prosecutorial misconduct.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BRIANNA L. SCHILL
Assistant Attorney General

By: s/ Brianna L. Schill
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

August 5, 2020

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

Tara Mahan, #294750

Applicant,

v.

State of South Carolina

Respondent,

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Case No.: 2020-CP-30-0283

Affidavit of Service by Mail

CLERK OF COURT
AUG 13 11 02 AM '20
LYNN H. LANCASTER

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

Ashley A. McMahan, Esquire
McMahan & Taylor, Attorneys, LLC
Post Office Box 5501
West Columbia, South Carolina 29169

DATED this 5th day of August, 2020.


John Grzymalski
Legal Assistant for Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOR THE 8 th JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	Case No.: 2020-CP-30-00283
Tara Mahan, #294750,	)	
	)	
Applicant,	)	AMENDED POST-CONVICTION
	)	RELIEF APPLICATION
v.	)	
	)	
State of South Carolina.	)	
_____	)	

The Applicant, by and through her undersigned attorney, hereby amends her PCR application filed on March 18, 2020, to add the following:

Applicant requests that she be permitted to amend her PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See Simpson v. Moore*, 367 S.C. 587, 627 S.E.2d 701 (2006); *see also Love v. State of South Carolina*, 428 S.C. 231, 834 S.E.2d 196 (2019); SCRCP Rule 15 (b).

Respectfully submitted,



ASHLEY A. MCMAHAN, ESQUIRE

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ATTORNEY FOR APPLICANT

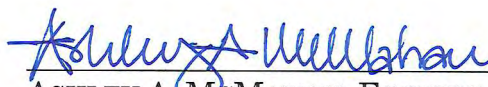
November 18, 2022

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Zachary Jones
Assistant Attorney General
zacharyjones@scag.gov

This 18th Day of November, 2022.



ASHLEY A. MCMAHAN, ESQUIRE
Attorney for Applicant

1

2 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
3) FOR THE EIGHTH JUDICIAL CIRCUIT
4) 2020-CP-30-00283
5)
6 COUNTY OF LAURENS)

5

6 TARA A. MAHAN,)

7 Applicant,)

8) TRANSCRIPT OF RECORD

9 vs.)

10 STATE OF SOUTH CAROLINA,)

11 Respondent)

11

12

November 30, 2022

13

Abbeville, South Carolina

14

15 B E F O R E:

16 HONORABLE R. SCOTT SPROUSE, JUDGE

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

18 Ashley A. McMahan, Esquire
Attorney for the Applicant

19

20 T. Cruise Mitchell, Esquire
Attorney for the State

21

22

23

Lisa G. Amick
Official Court Reporter

24

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E X H I B I T S

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1 MR. MITCHELL: May it please the Court?

2 THE COURT: Yes, sir.

3 MR. MITCHELL: This is the post-conviction relief
4 matter of Tara Mahan v. State, case number 2019-CP-30-283 [sic]
5 out of Laurens County. Cruise Mitchell on behalf of the State
6 of South Carolina. Applicant is present and represented by her
7 counsel, Ashley McMahan. Applicant was indicted at the
8 September 28th term of the Laurens County Grand Jury for
9 possession of methamphetamine, case number 2019-GS-30-1404, and
10 felony DUI resulting in death, case number 2019-GS-30-1402.
11 Applicant was represented by Tristan Shaffer, Deputy Solicitor
12 Owen Warren Mowry, Jr., of the Eighth Circuit Solicitor's
13 Office prosecuted the case. On October 17th, 2019, Applicant
14 pleaded guilty as indicted before the Honorable Frank R. Addy,
15 Jr. Judge Addy sentenced Applicant to 22 years imprisonment
16 for the felony DUI charge and a concurrent term of 3 years
17 imprisonment for the possession of methamphetamine charge.
18 Applicant did not appeal. Applicant timely commenced this PCR
19 action on March 16th, 2020. The State made its return and
20 motion for a more definite statement filed on August 5th, 2020.
21 And at this time, I'll turn it over to Ms. McMahan.

22 MS. MCMAHAN: Judge, at this time the Applicant calls
23 Tara Mahan.

24 THE COURT: Okay.

25 CLERK: Do you swear or affirm that the testimony

1 that you give the Court will be the truth?

2 MS. MAHAN: Yes, ma'am.

3 CLERK: You may be seated.

4 DIRECT EXAMINATION

5 BY MS. MCMAHAN:

6 Q Would you please state your full name for the record?

7 A Tara A. Mahan.

8 Q And did you file this PCR petition?

9 A Yes, ma'am.

10 Q And understanding the conversations that we've had, if
11 your relief is granted, we'd just basically start over from the
12 beginning, do you understand that?

13 A Yes, ma'am.

14 Q And you still want to go forward?

15 A Yes.

16 Q Okay. Who was your attorney on the DUI that you were in?

17 A Tristan Shaffer.

18 Q Okay. So was he your appointed attorney, retained?

19 A He was a public defender.

20 Q Okay. How many times would you say you met with him?

21 A In person, two, two times and then the third time was
22 right before Court.

23 Q And were you in the detention center the whole time?

24 A Yes, ma'am.

25 Q Did you ever go up for a bond or anything?

1 A I did. I went up for a bond in June, right when it
2 happened and then I went for another bond in December the
3 following year.

4 Q Okay. Was it denied both times?

5 A Yes.

6 Q Okay. So when you said you were once before Court, were
7 you about to have a trial on this or were you planning a guilty
8 plea or what was going on with that?

9 A I was going to do a guilty plea. I asked for a guilty
10 plea.

11 Q Okay. So you never really, you never really wanted a
12 trial, you were always just trying to see what kind of guilty
13 plea you could get?

14 A Yes.

15 Q Okay. And did you and Mr. Shaffer talk about that, how
16 you didn't want to go to trial, that you wanted a guilty
17 plea?

18 A Yeah, we did. I, actually I asked him, like, do you think
19 it would best to go to trial, and he, he told me, well, they
20 have witnesses, evidence and it was up to me. And I know I, I
21 was driving without a license, and I fell asleep driving and I,
22 I was under the influence of marijuana.

