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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County

Honorable David P. Caraker, Jr, Circuit Court Judge

AMY WRIGHT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001124

APPENDIX

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State of South Carolina) In the Court of General Sessions
) Eleventh Judicial Circuit
 County of Lexington) Indictment 2021-GS-32-02214

State of South Carolina,)
)
 vs.) Transcript of Record
)
 Amy Wright,)
)
 Defendant.)
 _____)

February 8, 2022
 Lexington County Courthouse
 Lexington, South Carolina

B E F O R E:

The Honorable Kristi F. Curtis, Judge

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 Certified Verbatim Reporter - Master
 Certificate of Merit
 Realtime Verbatim Reporter - Master

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TRANSCRIPT OF RECORD

(Whereupon, proceedings commenced in the matter of *State of South Carolina v. Amy Wright*, Indictment 2021-GS-32-02214, beginning at 10:43 a.m. on February 8, 2022. Defendant and counsel were present.)

DEPUTY CLERK OF COURT: Your Honor, we have 2021-GS-32-02214, the *State v. Amy Lynn Wright*, indicted for attempted murder, pleading as charged. That indictment has been true-billed and being represented by Mr. Story.

AMY WRIGHT, having been first duly sworn, testified and stated as follows:

THE COURT: Okay, Ms. Wright. I'm Judge Curtis. Ma'am, I understand that you're here today to plead guilty to attempted murder. It carries up to 30 years; is ---

THE DEFENDANT: Yes, ma'am.

THE COURT: --- that your understanding?

And you've had a chance to discuss fully your decision to enter this plea with your attorney, Mr. Story?

THE DEFENDANT: Yes, ma'am.

THE COURT: And are you happy with what your lawyer has done for you?

THE DEFENDANT: Yes, ma'am.

THE COURT: Are you under the influence of any drugs or alcohol today?

1 THE DEFENDANT: I'm on medication from the jail, my
2 depression medication, Zyprexa.

3 THE COURT: Okay. And are you taking that regularly
4 since you've been in the detention ---

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: --- center?

7 How long have you been in the detention center?

8 THE DEFENDANT: Almost two years.

9 THE COURT: And that medication is to treat
10 depression?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And do you feel like it helps you?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Mr. Story, have you had any concerns about
15 Ms. Wright's mental health?

16 MR. STORY: I have in the past, Your Honor. As you
17 saw, we had a evaluation. I also had an independent
18 evaluation done. So I'm satisfied with both of those
19 conclusions from the two different psychiatrists, Your
20 Honor.

21 THE COURT: They have declared her to be competent to
22 stand trial.

23 MR. STORY: That is correct, yes.

24 THE COURT: And, Ms. Wright, have you had any trouble
25 communicating with Mr. Story?

1 THE DEFENDANT: No, ma'am.

2 THE COURT: All right. Anything that you think would
3 keep you from understanding what we're doing today?

4 THE DEFENDANT: No, ma'am.

5 THE COURT: Has anyone promised you anything to try to
6 get you to plead guilty today?

7 THE DEFENDANT: No, ma'am.

8 THE COURT: Has anybody forced you, threatened you,
9 coerced you in any way?

10 THE DEFENDANT: No, ma'am.

11 THE COURT: You're waiving a number of important
12 rights when you enter this plea. You have a constitutional
13 right to remain silent. That means, if you went to trial,
14 you get to decide whether or not you want to testify.

15 And if you chose not to testify, nobody can hold that
16 against you, not the judge and not the jury. The trial
17 judge would instruct the jury that they can't even discuss
18 that fact their -- during their deliberations, because
19 that's a constitutional right. But when you plead guilty,
20 you're waiving that constitutional right to remain silent.
21 And you understand that?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: You have a constitutional right to a trial
24 by jury: to let twelve citizens come in the courtroom, let
25 them hear the evidence, and have them decide whether you're

1 guilty or not guilty. Of course, when you plead guilty,
2 you're waiving that right to a jury trial. And you
3 understand that?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: In a trial the state always bears the
6 burden of proving you guilty. And they have to prove you
7 guilty beyond a reasonable doubt. It's the highest
8 standard that we have in the law. You don't have any duty
9 to prove yourself innocent; it's the state's duty to prove
10 you guilty.

11 And all twelve jurors have to be firmly convinced of
12 your guilt and have to vote guilty before you can be
13 convicted. It has to be a unanimous verdict.

14 You're waiving those rights today when you enter this
15 plea.

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: And you understand that?

18 In a trial you also get the chance to confront the
19 state's witnesses. They sit in the witness stand right
20 here in the courtroom. You get to hear their testimony.
21 Mr. Story gets to ask those witnesses questions on cross-
22 examination.

23 He would also get a chance to present a defense on
24 your behalf. He would have the authority to subpoena your
25 witnesses and compel your witnesses to come to court to

1 testify.

2 But again, you waive those rights today when you enter
3 this plea.

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: You understand that?

6 Have you had a chance to review the discovery in this
7 case to see what -- what evidence the state would introduce
8 at trial against you?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: And you've discussed that at least with
11 your attorney ---

12 THE DEFENDANT: My ---

13 THE COURT: --- what the ---

14 THE DEFENDANT: --- with Mr. Story.

15 THE COURT: --- state's evidence ---

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: And knowing all of your rights, Ms.
18 Wright, are you pleading guilty or not guilty?

19 THE DEFENDANT: Guilty.

20 THE COURT: Okay. I'm going to hear the facts of your
21 case from the state, and then I'm going to have a few more
22 questions for you, and then I'll hear from Mr. Story.

23 MS. FULLER: Thank you.

24 THE COURT: Yes, ma'am.

25 MS. FULLER: Thank you, Your Honor. Before going into

1 the facts, just for the record, we did go ahead and e-mail
2 you a copy of her competency, the evaluation that was
3 conducted by Department of Mental Health. The state has no
4 objection to her competency. And obviously, based on your
5 colloquy with her this morning, she appears to fully
6 understand what she's doing today. At the completion of
7 this plea, we request that that be part -- be made part of
8 the record.

9 Your Honor, back on August 18th of 2020, 911 was
10 called at 9:35 a.m.; responded to this residence on Oakland
11 Avenue in Cayce, part of our county, Your Honor. What was
12 reported and what was clearly depicted from the photographs
13 and what I could tell from the report is the victim in this
14 case, Ms. Sutton, she was sitting on her couch downstairs.
15 And then Ms. Wright attacked her repeatedly several times
16 with a claw hammer.

17 The granddaughter that was in the residence heard the
18 grandmother screaming and went downstairs. She ran back
19 upstairs to get her mom and get her boyfriend to get help,
20 because she described that her grandmother was basically
21 bleeding out. She did report to law enforcement that she
22 saw Ms. Wright leave the residence with her two small
23 children.

24 And in the investigation, law enforcement spoke to the
25 family members. And what was determined was the

1 relationship. So this was a home where the grandmother
2 lived with a daughter, a granddaughter-in-law, as well as
3 the son-in-law. What I can understand, the relationship,
4 Ms. Wright was a relative of the husband, I believe either
5 -- they called -- the children called her "aunt," but it
6 seems like she may be more of a niece to the father in the
7 home, but I'm sure they'll explain that.

8 When she was living in the home, she had been there
9 for about two weeks. What the husband reported to law
10 enforcement -- and Mr. Hornsby reported that she had lived
11 there for two weeks because no other family would take her
12 in. She had been having problems with the victim, Ms.
13 Sutton, the grandmother in the home because she didn't like
14 the way that the grandmother spoke to her children. And
15 Ms. -- the grandmother, the victim in this case, had -- had
16 problems with her drinking as well.

17 But that morning, the husband reports leaving. And I
18 refer to him as "husband" because he's the husband of the
19 home, but the son-in-law of the victim. He reports leaving
20 for work at around 5 a.m. and then returning to the
21 residence when he received a frantic phone call from his
22 wife, describing what happened.

23 When law enforcement eventually spoke with Ms. Wright,
24 she gave a statement, indicating that she did it; what --
25 like, kind of indicating, like, what is there really to

1 talk about. She said: "But I did it. There's really not
2 much to say. I done it."

3 She indicated that she was irritated because Sutton,
4 the victim, was constantly verbally abusive to -- verbally
5 abusive to her two children. She said: "I got tired of
6 people treating my kids like that." And she indicated,
7 when asked what -- how was she abusive or was she abusive,
8 her response was: "No." She was just constantly saying
9 she -- they were verbally abusive.

10 What we have determined and what I've understood, what
11 she described as "verbally abusive" is the -- Ms. Sutton
12 telling her kids not to run around the house, to be quiet
13 in the home.

14 At one point on August 21st, when defendant spoke with
15 social worker at DSS, she stated that the reason she caused
16 harm to the victim was because, according to her, people
17 were going to kill her and her children. She also claimed
18 that the victim kept telling her children not to touch
19 things and not to run around in the home.

20 Caseworker asked her what people were going to kill
21 her and her children, and she would not -- she didn't
22 answer. And she asked if her grandchildren were present
23 during the incident, and the social worker described that
24 she began to break down and cry.

25 The social worker asked her: "Well, how are you

1 children disciplined?"

2 And she explained: Well, that her children are
3 spoiled and they get whatever they want. She said she was
4 just tired of the victim telling her children not to touch
5 things. On a jail call, while talking to her mother, she
6 described that she just snapped, okay; she just snapped.

7 And so when I first reviewed the file, I was puzzled.
8 I'm, like -- and I'll show you some of the photographs.
9 Because when I saw what Ms. Wright did to Ms. Sutton, I
10 thought there had to be some crazy or farfetched reason to
11 explain her behavior. But it really boils down to a woman
12 telling her kids not to touch things and to be quiet in a
13 house, and that caused her to snap.

14 So once I really dived into it, I told Mr. Story from
15 two years that I am not making a plea offer in this case
16 because what happened to Ms. Sutton was unjustified and no
17 one should have to live the life that she currently lives.
18 Because people took her in to their home because she had
19 nowhere else to go for two weeks, and this is what she did.

20 Your Honor, the -- in the medical -- the medical
21 records detailed quite a lot. I had to Google a lot of the
22 terms. But essentially, what it comes down to, she had
23 lots of bleeding of the brain. When I Googled some of
24 these terms, it had a 25 percent survival chance within 24
25 hours.

1 She was on life support for -- and in the hospital
2 from August 18th of 2020 to October 8th of 2020. She had
3 to have her finger amputated. Because what it appears is
4 that she's sitting on the couch with a newspaper next to
5 her at nine o'clock in the morning. It appears that she
6 must have used her hand to block the blow. And the blows
7 were that strong that it caused that much damage to her
8 finger that it had to be amputated.

9 The investigating officer is present. A family member
10 is present, and they wish to address the Court. But his
11 notes -- and he's actually left the department. But he --
12 this case stuck with him where he wanted to be here when
13 this case came to court.

14 And so when I called him and the number didn't work,
15 that's when I e-mailed the agency, the captains over there,
16 and I'm, like: Where is he? And he's here. And so he
17 wants to wish [sic] the Court because this one he
18 remembers.

19 The daily reports, he would document it that he got
20 from the charge nurse at the hospital. They reported the
21 next day; told him that they're not sure what her survival
22 chances would be. He would call; they're, like: She's in
23 for another brain surgery to try to reduce the swelling.
24 Her eyes were so swollen, they were shut -- swollen shut.

25 The -- four days later, they had successfully inserted

1 a feeding tube. But the nurse told the officer that the
2 victim may not survive. Then they were -- then they had to
3 amputate her finger.

4 And then they had to basically put her on the
5 ventilator, and then she finally came off of that. They
6 said she had little brain activity for that time frame.
7 It's a miracle that she is alive.

8 I'm going to hand you some of these photographs, Your
9 Honor. And I -- I warn you, I -- I cut them down, but they
10 are disturbing. They were provided in defense, so -- to
11 the defense in discovery.

12 (Off the record briefly while counsel
13 conferred.)

14 MS. FULLER: You'll also see the hammer that was left
15 and the puddle of blood. Crime scene, when they arrived on
16 scene, they did document that the -- it appeared that the
17 victim was assaulted while sitting in that chair; appeared
18 that she was struck multiple times. When the defendant was
19 asked how many times she struck, she said she didn't even
20 know.

21 You see -- you'll probably get the photo where you see
22 the damage to her finger or you saw that already; and then,
23 that there was blood spatter -- spatter on the couch area,
24 suggesting also that that's where the assault occurred.

25 The summary of her injuries is several skull

1 fractures, orbital fracture, brain bleed, and -- well, of
2 course, swelling of the brain over telling -- disciplining
3 her kids.

4 THE COURT: What's her ---

5 MS. FULLER: Her ---

6 THE COURT: --- what is her prognosis? How's she
7 doing now?

8 MS. FULLER: She -- my understanding, she's in a
9 walker and a wheelchair. Her -- her niece is going to
10 explain how this has impacted her. She still has eye
11 problems. She was supposed to go in for surgery. When she
12 -- I remember her being up. When she was placed on the
13 ventilator, they decided not to even attempt another repair
14 of the eye, the orbital, until she was off.

15 But she has -- this is -- this is the rest of her
16 life. And this is the state she's going to be in. It's a
17 miracle she even survived the amount of damage to the
18 brain. It's a -- it's a miracle that she even talks on the
19 phone when we call.

20 She doesn't -- she didn't want to be here,
21 understandably. But she's been responsive. I was -- I was
22 surprised to even get the written impact letter, like, to
23 be able to articulate how she feels. She doesn't -- when
24 she was asked that day, like, what -- she just doesn't even
25 -- like, she just got hit. So it wasn't as if, like, she

1 saw her coming or didn't even know. It was just -- yeah.

2 I'll now turn it over first to law enforcement, and
3 then turn it over to her niece to speak.

4 MR. STORY: Briefly ---

5 MR. SANGUILIANO: Morning, Judge.

6 MR. STORY: --- Your Honor, you want to take her plea
7 before we hear victim impact?

8 THE COURT: Sure.

9 Are those facts true, Ms. Wright?

10 THE DEFENDANT: Not all of them. Mainly ---

11 (Off the record briefly.)

12 THE COURT: And let me clarify. I'm really just
13 asking about the -- the offense on August ---

14 THE DEFENDANT: Oh. Yes ---

15 THE COURT: --- 19th ---

16 THE DEFENDANT: --- ma'am.

17 THE COURT: --- of 2020.

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Okay. All right. I do find -- find that
20 there is a sufficient factual basis for me to accept the
21 plea.

22 And I find that you're entering the plea today freely
23 and voluntarily, with full competence and understanding of
24 what you're doing today ---

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: --- and with the advice of Mr. Story, a
2 very competent attorney. You've got ten days from today's
3 date if you wanted to appeal the conviction.

4 THE DEFENDANT: Okay.

5 THE COURT: And again, let me hear from them; and
6 then, Mr. Story, I'll hear from you ---

7 MR. STORY: Thank you, Your Honor.

8 THE COURT: --- as well.

9 MS. FULLER: Thank you, Your Honor.

10 MR. SANGUILIANO: Good morning, Judge. My name is
11 Agent Paul Sanguiliano. I work for SLED.

12 THE COURT: I'm sorry. Tell me your last name again?

13 MR. SANGUILIANO: Sanguiliano.

14 THE COURT: And if you'll ---

15 MR. SANGUILIANO: I can ---

16 THE COURT: --- spell that ---

17 MR. SANGUILIANO: --- spell that.

18 THE COURT: --- for us.

19 MR. SANGUILIANO: S-a-n-g-u-i-l-i-a-n-o.

20 THE COURT: Okay. Thank you, sir.

21 MR. SANGUILIANO: I work for SLED now. But at the
22 time I was a investigator with the Cayce Police Department.
23 I was lead investigator on this case.

24 The solicitor's office did a pretty good job of
25 explaining it. I'll say that it's nothing short of a

1 miracle that Ms. Sutton is still alive. The charge nurse,
2 I spoke to them about every 48 hours to check on Ms.
3 Sutton's condition. And her exact words to me were: "If
4 she survives, she will not live the life she once lived."

5 She was attacked from behind; never saw it coming.
6 The crime scene, in 12 years of law enforcement in two
7 different states, was top-three most-brutal things I've
8 ever seen in the -- in my job.

9 And I'll say that as -- when I got there, Ms. Sutton
10 was being wheeled out to be taken with EMS. Her skull was
11 caved in. You could see the hammer -- the circles from the
12 front of the hammer perfectly indented in her skull, eyes
13 were swollen shut, and her hand was a mangled mess.

14 Ms. Wright has shown zero remorse for this incident
15 since I -- the -- the time I dealt with it. During her
16 confession initially and her recorded interview, through
17 jail calls, we weren't sure initially if her minor children
18 were witnesses to the event.

19 So we scheduled forensic interviews for them, and it
20 was ordered that she should have no contact with them.
21 That was violated multiple times in jail calls. When she
22 talked about the offense through her jail calls, zero
23 remorse for the entire thing.

24 And that's all I have, Judge. Thank you.

25 MS. MONTGOMERY: Hi, my name is Kawanna Montgomery. I

1 am Gloria Sutton's niece.

2 THE COURT: Okay. And I'm sorry. If you'll tell me
3 your name again.

4 MS. MONTGOMERY: Kawanna Montgomery.

5 THE COURT: Will you spell your first name for us?

6 MS. MONTGOMERY: K-a-w-a-n-n-a.

7 THE COURT: And your last name is Montgomery?

8 MS. MONTGOMERY: Yes, ma'am.

9 THE COURT: Okay. Thank you, ma'am. And if I could
10 ask you to speak up a little bit, because we're -- or -- or
11 if you would come up a little closer, that would be great.
12 I just want to make sure we can hear you.

13 MS. MONTGOMERY: I'm here to contest [sic] to the
14 things that she's going through now. She's depressed. She
15 cannot be alone at all.

16 THE COURT: How old is she?

17 MS. MONTGOMERY: She is 66.

18 THE COURT: Okay.

19 MS. MONTGOMERY: She had plenty of life. She was the
20 life of our family. Anybody that didn't have a vehicle,
21 she made it her way to make sure they got to doctors'
22 appointments, anywhere they needed to be.

23 She was there -- I have seven children. She was there
24 for the birth of five of them. When I say "there," I mean,
25 like no other; and not just for me, every one of my

1 sisters, cousins, brothers, nephews. She was the glue to
2 this family once my grandparents passed.

3 She can't go to the bathroom without assistance. She
4 -- everything she does, she has to have assistance. She
5 cannot drive. She cannot cook herself a meal. We all
6 corralled around her because she is the courageous one in
7 our family. So we are constantly celebrating her every
8 single day.

9 And Tommy Hornsby, which is my aunt's son-in-law, is
10 Amy's uncle. And when I tell you, it's no doubt that he
11 loves our family. Because he will stand for anything that
12 she is going through.

13 She has been very unremorseful this entire time.

14 THE COURT: I'm sorry. I didn't hear that.

15 MS. MONTGOMERY: She has been very unremorseful this
16 entire time. I -- I -- I don't think she needs any
17 leniency. I mean, telling your kids not to break things in
18 someone else's home or -- she would be up till four or five
19 o'clock in the morning.

20 And my aunt would get up at five o'clock in the
21 morning to go to work. This was her day off. She worked
22 six days a week. She was only off one day a week.

23 THE COURT: What kind of work was she doing?

24 MS. MONTGOMERY: She worked right here where I'm
25 working at now, Still Hopes, the Episcopal community right

1 there on -- can't even think of the name of the street now.

2 But --

3 THE COURT: And what kind of work did she do there?

4 MS. MONTGOMERY: She was a dietician and life coach.

5 And they still celebrate her. We just did a big retirement
6 for her last year.

7 She is completely loved and missed by a lot of people
8 because she cannot do a lot of the things that she used to
9 do. She is -- she lost over half of her life with this,
10 for nothing.

11 THE COURT: Ms. Montgomery, thank you so much for
12 being here.

13 MS. MONTGOMERY: Thank you.

14 MS. FULLER: I believe that's it, Your Honor. And in
15 terms of sentencing, you have a broad range there. But the
16 state, after hearing this -- these facts, we're merely
17 asking for the appropriate sentence: prison -- active,
18 significant prison sentence in this case.

