

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County

Honorable Walton J. McLeod, IV, Circuit Court Judge

CARLY BLUMENSTEIN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000932

APPENDIX

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

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IN THE COURT OF GENERAL SESSIONS
46TH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,

vs.

CASES NO. 2019-GS-46-07734, -0735
2018-GS-46-07792, -8594

CARLY MARIE BLUMENSTEIN,
Defendant.

10

11 HEARING BEFORE: THE HONORABLE PAUL M. BURCH

12 DATE: January 14, 2020

13 LOCATION: York County Courthouse
14 Moss Justice Center

15 TRANSCRIBED BY: KYMBERLEE M. WILLIAMS, CSR/RPR
16

17 APPEARANCES:

18

19 FOR THE STATE OF SOUTH CAROLINA

20 AUSTIN NEWMAN, ESQ.
ASSISTANT SOLICITOR
21 YORK COUNTY SOLICITOR'S OFFICE
1675 YORK HIGHWAY, #1A
22 YORK, SOUTH CAROLINA 29745

23

24 FOR THE DEFENDANT
CHRISTOPHER A. WELLBORN, P.A.
142 OAKLAND AVENUE, SUITE C
25 ROCK HILL, SOUTH CAROLINA 29730

1

I N D E X

2

3

Proceedings

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End of proceedings

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Certificate of Reporter

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PROCEEDINGS

1 * * *
TUESDAY, JANUARY 14, 2020
2 * * *

3 YORK, SOUTH CAROLINA

MS. NEWMAN: Your Honor, This is Carly

Blumenstein. She is represented by Chris Welborn of the
York County Bar.

She is pleading to indictments 2018-GS-46-07792 for
possession of methamphetamine, first offense; -8594 for
possession of methamphetamine, first offense; -0734 for
trafficking in methamphetamine, 28 grams or more, first
offense; -0735, for possession with intent to distribute
heroin, first offense.

The negotiation in this case is 15 years. She has
359 days of credit. The State is fine with the two
possessions just being time served.

THE COURT: You are 25 years of age?

THE DEFENDANT: Yes, sir.

THE COURT: From Denver, North Carolina?

THE DEFENDANT: Yes, sir.

THE COURT: Have you discussed these charges
with your attorney?

THE DEFENDANT: Yes, sir.

THE COURT: Are you satisfied with his help?

THE DEFENDANT: Yes, sir.

THE COURT: Has he answered all of your
questions?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Are you ready to go forward with
3 the plea?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: What is your education?

6 THE DEFENDANT: I have a Bachelors of Science
7 in biochemistry.

8 THE COURT: Where did you last work?

9 THE DEFENDANT: I worked at the Palmetto
10 Clinic back in 2018.

11 THE COURT: Do you understand that some of
12 these pleas that have been negotiated, so that gives me
13 very little wiggle room to accept or reject the offer?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you want to go forward and
16 plea?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. The first one I have
19 come to is 2019-734, which alleges trafficking in
20 methamphetamine, 28 grams or more, first offense. You
21 could receive up to 25 years and a \$50,000 fine. The
22 minimum sentence, I believe, is seven years on that.

23 The INDICTMENT alleges that on January 24, 2019, in
24 York County, you did traffic methamphetamine, a violation of
25 our drug laws. How do you plead to that offense?

1 THE DEFENDANT: Guilty.

2 THE COURT: You also understand that that is
3 classified as a violent and serious offense?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you have any questions about
6 that?

7 THE DEFENDANT: No, sir.

8 THE COURT: You have discussed that with your
9 attorney?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: The next indictment indictment,
12 2019, -735, possession with intent to distribute
13 heroin, first offense. That is a negotiated plea. On
14 the same date in York County, January 24, 2019,
15 possession with intent to distribute heroin. You could
16 receive up to 15 years and \$25,000 fine on that.

17 How do you plead?

18 THE DEFENDANT: Guilty.

19 THE COURT: Next indictment I come to is 2018,
20 (-7792, possession of methamphetamine, first offense,
21 which you could receive three years and a \$5,000 fine
22 on. That is occurring on or about October 3, 2018, in
23 York County, South Carolina.

24 How do you plead to that?

25 THE DEFENDANT: Guilty.

1 THE COURT: The last indictment is 2018,
2-8594, possession of methamphetamine, first offense.
3You could receive up to three years and \$5,000 fine.
4Occurring in York County, on or about November 16,
52018.

6 How do you plead to that one?

7 THE DEFENDANT: Guilty.

8 THE COURT: Any questions about these charges?

9 THE DEFENDANT: No, sir.

10 THE COURT: Do you understand by entering
11these plea, you are waiving your jury trial rights?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: If you had a trial, the State
14would have to prove you guilty beyond a reasonable
15doubt and convince 12 jurors unanimously of your guilt.

16 Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You would be able to cross-examine
19the State's witnesses and put up your own defense
20witnesses. You could testify in your own defense, or
21you could invoke your Fifth Amendment right to remain
22silent. If you elected not to testify, it couldn't
23being held against you, and I would even tell the jury
24that.

25 Do you understand that you are presumed innocent

and that presumption of innocence would stay with you
throughout any trial until the jury convicted you?

THE DEFENDANT: Yes, sir.

THE COURT: If a jury did convict you, you
would have a right to appeal as long as you file a
notice of appeal within ten days of the sentencing.
The same thing applies to a guilty plea.

Those are your basic rights. Any questions?

THE DEFENDANT: No, sir.

THE COURT: You understand them?

THE DEFENDANT: Yes, sir.

THE COURT: You do not want a trial?

THE DEFENDANT: No, sir.

THE COURT: You are satisfied with the
attorney's help and services?

THE DEFENDANT: Yes, sir.

THE COURT: He has answered all of your
questions?

THE DEFENDANT: Yes, sir.

THE COURT: If there is any problem with his
representation, I need to hear about it now.

THE DEFENDANT: No, sir.

THE COURT: Has anybody promised you anything
or threatened you in any way in order to get you to
plea?

1 THE DEFENDANT: No, sir.

2 THE COURT: Are you entering these pleas of
3 your own free will and accord?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You don't suffer from any mental
6 or physical issues that could be affecting your
7 understanding?

8 THE DEFENDANT: No, sir.

9 THE COURT: You are not under the influence of
10 any substances today?

11 THE DEFENDANT: No, sir.

12 THE COURT: Are you entering into these pleas
13 of your own free will and accord?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: I finds the pleas is freely,
16 voluntarily, and intelligently entered into.

17 She has had the service of a competent attorney
18 with whom she says she is satisfied.

19 The Court will accept her plea.

20 Solicitor.

21 MS. NEWMAN: Your Honor, as to the first
22 possession of meth, on October 3, 2018, the defendant
23 was a passenger in a vehicle that was stopped on Eden
24 Terrace in York County for failure to use a turning
25 signal. The defendant was the owner of the vehicle and

gave consent for a search. Officers found. 07 grams of meth in her purse.

As to the other possession, on November 13, 2018, she was stopped on Hanley House Lane in York County, for crossing over a center line several times. She consented to a search of her purse. Officers found a syringe containing a brown liquid that field-tested positive for meth.

As to the last two charges, on January 24, 2019, the defendant and her co-defendant were stopped on I77 near the 84 mile marker in NORTH county for going 70 in a 60. The canine gave a free-air sniff of the vehicle and alerted on the passenger's-side door. Officers found a black computer bag in the front passenger's floor board, which contained three plastic bags with 120.53 grams of meth inside. They also located three digital scales, packaging materials, and other drug paraphernalia. They then located a Mountain Dew hide-a-can containing .19 grams of heroin, and .22 grams of meth, 19 dosage units of Alazopram, and six dosage units of clonazepam. She claimed ownership of the drugs. Her co-defendant admitted to being involved in the deal that she set up to sell the drugs. He informed the officers that it was the third deal that they had done together.

She does not have a record.

THE COURT: Mr. Welborn.

1 MR. WELLBORN: Your Honor, those are the
2conceded facts. I have worked with Carly actually
3since December of 2018. She has a long history --
4which I have shared with the solicitor -- not only of
5drug abuse but other types of abuse, physical and other
6types of abuse as a result of relationships. She has
7been in and out of psyche therapy for several years,
8including one suicide attempt.

9 Her parents, who are extraordinarily supportive,
10have been with her and with me throughout this process for
11quite some time. At this point, this is where we are in
12terms of the negotiations if she went to trial.

13 I have explained it to her, and she is fully aware
14of the evidence that could be presented. So this is why we
15are here today.

16 THE COURT: All right.

17 What would you like to say?

18 THE DEFENDANT: I want to say I am sorry to my
19family. I have made a lot of mistakes in my past. I
20am ready to take responsibility for my actions. I hope
21that I can come out stronger on the other end of this
22experience. I know that I can do all things through
23Christ which strengthens me.

24 THE COURT: All right. Let's go to the
25trafficking. What is the negotiated plea? Tell me

what you negotiated. .

2 MS. NEWMAN: Fifteens years on the trafficking
3 and the possession with intent to distribute heroin,
4 first offense.

5 THE COURT: How many days of credit?

6 MS. NEWMAN: 359.

7 THE COURT: All right. On indictment 2019,
8 -734, trafficking in methamphetamine, the sentence is
9 15 years in the State Department of Corrections.
10 Credit for 359 days.

11 2019, -735, possession with intent to distribute
12 heroin, the sentence is 15 years the State Department of
13 Corrections with 359 days credit, concurrent.

14 On 2019, -7792, possession of methamphetamine, the
15 sentence is time served, con current.

16 -8594, possession of methamphetamine, the sentence
17 is time served, concurrent.

18 MS. NEWMAN: Thank you, Your Honor.

19 MR. WELLBORN: Thank you, Your Honor.

20 (At 9:48 a.m. the proceedings were concluded.)

21 * * *

22 END OF TRANSCRIPT

23

24

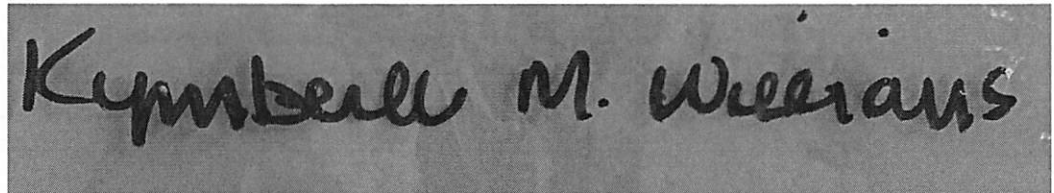
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CERTIFICATE OF REPORTER

I, Kymberlee M. Williams, Certified Shorthand Reporter/Registered Professional Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings and evidence introduced in the hearing of the captioned case, relative to appeal, in the Circuit Court for Sumter County, South Carolina, on the 14th day of January, 2020.

I do further certify that I am not related, of counsel or of interest to any party hereto.

This, the 5th day of April, 2021.

A rectangular box containing a handwritten signature in black ink. The signature is written in a cursive style and reads "Kymberlee M. Williams".

Kymberlee M. Williams, CSR/RPR

FORM 5
FILED-RECEIVED

STATE OF SOUTH CAROLINA

COUNTY OF YORK

CARLY M. BLUMENSTEIN #382062
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2020 NOV 16 AM 11:39

2020-08-46-03437

APPLICATION FOR

POST-CONVICTION RELIEF

CERTIFIED TRUE COPY
2020 NOV 23 AM 10:11
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Graham Correctional Institution, 4450 Broad River Rd., Columbia, SC 29210
2. Name and location of Court which imposed sentence York County Court of General Sessions, 2 Congress St S Ste 101, York, SC 29745
3. Name(s) of co-defendant(s) (if any) Nicholas Blaine Wilson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2019A4610200143 - PWID Heroin - 1st offense
 - (b) 2019A4610200139 - Trafficking in meth or cocaine base - 28 g or more, but less than 100 g - 1st offense
 - (c) 2018A4610400083 - Possession of less than one gram of methamphetamine - 1st

(d) 2018A4620302343 - Possession of less than one gram of meth.or cocaine base. -

1st offense

5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) January 14, 2020 - 15 years cfts 359 days concurrent
 - (b) January 14, 2020 - 15 years cfts 359 days
 - (c) January 14, 2020 - Time Served concurrent cfts 359 days
 - (d) January 14, 2020 - Time Served concurrent cfts 359 days
6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty X
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) Because I took a plea and didn't go to trial.
 - (b) _____
 - (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
 - (b) Involuntary guilty plea
 - (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
 - (b) _____
 - (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
 - (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

no

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

(a) your arraignment and plea? yes

(b) your trial, if any? _____

(c) your sentencing? yes

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

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

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

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

i. Christopher A. Wellborn, Esq. 142 Oakland Av., Rock Hill, SC 29730

ii. _____

iii. _____

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

i. plea and sentencing

ii. _____

iii. _____

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

New Trial

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

no

STATE OF SOUTH CAROLINA

)

VERIFICATION

)

County of RICHLAND

)

I, Carly M. Blumenstein, 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.

Carly Blumenstein

SWORN to and subscribed before me this 3rd
day of November, 2020

Crystal Jones (L.S.)
Notary Public

My Commission Expires: July 22nd, 2026

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

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

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

Carly Blumenstein
Applicant

SWORN or affirmed to and subscribed before me this
3rd day of November, 2020

Crystal Jones
Notary Public

My Commission Expires: July 22nd, 2026

FILED-RECEIVED

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF YORK FOR THE SIXTEENTH JUDICIAL CIRCUIT

DAVID HAMILTON
Carly Blumenstein#382062, C.C.C.P. & C.S.
Applicant YORK COUNTY, SC Case No.: 2020-CP-46-03437

v.) RETURN AND MOTION FOR MORE
) DEFINITE STATEMENT
State of South Carolina,) (Counsel Already Appointed)
Respondent.)

In response to application for post-conviction relief filed by Applicant Carly Blumenstein on November 16, 2020, and received by Respondent, the State of South Carolina, on December 4, 2020. Respondent makes the following return and requests an evidentiary hearing to resolve the claims as set forth in Applicant's application for post-conviction relief¹. In support of this return, and motion for a more definite statement, Respondent respectfully shows the Court:

I. Procedural History

Applicant is currently confined in the South Carolina Department of Corrections (SCDC). During its September 2019 term, the York County Grand Jury indicted Applicant for Trafficking Methamphetamine (2019-GS-46-00734), and Possession with Intent to Distribute Heroin (2019-

¹ Respondent's return was due on February 2, 2021. *See* Rule 12(a), SCRCPP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.") However, due to an exceptionally heavy workload, Respondent was unable to complete a return in this time. However, now having completed the return required in this matter and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent requests this Court accept its return as timely filed. *See* S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

GS-46-00735). Applicant was represented by Christopher A. Wellborn, Esquire. Assistant Solicitor Austin Newman of the Sixteenth Circuit Solicitor's Office prosecuted the case.

On January 14, 2020, Applicant appeared before the Honorable Paul M. Burch, circuit court judge and, pursuant to negotiations between the State and Applicant, plead guilty as indicted to Trafficking Methamphetamine, and Possession with Intent to Distribute Heroin. Additionally, pursuant to negotiations between the State and Applicant, Applicant waived presentment to a grand jury, and plead guilty to two counts of Possession of Methamphetamine (2018-GS-46-07792, -08594). In accordance with the negotiations, Judge Griffith sentenced Applicant to imprisonment for a term of fifteen years each for Trafficking Methamphetamine, and Possession with Intent to Distribute Heroin, and time served for both counts of Possession of Methamphetamine. All sentences were to run concurrent, and Applicant was given credit for 359 days time served. Applicant did not appeal her conviction or sentence.

II. Facts Giving Rise to the Conviction

Trafficking Methamphetamine and Possession with Intent to Distribute Heroin (2019-GS-46-0734, -0735)

On January 24, 2019, Applicant and a co-defendant were stopped on Interstate 77 for speeding. Tr. p. 9. During the traffic stop, police canines conducted a free-air sniff of the vehicle and alerted to a substance on the passenger's side door. Tr. p. 9. Inside the car police found a black computer bag on the floor of the passenger's side of the car which contained three plastic bags with 120.53 grams of methamphetamine, along with three digital scales, packaging materials, and other paraphernalia. Tr. p. 9. Police additionally found a Mountain Dew can containing .19 grams of heroin, and .22 grams of methamphetamine, nineteen doses of Alazopram, and six doses of Clonazepam. Tr. p. 9. Applicant claimed ownership of the drugs. Applicant's co-defendant

informed police he was involved in a drug deal Applicant had arranged, and that this was the third drug deal that Applicant and her co-defendant had conducted together. Tr. p. 9.

