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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to Spartanburg County
Alex Kinlaw, Jr., Plea Judge
G.D. Morgan, Post-Conviction Relief Judge

Appellate Case No. 2023-000473

JODI STAPLETON, SCDC # 335793,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S STATEMENT OF ISSUE ON CERTIORARI

Did the PCR court err in finding that Petitioner's plea was knowingly and voluntarily entered where Petitioner pled guilty because she was told by defense counsel that the State would seek life without parole (LWOP) even thought Petitioner did not have the requisite prior convictions for LWOP notice?

RESPONDENT'S COUNTERSTATEMENT OF ISSUE ON CERTIORARI

Did the post-conviction relief court properly find that Petitioner—who repeatedly testified she pled guilty to avoid harsher sentencing following likely convictions at trial—failed to demonstrate her guilty plea was involuntarily entered due to improper advice regarding potential sentences she may receive if she proceeded to trial on her litany of indictments when the record firmly established Petitioner entered knowing, voluntary, and intelligent guilty pleas with the advice of competent counsel who diligently represented her, including by providing her with proper and accurate advice regarding the potential sentences for each offense and that the solicitor had indicated that the State may seek life without parole should she not elect to resolve all of her various pending indictments in a global plea proceeding?

STATEMENT OF THE CASE

Petitioner Jodi Stapleton, a habitual felon with a record spanning more than a decade[1], is currently incarcerated within the South Carolina Department of Corrections serving an aggregate sentence of twenty-two years of imprisonment following her guilty pleas to a variety of offenses stemming from multiple distinct incidents that occurred over a ten-month period from October of 2017 to July of 2018.[2]

On October 31, 2017, Petitioner distributed 0.22 grams of crack cocaine to a confidential informant working with the Spartanburg County Sheriff's Office. (App. 16). This controlled purchase was captured on audio and video recording devices. (App. 16).

A week later, on November 6, 2017, Petitioner distributed 0.12 grams of crack cocaine to an undercover informant working with the Spartanburg County Sheriff's Office. (App. 16). This controlled purchase was again captured on audio and video recording devices. (App. 16).

On November 9, 2017, deputies with the Spartanburg County Sheriff's Office executed a search warrant at the home that Petitioner shared with her boyfriend Jurrell Thompson and their newborn child. (App. 17). Deputies recovered marijuana, three sets of digital scales, a loaded .40 caliber handgun with an extended magazine, and an extra .40 caliber magazine. (App. 17).

Thereafter, Petitioner was arrested, taken into custody of law enforcement, and

[1] Petitioner's lengthy prior record includes a 2007 conviction for possession with intent to distribute marijuana from Georgia, a 2007 conviction for possession with intent to distribute a controlled substance from Georgia, two separate 2009 habitual traffic offender convictions, a 2009 driving under the influence conviction, two separate convictions of possession with intent to distribute cocaine, a 2011 conviction for simple possession of marijuana, a 2011 conviction for giving false information to police, a 2013 conviction for shoplifting, and six separate 2016 convictions for habitual traffic offender. (App. 29-30).

[2] While Petitioner has elected only to challenge her guilty pleas and convictions for her three attempted murder charges, all of the pending offenses she faced at the time of her global plea are directly relevant to the issue before this Court, and, accordingly, are addressed here within.

subsequently released on bond. (App. 17). Petitioner failed to appear for a court appearance as required pursuant to her bond conditions and a bench warrant was issued for her arrest. (App. 17). On July 18, 2018, deputies with the Spartanburg County Sheriff's Office received information from Petitioner's bondsman that Petitioner and her boyfriend Jurrell Thompson were headed to a specific location to obtain money that Thompson's mother was wiring to them. (App. 17-18). Deputies activated their blue lights and attempted to intercept a vehicle being driven by Petitioner and with Thompson in the front passenger seat. (App. 18). Rather than complying with law enforcement commands and stopping the vehicle, Petitioner drove the vehicle to the side of the road to allow Thompson to emerge from the vehicle's sunroof with an AK-style rifle. (App. 18-19). With Thompson and his weapon in position to fire upon the deputies, Petitioner drove off and led deputies on a vehicle chase through residential and business areas of Spartanburg County, all while Thompson fired his rifle at the deputies in pursuit. (App. 18-19). During this chase, Petitioner positioned her vehicle to afford Thompson a better shooting position as he continued to fire at the deputies. (App. 18-19). Petitioner eventually stopped the vehicle and both her and Thompson fled on foot. (App. 19). Petitioner was apprehended a short time later at a friend's home hiding in a bed. (App. 19-21). Thompson, who was shot in the leg, was apprehended and told officers he was trying to kill the deputies. (App. 21). Later analysis by the State Law Enforcement Division (SLED) revealed that multiple bullets struck the deputies' vehicles, including areas where deputies were seated in the vehicles. (App. 21-22). As a result of this incident, both Petitioner and Thompson were charged with three counts of attempted murder.[3]