23 Q Okay. So his conversations with you, and don't let me put
24 words in your mouth or anything, his conversations with you
25 was, like, hey, we got some pretty strong evidence against you

1 so if you went to trial, did he tell you you probably wouldn't
2 be very successful at trial?

3 A Well, he, he didn't say I wouldn't be, but he said it was
4 under my discretion of what I wanted to do ---

5 Q Okay.

6 A --- and I told him it was best for me to take a
7 plea.

8 Q I got you. Okay. And then when you guys were talking
9 about plea offers and stuff like that, what was he talking
10 about with you about that?

11 A Oh, he had, he said what, he was going to go to the
12 solicitor or to the Judge or whatever he did and however they
13 do that, and he said, what, what would you feel comfortable
14 doing. I said anywhere from, like, 5 to 7 or 7, like, to 11,
15 and he went, and he must have exchanged that information that I
16 wanted, and he come back to me with a guilty plea of 7 to, I
17 mean, 11 to 14 years that the Judge had told the solicitor he
18 would give me.

19 Q Okay. So before you were supposed to plead guilty, I
20 guess, had they gone back and talked to the Judge?

21 A I, I'm not sure.

22 Q Okay. So but he came back and said this is kind of what
23 the Judge was saying?

24 A Yes.

25 Q Okay. But it's kind of weird because you were

1 starting your plea offer in one county, your plea in one
2 county, right, and then you moved to a different one?

3 A Right. It was in Newberry County, I believe. That's
4 where I originally had my hearing that day and I went there and
5 that, that's when I believe the family showed up and the Judge
6 dismissed himself from the case because he knew my victim's
7 family and he couldn't try it.

8 Q So you get to Newberry and you were supposed to be in
9 front of Judge Hocker, right?

10 A Correct.

11 Q And then Hocker realizes that he knows the family really
12 well?

13 A Yes.

14 Q So he recused himself, right?

15 A Yes.

16 Q And so did you go somewhere else later that
17 day?

18 A I did. We came to Greenwood County, we stopped in Laurens
19 County to drop an inmate off that was with me, we dropped him
20 off in Laurens County and then we came to Greenwood, and I got
21 seen, well, it was pretty late in the evening, I was shocked
22 that they seen me that late, but ---

23 Q So who ultimately ended up taking your guilty plea, what
24 Judge did you end up going in front of?

25 A Judge Addy.

1 Q Okay. So you're in, Judge Addy, Greenwood later that
2 afternoon?

3 A Yes.

4 Q Okay. And so you ended up doing your guilty plea in front
5 of Judge Addy, what, so what happened then? Let me back up.
6 When you were going to have your guilty plea in front of Judge
7 Addy, what did you think you were, the range was that you were
8 going to get?

9 A Well, I thought I was still going to get 11 to 14 and then
10 after I got there, I was pulled into a room by Mr. Shaffer, and
11 he told me that the Judge knew I had the guilty plea and he
12 took the case that day because the other Judge had asked him to
13 or asked him if he would and he said he would. And so I had
14 all these people, my family and stuff, and then the, my
15 victim's family was there and, you know, that's a lot of
16 driving, we had to go from county to county, and so, he asked
17 if I would like to go ahead and go with it, to have him
18 try my case or I could just wait. And so I go to Court and
19 I've been waiting already 18 months in the county to do it,
20 so I was anxious and I was ready to plea. And I had asked
21 him if it was the same Judge that denied my bond and he
22 said he wasn't sure, that happened at Laurens County, so
23 I went ahead and went with it. And then the Judge came
24 out, I realized it was the same Judge, and I got real
25 nervous.

1 Q But did you guys have a conversation, did he ever say,
2 hey, it's not going to be 11 to 14?

3 A I don't recall that, no.

4 Q So what did you end up getting?

5 A I got 22 years for one charge and then 3 years for the
6 possession charge, and they run them concurrent, so I'm serving
7 22 years.

8 Q Okay. And so after your plea, did you get a chance to
9 talk to Mr. Shaffer about the fact that you just got 22 years?

10 A No. I, I got, we said our goodbyes and he, I, it was,
11 what I recall is that he told me if I wanted to appeal it or
12 something, like, to write him or whatever, but I had to leave
13 the county the next day, I left the next day and went to
14 prison.

15 Q Okay. Is there anything else you want Judge Sprouse to
16 know about your case about Mr. Shaffer?

17 A Just that I feel that the, all the Judges that are in that
18 venue knew my victim's family because my victim's adopted
19 sister, I believe, works at the Laurens County Courthouse in
20 the treasury department, I don't know her exact job title, but
21 I just feel like a lot of Judges ---

22 Q So you feel like they were familiar with that whole thing?

23 A Yes, ma'am.

24 Q Did Mr. Shaffer, he made some sort of presentation for you
25 for your mitigation, right?

1 A Right.

2 Q Okay. Do you recall what was in that?

3 A It was, he made a video of me when I was in jail of what,
4 what had happened and what I feel, like, my apologies, who I
5 was and ---

6 Q So it was just kind of about you and ---

7 A Right.

8 Q --- your background ---

9 A Yeah. And then also, my mother was in it and it, so he
10 went to my mom's house and had her in the video, too.

11 Q And so were you talking about in the video, like, how bad
12 you felt about the whole thing or, or, like, remorse, that kind
13 of stuff?

14 A Yes.

15 Q Okay.

16 MS. MCMAHAN: Answer any questions the attorneys or
17 the Judge have for you, okay?

18 MS. MAHAN: Okay.

19 CROSS EXAMINATION

20 BY MR. MITCHELL:

21 Q Good morning, Ms. Mahan.

22 A Hey, good morning.

23 Q Did you tell the Judge that you understood that a felony
24 DUI resulting in death carries a maximum sentence of 25 years?