Possession of Methamphetamine (2018-GS-46-07792)

On November 3, 2018, Applicant was a passenger in a vehicle that was stopped on Eden Terrace in York County for failure to use a turn signal. Tr. p. 8. Applicant was the owner of the vehicle, and gave consent for a search of the car. Tr. p. 8-9. During the search, police found .07 grams of methamphetamine in Applicant's purse. Tr. p. 9.

Possession of Methamphetamine 2018-GS-46-08594)

On November 13, 2018, Applicant was stopped by police on Hanley House Lane in York County for crossing over the center line multiple times. Tr. p. 9. Applicant consented to a search of her purse, during which, officers found a syringe containing methamphetamine. Tr. p. 9.

III. Current Application

Applicant commenced this PCR action on November 16, 2020. Applicant asserts she is being held in custody unlawfully, alleging:

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea

As requested relief, Applicant is seeking "New Trial."

Attached herewith and incorporated herein are the York County Clerk of Court records regarding the subject conviction, Applicant's SCDC records, the plea transcript, and the records of this PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

IV. Response to Allegations of Ineffective Assistance of Counsel

In her application, Applicant raises a generic claim of ineffective assistance of counsel without any specificity or facts to support such allegations. Accordingly, Respondent addresses

this general allegation and Respondent submits the record establishes Applicant will not be able to prove ant ineffectiveness of counsel as to these claims. However, as set forth below, Respondent requests that Applicant through her counsel, file an amended application with specific grounds for relief so that Respondent may file an amended return specifically addressing all claims.

In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (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*. First, Applicant must prove that counsel’s performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC. 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). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S.

at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”). 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.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he/she would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. *See Blackledge v.*

Allison, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

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

Applicant, in her application for post-conviction relief alleges ineffective assistance of counsel, but has failed to explain with any specificity how she believes Counsel’s performance was ineffective. Therefore, Applicant cannot satisfy either requirement of *Hill*. However, the record likely does not refute or disprove Applicant’s allegations of ineffective assistance of plea counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

V. Response to Allegations of Involuntary Guilty Plea

Applicant alleges her guilty plea was involuntarily entered. However, Applicant has failed to provide any details or evidence in support of these assertions. Respondent contends this allegation is without merit.

“[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). 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. 1971) (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).

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*, 337 S.C. at 599, 524 S.E.2d at 624.

The 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*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); *see generally 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 guilty plea, the plea 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 plea 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).

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*, 345 S.C. at 20, 546 S.E.2d at 419. 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, 458 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). The voluntariness of

a guilty plea “is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984).

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). 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 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.

Surmounting *Strickland*’s high bar is never an easy task, and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” *Lee*, 582 U.S. at ____, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); *cf. Hill*, 474 U.S. at 58 (“[R]equiring a ‘prejudice’ showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel ‘will serve the fundamental interest in the finality of guilty pleas.’”). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977); *see also Jamison v. State*, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so

as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”); *cf. United States v. Broce*, 488 U.S. 563, 569 (1989) (“A plea of guilty and the ensuing conviction comprehend all of the factual and legal elements necessary to sustain a binding, final judgment of guilty and a lawful sentence. Accordingly, when the judgment of conviction upon a guilty plea has become final and the offender seeks to reopen the proceeding, the inquiry is ordinarily confined to whether the underlying plea was both counseled and voluntary. If the answer is in the affirmative then the conviction and the plea, as a general rule, foreclose the collateral attack.”).

Indeed, admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements.” *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); *cf. Blackledge*, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a “formidable barrier in any subsequent collateral proceedings”). “What is at stake in this phase of the case is not the integrity of the state convictions obtained on guilty pleas, but whether, years later, defendants must be permitted to withdraw their pleas, which were perfectly valid when made, and be given another choice between admitting their guilt and putting the State to its proof.” *McMann v. Richardson*, 397 U.S. 759, 773 (1970) (noting the compelling interests in maintaining the finality of guilty-plea convictions validly obtained). “Furthermore, there must be some consequence attached to the decision to plead guilty.” *People v. Schneider*, 25 P.3d 755, 761 (Colo. 2001) (*cited with approval in Jamison*, 410 S.C. at 469, 765 S.E.2d at 129) (“A defendant who voluntarily and knowingly enters a plea accepting responsibility

for the charges is properly held to a higher burden in demonstrating to the court that newly discovered evidence should allow him to withdraw that plea.”).

Applicant alleges her guilty plea was not voluntarily entered, however Applicant has failed to explain with any degree of specificity why her plea was not voluntarily entered. Therefore, Applicant cannot satisfy either requirement of *Hill*. However, the record likely does not refute or disprove Applicant’s allegations on an involuntary guilty plea; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. at 265, 305 S.E.2d at 248 (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

VI. Motion for a More Definite Statement

The State submits Applicant’s allegations of ineffective assistance of counsel are without merit. However, it is impossible for the State to adequately respond to these claims because Applicant has failed to set forth facts to “support each ground” or to explain with specificity the facts upon which his claims are based. S.C. Code Ann. § 17-27-50 (requiring an applicant to “specifically set forth the grounds upon which the application is based”). For example, Applicant does not specify what “tremendous understandings” resulted due to his inability to adequately communicate with counsel.

Accordingly, the State moves for Applicant, through counsel, to amend his application to provide a more definite statement of his allegations pursuant to Rule 12(e), SCRCP, and the Post-Conviction Procedure Act. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the

lower court”); *see also Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (stating it is incumbent upon an applicant to make at least a prima facie showing entitling him to relief before an evidentiary hearing will be scheduled and held); Rule 8(a)(2), SCRCP (requiring all civil pleadings to include “a short and plain statement of the facts showing that the pleader is entitled to relief”); Rule 71.1(d), SCRCP (“Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.”).

VII. Any Future Amendments and Invocation of Discovery

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 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*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *See id.* at 245, 834 S.E.2d at 203 (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 section 17-27-150 of the South Carolina Code, 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. Further, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State 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 the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

VIII. 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. Conclusion

WHEREFORE, the State requests this Court grant its motion for a more definite statement, and thereafter convene an evidentiary hearing on the claims of ineffective assistance of plea counsel and involuntary guilty plea.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

MICHAEL J. NEUBAUER
Assistant Attorney General

By:



ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

January 12, 2022

FILED-RECEIVED

STATE OF SOUTH CAROLINA JAN 19 AM 9:50

COUNTY OF YORK

DAVID HAMILTON

C.C.P. & GS

YORK COUNTY SC

IN THE COURT OF COMMON PLEAS

2020-CP-46-03437

CARLY M. BLUMENSTEIN, #382062

Applicant,

vs

CERTIFICATE OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,

Respondent,

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

Carly M. Blumenstein, #382062

DATED this 12th day of January, 2022.


 Joshua Osborne, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNT OF YORK) ~~2020~~ 3437
CASE NO.: ~~2019~~-CP-46-1277

Carly Marie Blumenstein #382062,)
Applicant,)
Vs.)
State of South Carolina,)
Respondent.)

AMENDMENT TO POST CONVICTION
RELIEF APPLICATION

FILED-RECEIVED
2022 DEC -5 AM 9:08
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

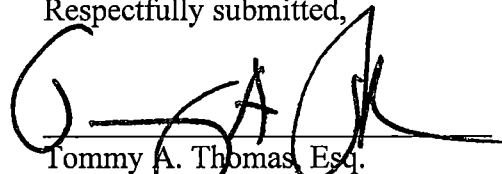
The Applicant above named in the aforementioned matter, through his Attorney, Tommy A. Thomas, respectfully moves to amend his original Post Conviction Relief Application as follows:

1. That the Applicant would further allege that she hired Christopher Wellborn as her trial lawyer. The purpose of hiring Mr. Wellborn was in order for him to try the case for which the Applicant was charged. However, just prior to trial, a plea offer was presented to her by counsel. This plea offer was a negotiated fifteen (15) years plea for two counts of Possession of Methamphetamine first offense, Trafficking in Methamphetamine 28 grams or more first offense and Possession with Intent to Distribute Heroin first offense. Plea counsel told the Applicant that she would be serving an 85% sentence, but that she would be parole eligible. Based upon this representation, the Applicant agreed to accept and enter into a plea. It was only after the Applicant entered the South Carolina Department of Corrections that she found out that she was 85% and not eligible for parole.
2. That the Applicant's Mother, Terri Robinson Blumenstein contacted plea counsel when the Applicant learned from the South Carolina Department of Corrections, that

she was not eligible for parole. Plea counsel advised Applicant's Mother that he would speak with the Attorney General's Office about this. Applicant's Mother was informed that plea counsel contacted the Attorney General's office and found out that she was not eligible for parole and admitted to Applicant's Mother that he had been wrong about Applicant's parole eligibility.

3. In addition, the Applicant believes that plea counsel seemed to not be fully invested in his representation. That often the Applicant would ask him to look into certain matters and he never did. Applicant believes that Plea counsel did not fully and properly investigate the case, did not advise her correctly regarding this case and encouraged her to enter into the plea based upon incorrect information.
4. Any and all other issues as they may arise from the PCR Trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. A. Thomas', is written over a horizontal line.

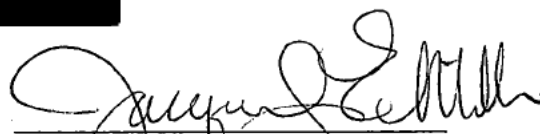
Tommy A. Thomas, Esq.
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

November 30, 2022

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNT OF YORK	)	CASE NO.: 2019-CP-46-1277
Carly Marie Blumenstein #382062,	)	
	)	
Applicant,	)	CERTIFICATE OF SERVICE
	)	
Vs.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

I, Jacquelyn E. Miller, Paralegal to Tommy A. Thomas, Attorney for the Appellant
 hereby certify that emailed, a copy of an Amendment to Post Conviction Relief Application to:

Zachary Jones, Esq.
 Assistant Deputy Attorney General
 P.O. Box 11549
 Columbia, SC 29211-1549


 Jacquelyn E. Miller, Paralegal to
 Tommy A. Thomas, Esq.
 Attorney for Appellant
 P.O. Box 88
 Irmo, SC 29063
 (803) 732-5507

November 30, 2022

FILED-RECEIVED
 2022 DEC -5 AM 9:08
 DAVID HAMILTON
 C.C.P. & GS
 YORK COUNTY, SC

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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CARLY MARIE BLUMENSTEIN

Mr. Thomas	6			
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Mr. Mitchell		17		
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Mr. Thomas			18	
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TERRY BLUMENSTEIN

Mr. Thomas	20			
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CHRISTOPHER A. WELLBORN

Mr. Mitchell	23			
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Mr. Thomas		37		
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Mr. Mitchell			45	
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Certificate	55			
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E X H I B I T S

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>ID/AD</u>
State's 1	Email	32

(REPORTER'S NOTE: All exhibits admitted during this proceeding were duly submitted to the York County Clerk of Court's Office.)

1 THE COURT: All right. First case, Mr. Attorney
2 General?

3 MR. MITCHELL: Yes, Your Honor. May it please the
4 Court?

5 THE COURT: Yes, sir.

6 MR. MITCHELL: This is the post-conviction relief
7 matter of *Carly Blumenstein v. State*, case number 2022-CP-
8 46-03437 out of York County.

9 Applicant was indicted at the September, 2019 term of
10 the York County Grand Jury for trafficking methamphetamine,
11 case number 2019-GS-46-00734 and possession with intent to
12 distribute heroin, 2019-GS-00735. Applicant was represented
13 by Christopher Wellborn. Assistant Solicitor Austin Newman
14 of the 16th Circuit Solicitor's office prosecuted the case.

15 On January 14th, 2020, pursuant to negotiations between
16 the State and the applicant, the applicant pleaded guilty
17 before the Honorable Paul M. Burch as indicted to
18 trafficking methamphetamine and possession with intent to
19 distribute heroin. Additionally, pursuant to negotiations
20 between the State and the applicant, she waived presentment
21 to the grand jury and pleaded guilty to two counts of
22 possession of methamphetamine.

23 In accordance with the negotiations, Judge Burch
24 sentenced applicant to fifteen years imprisonment each for
25 trafficking methamphetamine, and possession with intent to

1 distribute heroin and time served for both counts of
2 possession of methamphetamine. Applicant did not appeal.

3 Applicant timely commenced this PCR action on November
4 16th, 2020 and with that I'll hand it over to Mr. Thomas.

5 MR. THOMAS: Your Honor, if it please the Court.

6 THE COURT: Yes, sir.

7 MR. THOMAS: We do intend to go forward on the issue
8 that's raised in the amended application and -- unless
9 something arises at court.

10 THE COURT: I see the application -- I don't think I
11 see an amended application. What day is your amended
12 application?

13 MR. THOMAS: Your Honor, it was November 30th of,
14 actually, this year, so it may not have made it to the file,
15 but I'd be more than happy to give you my copy.

16 THE COURT: Well, if you got an extra. Anybody got an
17 extra copy?

18 MR. MITCHELL: I believe I have an extra, Your Honor.

19 THE COURT: Okay.

20 (Whereupon, the referenced document was handed up to
21 the Court.)

22 THE COURT: Thank you. All right. Okay. Mr. Thomas,
23 proceed.

24 MR. THOMAS: Your Honor, if it please the Court. We'll
25 call Carly Blumenstein to the stand.

1 THE COURT: Very well.

2 (CARLY MARIE BLUMENSTEIN, being first duly sworn, was
3 examined and testified as follows):

4 MR. THOMAS: Please the Court.

5 THE COURT: Yes, sir.

6 DIRECT EXAMINATION

7 CARLY MARIE BLUMENSTEIN BY MR. THOMAS:

8 Q. Carly, you were arrested, do you remember roughly when?

9 A. January 14th, 2019.

10 Q. 2019.

11 A. No. January 24th, 2019.

12 Q. Okay; all right. And what were your charges? Do you
13 remember what they were when you were arrested?

14 A. Trafficking methamphetamine, possession with intent to
15 distribute heroin, possession of Ecstasy, possession of
16 Klonopin, possession of Xanax.

17 Q. Okay. And you had a drug problem at the time?

18 A. Yes.

19 Q. Okay; all right. And you are now in the South Carolina
20 Department of Corrections?

21 A. Yes, sir.

22 Q. And you are serving how much time total?

23 A. Fifteen years.

24 Q. Okay. So you got fifteen and fifteen on the
25 trafficking and the heroin charge?

1 A. Yes, sir. I believe to be ran concurrent.

2 Q. They are running concurrent. And then you got time
3 served on the possession charges?

4 A. Yes, sir.

5 Q. Okay. Now, you filed a post-conviction relief action?

6 A. Yes, sir.

7 Q. And we're here for that today?

8 A. Yes, sir.

9 Q. The -- you're asking for a new trial or new plea and
10 you're asking that your conviction be set aside?

11 A. Yes, sir.

12 Q. The -- there are -- there is some risk if the Court was
13 to grant your post-conviction, that you could be tried and
14 potentially get a larger sentence. We've talked about that?

15 A. Yes, sir, we have.

16 Q. Okay. And given that knowledge, you would still want
17 to go forward today?

18 A. Yes, sir.

19 Q. And you will assume any risk?

20 A. Yes, sir.

21 Q. Okay. Carly, tell us a little bit about you were in
22 the county jail and then you hired an attorney?

23 A. Yes.

24 Q. And who did you hire?

25 A. Chris Wellborn.

1 Q. Did you make bond?

2 A. I did not. I was not granted a bond,---

3 Q. Right.

4 A. ---not when I first arrived and then I actually went up
5 for a bond six months later and I was denied bond then as
6 well.

7 Q. Okay. How long were you in the detention center?

8 A. Just short of a year.

9 Q. When did you hire Mr. Wellborn?

10 A. Mr. Wellborn was already my attorney on some
11 outstanding charges that I was already out on bond for.

12 Q. Okay; okay. So he just continued and picked up these
13 other charges as well?

14 A. Yes, sir.

15 Q. Okay. And by being in the county detention center, did
16 that make it harder for you to communicate with him or what
17 did that do?