19 THE COURT: Thank you, ma'am.

20 Mr. Story?

21 MS. FULLER: Oh.

22 MR. STORY: May it ---

23 MS. FULLER: Her prior record -- I apologize. She has
24 a 2004 possession of marijuana; a 2007 assault and battery
25 with intent to kill; a 2010 arrest for public disorderly

1 conduct; in 2018, open container, DUI-first, and child
2 endangerment.

3 THE COURT: Okay. Mr. Story?

4 MR. STORY: May it please the Court, Your Honor. I'll
5 just say -- I'll go ahead and -- and put it out there. I
6 agree; this is a very violent, very brutal offense. It was
7 unjustified.

8 That is because Ms. Wright is severely mentally ill.
9 She has been examined by two doctors, and that is because I
10 had grave concerns about her mental health, not just in the
11 conversations that we've had. But I've also spoken with
12 her mother, who is convinced that she has severe mental
13 health problems.

14 And just on top of that, simply reading the file and
15 the statements that she made to law enforcement led me to
16 believe that she was under some sort of delusion and that
17 she had mental health problems. Now, I'm not a
18 psychiatrist. I have had the doctor from DMH evaluate her
19 for competency and responsibility.

20 I also hired Dr. McDermott as an independent
21 evaluator. She didn't write a report, but she did tell me
22 that she believes she was competent and responsible.

23 She's been diagnosed with major depressive disorder.
24 Your Honor, I'm sure a lot of people come before you with
25 bipolar disorder or schizophrenia. That was, you know, as

1 a layperson what I suspected Ms. Wright had.

2 But talking with Dr. McDermott about major depressive
3 disorder, it's -- it's not your normal, run-of-the-mill
4 clinical depression. It -- people with major depressive
5 disorder can suffer delusions. They can also go through
6 manic and depressive periods. You've heard the statements
7 today about how Ms. Wright would stay up for long periods
8 of time. When she was in jail, she also reported to me
9 that she had periods of time where she couldn't sleep and
10 then, long periods of time where all she wanted to do was
11 sleep and stay in bed and -- and just going through the up
12 and down that's associated with major depressive disorder.

13 She reported to me auditory hallucinations, Your
14 Honor. And that's why we had the two evaluations.

15 Backtracking a little bit, Your Honor, I want to tell
16 you about her upbringing. She was raised mainly by her
17 grandmother. Her mom gave up custody when she was a baby.
18 And she was raised by her grandmother.

19 While living in her grandmother's house, she was the
20 victim of physical and sexual abuse -- not by her
21 grandparents, but by others members of the family. This
22 lasted up until adolescence/young adulthood; she suffered
23 this abuse.

24 Now, while in school, she did very well. I can tell
25 you, Ms. Wright seems to me very intelligent. In both

1 evaluations that we had, she reported that she did well in
2 school; she took advanced classes. While she was in high
3 school, she did well: did well on her tests, etc.

4 She got a little bit older. She was in at least two
5 relationships that were violent. She was the victim of
6 pretty intense domestic violence, from what she's reported
7 to me. She did have her two boys that we've talked about
8 for quite a bit that, I can tell you, she loves very much.

9 They now live with her mother. They're 9 and 6. And
10 her mother wanted to be here today, but she couldn't
11 because one of the boys came down with an illness and she's
12 taking care of them full-time so she has to be with them.

13 But she tells me she loves Amy very much. And, you
14 know, she's raising her boys. She did give me concern.
15 She said she thinks she's mentally ill, and she's upset
16 that we're even pleading guilty to this offense because,
17 you know, she believes she should be going to DMH or
18 something like that. And I've explained to her, I've had
19 two different evaluations and, you know, that's all we can
20 do.

21 Want to just -- kind of where she's at now, Your
22 Honor, she feels that they have gotten her medications
23 correct; mental health has done a good job at the jail.
24 Her -- her sleep cycles have been good the last maybe two
25 months. She's been in jail for 539 days since her -- her

1 arrest.

2 She feels like she's in a lot better place than she
3 was at the time. We've heard a lot today about, you know,
4 it -- this being unjustified, her not showing remorse. I
5 can't say for sure, but it just seems like she was under
6 some sort of delusion about people trying to kill her that
7 she reported to law enforcement and that sort of thing.
8 So, you know, it may not rise to the level of criminal
9 responsibility, but I would ask the Court to take into
10 consideration some of the statements that she made to law
11 enforcement and some her behavior.

12 It's -- you know, I've been a defense attorney for
13 about eight years. I've heard all sorts of reasons for why
14 people do certain things. And this is very out of the
15 ordinary. And it's just -- it's just a bizarre case, Your
16 Honor.

17 And she asks you to take all the facts into
18 consideration. She understands she is going to get a
19 significant prison sentence today, Your Honor. But we'd
20 ask you not to put her in for the rest of her life. She
21 understands that she needs to stay with mental health
22 whenever she does get out. She needs to cooperate with
23 mental health when she's in the Department of Corrections.

24 And I think she's certainly capable of being a good
25 mother to her boys, eventually being in their lives again

1 ---

2 THE DEFENDANT: Yes.

3 MR. STORY: --- and being a productive citizen, Your
4 Honor. So we would ask you to -- to give her a lower
5 prison sentence than what the officer has asked for. And I
6 think she would just like to say a few words, Your Honor.

7 THE COURT: Yes, ma'am.

8 THE DEFENDANT: I just wanted to say that I am sorry
9 for everything that has happened. I am remorseful about
10 it. I just don't talk about it. Because it hurts; it
11 does.

12 But I don't like people threatening my children, and I
13 lost it, you know. But please have mercy.

14 THE COURT: I want to take a look at the evaluation
15 that you sent me.

16 (The Court went off the record at 11:11 a.m.
17 and reconvened at 11:14 a.m. The defendant
18 and counsel were present when the
19 proceedings resumed.)

20 THE COURT: Okay. I'm taking into account the
21 evaluation that I read that, frankly, didn't find really
22 any issue with Ms. Wright's competency, really not what I
23 would describe as an overly significant period of mental
24 health treatment in her past.

25 So the sentence of the Court is 25 years. This is

1 just by the grace of God that this is not a 30-day [sic]
2 murder charge that you're serving day-for-day. So that's
3 about the best that I can do for you. Good luck to you.

4 MS. FULLER: Thank you, Your Honor.

5 THE COURT: Thank you ---

6 MR. SANGUILIANO: Thank you, Your Honor.

7 THE COURT: --- ma'am for being here.

8 (Whereupon, the proceedings concluded at
9 11:15 a.m.)

10 --- END OF TRANSCRIPT OF RECORD ---

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CERTIFICATE

I, the undersigned Maryann S. Nevers, CVR-M-CM, RVR, RVR-M, Official Court Reporter (Retired) for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for Lexington County, South Carolina, on the 8th day of February, 2022.

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



Maryann S. Nevers, CVR-M-CM, RVR, RVR-M
Official Court Reporter (Retired)

Leland, North Carolina
January 26, 2023

FORM 5

FILED

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF

2022 DEC 30 PM 12:54

Amy Wright

LISA M. COOPER
CLERK OF COURT
LEXINGTON

2022CP3204402

Full name and prison number (if any) of Applicant

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to 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 Lexington County
2. Name and location of Court which imposed sentence Lexington County
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) _____
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) February 12, 2020
 - (b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty had an open plea

(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) First time applying

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Sentence was wrongful

Paper attached explains

- (a) _____
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) wrongful charge
- (b) wrongful sentence
- (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, first time on this application
- (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) Have been incarcerated, trying to

(b) apply now to get help

(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? NO TRIAL
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES, my sentencing
- (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. Levington County provided a public
 - ii. defender
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. only spoke about my open plea
 - ii. I was at my sentencing
 - iii. _____

19. State clearly the relief you seek in filing this application: SENTENCE REDUCE
 _____ OR ELIGIBLE FOR PAROLE

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

NO

STATE OF SOUTH CAROLINA)
)
County of)

VERIFICATION

I, ^{Amy} ~~Weight~~ 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.

Amy Weight

SWORN to and subscribed before me this _____
day of _____, 2____.

Notary Public (L.S.)

My Commission Expires: _____

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

Amy Wright
I, *Wright* 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.

Amy Wright

Applicant

SWORN or affirmed to and subscribed before me this
____ day of _____, 2____.

Notary Public

My Commission Expires: _____

IN THE COURT OF COMMON PLEAS, ELEVENTH CIRCUIT
STATE OF SOUTH CAROLINA

AMY WRIGHT, Petitioner

against

STATE OF SOUTH CAROLINA
Respondent

PETITION FOR POST-CONVICTION RELIEF

AMY WRIGHT, Petitioner hereby moves this honorable court for post-conviction relief in that her plea was involuntary, irrational and the result of ineffective assistance of counsel and says:

1, She was convicted of one count of Attempted Murder and sentenced to twenty five (25) years incarceration without possibility of parole (c. February 12, 2022) , following an incident, altercation with her relative concerning what she believed was abusive behavior toward her children. The relative/grandmother experienced head injuries and loss of a finger and long term complications.

2, She did not attempt to kill her grandmother, and immediately reported the incident to police.

3, The plea was irrational because she did not attempt to kill her grandmother and the plea fails to satisfy the requirements of the charge. Under no circumstances was this an attempted murder, and any plea deal on that basis was misconceived.

4, "Assault and battery of a high and aggravated nature is a lesser-included offense of attempted murder." S.C. Code Ann S. 16-3-600. (State v. Hernandez, 2019, 428 S.C. 257, 834 S.E.2d 462 [1]) (maximum 20 years)

5, "Assault and battery in the first degree is a lesser-included offense of assault and battery of a high and aggravated nature and attempted murder." S.C.C.A. 16-3-600. (Hernandez, Id, [2]) (maximum 10 years)

6, "Assault and battery in the second degree is a lesser-included offense of first degree assault and battery, assault and battery, assault and battery of a high and aggravated nature, and attempted murder. S.C.C.A. 16-3-600. (Hernandez, Id. [3]) (maximum 3 years)

7, This court failed to properly evaluate whether the defendant had mitigating circumstances which resulted from prior abuse (Planned Parenthood of SE Pa. v. Casey, 1992, 505 US. 833, 112 S.Ct. 2791; see also: CA3, 1991, 947 F.2d 683) (U.S. v. Nwoye, 2016, 824

F.3d 1129, 1137, 423 U.S. App. D.C. 118, 126, Cavanaugh) (State v. Grubs, 353 S.C. 374, 380; 577 S.E.2d 493, 496) See also:
(State v. Norman, 324 N.C. 243, 378 S.E.2d 8, 1989) (Robinson v. State, 308 S.C. 74, 80; 417 S.E.2D 88, 91)

8, Counsel was ineffective for failing to properly investigate the circumstances of this case and the mitigating effect of battered woman circumstances and for allowing an irrational plea.

WHEREFORE, the judgment of conviction and sentence should be arrested by this court with the granting of such other and further relief as is just and proper.

Affirmed as true on information and belief,

Amy Wright 322552 8RA-26
Camille Griffin Graham Correctional Inst.
4450 Broad River Road
Columbia, S.C. 29210
August 1, 2022
AW:mm

| | | |
|----------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON |
| COUNTY OF LEXINGTON |) | PLEAS FOR THE ELEVENTH |
| |) | JUDICIAL CIRCUIT |
| |) | |
| AMY WRIGHT, SCDC # 322552, |) | |
| |) | Case No.: 2022-CP-32-04402 |
| Applicant, |) | |
| |) | RETURN AND PARTIAL |
| v. |) | MOTION TO DISMISS |
| STATE OF SOUTH CAROLINA, |) | (Counsel Already Appointed) |
| |) | |
| Respondent. |) | |
| |) | |

The Respondent State of South Carolina makes a Return and Partial Motion to Dismiss Applicant Amy Wright’s unsworn post -conviction relief application filed on December 30, 2022 and received by the Respondent the State of South Carolina on January 5, 2023.¹ On March 7, 2023, the Clerk of Court appointed Ashley McMahan as appointed counsel in this action. Respondent respectfully offers the following in support of its return and motion to dismiss:

I. Procedural History

Applicant Amy Wright, SCDC #322552, is presently confined in the South Carolina Department of Corrections (SCDC). In its August 2020 term, the Lexington Grand Jury indicted Applicant of attempted murder (2021-GS-32-02214). Stephan Story, Jr., Esquire, represented Applicant. Sutania Fuller, Senior Assistant Solicitor, represented the State. On February 8, 2022, Applicant appeared before the Honorable Kristi Curtis and pleaded guilty to attempted murder

¹ Respondent’s return was due to be filed within sixty days of receipt. See Rule 12(a), SCRCP (“[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.”) 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 respectfully asks this Court to accept this 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.).

(2020A3220300220). Judge Curtis sentenced the Applicant to twenty-five years. Applicant did not appeal her sentence or conviction.

II. Summary of Fact Presented at Guilty Plea Hearing

The facts for this indictment were articulated by the State at Applicant's plea hearing as follows:

MS. FULLER: Your Honor, back on August 18th of 2020, 911 was called at 9:35 a.m.; responded to this residence on Oakland Avenue in Cayce, part of our county, Your Honor. What was reported and what was clearly depicted from the photographs and what I could tell from the report is the victim in this case, Ms. Sutton, she was sitting on her couch downstairs. And then Ms. Wright attacked her repeatedly several times with a claw hammer.

The granddaughter that was in the residence heard the grandmother screaming and went downstairs. She ran back upstairs to get her mom and get her boyfriend to get help, because she described that her grandmother was basically bleeding out. She did report to law enforcement that she saw Ms. Wright leave the residence with her two small children.

And in the investigation, law enforcement spoke to the family members. And what was determined was the relationship. So this was a home where the grandmother lived with a daughter, a granddaughter-in-law, as well as the son-in-law. What I can understand, the relationship, Ms. Wright was a relative of the husband, I believe either -- they called -- the children called her "aunt," but it seems like she may be more of a niece to the father in the home, but I'm sure they'll explain that.

When she was living in the home, she had been there for about two weeks. What the husband reported to law enforcement -- and Mr. Hornsby reported that she had lived there for two weeks because no other family would take her in. She had been having problems with the victim, Ms. Sutton, the grandmother in the home because she didn't like the way that the grandmother spoke to her children. And Ms. -- the grandmother, the victim in this case, had -- had problems with her drinking as well.

But that morning, the husband reports leaving. And I refer to him as "husband" because he's the husband of the home, but the son-in-law of the victim. He reports leaving for work at around 5 a.m. and then

returning to the residence when he received a frantic phone call from his wife, describing what happened.

When law enforcement eventually spoke with Ms. Wright, she gave a statement, indicating that she did it; what -- like, kind of indicating, like, what is there really to talk about. She said: "But I did it. There's really not much to say. I done it."

She indicated that she was irritated because Sutton, the victim, was constantly verbally abusive to -- verbally abusive to her two children. She said: "I got tired of people treating my kids like that." And she indicated, when asked what -- how was she abusive or was she abusive, her response was: "No." She was just constantly saying she -- they were verbally abusive.

What we have determined and what I've understood, what she described as "verbally abusive" is the -- Ms. Sutton telling her kids not to run around the house, to be quiet in the home.

At one point on August 21st, when defendant spoke with social worker at DSS, she stated that the reason she caused harm to the victim was because, according to her, people were going to kill her and her children. She also claimed that the victim kept telling her children not to touch things and not to run around in the home.

(Plea Tr. 9-11).

III. Allegations Raised and Relief Sought in Current Application

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following, contending in the attachment that the plea was involuntary, irrational and the result of ineffective assistance of counsel:

1. Actual Innocence:
 - i. She was convicted of attempted murder and sentenced to 25 years without parole following an incident, altercation wither relative concerning what she believed to be abusive behavior toward her children. The relative /grandmother experienced head injuries and loss of a finger and long term complications.
 - ii. The Applicant contends that "she did not attempt to kill her grandmother, and immediately reported the incident to the police."
2. "The plea was irrational because she did not attempt to kill her grandmother and the plea fails to satisfy the requirements of the

charge. Under no circumstances was this an attempted murder, and any plea deal on that basis was misconstrued.” The Applicant cites to assault and battery of a high and aggravated nature, assault and battery in the first degree and assault and battery in the second degree as lesser-included offense of attempted murder.

3. “The Court failed to properly evaluate whether the defendant had mitigating circumstances which resulted from prior abuse.”
4. Ineffective Assistance of Counsel
 - i. Applicant alleges that Counsel failed to investigate the circumstances of the case mitigating effect of battered woman circumstances and for allowing an irrational plea.
 - ii. Applicant apparently alleges that Counsel failed to inform her of any lesser-included offenses.

As requested relief, Applicant states she is seeking a “sentence reduction or eligible for parole.”

Attached herewith and incorporated herein are the following:

1. Records of the Lexington County Clerk of Court including:
 - a. records regarding the subject convictions;
 - i. Arrest warrant – attempted murder – 2020A3230300220
 - ii. Magistrate Notice of Rights, indicating bond denied;
 - iii. Motion for Disclosure of Evidence Favorable to Defendant;
 - iv. Request for Disclosure Pursuant to Rule 5;;
 - v. State’s Request for Discovery;
 - vi. Order for Competency Evaluation
 - vii. Order for Criminal Responsibility and Capacity to Conform Evaluation;
 - viii. Indictment for Attempted Murder - 2021GS3202214
 - ix. Sentencing Sheet;
2. Records from the South Carolina Department of Corrections (5 pages) including
 - a. SCDC Record Summary Report dated Jan.30, 2023;


- b. Sentencing Sheet 2021-GS-32-02214 dated February 8, 2022
3. Guilty plea transcript of February 8, 2022 (28 pages); and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

III. Motion to Dismiss Allegation of Actual Innocence

Applicant alleges actual innocence (or insufficient factual basis for plea) in his PCR application, and it should be summarily dismissed as it is not a cognizable claim under the Uniform Post-Conviction Relief Procedure Act. S.C. Code Ann. § 17-27-20(A).

A free-standing claim of actual innocence is not a proper claim in post-conviction relief.

An applicant may commence a post-conviction relief action on the following grounds:

- 
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; 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 [her] sentence has expired, [her] probation, parole or conditional release [was] unlawfully revoked, or she 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).

Absent a proper claim of newly discovered evidence, a claim of actual innocence is not a valid post-conviction relief allegation, nor does it support a cognizable claim for relief under any of the statutory grounds. See Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975) (finding that

alleged trial errors and sufficiency of the evidence are direct appeal issues that are not cognizable PCR claims); S.C. Code Ann. § 17-27-20(B) (“This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction.”).

For these reasons, Respondent respectfully requests this Court dismiss the allegation of actual innocence as it is not cognizable under the Uniform Post-Conviction Procedure Act.

III. Response to Allegations of Ineffective Assistance of Counsel

The Applicant alleges she is entitled to post-conviction relief based on allegation of ineffective assistance of plea counsel. Specifically, Applicant contends plea counsel failed to investigate mitigating effect of battered woman circumstances and failed to inform her of lesser-included offenses.

A. Ineffective Assistance of Counsel and Guilty Pleas

In a Post-Conviction Relief action, the applicant bears the burden of proving the allegations in their 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, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. 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. With respect to plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

i. Failure to Investigate

Applicant alleges plea counsel was ineffective for failing to properly investigate the circumstance of the case and the mitigating effect of battered woman syndrome circumstances.

Applicant raises several allegations concerning failure to investigate and prepare and present evidence. Regarding failure to investigate and present evidence allegations, Applicant is required to present evidence or witnesses he alleges plea counsel did not properly investigate. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Additionally, whether Applicant was prejudiced by Counsel's failure to investigate is contingent on whether the evidence presented would have led plea counsel to change her recommendation regarding the plea. Stalk v. State, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009)

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel's duty to investigate. Ard, 372 S.C. at 331, 642 S.E.2d at 597 ("this duty is limited to a reasonable investigation"). The United States Supreme Court also instructed

reviewing courts to "keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." Strickland, 466 U.S. Thus, in applying the Strickland standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation must be evaluated with heavy deference to counsel's judgment. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633 (Ct. App. 2014).

During the guilty plea hearing, plea counsel informed the court of Applicant's mental illness, abuse she suffered from as a child, and domestic violence she suffered. (Plea tr. 22). Applicant has failed to show what additional investigations plea counsel should have done that would have resulted in a different outcome in Applicant's case. Therefore, this allegation is without merit.

The Applicant may be asserting that she was entitled to a determination for early parole eligibility under S.C. Code § 16-25-90. In that section it reads:

§ 16-25-90. Parole eligibility as affected by evidence of domestic violence suffered at hands of household member.