25 A Yes, I do. I recall that, I read over my transcripts.

1 Q You recall the Judge saying that he could give you between
2 1 to 25 years, and you responded, yes?

3 A Yes, I do.

4 Q Did you tell the Judge that you were satisfied with your
5 plea counsel's representation?

6 A Yes, I did.

7 Q Did you recall telling the Plea Court that you were
8 completely satisfied with your decision to plead guilty?

9 A I, I was, yes, I recall, I read my transcripts, yes. And
10 I was so nervous that day that there was some things that I
11 just agreed to, I just wanted to be able to get it to the side
12 so I could do what I had to do, you know.

13 Q Did you tell the Plea Court that nobody promised you
14 anything in exchange for your plea?

15 A Yeah.

16 Q Did you intend to go to a jury trial?

17 A I, after I knew that there was witnesses and evidence and
18 my old driving record, I took it best not to, but I had wanted
19 to, but then I didn't want to. Like, it was, it was hard to
20 make the decision to because I was afraid I was going to get,
21 you know, a long time, and I wound up getting that anyway.

22 Q So you were just trying to get a most favorable plea, plea
23 offer?

24 A Yeah, because, yes.

25 MR. MITCHELL: No further questions, Your Honor.

1 THE COURT: Any redirect?

2 MS. MCMAHAN: Just briefly.

3 REDIRECT EXAMINATION

4 BY MS. MCMAHAN:

5 Q So when you said that you were satisfied with Mr. Shaffer
6 at your guilty plea, were you satisfied with him at that time
7 that you said that?

8 A Yeah. At the guilty plea, at the time, yes.

9 Q Are you satisfied with him now?

10 A Not, not entirely. I wish that he would have told me I
11 could appeal it and not, you know, I didn't feel like I could
12 have fought it anyways so that's why I did the PCR.

13 Q So when you, when the Judge was telling you this was the
14 range that you could possibly get, this is what that sentence
15 carried, did you still think based on what you were told in
16 Newberry that you were going to get somewhere between 11 and 14
17 years?

18 A He said that the Judge might take it into consideration of
19 what the other Judge had said he might offer me and so, yes.
20 Yeah, but then when I seen what, that it was actually the same
21 Judge that denied my bond, I just went into panic mode a little
22 bit that day, in Court.

23 Q Okay. Anything else you want Judge Sprouse to know?

24 A No.

25 MS. MCMAHAN: Nothing further from me.

1 THE COURT: Anything from this witness?

2 MR. MITCHELL: Just briefly, Your Honor.

3 **RECROSS EXAMINATION**

4 BY MR. MITCHELL:

5 Q Did your counsel advise you of your right to appeal?

6 A He told me if I wanted to I could write him because I
7 couldn't call him ---

8 Q Okay.

9 MR. MITCHELL: No further questions, Your Honor.

10 A --- and I left, I left the next day, and I didn't have no
11 way to get, to write him. And I didn't have no envelopes or
12 anything like that when I left the county, I had to leave
13 everything there.

14 THE COURT: Thank you, ma'am. You can step down.

15 MS. MCMAHAN: Your Honor, the applicant rests.

16 THE COURT: Okay.

17 MR. MITCHELL: The State calls Tristan Shaffer.

18 CLERK: Raise your hand. Do you swear or affirm the
19 testimony you're about to give the Court will be the truth?

20 MR. SHAFFER: I do.

21 CLERK: You may be seated.

22 **DIRECT EXAMINATION**

23 BY MR. MITCHELL:

24 Q Good morning, Mr. Shaffer.

25 A Good morning.

1 Q How are you?

2 A I'm alright.

3 Q Will you explain the circumstances that caused Ms. Mahan
4 to plea in front of Judge Addy instead of Judge Hocker?

5 A So for at least two or three weeks prior to the plea,
6 we were planning on pleaing in front of Judge Hocker. We had
7 conferenced it with him in Laurens County in chambers. Sort of
8 planning everything around what we're putting in front of
9 Hocker, we had an idea of what he was going to do, a pretty
10 firm, I mean, you know, he obviously didn't prejudge the case,
11 but I pretty much knew exactly what he was going to do, I mean,
12 I wouldn't, you know, bet a whole bunch of money on the fact
13 that he would have gone in a range, and actually I think the
14 range was more like, I think it was like 10 to 17 is what I
15 told her, 10 to 16 or something like that, I think it was a
16 little bit larger range than what she referred to. But I was
17 nearly, you know, not a hundred percent certain, 99 percent
18 certain he was going to go in that range. Taylor, the
19 mitigation for Judge Hocker, planned on doing everything before
20 Judge Hocker, get to Newberry to plea her in front of Judge
21 Hocker because we didn't have another term and then Judge
22 Hocker says, oh, I know one of the victims, I can't do it. So
23 at that point we had an option, I think, of doing it the
24 following week with Judge Keesley or doing it that day with
25 Judge Addy, otherwise it would have gone, it would have been

1 called to trial and I didn't really want to try, call it, I
2 mean, I didn't want to plead her on the morning of trial. So
3 I, I honestly thought that Addy would have been better than
4 Keesley on, you know, on my choices there. I, I probably did
5 tell her that Addy probably wouldn't go much above what Hocker
6 would have done because as a general rule, and I've never done
7 a felony DUI, at that time, I had never done any felony DUI or
8 driving type offense in front of Addy, I was wrong, obviously.
9 I made a bad choice there, I didn't know, but, you know, but I,
10 honestly, I think Judge Keesley, my understanding is he
11 wouldn't have been all that great at that either. So I chose
12 Judge Addy thinking that that was the better of the two, had I
13 known what Judge Addy was going to give her, I absolutely would
14 have said go to trial on it even though they had a really
15 strong case against her.

16 Q You don't know what Judge Keesley would have sentenced her
17 to?

18 A Absolutely not, yeah, because the only offer I ever got
19 was straight up, that was the best offer I ever got. I think
20 that they had an idea of maybe they would do something in a
21 range or, or do a negotiated, but I think the negotiated was
22 worse than what I would have expected, like, it was a high
23 negotiated, probably close to what she ended up getting,
24 probably, I, and I don't know this for sure, but there may have
25 been some discussion of something around 20, negotiated.