On July 24, 2018, investigators with the Spartanburg County Sheriff's Office received a

[3] Thompson was sentenced to thirty years of imprisonment for each count of attempted murder. Records for Jurrell Keith Thompson, Spartanburg County Seventh Judicial Circuit Public Index, https://publicindex.sccourts.org/Spartanburg/PublicIndex/PISearch.aspx

call from a man who stated that he had rented an apartment and furnishings for Petitioner to help her out. (App. 22-23). The man stated that he went to the apartment after Petitioner's arrest and found that it had been emptied of all the rented furniture. (App. 23). Petitioner claimed that she did not know what happened to the furniture, but jail calls between Petitioner and Thompson's mother revealed that Petitioner instructed Thompson's mother to take the furniture and sell it to raise money for attorney's fees. (App. 23)

As a result of all of these incidents, the Spartanburg County Grand Jury indicted Petitioner for three counts of attempted murder, unlawful neglect of a child (2018-GS-42-657), two counts of distribution of cocaine base–second offense, and breach of trust between $2,000 and $10,000. (App. 4-5).[4] The Seventh Circuit Solicitor's Office prosecuted the cases.

Petitioner retained the services of Robin Clark File, Esquire, to represent her on all of these indictments. Following plea negotiations with the State, Petitioner elected to forgo her right to jury trials on these various offenses and instead enter a global plea to resolve all pending charges (along with the dismissal of two related drug charges) in exchange for a recommendation of concurrent sentences on all charges but no recommendation as to the sentence imposed. (App. 4-5, 9). On November 21, 2019, Petitioner, alongside counsel, appeared before the Honorable Alex Kinlaw, Jr., circuit court judge, for a plea hearing. During a thorough plea colloquy with Judge Kinlaw, Petitioner affirmed she was indeed guilty of all charges, understood the possible sentences for each offense, understood her right to a jury trial on each offense, understood her constitutional rights, and wished to waive these rights to enter a global plea to resolve all pending charges simultaneously. (App. 4-16, 24-25). Petitioner also affirmed that she was satisfied with the services

[4] Records for Jodi Stapleton, Spartanburg County Seventh Judicial Circuit Public Index, https://publicindex.sccourts.org/Spartanburg/PublicIndex/PISearch.aspx

of her attorney, had not been threatened, coerced, or promised anything to enter her guilty pleas, and was entering her pleas freely and voluntarily. (App. 4-16, 24-25). Following presentations by the State and the defense, Judge Kinlaw accepted Petitioner's guilty pleas to all offenses and sentenced her to the following terms of imprisonment: twenty-two years for each count of attempted murder, five years for child neglect, ten years for distribution of cocaine base-second offense, and five years for breach of trust with fraudulent intent. (App. 46-47). Pursuant to plea negotiations with the State, all sentences were to be served concurrently and two drug charges were dismissed. (App. 4-5, 9, 46-47). Petitioner, though counsel, filed a motion to reconsider her sentences, which was denied by Judge Kinlaw on March 27, 2020. (App. 49-50). Petitioner did not seek direct appellate review of her plea or sentences. (App. 72-91).

On April 2, 2020, Petitioner then initiated this underlying post-conviction relief action with the filing of her *pro se* application, challenging only her three attempted murder convictions and sentences. In this application, Petitioner asserts claims of ineffective assistance of counsel and involuntary guilty plea, including, "the guilty plea was involuntary because it was coerced by attorney with threats from prosecutor for sentence enhancement (life without parole) if jury [trial] ensued." (App. 59). Petitioner repeatedly stated she was seeking a sentence reduction, time served, or a lesser charge than attempted murder so that she could receive a lesser sentence. (App. 51-60). Rodney Richey, Esquire, was thereafter appointed by the Spartanburg County Clerk of Court to represent Petitioner pursuant to Re: Appointment of Counsel in Post-Conviction Relief Cases before the Circuit Court (S.C. Sup. Ct. Order filed Oct. 6, 2008) and Rule 71.1(d), SCRCP (providing for appointment of counsel only where there is a question of law or fact which necessitates a hearing).

