

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

SUPPLEMENTAL APPENDIX

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Jun 06 2025

SC Court of Appeals

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ORDER DENYING MOTION TO ALTER OR AMEND
PURSUANT TO RULE 59, SCRCP7

FILED-RECEIVED
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 DAVID HAMILTON
 C.C.C.P. & YES
 YORK COUNTY, SC

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) THE SIXTEENTH JUDICIAL CIRCUIT
 COUNTY OF YORK)
 Carly Blumenstein, #382062,)
 Applicant,)
 vs.)
 State of South Carolina,)
 Respondent.)

Case No.: 2020-CP-46-03437

The above-captioned matter came before the court via an application for post-conviction relief filed by Carly Blumenstein (Applicant) on November 16, 2020. This court convened an evidentiary hearing into the matter on December 8, 2022. Applicant was present at the hearing and represented by Tommy A. Thomas, Esquire, and T. Cruise Mitchell, Esquire of the South Carolina Attorney General’s Office represented Respondent.

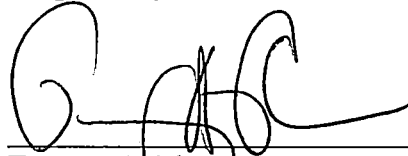
An Order of Dismissal in this matter was signed April 17, 2023. Applicant now moves before this court pursuant to SCRPC Rule 59(b) for reconsideration on the bases outlined below.

ARGUMENT

Applicant is informed and believes that reconsideration of this order is necessary and appropriate due to the inclusion of information regarding a waiver that was not adduced at trial. The first full paragraph on p.14 of the Order of Dismissal refers to a plea waiver signed by Applicant that was included in the Clerk of Court’s records. Applicant does not dispute that this information was provided to her counsel prior to the merits hearing; however, the waiver itself was not entered into evidence, nor was any testimony or argument presented regarding its existence of meaning. Therefore, Applicant had no opportunity to refute the waiver or present her own testimony regarding the same. For this information to then be included as a finding of fact that supports this court’s conclusions of law is in violation of SCRPC Rule 52.

Applicant respectfully requests that this court reconsider the inclusion of this waiver in its order of dismissal so that the order accurately reflects the evidence presented at the hearing on this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tommy A. Thomas', written over a horizontal line.

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

May 2, 2023

STATE OF SOUTH CAROLINA)
)
 COUNT OF YORK)
)
 Carly Marie Blumenstein #382062,)
)
 Applicant,)
)
 Vs.)
)
 State of South Carolina,)
)
 Respondent.)

THE COURT OF COMMON PLEAS
 CASE NO.: 2020-CP-46-03437

CERTIFICATE OF SERVICE

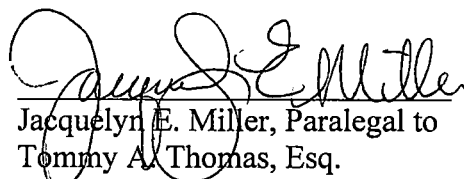
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 2023 MAY -5 AM 11: 25
 DAVID HAMILTON
 C.C.P. & GS
 YORK COUNTY, SC

I, Jacquelyn E. Miller, Paralegal to Tommy A. Thomas, Attorney for the Applicant

hereby certify that emailed, a copy of Motion for Reconsideration to:

T. Cruise Mitchell, Esq.
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 P.O. Box 11549
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cruisemitchell@scag.gov

The Honorable Walton J. McLeod, IV
 Presiding Judge Sixteenth Circuit
 205 E. Main Street
 Lexington, SC 29072
wjmcleodsc@sccourts.org


 Jacquelyn E. Miller, Paralegal to
 Tommy A. Thomas, Esq.
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May 2, 2023

FILED-RECEIVED

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

2020 AUG 22 AM 11: 25

ANGIE M. BRYANT

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

v.

STATE'S RETURN TO MOTION FOR RECONSIDERATION

State of South Carolina, Respondent.

This matter comes before this Court via 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.

An Order of Dismissal in this matter was signed April 17, 2023. Applicant filed a Motion for Reconsideration pursuant to SCRCP Rule 59 on May 2, 2023. Respondent respectfully offers the following in support of its Return to Motion for Reconsideration:

ARGUMENT

Applicant argues the inclusion of the guilty plea waiver form referenced in the Order of Dismissal should be reconsidered pursuant to Rule 59. This argument is without merit. "The voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the entry of the guilty plea, and also from the record of the post-conviction relief hearing." *Harris v. Leekes*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). "When determining issues relating to guilty pleas, this Court will consider the entire record, including the transcript of the guilty pleas and the evidence presented at the PCR hearing." *Roddy v. State*, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (200).