1 Maybe a little bit lower than what she got, but not
2 significantly.

3 Q Did you inform Ms. Mahan before that she could receive up
4 to 25 years?

5 A Yeah, I, I did tell her that. I, I also, I did tell her I
6 didn't think Addy would have been much higher than Hocker.

7 Q Did Ms. Mahan ever give you any indication she wanted
8 to proceed to a jury trial?

9 A Actually, I think at some point she did mention, maybe
10 doing that. And during the bond hearing, she actually went in
11 front of a different Judge, it was Judge Burch doing the bond
12 hearing, I remember it pretty clearly. But you know, she did
13 fairly early on, there was an argument to be made about
14 methamphetamine and ultimately hearsay is that methamphetamine,
15 you can't, it's not like alcohol where you can say, okay, above
16 point zero eight, you're generally impaired. There's no real
17 science to back that up with methamphetamine. There's a
18 therapeutic dose that goes up to about 25 milligrams per
19 milliliter of blood, she was about 250, I believe, maybe 260,
20 but that doesn't necessarily mean she's impaired either. It
21 depends on where she was in the cycle, and really, they would
22 have had to rely a lot on data outside of it, it's not like a
23 pharmacologist can say, 260, you're definitely impaired. It
24 depends on how much you use it, where you are, if you're coming
25 up or coming down off of a high. You know, and so they relied

1 partially on stuff that's not scientific, it's subjective type
2 or accident reconstruction type stuff, but she had bad, she had
3 someone following her who called star hp, and said she was
4 driving intoxicated, I mean, she had some really bad things
5 that were coming. And obviously, it's a collision involving,
6 you know, a tractor and her car, and she clearly violated a
7 statute at the time that she did it.

8 Q Did she ask you to file an appeal in this case?

9 A No, not that I recall. I, I do recall her mom calling me
10 and I want to say it, it likely was like right around the 10
11 days or right after the 10 days. I do remember her mom calling
12 me, and I, I told her to file a PCR, you know, I mean, I, I
13 don't do that all the time, but honestly, if there's a way to
14 give her some relief, I'm all for it because, you know, she, I
15 don't think she got what she deserved, I don't think that that
16 was a fair sentencing.

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

18 THE COURT: Cross examination.

19 **CROSS EXAMINATION**

20 BY MS. MCMAHAN:

21 Q Mr. Shaffer, was there any discussion about letting her
22 plead to any other charges like a reckless homicide or anything
23 like that?

24 A No. I mean, they weren't ever going to offer that. If
25 the prosecutor switched it in the middle of it, even the

1 prosecutor who ended up doing the plea at the back end of it
2 covered the plea for him, he wasn't ---

3 Q Who was the first prosecutor?

4 A It was Mowry, Wade did the, I'm pretty sure that Wade was
5 the one who actually put up the plea, but Wade was at least
6 with Mowry and their agreement in putting up the plea.

7 Q So during the plea, what, I know you had conversations
8 with Judge Hocker and you and Taylor kind of brought this
9 to him, and Judge Hocker, I guess, in chambers was he,
10 is that the point where he said somewhere between 10 and
11 16?

12 A Yeah. Well, I think he, he referred to a case where he
13 gave some guy on a motorcycle 12, and he referred to another
14 case that he gave someone higher than that who had a worse,
15 worse record. And he didn't prejudge what he would do, but I
16 mean, you could read between the lines.

17 Q Okay. So then, but to your recollection, he, she was not
18 in front of Judge Addy for bond, it was Judge Burch?

19 A Yeah, she was in front of Judge Burch.

20 Q Okay. And then so when you get to Addy, you don't recall
21 having a conversation with her telling her, like, oh, Addy may
22 go off the rails or outside of this range that we've already
23 discussed?

24 A I, I did tell her that he could go outside the range.

25 Q Okay.

1 A I told her that I didn't think it would be much outside
2 the range. Because, here, here's the thing, if Hocker
3 offered to tell Addy exactly what he was planning, or
4 maybe not exactly what he was planning, I mean, what he was
5 planning on doing, but that was after, I was a little bit
6 afraid of that because I had done a lot of litigation
7 work on it and I hoped that the litigation might get
8 harder, and Hocker, obviously, had not seen the, the litigation
9 stuff before he would have had that conversation with Addy. So
10 I was a little afraid that he may have had something in his
11 mind about what he may have planned on doing and Addy would
12 have done that. So I declined the offer for Judge Hocker to
13 call Judge Addy to, to tell him his range.

14 Q Okay.

15 A Or tell him what he planned on doing or something like
16 that. It was some conversation I had right before we left
17 Newberry to drive to Greenwood.

18 Q Okay. And then the mitigation you're talking about, I
19 think, that's when Ms. Mahan alluded to that earlier, was that
20 the presentation, sort of video that you had made?

21 A Yeah. It was about a 15-minute-long video that had, it
22 was sort of like little documentary type thing of her life and
23 why she got to that point. Really, like, it's sad, I mean, you
24 know, she had a whole lot going on that was not good, you know,
25 it really is sad. You know, she had gotten into a previous

1 wreck, I think she had a traumatic brain injury, I don't know
2 if it was actually diagnosed, I can't recall if it was
3 diagnosed or not, but I mean, she had pretty severe injuries
4 that she had to, like, relearn how to drive, relearn how to do
5 a whole bunch of things. It really is sad, I mean, and
6 obviously, I'll be honest, I like Tara, I don't think that
7 she's where she was prior to that previous wreck where she got
8 really messed up, and I thought that that should have probably
9 mitigated the case a whole lot more than it did.

10 Q So you were showing, like, look, here's kind of the
11 circumstances of her life, but here's how much she had improved
12 and that kind of thing. And that she was remorseful ---

13 A Yeah. I mean, she was so remorseful, she was genuinely,
14 like, I showed that to people and they would be, like, crying
15 and watching, it's really sad, I mean, her life is sad. And
16 she genuinely cares about the victim and the victim's family
17 and she, you know, her family cares and they're sad about it,
18 it's sort of a tragedy, really.

