

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County

Paul M. Burch, Circuit Court Judge

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S.C. SUPREME COURT

BRITTANY LEWIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000181

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2015-GS-26-00365, 00366

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

February 24, 2015

BRITTANY LEWIS,)

Defendant.)

B E F O R E :

Honorable Larry B. Hyman, Jr.
Horry County Courthouse
Conway, South Carolina

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

Lauree Richardson, Esquire
Attorney for Plaintiff

Kia Wilson, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

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<u>[Signature]</u> (SIGNATURE)

Sub P Act. 7-15

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BY THE COURT

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1 (February 24, 2015)

2 THE COURT: All right, Madame Solicitor.

3 MS. RICHARDSON: Your Honor, this is the State of South
4 Carolina versus Brittany Lewis. She is charged in indictment
5 2015-GS-26-365 as well as 366, both of those being for driving
6 under the influence, death resulting. Your Honor, she is here
7 to plead guilty before Your Honor, she is waiving presentment
8 to the Grand Jury. The State is recommending a twenty-year
9 sentence.

10 THE COURT: Okay. All right, Ms. Lewis, you are
11 represented by Ms. Wilson today, I believe; is that correct?

12 MS. LEWIS: Yes, sir.

13 THE COURT: Now, Ms. Lewis, you are charged under two
14 indictments for felony driving under the influence, death
15 resulting. Do you understand the nature of those charges?

16 MS. LEWIS: Yes, sir.

17 THE COURT: Have you had an opportunity to discuss the
18 charges with your attorney?

19 MS. LEWIS: Yes, sir.

20 THE COURT: And has she explained the elements of those
21 two charges?

22 MS. LEWIS: Yes, sir.

23 THE COURT: Now, I note that neither of these indictments
24 has been presented to the Grand Jury. You have indicated on
25 the sentencing sheets that you wish to waive that part of the

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1 process; is that correct?

2 MS. LEWIS: Yes, sir.

3 THE COURT: Do you understand what that means?

4 MS. LEWIS: Yes, sir.

5 THE COURT: And have you discussed that as well with your
6 attorney?

7 MS. LEWIS: Yes, sir.

8 THE COURT: All right. Ms. Lewis, have you had an
9 opportunity to discuss the potential penalties with Ms.
10 Wilson?

11 MS. LEWIS: Yes, sir.

12 THE COURT: I advise you that on each of these charges,
13 you could receive a sentence up to twenty-five years; do you
14 understand that?

15 MS. LEWIS: Yes, sir.

16 THE COURT: And do you further understand that these
17 would be what we refer to as non-paroleable offenses; you
18 understand that?

19 MS. LEWIS: Yes, sir.

20 THE COURT: Now, Ms. Lewis, has Ms. Wilson had the
21 opportunity to review with you the evidence or discovery
22 materials in this case?

23 MS. LEWIS: Yes.

24 THE COURT: And has she explained to you how that
25 evidence might be used against you if you were to have a jury

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1 trial?

2 MS. LEWIS: Yes.

3 THE COURT: That is the State would attempt to have that
4 evidence introduced as part of its case to fulfill its
5 obligation for its burden of proof; do you understand that?

6 MS. LEWIS: Yes, sir.

7 THE COURT: Then, there's no question that Ms. Wilson has
8 discussed with you the matter of a jury trial?

9 MS. LEWIS: Yes.

10 THE COURT: Do you understand that you have an absolute
11 right to a jury trial in this matter?

12 MS. LEWIS: Yes, sir.

13 THE COURT: You do not have to plead guilty. You have
14 the right to be tried on either or both of these cases. Do
15 you understand that?

16 MS. LEWIS: Yes.

17 THE COURT: A plea of guilty is merely an option; do you
18 understand?

19 MS. LEWIS: Yes, sir.

20 THE COURT: Did you know that if you plead guilty,
21 though, you are waiving, you are giving up that absolute right
22 to a jury trial that you have and that I spoke of a moment
23 ago?

24 MS. LEWIS: Yes.

25 THE COURT: That is an absolute permanent, forever

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1 waiver. You cannot come back next week or this afternoon or
2 next month and tell me that you've changed your mind and that
3 you now want a jury trial; do you understand that?

4 MS. LEWIS: Yes, sir.

5 THE COURT: Very well. Did you know, Ms. Lewis, that if
6 you waive your right to a jury trial and that is precisely
7 what you do when you plead guilty, you give up many, many
8 other rights that are associated with a jury trial, there are
9 so many that we could spend the rest of the month talking
10 about all of the rights that are attached to a jury trial.

11 MS. LEWIS: Yes, sir.

12 THE COURT: I would point out some of these rights to you
13 just by way of illustration, I'm certainly not covering all of
14 them, but I would like to point out to you a few of the rights
15 that are at least in my opinion some of the more important
16 ones, things like your right to remain silent. In a jury
17 trial, you would not be required to testify, no one could make
18 you testify, you, of course, would have the right to testify
19 if you chose to testify but otherwise, no one could make you
20 testify. This right is so important that if you chose to
21 remain silent, I would tell the jury that they could not
22 consider that in any way during their deliberations. It could
23 not be used against you. Do you understand?

24 MS. LEWIS: Yes, sir.

25 THE COURT: You, of course, would have the right to have

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BY THE COURT

1 an attorney with you through all phases of the trial, you
2 would never be alone in the courtroom, you would have
3 attorney. Finally, I want you to understand that in a jury
4 trial, the State has the burden of proof. The State is
5 required to convince every juror of your guilt beyond a
6 reasonable doubt and I would instruct the jury that unless
7 each and every one of them was convinced beyond a reasonable
8 doubt by the State's proof of your guilt that they could not
9 convict you. Do you understand that?