18 A. Definitely; yes.

19 Q. It did? And how so?

20 A. I would say that on my end communication was limited
21 to letters, really, that I would write to him and just hope
22 that he would come see me in response. There were no phone
23 calls or anything like that.

24 Q. Okay. Do you remember how many times he came to see
25 you?

1 A. A handful, maybe five.

2 Q. Okay. Now, when he did come to see you, what did y'all
3 talk about?

4 A. So in the beginning, we discussed defense strategy.

5 Q. Okay. And what kind of defense strategy was that?

6 A. Well, it was our intention to go to trial and I tried
7 to be as transparent with him as possible about the events
8 that had transpired and, although I have no legal knowledge
9 or did not at the time, I still would pitch ideas, you know,
10 of possible routes we could take in trial.

11 Q. You felt like you had certain defenses to these
12 charges?

13 A. Yes.

14 Q. Okay.

15 A. I had avenues I wanted to explore, definitely, and I
16 was hoping to get his support with that.

17 Q. Okay. Now, did he ever tell you what I call a theory
18 of defense, how he was going to defend you, what he thought
19 the possibilities were?

20 A. Not so much. It was more me shooting shots and hoping
21 to get some kind of feedback and I didn't really get that
22 from him. He was very cryptic.

23 Q. Right. So did you ever get any kind of idea how he was
24 going to defend you?

25 A. Not -- not really, not from him.

1 Q. Yeah. Now, you said that you hired him to take the
2 case to trial. Was that what your intent was?

3 A. Definitely. Yes, sir.

4 Q. And how did you select Mr. Wellborn?

5 A. Well, my family and I did some research and found that
6 he's one of the best trial lawyers in the area.

7 Q. Okay. So you had hired him for a trial?

8 A. Yes.

9 Q. Okay. Now, at some point in time you had to start
10 discussing your options in regards to plea versus trial?

11 A. Correct.

12 Q. And how did that go? What were those discussions?

13 A. Well, initially, he told me that my solicitor was
14 willing to offer me fifteen years. He said it would be
15 violent time, but that it would be parolable.

16 Q. Right. And did you -- did you kind of balance the pros
17 and the cons from going to trial, what that potential was
18 versus taking a plea? I mean, you had some sort of process
19 that you had to go through to make a decision to accept a
20 plea versus trial.

21 A. Sure; yeah. I think, if you mean, like, why I decided
22 to start considering a plea?

23 Q. Yeah; exactly.

24 A. A lot of it was I was tired. I had sat in the county
25 for a year and I felt like my attempts to communicate with

1 him had been not reciprocated and when we did meet, I felt
2 that -- I could feel over time that, okay, the avenues I was
3 wanting to explore, let's look at these possibilities for
4 how I can defend myself at trial, that, you know, I got the
5 vibe from him that he was not following those avenues and
6 I'm thinking, okay, so maybe it's not a good idea, maybe I
7 -- you know, I was losing hope, I guess, and that was a big
8 part of it, was, okay, I've been sitting, I've been sitting
9 and now they're offering fifteen years. Yes, it will be
10 violent, but it would be parolable and so I kind of started
11 to, like you said, weigh my pros and cons.

12 Q. Right; right. Did you have an opportunity to actually
13 sit down with him and talk about the fifteen-year plea, what
14 it meant service time wise, those kind of things?

15 A. Yes. So I think that the biggest part of it was that
16 he told me, he said, yes, it would be violent time, that is
17 eighty-five percent, but there's an opportunity for it to be
18 parolable. He explained to me, he said, when sixty-five
19 percenters are parole eligible, they do twenty-five percent
20 of their time before they're eligible for parole and then
21 when you have violent offenders, they're required to
22 complete thirty percent of their time before they become
23 eligible, so he walked me through the math. He said,
24 fifteen years, thirty percent of that would be five years.
25 You've already done one, so you're looking and going and

1 sitting at the DOC for four more years become -- before you
2 become eligible for parole. Do you think you can do that?
3 And at that point I'm thinking, okay, I've sat one. I've
4 only sat four. I'm not getting the vibe from this guy that
5 he wants to go to trial, so I mean, it's only four more and
6 that's when I started to consider, okay, you know, this
7 might be the route I need to go.

8 Q. All right. Did you calculate what you were going to
9 have to do if it was eighty-five percent?

10 A. No.

11 Q. Okay.

12 A. No, because it -- not at that time. No.

13 Q. All right. Because you thought that you were going to
14 be parole eligible?

15 A. Sure. Yeah. In my mind, just go down to SCDC for four
16 more years.

17 Q. All right. Have you had an opportunity now to
18 calculate what service time is going to be required for
19 eighty-five percent?

20 A. Yes.

21 Q. What is that?

22 A. Twelve years and nine months.

23 Q. Okay. So you're looking at from a total of five
24 reduced to four because of your detention time versus twelve
25 years and, what, five months?

1 A. Nine.

2 Q. Nine months. Significant?

3 A. It's a big jump.

4 Q. Yeah. And when you decided to accept this plea, was it
5 based upon the fact that you would have parole eligibility?

6 A. Yes. Yes.

7 Q. That's the reason why?

8 A. That's the reason why I took the plea.

9 Q. Yeah. Had you known that it was going to be not
10 eligible for parole, would you have taken it to trial?

11 A. Possibly, yes.

12 Q. Okay; okay. Now, --

13 MR. THOMAS: Your Honor, if I can beg the Court's
14 indulgence.

15 Q. Now, Carly, you understand that in your -- when you
16 were in front of the Court, the judge asked you certain
17 questions?

18 A. Yes, sir.

19 Q. What we call a plea colloquy to whether or not you
20 understood the rights that you were giving up, whether or
21 not you were entering into this plea freely and voluntarily,
22 that you were satisfied with your lawyer. Do you remember
23 that?

24 A. Yes, sir.

25 Q. And did you answer those questions to the satisfaction

1 of the Court?

2 A. I believe so. Yes, sir.

3 Q. Okay. So at the time when you answered those
4 questions, what was your belief about the fifteen years?
5 Did you believe that you were going to be parole eligible?

6 A. Yes, that it was violent time, but that it was parole
7 eligible. Yes.

8 Q. Okay. So when you said that you were entering into the
9 plea freely and voluntarily, that was based on something
10 that wasn't true?

11 A. I know that now.

12 Q. All right. Well, let's talk about that. When did you
13 find out that you were not eligible for parole?

14 A. So after leaving here, I went down to the DOC and was
15 in intake or receiving and was calling home when I had the
16 opportunity and asking my parents, you know, am I popping up
17 on line and is it showing, you know, that I'm classified so
18 I can move on through and go to a dorm and over time they
19 would tell me, yeah, I see your picture up there, I see your
20 name, okay, now, you know, we see your medical stuff and
21 your date of birth or whatever, but I could feel some
22 hesitancy from them and I wasn't sure what it was and then
23 one day my mom -- when I called home one day, my mom said
24 there's something we need to tell you. We've been waiting
25 and waiting and putting it off, because we were hoping that

1 maybe it was just in the system wrong, but it looks like
2 your projected release date is not reflecting that of a
3 parole-eligible sentence and I said, well, what do you mean?
4 And she said, well, it says that you'll be getting out of
5 there in 2031, and that definitely did not align with the
6 math that Mr. Wellborn and I had done together. So that was
7 --

8 Q. That was the first time you heard of that -- heard
9 about that?

10 A. Yes, was my mom having to tell me over the phone.
11 Yeah.

12 Q. Okay; all right. And you are, in fact, not eligible
13 for parole?

14 A. I'm not.

15 Q. And you pled to trafficking meth twenty-eight or more
16 grams?

17 A. Twenty-eight to a hundred. Yes, sir.

18 Q. Twenty-eight to a hundred. Did you ever talk to your
19 attorney about pleading to trafficking meth, ten to twenty-
20 eight?

21 A. Did not.

22 Q. Okay. And so you didn't -- you didn't ask about that
23 because you still felt that you were eligible for parole?

24 A. Sure.

25 Q. That's what you understood at the time?

1 A. Correct.

2 Q. Okay. Carly, I know this has been a long time coming
3 and this is a pretty quick testimony on your part, is there
4 anything that I may have forgotten or failed to raise or
5 anything that you would like to raise to the attention of
6 the Court?

7 A. Well, you know, it's been heart- -- it's been
8 heartbreaking to me. I went from thinking that I was going
9 to serve a total of five years, be eligible for parole and,
10 hopefully, make it home to my parents and then it ended up
11 being twelve years and nine months, that's almost thirteen,
12 it's a big jump, and so it was devastating, devastating more
13 because I know it's hurt my parents knowing that I'll have
14 to do that much more time and so, you know, I just hope that
15 -- that you can see that I was misinformed and, from what I
16 understand, that makes my plea involuntary and so I just
17 really hope that you will take that into account today.

18 MR. THOMAS: All right. Thank you, Carly.

19 THE WITNESS: Thank you.

20 THE COURT: Cross-examination.

21 MR. MITCHELL: Just briefly, Your Honor.

22 THE COURT: Sorry.

23 THE WITNESS: Okay.

24 THE COURT: We didn't tell you that, but the
25 State is entitled to ask you some questions.

1 THE WITNESS: Okay; sure. Hi.

2 CROSS-EXAMINATION

3 CARLY MARIE BLUMENSTEIN BY MR. MITCHELL:

4 Q. Hey. Good afternoon, Ms. Blumenstein. How are you?

5 A. Hey. How's it going?

6 Q. You said you met with Mr. Wellborn a handful of times.

7 A. Yes, sir.

8 Q. And during those meetings you wanted him to investigate
9 other avenues?

10 A. Yes, sir.

11 Q. What other avenues specifically?

12 A. So, again, early on we had hired him for trial so those
13 avenues were, you know, a -- to start, you know, talking
14 about defense strategy for me. One of the things that I
15 wanted him to look into -- and, again, I don't -- at the
16 time had no, you know, legal knowledge, so I was just
17 shooting shots out there, seeing what might work and I had
18 told him the truth of the matter, which was that the drugs
19 were not mine and that I was just driving the car and I
20 wanted that truth to come out and I'd asked him if there was
21 any chance of us getting the drugs fingerprinted so they
22 could show that I never handled them, I never obtained them,
23 because they were not mine and that was one of those things
24 that just kind of got lost, like, I would continue to ask
25 him and, oh, we'll see, we'll look into it, I don't know,

1 and then eventually I thought to myself, okay, well, maybe
2 this isn't a good avenue. I don't know -- I don't know.
3 That's what I was hoping he could help me with, that was one
4 of them. I was also concerned about the legality of the K9
5 search that occurred on the day of my arrest. I wanted him
6 to look into that. Those are the two biggest ones that I
7 can remember.

8 Q. You never admitted the drugs were yours?

9 A. I did. I did do that.

10 MR. MITCHELL: Beg the Court's indulgence, Your Honor.

11 No further questions, Your Honor.

12 THE COURT: Redirect?

13 MR. THOMAS: Your Honor, just one.

14 REDIRECT EXAMINATION

15 CARLY MARIE BLUMENSTEIN BY MR. THOMAS:

16 Q. Carly, you answered a question that you admitted that
17 the drugs were yours.

18 A. Stupid.

19 Q. Why did you want to do that?

20 A. It was stupid, dumbest decision of my life, which that
21 can go undisputed, I'm sure. I did have a drug problem. My
22 co-defendant was someone that I thought I could trust. I
23 felt bad because I knew that if he was stuck with the
24 trafficking charges, it would be his third offense and that
25 meant a long time, perhaps a life-time for him to spend in

1 prison away from his child and I thought to myself, well, it
2 will only be my first offense, so maybe if I claim the drugs
3 and I take the charges, he'll help me out, he'll come bond
4 me out, you know, or at least take care of me if I do prison
5 time. Yeah, that was dumb. I was clouded by drugs, you
6 know, I was not in a clear state of mind. I was young and
7 dumb and really thought more of others than myself and I
8 wish I knew then what I know now.

9 Q. Did you have a relationship with the co-defendant?

10 A. Not other than friends. No.

11 Q. Okay; okay.

12 MR. THOMAS: No further questions, Your Honor.

13 THE COURT: Any recross?

14 MR. MITCHELL: No, Your Honor.

15 THE COURT: All right. The witness is excused.

16 THE WITNESS: Thank you.

17 THE COURT: You may step down.

18 MR. THOMAS: Your Honor, if it please the Court, we
19 would call Carly's mom to the stand, Terry Blumenstein.

20 THE COURT: Okay. Terry what?

21 MR. THOMAS: Blumenstein.

22 THE COURT: Blumen- -- okay.

23 MR. THOMAS: Yeah.

24 (TERRY BLUMENSTEIN, being first duly sworn, was
25 examined and testified as follows):

1 MR. THOMAS: May it please the Court, Your Honor?

2 THE COURT: Yes, sir.

3 DIRECT EXAMINATION

4 TERRY BLUMENSTEIN BY MR. THOMAS:

5 Q. Terry, how do you pronounce your last name?

6 A. Blumenstein.

7 Q. Blumenstein. I've got friends that pronounce it two
8 different ways. I apologize for the confusion. I think
9 I've called it both. Now, you are related to Carly?

10 A. I'm her mother.

11 Q. Her mom. And you've been sworn to tell the truth?

12 A. Yes.

13 Q. You understand that, based upon that, that you're
14 obligated to tell the truth?

15 A. Yes.

16 Q. And that's what you intend to do?

17 A. Yes, sir.

18 Q. Okay. You were involved with Carly's process through
19 the court?

20 A. Yes, sir.

21 Q. You were with -- there for her, you kind of knew --
22 followed her, you knew a little bit about what was going on?

23 A. Yes, sir.

24 Q. Okay. And did you have an opportunity to talk to
25 Christopher Wellborn on occasion?

1 A. Oh, yes. We would call him and, you know, ask him when
2 he was going to go see Carly and, you know, talk about when
3 the case was going to -- you know, where it was going. Yes.
4 We -- we would talk.

5 Q. Okay; all right. And in regards to the plea, what was
6 your understanding of what the plea was?

7 A. The understanding was that it was fifteen years, but
8 that it would be parolable and that it would be, basically,
9 four years before she'd be eligible for parole, given the
10 fact that, you know, the five years and then the time that
11 she had served of almost a year.

12 Q. Okay; all right. And as far as you know, that was what
13 Carly's understanding was?

14 A. Oh, absolutely.

15 Q. Okay. And that was an important factor into her
16 accepting the plea?

17 A. Yes, sir.

18 Q. Okay. Now, did you have an occasion to question as to
19 whether or not that was in fact true?

20 A. Yes, sir. After she was sentenced and I went out and
21 looked on the South Carolina Department of Corrections
22 page for her profile and the primary reason I did that was
23 to check and make sure a couple things, one was that she had
24 been given time for served and while I saw it -- while I was
25 there looking, I noticed that it was parole ineligible.

1 They had a no there for parole eligible. So I immediately
2 called up her attorney, Chris Wellborn, and I said I think
3 there's been a mistake made. This is showing that she's not
4 parole eligible and he said, let me call the Attorney
5 General's office. So he calls me back and he said that he
6 had made a mistake, that the charge that she had been
7 convicted on did not carry parole.

8 Q. Okay. And that's the first that you learned about it?

9 A. Yes, sir. And then after that, you know, I just said
10 we found the right time to tell Carly and then she pursued
11 the PCR.