19 Q Okay. Is there anything else Judge Sprouse should know
20 today about Ms. Mahan's case?

21 A I mean, if he can find a way ---

22 MR. MITCHELL: Your Honor, outside the scope.

23 THE COURT: Excuse me?

24 MR. MITCHELL: Outside the scope.

25 THE COURT: Overruled.

1 A That's the only thing I would say. If there is a way to
2 grant relief, I'm all for granting relief.

3 Q Okay.

4 MS. MCMAHAN: Nothing further, Your Honor.

5 THE COURT: Any redirect?

6 **REDIRECT EXAMINATION**

7 BY MR. MITCHELL:

8 Q The plea in front of Judge Hocker was always going to be a
9 straight up plea?

10 A That's correct, yeah. Everything was going to be straight
11 up, they never offered anything other than vague conversations
12 that I thought were higher than what a judge would give her
13 about a negotiated plea, they never actually, I mean, that
14 wasn't actually a firm offer, I don't believe. I'm pretty sure
15 that was not a firm offer, but you know, if, if you come to me
16 on a case that carries 25 and you say, hey, and someone like
17 Tara, it's like, oh, well, we'll get the negotiated 20, 22, or
18 23, whatever the heck they say, I mean, at some point it's not
19 really a negotiation, it's really sort of like that, that's not
20 really any better. I'd rather be straight up in front of most
21 judges than have it negotiated that's 20 plus on a 25-year
22 offense.

23 MR. MITCHELL: No further questions, Your Honor.

24 THE COURT: Anything further for this witness?

25 MS. MCMAHAN: None, Your Honor.

1 THE COURT: Okay. Thank you, Mr. Shaffer.

2 MR. MITCHELL: Nothing further from the State, Your
3 Honor.

4 THE COURT: Alright. Summations? State go first.

5 MR. MITCHELL: Yes, Your Honor.

6 THE COURT: Hold on, I didn't ask. Any reply?

7 MS. MCMAHAN: None, Your Honor.

8 THE COURT: Okay. Go straight into summation.

9 MR. MITCHELL: The State submits that Applicant has
10 not met her burden showing she's entitled to post-conviction
11 relief. Your Honor, this was a straight up plea where Judge,
12 Judge Addy was not bound by any sentencing recommendation.
13 Applicant has failed to establish that there was any sort of
14 sentencing recommendation in this case. Judge Addy on the
15 record informed Ms. Mahan that she could receive up to 25 years
16 in this case. Judge Addy sentenced her to 22 years, so it was
17 within the range. Any misconception Ms. Mahan might have had
18 going into the plea hearing regarding what her sentencing would
19 be, the State would submit that it was procured at the plea
20 hearing when Judge Addy informed the Applicant that she could
21 receive 25 years. Also, Your Honor, under Hill v. Lockhart and
22 under the prejudice prong, to get granted relief, you must show
23 that there was a reasonable probability that she would not have
24 plead guilty. By Ms. Mahan's own admission, she said that she
25 was always intending on pleading guilty and had no interest in

1 going to a jury trial due to the overwhelming evidence by the
2 State. So the State would submit that she fails in that
3 regard. Also, Your Honor, there's a case, Wolfe v. State, 326
4 S.C. 158 where in that case the Defendant's guilty plea was not
5 rendered involuntary by any erroneous advice of counsel about
6 possible reduction in sentence if Defendant pled guilty. And
7 the Court ruled that because in light of the Defendant's
8 acknowledgment during the plea hearing, that he had been made
9 no promises as to his sentence, and there was no sentence
10 recommending, sentence recommendation by any judge. In this
11 case, Judge Addy asked her if any promises were made, she
12 answered in the negative, no. Judge Addy advised her that he
13 could sentence her up to 25 years and she said she understood
14 that. Your Honor, with regard to the mitigation, Mr. Shaffer
15 made a long video with her mother in it, she made apologies,
16 really, anything you could ask in a case like this for
17 mitigation, so she was not prejudiced at all and there were no
18 deficiencies at all in the mitigation. In regard to the
19 appeal, Mr. Shaffer did advise her of her right to an appeal,
20 and Mr. Shaffer said that the Applicant never requested him to
21 file an appeal. So with that being said, Your Honor, the State
22 submits that she has failed to meet her burden showing she's
23 entitled to post-conviction relief.

24 THE COURT: Thank you, Mr. Mitchell. Ms.
25 McMahan?

1 MS. MCMAHAN: Judge, as you heard trial counsel say
2 today that, I mean, he probably told her that Judge Addy may
3 deviate a little bit from what he'd already told her was the
4 possible negotiations. I mean, 6 to 8 years is not a little
5 bit, it's a lot. And also, you know, she's entitled to
6 effective assistance of counsel during plea negotiations and,
7 you know, we have Supreme, US Supreme Court cases that indicate
8 that, that's Lafler versus Cooper and Missouri v. Frye, and
9 also if you check out the State case on Davie v. State, that
10 all references effective assistance of counsel during guilty
11 plea negotiations. So if Ms. Mahan went into Court that day
12 based on what Mr. Shaffer told her, thinking she was going to
13 get somewhere in this range and then ends up, you know, way
14 outside of that, of course she did not go in with eyes wide
15 open with that guilty plea. Also, it was, you know, this was
16 something that was, like, pushed that afternoon, like, let's
17 get this done and get it over with. Now, whether or not the
18 State could prove anything at trial, obviously, that's what she
19 was trying to avoid given that there was somewhat overwhelming
20 evidence, I wouldn't say totally overwhelming since they still
21 would have to prove that meth was under the influence, but you
22 know, that was a choice that she made to avoid trial so that
23 she wouldn't end up with the sentence that she ended up
24 getting. So I would submit that, you know, trial counsel, even
25 if you put all the other issues aside, was ineffective in the

1 plea negotiations with Ms. Mahan and expressing that to her
2 correctly.

3 THE COURT: Thank you, Ms. McMahan. Well, I'm going
4 to read the transcript and the material submitted, I'll take
5 this under advisement and have my law clerk email you. Thank
6 you, counsel.