Notwithstanding any provision of Chapters 13 and 21 of Title 24, and notwithstanding any other provision of law, an inmate who was convicted of, or pled guilty or nolo contendere to, an offense against a household member is eligible for parole after serving one-fourth of his prison term when the inmate at the time he pled guilty to, nolo contendere to, or was convicted of an offense against the household member, or in post-conviction proceedings pertaining to the plea or conviction, presented credible evidence of a history of criminal domestic violence, as provided in Section 16-25-20, suffered at the hands of the household member. This section shall not affect the provisions of Section 17-27-45.

S.C. Code Ann. § 16-25-90. A defendant must prove by a preponderance of the evidence a history of domestic violence from the victim in order to be eligible for statutory early parole. State v. Grooms 343 S.C. 248, 540 S.E.2d 99 (S.C. 2000). State v. Hawes, 411 S.C. 188, 767 S.E.2d 707. (S.C. 2015).

The record of the plea does not support the existence of abuse required by statute by the victim. To the contrary, it suggested that the victim was targeted because she was advising the Applicant's children to not run around the house and to be quiet in the home or to not touch things. Tr.p. 11-12.

Respondent submits Applicant cannot satisfy the requirements of Strickland. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of plea counsel. Therefore, Respondent requests an evidentiary hearing to resolve the issues fully. 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").

ii. Failure to Inform of Lesser – Included Offenses

Applicant alleges that Counsel was ineffective for failing to inform her of any lesser-included offenses. Defendant must be advised of any lesser-included offenses which the jury would be instructed on if she went to trial. Kerrigan v. State, 304 S.C. 561, 406 S.E.2d 160 (1990). The test for determining when an offense is a lesser-included offense of another is whether the greater of the two offenses includes all the elements of the lesser offense. State v. McFadden, 342 S.C. 629, 539 S.E.2d 387 (2000). If the lesser offense includes an element which is not included in the greater offense, then the lesser offense is not included in the greater offense. Hope v. State, 328 S.C. 78, 492 S.E.2d 76 (1997); Suber v. State, 371 S.C. 554, 640 S.E.2d 884 (2007) (finding plea counsel not deficient for failing to inform of lesser-included offense where the lesser-included offense was not viable under the facts and circumstances); See State v. Funchess, 267 S.C. 427, 429, 229 S.E.2d

331, 332 (1976) (“[I]t is not error to refuse to submit a lesser included offense unless there is testimony tending to show that the defendant is only guilty of the lesser offense.”).

Respondent submits Applicant cannot satisfy the requirements of Strickland. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of plea counsel. Therefore, Respondent requests an evidentiary hearing to resolve the issues fully. See Sharper, 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. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. *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. Id. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) (“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.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss these allegations or claims. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRPC; see also Rules 15(a)-(b), SCRPC. The

State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice against the State. See Rule 15(a), SCRPC.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, 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. 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 against the State.

VII. CONCLUSION

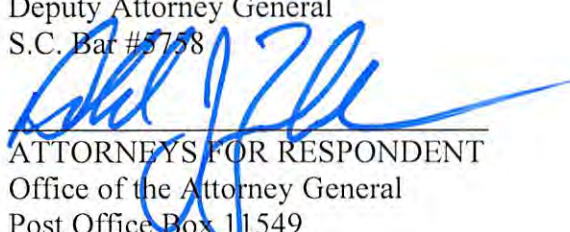
WHEREFORE, the State respectfully requests this Court grant its motion to dismiss as set forth in Sections IV and convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General
S.C. Bar #5758


By:



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

July 27, 2023

| | | |
|----------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON |
| COUNTY OF LEXINGTON |) | PLEAS FOR THE ELEVENTH |
| |) | JUDICIAL CIRCUIT |
| |) | |
| AMY WRIGHT, SCDC # 322552, |) | |
| |) | Case No.: 2022-CP-32-04402 |
| Applicant, |) | |
| |) | ATTACHMENTS TO RETURN |
| v. |) | |
| STATE OF SOUTH CAROLINA, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

- 
1. Records of the Lexington County Clerk of Court including:
 - a. records regarding the subject convictions;
 - i. Arrest warrant – attempted murder – 2020A3230300220
 - ii. Magistrate Notice of Rights, indicating bond denied;
 - iii. Motion for Disclosure of Evidence Favorable to Defendant;
 - iv. Request for Disclosure Pursuant to Rule 5;;
 - v. State’s Request for Discovery;
 - vi. Order for Competency Evaluation
 - vii. Order for Criminal Responsibility and Capacity to Conform Evaluation;
 - viii. Indictment for Attempted Murder - 2021GS3202214
 - ix. Sentencing Sheet;
 2. Records from the South Carolina Department of Corrections (5 pages) including
 - a. SCDC Record Summary Report dated Jan.30, 2023;
 - b. Sentencing Sheet 2021-GS-32-02214 dated February 8, 2022
 3. Guilty plea transcript of February 8, 2022 (28 pages)

ARREST WARRANT
2020A3220300220

STATE OF SOUTH CAROLINA
 County/ Municipality of
CAYCE

THE STATE
against

AMY LYNN WRIGHT

Address: [REDACTED]
Phone: [REDACTED] SSN: [REDACTED]
Sex: F Race: W Height: 5-00 Weight: 110
DL State: SC DL#: [REDACTED]
DOB: [REDACTED] Agency ORI#: SCC32020C
Prosecuting Agency: CAYCE PUBLIC SAFETY
Prosecuting Officer: INV. SANGUILIAO
Offense: ATTEMPTED MURDER
Offense Code: 3410
Code/Ordinance Sec. 16-03-0029

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.

Signature of Judge (L.S.)

Date: _____
Date Time

RETURN

A copy of this arrest warrant was delivered to
defendant AMY LYNN WRIGHT

on 8-19-20

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

CAYCE POLICE DEPARTMENT
52 TAVERN JUMPER ROAD
CAYCE, SOUTH CAROLINA 29033
(803) 794-0456

STATE OF SOUTH CAROLINA

County/ Municipality of
CAYCE

AFFIDAVIT ORIGINAL

Form Approved by
S.C. Attorney General
April 24, 2003
SCCA 618

Personally appeared before me the affiant INV W DOUGALL
being duly sworn deposes and says that defendant AMY LYNN WRIGHT
did within this county and state on 08/18/2020 to 08/18/2020
State of South Carolina (or ordinance of County/ Municipality of CAYCE)
violate the criminal laws of the
in the following particulars:
DESCRIPTION OF OFFENSE: 16-03-0029 / ATTEMPTED MURDER

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:

IN THAT ON 8/18/2020, THE DEFENDANT, AMY LYNN WRIGHT, COMMITTED THE OFFENSE OF ATTEMPTED MURDER WHILE
AVENUE. AVENUE IS A RESIDENTIAL PROPERTY LOCATED IN THE CITY OF CAYCE, LEXINGTON COUNTY, SOUTH CAROLINA.
THE DEFENDANT OBTAINED A CLAW HAMMER AND THEN STRUCK THE VICTIM, FLORINE SUTTON, IN THE HEAD WITH THAT HAMMER. THE
VICTIM WAS SEATED IN A CHAIR AND UNARMED WHEN THE DEFENDANT ATTACKED THE VICTIM. THE DEFENDANT ADMITTED TO STRIKING
THE VICTIM WITH THE HAMMER DURING A LAW ENFORCEMENT INTERVIEW. THE DEFENDANT WAS UNABLE TO RECALL THE NUMBER OF
TIMES THAT SHE STRUCK THE VICTIM WITH THE HAMMER. THE DEFENDANT FLED THE RESIDENCE AFTER THE CRIME AND SURRENDERED
TO LAW ENFORCEMENT SEVERAL HOURS AFTER THE CRIME OCCURRED. THE VICTIM SUSTAINED GREAT BODILY INJURY AND WAS
TRANSPORTED TO A TRAUMA CENTER FOR EMERGENCY MEDICAL CARE. THE DEFENDANT DEMONSTRATED AN INTENT TO KILL WITH
MALICE AFORETHOUGHT THROUGH HER ACTIONS. ALL ACTS CONSTITUTE THE CRIME OF ATTEMPTED MURDER.

Signature of Affiant

Affiant's Address LAVEN JUMPER RD
CAYCE SC 29033
Affiant's Telephone (803) 794-0456

STATE OF SOUTH CAROLINA

County/ Municipality of
CAYCE

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN 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 08/18/2020 defendant AMY LYNN WRIGHT

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

County/ Municipality of CAYCE) as set forth below:

DESCRIPTION OF OFFENSE: ASSAULT / ATTEMPTED MURDER

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 the 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 08/19/2020)

Date Time (L.S.)

Signature of Issuing Judge

Judge Code: 432

Judge's Address

Judge's Telephone

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

Case: 20-06652

BAIL set by

Judge 2

on 0819 20

Type and Amount: Bond Denied

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____
(indicate jury trial, bench trial, plea, noi, pros, etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

FILED
CLERK OF DISTRICT COURT
JULY 24 1980
11:05 AM

Bond Denied

August 19, 2020

INFORMATION REGARDING YOUR RIGHTS

You have been charged with a criminal offense and if you are found guilty, you are facing serious consequences which may include payment of a fine, loss of your driver's license, and the possibility of a jail sentence. In addition, you may face increased penalties for later convictions, the loss of your right to possess firearms and/or ammunition, and your immigration status will be affected. You have important constitutional rights, including the right to representation by an attorney, but you may lose these rights or waive them if you do not act to protect these rights.

You have the right to hire an attorney to represent you in every case. If you cannot afford an attorney, you may be eligible for a free attorney. If you want a determination made as to whether you are qualified for a free lawyer, then it is your obligation to be screened at the location identified in Paragraph 5(c) of the Bond Checklist Form that you received after your Bond Hearing. If you do not hire an attorney or go to be screened, then you may be found to have waived your right to an attorney at your trial.

You also have the right to represent yourself. However, you should be aware that self-representation can be dangerous. For example, there may be certain factual or legal defenses to your charge that you are not aware of or legal issues related to the conduct of your trial or guilty plea that an attorney would know how to preserve for an appeal. If you exercise your right to proceed without a lawyer, then you are responsible for complying with all applicable rules of court, including rules of evidence, procedural rules, and proper behavior before the Judge and/or Jury.

If convicted on the charge(s) filed against you and ordered to pay a fine, you may request a reasonable scheduled payment plan to pay the fine.

It is your obligation to keep up with your trial date and to obtain an attorney, either by hiring one or by being screened and found eligible for a court-appointed attorney prior to your trial date. If you do not appear at your trial with your attorney, you may be deemed to have waived your right to have an attorney represent you.

You are required to keep the court notified of any change of address until the completion of the case.

Signature of Defendant

Amy Lynn Wright

Defendant Refused to Sign

L

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

STATE OF SOUTH CAROLINA

VS.

Amy Lynn Wright

DEFENDANT

IN THE COURT OF GENERAL SESSIONS

2020 AUG 24 PM 09

NOTICE OF DATE AND TIME OF INITIAL APPEARANCE FOR DEFENDANT'S

LISA M. SOMER
CLERK OF COURT
LEXINGTON SC

Bond Denied

CASE NUMBER/CHARGE:

2020A3220300220 Assault / Attempted Murder

Your Initial Appearance date is set for: **October 1, 2020** at 9:00 AM, at the Mark II. Westbrook Judicial Center 205 East Main Street, Lexington, SC 29072. The date and time of your Initial Appearance **CANNOT** be changed.

YOU MUST BE PRESENT AT THIS INITIAL APPEARANCE. IF YOU FAIL TO APPEAR FOR YOUR INITIAL APPEARANCE AT THE ABOVE STATED DATE AND TIME, YOUR BOND WILL BE TAKEN FROM YOU (REVOKED) AND YOU WILL BE PLACED IN JAIL UNTIL THE TRIAL OF YOUR CASE, WHICH COULD TAKE MANY MONTHS. YOU WILL NOT BE GRANTED A NEW BOND IF YOU FAIL TO APPEAR.

- You have been APPROVED for an attorney from the Public Defender's Office. You should contact your attorney as soon as possible at the following address and telephone number: Lexington County Public Defender's Office, 202 East Main Street, Lexington, South Carolina (803) 785-8873.
- The Public Defender has a conflict. You SHALL apply within 48 hours for a court appointed attorney at the Clerk of Court's Office located at 205 East Main Street, Lexington South Carolina.
- Although you have applied for an attorney from the Public Defender's Office, you were REJECTED by the Court for appointment of a Public Defender attorney. You MUST hire your own attorney before your Initial Appearance date, if you wish to be represented by an attorney. You must have your attorney contact the Solicitor who is prosecuting your case before the Initial Appearance date.

If you want to have a preliminary (probable cause) hearing in your case, you must request one through your attorney. This request must be made within 10 Days from today's date. Once you have made a request for a preliminary hearing, one will be scheduled and you will be notified of the date and time of your preliminary hearing.

I have read this form or have had it read to me. I understand these instructions and I have been given a copy of this form.

Amy Lynn Wright
Defendant's Signature

Judge's Signature

8/19/2020
Date

8/19/2020
Date

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS
ELEVENTH JUDICIAL CIRCUIT

COUNTY OF LEXINGTON

2020 SEP 11 AM 8:37

The State,

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

2020A3220300220

vs.

MOTION FOR DISCLOSURE OF EVIDENCE
FAVORABLE TO DEFENDANT

Amy Lynn Wright

Defendant.

TO: S.R. HUBBARD III, SOLICITOR, ELEVENTH JUDICIAL CIRCUIT

YOU WILL PLEASE TAKE NOTICE that as soon as counsel can be heard, the undersigned attorney for the Defendant will move before the presiding judge of the Eleventh Judicial Circuit, for an order requiring disclosure of all evidence or information within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, or which is presently in the possession, custody or control of any law enforcement department within the State of South Carolina, which could tend to show that the Defendant is not guilty or which could tend to mitigate the Defendant's punishment, if convicted. U.S. Const. Amends. V, VI, XIV; S.C. Const. art. I, §§ 3 and 14; *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972); *United States v. Bagley*, 473 U.S. 667 (1985); *Kyles v. Whitley*, 514 U.S. 419 (1995); *Napue v. Illinois*, 360 U.S. 364 (1959); *Moore v. Illinois*, 408 U.S. 786 (1972); *Alcorta v. Texas*, 355 U.S. 28 (1957); *Mooney v. Holohan*, 294 U.S. 103 (1935); *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006); *State v. Von Dohlen*, 322 S.C. 234, 471 S.E.2d 689 (1996).

Stephen Russell Story
Attorney for the Defendant
202 East Main St.
Lexington, SC 29072
(803) 785-8873

Lexington, South Carolina
Date: 8/27/20

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON 2020 SEP 11) AM 8:37 ELEVENTH JUDICIAL CIRCUIT

The State,

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

2020A3220300220

vs.

REQUEST FOR DISCLOSURE
PURSUANT TO RULE 5

Amy Lynn Wright


Defendant.

TO: S.R. HUBBARD III, SOLICITOR, ELEVENTH JUDICIAL CIRCUIT

YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through undersigned attorney, hereby requests disclosure of all information available to the Defendant pursuant to Rule 5, SCRCrimP.

1. All information available to the defense under Rule 5, SCRCrimP.
2. The Defendant further moves that the State produce any statement of any prospective witness at the same time that it complies with remainder of this request. Note that this motion is made pursuant to Rule 5, SCRCrimP.

Respectfully submitted,



 Stephen Russell Story
 Attorney for the Defendant
 202 East Main St.
 Lexington, SC 29072
 (803) 785-8873

Lexington, South Carolina

Date: 8/29/20

ORIGINAL

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF LEXINGTON) 2020 OCT 15 AM 10:39) REQUEST FOR DISCOVERY
 The State,) LISA M. COMER)
 vs.) CLERK OF COURT)
 Amy Lynn Wright,) LEXINGTON SC) Warrant # 2020A3220300220
 Defendant.)

TO: DEFENDANT AMY LYNN WRIGHT AND/OR STEPHEN STORY, THE DEFENDANT'S ATTORNEY OF RECORD

As the Defendant, Amy Lynn Wright, has requested disclosure under subdivisions (a) (1) (C) and (a)

(1) (D) of Rule 5 of the S.C. rules of Criminal Procedure and as the State has complied with such request, the State hereby requests disclosure of evidence by the Defendant as mandated under subdivisions (b)(1)(A) and (b)(1)(A) of Rule 5, to wit:

(b)(1)(A): The Defendant shall permit the State to inspect and copy books, pages, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody, or control of the Defendant and which the Defendant intends to introduce as evidence in chief at trial. AND

(b)(1)(B): The Defendant shall permit the State to inspect and copy any results of reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession, or control of the Defendant, which the Defendant intends to introduce as evidence in chief at the trial, or which were prepared by a witness whom the Defendant intends to call at trial when the results or reports relates to the witness testimony.

Pursuant to South Carolina Rule of Criminal Procedure 5(e), the State requests notice of the Defendant's intent to offer an alibi defense. Rule 5 (e) provides in pertinent part:

- (1) Notice of Alibi by Defendant: Upon written request of the prosecution stating the time, date, and place at which the alleged offense occurred, the defendant shall serve within ten days, or at such times as the court may direct, upon the prosecution a written notice of his and/or her intention to offer an alibi defense. The notice shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he and/or she intends to rely to establish such alibi.

- (2) Disclosure by Prosecution: Within ten days after the defendant serves his and/or her notice, but in no event less than ten days before trial, or as the court may otherwise direct, the prosecution shall serve upon the defendant or his attorney the names and addresses of witnesses upon whom the State intends to rely to establish defendant's presence at the scene of the alleged crime.
- (3) Continuing Duty to Disclose. Both parties shall be under a continuing duty to promptly disclose the names and addresses of additional witnesses whose identity, if know, should have been included in the information furnished under subdivision (1) or (2).
- (4) Failure to Disclose. If either party fails to comply with the requirements of this rule, the court may exclude the testimony of any undisclosed witness offered by either party. Nothing in this rule shall limit the right of the defendant testify on his and/her own behalf.

With respect to Rule 5 (e), this is a request of the prosecution stating the time, date and place the alleged offenses occurred, to wit: on or August 18, 2020 at 601 Oakland Avenue.

Notice of the Defense of Insanity or Plea or Guilty but Mentally ill: the Defendant shall give written notice of any intention to reply upon the defense of insanity or a plea of guilty but mentally ill at the time of the crimes. Said notice shall be served upon the undersigned within ten (10) days of this request

If, prior to or during trial, the Defendant discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under Rule 5, the Defendant shall promptly notify the State or its attorney or the Court of the existence of the additional evidence or material as required by subdivision (c) of Rule 5.

/s

Sutania A. Fuller
Assistant Solicitor

October 15, 2020
Lexington, SC

COVERSHEET FOR DMH AND DDSN EVALUATION ORDERS

1. The Competency to Stand Trial Evaluation orders (SCCA 221 and SCCA 487) and the Criminal Responsibility (McNaughten) Evaluation order (SCCA 222) should **not** be altered. It is important for purposes of compliance with the statutes as well as timeliness, efficiency and quality control in conducting evaluations that the applicable form order be used **exactly** as published, **without alterations or additions** to the terms of the form order.

2. Additional records **must** be attached to the order for a complete evaluation. It is the duty of counsel requesting the evaluation to obtain these records in advance and have them ready at the time the judge signs the order so that the evaluation will not be delayed. Within five (5) days of its issuance, counsel must file the order with the Clerk and serve the order on the examining agency. A list of the necessary records is available on the last page of the order, and may include:
 - Completed DMH/DDSN Outpatient Information Appointment Sheet
 - Copy of the indictments(s)
 - Copy of the arresting agency's incident report
 - Copy of the warrant(s)
 - Law enforcement investigative reports
 - The defendant or juvenile's statements to law enforcement, written or electronically recorded
 - Witness statements to law enforcement
 - Autopsy reports
 - Defendant's school psychological records
 - Defendant's Rule 5(f) notice of insanity records
 - Copy of the Juvenile Petition
 - Special education records, including psychological evaluations and IEPs
 - School records, including disciplinary and attendance records
 - Mental health records, including inpatient and outpatient evaluation and/or treatment

3. Only **one** Competency to Stand Trial evaluation can be ordered. For Defendants with mental illness, the order is addressed to the Department of Mental Health. For Defendants with mental retardation, the order is addressed to the Department of Disabilities and Special Needs. The order may not be addressed to both agencies. In the event there is a dual diagnosis or uncertainty as to the correct diagnosis, the order is first addressed to the Department of Mental Health, and the examiners will determine whether further referral is necessary. All orders for criminal responsibility evaluation, regardless of the diagnosis, are forwarded to the Department of Mental Health.