12 Q. Okay; okay. So she found out about it from you?

13 A. Yes, she did.

14 Q. Okay. And that was something that you didn't want to
15 tell her?

16 A. No. It was horrible.

17 MR. THOMAS: Your Honor, if I can beg the Court's
18 indulgence.

19 THE COURT: Yep.

20 MR. THOMAS: I have no further questions, Your Honor.

21 THE COURT: Cross-examination.

22 MR. MITCHELL: No questions, Your Honor.

23 THE COURT: All right. Witness may step down.

24 MR. THOMAS: Your Honor, if it please the Court, that's
25 the applicant's case.

1 THE COURT: All right. The State's case.

2 MR. MITCHELL: The State calls Christopher Wellborn.

3 (CHRISTOPHER WELLBORN, being first duly sworn, was
4 examined and testified as follows):

5 DIRECT EXAMINATION

6 CHRISTOPHER WELLBORN BY MR. MITCHELL:

7 Q. Good afternoon, Mr. Wellborn.

8 A. Good afternoon.

9 Q. Can you explain how you became to represent Ms.
10 Blumenstein?

11 A. Well, actually, I represented her on two previous
12 cases, both involving methamphetamines, both involving
13 traffic stops. It seems that they were a year to two years
14 earlier in terms of the sequence. In both cases they were
15 -- she was driving and -- I believe both cases she was
16 driving, if not, certainly riding in a vehicle which was
17 stopped for a typical traffic violation, search ensued and
18 methamphetamines found in a simple possession amount, either
19 in her pocketbook, purse or in the vehicle. In both cases
20 she claimed that the methamphetamine was not hers or there
21 was some argument that could be made that perhaps someone
22 else had had access to her items and had slipped this
23 methamphetamine in and so that was going to be our position
24 if we went to trial in those cases. While those cases were
25 pending, while she was out on bond, she was stopped driving,

1 I believe, northbound on I-77 in the Fort Mill area for a
2 traffic infraction by a highway patrolman, pulled over and
3 the highway patrolman made the decision that something
4 strange was going on and he decided to prolong the search
5 for purposes of the drug enforcement unit or somebody to
6 come by with a drug dog. There was a search and I believe
7 she was also driving the car in that case as well. A search
8 was done of the vehicle. There were two people in the
9 vehicle. There was Carly and another person, a male. There
10 was a bag/purse that was in the car and I can't remember off
11 the top of my head whether it was a book bag or a clutch or
12 a satchel, but there was over twenty-eight grams, a
13 significant amount of methamphetamine found at that point in
14 the vehicle, along with other items that were contraband.
15 Carly's position when she came to see me was, well, this was
16 not mine. This belonged to the other guy and I'm sure he
17 will admit that if we -- you know, if we pursue it. So that
18 was going to be -- when we first met, that was going to be
19 our line of defense. I investigated that. First thing I
20 did is look at the videos, the traffic videos of the stop,
21 because the other was whether or not this was a legal stop,
22 was the stop prolonged in a way that would render it
23 illegal, you know, did they have a reason to prolong what
24 was, basically, a traffic infraction for purposes of a drug
25 interdiction. Looked at the -- you know, looked at the

1 video. There were things that Carly mentioned that should
2 have been on the video that would have been helpful,
3 potentially, to our cause in suppressing the evidence. They
4 were not on the video, quite frankly. What she suggested
5 that the officers had said or the officers did was not, in
6 fact, what was on the video. So fairly quickly the
7 suppression of the search avenue was foreclosed. The next
8 issue was that Carly, not at the scene, but I believe it was
9 when she was taken by the drug enforcement unit to the City
10 of Rock Hill to their office, gave a confession, admitting
11 that the drugs were hers. You know, that is a -- that's a
12 problem in a case where your defense is they're not mine,
13 they're somebody else's when the person admits that they're
14 yours. Again, not fatal, but it was something that was
15 problematic. So the issue then became whether or not this
16 person that was the co-defendant would own up or on some
17 previous occasion had given a statement acknowledging, if
18 not expressly, at least impliedly, that the drugs were his.
19 Carly had mentioned that there would be a video of them from
20 inside the car, I believe it was the highway patrolman's
21 car, while they were being detained for purposes of follow-
22 up search of the vehicle on the side of I-77 and that she
23 had mentioned something to this co-defendant about how, you
24 know, he knew that the drugs were not hers and he
25 acknowledged that and said he was sorry or in some way

1 acknowledged that he was regretful about having gotten her
2 in this position. That conversation did not exist. Well, I
3 looked at that, I looked at all the videos, 'cause I was
4 hoping against hope that I was going to find that and,
5 unfortunately, that was not there. So what we were left
6 with was a situation now where my client with, you know, two
7 previous stops; she had yet to be convicted of anything; had
8 admitted possessing drugs, which in a trafficking scenario,
9 that's all it takes is possession. You don't have to
10 possess -- they don't have to prove intent. The mere
11 possession of the amount is enough and she possessed
12 methamphetamine, certainly, much more than the twenty-eight
13 grams that was at the bottom end of the sentencing level and
14 she was facing up to twenty-five years in jail and at
15 eighty-five percent, because it's a no-parole offense, and
16 so that question then became how do we mitigate to try and
17 get this down. So we switched gears. I switched gears from
18 a let's look at avenues of trial to let's now go hot and
19 heavy towards mitigation, because I knew this is -- in
20 talking to Carly and, quite frankly, in talking to Carly's
21 parents, not only her mother but her father, who not only
22 did we speak on the telephone, we had several meetings in my
23 office where went over, you know, how the case was going,
24 but also Carly's background. So there was a lot of
25 investigation that went into how Carly got into this

1 situation and Carly, you know, without getting into
2 excruciating details, she had been through a lot with
3 relationships where she had been, quite frankly, if not
4 physically certainly -- well, in some cases physically, but
5 certainly emotionally abused by people who were, if not co-
6 defendant, co-dependants were certainly supplying her with
7 drugs. She had been through some counseling, some
8 treatment, some of it successful and, quite frankly, it was
9 a really, really compelling story for mitigation.
10 Unfortunately, on the other side of the equation was the
11 representative of the State that did not find it compelling.
12 The prosecutor in the case had been the same prosecutor that
13 had had Carly's cases in the two previous stops and looked
14 at this, you know, as a third strike. In the process of us
15 going through the investigation of the mitigation, what also
16 came out through a combination of jail calls which were
17 recorded between Carly and others, convers- -- and various
18 correspondence that took place within the jail, was the fact
19 that there was strong evidence that Carly had intended, in
20 fact, to sell the methamphetamine in question to raise money
21 to get her boyfriend out of jail, the man who would have
22 probably gotten her into the scenario to begin with, not the
23 person who was stopped with her on the side of the road, but
24 who was her boyfriend at the time and she was in, what I
25 would describe as a somewhat controlling and abusive

1 relationship with him. She was -- it seemed to be and there
2 was an argument that a case could be made, especially if he
3 testified, that this was, basically, supposed to be sold and
4 she was, at the very least, if -- if nothing else, part of
5 the facilitation of the transport of this methamphetamine
6 for purposes of sale to raise bond money so he could get out
7 of jail. At that point, I mean, this was not going to be a
8 compelling case in my mind in front of a jury, but that's
9 never my decision. You know, if a client says I don't care,
10 I want to go to trial, we go to trial. That's -- you know,
11 you can only do your best job, you know, give your advice.
12 So I talked to her parents about it. I explained that this
13 was, in my opinion, kind of dead letter if we went in front
14 of a jury and that we really needed to concentrate on plea.
15 I had multiple correspondence, telephone, in person, email
16 with the prosecutor in the case, indicating that this was a
17 plea, but also trying to, as much as possible, sort of
18 foreshadow and see the issues related to mitigation, which I
19 hoped would be helpful. It helped to the extent that we did
20 not get a, you know, a straight-up offer. We got a
21 negotiated fifteen as our offer. Now, I don't get to choose
22 what the offer is. I can only bring the offer to the client
23 and say, this is the offer. These are our choices. We have
24 a choice of -- and there's always three choices and I
25 explained this to Carly, they offer three options you have,

1 number 1, you accept the offer; number 2, you reject the
2 offer; number 3, you say I can't make a decision and I take
3 that back to the State and the State says, well, if she
4 can't make the decision, then we'll make the decision for
5 her and whatever decision they may make, maybe go to trial
6 and, you know, look at the full load. Ultimately, she made
7 the decision to accept the offer of the fifteen and, you
8 know, that's where we were. I, quite frankly, didn't like
9 it. I didn't think, given the fact, that this was a first
10 offense, given what she'd been through psychologically,
11 given the fact that she was in this situation, in my mind,
12 as a result of a combination of a severe drug problem and
13 that problem included multiple drugs, that she had been
14 hospitalized for it. We could document that she had been
15 hospitalized for it; we did document that she'd been
16 hospitalized for it; that she had undergone counseling, we
17 documented that; that we had psychological records
18 documenting the fact that she had been abused and that for
19 all of these reasons that, quite frankly, she deserved a
20 better break, but it's not -- you know, I don't get to
21 choose the break that the client gets, unfortunately, unless
22 the client says we're going to trial, in which case the jury
23 gets to choose, that choice is out of my hands and I really,
24 to this day, in terms of potential -- and this was about a
25 trial penalty. I mean, that's the unfortunate side of it is

1 that this was a trial penalty scenario where my client,
2 Carly, knew she was facing a severe penalty if she went to
3 trial and lost and she also knew towards the end that, you
4 know, she didn't really have the strongest case, given the
5 fact that she admitted to the drugs. There was potential
6 testimony that she was selling those drugs or facilitating
7 sell of those drugs, was certainly aware that the drugs
8 existed in the vehicle and that's all it would take, quite
9 frankly, for trafficking is the fact she's driving the
10 vehicle and she's aware the drugs are there, because that is
11 knowing possession, which is all that is required for
12 trafficking and that this person who was in the vehicle
13 wasn't going to, you know step up -- excuse me -- and say,
14 oh, my drugs. She didn't know anything about them, you
15 know, I'll do the right thing. So that's where we were.

16 Q. Before she took the plea, did you discuss with her the
17 charge and the consequences?

18 A. I did discuss with her the charge and the consequences.
19 Absolutely.

20 Q. Did you tell her that it was an eighty-five percent
21 offense with also parole eligibility?

22 A. What I said was eighty-five percent eligible. Now,
23 what that means in South Carolina, as a practical matter, is
24 you, at eighty-five percent of your sentence, assuming that
25 you have not caused fights, riots, been a problem in the

1 department of corrections, you are released. The exact word
2 for word of the conversation with her, I cannot tell you to
3 this day; I wish I could. I would love to be able to sit
4 here and say that absolutely, one hundred percent I said,
5 Carly, you're going to be out in four years, and the reason
6 I would love to be able to say that is because, quite
7 frankly, I'd like to see her get out. I think she's a nice
8 person. I think it's a -- it's -- quite frankly, it's
9 unjust that she is doing the time that she's doing. I would
10 also like to be able to say with absolute certainty I said,
11 No, you are going to have to do exactly thirteen and a half
12 years or whatever eighty-five percent would have been at the
13 time that I had the conversation with her, but I can't tell
14 you either one of those things, because I actually have no
15 exact memory of what I told her other than the fact that she
16 was looking at a offense that carried eighty-five percent.
17 I do remember telling her that. Beyond that, if I were to
18 say anything else about what I told her, I would be simply
19 making it up and I'm not going to do that.

20 Q. So you know you told her that she would be serving
21 eighty-five percent of her sentence?

22 A. Yeah. I told her it was a eighty-five percent
23 sentence.

24 Absolutely. And I had correspondence with the solicitor to
25 that effect, too.

1 Q. I was just about to get to that. So you talked about
2
3 communicating via email with the solicitor.

4 A. Yes.

5 Q. You asked -- so she said, we're sticking with fifteen
6 and it'd be twenty-five, then the solicitor said, that's
7 correct. It's violent, serious and no parole?

8 A. Yes.

9 Q. If you'd like to see if it's accurate.

10 (Whereupon, Mr. Thomas handed a document to the witness
11 for review.)

12 A. So looks like this was a thread from December 8th of --
13 oh, no, you received it December 8th, excuse me, December 5
14 of 2019. Actually, the first conversation must have taken
15 place on December 5, yeah, 2019 and that is what it says.
16 That's correct.

17 MR. MITCHELL: Your Honor, the State would offer this
18 in evidence as State's Exhibit 1.

19 THE COURT: You seen this, Mr. Thomas?

20 MR. THOMAS: I have, Your Honor.

21 THE COURT: All right. Without objection?

22 MR. THOMAS: Without objection, Your Honor.

23 THE COURT: All right. State's Exhibit 1 admitted into
24 evidence.

25 MR. MITCHELL: Thank you.

1 (Whereupon, the court reporter marked the referenced
2 document as State's Exhibit Number 1.)

3 Q. So after receiving that email, you would have known
4 that it was -- that there was no parole eligibility for that
5 offense?

6 A. Well, I knew it before the --

7 Q. Okay.

8 A. But yeah. I mean, my hope was in that correspondence
9 that we might be able to knock this into something where we
10 could get it down to, you know, thirty percent, one-third
11 before eligibility for parole, which would have meant, had
12 she not gotten parole, she would have had a max out at
13 approximately, I believe it's, fifty-four percent, again,
14 assuming people get their good time credits, their earned
15 credits, et cetera, et cetera.

16 Q. So knowing it was a non-parole eligible offense, you're
17 still not sure whether you would have informed her if it was
18 parole eligible or not?

19 A. I -- what I rem- -- you know, I would have, yes. I
20 mean, in my mind I would have said that to her. The exact
21 words I said to her is what I'm trying to convey and perhaps
22 inartfully, I cannot remember the exact words that I said to
23 her and I don't want to represent exact words that I said to
24 her if I don't remember them, because I don't think that's
25 appropriate to do, especially since I'm under oath. I did

1 -- I did tell her it was an eighty-percent -- in the eighty-
2 five percent category.

3 Q. Yes, sir. Was there ever an offer for her to plead to
4 ten to fifteen grams?

5 A. No. No, there was not. That -- and, you know, I had
6 requested that as an option. I had talked about drug court.
7 I thought she would have been an ideal candidate for drug
8 court. There were various things that we requested and they
9 were all summarily rejected. It was a very, very binary
10 option that we had almost from the get-go in this particular
11 case and part of it -- well, not just part of it, I think,
12 it was explicitly stated to me the reason for that was that
13 she was out on bond for two cases in a row, both involving
14 methamphetamine and we'd gone from what, arguably, would
15 have been a possession methamphetamine first offense, third
16 incident to suddenly trafficking in meth in a case where the
17 State's theory, as they were able to develop it or at
18 least impliedly develop it, was a clear trafficking, because
19 it was being used to raise money to get out somebody else
20 who was in jail for trafficking methamphetamine, you know,
21 to wit, Carly's boyfriend.

22 Q. Going back a little bit, you did investigate the
23 legality of the traffic stop?

24 A. Yes.

25 Q. You did investigate the fact that she claimed the drugs

1 were the co-defendant's?

2 A. Yes.

3 Q. And --

4 A. Well, her claim was that the co-defendant in -- who --
5 the co-defendant from the stop, the same person who was in
6 the car, had acknowledged that the drugs were his and that
7 there should be a in- -- there should be camera or a video
8 of that while they were seated in the patrol car and there
9 was no such statement that he made on any of the videos and
10 I looked at the body cams, I looked at the dash cams, I
11 looked at the in-camera car. I looked at every single video
12 that was available and it simply was not there. So then the
13 question was can we get him to admit it and he was
14 represented, his counsel wasn't interested in having me talk
15 to him, so that shut that avenue down and that's where we
16 were.

17 Q. And after that developed, was there any inclination of
18 going to a jury trial?

19 A. Well, I advised my client that I thought going to a
20 jury trial was not going to be successful. I also advised
21 my client that, typically, although constitutionally it
22 should not be the case, but as a practical matter, after a
23 jury has sat through an entire trial and someone's been
24 found guilty, when the evidence is somewhat overwhelming of
25 their guilt, that the Bench was typically less inclined

1 rather than more inclined to give people a minimal amount of
2 time versus a more significant amount of time and what she
3 was facing, if she'd gone to trial on the twenty-eight to a
4 hundred, was up to twenty-five.

5 Q. Do you remember having a conversation with Ms.
6 Blumenstein's mother regarding the -- when she found out it
7 wasn't a parole eligible offense?

8 A. I do remember a telephone call from Terry and I -- I
9 remember there was a question about whether she was getting
10 credit and getting credit for time served and other issues
11 and I asked -- and I said I would look into that, which I
12 did and I can't remember if it was -- if the details were,
13 you know, is she parole eligible or -- I do remember a
14 little bit about whether she was getting credit for time
15 served. I do remember telling Terry that this was an
16 eighty-five percent parole -- you know, that she would have
17 to do. Whether that occurred during the initial
18 conversation or whether it occurred during the follow up, I
19 can't remember. I do remember, Terry is correct that I --
20 that we did have a conversation and I did offer to check,
21 which I did; I did call Terry back and that's what I
22 remember.