7 (Whereupon the hearing ended at 10:10 am.)
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1 CERTIFICATE OF REPORTER

2
3
4 STATE OF SOUTH CAROLINA)
5)
6)
7)
8)
9 COUNTY OF LAURENS)

10 I, the undersigned Lisa G. Amick, Official Court Reporter
11 for the Eighth Judicial Circuit of the State of South Carolina,
12 do hereby certify that the foregoing is a true, accurate, and
13 complete transcript of record of all proceedings had and
14 evidence introduced in the trial of the captioned case,
15 relative to appeal, in the County of Abbeville, South Carolina,
16 on the 30th day of November 2022.

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

19
20 October 30, 2023

21 *Lisa Amick*

22 _____
23 Lisa G. Amick

24 Court Reporter

25 My commission expires: June 30th, 2025

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

Tara Ann Mahan, SCDC #294750,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Case No. 2020-CP-30-00283

ORDER OF DISMISSAL

K. MICHELLE SIMMONS
2023 JUN 27 A 9 28
LAURENS COUNTY
CLERK OF COURT

INTRODUCTION

The matter before this Court is an action for post-conviction relief (PCR) commenced by Tara Ann Mahan (Applicant) on March 16, 2020. On November 30, 2022, a hearing into the matter was convened before the Honorable R. Scott Sprouse. Applicant was present and represented by Ashley A. McMahan, Esquire. Assistant Attorney General T. Cruise Mitchell represented the State.

After hearing the testimony at the PCR hearing and upon full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of counsel and involuntary guilty plea are without merit. For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections. During its September 2018 term, the Laurens County Grand Jury indicted Applicant for felony DUI resulting in death (2019-GS-30-01402) and possession of methamphetamine, first offense (2019-GS-30-

01404). Applicant was represented by Tristan M. Shaffer, Esquire. Former Deputy Solicitor Owen Warren Mowry, Jr., of the Eighth Circuit Solicitor's Office prosecuted the case.

On October 17, 2019, Applicant appeared before the Honorable Frank R. Addy, circuit court judge, and pleaded guilty as indicted to felony DUI resulting in death and possession of methamphetamine. Judge Addy sentenced Applicant to twenty-two years imprisonment for felony DUI resulting in death and three years' imprisonment for possession of methamphetamine, with those sentences to be served concurrently. Applicant did not file a direct appeal.

STATEMENT OF FACTS¹

This case arose on June 14th of 2018, in Laurens County. About a half hour before the collision that claimed the life of Wesley Chad Robinson of Laurens, Ms. Liz Ledlow of Greenville was a passenger in a car driven on I-385 by her husband. They observed a four-door Mercury Grand Marquis with a tag number NEN-475 being driven quite slowly but very erratically in the lane of travel on 385 North.

The driving was so bad that Ms. Ledlow's husband reported that he wanted the car behind him, rather than have to deal with what he and Ms. Ledlow perceived as a likely wreck in front of him. Even as their car got past the Mercury, Ms. Ledlow observed the car still swerving back and forth and she called 911 to report it. She described the car in considerable detail, including the tag, and she gave a contemporaneous report of the car's lack of control. She reported that the car left I-385 at mile marker 19.

Highway patrol began looking for the car, but were not able to locate it immediately. A short time later, about ten miles away, a little after 2:00 pm, near the intersection of Fleming Mill Road and Fieldcrest Drive in Laurens County, Mr. Robinson, who was a 29-year old Clemson

¹ The following summarization was taken from the Solicitor's recitation of facts during the guilty plea hearing. (GP. Tr. p. 9 – 15).

graduate, was driving a Kubota tractor with a large mower attachment. He was returning from having mowed a field in preparation for haying and was driving back to the dairy where he was going to park the tractor.

At that same time, Ms. Peggy LeRoy was driving in the opposite lane approaching the tractor. She was prepared to testify that the same Mercury that had been reported by Ms. Ledlow came out of nowhere at a high rate of speed. She was not able to give any estimate as to how fast, but she did believe it was well in excess of the posted 45 miles an hour. She saw the car have an impact with the left rear of the mower, which not only broke the towing bar, causing the mower to separate from the tractor, but also caused the tractor to rollover to the right towards the shoulder. Mr. Robinson was thrown from the driver's seat. The tractor rolled over on top of him, crushing his chest. He died as a result, according to the determination by Dr. Ward. He was prepared to testify that his conclusion was the victim died of extensive blunt force trauma to the chest and to the abdomen resulting in a fracture of the victim's sternum and a separation of mid-thoracic vertebra.

The investigation by MAIT from the Highway patrol found no mechanical problem with the Mercury that would have accounted for the bad driving that had been observed. After striking the tractor mower, the defendant's car then went off the left-hand side of the roadway striking a tree. Ms. LeRoy, who had been coming the opposite direction, stopped her car and got out at once. She indicated that where she parked was probably no more than 50 to 70 feet from the defendant's car as she approached the victim's tractor.

She said that she observed the defendant backing out of the front seat on the passenger side of the car and that the defendant loudly declared several times that she hadn't been the driver and

that the driver had fled. But Ms. LeRoy was prepared to testify that she saw nobody but the defendant in the car. Later, the defendant admitted to law enforcement that she had been the driver.

Ms. LeRoy proceeded to check on Mr. Robinson, but she found no signs of life. Ms. Mahan was arrested for felony DUI at the scene because she exhibited a number of factors that led the officers to believe that she was impaired. At the scene before she was taken to the hospital, a small quantity of marijuana was discovered just outside the car door, along with a glass smoking pipe with suspected meth residue. At the hospital the defendant admitted to the highway patrol trooper that she had smoked both meth and marijuana during the day and turned over to the trooper a quantity of meth that she had on her person. SLED analysis indicated that it was .17 grams.