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF LEXINGTON) Indictment No.(s):

JAN 22 PM 1:18
 LISA M. COMER
 CLERK OF COURT
 LEXINGTON, SC

A/Warrant No.(s): 2020A3220300220

The State of South Carolina)

Plaintiff,)

v.)

AMY LYNN WRIGHT,)

Defendant.)

ORDER FOR COMPETENCY TO STAND TRIAL EVALUATION PURSUANT TO STATE V. BLAIR

**EVALUATION BY:
 (Select Only One)**

Department of Mental Health (Mental Illness)

OR

Department of Disabilities and Special Needs (Intellectual Disability or Related Disability)

This matter is before me for an order requiring defendant Amy Lynn Wright, charged with Attempted Murder, to submit to an evaluation for competency to stand trial pursuant to State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981) and S.C. Code Ann. § 44-23-410 (1976).

BASIS FOR ORDER. I have considered the showing made in support of the motion requesting this evaluation and have reason to believe defendant may lack the competency to understand the criminal proceedings or to assist with the defense as a result of a lack of mental competence.

This order is issued for the following reasons: The Defendant has a history of Mental Health treatment.

THEREFORE, IT IS ORDERED: Defendant shall be examined and observed at an appropriate facility by two examiners of the Department of Mental Health if suspected of having a mental illness or by two examiners designated by the Department of Disabilities and Special Needs if suspected of having an intellectual disability or a related disability, to render an opinion whether defendant is competent to stand trial.

COMPLIANCE DEADLINE/TRANSPORT FOR EVALUATION. The examining facility shall schedule the ordered examination no later than thirty (30) days from the examining agency's receipt of this order. If defendant is currently free on bond or personal recognizance,

defendant is responsible for making transportation arrangements to attend the examination. In the event defendant does not appear at the scheduled examination, upon written notice of such failure by the examining agency to the Sheriff of the county in which this case arose, defendant shall be taken into custody by the Sheriff and held until an examination can be scheduled and completed, and thereafter shall be released. Defendant's bond or bail is hereby revoked to the extent necessary to carry out the provisions of this order, and upon completion of the examination and release of defendant, any previous bail or bond issued by the Court shall remain in effect. If defendant is in custody at the time of the scheduled examination, the Sheriff is hereby authorized and required to transport defendant to and from the examination, arriving at the examining facility at the time established by confirmed appointment with the staff of the examining facility. In the event defendant is in custody of a law enforcement agency other than a Sheriff's department, nothing herein prevents such agency from carrying out the provisions of this order.

TRANSFER TO ALTERNATE AGENCY. If the initial examination is performed by the Department of Mental Health, and examiners find indications of an intellectual disability or a related disability but not mental illness, the Department of Mental Health shall not render an opinion on mental competency, but shall inform the Court, prosecutor, and defense counsel that defendant is "not mentally ill" and shall provide a copy of such notification and a copy of this order to the Department of Disabilities and Special Needs. Likewise, if the initial examination is performed by the Department of Disabilities and Special Needs, and examiners find indications of mental illness but not an intellectual disability or a related disability, the Department of Disabilities and Special Needs shall not render an opinion on mental competency, but shall inform the Court, prosecutor, and defense counsel that defendant does "not have an intellectual disability or a related disability" and shall provide a copy of such notification and this order to the Department of Mental Health.

In either case, the examining agency shall make copies of any records gathered or created in connection with its examination available to examiners designated by the alternate agency, and the alternate agency shall thereafter designate examiners to evaluate defendant as to competency to stand trial within thirty (30) days of receipt of the notification from the initial examining agency.

FINDING OF DUAL DIAGNOSIS. If examiners of either the Department of Mental Health or the Department of Disabilities and Special Needs find an indication of a dual diagnosis of mental illness and an intellectual disability or a related disability, no opinion on defendant's mental

competency shall be rendered, and the dual diagnosis must be reported to the Court, prosecutor, and defense counsel. The examining agency shall also provide notification of the finding and a copy of this order to the other agency. Thereafter, the Department of Mental Health and the Department of Disabilities and Special Needs shall arrange for an examiner from each agency to further evaluate defendant to render a final report on defendant's mental competency. Both agencies are authorized and required to make copies of all relevant records within their possession or control available to examiners for purposes of completing the dual evaluation.

AUTHORIZATION FOR INPATIENT EVALUATION. In the event examiners from either agency determine defendant requires an inpatient examination, upon written notice to this Court from the director of the examining agency or his designee, defendant shall be committed to an appropriate facility of the requesting agency for no more than fifteen (15) days for examination and observation related to defendant's mental competency to stand trial.

REQUEST FOR EXTENSION. Before the expiration of the examination period or the examination and observation period, the Department of Mental Health or the Department of Disabilities and Special Needs, as appropriate, may apply to a judge designated by the Chief Justice of the South Carolina Supreme Court for an extension of time up to fifteen (15) days to complete the examination or the examination and observation.

DETENTION BEYOND EVALUATION PERIOD. If, in the judgment of the designated examiners, defendant is in need of immediate hospitalization or inpatient treatment, upon written request to this Court from the director of the examining facility or his designee, defendant may be detained by the requesting agency in a suitable facility for so long as deemed clinically necessary or until a hearing required and provided by S.C. Code Ann. § 44-23-430 (1976) may be conducted by this Court. An additional Court order shall be necessary for ongoing pre-trial inpatient detention of defendant as discussed in this paragraph.

ISSUANCE AND ADMISSIBILITY OF WRITTEN REPORT. Within ten (10) days of all examinations or the conclusion of the observation period, a written report shall be made to the Court pursuant to S.C. Code Ann. § 44-23-420 (1976). A copy of the report shall also be forwarded to the prosecutor and defense counsel. This evaluation report shall be admissible as evidence in subsequent hearings pursuant to S.C. Code Ann. § 44-23-420(c) (1976); thus, the report is a statutory exception to the rule against hearsay and shall be admissible without need for foundational

testimony. However, the report shall be inadmissible in any other proceedings except as expressly permitted by South Carolina law.

OWNERSHIP AND DISCOVERABILITY OF EXAMINING AGENCY FILES. The examining agency is an independent entity, conducting this evaluation pursuant to Court order, and is not aligned with any party before the Court. To promote full disclosure and to assure the cooperation of defendant during the evaluation process, ownership of the examining agency's files shall be vested with the examining agency, including clinician's notes, staff reports, evaluation documents, memoranda, test results, etc. Neither these files nor any of their contents shall be provided to any party except upon presentation of a Court order authorizing such or a release authorization signed by defendant. In the event the examining agency's evaluation opinion is contested, an examiner may be appropriately and fully questioned as to the basis for the examiner's opinion at any hearing pursuant to S.C. Code Ann. § 44-23-430 (1976). However, examiners and agency staff may not be compelled to testify regarding statements made during the competency examination for any purpose other than to establish competency. Also, statements made during the examination may not be used to impeach defendant at trial. Hudgins v. Moore, 337 S.C. 333, 524 S.E.2d 105 (1999).

MEDICAL PROVIDERS/SCHOOLS MUST RELEASE NECESSARY RECORDS. State agency examiners conducting the evaluation may need clinical and school records concerning defendant to assist in forming an opinion. It is therefore ordered, upon presentation by the examining agency of this order with a written request for specific records attached thereto, that any physician or clinician, licensed health care facility, licensed health care provider, or any school district is hereby authorized and required to furnish copies of all records concerning defendant to the Department of Mental Health or the Department of Disabilities and Special Needs, or both.

COUNSEL REQUIRED TO FURNISH NECESSARY RECORDS. Upon written request from the examining agency, counsel for the prosecution and defense shall furnish to the agency such records and information in counsel's possession as the agency requests, including but not limited to copies of law enforcement reports, investigations, witness statements, statements by defendant (both written and electronic), defendant's medical records, and prior psychiatric or psychological evaluations of defendant. Nothing herein shall be construed to require counsel to divulge any information, documents, notes, or memoranda that are protected by attorney-client privilege or work-product doctrine.

DUTIES OF DEFENSE COUNSEL. Unless the prosecution is the party moving for this evaluation, defense counsel has the responsibility to file, serve, and transmit this order as outlined in the final paragraph below. Defense counsel does not have the right to attend any clinical interview scheduled pursuant to this Order, nor does defendant have a constitutional right to compel counsel's attendance. State v. Hardy, 283 S.C. 590, 325 S.E.2d 320 (1985). The Court recognizes, however, that circumstances may arise through which the examining agency may request counsel's attendance to facilitate the examination. In the event that such a determination is made, the examining agency may request counsel's attendance in writing, and counsel's level of participation shall be prescribed by the examining agency's written evaluation protocol. In this event, because of the substantial number of individuals awaiting examination, such interviews cannot be rescheduled, postponed, or canceled to accommodate counsel except upon presentation to the examining agency of a written statement from a circuit court judge that counsel's attendance is required in Court at the time the examination is scheduled. Whether or not defense counsel is requested to attend the clinical interview, defense counsel must meet with defendant prior to the interview to discuss this Court order, the evaluation process, the clinical interview, defendant's rights with regard to the clinical interview, and penalties associated with non-appearance and non-cooperation. Failure to comply with these requirements may result in sanctions for defense counsel. Defendant's refusal to participate at the interview because of the absence of counsel will be deemed non-cooperation. Failure of defendant to cooperate or participate in the interview may result in cancellation of the interview, examiners being unable to offer an opinion on competency to stand trial, and the case being called for trial without completion of the evaluation.

FILING, SERVICE, AND TRANSMITTAL OF ORDER. It is the responsibility of counsel for the party requesting the evaluation to file and serve this order as outlined herein. In the event the evaluation has been requested by consent, or the moving party cannot be determined, defense counsel shall be responsible. After being signed by the Court, the original order without attachments shall be immediately filed with the Clerk of Court and a certified copy served upon the opposing party. Further, within five (5) business days, a certified copy of this order, together with the attachments listed at the end of this order, must be served upon the examining agency at the address listed below. To expedite commencement of the evaluation process and scheduling of the clinical interview, counsel is instructed to immediately contact the examining agency to advise of the

issuance of this order and forthcoming service upon the agency:

Evaluation Order Service Information

Department of Mental Health

Forensic Evaluation Service Paralegal
S. C. Department of Mental Health
CBHS Forensic Center
7901 Farrow Road
Columbia, S.C. 29203-3220
(803) 935-5540 (Phone)
(803) 935-5544 (Fax)
Email: FES-PARALEGAL@SCDMH.ORG

Department of Disabilities and Special Needs

Office of Clinical Services
Department of Disabilities and Special Needs
Post Office Box 4706
Columbia, S.C. 29240
(803) 898-9694 (Phone)
(803) 898-9660 (Fax)
Email: OBSForensics@ddsn.sc.gov

AND IT IS SO ORDERED.



Presiding Circuit Judge

WALTON J. McLEOD

Printed Name of Presiding Circuit Judge

 _____, South Carolina

Dated: 1-21-2021

Sutania A. Fuller


Prosecutor
205 E. Main Street

Address
Lexington, SC 29072

City, State, Zip
(803) 785-8352

Telephone
Sfuller@lex-co.com

Email

Stephen R. Story 

Defense Counsel
202 East Main Street

Address
Lexington, SC 29072

City, State, Zip
(803) 785-8873

Telephone
Sstory@lex-co.com

Email

The following documents must be attached to this order upon submission to the Department of Mental Health or to the Department of Disabilities and Special Needs whichever is applicable:

1. Completed DMH/DDSN Outpatient Information Appointment Sheet
2. Copy of the indictment(s) (if issued)
3. Copy of the arresting agency's incident report
4. Copy of the warrant(s)
5. Law enforcement investigative reports
6. Defendant's statements to law enforcement, written or electronically recorded
7. Witness statements to law enforcement
8. Defendant's school psychological records (if available)
9. Autopsy reports (if applicable)

COVERSHEET FOR DMH AND DDSN EVALUATION ORDERS

1. The Competency to Stand Trial Evaluation orders (SCCA 221 and SCCA 487) and the Criminal Responsibility (McNaughten) Evaluation order (SCCA 222) should not be altered. It is important for purposes of compliance with the statutes as well as timeliness, efficiency and quality control in conducting evaluations that the applicable form order be used exactly as published, without alterations or additions to the terms of the form order.
2. Additional records **must** be attached to the order for a complete evaluation. It is the duty of counsel requesting the evaluation to obtain these records in advance and have them ready at the time the judge signs the order so that the evaluation will not be delayed. Within five (5) days of its issuance, counsel must file the order with the Clerk and serve the order on the examining agency. A list of the necessary records is available on the last page of the order, and may include:

- Completed DMH/DDSN Outpatient Information Appointment Sheet
- Copy of the indictments(s)
- Copy of the arresting agency's incident report
- Copy of the warrant(s)
- Law enforcement investigative reports
- The defendant or juvenile's statements to law enforcement, written or electronically recorded
- Witness statements to law enforcement
- Autopsy reports
- Defendant's school psychological records
- Defendant's Rule 5(f) notice of insanity records
- Copy of the Juvenile Petition
- Special education records, including psychological evaluations and IEPs
- School records, including disciplinary and attendance records
- Mental health records, including inpatient and outpatient evaluation and/or treatment

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3. Only one Competency to Stand Trial evaluation can be ordered. For Defendants with mental illness, the order is addressed to the Department of Mental Health. For Defendants with mental retardation, the order is addressed to the Department of Disabilities and Special Needs. The order may not be addressed to both agencies. In the event there is a dual diagnosis or uncertainty as to the correct diagnosis, the order is first addressed to the Department of Mental Health, and the examiners will determine whether further referral is necessary. All orders for criminal responsibility evaluation, regardless of the diagnosis, are forwarded to the Department of Mental Health.

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by written communication recommend to the Court that a competency to stand trial evaluation should be ordered. Further, the examiner should state whether, in the examiner's opinion, such lack of competency is due to a mental illness or, in the alternative, an intellectual disability or a related disability. A copy of this written communication shall be sent to the prosecutor and defense counsel.

AUTHORIZATION FOR INPATIENT EVALUATION. In the event examiners from the Department of Mental Health determine defendant requires an inpatient examination, upon written notice to this Court from the director of the Department of Mental Health or his designee, defendant shall be committed to an appropriate facility of the Department of Mental Health for no more than fifteen (15) days for examination and observation related to defendant's criminal responsibility and capacity to conform. If the examination and observation of defendant has not concluded at the end of the initial inpatient fifteen (15) days, defendant may be kept in the continued custody of the Department of Mental Health for an additional period not to exceed fifteen (15) days, provided the director of the examining facility or his designee notifies this Court in writing. The issuance of an additional Court order allowing for the inpatient commitment(s) discussed in this paragraph is not necessary.

DETENTION BEYOND EVALUATION PERIOD. If, in the judgment of Department of Mental Health examiners, defendant is in need of immediate hospitalization or inpatient treatment, upon written request to this Court from the director of the examining facility or his designee, defendant may be detained by the Department of Mental Health in a suitable facility for so long as deemed clinically necessary or until a hearing on the matter may be conducted by this Court. An additional Court order shall be necessary for ongoing pre-trial inpatient detention of defendant as discussed in this paragraph.

ACCESS TO EXAMINER'S REPORT. The Department of Mental Health is an independent entity, conducting this evaluation pursuant to Court order, and is not aligned with any party before the Court. It is the intention of the State of South Carolina to provide defendant an adequate opportunity for mental status investigation when the defendant's mental condition is seriously in question pursuant to Ake v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087 (1985) either before or after defendant formally asserts the insanity defense.

The purpose of the following provisions controlling access to the examining

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strike a balance between defendant's right to explore the possibility of an insanity defense and prosecution's right to respond if such defense is raised. If defendant is requesting evaluation prior to asserting the defense of insanity, the evaluation shall be confidential until such time as defendant elects to assert the insanity defense. If defendant or prosecution is requesting evaluation after defendant's formal assertion of the insanity defense pursuant to Rule 5(f) of the South Carolina Rules of Criminal Procedure, or both parties are requesting the evaluation by consent, the evaluation shall not be confidential and both defense counsel and the prosecutor shall be provided a copy of the examiner's report. In either case, ownership of the examining agency's files shall be vested with the examining agency.

(A) Ex parte evaluation requested by defendant prior to assertion of insanity defense.

If defendant has requested an evaluation to determine whether the insanity defense may be viable, the examiner's report shall not be provided to the prosecution and shall not be admissible as evidence in any Court proceedings. The prosecution may not discover any portion of the evaluation files. Any written report resulting from the evaluation shall be considered confidential and provided only to defense counsel, and shall be provided within ten (10) days of all examinations or the conclusion of the inpatient examination period. Examiners and agency staff may not be compelled to testify regarding statements made during the criminal responsibility and capacity to conform examination for any purpose unless and until defendant asserts the defense of insanity. However, as a condition of accepting the evaluation provided by the State of South Carolina, defendant expressly waives any and all confidentiality privileges associated therewith if defendant subsequently asserts the insanity defense. In such case, the evaluation shall no longer be confidential, and all parties' access to the evaluation report shall be controlled by paragraph (B) below.

(B) Evaluation requested by either party after assertion of insanity defense.

Because the assertion of the insanity defense places defendant's mental status at issue, either party may discover any portion of the evaluation files upon presentation of a Court order authorizing such or a release authorization signed by defendant. Both the prosecutor and defense counsel shall be provided a copy of the examiner's report within ten (10) days of the conclusion of all examinations or the inpatient examination period. The evaluation report may be admissible as evidence in subsequent hearings concerning defendant's criminal responsibility and capacity to

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conform. However, the report shall be inadmissible in any other proceedings except as expressly permitted by South Carolina law. Examiners and agency staff may not be compelled to testify regarding statements made during the criminal responsibility and capacity to conform examination for any purpose other than on the issue of criminal responsibility and capacity to conform. Also, statements made during the examination may not be used to impeach defendant at trial. Hudgins v. Moore, 337 S.C. 333, 524 S.E.2d 105 (1999).

(C) Evaluation Requested by Consent of Both Parties.

By consent, the parties may request evaluation at any time, regardless of whether the insanity defense has been asserted by the defendant. The procedures and rules for this examination shall be the same as outlined in paragraph (B) above; however, in the event defendant does not assert the insanity defense, the examiner's report shall not be admissible for any reason, nor shall the contents of the evaluation files be used for any purpose.

MEDICAL PROVIDERS/SCHOOLS MUST RELEASE NECESSARY RECORDS.

Department of Mental Health examiners conducting the evaluation may need clinical and school records concerning defendant to assist in forming an opinion. It is therefore ordered, upon presentation by the Department of Mental Health of this order with a written request for specific records attached thereto, that any physician or clinician, licensed health care facility, licensed health care provider, or any school district is hereby authorized and required to furnish copies of all records concerning defendant to the Department of Mental Health.

COUNSEL REQUIRED TO FURNISH NECESSARY RECORDS.

Upon written request from the Department of Mental Health, counsel for prosecution and defense shall furnish to the agency such records and information in counsel's possession as the agency requests, including but not limited to copies of law enforcement reports, investigations, witness statements, statements by defendant (both written and electronic), defendant's medical records, and prior psychiatric or psychological evaluations of defendant. Nothing herein shall be construed to require counsel to divulge any information, documents, notes, or memoranda that are protected by attorney-client privilege or work-product doctrine.