23 Q. So you never informed anybody that she could be up for
24 parole after four years?

25 A. I have no memory of doing that. That wouldn't have

1 made any sense.

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

3 THE COURT: Cross-examination.

4 MR. THOMAS: Yes, Your Honor. Please the Court.

5 CROSS-EXAMINATION

6 CHRISTOPHER WELLBORN BY MR. THOMAS:

7 Q. Counsel, thank you for being here. As far as the
8 trafficking meth, you said the twenty-eight to a hundred,
9 she was looking at twenty-five years?

10 A. That's what I --

11 Q. Is that a mandatory minimum or is that --

12 A. That's the outside range.

13 Q. Outside range.

14 A. Yeah.

15 Q. What is the trafficking in meth ten to twenty-eight?

16 A. I know it is a violent offense and it carries parole
17 eligibility after a third and I can't remember off the top
18 of my head what the next one is.

19 Q. But it carries less than twenty years?

20 A. Oh, absolutely.

21 Q. Yeah.

22 A. Yeah.

23 Q. All right.

24 A. Unfortunately, it was never offered to my client.

25 Q. Yeah, but she could have gotten the same fifteen, the

1 negotiated fifteen, on a ten to twenty-eight versus twenty-
2 eight to a hundred?

3 A. That's true, had she been offered that as a plea, but
4 she was not offered that as a plea.

5 Q. Okay.

6 A. And the other option, of course, is if we'd gone to
7 trial and the jury had found her guilty of a lesser amount
8 of methamphetamine, even though there was a much greater
9 amount of methamphetamine found in the vehicle.

10 Q. Right.

11 A. Those were the two possibilities where that scenario
12 could have played out. Realistically, it wasn't -- you
13 know, my opinion and my client, I think, would have agreed
14 that the jury wasn't going to find a greater or lesser
15 amount of methamphetamine, which left one option, Mr.
16 Thomas, which is that the solicitor had agreed to let her
17 plead to that lesser offense, which the solicitor absolutely
18 did not.

19 Q. Well, but the argument to the solicitor could have been
20 made that although it is a lesser, quote/unquote, "lesser
21 offense" in amount, she could have still gotten a fifteen-
22 year sentence, which she has under twenty-eight to a
23 hundred, on a ten to twenty-eight?

24 A. That argument not only could have been made, it was
25 made.

1 Q. Okay. I apologize.

2 A. It was rejected.

3 Q. I didn't hear you say that.

4 A. It was rejected.

5 Q. Okay. So you said that you advised that it was from --
6 that you didn't want to say something that wasn't true, but
7 that to the best of your knowledge, you were talking about
8 eighty-five percent with parole eligibility?

9 A. No.

10 Q. You're talking about community service. Right?

11 A. Well, no. What I said was, to my recollection was, I
12 mentioned to her that it was eighty-five percent, what she
13 was pleading to. Beyond that -- for a parole eligibility
14 after eighty-five percent. Beyond that, I cannot give you
15 any of the particulars of the conversation, because if I
16 were to -- I would be -- again, I would be making that up.
17 That's what I said.

18 Q. But you said that eighty-five percent -- from what
19 you're saying, eighty-five percent with parole eligibility
20 after the eighty-five percent, which, in essence, is
21 community supervision. You serve eighty-five percent of
22 your time, then you're on community supervision for the
23 balance.

24 A. Well, --

25 Q. Correct?

1 A. No. Actually, that's not correct, because you can do
2 more than the eighty-five percent and not be released if you
3 have not behaved yourself---

4 Q. Certainly.

5 A. ---during that period.

6 Q. Disciplinary; yes.

7 A. So if you have behaved yourself during that eighty-five
8 percent, then you are eligible to be released, which is, you
9 know, arguably paroled or released and you're right, that's
10 community service and so -- yeah, that's -- you're
11 absolutely correct; that would be community service.

12 Q. So it's not parole?

13 A. It's not parole.

14 Q. Okay.

15 A. That's right.

16 Q. So if you had told her eighty-five percent with parole
17 eligibility---

18 A. Uh-huh.

19 Q. ---after that, you would have been wrong?

20 A. Well, you're right. I would have been wrong.

21 Q. Yeah. You should have -- it would have been community
22 supervision.

23 A. Would have been community supervision. That's correct.

24 Q. Okay. So did you talk to her about how much time you
25 would have to do for parole eligibilities on non-violent and

1 violent crimes?

2 A. I ex- -- well, we -- we talked about violent, because

3

4 she wasn't charged with any non-violent offenses that she

5 would be pleading to and I did explain that on a violent

6 offense, typically, violent offense, you're looking at

7 having to serve a third of that sentence before you're

8 eligible for parole unless, of course, -- and if you don't

9 get parole, then you're looking at having to max out the

10 sentence, which is a percentage that is calculated within

11 the department of corrections, depending on whether somebody

12 gets work credits, educational credits, good time, et

13 cetera. We had that conversation.

14 Q. Okay. And you are aware, I'm sure, that with some -- I

15 say recently, I guess it's probably been a while now,

16 Supreme Court decision in regards to being parole eligible,

17 parole eligible, on certain eighty-five percent drug crimes.

18 You're aware of that?

19 A. Yes.

20 Q. And there are certain eighty-five percent drug crimes

21 that you are eligible for parole?

22 A. Okay.

23 Q. Which means that they would be crimes that are twenty

24 or more years in sentence and in the past have been not

25 eligible for parole, but pursuant to the Supreme Court

1 ruling, they are now eligible for parole. Did you take that
2 into consideration at all?

3 A. No.

4 Q. Okay. So, in fact, did you ever review it for -- well,
5 obviously, the answer to that is no because of SCDC and
6 probation and parole's review of her sentence, that it could
7 be a possibility that she was eighty-five but, yet, still
8 parole eligible?

9 A. What -- well, when you say did I review it, review it
10 when? Before she pled?

11 Q. Well, did you take that into -- did you know that there
12 were certain crimes that were eighty-five percent parole
13 eligible at this time that are advising her about the plea?

14 A. I knew that what she was pleading to required eighty-
15 five percent.

16 Q. Okay; all right. Now, what I didn't understand a
17 little bit, that I was confused about, your testimony was
18 that, I think in regards to the email and you said that you
19 had received this email from the solicitor's office, that
20 you were inquiring about the fifteen; the fifteen's still
21 good.

22 A. Okay.

23 MR. THOMAS: Your Honor, may I approach?

24 THE COURT: Certainly.

25 Q. I don't have a copy of the email. May I -- Ah. It's

1 over here. You're aware of the email?

2 A. I've been shown it. Yes.

3 Q. Okay. Do you need a -- to look at it?

4 A. No. I don't think so.

5 Q. Okay. You sent an email to the solicitor, basically,
6 saying, Good afternoon, we are sticking with the fifteen and
7 it will be eighty-five percent. Is that correct?

8 A. Well, the email speaks for itself. I can't remember if
9 that's the solicitor responding or me saying it's eighty-
10 five percent, but obviously it's discussed within the body
11 of that; yes.

12 Q. All right. But at this point we're still consistent
13 with her allegations that it's eighty-five percent parole
14 eligible based upon that statement?

15 A. Well, it's consistent with the fact that it's eighty-
16 five percent.

17 Q. Right.

18 A. Suggesting that it's eighty-five percent is what's
19 required on the sentence.

20 Q. Right. And then -- and the reason I bring this up is
21 that in your testimony you talk about in relation to this
22 email and why you reached out to the solicitor's office,
23 about knocking down it to something less for parole.

24 A. Yeah. Well, that wasn't during that email. These
25 conversations with the solicitor had been going on for quite

1 some time.

2 Q. Okay.

3 A. I mean, we -- I didn't have a single conversation with

4

5 the solicitor via email and that was it about this case.

6 This had been going on for several months and, in fact,

7 multiple months, where I'd been back and forth with the

8 solicitor. I talked about Carly's background. I had sent

9 the solicitor information about Carly's counseling, about

10 the medical stuff that she'd been through. I had multiple

11 conversations with the solicitor, telephone, in person, here

12 at the courthouse, some by email, one of which you have.

13 This had been an ongoing process.

14 Q. Okay. And you said that you do remember the phone call

15 to her mom?

16 A. Well, I remember multiple phone calls from mom, but

17 yes, I do remember the one that was testified to in court

18 today. I do remember --

19 Q. Okay; all right.

20 A. I remember there was a call that Terry made to me, I

21 picked up the phone, Terry asked me to look at something,

22 that she thought a mistake had been made. I said that I

23 would check it out and I would call her back and I checked

24 it out and I called her back.

25 Q. But you do or you don't remember the question about

1 parole eligibility?

2 A. I remember the question about time served. I don't
3 have a specific recollection about the parole eligibility.

4 Q. Okay.

5 A. But that doesn't mean it didn't happen.

6 Q. Okay.

7 A. It just means that I don't remember it.

8 Q. Okay.

9 MR. THOMAS: Your Honor, if I can beg the Court's
10 indulgence.

11 THE COURT: All right.

12 MR. THOMAS: Your Honor, please the Court. We don't
13 have any questions -- any further questions.

14 THE COURT: Any redirect?

15 MR. MITCHELL: Just briefly, Your Honor.

16 REDIRECT EXAMINATION

17 CARLY BLUMENSTEIN BY MR. MITCHELL:

18 Q. The negotiated plea that Ms. Blumenstein ended up
19 pleading guilty to, in your mind that was the best offer the
20 solicitor was going to give you?

21 A. Yeah. I mean, it was -- the other offer was we go to
22 trial and neither my client or I, in conversations, thought
23 that was a better solution than the offer that we were
24 given.

25 Q. And you told Ms. Blumenstein that she would have to

1 serve eighty-five percent of her sentence?

2 A. That's correct.

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

4 THE COURT: Anything else?

5 MR. THOMAS: No, Your Honor. Nothing further.

6 THE COURT: All right. Witness is excused.

7 MR. WELLBORN: Thank you, Your Honor.

8 THE COURT: Next witness.

9 MR. MITCHELL: The State rests, Your Honor.

10 THE COURT: All right. The State's rested. Mr.
11 Thomas?

12 MR. THOMAS: Your Honor, if I may, I was going to ask
13 the Court to allow me to submit a memoranda in this case as
14 well. I think I would like to bifurcate it if I could and
15 do a little bit of an argument before I forget---

16 THE COURT: Okay.

17 MR. THOMAS: ---and then submit it with some case law
18 that I'd like to bring to the Court's attention.

19 THE COURT: That'd be fine.

20 MR. THOMAS: Okay. Your Honor, if it please the Court.
21 These -- the testimony today is starkly different. You
22 know, Ms. Blumenstein testified that she wanted to go to
23 trial, that she hired Chris Wellborn as a trial lawyer. She
24 felt like that she had certain defenses to this, she
25 enumerated a couple of those and that she'd been sitting in

1 the county jail. She felt like he wasn't really being
2 receptive, so then she started considering a plea and that
3 the plea was, basically, predicated upon the fact that it
4 was going to be fifteen years with parole eligibility,
5 eighty-five percent.

6 Now, she's not schooled in the law. So -- and one
7 thing I was asking Chris about is that there are a number of
8 cases, of drug cases, that are eighty-five percent that are
9 parole eligible and if they're violent offenses, they're
10 eligible within thirty percent or thirty-five percent or
11 thirty-three percent of their time, so they do exist.

12 Chris says that he takes that into consideration and
13 then the mom testifies, I think, very clearly that she's
14 watching the SCDC website, sees her face page, sees that
15 she's not eligible for parole. She's dreading talking to
16 her daughter about it, because that was something that she
17 was counting on and she calls Chris and Chris says, well,
18 let me look into it, comes back and says, no, I'm wrong. It
19 was -- it was not parole eligible.

20 Now, if we take his testimony, I think there are
21 glimpses in there that lead us to the fact that she actually
22 did believe and understand that she was eligible for parole
23 and that's why she took the plea. The thing that -- one of
24 the things that I think is most important is you will serve
25 eighty-five percent and be parole eligible. That's awfully

1 close to what she said, eighty-five percent with parole
2 eligibility, but Chris kind of changes around, which is not
3 completely correct, is that it's not eighty-five percent of
4 parole eligibility, it's eighty-five percent with community
5 service.

6 THE COURT: Supervision.

7 MR. THOMAS: Supervision. Yeah, community supervision.
8 So I see where it could very easily be that she understood
9 that it's eighty-five percent with parole and then it's also
10 -- how they could be inferred from eighty-five percent and
11 parole and Wellborn is talking about community supervision.

12 Also, the other thing that bothers me is these brief
13 references in his testimony to negotiating. I was
14 negotiating -- and I could have very easily written this
15 down wrong, but I was negotiating a knock down to something
16 less for parole purposes and it's not consistent with him
17 going from twenty-eight to a hundred from ten to twenty-
18 eight. I mean, he says, I spoke with the solicitor and they
19 rejected that. Now, he didn't say that at first, but he
20 then finally says that.

21 It's inconsistent to be talking about why he's -- and I
22 took it -- I could be wrong about this, too -- why he took
23 it in conjunction when he was being asked about the email,
24 that he talked about -- to the solicitor about something for
25 parole eligibility when it was clear or should have been

1 clear to him in the email that it was not parole eligible.
2 So -- and there were a couple of times where he says, I
3 don't remember, and that was especially around the thing
4 about, I don't remember in regards to parole eligibility, I
5 do remember that I told her eighty-five percent and parole.

6 So we would argue is that even if he meant to tell her
7 that she was eighty-five percent of the crime and not
8 eligible for parole, he never told her that and the case law
9 is that if you -- you don't have any obligation to advise at
10 all. You can just say I don't know, but he undertook the
11 obligation. He undertook that thing to tell her about what
12 she was looking at, eighty-five percent and parole.

13 THE COURT: Is your argument that you don't have to
14 inform, you just can't misinform?

15 MR. THOMAS: You can't misinform. You can't misinform.
16 And I think, to take it a little further, is that if you
17 misinform, you got to make sure she understands and where's
18 the prejudice? The prejudice is that she -- she understood
19 that she was going to be eligible; that doesn't mean she was
20 going to get it, but it does mean that she's eligible for
21 parole. I do a lot of parole. I think she'd be a good
22 candidate for parole. She has no prior record. So I think
23 she would be a good candidate, but you got to make sure that
24 she knows -- and, clearly, the prejudice is the difference
25 between the five that she would have had on parole

1 eligibility and the -- how much time?

2 MS. BLUMENSTEIN: Twelve years and nine months.

3 MR. THOMAS: -- twelve years and nine months.

4 THE COURT: The difference is--

5 MR. THOMAS: Yes.

6 THE COURT: ---no parole eligibility versus parole
7 eligibility.

8 MR. THOMAS: Versus parole eligibility.

9 THE COURT: Time aside?

10 MR. THOMAS: Yes, sir. So I think, clearly, that one,
11 I think she was -- I think it was -- I think he undertook
12 the obligation to inform her or undertook to inform her
13 about parole. I think he was wrong. I think he
14 misconstrued -- if you take it in his best light, he
15 misconstrued to her what parole meant and that, in essence,
16 she relied upon that, she entered into the plea to her
17 detriment and it's ended up now that she has to serve a
18 substantial amount of more time.

19 THE COURT: Okay. State?

20 MR. MITCHELL: Your Honor, the State would, obviously,
21 like a opportunity to respond to any writing, any writing
22 that -- and so --

23 THE COURT: And -- I'll let you finish first before --

24 MR. MITCHELL: Your Honor, this -- once Mr. Wellborn
25 began representation of Mrs. Blumenstein, first of all, he

1 investigated all the avenues that Ms. Blumenstein suggested.
2 As those started to fall apart, Mr. Wellborn realized that a
3 plea was probably going to be the best -- the best possible
4 solution.

5 Now, he said he negotiated with the solicitor for quite
6 a while and the lowest offer they were going to give Ms.
7 Blumenstein was a negotiated sentence of fifteen years for
8 the trafficking.

9 In Mr. Wellborn's testimony he says he knows he told
10 Ms. Blumenstein that she was going to serve eighty-five
11 percent of her sentence. Where you get four years from
12 that, I'm not sure, but -- and he doesn't remember, in his
13 testimony, saying that it was eighty-five percent parole
14 eligible, but he does remember saying that she would have to
15 serve eighty-five percent. Mr. Wellborn also communicated
16 that same to Ms. Blumenstein's mother.