Here, it is undisputed that the guilty plea waiver form is a part of the record before this Court. The Court can consider, not only the evidence presented at the evidentiary hearing, but also any evidence contained in the record to determine the voluntariness of the guilty plea. It was entirely appropriate for the Court to consider the guilty plea waiver form, along with evidence and testimony presented at the evidentiary hearing in determining the voluntariness of Applicant's guilty plea. Applicant cites to SCRCF Rule 52 in support of her argument. SCRCF Rule 52 states:

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

(b) Amendment. Upon motion of a party made not later than 10 days after receipt of written notice of entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly, and the motion may be made with a timely motion for a new trial. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the trial court an objection to such findings or has made a motion to amend them or a motion for judgment.

(c) Time for Appeal; End of Term. The time for appeal for all parties shall be stayed by a timely motion to amend the judgment and shall run from the receipt of written notice of entry of the order granting or denying such motion. The time within which to make the motion under this Rule shall not be affected by the ending of a term of court or departure of the judge from the circuit, and the trial judge shall retain jurisdiction of the action for the purpose of hearing and disposing of such motion if not heard and disposed during the term. Except by consent of the parties, argument on the motion shall be heard in the circuit where the trial was held. The motion may in the discretion of the court be determined on briefs filed by the parties without oral argument.

(d) Judge to be Provided with Copy. A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion.

Applicant's reliance on SCRCF Rule 52 is misplaced. Nothing in SCRCF Rule 52 supports the notion that the Court must only consider evidence presented at the evidentiary hearing when making its findings in determining the voluntariness of a guilty plea.

Accordingly, Applicant's Motion for Reconsideration requesting the Court to reconsider the inclusion of the guilty plea waiver form should be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

T. CRUISE MITCHELL
Assistant Attorney General

By: s/ T. Cruise Mitchell
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Columbia, SC 29211

June 2, 2023

FILED-RECEIVED
 STATE OF SOUTH CAROLINA)
 COUNTY OF YORK,)
 Carly Blumenstein #382062,)
 Applicant,)
 vs.)
 State of South Carolina,)
 Respondent.)

2024 MAY 13 PM 12:07
 ANGIE M. BRYANT
 C.C.C.P. & GS
 YORK COUNTY, SC

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT
 NO.: 2020-CP-46-03437
**ORDER DENYING MOTION TO ALTER
 OR AMEND PURSUANT TO RULE 59,
 SCRPC**

This matter is before the Court by way of a post-conviction relief (“PCR”) action commenced by Carly Blumenstein (“Applicant”). This Court held an evidentiary hearing on December 9, 2022. Applicant was present at the hearing and represented by Tommy A. Thomas, Esq., and Assistant Attorney General T. Cruise Mitchell represented the State. An Order of Dismissal in this matter was signed on April 17, 2023. Applicant filed a Motion for Reconsideration pursuant to SCRPC Rule 59 on May 2, 2023. For the reasons set forth herein, Applicant’s Motion to Alter or Amend and for Reconsideration pursuant to Rule 59(e), SCRPC, is **DENIED**.

Applicant argues that reconsideration of the Order of Dismissal is necessary and appropriate due to the inclusion of information regarding a plea waiver. Applicant acknowledges that information referring to a plea waiver signed by Applicant and included in the clerk’s records was provided to her counsel prior to the merits hearing. However, Applicant argues that the waiver itself was not entered into evidence, nor was testimony or argument presented regarding its existence. Applicant thus asserts that the Court should reconsider any consideration of the existence of the plea waiver in the Order of Dismissal.

The State asserts, and this Court agrees, that this argument is without merit. “The voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the entry of the guilty plea, and also from the record of the post-conviction relief hearing.” *Harris v. Leekes*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). “When determining issues relating to guilty pleas, this Court will consider the entire record, including the transcript of the guilty pleas and the evidence presented at the PCR hearing.” *Roddy v. State*, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000).

There is no dispute that the guilty plea waiver form is a part of the record before this Court. The Court can consider any evidence contained in the record to determine the voluntariness of the guilty plea. This includes the guilty plea waiver form, along with evidence and testimony presented at the evidentiary hearing in determining the voluntariness of Applicant’s guilty plea.


After careful consideration of the record in this case and the submissions of counsel, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered.

IT IS THEREFORE ORDERED that Applicant’s Motion to Alter or Amend and for Reconsideration pursuant to Rule 59(e), SCRPC, is **DENIED**. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

This Court hereby advises Applicant he must file and serve a notice of appeal within thirty days of the service of this Order to secure appellate review. *See* Rule 203, SCACR. Applicant’s attention is directed to Rule 227, SCACR, for the procedures following the filing and service of the notice of appeal.

IT IS SO ORDERED.

May 6, 2024


 WALTON J. MCLEOD, IV
 Presiding Judge
 Sixteenth Judicial Circuit