DUTIES OF DEFENSE COUNSEL. Unless the prosecution is the party moving for this evaluation, defense counsel has the responsibility to file, serve, and transmit this order as outlined in

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the final paragraph below. Defense counsel does not have the right to attend any clinical interview scheduled pursuant to this Order, nor does defendant have a constitutional right to compel counsel's attendance. State v. Hardy, 283 S.C. 590, 325 S.E.2d 320 (1985). The Court recognizes, however, that circumstances may arise through which the Department of Mental Health may request counsel's attendance to facilitate the examination. In the event that such a determination is made, the Department of Mental Health may request counsel's attendance in writing, and counsel's level of participation shall be prescribed by the Department of Mental Health's written evaluation protocol. In this event, because of the substantial number of individuals awaiting examination, such interviews cannot be rescheduled, postponed, or canceled to accommodate counsel except upon presentation to the Department of Mental Health of a written statement from a circuit court judge that counsel's attendance is required in Court at the time the examination is scheduled. Whether or not defense counsel is requested to attend the clinical interview, defense counsel must meet with defendant prior to the interview to discuss this Court order, the evaluation process, the clinical interview, defendant's rights with regard to the clinical interview, and penalties associated with non-appearance and non-cooperation. Failure to comply with these requirements may result in sanctions for defense counsel. Defendant's refusal to participate at the interview because of the absence of counsel will be deemed non-cooperation. Failure of defendant to cooperate or participate in the interview may result in cancellation of the interview and examiners being unable to offer an opinion on criminal responsibility and capacity to conform. Failure to cooperate may further result in the case being called for trial without completion of the evaluation, and may result in defendant being prohibited from presenting expert testimony on the issue of insanity or waiver of the insanity defense.

FILING, SERVICE, AND TRANSMITTAL OF ORDER. It is the responsibility of counsel for the party requesting the evaluation to file and serve this order as outlined herein. In the event the evaluation has been requested by consent, or the moving party cannot be determined, defense counsel shall be responsible. After being signed by the Court, the original order without attachments shall be immediately filed with the Clerk of Court and a certified copy served upon the opposing party. Further, within five (5) business days, a certified copy of this order, together with the attachments listed at the end of this order, must be served upon the Department of Mental Health at the address listed below. To expedite commencement of the evaluation process and scheduling of

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the clinical interview, counsel is instructed to immediately contact the Department of Mental Health to advise of the issuance of this order and forthcoming service upon the agency:

Evaluation Order Service Address for the Department of Mental Health

Forensic Evaluation Service Paralegal
S. C. Department of Mental Health
CBHS Forensic Center
7901 Farrow Road
Columbia, S.C. 29203-3220
(803) 935-5540 (Phone)
(803) 935-5544 (Fax)
Email: FES-PARALEGAL@SCDMH.ORG

AND IT IS SO ORDERED.



Presiding Circuit Judge


WALTON J. MCLEOD
Printed Name of Presiding Circuit Judge

Lexington, South Carolina

Dated: 3-19-2021

Ex Parte
Prosecutor
205 East Main Street
Address
Lexington, SC 29072
City, State, Zip
785-85352
Telephone

Email


Stephen R. Story
Defense Counsel
407 West Main Street
Address
Lexington, SC 29072
City, State, Zip
785-8873
Telephone
Sstory@lex-co.com

Email

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LEXINGTON, SC

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CLERK OF COURT
LEXINGTON, SC

The following documents must be attached to this order upon submission to the Department of Mental Health:

1. Completed DMH/DDSN Outpatient Information Appointment Sheet
2. Copy of the indictment(s) (if issued)
3. Copy of the arresting agency's incident report
4. Copy of the warrant(s)
5. Law enforcement investigative reports
6. Defendant's statements to law enforcement, written or electronically recorded
7. Witness statements to law enforcement
8. Defendant's school psychological records (if available)
9. Defendant's Rule 5(f) notice of insanity defense (if applicable)
10. Autopsy reports (if applicable)

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CLERK OF COURT
LEWIS AND CLARK COUNTY
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WITNESSES

Cayce Department of Public Safety

Paul J Sanguiliano III

Law Enforcement Case #: 2008652

SF

ARREST WARRANT NUMBER

2020A3220300220

ACTION OF GRAND JURY

TRUE BILL

[Signature]

Foreperson of Grand Jury
Date: 7.12.21

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2021GS3202214

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JULY TERM 2021

THE STATE

vs.

Amy Lynn Wright

CDR #: 3410

Indictment for

Attempted Murder

§ 16-03-0029

S.R. Hubbard III, SOLICITOR

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

Defendant

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

Defendant

Witness
C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

INDICTMENT FOR
 Attempted Murder
 § 16-03-0029

At a Court of General Sessions, convened on July 2021, the Grand Jurors of Lexington County present upon their oath:

That **Amy Lynn Wright** in Lexington County, South Carolina, on or about August 19, 2020, did, with the intent to kill, attempt to kill another person with malice aforethought, either express or implied, to wit: the Defendant struck the victim, Florine Sutton, in the head with a claw hammer multiple times, in violation of §16-03-0029 of the 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.


 ASSISTANT SOLICITOR

0-20418 77

STATE OF SOUTH CAROLINA)
COUNTY OF Lexington)
STATE)
VS.)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2021 - GS - 32 - 02214

Amy Lynn Wright
AKA: _____)
Race: White Sex: F Age: 36)
DOB: _____ SS#: _____)
Address: _____)
City, State, Zip: Cayce, SC 29033)
DL#* _____ SID# _____)

AW#: 2020A3220300220
Date of Offense: 8/19/2020
S.C. Code §: 16-03-0029
CDR Code #: 3410

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the above indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Murder / Attempted Murder

In violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

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:
Sutton Fuller 100730 Amy Lynn Wright Sgt. A 100898
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Correction County Detention Center,

for a determinate term of 25 days/months/years/Time Served Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years/Time Served and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

The sentence shall run 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. 539 days/months
 To include time spent on monitored house arrest prior to trial and sentencing.
 The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Amy Lynn Wright INDICTMENT/CASE#: 2021 - GS - 32 - 02214

SPECIAL CONDITIONS:

- PTUP after _____ months/years
- And Other Terms Listed Below:
- Substance Abuse Counseling Completion of GED Random Drug/Alcohol Testing
- Attend Voc. Rehab. Or Job Corp No Contact with Victim Domestic Violence Intervention Program
- Mental Health Counseling May serve W/E beginning: _____
- Sex Offender Registry pursuant to S.C. Code § 23-3-430 Public Service Employment _____ days/hours
- Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- Other: _____

RESTITUTION: Deferred Def. Waives Hearing Ordered

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

Payment Terms: _____ Set by SCDPPPS

Recipient: _____

*Fine:

| | | | | |
|---|----------|-----------|--------------|------------------|
| Fine may be pd. in equal consecutive weekly/monthly prmts. of | \$ _____ | Beginning | _____ | \$ _____ |
| §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 | \$ _____ |
| §14-1-212 (Law Enforce. Funding) | | | \$25 | \$25 |
| §14-1-213 (Drug Court Surcharge) | | | \$150 | \$ _____ |
| §34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs) | | | \$41 | \$ _____ |
| §50-21-114 (BUI Breath Test Fee) | | | \$50 | \$ _____ |
| §56-5-2942(J) (Vehicle Assessment) | | | \$40/ea | \$ _____ |
| 3% to County (if paid in installments) | | | TBD | \$ _____ |
| <input type="checkbox"/> Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees | | | \$500 | \$ _____ |
| <input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund | | | TBD | \$ _____ |
| | | | TOTAL | \$ 125.00 |

Clerk of Court/Deputy Clerk: _____
Court Reporter: _____

Maryann News

Presiding Judge: _____
Judge Code: _____
Sentence Date: _____

Krista Carter
2762
2-8-22

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
RECORD SUMMARY REPORT DATED 01/30/23

C0674

WRIGHT, AMY LYNN FBI # 82384FC4 SID# SC01556572 SCDC # 00322552

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ..: GRAHAM CORR INST

SECURITY/CUST.: 2 ADULT-STRAIGHT SENTENCE

CURR INCARC SENT...: 25 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: YES

SOCIAL SECURITY #...: [REDACTED]

DORM.....: SRA0026B

RACE....:W SEX...:F

PROJ MAXOUT DATE: 11/01/2041

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: FOOD SERVICE AIDE

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 2F5 EEC LEVEL:

ASSIGNMENT...: CAFETERIA

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 37 DATE OF BIRTH...: [REDACTED]/85

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

| CURRENT OFFENSES | SENTENCE | YRS | MOS | DYS | COUNTY | SENTENCE | START | V/NV | CATEGORY |
|------------------|----------|-----|-----|-----|-----------|-----------|-------|------|----------|
| ATTEMPTED MURDER | | 25 | 0 | 0 | LEXINGTON | 8/ 8/2020 | V | | 4 |

| PREVIOUS SCDC OFFENSES (COMPLETE) | SENTENCE | YRS | MOS | DYS | COUNTY | SENTENCE | START | V/NV | CATEGORY |
|-----------------------------------|----------|-----|-----|-----|----------|----------|-------|------|----------|
| ASSLT & BATT W/INTNT KIL | | 0 | 30 | 0 | RICHLAND | 6/20/20 | 7 V | | 4 |

PRIOR COMMITMENTS OVER 90 DAYS:

INMATE HAS NO PRIORS

DETAINERS (HOLD, WANTED, NOTIFY):

NO DETAINERS

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES WHILE IN CUSTODY

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

| | |
|--|-------|
| 8/15/ 8 MUTILATION | OTHER |
| 7/26/ 8 TRAFFICKING AND TRADING | OTHER |
| 7/25/ 8 THREATENING TO INFLICT H CONVICTED | ADMIN |
| 1/ 4/ 8 POSSESSION OF CONTRABAND | OTHER |

HISTORY OF MOVEMENTS:

| | | | |
|----------|-------------|----------------------|------------------------|
| 5/26/22 | GRAHAM | INCARCERATED | ADMINISTRATIVE |
| 4/ 5/22 | GRAHAM R&E | INCARCERATED | ADMINISTRATIVE |
| 2/11/22 | GRAHAM | INCARCERATED | ADMINISTRATIVE |
| 2/11/22 | GRAHAM R&E | INCARCERATED | NEW ADMISSION |
| 7/31/11 | UNK | RELEASE | EXPIRATION OF SENTENCE |
| 7/31/ 9 | RICHLAND CO | COMMUNITY SUPERVISIO | RELEASED TO PROBATION |
| 11/ 4/ 8 | LEATH | INCARCERATED | ADMINISTRATIVE |
| 11/ 4/ 8 | GRAHAM | INCARCERATED | MEDICAL |
| 10/21/ 8 | LEATH | INCARCERATED | MEDICAL |
| 10/21/ 8 | GRAHAM | INCARCERATED | MEDICAL |
| 9/13/ 7 | LEATH | INCARCERATED | ADMINISTRATIVE |
| 6/22/ 7 | GRAHAM R&E | INCARCERATED | R&E PROCESSING |
| 6/22/ 7 | KIRKLAND | INCARCERATED | NEW ADMISSION |

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

| JOB DESCRIPTION | START DATE | END DATE | TERMINATION REASON | JOB LVL |
|----------------------|------------|----------|--------------------|---------|
| FOOD SERVICE AIDE | 06/01/22 | 0/ 0/ 0 | | 2F5 |
| MACHINE OPERATOR HEL | 04/06/09 | 7/31/ 9 | RELEASED/PAROLED | 2F5 |
| COOK | 03/29/09 | 4/ 5/ 9 | INMATE REQUEST | 2F5 |
| BAKER | 10/16/08 | 3/28/ 9 | INMATE REQUEST | 2F5 |

80

MACHINE OPERATOR HEL 09/03/08 10/15/ 8 PROMOTION

2F5

WRIGHT,AMY LYNN FBI # 82384FC4 SID# SC01556572 SCDC # 00322552 (CONTINUED)
FOOD SERVICE AIDE 08/19/08 9/ 2/ 8 INMATE REQUEST 2F5
GENERAL WORKER 05/01/08 7/26/ 8 PLACED IN ST/SP CUSTODY 2F5

HISTORY OF EARNED EDUCATION CREDITS:

| EEC | START | END | TERMINATION |
|---------------------------|----------|----------|-------------------------|
| DESCRIPTION | DATE | DATE | REASON |
| LVL 2 - FULL TIME(NO EWC) | 10/30/07 | 4/30/ 8 | INMATE REQUEST |
| LVL 2 - FULL TIME(NO EWC) | 09/18/07 | 10/27/ 7 | PLACED IN ST/SP CUSTODY |

***** END OF REPORT *****

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
 Amy L. Wright, #322552,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina.)
 _____)

COURT OF COMMON PLEAS
 FOR THE 11th JUDICIAL CIRCUIT
 Case No.: 2022-CP-32-04402

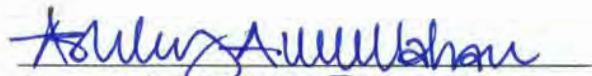
**AMENDED POST-CONVICTION
 RELIEF APPLICATION**

The Applicant, by and through her undersigned attorney, hereby amends his PCR application filed on February 16, 2021, to add the following allegations:

1. Ineffective Assistance of Counsel of Stephen R. Story, Jr. – Had Mr. Story presented evidence of Ms. Wright’s remorsefulness regarding the incident, Applicant would have received a shorter sentence than the one she received.

Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



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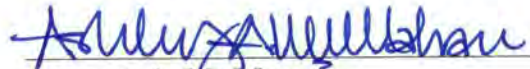
July 28, 2024
 Columbia, South Carolina

CERTIFICATE OF SERVICE

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

Donald J. Zelenka
Deputy Attorney General
dzelenka@scag.gov

This 28th Day of July, 2024.



ASHLEY A. McMAHAN
Attorney for Applicant

STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT 14
COUNTY OF LEXINGTON) DOCKET No. 2022-CP-32-04402

AMY WRIGHT,)
Applicant,)
versus)
THE STATE OF SOUTH CAROLINA,)
Respondent.)

H E A R I N G
BEFORE THE HONORABLE DAVID CARAKER

DATE: AUGUST 27, 2024.
TIME: 10:20 A.M.
LOCATION: South Carolina Circuit Court 14
TRANSCRIBED BY: Jackson Alexander

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7

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12 Attorney for the Respondent.

13

14 ALSO ATTENDING:

15 (None)

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1 PROCEEDINGS.

2 MR. ZELENKA: Your Honor, may it please the Court? I'm
3 Don Zelenka, with the Attorney General's Office. This matter
4 is Amy Wright versus State of South Carolina, civil action
5 number 2022-CP-32-04402. Ms. Wright made an application for
6 post-conviction relief that was filed on December 30th, 2022.
7 It was a pro se application, and on March 2023, the Applicant
8 was -- appointed Ashley McMahan as Counsel.

9 Ms. Wright is currently confined in the Department of
10 Corrections. She was indicted for attempted murder. Stephen
11 Story was appointed to represent him, Sutania Fuller was the
12 solicitor that appeared on behalf of the State. On February
13 8th, 2022, she appeared before Judge Curtis and pled guilty
14 to attempted murder, and she was sentenced to 25 years for
15 that.

16 And in the return that we filed on July 28th, 2023, I
17 summarized in that the factual basis that led to the guilty
18 plea. I won't restate that, but essentially, it involved an
19 assault that was done on an individual living with
20 Ms. Wright, a family member who was hit in the head numerous
21 times with claw hammer, and had lived there briefly. And the
22 reasons stated for that were basically that she was upset
23 with the way the victim in that case was treating her
24 children and had been -- what she would assert, was verbally
25 abusive to her children. She claimed in her pro se

1 post-conviction application that she was innocent and that
2 the plea was not rational because she didn't have essentially
3 some criminal intent, and that the Court failed to properly
4 evaluate mitigating circumstances done in that case.

5 We've asserted in our application that the claims of
6 actual innocence are not properly presented in the
7 Post-Conviction Relief Act, and basically, should be
8 dismissed outright. The applicant then on July 28th, 2024,
9 filed an amended post-conviction relief application through
10 Counsel McMahan, in which they asserted ineffective
11 assistance of counsel by Stephen Story. Had Mr. Story
12 presented evidence of Ms. Wright's remorsefulness regarding
13 the incident, the Applicant would've received a shorter
14 sentence. The burden of proof is on the Applicant.
15 Mr. Story is here present in the courtroom, as is the
16 Applicant, and we're ready to proceed in the matter.

17 THE COURT: Thank you, sir. Yes, Ms. McMahan.

18 MS. MCMAHAN: Your Honor, the Applicant calls
19 Ms. Wright. You can just sit there.

20 AMY WRIGHT,

21 being duly sworn, testified as follows:

22 THE CLERK: Please state your full name for the record.

23 THE WITNESS: Amy Wright.

24 DIRECT EXAMINATION

25 BY MS. MCMAHAN:

1 Q. Please spell your last name.

2 A. W-R-I-G-H-T.

3 Q. Did you file this PCR application?

4 A. Yes, ma'am.

5 Q. Do you still want to go forward on it?

6 A. Yes, ma'am.

7 Q. Who was your attorney that represented you?

8 A. Stephen Story.

9 Q. And were you in the detention center the whole
10 time? Were you out on bond?

11 A. I was on Lexington County.

12 Q. You were in the detention center?

13 A. Yes, ma'am.

14 Q. And did you meet with Mr. Story in person or on
15 video?

16 A. Video.

17 Q. And how many times do you think you met with him?

18 A. Few times.

19 Q. Like, more than three?

20 A. About three or four.

21 Q. And how long were you in the detention center?

22 A. Almost two years.

23 MR. ZELENKA: I'm sorry, I couldn't hear.

24 BY MS. MCMAHAN:

25 Q. And was every time that you met with him on video?

1 A. Yes, ma'am.

2 Q. Was it during COVID?

3 A. Yes, ma'am.

4 Q. Did you get a copy of your discovery?

5 A. No, ma'am.

6 Q. Did he go over the case with you?

7 A. Yes, ma'am, he did.

8 Q. And what did you guys talk about?

9 A. My mental health state, what happened about the
10 situation, what occurred with it, and what was the reason of
11 my decision of doing that.

12 Q. What was your mental health state that
13 (inaudible).

14 A. I apologize. It's bipolar -- bipolar and
15 schizophrenia.

16 Q. Sorry (inaudible).

17 A. Bipolar and schizophrenia.

18 Q. You're bipolar and (crosstalk).

19 A. And manic depression.

20 Q. Okay. That's what you talked about?

21 A. Yes, ma'am.

22 MS. MCMAHAN: Can you hear me?

23 MR. ZELENKA: I hear you.

24 MS. MCMAHAN: Okay.

25 BY MS. MCMAHAN:

1 Q. And did you discuss whether or not you wanted a
2 plea or a trial?

3 A. I was told to recommend not to take a trial.

4 Q. Why was that?

5 A. Facing the fact that they could have given me
6 life.

7 Q. Did you have a prior record?

8 A. I had one from back in 2005.

9 Q. Were they going to use that to (inaudible) it?

10 A. Uh-huh.

11 Q. This one?

12 A. Yes, ma'am.

13 Q. Do you remember the plea offer...

14 MR. ZELENKA: I (inaudible).

15 MS. MCMAHAN: It's complicated in this courtroom.

16 BY MS. MCMAHAN:

17 Q. Do you remember the plea offers you were given?

18 A. No, ma'am. I don't recall it.

19 Q. Was the plea offer that you took, was that the
20 only one?

21 A. Only one, yes, ma'am.

22 Q. And when did he tell you about that?

23 A. About the second time that we met.

24 Q. When did you decide to take it?

25 A. About the third time we spoke.

1 Q. Okay.

2 A. I had time to think about it.

3 Q. Okay.

4 A. I didn't know that -- I was -- from my
5 understanding, I was only a one-time plea.

6 Q. Okay. Just a one-time thing?

7 A. Yes, ma'am.

8 Q. No more deal?

9 A. Yes, ma'am.

10 Q. And were you set to go to trial? Were you coming
11 up on a trial docket or you guys were just discussing plea?

12 A. We were discussing things.

13 Q. Okay.

14 MR. ZELENKA: I'm sorry?

15 THE WITNESS: Discussing things.

16 BY MS. MCMAHAN:

17 Q. And what did Mr. Story tell you that you had -- if
18 you had any defenses at all. Did he -- did you all talk
19 about that?

20 A. Not much, no, ma'am. I don't recall.

21 Q. So what was going on? Like, the victim had been
22 rude to your children?

23 A. She threatened to do bodily harm to them. It
24 triggered me.

25 Q. And was that because of your mental health issues

1 that you had stated earlier?

2 A. Yes, ma'am. I mean, not only that, I know from
3 her prior record of how she was abusive to her own children
4 growing up. So I didn't like it too much, you know.