17 Your Honor, she's not -- she's not prejudice by this
18 since, if what Mr. Wellborn says to be true, is because she
19 has to serve eighty-five percent of her sentence and that's
20 factually correct.

21 So, Your Honor, the State would submit that she was not
22 prejudiced by Mr. Wellborn informing her that she has to
23 serve eighty-five percent of her sentence.

24 THE COURT: Okay. Mr. Thomas, anything else?

25 MR. THOMAS: No, sir, nothing further.

1 THE COURT: The crux, if I'm not mistaken, is just
2 whether she understood the full ramifications or that there
3 was no parole.

4 MR. THOMAS: I think so.

5 THE COURT: And, I mean, obviously, we've heard sworn
6 testimony here today and I -- I mean, in reviewing the
7 record, I think there's also pertinent documents which go to
8 both of your respective arguments, so, you know, you talk
9 about a memorandum, I'm frankly inclined just to tell both
10 of you to do proposed orders--

11 MR. THOMAS: Okay.

12 THE COURT: ---at this point.

13 MR. THOMAS: All right.

14 THE COURT: And that will be your memorandum.

15 MR. THOMAS: Yes, sir.

16 THE COURT: Okay?

17 MR. MITCHELL: Yes, Your Honor. Thank you.

18 THE COURT: All right. So the matter will be under
19 advisement. Both State and the petitioner is going to
20 provide the proposed orders. Do you get the transcript
21 before you do it?

22 MR. MITCHELL: Typically not, but I --

23 THE COURT: That's fine.

24 MR. MITCHELL: In this case, I prefer one. If that's
25 okay with Mr. Thomas, we'll wait until we get the

1 transcripts.

2 MR. THOMAS: I don't have any objection, Your Honor.
3 It's one of those things where you actually should really do
4 it in every case and I don't, but you tend to get a better
5 order if you do get a transcript.

6 THE COURT: I defer that to y'all.

7 MR. MITCHELL: I agree with Mr. Thomas. I'll -- I'd
8 rather wait for the transcript to come in.

9 THE COURT: All right. Well, then, --

10 MR. MITCHELL: Do you want me to email you as soon as
11 we get the transcript and then---

12 THE COURT: Yeah.

13 MR. MITCHELL: ---we'll get a date for it after that.

14 THE COURT: I just don't want this to --

15 MR. THOMAS: They can expedite it, Your Honor. We've
16 done those before and if we expedite it, we're looking at a
17 couple of weeks to get the transcript, so it moves pretty
18 quickly.

19 THE COURT: Well, assuming our court reporter is not in
20 other places handling other cases.

21 MR. THOMAS: Yeah; yeah.

22 THE COURT: They seemed to get assigned to new places
23 every week. I don't know.

24 MR. THOMAS: Yes, sir.

25 THE COURT: All right. We'll do that and we'll just --

1 y'all will wait for the transcript, but, obviously, today's
2 what, December 8th?

3 MR. THOMAS: Yes.

4 THE COURT: Once we get into January, I'd like updates
5 every month. Hopefully, it won't take past January, but you
6 know, we never know what the workload is for transcripts,---

7 MR. THOMAS: Yes, sir.

8 THE COURT: ---'cause I know it can become a lot, so --
9 all right. It's under advisement. Thank you.

10 MR. THOMAS: And thank you for your indulgence, Your
11 Honor. You have the next case, too?

12 MR. THOMAS: No, sir. Thank goodness, I don't.

13 MR. MITCHELL: Thank you, Your Honor.

14 (END OF REQUESTED TRANSCRIPT)

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STATE OF SOUTH CAROLINA)

) C E R T I F I C A T E

COUNTY OF YORK)

I, the undersigned Shannon E. McGilberry, official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the record of all proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for York County, South Carolina, on the 8th day of December, 2022.

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

In witness whereof, I have hereunto subscribed my name, this 10th day of January, 2023.

Shannon E. McGilberry, CVR-M

My Commission Expires:

April 26, 2027

Hogge, Matthew

From: Smith, Austin
Sent: Thursday, December 8, 2022 11:24 AM
To: Hogge, Matthew
Subject: Fwd: Blumenstein

Austin Smith

Begin forwarded message:

From: "Newman, Austin" [REDACTED] >
Date: December 5, 2019 at 3:31:11 PM EST
To: Christopher Wellborn [REDACTED] >
Subject: RE: Blumenstein

That is correct. It is violent, serious, and no parole.

Austin Newman
 Assistant Solicitor
 Sixteenth Judicial Circuit
 1675-1A York Hwy
 York, SC 29745
 Phone: (803)628-3020
 Fax: (803) 628-3025
 [REDACTED]

From: Christopher Wellborn [REDACTED] >
Sent: Thursday, December 5, 2019 3:29 PM
To: Newman, Austin [REDACTED]
Subject: Re: Blumenstein

WARNING: The email below is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

28 plus, correct?

On Dec 5, 2019, at 3:28 PM, Newman, Austin
 <[REDACTED]> wrote:

Good afternoon. We are sticking with the 15 and it will be 85%.

Thanks,

Austin Newman
Assistant Solicitor
Sixteenth Judicial Circuit
1675-1A York Hwy
York, SC 29745
Phone: (803)628-3020
Fax: (803) 628-3025
[REDACTED]

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2020CP4603437

Carly M Blumenstein

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The Court

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

/s/ Walton J. Mcleod, IV

Circuit Court Judge

2765

Judge Code

4/17/2023

Date

For Clerk of Court Office Use Only

This judgment was entered on **April 25, 2023**, and a copy mailed first class or placed in the appropriate attorney's box on **April 25, 2023**, to attorneys of record or to parties (when appearing pro se) as follows:

Tommy Arthur Thomas PO Box 88 Irmo, SC 29063

Zachary William Jones PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Carly Blumenstein, SCDC #382062,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

Case No. 2020-CP-46-03437

ORDER OF DISMISSAL

FILED-RECEIVED
2023 APR 25 AM 9:29
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

I. INTRODUCTION

The matter before this Court is an action for post-conviction relief (PCR) commenced by Carly Blumenstein (Applicant) on November 16, 2020. On December 9, 2022, a hearing into the matter was convened before the Honorable Walton J. McLeod, IV. Applicant was present and represented by Tommy A. Thomas, 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 are without merit. For the reasons discussed below, this Court hereby **DENIES** relief and dismisses this action with prejudice.

II. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections. During its September 2019 term, the York County Grand Jury indicted Applicant for trafficking methamphetamine, 100 grams or more, first offense (2019-GS-46-00734), and possession with intent to distribute heroin (2019-GS-46-00735). Applicant was represented by Christopher A. Wellborn, Esquire. Assistant Solicitor Austin Newman of the Sixteenth Circuit Solicitor's Office prosecuted the case.

On January 14, 2020, Applicant appeared before the Honorable Paul M. Burch, circuit court judge, and, pursuant to negotiations between the State and Applicant, pleaded guilty to the lesser included offense of trafficking methamphetamine, 28 grams or more, first offense and possession with intent to distribute

heroin. Additionally, pursuant to negotiations between the State and Applicant, Applicant waived presentment to a Grand Jury, and pleaded guilty to two counts of possession of methamphetamine (2018-GS-46-07792, -08594). In accordance with the negotiations, Judge Burch sentenced Applicant concurrently to fifteen years' each for trafficking methamphetamine and possession with intent to distribute heroin, and time served for both counts of possession of methamphetamine. Applicant did not file a direct appeal.

III. STATEMENT OF FACTS

Trafficking Methamphetamine and Possession with Intent to Distribute Heroin (2019-GS-46-00734, -00735)

On January 24, 2019, Applicant and a co-defendant were stopped on Interstate 77 for speeding. (GP Tr. p. 9). During the traffic stop, police canines conducted a free-air sniff of the vehicle and alerted to a substance on the passenger's side door. (GP Tr. p. 9). Inside the car police found a black computer bag on the floor of the passenger's side of the car which contained three plastic bags with 120.53 grams of methamphetamine, along with three digital scales, packaging materials, and other paraphernalia. (GP Tr. p. 9). Police additionally found a Mountain Dew can containing .19 grams of heroin, and .22 grams of methamphetamine, nineteen doses of Alazopram, and six doses of Clonazepam. (GP Tr. p. 9). Applicant claimed ownership of the drugs. Applicant's co-defendant informed police he was involved in a drug deal Applicant had arranged, and that this was the third drug deal that Applicant and her co-defendant had conducted together. (GP Tr. p. 9).

Possession of Methamphetamine (2018-GS-46-07792)

On November 3, 2018, Applicant was a passenger in a vehicle that was stopped on Eden Terrace in York County for failure to use a turn signal. (GP Tr. p. 8). Applicant was the owner of the vehicle, and gave consent for a search of the car. (GP Tr. p. 8-9). During the search, police found .07 grams of methamphetamine in Applicant's purse. (GP Tr. p. 9).

Possession of Methamphetamine (2018-GS-46-08594)

On November 13, 2018, Applicant was stopped by police on Hanley House Lane in York County for crossing over the center line multiple times. (GP Tr. p. 9). Applicant consented to a search of her purse, during which, officers found a syringe containing methamphetamine. (GP Tr. p. 9).

IV. 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
2. Involuntary Guilty Plea

Pursuant to Rule 71.1, SCRPC, Applicant, through PCR counsel, amended her application to include the following allegations:

1. That the Applicant would further allege that she hired Christopher Wellborn as her trial lawyer. The purpose of hiring Mr. Wellborn was in order for him to try the case for which the Applicant was charged. However, just prior to trial, a plea offer was presented to her by counsel. This plea offer was a negotiated fifteen (15) years plea for two counts of Possession of Methamphetamine first offense, Trafficking in Methamphetamine 28 grams or more first offense and Possession with Intent to Distribute Heroin first offense. Plea counsel told the Applicant that she would be serving an 85% sentence, but she would be eligible for parole.
2. That the Applicant's Mother, Terri Robinson Blumenstein contacted plea counsel when the Applicant learned from the South Carolina Department of Corrections, that she was not eligible for parole. Plea counsel advised Applicant's Mother that he would speak with the Attorney General's Office about this. Applicant's Mother was informed that plea counsel contacted the Attorney General's office and found out that she was not eligible for parole and submitted to Applicant's Mother that he had been wrong about Applicant's parole eligibility.
3. In addition, the Applicant believes that plea counsel seemed to not be fully invested in his representation. That often the Applicant would ask him to look into certain matters and he never did. Applicant believes that Plea counsel did not fully and properly investigate the case, did not advise her correctly regarding this case and encouraged her to enter into the plea based upon incorrect information.
4. Any and all other issues as they may arise from the PCR trial.

At the hearing, Applicant proceeded only on claims that were raised in the amended application.

V. 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. *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. ___, 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).

VI. 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. The Court will now address the claims raised in the application and amended application, finding 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 Investigate¹

Applicant contends Counsel was ineffective for failing to fully and properly investigate the case, including failing to investigate certain matters suggested by Applicant. Applicant further contends Counsel was not fully invested in his representation. This Court disagrees, and finds Applicant failed to present sufficient evidence or testimony indicating how a more thorough investigation would have affected Applicant’s decision to plead guilty.

1. PCR Testimony

Applicant testified she met with Counsel “a handful, maybe five times” while she was detained in the York County Detention Center. (PCR Tr. p. 9). During these meetings, Applicant testified she would

¹ Claim 3

“pitch ideas...of possible routes we could take in trial” and that Counsel “was not following those avenues.” (PCR Tr. p. 9; PCR Tr. p. 10). Specifically, she wanted Counsel to investigate the existence of evidence showing the drugs were not hers and to challenge the constitutionality of the K9 search. (PCR Tr. p. 17 – 18). Applicant testified she admitted to law enforcement the drugs were hers. (PCR. Tr. p. 18).

Counsel testified he initially represented Applicant on the two possession of methamphetamine charges, where, in both cases, drugs were found in her purse, pocketbook, or in her vehicle after a traffic stop and subsequent search. (PCR Tr. p. 23). While those cases were pending, Applicant was once more stopped in York County and a search of her vehicle was conducted. (PCR Tr. p. 24). After a K9 search of the vehicle, over 28 grams of methamphetamine were found. (PCR Tr. p. 24).

Counsel testified the first action he undertook in his representation of Applicant on the trafficking charge was to investigate the legality of the stop. (PCR Tr. p. 24). Counsel watched the videos of the traffic stop to determine whether the stop was “prolonged in a way that would render it illegal.” (PCR Tr. p. 24). Applicant mentioned to Counsel certain actions by law enforcement “that should have been on the video that would have been helpful, potentially, to our cause in suppressing the evidence”; however, upon review of the videos, Counsel discovered those actions did not occur. (PCR Tr. p. 25, ll. 1-6). Thus, after investigating the legality of the stop, Counsel determined “the suppression of the search avenue was foreclosed.” (PCR Tr. p. 25).

Counsel testified the first line of defense in this case was to argue the drugs did not belong to Applicant but instead belonged to the co-defendant. (PCR Tr. p. 24). Counsel testified this defense was problematic from the outset since Applicant gave a confession admitting the drugs were hers. (PCR Tr. p. 25). Despite the precarious nature of this defense, Counsel investigated videos from the highway patrol vehicle, where Applicant and co-defendant were detained shortly after the traffic stop, which Applicant mentioned contained statements made by her and co-defendant corroborating her defense. (PCR Tr. p. 26). Furthermore, Counsel testified he looked at body cams, dash cams, and at in-camera car footage; he looked at every single available video and those statements were not there. (PCR Tr. p. 35). After a thorough investigation of the videos, Counsel determined that conversation did not exist. (PCR Tr. p. 26).

After determining the suppression of the drugs and Applicant's defense she lacked ownership in the drugs would likely be unsuccessful, Counsel testified their strategy switched from one of preparing for trial to mitigation. (PCR Tr. p. 26). This strategy was agreed upon by Applicant and both her parents. (PCR Tr. p. 27). Counsel testified he had extensive communications with the Solicitor lasting several months in which he conveyed issues related to mitigation including information regarding Applicant's background, her counseling, and her medical history in order to obtain the best plea offer possible. (PCR. Tr. p. 44). Counsel testified these communications occurred over the phone, in person, at the courthouse, and over email. (PCR Tr. p. 44). Counsel testified that during plea negotiations he requested an offer for Applicant to plead to trafficking methamphetamine ten to fifteen grams. (PCR Tr. p. 34). Further, Counsel testified he argued Applicant would be an ideal candidate for drug court given her background. (PCR Tr. p. 34). Despite Counsel's best efforts both these suggestions were summarily rejected by the Solicitor. (PCR Tr. p. 34).

2. Discussion

This Court concludes Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*). Counsel's credible testimony indicates he met with Applicant several times and thoroughly investigated the defenses Applicant suggested. Further, Applicant failed to present "any evidence of how additional preparation or communication would have resulted in a different outcome." *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); see *Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (explaining that, where an applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to show his counsel's lack of preparation prejudiced him); *Harris v. State*, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (finding that, when there is evidence counsel met with a defendant in preparation for trial and there is no evidence additional preparation on the part of counsel would have

affected the outcome at trial, counsel cannot be said to have been ineffective), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

In sum, as made clear by the above summary of Counsel's testimony, Applicant's allegations regarding Counsel's failure to investigate possible defenses are refuted by Counsel's credible testimony.

First, Applicant alleges Counsel failed to investigate the legality of the traffic stop and K9 search. This Court finds Counsel adequately investigated the traffic stop and subsequent search. Counsel credibly testified he analyzed all the videos of the traffic stop available to ascertain the constitutionality of the traffic stop. Furthermore, Counsel testified he examined the videos for the specific actions Applicant indicated would be on the videos. Counsel credibly testified those actions were not on the videos. After sufficiently investigating the videos, Counsel determined the suppression of the drugs would likely be unsuccessful. Thus, this Court finds Counsel adequately and thoroughly investigated the legality of the K9 search, and accordingly, Counsel exercised reasonable professional judgment in determining the stop was legal and suppression of the drugs would be unlikely.