In response to the application, Respondent filed a return and motion for a more definite

statement, requesting Petitioner file an amended return with specific allegations and supporting facts to comply with filing requirements as set forth in the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-50, and the Rule 8(a) of the South Carolina Rules of Civil Procedure. Attached to this return and before the post-conviction relief court were the records from the Spartanburg County Clerk of Court regarding Petitioner's underlying general sessions matter, the transcripts from Petitioner's guilty plea proceeding, Petitioner's inmate records from the South Carolina Department of Corrections, and the records from this current action. Petitioner did not file an amended application or otherwise amend her application.

An evidentiary hearing on this action was convened April 19, 2022, before the Honorable G.D. Morgan, circuit court judge. Petitioner appeared along with counsel Richey. Respondent was represented by Assistant Attorney General Chelsey Marto of the South Carolina Attorney General's Office. The post-conviction relief court heard testimony from Petitioner and her plea counsel.

Regarding the claim before this Court that her guilty plea was involuntarily entered based on erroneous advice, Petitioner testified that she elected to plead guilty rather than proceed to trial because she was "under a lot of stress" (App. 87). She elaborated that she was advised that the State *may* serve notice of its intent to seek life without parole if she did not plead guilty:

> There was paperwork saying that if I go, I think the solicitor was gonna serve LWOP papers on me. And it was discussions that, you know, maybe I should just take the plea so I would make it out of jail one day, and I just didn't -- I -- I took the plea. And I really didn't wanna take the plea because I just feel like I should've never pled guilty to something that I shouldn't have been convicted on.

(App. 87-88). She later testified that counsel informed her that the State was not willing to make any plea offers. (App. 90). On cross-examination, she again stated that counsel advised her that the State was *considering* serving her with notice of intention to seek life without parole if she

proceeded to trial and was convicted:

> Because the solicitor sent my lawyer a paper stating that - - I can't remember the exact situation of the crimes, I think it was that I would be LWOP'ed if I was found guilty.

(App. 92). She testified that counsel advised her that she would likely be convicted at trial and explained a hand-of-one, hand-of-all theory to her. (App. 94-95).

Plea counsel testified that he discussed whether proceed to trial versus pleading guilty "extensively" with Petitioner. (App. 96-97). He elaborated:

> There had been some discussions with - - from the solicitor about *possibly* seeking a LWOP sentence or - - and everything. And, also, I was telling her that I didn't think that - - in my opinion, I didn't think that she had a very good chance at trial and that she stood to get a whole lot more time if she went to trial on this than what she ended up getting, so -- . . . versus the plea so . . .

(App. 97-98) (emphasis added). Counsel specifically stated that the State had not yet served Petitioner with its notice of intention to seek life without parole but that the solicitor indicated she investigating Petitioner's eligibility for a life sentence pursuant to Section 17-25-45, which he conveyed to Petitioner. (App. 98). He elaborated that the case was on the trial docket a few times, that there was not any favorable discovery or possible defenses that would have been helpful during a trial on her attempted murder indictments, and that he conveyed this to Petitioner. (App. 98-101).

At the conclusion of the hearing, the court took the matter under advisement. The court later denied the application and subsequently issued a written order filed on March 6, 2023, finding Petitioner failed to establish any constitutional violations or deprivations entitling her to relief and denying the application with prejudice pursuant to S.C. Code Ann. § 17-27-80. In this order, the court specifically found that Petitioner was not threatened or coerced into pleading guilty, specifically rejecting her claim that she was coerced into pleading based on a fear of a life sentence

if she proceeded to trial. Petitioner then initiated this instant appeal.