5 Q. So she had -- had she been arrested for those
6 kinds of things? But you just knew her?

7 A. I know her personally, yes, ma'am.

8 Q. Was she related to you?

9 A. No, ma'am.

10 Q. And so at one point, Mr. Story was talking about
11 your case to the judge. What kind of -- and there were some
12 people that talked about how you weren't remorseful with the
13 situation. Tell me about your remorsefulness with all that.

14 A. The -- I think the detective stated that I was not
15 remorseful through my whole situation, saying that he watched
16 my videos through talking to my mom and my kids. But
17 actually -- I actually tried to write a letter and try to
18 apologize, and try to make things right with the victim while
19 I was incarcerated at Lexington County Detention Center.

20 Q. What happened with that letter?

21 A. It got returned back.

22 Q. Did you tell Mr. Story you were trying to
23 apologize to her?

24 A. I don't recall.

25 Q. So she returned it to sender, I guess, or somebody

1 did?

2 A. Yes, ma'am.

3 Q. Did you make any attempt after that?

4 A. I made -- I tried to write one more time. And
5 after that, no, ma'am.

6 Q. At your plea, do you feel like the fact that you
7 were actually remorseful was adequately represented to the
8 judge?

9 A. They weren't remorseful when they were stating
10 that about it to the judge. I think that they were just
11 trying to pinpoint things on me as far as trying to make me
12 look very aggressive or like a real monster inside that
13 courtroom.

14 Q. And what would you have liked Mr. Story to talk
15 about on your behalf that would've made you look otherwise?

16 A. That I was -- people make mistakes. To help, as
17 far as speaking about me, that I'm really, I'm not insane.
18 I'm not crazy, you know?

19 Q. Was there anything discussed, like how you -- how
20 her behavior had triggered you and you have these mental
21 health issues?

22 A. Just about the fact that she wanted to do bodily
23 harm to Isaiah and Elijah.

24 Q. And that was presented, though, or not?

25 A. I don't think so.

1 Q. Okay. And do you think if that had been
2 presented, that would've made a difference perhaps?

3 A. I believe, yes.

4 Q. Okay.

5 A. Protecting your own children. I mean, any mother,
6 I think, or parent should do that.

7 Q. Is there anything else you want the Court to know
8 today about your PCR?

9 A. No, ma'am.

10 Q. Okay. Answer any questions Mr. Zelenka may have.

11 A. Yes, ma'am.

12 CROSS-EXAMINATION

13 BY MR. ZELENKA:

14 Q. Well, Ms. Wright, why did you plead guilty?

15 A. Because what I did to the lady wasn't the right
16 decision.

17 Q. I'm sorry?

18 A. Because what -- I'm sorry, I don't talk loud.
19 Because what I did to the lady wasn't a right decision.

20 Q. Okay. When you talked with Mr. Story, how did you
21 explain the crime to him? What did you say you were doing at
22 the time the victim was hit in the head with the hammer. Why
23 did you do that?

24 A. I wasn't thinking.

25 Q. Pardon me?

- 1 A. I wasn't thinking.
- 2 Q. Okay.
- 3 A. I just reacted.
- 4 Q. And what were you reacting to?
- 5 A. Her being verbally aggressive towards my two
6 children.
- 7 Q. And -- but how specifically, what was she doing?
- 8 A. Yelling at them, using profanity.
- 9 Q. She was yelling at them? What else?
- 10 A. Using profanity.
- 11 Q. Was she striking them?
- 12 A. Coming close to it. Yes.
- 13 Q. Coming close to striking them? And how was she
14 correcting them? What was she yelling to them about?
- 15 A. They were just...
- 16 Q. Turn down the TV? What -- what sort of stuff?
- 17 A. No, sir. They were just running around in the
18 home, in my uncle's home. They weren't doing anything
19 harmful. And she was sitting in the living room, and they
20 were just running around and she wanted them to stop.
- 21 Q. Okay. And she was living with you for about two
22 weeks?
- 23 A. I don't live with them. I've lived with my
24 mother.
- 25 Q. Okay. How injured did she become with the strikes

1 you gave her?

2 A. Sir?

3 Q. How injured did the hits on the head occur?

4 A. She -- from the information that I had read, she
5 had got a couple head injuries.

6 Q. Okay. I mean, she was very seriously injured,
7 isn't that correct?

8 A. Yes, sir.

9 Q. Yes. There's no doubt about that. And how often
10 did you meet with Stephen Story, who's here in the courtroom?

11 A. We met a few times on video because of COVID.

12 Q. Okay. And did you tell him your reasons for --
13 for striking the victim?

14 A. Yes, sir.

15 Q. And did you feel that he fully understood that?

16 A. Yes, sir.

17 Q. And in your statements that you gave to Mr. Story,
18 did you describe your remorse to him?

19 A. Yes, sir.

20 Q. And what did you tell him?

21 A. That I felt really bad. It broke me down. One,
22 not only was I separated from my children and family, but
23 from what I did to her, to her life and her well-being.

24 Q. Okay. And who made the decision to plead guilty?
25 Did you make that decision rather than go to trial?

1 A. Yes, sir.

2 Q. Did you know you had the right to go to trial if
3 you wanted to?

4 A. I believe so, yes, sir.

5 Q. And did you know that you were facing a
6 significant period of time for what you did?

7 A. Yes, I did.

8 Q. And you -- were you surprised by the sentence that
9 you received?

10 A. Yes, sir.

11 Q. Why was that?

12 A. I didn't know, to be honest, I didn't know. I was
13 expecting to do some time because of what I did to the
14 victim, but as far as doing 25 years away from my two
15 children, I thought that wasn't a right thing, being that I
16 was protecting them.

17 Q. Well, you knew you were facing 30 years, isn't
18 that correct?

19 A. That's what they said, zero to 30 years on my
20 plea.

21 Q. Yeah. And you -- you acknowledged that. So you
22 ended up with less than 30 years?

23 A. I ended up with 25 years, yes, sir.

24 Q. Okay. And, Mr. Story (sic), prior to the time of
25 the guilty plea, you had mental evaluations done? Isn't that

1 also correct?

2 A. Yes, sir.

3 Q. And you were found that you were competent to
4 stand trial?

5 A. Yes, sir.

6 Q. Competent to plead guilty?

7 A. Yes, sir.

8 Q. And those determinations were correct. You
9 understood what was going on at the time of the guilty plea,
10 didn't you?

11 A. Yes, sir.

12 Q. Okay. And you acknowledged that you were pleading
13 guilty because you, in fact, were guilty. You told the judge
14 that too, didn't you?

15 A. Yes, sir.

16 Q. Now, if the -- you listen to the solicitor,
17 Sutania Fuller, make her what I call "A factual basis for the
18 plea" describing the crime that occurred. Do you recall
19 listening to that?

20 A. Yes, sir, I do. She used Google.

21 Q. Okay. And the judge determined that there was a
22 factual basis, and then one of the law enforcement officers
23 with Casey, who was a SLED agent, then made an assertion
24 asking essentially for a maximum sentence. Do you recall
25 that?

1 A. Yes, sir. He was the one that stated that I
2 wasn't remorseful.

3 Q. Okay. And then Mr. Story then made a plea on your
4 behalf. Do you remember that?

5 A. Yes, sir.

6 Q. And although Sutania Fuller was asserting that you
7 hadn't shown any remorse with what you did, based upon some
8 statements that you had given law enforcement and your
9 reaction by just essentially leaving with your two children
10 at the time of the incident while the victim was still at the
11 house. He asserted that you were severely mentally ill, that
12 he had had a not only a DMH evaluation -- Department of
13 Mental Health, but he had also hired another psychiatrist to
14 interview you just to make sure that there weren't other
15 defenses -- competency defenses such as "guilty but mentally
16 ill or insanity." You were aware of that too, weren't you?

17 A. Yes, sir.

18 Q. And he indicated that it had been reported that
19 you had some auditory hallucinations that had gone on, and
20 also that you thought yourself that you were mentally ill
21 under those situations. And then talked about your remorse,
22 trying to contrast Sutania Fuller's presentation with his own
23 presentation that he thought that in fact that you had felt
24 remorse. And he strongly disagreed with that, didn't he?

25 A. I don't recall that.

1 Q. He thought that you were actually remorseful up to
2 that period of time. Do you remember that?

3 A. No, sir.

4 Q. Okay. For the record, I'm referring to page 25 of
5 the transcript. But then after that, you made a statement
6 after -- and do you remember what your statement was that you
7 told the judge in court?

8 A. Do I remember it? No, sir.

9 Q. Yes. Do you remember what you said?

10 A. No, sir.

11 Q. Okay. This is what you told the Court, and tell
12 me if it was accurate. "I just wanted to say that I'm sorry
13 for everything that has happened. I am remorseful about it.
14 I just don't talk about it because it hurts. It does."

15 A. Yes, sir. I do remember saying that.

16 Q. You told the Judge that. But then you also told
17 the judge, "But I don't like people threatening my children
18 and I lost it. You know, please have mercy." Is that what
19 you said?

20 A. Yes, sir.

21 Q. Is that accurate?

22 A. Yes, sir.

23 Q. Okay. So you did get that information. And do
24 you recall the judge then took a break, reviewed the
25 evaluation that had been submitted, but then sentenced you to

1 25 years?

2 A. Yes, sir.

3 Q. And what else would you have wanted your lawyer to
4 say about your remorse? What do you think he should have
5 done?

6 A. He should have done more than what he had done.
7 The solicitor did most of the talking, and it's like he
8 didn't have an opportunity to -- to talk on my behalf as much
9 as he should have.

10 Q. Okay. You think it should have been a longer plea
11 on his part on your behalf?

12 A. Yes, sir.

13 Q. You should have spent more time with the Court?

14 A. Yes, sir.

15 MR. ZELENKA: Okay. I have no further questions.

16 THE COURT: Thank you, sir. Re-direct?

17 MS. MCMAHAN: I can come back.

18 RE-DIRECT EXAMINATION

19 BY MS. MCMAHAN:

20 Q. Did you have a conversation with Mr. Story about
21 defense of others or anything like that?

22 A. I don't remember.

23 MS. MCMAHAN: Okay. I have no further questions, your
24 Honor.

25 THE COURT: Ms. Wright, you may step down.

1 MS. WRIGHT: Thank you.

2 MS. MCMAHAN: Applicant rests.

3 THE COURT: Okay. The State?

4 MR. ZELENKA: The State calls Stephen Story.

5 STEPHEN STORY,

6 being duly sworn, testified as follows:

7 THE CLERK: Please state your full name for the record.

8 THE WITNESS: Stephen Story. S-T-O-R-Y.

9 DIRECT EXAMINATION

10 BY MR. ZELENKA:

11 Q. Mr. Story, I know you've testified before this
12 court earlier, but for the record, briefly describe your
13 professional occupation and give us some background on your
14 experience as a criminal lawyer.

15 A. So I was admitted to the bar in 2013. I began in
16 the Circuit -- the Third Circuit Public Defender's Office in
17 2013. I was there several years. I handled major felonies
18 including: serious and most serious offenses, burglary first,
19 armed robbery. I handled murder cases after a couple years.
20 But I have handled a lot of major felonies, serious and most
21 serious offenses. I came to the Lexington Public Defender's
22 Office, or the 11th Circuit Public Defender's Office in early
23 of 2017, and I have been there since, and that's where I'm
24 currently employed.

25 Q. Okay. Thank you. How did you become involved in

1 Ms. Wright's case?

2 A. I was appointed to Ms. Wright's case in August of
3 2020.

4 Q. Okay. And as a result of that appointment, did
5 you have the opportunity to receive discovery from the State?

6 A. Yes, I did.

7 Q. And did you -- what, if anything, did you do with
8 the discovery?

9 A. So I went and met with Ms. Wright not long after I
10 was appointed the case in August. Not long after that, I
11 received the discovery materials, and I went and basically
12 told Ms. Wright what they contained, some of the major
13 allegations. What -- if we were to proceed to trial, what
14 would likely come in as evidence at trial. That sort of
15 thing.

16 Q. Okay. Did you provide her with a copy of the
17 discovery that you had received?

18 A. I don't believe I gave her a copy of the written
19 materials. I reviewed -- you know -- obviously, I reviewed
20 them with her. I don't think she requested the written
21 materials. If she had, I certainly would've given her a copy
22 with the -- you know, advice not to show it to anybody at the
23 detention center.

24 Q. Okay.

25 A. Yeah.

1 Q. And when you say "reviewed them with her," under
2 the circumstances in 2020, were you showing her the
3 individual copies? Were there some restrictions during that
4 time period that caused you to do things in a different way?

5 A. Well, it was during COVID. At some point in 2020,
6 I believe it was April or May, we began going to video visit
7 only, although we could have in-person visits. I don't
8 recall if our first visit was in-person or via video. I
9 believe the -- when I reviewed the discovery materials after
10 I had received them, that was a video visit. I believe we
11 still had the ability to send written materials at that time
12 to the jail for our clients to have a copy. I don't recall
13 ever doing that, sending it to Ms. Wright, though.

14 Q. So with that information, what was your position
15 on how this case was alleged? Was it a trial, was it a
16 guilty plea? Was that an insanity plea? What was -- what was
17 going on with the information that you had?

18 A. Okay. So, Ms. Wright told me -- pretty early on
19 in my representation, she did not want to go to trial. She
20 had made statements to law enforcement that she did it. She
21 made statements to me that she did it. She was aware she did
22 it, committed this offense. My understanding was she wanted
23 me to get her the best offer possible. So we never received
24 a plea offer, so to speak. She was charged with attempted
25 murder and nothing else.

1 She had a 2007, I believe, assault and battery with
2 intent to kill on her record. Therefore, I believe that if
3 the State chose to, they could notice her for life without
4 parole based on two most serious or most serious offenses.
5 And she could be looking at life without parole. Now,
6 Ms. Fuller at the time didn't notice her for life without
7 parole. She didn't mention it, but I knew -- I don't know if
8 that was an oversight on her part or she never intended to
9 seek it. I don't know. But I knew it was a possibility.

10 Also based on the evidence, the fact that she made an
11 admission, she actually -- according to the police report,
12 showed up at West Columbia City Hall, which is also where the
13 West Columbia Police Department has a headquarters. Even
14 though this was a Casey Public Safety case, she went there.
15 She made statements to law enforcement that she committed
16 this offense. She had left the scene after law enforcement
17 was called.

18 It wasn't a case I was planning to go to trial on, or
19 that I thought we had a strong possibility of success at
20 trial. Now, generally, I will go to trial anyway if we do
21 not have a plea offer, but with the possibility of life
22 without parole, and also that coupled with the evidence in
23 this case or potential evidence, I thought it was best, even
24 if we did not get a plea offer, to plead straight up, as we
25 call it, "plead as charged to attempted murder" in this case,

1 and beg for mercy from the Court, put mitigation in front of
2 the judge and to try to get the best sentence possible. And
3 if you want me to, I can go forward with the why I asked for
4 mental evaluations and that kind of thing.

5 Q. Yes.

6 A. Yeah. Okay. So first of all, the -- just reading
7 the motion of discovery -- and I brought this to the
8 attention of the solicitor, the facts of the case and the
9 statements Ms. Wright made were pretty unusual. I mean, she
10 left the scene, but then she went to the West Columbia Police
11 Department or the City Hall, essentially turning herself in,
12 in a way, and, you know, made statements. The other issue
13 was -- I mean, it was just strange. So couple that with the
14 fact she -- when I talked to her about why she committed this
15 offense, she talked about protecting her kids without going
16 into a whole lot of detail. As of why, she told me there was
17 a lot I didn't understand about the circumstances of it,
18 which sounded kind of conspiratorial. She also told me that
19 she was hearing voices on multiple occasions.

20 Also the second or third time I met with her, she told
21 me that she was essentially not sleeping and having a lot of
22 trouble with her sleep patterns, also indicating to me that
23 she had some sort of mental illness. So I asked for an
24 evaluation. She had a virtual evaluation with the Department
25 of Mental Health doctor. I believe it was Dr. McCabe. And

1 at first, I believe she had a competency evaluation, but then
2 she refused to talk about the facts of the case. So she
3 didn't participate in the responsibility evaluation. After
4 that, I had a conversation with her. We asked essentially
5 that she go back, that we have another shot that DMH has
6 tried to evaluate her again. This time she did communicate
7 some with, I think it was Dr. McCabe.

8 So then, Dr. McCabe evaluated her. She wrote a report.
9 We had gotten medical records, I believe, from Kershaw Mental
10 Health, and that I believe had diagnosed her with major
11 depressive disorder. But essentially, Dr. McCabe's report
12 found that she was responsible, she was competent, she was
13 responsible.

14 She -- after that, I wasn't completely satisfied with
15 that report, again, based on some of the things Ms. Wright
16 had told me. So I asked for funds for an independent
17 evaluation. She met with Dr. Jamae McDermott for a -- and
18 again, this was via video. I was in my office on a video
19 screen. Ms. Wright was at the detention center. Dr.
20 McDermott was at her office. So it was kind of a three-way
21 evaluation. Dr. McDermott talked to her at length. She did
22 certainly a longer evaluation than the Department of Mental
23 Health did. After that, we talked about it. She told me, I
24 think, she likely had major depressive disorder, but she did
25 believe she was responsible.

1 So, yeah, I just wrote that in my notes. And so after that,
2 we decided that we would plead -- essentially, I understood
3 that Ms. Fuller was not going to make any sort of plea offer
4 in the traditional sense, but also that she was not -- at
5 least -- the solicitor was not asking for the maximum or
6 anything like that. So we decided to plead guilty.

7 Q. Okay. And leading into your discussions with your
8 client, did you get an impression of remorse from your
9 client?

10 A. She did say she was sorry to me that she hated
11 what happened. Ms. Wright did not talk in great detail about
12 the circumstances. To me, she was -- she did show some
13 remorse. Absolutely. I wouldn't say -- she -- she told me
14 without going into great detail, that she was protecting her
15 kids and she did say she was sorry for what happened is
16 essentially the -- our conversation in a nutshell.

17 Q. How did you -- did you share the sense of remorse
18 with the prosecution before the plea?

19 A. I believe so. I mean, with -- I know law
20 enforcement in the report had given her statements that the
21 impression being that they saw a lack of remorse. I did not
22 believe a total lack of remorse was accurate. I think most
23 of what I communicated to the solicitor was my concern about
24 her mental health, and her mental health at the time of the
25 offense. And that essentially -- you know, she could get

1 better with medication and treatment for her mental health
2 and that kind of thing. You know, that was -- that was what
3 I hung my hat on, essentially trying to get a plea offer of
4 some kind. But I believe I talked about the remorse to some
5 extent.

6 Q. When you reviewed the State's discovery in this
7 case, did you have an opinion as to whether this was a very
8 serious violent crime that occurred?

9 A. Yes.

10 Q. And why is that?

11 A. So the injuries to the victim, I believe her name
12 was Ms. Sutton, were very severe. I mean, she had to go to
13 the hospital. She had cranial fracture, orbital fracture,
14 brain bleed. She had to be put on a feeding tube, I believe,
15 at the hospital. We had some medical records, so I knew that
16 her injuries were very serious.

17 Q. Did you believe that the circumstances that led up
18 to that injury essentially that the Applicant's reactions to
19 it were definitely out of proportion?

20 A. It...

21 Q. And -- and I guess what I'm saying, she was
22 indicating to you that there was some protection from the
23 children based upon the verbal statements that were coming
24 from the victim to her children, contrasted with the beating
25 of this individual that resulted in her medical treatment, at

1 least going at the time of the plea in a wheelchair, that
2 that was out of proportion reaction to whatever was going on.

3 A. Yes. It -- the problem -- a big problem with the
4 facts of the case is that -- you know, nobody -- you know,
5 Ms. Wright was telling me she was trying to protect her
6 children without going into a lot of detail. But she -- no
7 one witnessed the incident. The children, I believe, were
8 out of the house. There was another family member, I believe
9 the granddaughter of the victim, who found her, was in the
10 house. But -- I mean, this -- it appeared from the discovery
11 I got sort of that it was -- I guess you could describe it
12 somewhat as an ambush. It didn't seem like a strong case for
13 self-defense or defense of others.

14 Now, what Ms. Wright told me contrasted with the
15 statement she had initially given to law enforcement that,
16 you know, she was yelling at the kids and she was tired of
17 her yelling at the kids. She definitely told me more that
18 this was for the children's protection and that she thought
19 Ms. Sutton and maybe other members of the family were putting
20 her two boys in danger. So -- and I apologize if I got off
21 track some, but it didn't seem like a strong case for trial
22 for self-defense, defense of others. And to answer your
23 question, it did seem out of proportion, I think, given
24 whoever you believe, essentially. I mean, it would certainly
25 be out proportion for someone yelling at your kids, but I

1 also didn't think that the circumstances warranted...