Next, Applicant alleges Counsel failed to properly investigate potential exculpatory evidence showing the drugs belonged to her co-defendant. This Court finds Counsel adequately investigated and prepared for this defense. Counsel's credible testimony evinces his investigative acts, including reviewing video from the highway patrol that Applicant claimed contained exculpatory statements made by her and her co-defendant. Furthermore, Counsel credibly testified he reviewed all other videos available to him, including footage from body cameras and dashboard cameras, to see if any exculpatory evidence existed. Again, Counsel credibly testified that evidence simply did not exist. Moreover, Applicant testified she made a statement to law enforcement claiming ownership over the drugs making this defense even more untenable. Thus, this Court finds Counsel adequately investigated and prepared for this defense, and Counsel exercised reasonable professional judgment in determining this defense would likely be unsuccessful.

Applicant's allegation Counsel was not fully invested in his representation is refuted by the credible testimony of Counsel. As discussed above, Counsel thoroughly investigated this case including all potential

defenses. Counsel negotiated extensively with the Solicitor, over the course of several months, seeking to obtain the best plea deal possible. For the purpose of mitigation Counsel investigated Applicant's background in the hopes it would lead to a more favorable plea deal. Despite the worthy efforts of Counsel, it is clear from Counsel's testimony that the Solicitor was not going to acquiesce from the plea offer of fifteen years. Counsel then advised Applicant the best solution was to plead guilty to the negotiated offer of fifteen years for trafficking methamphetamine, 28 grams or more, first offense.

The Court finds Applicant failed to present evidence of a viable defense, investigative tactic, or alternate strategy Counsel should have explored which would have helped Applicant's case or affected her decision to plead guilty. Accordingly, Applicant's claims pertaining to Counsel's failure to investigate and prepare Applicant for trial are **DENIED**.

B. Plea Counsel Erroneously Advised Applicant Her Sentence Was Parole Eligible and Applicant Relied On This Misinformation In Making Her Decision to Plead Guilty²

Applicant also contends Counsel was ineffective for erroneously advising Applicant she would be eligible for parole if she pleaded guilty to trafficking in methamphetamine. This Court disagrees, and finds that Counsel's credible testimony; Counsel's communication via email with the Solicitor, which was made part of the record; and the plea waiver form signed by Applicant refute this allegation.

1. PCR Testimony

At the PCR hearing Applicant testified that her intent in hiring Counsel was to prepare for a trial. (PCR Tr. P. 10). Applicant testified she decided to start considering a plea because she had been in County Detention for over a year and was losing hope in her case due to Counsel not investigating certain avenues. (PCR Tr. p. 11). Applicant testified Counsel informed her she would be pleading to a violent crime, but it would be parole eligible. (PCR Tr. p. 11). Applicant testified Counsel told her she would have to complete thirty percent of her time before she would be eligible for parole. (PCR Tr. p. 11). Applicant testified Counsel went through the math with her and determined she would have to serve five years before becoming eligible for parole. (PCR Tr. p. 11-12). Applicant testified she pleaded guilty based on the parole eligibility

² Claims 1 and 2

of the offense. (PCR Tr. p. 13). Applicant testified she was informed by her mother over the phone that she was not eligible for parole.

At the PCR hearing, Applicant's mother, Terry Blumenstein, testified she would talk with Counsel regularly about the case. (PCR Tr. p. 21). Applicant's mother testified that Counsel informed her that Applicant would be serving a fifteen year sentence, but Applicant would only have to serve four years before becoming parole eligible. (PCR Tr. p. 21). Applicant's mother further testified she found out Applicant was not parole eligible when looking at Applicant's profile on the South Carolina Department of Corrections website. (PCR Tr. p. 21).

Counsel testified he then began plea negotiations with the Solicitor on behalf of Applicant. (PCR Tr. p. 28). After extensive communications with the Assistant Solicitor, Counsel testified they received a negotiated plea offer of fifteen years' imprisonment. (PCR Tr. p. 28). Counsel testified he explained to Applicant she had the choice of accepting the offer or rejecting the offer and proceeding to trial. (PCR Tr. p. 29).

Counsel testified he informed Applicant she would be serving 85% of her sentence. (PCR. Tr. p. 31). Counsel testified there was correspondence with the solicitor to that effect. (PCR Tr. p. 31). The State then admitted a copy of the email into the record without objection. (PCR Tr. p. 32), *See* State's Exhibit 1. Counsel testified that after receiving the email he believes he would have informed Applicant she was pleading to a non-parole eligible offense even though he cannot remember the exact words he used. (PCR Tr. p. 33). Counsel testified he told Applicant the sentence was "in the eighty five percent category." (PCR Tr. p. 34). Counsel testified he has no memory of informing Applicant she would be parole eligible after four years and "that wouldn't have made any sense." (PCR Tr. p. 36-37). Regarding conversations between Counsel and Applicant's mother, Counsel testified he remembers telling her that Applicant would have to do eighty-five percent. (PCR Tr. p. 36). Counsel testified he remembered a phone call between himself and Applicant's mother where they discussed a possible mistake regarding Applicant's time served, however, Counsel did not recall a conversation with Terry concerning parole eligibility. (PCR Tr. p. 36).

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).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights 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).

Parole eligibility is collateral consequence of sentencing which a defendant need not be specifically advised before entering a guilty plea. *Griffin v. Martin*, 278 S.C. 620, 300 S.E.2d 482 (1983). *See Brown v. State*, 306 S.C. 381, 412 S.E.2d (1991) (guilty plea is not rendered involuntary if the defendant is not informed of the collateral consequences of his sentence). "However, if trial Counsel actively misinforms the defendant about parole eligibility, the defendant must prove [she] relied on the misinformation to receive PCR". *Frasier v. State*, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

This Court finds Applicant's allegation she pleaded guilty due to Counsel's misinformation regarding parole eligibility is without merit. Applicant testified she would not have pleaded guilty had she been aware the charge was a non-parole eligible offense. This Court finds that Applicant's testimony regarding her reliance on the parole eligibility of the offense is not credible based on extensive evidence presented to the contrary.

Specifically, this allegation is refuted by the credible testimony of Counsel. Counsel credibly testified multiple times that he informed Applicant she would be serving eighty five percent of her sentence for trafficking methamphetamine. Counsel credibly testified it does not make any sense he would have advised Applicant she would only have to serve four years. This directly refutes Applicant's testimony that Counsel informed her she would become parole eligible after serving four years. Furthermore, Counsel testified he believed he would have informed Applicant she was pleading to a non-parole eligible offense after receiving an email from the Solicitor confirming this. *See State's Exhibit 1*.³ Counsel credibly testified

³ This Court finds it incredulous that after *months* of plea negotiations Applicant would claim that Counsel advised her she would be pleading to an offense that would be parole eligible after four years. This is especially difficult to believe considering the original offense charged carried a mandatory term of imprisonment of 25 years.

he remembers telling Applicant's mother she would be serving 85% of her sentence. Counsel credibly testified he does not recall discussing parole eligibility with Applicant's mother.

Furthermore, this Court has before it a plea waiver form signed by Applicant and filed on November 23, 2020.⁴ The plea waiver form explains the consequences of the offense Applicant plead to. The form explains trafficking methamphetamine 28 grams or more 1st offense is violent, serious, and *no parole*. Applicant initialed near the box checked *no parole*. This form directly refutes Applicant's allegation she was unaware she was pleading to a non-parole eligible offense. Accordingly, this Court finds Applicant was not actively misinformed regarding the parole eligibility of the offense.

This Court again finds applicable the strong presumption that trial counsel rendered adequate assistance and exercised reasonable professional judgment in his representation of Applicant at all stages of the proceedings. *Ard*, 372 S.C. at 331, 642 S.E.2d at 596; *Strickland*, 466 U.S. at 689. Counsel's credible testimony, his correspondence with the Solicitor, and the plea waiver form demonstrate Applicant was aware she was pleading to non-parole eligible offense; thus, she did not rely on any misinformation regarding her parole eligibility when giving her plea. Accordingly, Applicant's claims pertaining to Counsel's alleged misinformation of Applicant's parole eligibility and her subsequent reliance on that misinformation 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,

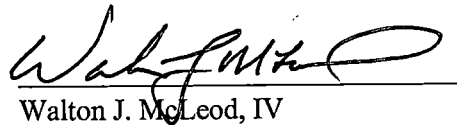
⁴ The plea waiver form was included in the Clerks Records.

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 17 day of APRIL, 2023.



Walton J. McLeod, IV
Presiding Judge
Sixteenth Judicial Circuit

, South Carolina

WITNESSES

DEU

Witnessing Officer: Rodenhauser

ARREST WARRANT NUMBER

2019A4610200139

ACTION OF GRAND JURY

TRUE BILL

VERDICT

Sarah Nivers
Foreperson of Grand Jury
Date: 9/19/19

Foreperson of Petit Jury
Date:

DOCKET NO. 2019-GS-46-00734

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

SEPTEMBER 19, TERM 2019

THE STATE

VS.

CARLY MARIE BLUMENSTEIN

INDICTMENT FOR

TRAFFICKING METHAMPHETAMINE

SC Code: § 44-53-375(C)
CDR Code: 0368

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

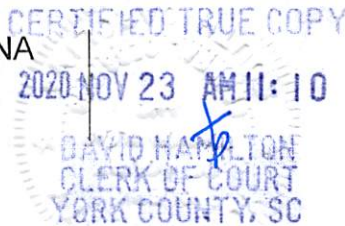
I Carly Bluma Stein
hereby appear in my own proper person and plead guilty to the within indictment or to
Trafficking meth 28g or more
1st offense

X Carly Blumenstein
Defendant

Witness:

Angie M. G. spec
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF YORK



INDICTMENT

At a Court of General Sessions, convened on September 19, 2019, the Grand Jurors of York County present upon their oath:

TRAFFICKING METHAMPHETAMINE

The defendant, Carly Marie Blumenstein, did on or about January 24, 2019, in York County, South Carolina, knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of one hundred (100) grams or more of methamphetamine as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2), all in violation of 44-53-375(C), Code of Laws of South Carolina (1976, as amended).

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

A handwritten signature in black ink, appearing to read "Austin D. Newman", written over a horizontal line.

AUSTIN D. NEWMAN
ASSISTANT SOLICITOR

COUNTY OF YORK

STATE VS.

CARLY MARIE BLUMENSTEIN

AKA:

Race: White

Sex: F

Age: 25

DOB: [REDACTED]

SS#: [REDACTED]

Address: [REDACTED] Lake Shore Road S

City, State, Zip: Denver, NC 28037

DL# [REDACTED]

SID# SC02348064

*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: **Trafficking Methamphetamine 28g or more 1st Offense (NLT 7 YEARS TO 25 YEARS & \$50,000)**

In violation of § 44-53-375(C) of the S.C. Code of Laws, bearing CDR Code # 0392

☐ 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:


Austin D. Newman, Assistant Solicitor

102332

SC Bar #


Defendant
Attorney for Defendant

11914

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 354 days☐ 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

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

☐ Ordered PTUP _____

days/hours Public Service Employment

Payment Terms: _____

Obtain 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

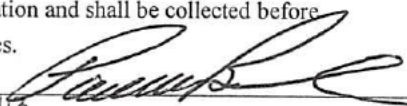
pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before
any other fees.Presiding Judge: 

Judge Code: 2048

Sentence Date: 1-14-20

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/Probation) \$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) \$ \$ _____

TOTAL

\$ 275

Clerk of Court/Deputy Clerk: DAVID HAMILTON

Court Reporter: Kymberlee Williams

WITNESSES

DEU

Witnessing Officer: *Rodenhauser*

ARREST WARRANT NUMBER

2019A4610200143

ACTION OF GRAND JURY

TRUE BILL

Sarah Nivers
Foreperson of Grand Jury
Date: *9/19/19*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2019-GS-46-00735

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

SEPTEMBER 19, TERM 2019

THE STATE

VS.

CARLY MARIE BLUMENSTEIN

INDICTMENT FOR

POSSESSION WITH INTENT TO
DISTRIBUTE HEROIN

SC Code: § 44-53-370
CDR Code: 0183

After being fully advised as to my legal
rights, I hereby waive presentment to
the Grand Jury.

114

Defendant

Carly Blumenstein
hereby appear in my own proper
person and plead guilty to the within
indictment or to

X Carly Blumenstein
Defendant

Witness:

Gregory H. Chase
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

CERTIFIED TRUE COPY

2020 NOV 23

AM 11:11

INDICTMENT

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on September 19, 2019, the Grand Jurors of York County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE HEROIN

The defendant, Carly Marie Blumenstein, did on or about January 24, 2019, in York County, South Carolina, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase heroin, a schedule I controlled substance narcotic, all in violation of Section 44-53-370, Code of Laws South Carolina (1976, as amended).

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



AUSTIN D. NEWMAN
ASSISTANT SOLICITOR

116
COUNTY OF YORK
STATE VS.

CARLY MARIE BLUMENSTEIN

AKA: _____
Race: White Sex: F Age: 25
DOB: _____ SS#: _____
Address: _____ Lake Shore Road S
City, State, Zip: Denver, NC 28037
DL# _____ SID# SC02348064

INDICTMENT/CASE#: 2019-GS-46-00735
A/W: 2019A4610200143
Date of Offense: 01/24/2019
S.C. Code #: 44-53-370
CDR Code #: 0183

DL# _____ SID# SC02348064

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Possession with Intent to Distribute Heroin 1st Offense (NMT 15 YEARS &/OR \$25,000)

In violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # 0183

☒ 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. *xcmb* (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____ 102332 _____ 11914
Austin D. Newman, Assistant Solicitor SC Bar # _____ Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. *359 days*
☐ 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 _____

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/Probation) \$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) \$ \$ _____

TOTAL \$ 275

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before
any other fees.

Presiding Judge: _____

Judge Code: 2098Sentence Date: 1-14-20

WITNESSES

RHPD

Witnessing Officer:

ARREST WARRANT NUMBER

2018A4620302343

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2018-GS-46-07792

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JANUARY 23, TERM 2020

THE STATE

VS.

CARLY MARIE BLUMENSTEIN

INDICTMENT FOR

POSSESSION OF METHAMPHETAMINE

SC Code: § 44-53-375(A)
CDR Code: 3009

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

X Carly Blumenstein
Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

X Carly Blumenstein
Defendant

Witness:

Amber C. Spec
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

CERTIFIED TRUE COPY

2020 NOV 23 AM 11:10

INDICTMENT

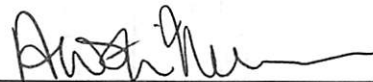
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on January 23, 2020, the Grand Jurors of York County present upon their oath:

POSSESSION OF METHAMPHETAMINE

The defendant, Carly Marie Blumenstein, did on or about October 3, 2018, in York 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 case made and provided.



AUSTIN D. NEWMAN
ASSISTANT SOLICITOR

COUNTY OF YORK
STATE VS.

CARLY MARIE BLUMENSTEIN

AKA:

Race: White

Sex: F

Age: 25

DOB: [REDACTED]

SS#: [REDACTED]

Address: 3814 Lake Shore Road S

City, State, Zip: Denver, NC 28037

DL# [REDACTED]

SID# SC02348064

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

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

INDICTMENT/CASE#: 2018-GS-46-07792

A/W: 2018A4620302343

Date of Offense: 10/03/2018

S.C. Code §: 44-53-375(A)

CDR Code #: 3009

SENTENCE SHEET

TO: Possession of Methamphetamine 1st Offense (NMT 3 YEARS &/OR \$5,000)

In violation of § 44-53-375(A) of the S.C. Code of Laws, bearing CDR Code # 3009

☒ 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. CEB (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Austin D. Newman 102332
Austin D. Newman, Assistant Solicitor SC Bar #Carly Blumenstein 11914
Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☒ County Detention Center, for a determinate term of Time Served 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: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc. 359 days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. 6

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

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

Payment Terms: _____

☐ Ordered PTUP _____ days/hours Public Service EmploymentObtain GED ☐☐ Set by SCDPPPS _____

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/Probation) \$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) \$ \$ _____

TOTAL \$ 275

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before any other fees.

Presiding Judge: David HamiltonJudge Code: 2048Sentence Date: 1.14.20

Clerk of Court/Deputy Clerk: DAVID HAMILTON

Court Reporter: Kymberlee Williams

WITNESSES

DEU

Witnessing Officer:

ARREST WARRANT NUMBER

2018A4610400083

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2018-GS-46-08594

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JANUARY 23, TERM 2020

THE STATE

VS.