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the post-conviction relief court's factual findings and will uphold them if there is probative evidence in the record to support them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The post-conviction relief court properly found that Petitioner—who repeatedly testified she pled guilty to avoid harsher sentencing following likely convictions at trial—failed to demonstrate her guilty plea was involuntarily entered due to improper advice regarding potential sentences she may receive if she proceeded to trial on her litany of indictments because the record firmly established Petitioner entered knowing, voluntary, and intelligent guilty pleas with the advice of competent counsel who diligently represented her, including by providing her with proper and accurate advice regarding the potential sentences for each offense and that the solicitor had indicated that the State may seek life without parole should she not elect to resolve all of her various pending indictments in a global plea proceeding.

On appeal, Petitioner asserts that her guilty plea was coerced by inaccurate sentencing advice from counsel, and accordingly, that her guilty plea was involuntary. Specifically, Petitioner asserts that she was not eligible for a life without parole sentence because she did not have any prior convictions for "serious" or "most serious" offenses, and, therefore, it was "patently untrue" that she risked facing a life sentence if she proceeded to trial rather than pleading guilty. See PWC 5 ("Petitioner's prior record consisted of no serious or most serious offenses.") and 8 ("[Petitioner] was told she would face LWOP and therefore never get out of prison if she went to trial, which was patently untrue."). Petitioner asserts that because counsel did not inform her that she was ineligible for a life without parole sentence based on a lack of prior qualifying convictions, he provided her with "erroneous legal advice" that she avers induced her plea and rendered it involuntary. (PWC 5). However, this claim fails as a matter of law, as it is indisputable that Petitioner faced a very real risk of a life without parole sentence pursuant to S.C. Code Ann. § 17-25-45 based on the succession of pending "serious" and "most serious" indictments she faced at the time of her global plea. The post-conviction relief court properly found that Petitioner—who repeatedly testified she pled guilty to avoid a harsher sentence following a likely conviction at trial—failed to establish any constitutional deprivations entitling her to post-conviction relief

based on a claim that her guilty plea was involuntarily entered due to improper advice regarding potential sentences she may receive if she proceeded to trial (or trials) on her litany of indictments. Demonstrating that fact, the record firmly established Petitioner entered knowing, voluntary, and intelligent guilty pleas with the advice of competent counsel who diligently represented her and accurately advised her. And, defense counsel's accurate advice to Petitioner included correct statements about: (1) the potential sentences for each offense Petitioner was facing; and (2) the solicitor's intention to potentially seek a mandatory life without parole sentence should she not elect to resolve all of her various pending indictments in a global plea proceeding, which would allow her to avoid consecutive convictions in multiple trials that would render Section 17-25-45 applicable. Accordingly, counsel did not provide erroneous advice to Petitioner and this claim fails as a matter of law. The post-conviction relief court properly determined Petitioner's pleas were voluntary. This Court should deny certiorari.

"[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).

"The longstanding 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." Gustine v. State, 325 S.C. 123, 127, 480 S.E.2d 444, 446 (1997) (citing Hill v. Lockhart, 474 U.S. 52, 56 (1985) (citations omitted)). However, courts have consistently refused to "hold that 'a guilty plea is compelled and invalid under the Fifth Amendment whenever

motivated by the defendant's desire to accept the certainty or probability of a lesser penalty rather than face a wider range of possibilities extending from acquittal to conviction and a higher penalty authorized by law for the crime charged.'" Gustine, 325 S.C. at 128, 480 S.E.2d at 446 (quoting Brady v. United States, 397 U.S. 742, 751 (1970)).

To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him or her and the consequences of his or her plea. Brady, 397 U.S. at 748. 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. 1971) (Stevens, J., dissenting) (explaining 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).

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, to knowingly and voluntarily plead guilty, the defendant must have a full understanding of the consequences of the plea, including the nature and crucial elements of the offense(s); the maximum and any mandatory minimum penalty; and the nature of the constitutional rights being waived. Pittman, 337 S.C. at 599, 524 S.E.2d at 624.

However, 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." United States v. Cox, 464 F.2d 937, 942 (6th Cir. 1972) (citing Brady, 397 U.S. 742). The standard 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." Id. at 31.

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." State v. Ray, , 437, 427 S.E.2d 171, 174 (1993); see also Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his or her guilty or the trial judge "usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." Dover v. State, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the trial judge "does not have to direct the defendant's attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea." Carter v. State, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

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, 326 S.C. at 165, 485 S.E.2d at 370; 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).