2 Q. And -- but you indicated throughout, and the
3 record supports that the prosecutor in the case was
4 essentially not doing any plea negotiation at all based upon
5 her interpretation she said that the plea of the facts of the
6 case. Is that unusual in dealing with the 11th Circuit
7 Solicitor's Office or Sutania Fuller, in particular, that no
8 plea offer was going to be made at all on a case like this?

9 A. I think -- I mean, generally, I get a plea offer
10 sometimes based on the facts or my client's record or
11 something like this, they will tell me they're not making any
12 plea offers. Generally, they'll give some kind of
13 concession, such as they won't ask for the max or they're not
14 asking for a specific number or something like that. So it's
15 not -- it's certainly not unheard of for me not to get a plea
16 offer on a serious offense.

17 Q. Okay. One last question -- hopefully one last
18 question. The Applicant testified that she had attempted to
19 send a letter to the victim in the case. Were you aware of
20 that?

21 A. No.

22 Q. Okay. Did -- were you aware that it was marked
23 return to sender by the victim, if I understood the questions
24 correctly on the Applicant's testimony?

25 A. I do not recall ever being made aware of that.

1 No.

2 MR. ZELENKA: I have no further questions.

3 CROSS-EXAMINATION

4 BY MS. MCMAHAN:

5 Q. Do you only give discovery to your client if they
6 ask for it?

7 A. Usually, yeah.

8 Q. Why is that?

9 A. So, my theory is -- well, this isn't really a
10 problem as of late. Well, it is a problem as of late. So
11 usually on more serious cases, we always have people at the
12 jail who say that certain inmates confess to them and they
13 know the details of an offense. And one of my theories is
14 that somebody sees their motion of discovery so they know the
15 details of the offense and they can then tell them that my --
16 that the defendant confessed to them. And it sounds
17 plausible because they know the details and they've talked
18 about certain details of the offense. One way I try to
19 prevent that is by -- if they -- not giving them a copy of
20 their motion of discovery, unless they ask for it. Now, if
21 they ask for it, they certainly have a right to it. In which
22 case, I admonish them, "Please do not show this to anybody.
23 Keep it a secret. Don't talk about it with any other
24 inmates," in order to limit that possibility. That's the
25 main reason I don't do it. Yeah, that's -- that's the main

1 reason.

2 Q. And did you and Ms. Wright have a discussion about
3 the victim's past abusiveness, I guess, towards other
4 children or other family members?

5 A. Not towards -- not towards other. We talked about
6 the victim, Ms. Sutton, in pretty general terms, what I
7 recall.

8 Q. There was no conversation specifically about how
9 she historically had been an abusive person, that you recall?

10 A. Not physically abusive, no.

11 Q. And would you advise your client to apologize to
12 the victim while they're at the detention center?

13 A. While they're at the detention center? No, I
14 would not.

15 Q. When would you advise them to apologize?

16 A. Possibly at a guilty plea, I might.

17 Q. And your meetings with her, were most of them by
18 video or were they in person?

19 A. I know most of them were by video because I was
20 appointed this case in 2020. I believe at one point
21 Ms. Wright told me she wanted -- she wasn't comfortable doing
22 video visits, and I tried to meet with her in person. Now,
23 since COVID, I can only meet with my clients separated by
24 glass, but I do believe I met with her in person at least on
25 an occasion or two, but most of them were via video.

1 MS. MCMAHAN: I have no further question, Judge.

2 THE WITNESS: All right, thank you.

3 THE COURT: Any re-direct?

4 MR. ZELENKA: No further.

5 MR. STORY: Can I step down? Thank you.

6 THE COURT: Anything else, Mr. Zelenka?

7 MR. ZELENKA: No further witnesses. We would rest with
8 the submission of the Court records and the guilty plea of
9 February 8th, 2022. We would assert that they have failed to
10 meet their burden of proof on the grounds other than the
11 grounds set forth in the initial application. We submit that
12 Counsel acted reasonably and his representations made
13 concerning the Applicant's remorse at the time of the guilty
14 plea, and as supported by the Applicant's own sworn
15 statements during the guilty plea itself expressing
16 essentially what she opined to be her true nature of remorse
17 at that particular time. It was consistent with the
18 information the Defense Counsel had received from the
19 Applicant during that period of time. He wasn't deficient in
20 that presentation and the result of the proceeding would not
21 have been different related to the sentencing claim as
22 asserted in the amended application. So we would think this
23 should be dismissed. We understand your Honor wants to
24 review the full record after this testimony.

25 THE COURT: Thank you, sir. Ms. McMahan?

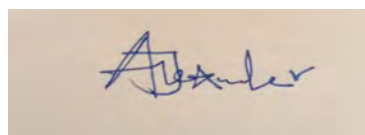
CERTIFICATE OF TRANSCRIBER

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I, JACKSON ALEXANDER, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had, and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 14 of Lexington County, South Carolina, on August 27, 2024.

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

July 20, 2025.

A rectangular box containing a handwritten signature in blue ink that reads "Alexander".

JACKSON ALEXANDER

Transcriber

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON
COUNTY OF LEXINGTON 2025 APR 28) PM 2:34 PLEAS FOR THE ELEVENTH
) JUDICIAL CIRCUIT

AMY WRIGHT, SCDC # 322552,)
) LISA M. COVER
) CLERK OF COURT
) LEXINGTON, SC) Case No.: 2022-CP-32-04402

Applicant,)
) ORDER OF DISMISSAL

v.)
STATE OF SOUTH CAROLINA,)

Respondent.)
_____)

This matter comes before this Court from Applicant Amy Wright's post-conviction relief application filed on December 30, 2022. On March 7, 2023, the Clerk of Court appointed Ashley McMahan as appointed counsel in this action. The Respondent made a Return and Partial Motion to Dismiss on July 27, 2023. On July 28, 2024, counsel McMahan made an Amended Post-Conviction Relief Application.

On August 27, 2024 an evidentiary hearing was held before this Court. The Applicant was present and represented by her court-appointed counsel Ashley A. McMahan. The Respondent was represented by Deputy Attorney General Donald J. Zelenka. Testimony was received from the Applicant and his prior attorney, Stephen R. Story, Jr. At the conclusion of the hearing, this Court took the matter under advisement. This Order of Dismissal with prejudice follows:

I. Procedural History

Applicant Amy Wright, SCDC #322552, is presently confined in the South Carolina Department of Corrections (SCDC). In its August 2020 term, the Lexington Grand Jury indicted Applicant of attempted murder (2021-GS-32-02214). Stephan R. Story, Jr., Esquire, represented Applicant. Sutania Fuller, Senior Assistant Solicitor, represented the State. On February 8, 2022, Applicant appeared before the Honorable Kristi Curtis and pleaded guilty to attempted murder

(2020A3220300220). Judge Curtis sentenced the Applicant to twenty-five years. Applicant did not appeal her sentence or conviction.

II. Summary of Fact Presented at Guilty Plea Hearing

The facts for this indictment were articulated by the State at Applicant's plea hearing as follows:

MS. FULLER: Your Honor, back on August 18th of 2020, 911 was called at 9:35 a.m.; responded to this residence on Oakland Avenue in Cayce, part of our county, Your Honor. What was reported and what was clearly depicted from the photographs and what I could tell from the report is the victim in this case, Ms. Sutton, she was sitting on her couch downstairs. And then Ms. Wright attacked her repeatedly several times with a claw hammer.

The granddaughter that was in the residence heard the grandmother screaming and went downstairs. She ran back upstairs to get her mom and get her boyfriend to get help, because she described that her grandmother was basically bleeding out. She did report to law enforcement that she saw Ms. Wright leave the residence with her two small children.

And in the investigation, law enforcement spoke to the family members. And what was determined was the relationship. So this was a home where the grandmother lived with a daughter, a granddaughter-in-law, as well as the son-in-law. What I can understand, the relationship, Ms. Wright was a relative of the husband, I believe either -- they called -- the children called her "aunt," but it seems like she may be more of a niece to the father in the home, but I'm sure they'll explain that.

When she was living in the home, she had been there for about two weeks. What the husband reported to law enforcement -- and Mr. Hornsby reported that she had lived there for two weeks because no other family would take her in. She had been having problems with the victim, Ms. Sutton, the grandmother in the home because she didn't like the way that the grandmother spoke to her children. And Ms. -- the grandmother, the victim in this case, had -- had problems with her drinking as well.

But that morning, the husband reports leaving. And I refer to him as "husband" because he's the husband of the home, but the son-in-law of the victim. He reports leaving for work at around 5 a.m. and then

returning to the residence when he received a frantic phone call from his wife, describing what happened.

When law enforcement eventually spoke with Ms. Wright, she gave a statement, indicating that she did it; what -- like, kind of indicating, like, what is there really to talk about. She said: "But I did it. There's really not much to say. I done it."

She indicated that she was irritated because Sutton, the victim, was constantly verbally abusive to -- verbally abusive to her two children. She said: "I got tired of people treating my kids like that." And she indicated, when asked what -- how was she abusive or was she abusive, her response was: "No." She was just constantly saying she -- they were verbally abusive.

What we have determined and what I've understood, what she described as "verbally abusive" is the -- Ms. Sutton telling her kids not to run around the house, to be quiet in the home.

At one point on August 21st, when defendant spoke with social worker at DSS, she stated that the reason she caused harm to the victim was because, according to her, people were going to kill her and her children. She also claimed that the victim kept telling her children not to touch things and not to run around in the home.

(Tr. p. 9-11).¹

Cayce Police Department Investigator Paul Sanguiliano described that it was a miracle that the victim was still alive. He described that crime scene as one of the most brutal he had seen in his 12 years in law enforcement. Tr.p. 18. He described his arrival at the scene with the victim being wheeled out with a caved in skull with circles consistent with the front of the hammer indented with her eyes swollen shut. Tr.p. 18. Family members described the victim tragic change of life being wheelchair bound, unable to cook for herself and needing assistance to go to the bathroom as a result. They asked for no leniency for the Applicant. Tr.p. 19-20.

¹ According to the prosecution, the Applicant had a prior record of 2004 – possession of marijuana, 2007 assault and battery with intent to kill, 2010 arrest for public disorderly conduct, and 2018 – open container, DUI-first, and child endangerment. Tr.p. 21-22.

III. Allegations Raised and Relief Sought before this Court

In her application for post-conviction relief, Applicant alleged she was being held in custody unlawfully based on the following, contending in the attachment that the plea was involuntary, irrational and the result of ineffective assistance of counsel:

1. Actual Innocence:
 - i. She was convicted of attempted murder and sentenced to 25 years without parole following an incident, altercation with her relative concerning what she believed to be abusive behavior toward her children. The relative/grandmother experienced head injuries and loss of a finger and long term complications.
 - ii. The Applicant contends that "she did not attempt to kill her grandmother, and immediately reported the incident to the police."
2. "The plea was irrational because she did not attempt to kill her grandmother and the plea fails to satisfy the requirements of the charge. Under no circumstances was this an attempted murder, and any plea deal on that basis was misconstrued." The Applicant cites to assault and battery of a high and aggravated nature, assault and battery in the first degree and assault and battery in the second degree as lesser-included offense of attempted murder.
3. "The Court failed to properly evaluate whether the defendant had mitigating circumstances which resulted from prior abuse."
4. Ineffective Assistance of Counsel
 - i. Applicant alleges that Counsel failed to investigate the circumstances of the case mitigating effect of battered woman circumstances and for allowing an irrational plea.
 - ii. Applicant apparently alleges that Counsel failed to inform her of any lesser-included offenses.

In her amended application, the Applicant, through counsel, alleged the following:

- I. Ineffective assistance of counsel Stephen R. Story, Jr.
 - a. Had Mr. Story presented evidence of Ms. Wright's remorsefulness regarding the incident, Applicant would have received a shorter sentence.

IV. MATTERS BEFORE THE COURT

This Court has before it the following materials:

1. Records of the Lexington County Clerk of Court including:

- a. records regarding the subject convictions;
 - i. Arrest warrant – attempted murder – 2020A3230300220
 - ii. Magistrate Notice of Rights, indicating bond denied;
 - iii. Motion for Disclosure of Evidence Favorable to Defendant;
 - iv. Request for Disclosure Pursuant to Rule 5;;
 - v. State’s Request for Discovery;
 - vi. Order for Competency Evaluation
 - vii. Order for Criminal Responsibility and Capacity to Conform Evaluation;
 - viii. Indictment for Attempted Murder - 2021GS3202214
 - ix. Sentencing Sheet;

2. Records from the South Carolina Department of Corrections (5 pages) including

- a. SCDC Record Summary Report dated Jan.30, 2023;
- b. Sentencing Sheet 2021-GS-32-02214 dated February 8, 2022

Guilty plea transcript of February 8, 2022 (28 pages); and the records of the current PCR action.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW RELATED TO ALLEGATIONS INEFFECTIVE ASSISTANCE OF COUNSEL AND OTHER GROUNDS RAISED

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant failed to meet the high burden required for a grant of post-conviction relief pursuant to Rule 71.1, SCRCP, and the Uniform Post-Conviction Procedure Act (the Act). For the reasons discussed below, this Court denies

Allegation of Actual Innocence

Applicant alleges actual innocence (or insufficient factual basis for plea) in her original PCR application. In particular, she contends that she did not attempt to kill her grandmother and counsel should have informed her about the lesser offenses prior to her plea. This Court must dismiss the assertions related to insufficient evidence to convict. It is dismissed as not a cognizable claim under the Uniform Post-Conviction Relief Procedure Act. S.C. Code Ann. § 17-27-20(A).²

A free-standing claim of actual innocence is not a proper claim in post-conviction relief.

An applicant may commence a post-conviction relief action on the following grounds:

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; 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 [her] sentence has expired, [her] probation, parole or conditional release [was] unlawfully revoked, or she 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...**Provided however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.**

S.C. Code Ann. § 17-27-20(A).

² The statutory crime of attempted murder is defined as "a person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder. A person who violates this section is guilty of a felony, and, upon conviction, must be imprisoned for not more than thirty years. A sentence imposed pursuant to this section may not be suspended nor may probation be granted." S.C. Code Ann. § 16-3-29.

Absent a proper claim of newly discovered evidence, a claim of actual innocence is not a valid post-conviction relief allegation, nor does it support a cognizable claim for relief under any of the statutory grounds. See Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975) (finding that alleged trial errors and sufficiency of the evidence are direct appeal issues that are not cognizable PCR claims); S.C. Code Ann. § 17-27-20(B) (“This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction.”). This Court dismisses the allegation of actual innocence as it is not cognizable under the Uniform Post-Conviction Procedure Act.

Similarly, the Applicant complains in her *pro se* application that the guilty plea was irrational because the facts of the case did not show the existence of the crime of attempted murder. This free-standing assertion fails for the same reason as above. During the guilty plea, as set forth below, the plea court heard a factual basis for the crime of attempted murder. Tr.p. 9-11. The Applicant acknowledged her decision to waive her constitutional rights and plead guilty. Tr.p. 8, 16. The plea court found a valid factual basis for the crime of attempted murder and determined that the guilty plea was freely and voluntarily entered. Tr.p. 16. By entering the plea freely and voluntarily, the Applicant waived her right to present a defense. Therefore, under S.C. Code Ann. § 17-27-20(A)(6), because “this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction” the allegation is about the irrational plea must be dismissed. The Applicant entered a knowing, voluntary, and intelligent guilty plea. By doing so, he waived his right to challenge the sufficiency of the evidence underlying his conviction. See State v. Herndon, 742 S.E.2d 375, 379 (S.C. 2013) (“The Alford plea is, in essence, a guilty plea and carries with it the same penalties and punishments.”); LoPiano v. State, 243 S.E.2d 448, 451 (S.C. 1978) (“We are not here concerned with the weight or sufficiency of

the evidence to sustain a conviction. By entering a plea of guilty, [Defendant] waived his right to attack his conviction on this ground. Since we have determined that [the] plea was entered voluntarily and understandingly, he does not now have the right, in post-conviction proceedings, to attack the plea upon the ground that the facts were insufficient to establish the offense to which he pled.”). The allegation is denied.

Allegations of Ineffective Assistance of Counsel

The Applicant alleges she is entitled to post-conviction relief based on allegation of ineffective assistance of plea counsel. Specifically, Applicant contends in her *pro se* application that plea counsel failed to investigate mitigating effect of battered woman circumstances and failed to inform her of lesser-included offenses. In the amended application by counsel she asserts that counsel failed to adequately present evidence of the Applicant’s remorsefulness about the incident which she claims would have resulted in a lesser sentence.

A. Ineffective Assistance of Counsel and Guilty Pleas

In a Post-Conviction Relief action, the applicant bears the burden of proving the allegations in their 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, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. 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. With respect to plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

PCR Hearing Testimony

Applicant Amy Wright

The Applicant stated that Stephen Story was her counsel. She had been in the detention center for two years prior to her plea. She asserted that she only met with counsel three or four times during COVID, but only met virtually, never in person. She claimed that she never received a copy of the discovery from counsel. She claimed that counsel went over the case "a little" and discussed her mental health issues, which included bipolar disorder, manic depression and schizophrenia. She stated that counsel recommended that they not go to trial because there was a risk she could receive a life sentence because she also had a 2005 conviction that could have enhanced the punishment. She stated this case was not set for a trial or on a trial docket.

She claims that it was not presented at the plea that the victim threatened to do bodily harm to her children and had been arrested for abusing her own children and the Applicant was worried about that, but stated she did not tell that to counsel due to her own mental condition.

She took issue with the statement by a law enforcement officer that she was not remorseful. She testified that she tried to send the victim an apology letter but it was not delivered and received a "return to sender." She claimed that she was inappropriately painted as aggressive and a monster in the courtroom.

On cross-examination, she stated she pled guilty because what she did to the lady was not the right decision. She stated that she was not thinking and just reacted to the victim being verbally aggressive towards her children by yelling, cussing and almost striking them. The Applicant admitted that the victim received very serious head injuries. She met counsel a few times due to COVID and told him her reason for striking the victim with a hammer. She stated that she described to Story her remorse and that this caused her to be separated from her family and also to the damage to the victim and her family.

The Applicant decided to plead. She knew she had a right to a jury trial and knew she was facing significant time. However, the Applicant admitted that she was surprised by the 25 year sentence, knowing the range was 0-30 years and felt that 25 years was not right.

Wright stated she had a mental health evaluation before the plea which found her to be competent to stand trial. She testified that she understood the guilty plea and plead guilty because she was guilty.

The Applicant stated that the law enforcement officer asked for a maximum sentence and claimed that she was not remorseful. She was aware that counsel Story made a plea on her behalf and pointed out that she suffered from mental illnesses with treatment at Department of Mental

Health and with psychiatrists. Counsel brought up her auditory hallucinations and remorse, but she did not recall him saying that she was actually remorseful or her own statement to the court. However, she recalled the expressions of remorse after reviewing counsel Story and her statements of remorse in the transcript at pages 25 and 26. Ahe opined that Story

Counsel Stephen Story

Counsel Stephen Story testified that he was appointed on the Applicant's case in August 2020. He stated that he was admitted to practice in 2013 and worked in the Third Circuit Public Defenders Office for a number of yeas handling serious offenses and felonies. Since 2017, he has been with the Lexington County Public Defender's Office.

He testified that he initially met with her shortly after he was appointed and later again after receiving the discovery in the case. Counsel reviewed with her what was in the discovery , but did not leave a copy with her and she did not request a copy for herself. He clarified that he only gives discovery to the clients when they request it while incarcerated, to prevent other inmates from getting it (as jailhouse snitches) and saying that the Applicant confessed to them.

Story noted the majority of his meetings with her were virtual because of COVID. Counsel stated that Wright told her very early that she did not want a jury trial, but wanted the best offer. However, they never received a plea offer. She had a prior assault and battery with intent to kill that could enhance the sentence to possibly a life without parole sentence. Story clarified, however, that Sutania Fuller, the prosecutor never mentioned that possibility. Story pointed out that the Applicant had gone to the police station in West Columbia and confessed. He thought and advised her that the best choice was to plead as charged and ask the judge for leniency with a showing of mitigating factors.