CURRENT APPLICATION

Applicant timely commenced this PCR application on November 16, 2020. In her application Applicant alleged she was entitled to relief based on the following grounds:

1. Ineffective Assistance of Counsel
 - a. "Counsel failed to put on the record to Judge Addy that a plea agreement was entered with Judge Hocker for 10-15 years."
 - b. Failure to ensure that Applicant had a preliminary hearing.
 - c. "Counsel failed to put on the record that Applicant did not have a preliminary hearing."
 - d. Counsel failed to acquire an expert regarding the DNA evidence.
 - e. Counsel failed to acquire an expert regarding Applicant's alcohol and drug levels at the time of the crime.
2. Prosecutorial Misconduct
 - a. *Brady* violation

At the hearing, Applicant proceeded only on the claim 1(a). Before this Court are the records of the Laurens County Clerk of Court regarding the underlying convictions, the plea transcript, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the records of this post-conviction relief action.

STANDARD OF REVIEW

An applicant may seek PCR upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. §17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. (Emphasis added.) *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

The reviewing court applies the two-part test outlined in *Strickland v. Washington* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687-88; *accord. Cherry v. State*,

300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that “[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable” (citation and internal quotation marks omitted)).

The applicant has the burden of establishing both deficiency and prejudice in order to be entitled to relief. *Hughes v. State*, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRPC. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of “were outside the wide range of competence” demanded of attorneys in criminal cases. *Strickland*, 466 U.S. at 688. To prove prejudice, the applicant must establish “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Id.* Significantly, “the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Id.* at 696.

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel. *See Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel’s performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel’s representation fell below an objective standard of reasonableness demanded of attorneys in

criminal cases. *Hill*, 474 U.S. at 58–59; accord *Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the competence demanded of attorneys in criminal cases." *Hill*, 474 U.S. at 56.

The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." *Id.* Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." *Id.* at 59. The applicant must further convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372.

This inquiry "focuses on a defendant's decisionmaking" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 582 U.S. 357, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in

this action incorporated by way of the State's return, this Court proceeds to the claims raised in the application and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

A. Failure to Inform Court of Plea Agreement

Applicant contends Counsel was ineffective for failing to put on the record to Judge Addy that a plea agreement was entered with Judge Hocker for 10-15 years. This Court disagrees, and finds Applicant failed to present sufficient evidence or testimony indicating that any such agreement existed. This Court finds credible and persuasive the testimony of Counsel, who presented well-recollected testimony of Applicant's plea negotiations and proceedings.

1. PCR Testimony

Applicant testified that after considering the strength of the State's evidence with Counsel, including witness statements and toxicology results, she decided to pursue a guilty plea. Applicant testified Counsel left the decision of whether to proceed to trial or plead guilty up to her. Applicant testified she was initially scheduled to plead guilty in front of Judge Hocker; however, he recused himself due to a relationship with the victim's family. Following the recusal, Applicant testified she was transported to Greenwood County Courthouse to plead guilty in front of Judge Addy. Applicant testified she does not remember if Counsel informed her she was pleading to a recommended sentencing range of 10 – 15 years. Applicant testified Counsel presented mitigation during the guilty plea hearing, including a video wherein Applicant explained her background and expressed remorse. Applicant testified she was sentenced to 22 years' imprisonment.

On cross examination, Applicant testified she informed the plea court she understood she could receive a 25-year sentence. Additionally, Applicant testified she informed the plea court

nobody promised her anything in exchange for her plea and she was satisfied with her attorney. Applicant again testified she never wished to proceed to trial.

Counsel testified they initially arranged for Applicant to plead guilty in front of Judge Hocker. Counsel testified he met with Judge Hocker who seemed receptive to a sentencing range of 10 – 16 years; however, Judge Hocker was clear he was not going to pre-judge the case. In the course of these discussions, Counsel testified Judge Hocker referred to two cases he presided over involving felony driving under the influence: one of which he sentenced the defendant to 12 years, and another where he sentenced defendant to something greater. Based on this conversation, Counsel testified he surmised that Judge Hocker would sentence Applicant somewhere in the range of 10 – 16 years. However, Counsel testified any plea in front of Judge Hocker was always going to be a straight up plea. Counsel testified Judge Hocker recused himself based on a relationship with one of the victims.

Following the recusal, Counsel testified they were left with three options: plead guilty in front of Judge Addy, plead guilty in front of Judge Keesley, or proceed to trial. Applicant proceeded to a guilty plea hearing in front of Judge Addy. Counsel testified Applicant received a negotiated plea offer of 20 years; however, Counsel thought Applicant would receive a lesser sentence if she pleaded straight up so the offer was rejected. During the plea hearing, Counsel testified he presented a 15-minute mitigation video which included Applicant's background, her show of remorse, and referred to a prior injury Applicant suffered which potentially could have caused traumatic brain injury. Mr. Shaffer noted that he had made this mitigation specifically anticipating they would be in front of Judge Hocker.

Counsel further testified that he did tell the Applicant that Judge Addy probably wouldn't go much higher than the range anticipated by Judge Hocker. Counsel noted that he had not done a

DUI plea in front of Judge Addy before and had he known Judge Addy was going to give the Applicant 22 years, he probably would have recommended his client go to trial instead of pleading guilty.

2. Discussion

"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. *Id.* at 755; *see also United States v. Smith*, 440 F.2d 521, 528–529 (7th Cir.) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750–53, or by increasing the risks of punishment on those who do not. *Alford*, 400 U.S. at 37 (1970); *cf. United States v. Cox*, 464 F.2d 937, 942 (6th Cir. 1972) ("It is well established that a guilty plea is not rendered invalid because

it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment.” (citing *Brady*, 397 U.S. 742)). An applicant who enters a plea on the advice of counsel may “only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the [applicant] would not have pled guilty, but would have insisted on going to trial.” *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing *Hill*, 474 U.S. 52).

The voluntariness of a guilty plea, however, “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.” *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). In evaluating 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. *Wolfe v. State*, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997); cf. *Rayford v. State*, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant’s claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant’s claim his lawyer misadvised him).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one’s accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant “must be aware of 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).