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). As with all post-conviction relief actions, it is the applicant who bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of involuntariness of a plea or ineffectiveness of counsel is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Here, Petitioner did not and could not meet her burden of proof and, accordingly, the post-conviction relief court properly rejected this claim.

Initially, Petitioner's claim that she is entitled to relief because she was not eligible for a life without parole sentence is incorrect as a matter of law. Here, Petitioner was indicted for a litany of "serious" and "most serious" offenses stemming from multiple distinct incidents that occurred over a ten-month period from October of 2017 to July of 2018. Included in these indictments, Petitioner was indicted for three counts of attempted murder, which is explicitly enumerated as a qualifying "most serious offense" for enhancement purposes as a recidivist offender pursuant to S.C. Code Ann. § 17-25-45. See S.C. Code Ann. § 17-25-45(C)(1) (listing attempted murder as a "most serious offense"). Additionally, Petitioner was indicted for two separate and distinct counts of distribution of cocaine base-second offense—an offense that carries a penalty of up to thirty years of imprisonment and, accordingly, is a qualifying "serious offense" for enhancement purposes as a recidivist offender pursuant to S.C. Code Ann. § 17-25-45. See S.C. Code Ann. § 44-53-375(B)(2) ("[F]or a second offense, the offender must be imprisoned for not less than five years nor more than thirty years, or fined not more than fifty thousand dollars,

or both.") and S.C. Code Ann. § 17-25-45(C)(2)(a) (defining "serious offense" as "any offense which is punishable by a maximum term of imprisonment for thirty years or more which is not referenced in subsection (C)(1)."). Accordingly, Petitioner was indeed potentially facing the possibility of a life without parole sentence pursuant to Section 17-25-45 based on her pending charges, as the State could have elected to dispose of Petitioner's various separate and distinct offenses stemming from separate and distinct incidents (and would have had to, if Petitioner elected to proceed to trial on these separate and distinct criminal acts), resulting in qualifying convictions for the notice of intent to seek life without parole pursuant to Section 17-25-45. Specifically, the State could have disposed of each of Petitioner's distribution of cocaine base-second offense indictments[5], both qualifying "serious" offenses, and, thereafter, served her with its intention to seek life without parole for her attempted murder indictments, all of which are qualifying "most serious" offenses. Similarly, the State could have elected to dispose of Petitioner's three qualifying "most serious" attempted murder indictments first, and then disposed of one of Petitioner's distribution of cocaine base-second offense indictments second, and, thereafter, served her with its intention to seek life without parole before disposing of her final qualifying offense—the remaining distribution of cocaine base-second offense. Regardless of the sequence that the State called her various indictments to trial, it is abundantly clear that Petitioner did indeed face the risk of being eligible for a life without the possibility of parole sentence

[5] It is worth noting that the State nolle prossed ***two*** of Petitioner's drug indictments, including one of the qualifying distribution of cocaine base-second offense, that occurred on a different date from the distribution of cocaine base-second offense indictment to which she pled guilty, as a result of her acceptance of a global resolution of all pending charges. This dismissed offense unquestionably was unrelated to the distribution of cocaine base-second offense to which she pled guilty, as both indictments were described on the record at Petitioner's plea hearing as two separate incidents occurring on two different dates. By accepting the State's global plea offer, Petitioner avoided a conviction for at least one serious offense by the dismissal of this distribution of cocaine base-second offense charge.

pursuant to Section 17-25-45 based on her pending charges.

Thus, Petitioner very well could have been eligible for life without parole had she not accepted the State's offer to globally resolve all of her pleas for a recommendation of concurrent sentences and the dismissal of two drug offenses. Accordingly, it was a correct statement of law for the solicitor to tell Petitioner's counsel that the State was considering invoking sentencing pursuant to Section 17-25-45. Counsel was likewise correct in advising Petitioner that the State was considering pursuing a life sentence if she elected not to resolve all of her pending charges simultaneously. Moreover, counsel did not err failing to tell her she was not eligible for a life sentence, which itself is a misstatement of law and would have been erroneous advice. Counsel properly advised Petitioner of possible outcomes regarding her various charges, including a very real possibility that the State would be serve her with notice of its intention to seek life without parole pursuant to Section 17-25-45. Petitioner was not coerced with false information that induced her plea, but rather, Petitioner was properly advised by her counsel and elected to resolve all of her pending indictments at once to avoid the threat of a harsher sentence if she proceeded to trial. This decision, albeit a tough decision but one that was based on proper and correct legal advice, does not render Petitioner's plea involuntary.