He stated that based upon her statements to him, he believed that he needed to get a mental health evaluation. This was because she claimed to hear voices on multiple occasions, had conspiracy theories about harming children, and was not sleeping which suggested the possibility of a mental illness. Although she was found competent to stand trial, she had refused to participate in the criminal responsibility evaluation. Counsel requested an independent evaluation from Dr. McDermott by video who opined that she was competent and criminally responsible, though had a major depressive disorder. Story thought that she did not go into much detail about what she thinks or feels when talking with him.

Story stated that the prosecutor was not negotiating any plea offer at all, which was not uncommon with this type of violent offense. They decided to plead guilty since the solicitor was not asking for the maximum in their discussion and that it was doubtful that a plea deal for a lesser negotiated sentence would occur due to other factors. He noted that the victim had cranial and orbital fractures and needed a feeding tube from the very serious injury. He testified that this was not a strong case for trial. He recalled that this was a serious violent crime with severe injuries. It was described as an ambush of the victim, not self-defense or defense of others.

Story indicated that he thought he shared the Applicant's remorse with law enforcement. Story stated he believed that the Applicant did not have a total lack of remorse which was an inaccurate portrayal of her, but she did say she was sorry and hated what happened. He believed that Wright's reaction in the crime was totally out of proportion to the event, but she contended she was trying to protect her children who were not in the house at the time.

Failure to Investigate and Inadequate Mitigation Presentation

This Court finds that the Applicant has failed to prove that counsel was ineffective concerning his investigation leading up to the trial. Applicant initially alleged plea counsel was

ineffective for failing to properly investigate the circumstance of the case and the mitigating effect of battered woman syndrome circumstances. She further indicated that he failed to investigate adequately the mental health issues related to the Applicant, and the prior alleged violent history of the victim related to the victim's children, and the Applicant's alleged remorse. In addition, the Applicant asserts that these matters should have been more effectively presented in mitigation of sentence

Regarding failure to investigate and present evidence allegations, Applicant is required to present credible evidence or witnesses he alleges plea counsel did not properly investigate. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Additionally, whether Applicant was prejudiced by Counsel's failure to investigate is contingent on whether the evidence presented would have led plea counsel to change her recommendation regarding the plea. Stalk v. State, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel's duty to investigate. Ard, 372 S.C. at 331, 642 S.E.2d at 597 ("this duty is limited to a reasonable investigation"). The United States Supreme Court also instructed reviewing courts to "keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." Strickland, 466 U.S. Thus, in applying the Strickland standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation must be evaluated with heavy deference to counsel's judgment. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633 (Ct. App. 2014).

During the guilty plea hearing, plea counsel informed the sentencing court of Applicant's mental illness, abuse she suffered from as a child, and domestic violence she suffered. Tr. p. 22. He noted that she was severely mentally ill, having been examined by two doctors and from

information from the Applicant's mother. Due to his conversations with her and his review of statements she made to law enforcement, counsel advised the plea court that he was concerned she suffered under mental delusions and had the DMH doctor evaluate her and also retained a private psychiatrist, Dr. McDermott to do an independent evaluation. Counsel told the court that she had been diagnosed with major depressive disorder. Tr.p. 22. Counsel advised the court that with this disorder, people can suffer delusions and go through manic and depressive periods. Counsel found support in this concern with the statements earlier that the Applicant would stay up for long periods of time and then periods of time that all she wanted to do was stay in bed. Counsel advised the court that the Applicant also suffered from auditory hallucinations.

Counsel also advised the plea court about the Applicant's upbringing. He described that she was raised by her grandmother after her mother gave up custody. However, while living with her, the Applicant was the victim of physical and sexual abuse from other members of her family, lasting until young adulthood. Tr.p. 23.

The Applicant's educational ability was described as very intelligent and was placed in advanced classes through high school.

However, counsel also advised the court that as she got older she was in at least two relationships that turned violent. He noted that she was the victim of pretty intense domestic violence that she reported to counsel. Tr.p. 24.

Counsel stated that she has two children who live with the Applicant's mother who were age 9 and 6. Counsel stated to the court that her mother was unable to come to court because one of the children was ill. Counsel reported that the Applicant's mother loves her very much. However, the mother had expressed concern and believed that the Applicant was mentally ill and should not be pleading guilty and should have been sent to the Department of Mental Health or a

similar institution. Counsel stated that he had advised her mother that the two evaluations they had done did not support it. Tr.p. 24.

Counsel stated that the Applicant feels that mental health at the jail had gotten her medications correct and resolved her sleep cycle issues for the last two months.

As to whether the Applicant had remorse,³ counsel challenged it directly in the mitigation:

She feels like she's in a lot better place than she was at the time. We've heard a lot today about, you know, it -- this being unjustified, her not showing remorse. I can't say for sure, but it just seems like she was under some sort of delusion about people trying to kill her that she reported to law enforcement and that sort of thing. So, you know, it may not rise to the level of criminal responsibility, but I would ask the Court to take into consideration some of the statements that she made to law enforcement and some her behavior.

Tr.p. 25, l. 2-11. Counsel further indicated that this was a bizarre case in his eight years of practice. He asked the court to take everything into consideration and asked the court to give mental health treatment in the Department of Corrections and allow her to be a productive part of her children's lives. Tr.p. 25-26.

The Applicant then made a personal plea for leniency to the sentencing court reflective of her attitude of remorse:

I just wanted to say that I am sorry for everything that has happened. I am **remorseful about it**. I just don't talk about it. Because it hurts; it does.

But I don't like people threatening my children, and I lost it, you know. But please have mercy.

³ The remorse assertion by counsel Story was in direct response to the statements by Cayce Police Department Investigator Paul Sanguiliano about the Applicant's lack of remorse. He advised the sentencing court:

Ms. Wright has shown zero remorse for this incident since I -- the -- the time I dealt with it. During her confession initially and her recorded interview, through jail calls, we weren't sure initially if her minor children were witnesses to the event.

So we scheduled forensic interviews for them, and it was ordered that she should have no contact with them. That was violated multiple times in jail calls. When she talked about the offense through her jail calls, zero remorse for the entire thing.

Tr.p. 18, l. 14-23.

Tr.p. 26, l. 8-13.

This Court finds that the Applicant has failed in his burden of proof to show deficient performance as what additional investigation in the case would have led to. It is apparent to this Court that counsel had a full understanding of the facts of the from the state's and Applicant's own versions. Counsel fully reviewed the discovery with the Applicant in their meetings.⁴ He was aware of the Applicant's theory from the discussions with her, a review of the state's evidence he received from discovery and his own pursuant of mental health evaluations. It was the Applicant's position that the victim was an evil person who was likely to harm the Applicant's children. However, the Applicant has failed to show any untapped potential evidence to support that theory, other than speculation presented in this hearing that the victim had harmed her own children. However, that speculation lacked a connection to what happened on that date and did not provide a defense or evidence of a lesser offense. However, in this hearing, the Applicant failed to present any evidence of the victim's propensity for violence to support that suggestion.⁵

This Court finds that from counsel's credible testimony that he was aware that there was no credible evidence presented to him that the victim had physically harmed any of the Applicant's children. The Applicant has failed to show how counsel's investigation into the victim's background was not reasonable performance.

This Court also concludes that the Applicant failed to show deficient performance in his investigation of the Applicant's mental health. This Court finds that counsel was aware of mental

⁴ Counsel went over the discovery with the Applicant in their meetings. These discussions occurred virtually as well as in person based upon counsel's credible testimony. However, the discovery was not left with the Applicant who did not request it. This was counsel's practice to avoid the possibility of jailhouse snitches.

⁵ This Court takes judicial notice of the Public Index of the Lexington County Clerk of Court. I also does not include any public entries support any criminal record for Florine Sutton, the victim in this case.

health issues in discussion with both the Applicant and her family. In light of the Applicant's statement to counsel, he requested a criminal responsibility and competency to stand trial evaluation by the Department of Mental Health which was granted by Judge McLeod on March 19, 2021. Counsel also sought an independent psychiatric examiner, Dr. McDermott, who generally opined she suffered from major depressive disorder. However, these clinical findings did not support either an insanity of guilty but mentally ill verdict or a lesser verdict than attempted murder. Then Applicant failed to show deficient performance as to his investigation. Counsel Story performed what a reasonable counsel in the practice of criminal law would do related to his initial concern about mental health issues.

This Court finds that counsel failed to prove that counsel was deficient concerning his investigation about the battered women mitigation defense as alleged in the Applicant's initial application. The Applicant contended that she had been abused in two prior relationships and that in her upbringing she had been sexually and physically abused by family members. However, there was no showing that the victim in this case was ever an abuser of the Applicant. The information was that at most, the verbal statements by the victim did not amount to criminal domestic abuse toward either the Applicant or her family. The Applicant has also failed to present any evidence to support that the children of the Applicant were the subject of any domestic abuse by the victim.

Trial counsel cannot be deficient for failing to pursue a course of action that would require expanding existing precedent and testing unproven theories of law. See Strickland, 466 U.S. at 690 (“[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.”); Robinson v. State, 308 S.C. 74, 78, 417 S.E.2d 88, 91 (1992) (holding that trial counsel was not ineffective for failing to request a charge on battered woman's syndrome when the theory was not well known at the time and had

not been recognized by our supreme court as relevant to a claim of self-defense); Gilmore v. State, 314 S.C. 453, 457, 445 S.E.2d 454, 456 (1994) (“We have never required an attorney to be clairvoyant or anticipate changes in the law which were not in existence at the time of trial.”), overruled on other grounds by Brightman v. State, 336 S.C. 348, 351 n.4, 520 S.E.2d 614, 615 n.4 (1999); Arnette v. State, 306 S.C. 556, 557–58, 413 S.E.2d 803, 804 (1992) (holding trial counsel provided effective assistance although he failed to consider the defense of accident because there was no evidence that the defense could be applied to the applicant); State v. Moussa, 53 A.3d 630, 637 (N.H. 2012) (“An attorney is not obligated to pursue weak options when it appears, in light of informed professional judgment, that a defense is implausible or insubstantial.” (quoting United States v. Woodard, 291 F.3d 95, 108 (1st Cir. 2002))); Esprit v. State, 826 S.E.2d 7, 15 (Ga. 2019) (“A criminal defense attorney does not perform deficiently when he fails to advance a legal theory that would require ‘an extension of existing precedents and the adoption of an unproven theory of law.’ ” (quoting Williams v. State, 818 S.E.2d 653 (Ga. 2018))).

Similarly, counsel cannot be deemed deficient based upon his reasonable investigation concerning the existence of any alleged lesser offenses or defenses. Defendant must be advised of any lesser-included offenses which the jury would be instructed on if she went to trial. Kerrigan v. State, 304 S.C. 561, 406 S.E.2d 160 (1990). The test for determining when an offense is a lesser-included offense of another is whether the greater of the two offenses includes all the elements of the lesser offense. State v. McFadden, 342 S.C. 629, 539 S.E.2d 387 (2000). If the lesser offense includes an element which is not included in the greater offense, then the lesser offense is not included in the greater offense. Hope v. State, 328 S.C. 78, 492 S.E.2d 76 (1997); Suber v. State, 371 S.C. 554, 640 S.E.2d 884 (2007) (finding plea counsel not deficient for failing to inform of lesser-included offense where the lesser-included offense was not viable under the facts and

circumstances); See State v. Funchess, 267 S.C. 427, 429, 229 S.E.2d 331, 332 (1976) (“[I]t is not error to refuse to submit a lesser included offense unless there is testimony tending to show that the defendant is only guilty of the lesser offense.”).

Counsel recognized that due to the repeated malicious violence toward the victim that there was not an available showing of a lesser offense of attempted murder. Further, the State was not negotiating any lesser charges. Further, the Applicant indicated to counsel that she did not want to go to trial at the outset of the representation. It was clear that the State was not willing to offer a lesser plea than attempted murder. The Applicant did not make a credible showing otherwise of deficient performance related to advising on the potential charges based upon the facts in the case.

In addition, the Applicant failed to show deficient performance related to any investigation of self-defense or defense of others that the Applicant stated in passing. This Court finds that the evidence presented concerning the incident through counsel and the plea was that the Applicant was not in fear for herself and her children were not even present at the time of the victim’s beating, but were outside of the home. Counsel conclusion related to his rejection of these matters and advice was not deficient performance.

This Court further finds that counsel investigation of the Applicant’s alleged remorse was not deficient. Counsel was aware of the Applicant’s expression of remorse to him, as well as the record related to the statements made to law enforcement. Although he may not have been aware of a letter that the Applicant wrote to the victim that was returned, that does not indicate deficient performance on his behalf. The Applicant failed in his burden of proof to show credible evidence of an omission to support a finding of a deficiency.

Further, the Applicant indicated at the plea that she was satisfied with counsel and had discussed the evidence with him and had reviewed the discovery with him . Tr.p. 8. This statements

in court carried a presumption of verity that the Applicant has failed in this proceeding to show a credible reason why she should not be held to the truth of those comments. Blackledge v. Allison, supra.

The Applicant has failed in her burden of proof related to the investigation. It must be denied.

Guilty Plea

More clearly, the Applicant has failed to show how any omissions on the part of counsel showed Sixth Amendment prejudice in her decision to plead guilty. As to the guilty plea, the Applicant failed to show any omission on the part of counsel that to a reasonable probability would have caused her to go to trial rather than plead guilty. See Hill v. Lockhart, supra. As noted above, the Applicant failed to present any item of evidence or credible testimony that counsel failed to uncover or consider. This Court finds credible counsel's assessment that this case would not have been favorably received by a jury and that there was no visible defense to present. Counsel's advise to plead guilty and attempt to mitigate the sentence before the judge was well founded. Counsel was also aware of an unstated risk that with the assault and battery with intent to kill prior that the State could have sought life without parole. The Applicant's plea was entered freely and voluntary upon her own choice to attempted murder, aware that she could receive sentence of 30 years.

As reflected in counsel's plea in mitigation, the areas presented that the Applicant took issue with were essentially presented to the sentencing court. The Applicant's speculation that the information could have been presented more fully or differently to her that would have affected her decision to chose to go trial to a reasonable probability is not supported by any credible evidence to this Court.

Sentencing

Further, regarding sentencing, this Court the Applicant has wholly failed to show that counsel was deficient related to the presentation in mitigation of sentence. In Glover v. United States, 531 U.S. 198, 202–04, 121 S.Ct. 696, 148 L.Ed.2d 604 (2001), the United States Supreme Court applied Strickland to a noncapital sentencing proceeding. Glover presented the question whether “a showing of prejudice, in the context of a claim for ineffective assistance of counsel, requires a significant increase in a term of imprisonment.” *Id.* at 204, 121 S.Ct. 696. The claim in Glover arose from noncapital sentencing proceedings governed by federal guidelines. *Id.* at 200, 121 S.Ct. 696. The Supreme Court reversed the Seventh Circuit for “supplant[ing] the Strickland analysis” in such a context. *Id.* at 203, 121 S.Ct. 696. In closing, Glover noted that “the ultimate merits of [petitioner’s] claim” would turn on Strickland’s elements: “the question of deficient performance” and “prejudice flow[ing] from the asserted error in sentencing.” *Id.* at 204, 121 S.Ct. 696.

To the extent that there was any doubt that Glover “clearly established” that Strickland applied to noncapital sentencing proceedings, that doubt was erased in Lafler v. Cooper, 132 S.Ct. 1376, 182 L.Ed.2d 398 (2012). In Lafler, the Supreme Court stated that Glover:

establish[ed] that there exists a right to counsel during sentencing in ... noncapital ... cases. Even though sentencing does not concern the defendant’s guilt or innocence, ineffective assistance of counsel during a sentencing hearing can result in Strickland prejudice because “any amount of [additional] jail time has Sixth Amendment significance.”

Lafler, 132 S.Ct. at 1385–86 (second alteration in original) (citations omitted) (quoting Glover, 531 U.S. at 203, 121 S.Ct. 696).

Given Glover and Lafler, the Supreme Court has clearly established that Strickland governs claims for ineffective assistance of counsel in noncapital sentencing proceedings. See also Premo v. Moore, 562 U.S. 115, 126, 131 S.Ct. 733, 178 L.Ed.2d 649 (2011) (“Whether before, during, or

after trial, when the Sixth Amendment applies, the formulation of the standard [for deficient performance, as an element of ineffective assistance of counsel] is the same: reasonable competence in representing the accused.”) (quoting *Strickland*, 466 U.S. at 688, 104 S.Ct. 2052).

How to present evidence and argument in noncapital mitigation is a matter of strategy. Decisions regarding the presentation of evidence are inherently matters of trial strategy. The United States Supreme Court has cautioned courts not to assess counsel's decisions concerning strategy through the distorting lens of hindsight; rather, courts are to employ a strong presumption that counsel's conduct falls within a wide range of reasonable assistance and, under the circumstances, might be considered sound trial strategy. *Strickland*, 466 U.S. at 689.

The Applicant failed to show any deficiency on the part of counsel’s mitigation presentation in the sentencing proceeding. As noted above, counsel presented information about her remorse, her mental health diagnosis of major depressive disorder, and her belief that she was protecting her children in the attack at that time, although she recognized that it was wrong to do so. Counsel was faced with a horrible and violent situation in the assaults committed on the victim that were legally unprovoked and caused life threatening and permanent damage to the victim

The Applicant has also failed to show prejudice under *Strickland*. The record before the Court only reveals the speculation by the Applicant that the mitigation could have been presented more persuasively, yet failed to suggest how that could have been done. This Court also finds that the Applicant has failed to prove prejudice under *Strickland* in the strategic decisions counsel made in sentencing. See *Jones v. State*, 332 S.C. 329, 339, 504 S.E.2d 822, 827 (1998) (finding that the absence of “fancier” mitigation evidence does not render the prior mitigation case constitutionally inadequate where such evidence would not have had any effect on the outcome of the trial). As noted above, it appears that all matters of suggested mitigation were presented to the

sentencing court.

The test for prejudice in the sentencing is from Strickland, the defendant must show that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Strickland, 466 U.S. at 694. This Court concludes that the Applicant has failed to satisfy that burden. He has failed to present any item of evidence in this proceeding in mitigation of sentence that undermines confidence in Judge Curtis’s twenty-five year sentence to a reasonable probability. This must be dismissed.

§ 16-25-90 Applicability

In the State’s return in this matter, the State had speculated that the Applicant’s *pro se* claim of ineffective assistance of counsel may have been related to a failure to investigate or present an assertion that she was entitled to a determination for early parole eligibility under S.C. Code § 16-25-90. In that section it reads:

§ 16-25-90. Parole eligibility as affected by evidence of domestic violence suffered at hands of household member.

Notwithstanding any provision of Chapters 13 and 21 of Title 24, and notwithstanding any other provision of law, an inmate who was convicted of, or pled guilty or nolo contendere to, an offense against a household member is eligible for parole after serving one-fourth of his prison term when the inmate at the time he pled guilty to, nolo contendere to, or was convicted of an offense against the household member, or in post-conviction proceedings pertaining to the plea or conviction, presented credible evidence of a **history of criminal domestic violence**, as provided in Section 16-25-20, **suffered at the hands of the household member**. This section shall not affect the provisions of Section 17-27-45.

S.C. Code Ann. § 16-25-90 (emphasis added). A defendant must prove by a preponderance of the evidence a history of domestic violence from the victim in order to be eligible for statutory early parole. State v. Grooms 343 S.C. 248, 540 S.E.2d 99 (S.C. 2000). State v. Hawes, 411 S.C. 188, 767 S.E.2d 707. (S.C. 2015).

This Court finds that counsel was not deficient in pursuing this request. The record of the plea does not support the existence of abuse required by statute by the victim. To the contrary, it suggested that the victim was targeted because she was advising the Applicant's children not to run around the house and to be quiet in the home or not to touch things. Tr.p. 11-12. This victim in this case had no history of domestic violence with the Applicant. This assertion is denied because the statute is inapplicable.

CONCLUSION

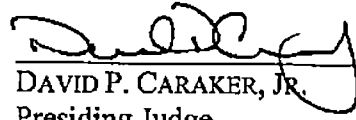
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant her application and vacate her conviction. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that she must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. 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's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. The Applicant is returned to the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 22nd day of April, 2025.



DAVID P. CARAKER, JR.
Presiding Judge
Eleventh Judicial Circuit

Lexington, South Carolina