CARLY MARIE BLUMENSTEIN

INDICTMENT FOR

POSSESSION OF METHAMPHETAMINE

SC Code: § 44-53-375(A)

CDR Code: 3009

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

120

X Carly Blumenstein
Defendant

I Carly Blumenstein
hereby appear in my own proper person and plead guilty to the within indictment or to

X Carly Blumenstein
Defendant

Witness:

Anthony Cooper
C.C.O.PLS. AND G.S.

STATE OF SOUTH CAROLINA

CERTIFIED TRUE COPY

COUNTY OF YORK

2020 NOV 23 AM 11:10

INDICTMENT

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on January 23, 2020, the Grand Jurors of York County present upon their oath:

POSSESSION OF METHAMPHETAMINE

The defendant, Carly Marie Blumenstein, did on or about November 16, 2018, in York 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 case made and provided.



AUSTIN D. NEWMAN
ASSISTANT SOLICITOR

COUNTY OF YORK
STATE VS.

JAIL

CARLY MARIE BLUMENSTEIN

AKA: _____
Race: White Sex: F Age: 25
DOB: _____ SS#: _____
Address: _____ Lake Shore Road S
City, State, Zip: Denver, NC 28037INDICTMENT/CASE#: 2018-GS-46-08594
A/W: 2018A4610400083
Date of Offense: 11/16/2018
S.C. Code §: 44-53-375(A)
CDR Code #: 3009

SENTENCE SHEET

DL# _____ SID# SC02348064

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

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

☐ CONVICTED OF or ☒ PLEADS

TO: Possession of Methamphetamine 1st Offense (NMT 3 YEARS &/OR \$5,000)

In violation of § 44-53-375(A) of the S.C. Code of Laws, bearing CDR Code # 3009

☒ 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. *YCMB* (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Austin D. Newman
Austin D. Newman, Assistant Solicitor 102332 SC Bar #*Carly Blumenstein*
Defendant Attorney for Defendant 11914 SC Bar #WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☒ County Detention Center,
for a determinate term of Time Served 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: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc. 359 day☐ 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 \$ 100

Fine may be pd. in equal consecutive weekly/monthly

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

pmts. of \$ _____ Beginning _____

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

\$ _____ Paid to Public Defender Fund

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

Other: _____

Proviso (Public Def/Probation) \$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) \$ \$ _____

TOTAL \$ 275☐ 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: DAVID HAMILTON

Presiding Judge: *David Hamilton*Court Reporter: *Kymberlee Williams*Judge Code: 2045Sentence Date: 1.14.20

ARREST WARRANT

2019A4610200143

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

THE STATE

against

Carly Marie Blumenstein

Address: Lake Shore Road South

Denver, NC 28037-

Phone: SSN:
 Sex: F Race: W Height: 5 5 Weight: 130
 DL State: NC DL #:
 DOB: Agency ORI #: SC0460000
 Prosecuting Agency: York County Sheriff
 Prosecuting Officer: Christopher E Rowe - S00203
 Offense: Drugs /PWID Heroin - 1st offense

Offense Code: 0183
 Code/Ordinance Sec: 44-53-0370(b)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused
 is to be arrested and brought before me to be
 dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Carly Marie Blumenstein
 on 1/24/19

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

York County General Sessions
 1675 York Hwy
 York, SC 29745

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

Personally appeared before me the affiant Christopher E Rowebeing duly sworn deposes and says that defendant Carly Marie Blumensteindid within this county and state on or about 1/24/2019State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of York)

in the following particulars:

DESCRIPTION OF OFFENSE: Drugs /PWID Heroin - 1st offense

I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

The defendant, Carly Blumenstein, did willfully and unlawfully violate South Carolina drug laws by possessing with the intent to
 distribute approximately .3 grams of Heroin while on I-77 north near the 82 mile marker Fort Mill, York County, South Carolina.
 The drugs were identified as Heroin by the defendant, and based on officer's training and experience. Probable cause based on
 police investigation, traffic stop, positive K-9 alert, recovery of evidence, and defendant statements. REPORT#20190003056

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

Affiant's Address 1675 2-A York HwyYork, SC 29745-Affiant's Telephone (803)628-3059

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/24/2019 defendant Carly Marie Blumenstein

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of York) as set forth below:

DESCRIPTION OF OFFENSE: Drugs /PWID Heroin - 1st offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
 her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
 soon thereafter as is practicable

Sworn to and subscribed before me

on 1/24/2019

Signature of Issuing Judge

Leon E. Yard

Judge Code: 5945

(L.S.)

Judge's Address Moss Justice CenterYork, SC 29745-7423Judge's Telephone (803)628-3029Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
 S.C. Attorney General
 April 21, 2003
 SCCA 518

124

DAVID HAMILTON
 CLERK OF COURT
 YORK COUNTY, SC
 2020 NOV 23 AM 11:11
 CERTIFIED TRUE COPY

ARREST WARRANT

2018A4620302343

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
ROCK HILL

THE STATE

against

BLUMENSTEIN, CARLY MARIE

Address: WILLIAMS RD
FORT MILL SC 29715

Phone: SSN: Sex: F Race: W Height: 505 Weight: DL State: NC DL#: DOB: Agency ORI #: 460300Prosecuting Agency: RHPDProsecuting Officer: JOSHUA D ENGLERTOffense: VDL (POSSESSIONOffense Code: Code/Ordinance Sec. 44-53-375 (A)This warrant is **CERTIFIED FOR SERVICE** in the

☐ County/ ☐ Municipality of

The Accused
is to be arrested and brought before me to be
dealt with according to law.

(L.S.)
Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Carly M. Blumenstein

on 10-4-2018

Sam Buchanan
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

ROCK HILL MUNICIPAL COURT

ROCK HILL SC 29730

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

ROCK HILL

Personally appeared before me the affiant Sam Buchananbeing duly sworn deposes and says that defendant BLUMENSTEIN, CARLY MARIEdid within this county and state on 10/03/2018

State of South Carolina (or ordinance of

in the following particulars:

DESCRIPTION OF OFFENSE:

VDL (POSSESSION METHAMPHETAMINE) - 44-53-375 (A) 300g

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

On 10/03/2018 the defendant did willfully and unlawfully violate South Carolina Code of Law 44-53-375(A) Possession of
Methamphetamine. During a consensual search of the defendant's property, Officer Englert located .07 grams of
methamphetamine inside the defendants black purse. The methamphetamine was inside of a clear plastic bag. This incident took
place during a lawful traffic stop in the 700 block of Eden Terrace, which is within the city limits of Rock Hill, South Carolina, County
of York.

Police Investigation

Case #: 1810030085

The affiant is swearing to this based on information and belief provided by the arresting officer.

Signature of Affiant Sam Buchanan

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

ROCK HILL

Affiant's Address ROCK HILL MUNICIPAL COURTROCK HILL SC 29730Affiant's Telephone - -

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 10/03/2018 defendant BLUMENSTEIN, CARLY MARIE

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of ROCK HILL) as set forth below:

DESCRIPTION OF OFFENSE:

VDL (POSSESSION METHAMPHETAMINE) - 44-53-375 (A)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 10/4/2018

Signature of Issuing Judge

Judge Code: 801dpJudge's Address ROCK HILL MUNICIPAL COURTROCK HILL SC 29730Judge's Telephone 803-329-5695

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

PLEA WAIVER FORM

STATE OF SOUTH CAROLINA

COUNTY OF YORK

vs.

Carly Marie Blumenstein,
Defendant.

IN THE COURT OF GENERAL SESSIONS

CERTIFIED TRUE COPY
2020 NOV 23 AM 11:10
X
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

cmb

= defendant's initials required

Total Time Served (days) 359

I want to plead guilty, no contest, or enter a plea under N.C. v. Alford to the charges listed below. I understand that the minimum and maximum penalties as well as some of the collateral consequences for the charges to which I am pleading are listed below:

True billed ☐ Waiver ☒Indictment #: 2018-GS-46-07792 CDR: 3009Statute #: 44-53-375(A)Original Charge: Possession of Methamphetamine 1st OffensePleading To: Possession of Methamphetamine 1st Offense

cmb

Misdemeanor ☒ Felony ☐

Penalty: NMT 3 YEARS &/OR \$5,000

☒ Non-Violent ☐ Violent ☐ Serious ☐ Most Serious ☐ No Parole ☐ Sex Offender

Registry

☐ Mandatory GPS ☐ Increased Punishment for Future Offenses ☐ Murder Day for Day
True billed ☐ Waiver ☒Indictment #: 2018-GS-46-08594 CDR: 3009Statute #: 44-53-375(A)Original Charge: Possession of Methamphetamine 1st OffensePleading To: Possession of Methamphetamine 1st Offense

cmb

Misdemeanor ☒ Felony ☐

Penalty: NMT 3 YEARS &/OR \$5,000

☒ Non-Violent ☐ Violent ☐ Serious ☐ Most Serious ☐ No Parole ☐ Sex Offender

Registry

☐ Mandatory GPS ☐ Increased Punishment for Future Offenses ☐ Murder Day for Day

128

True billed ☒ Waiver ☐

Indictment #: 2019-GS-46-00734 CDR: 0392

Statute #: 44-53-375(C)

Original Charge: Trafficking Methamphetamine 100g or more

Pleading To: Trafficking Methamphetamine 28g or more 1st Offense

Cmb

Misdemeanor ☐ Felony ☒

Penalty: NLT 7 YEARS TO 25 YEARS & \$50,000

☐ Non-Violent ☒ Violent ☒ Serious ☐ Most Serious ☒ No Parole ☐ Sex Offender

Registry

☐ Mandatory GPS ☐ Increased Punishment for Future Offenses ☐ Murder Day for Day

True billed ☒ Waiver ☐

Indictment #: 2019-GS-46-00735 CDR: 0183

Statute #: 44-53-370

Original Charge: Possession with Intent to Distribute Heroin 1st Offense

Pleading To: Possession with Intent to Distribute Heroin 1st Offense

Cmb

Misdemeanor ☐ Felony ☒

Penalty: NMT 15 YEARS &/OR \$25,000

☒ Non-Violent ☐ Violent ☐ Serious ☐ Most Serious ☐ No Parole ☐ Sex Offender

Registry

☐ Mandatory GPS ☐ Increased Punishment for Future Offenses ☐ Murder Day for Day

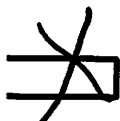
List **General Sessions** Charges Being Dismissed: Poss. Of alprazolam 1st, Poss. Of clonazepam 1st, and Poss. Of ecstasy 1st

List Pending **General Sessions** Charges not being resolved: Click here to enter text.

List Prior Convictions: none

YOA: ☐ Eligible ☒ Ineligible due to: ☐ Age ☒ Offense ☐ Other: Click here to enter text.

Currently on Probation? ☐ Yes ☒ No Is this plea a violation of the probation? ☐ Yes ☐ No

 I have agreed to plead guilty, no contest, or enter a plea under N.C. v. Alford as part of a plea arrangement. The Solicitor, my lawyer, and I have informed the court that the following contains all of the terms of conditions of my plea:

Type of Plea ☒ Guilty ☐ N.C. v. Alford ☐ Nolo
 ☐ Recommendation ☒ Negotiated ☐ Without Recommendation

☒ State is recommending or the negotiation is: 15 years

☒ This plea is not the product of any other promises or any threats whatsoever, except as indicated below:

☒ I understand that, upon entering a plea under N.C. vs. Alford, I will be treated as being guilty whether or not I admit that I am in fact guilty.

☒ I understand that a no contest plea is treated by the Court the same as a plea of guilty.

☒ The Solicitor is making a recommendation to the judge, as listed above. I understand the Judge is not required to accept the recommendation given by the Solicitor and the Judge may accept it, may go below the recommendation, or may go above the recommendation.

☒ This plea is a negotiated plea and the negotiation is listed above. I understand the Judge may refuse to accept the negotiation and that if the Judge refuses, the plea will not go forward.

☒ This plea is without negotiation and I understand I could receive from the minimum to the maximum sentence on each charge to which I am pleading guilty and that those sentences could also be run consecutive to other.

☒ I am not currently under the influence of any intoxicants, drugs, or narcotics.

☒ I currently DO take the following prescribed medications:

☒ I am entering my plea today freely, voluntarily, knowingly, and intelligently.

☒ I understand that I have the right to be represented by a lawyer at all stages of the proceedings. I can hire my own lawyer, or the court will appoint a lawyer for me if I cannot afford one. I understand an attorney would be of benefit to me, and since I am not an attorney, there is a danger in my representing myself. Understanding this, I give up this right.

☒ I understand that I have the right to plead not guilty and be tried by a jury, and that I am presumed innocent until such time as the jury is convinced of my guilty beyond a reasonable doubt. Understanding this, I give up that right.

☒ I understand I have the right to have the Court issue subpoenas to bring my witnesses and evidence to a trial at no cost to me. Understanding this, I give up that right.

☒ I understand I have the right to testify or remain silent at trial. Understanding this, I give up this right.

cmb My lawyer has reviewed with me all the factual and legal issues surrounding my case, including any defenses I may have and he or she has done everything I have asked him to do. I am satisfied with his or her services.

cmb I understand that I have the right to remain silent, that is, the right against self-incrimination. Understanding this, I give up this right.

cmb I understand that in a jury trial I have the right to see and hear all witnesses called to testify against me and to confront, cross-examine, and question them.

cmb I give up, for each of the charges listed above, my right to a jury trial, my right to a bench trial (trial by Judge with no jury), my right to confront and cross examine witnesses, my right to remain silent and not incriminate myself, and my right to produce evidence and to present a defense, including my right to testify on my own behalf.

cmb I understand that by my pleading to each charge, I am waiving all defenses, including, but not limited to the right to challenge any evidence the State may have used in its case against me and the voluntariness of any statements made to law enforcement.

cmb I understand that upon my conviction I may be ordered to pay restitution to any persons directly and proximately injured as a result of my commission of these crimes and that a civil judgement in favor of each person may be docketed against me and will be a lien against any real estate I own now or may own in the future.

☒ I understand that if I am not a citizen of the United States, my plea of guilty, no contest, or my plea under N.C. v. Alford may result in my deportation, exclusion from re-entry to the United States, and denial of naturalization and amnesty.

cmb I understand that I have 10 days within which to appeal this guilty plea.

cmb I understand that I am pleading guilty, no contest, or under N.C. v. Alford to the charges shown above.

cmb I now personally plead ☒ guilty; ☐ under N.C. v. Alford; ☐ no contest to the charges above.

Acknowledgement

I have read or have had read to me this form and have initialed each of the items that applies to my case. If I have an attorney, I have discussed each item with my attorney. By putting my initials next to the items in this form, I am indicating that I understand and agree with what is stated in each item that I have initialed. The nature of the charges, possible defenses, the effects of any prior convictions and enhancements, have been explained to me. I understand each of the rights outlined above, and I give up each of them to enter my plea.

Defendant's Signature: X Carley Inmenstia Date: 14 Jan 2020

Defense Counsel's Statement

I, the attorney for the defendant in the above entitled case, personally read and explained to the defendant the entire contents of this plea form and any addendum thereto. I discussed all charges, all discovery provided by the State, and possible defenses with the defendant and the consequences of the plea, including any immigration consequences. I personally observed the defendant fill in and initial each item, or read and initial each item to acknowledge his or her understanding and waivers. I observed the defendant date and sign this form and any addendum. I concur in the defendant's plea and waiver of constitutional rights.

Print Name: Christopher Wellborn Attorney Signature: [Signature] Bar #: 11914

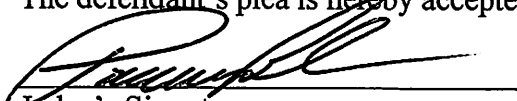
Date: 14 Jan 2020 Circle One: PD ☒ Retained ☐ Appointed

Judge's Confirmation

Upon consideration of the record, evidence or factual presentation offered, answers of defendant, and statements of the lawyer for the defendant and the prosecutor and the contents of this plea and waiver form, the undersigned finds that:

1. There is a factual basis for the entry of the plea,
2. The defendant is satisfied with his/her lawyer's legal services,
3. The defendant is competent to stand trial, and
4. The plea is the informed choice of the defendant and is made freely, voluntarily, knowingly, and intelligently.

The defendant's plea is hereby accepted by the Court.


Judge's Signature

Judge's Code: 2048

Date: 1/14/2020