Despite this, Petitioner argues that because her "prior record consisted of no serious or most serious offenses . . . She was, unquestionable, not eligible for an LWOP sentence." (PWC 5). Petitioner's misguided argument that she was not eligible for a life without parole sentence seems to be premised on a faulty belief that the State could not have disposed of her current, pending charges at different times in order to accumulate the necessary strikes for Section 17-25-45 to be applicable. This is an incorrect statement of law, as the State was free to dispose of Petitioner's indictments separately, as Petitioner's "serious" distribution of cocaine base-second offense

indictments and three "most serious" attempted murder indictments were based on three distinct incidents that occurred more than ten months apart. Simply stated, there is nothing that would have prevented the State from resolving Petitioner's various sets of charges one by one, thereby rendering Petitioner eligible for a life without parole sentence pursuant to Section 17-25-45. See S.C. Code Ann. § 17-25-45(F) ("For the purpose of determining a prior or previous conviction under this section and Section 17-25-50, a prior or previous conviction shall mean the defendant has been convicted of a most serious or serious offense, as may be applicable, on a separate occasion, prior to the instant adjudication. There is no requirement that the sentence for the prior or previous conviction must have been served or completed before a sentence of life without parole can be imposed under this section."). Petitioner's faulty logic that she was ineligible for a life sentence fails as a matter of law.

Petitioner doubles down on this flawed argument by erroneously asserting that "Petitioner's case is on all fours with Ray v. State." (PWC. 8). In Ray, this Court reversed the denial of post-conviction relief based on a finding that Ray's guilty plea armed robbery was involuntary based on clearly erroneous advice that he would be subject to a mandatory life without parole sentence pursuant to Section 17-25-45 if he was convicted at trial. Ray v. State, 303 S.C. 374, 401 S. E. 2d 151 (1991). Crucial to the Ray court's decision was that Ray was not eligible for a life sentence pursuant to Section 17-2545. Id. Additionally, Ray was affirmatively told that he would receive a life sentence if he proceeded to trial and was convicted, not that such a sentence was a possibility. Id. These are two important factors that are not present in Petitioner's case, making it readily distinguishable from Ray. First, as discussed above, Petitioner could have been eligible for a life without parole sentence pursuant to Section 17-25-45 based on her pending "serious" and "most serious" offenses stemming from separate and distinct incidents that would

have been tried separately had she not elected to enter a global guilty plea to resolve all her pending indictments. It is inaccurate to state that Petitioner was not eligible for a life without parole sentence, as she faced a very real threat of such a sentence based solely on the pending indictments at the time of her plea. Petitioner's repeated assertions that her *prior* record did not contain the requisite qualifying offenses fails to recognize that her *pending* indictments could result in a life sentence pursuant to Section 17-25-45. Second, Petitioner was not advised by counsel that she would be automatically sentenced to life without parole if she went to trial, differing from the scenario in Ray. Here, the uncontroverted testimony from both Petitioner and counsel was that the State was considering the applicability of Section 17-25-45 and a possible life sentence should Petitioner not accept an offer for a global resolution of her litany of offenses for a concurrent sentence. These are crucial distinctions that make it abundantly clear that Petitioner's case is ***not*** "on all fours with Ray v. State" despite her assertions.

Petitioner repeatedly testified her plea was induced by her strong desire to avoid a sentence of life without parole, which again, is a difficult but nonetheless constitutional choice that Petitioner knowingly, intelligently, and freely made with the advice of competent counsel who accurately advised her as to potential sentences she faced. The record from both the plea and the evidentiary hearing establish Petitioner was represented by competent counsel who was sufficiently prepared, properly investigated Petitioner's case, and provided reasonable and prudent advice to Petitioner. The record clearly establishes Petitioner's plea was knowing, voluntary, and intelligent. Ample evidence supports these findings. The post-conviction relief court properly denied relief and this Court should deny certiorari.

CONCLUSION

Because the post-conviction relief court properly determined Petitioner failed to establish any constitutional depravations, this Court should deny certiorari. Should this Court grant certiorari, Respondent requests the opportunity to fully brief the issues raised.

Respectfully submitted,

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