This Court finds Applicant’s allegation Counsel was ineffective for failing to put on the record to Judge Addy that a plea agreement was entered with Judge Hocker for 10 – 15 years is without merit. Although Applicant testified Counsel entered into a plea agreement with Judge Hocker, Counsel’s credible testimony demonstrates no such plea agreement ever formally existed. Counsel merely speculated, based on informal conversations with Judge Hocker, occurring very early on in the process, that Applicant would be sentenced somewhere in the range of 10 – 16 years. Counsel credibly testified the plea in front of Judge Hocker was always going to be a straight up plea. Counsel presented a comprehensive mitigation video, but despite his best efforts Applicant was sentenced to 22 years’ imprisonment. While Mr. Shaffer did testify that he probably told the Applicant that Judge Addy probably wouldn’t go much higher than Judge Hocker, there was no formal plea agreement and Counsel did not erroneously advise Applicant of the consequences of her plea, this Court finds Counsel was **NOT DEFICIENT**.

Even if this Court were to find Counsel deficient, Applicant’s claim would still fail as a matter of law for two reasons. First, the allegation fails under the prejudice prong of *Hill*. When an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, [s]he would not have pleaded guilty and would have insisted on going to trial.” *Hill*, 474 U.S. at 59. Applicant twice testified she never intended on going to trial. Thus, Applicant could not possibly be prejudiced by any alleged deficiency.

Second, even supposing Applicant was under the impression she would be sentenced to 10 – 15 years, her allegation still lacks merit. “Defendant’s knowing and voluntary waiver of statutory

or constitutional right must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *State v. Ray*, 310 S.C. 431, 427 S.E.2d 171 (1993). Any possible misconceptions regarding sentencing on a defendant's part can be "cured by the colloquy during the actual guilty plea hearing." *Wolfe v. State*, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997). At the outset of the guilty plea hearing, the Solicitor informed the plea court there is no recommendation in this case. (GP. Tr. p. 4). The plea court then engaged in the following colloquy with Applicant:

The Court: Ms. Mahan, they tell me that you want to plead guilty to felony DUI and possession of methamphetamine. Do you understand that the felony DUI charge carries a minimum of one year and a maximum of 25 years?

The Defendant: Yes, I do, your Honor.

The Court: The meth charge carries up to three years. Do you understand that whatever sentence you receive is entirely up to me? I could give you anything between 1 to 25 years, do you understand that, ma'am?

The Defendant: Yes, I do.

(GP. Tr. p. 6 – 7).

Although Applicant was hoping for a lighter sentence by pleading guilty, "wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made." *Wolfe v. State*, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997). Applicant was aware of the charges and consequences of her plea as evidenced from the record of the guilty plea hearing. Furthermore, the plea court thoroughly explained to Applicant the Constitutional rights she would be waiving by pleading guilty. (Gp. Tr. pp. 17 – 20). Thus, this Court finds Applicant's guilty plea was knowing, voluntary, and intelligent.

Accordingly, Applicant's claim pertaining to Counsel's failure to inform the Court of a plea agreement and subsequent reliance on that agreement is **DENIED**.

VII. CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant her application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. This Court finds Applicant freely, knowingly, and voluntarily pleaded guilty. Therefore, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

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

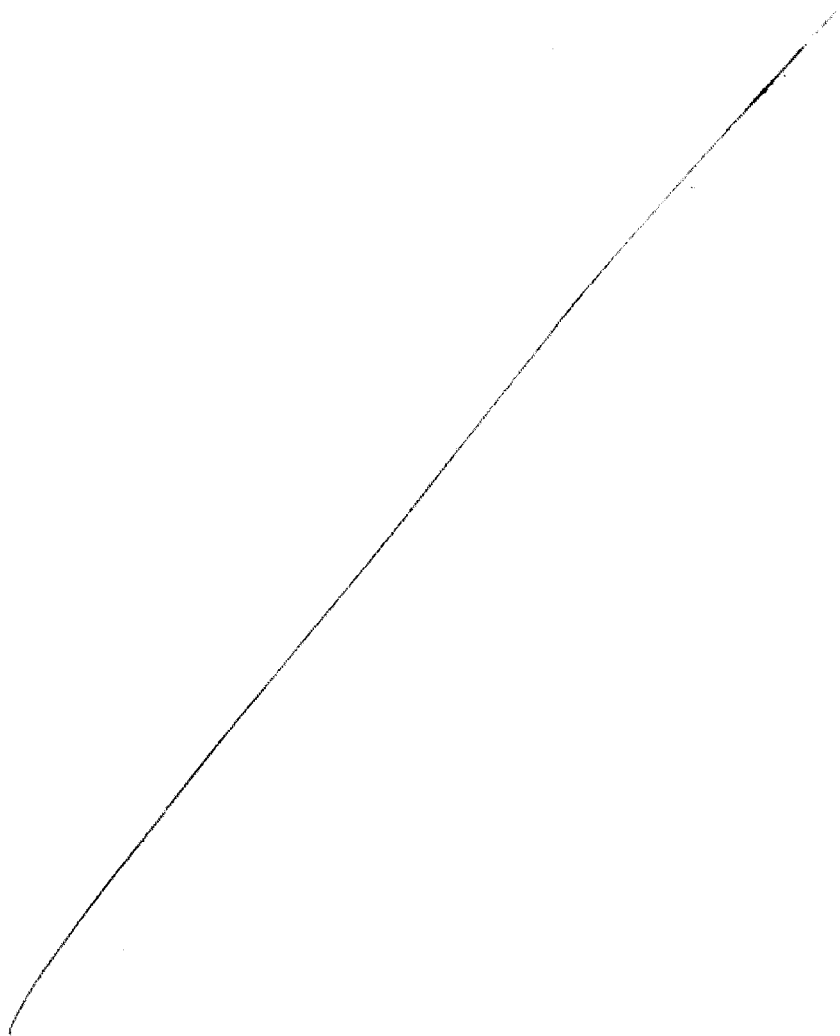
IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 23 day of June, 2023.


 R. SCOTT SPROUSE
 Presiding Judge
 Eighth Judicial Circuit

Waltham, South Carolina



RSS