10 MS. WILSON: Yes, sir.

11 THE COURT: In a guilty plea, the State does not have to
12 meet that burden. The State merely needs to establish a
13 factual basis for the plea. Do you understand?

14 MS. LEWIS: Yes, sir.

15 THE COURT: Now, Ms. Lewis, knowing these things, do you
16 appear before me prepared to plead guilty and waive your right
17 to a jury trial as well as the collateral rights that go along
18 with it?

19 MS. LEWIS: Yes, sir.

20 THE COURT: Very well. Now, Ms. Lewis, I'm gonna talk to
21 you about your attorney, Ms. Wilson. How long has Ms. Wilson
22 been representing you?

23 MS. LEWIS: A year.

24 THE COURT: And have you met with her and talked about
25 your case on several occasions?

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1 MS. LEWIS: Yes, sir.

2 THE COURT: Okay. Has she done everything that you think
3 that she could do to help you?

4 MS. LEWIS: Yes, sir.

5 THE COURT: Do you need any more time with her?

6 MS. LEWIS: No.

7 THE COURT: Has she met your expectations?

8 MS. LEWIS: Yes.

9 THE COURT: You are pleased with her?

10 MS. LEWIS: Yes, sir.

11 THE COURT: All right. Ms. Lewis, I see here that you
12 are twenty-nine. Is that your age now?

13 MS. LEWIS: Yes, sir.

14 THE COURT: Okay. And the sentencing sheet that I have
15 before me would indicate that you are from Conway; is that
16 right?

17 MS. LEWIS: Yes, sir.

18 THE COURT: Were you a native of Horry County?

19 MS. LEWIS: Been here all my life.

20 THE COURT: All your life, all right. Ms. Lewis, are you
21 married?

22 MS. LEWIS: No, sir.

23 THE COURT: Do you have children?

24 MS. LEWIS: Three.

25 THE COURT: Okay. And before you -- I think you've been

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1 incarcerated; is that right?
2 MS. LEWIS: Yes, sir.
3 THE COURT: Okay. Have you -- prior to your
4 incarceration, were your children living with you?
5 MS. LEWIS: No.
6 THE COURT: Who were they living with?
7 MS. LEWIS: My grandma.
8 THE COURT: Ms. Lewis, how far did you go in school?
9 MS. LEWIS: To the twelfth grade.
10 THE COURT: Did you finish?
11 MS. LEWIS: No, sir.
12 THE COURT: Have you gotten your GED?
13 MS. LEWIS: No, sir.
14 THE COURT: Have you been working?
15 MS. LEWIS: No, sir.
16 THE COURT: Have you ever had a job?
17 MS. LEWIS: I'm disabled.
18 THE COURT: Okay. Tell me about your disability.
19 MS. LEWIS: I got in a wreck and broke my neck and my
20 back back in 2009.
21 THE COURT: Okay. Let me ask you this, would that
22 physical disability or any mental health issue or addiction
23 issue that you may suffer from, would anything prevent you or
24 impair your ability to understand what we are doing here
25 today?

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1 MS. LEWIS: No, sir.

2 THE COURT: Do you fully and completely understand what
3 we are doing here today?

4 MS. LEWIS: Yes, sir.

5 THE COURT: Ms. Lewis, I invite you if at any time during
6 these proceedings, you have some question as to what we are
7 doing or what the consequences of what we're doing would be,
8 please ask me. I cannot give you advice but I can certainly
9 explain to you these proceedings and I'll be happy to do that.
10 Do you understand?

11 MS. LEWIS: Yes, sir.

12 THE COURT: Now, finally, I want to ask you, Ms. Lewis,
13 if you have within the last forty-eight hours had any drugs or
14 alcohol or any kind or sort?

15 MS. LEWIS: No, sir.

16 THE COURT: Okay. Once again, can you think of any
17 reason, any reason at all, whether it be from physical
18 infirmity, mental illness, addiction, can you think of any
19 reason why you would not fully and completely understand my
20 questions and what we are doing here today?

21 MS. LEWIS: No, sir.

22 THE COURT: All right. I want you to listen very
23 carefully. Ms. Richardson is about give me the factual basis
24 for these charges. She essentially is telling me why you are
25 charged with these crimes.

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1 MS. RICHARDSON: Thank you, Your Honor. On January the
2 25th, 2014 at approximately 5:20 in the afternoon, the victims
3 in this case, Ms. Jacquelyn Cohen, Ryan Marsh and Christina
4 Frink were on 701 heading towards Georgetown. The Defendant
5 in this case was traveling, Your Honor, at a perpendicular
6 road, blew through a stop sign willfully and t-boned these
7 victims. May I approach?

8 THE COURT: Certainly.

9 MS. RICHARDSON: I've shown these to Defense counsel.

10 THE COURT: Thank you.

11 MS. RICHARDSON: Ms. Jacquelyn Cohen was the driver of
12 the Taurus, Your Honor, that was t-boned.

13 THE COURT: I see here it looks like a blue car and maybe
14 a white car?

15 MS. RICHARDSON: Yes, Your Honor. The Defendant was
16 driving the white truck, it was a white Silverado truck,
17 Chevrolet truck, king cab. The victims in this cases were
18 driving a blue Ford Taurus car. Again, Your Honor, Ms. Cohen
19 was the driver of that car, she was eighteen years old at the
20 time of the collision, Your Honor. She died upon impact.
21 Ryan Marsh, he was in the back seat behind the driver's side,
22 Your Honor. He was twenty-two years old at the time of the
23 collision. He died from the impact. Ms. Christina Frink was
24 the passenger in the car, Your Honor. She was nineteen at the
25 time of the collision. She's twenty. She will stand before

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1 Your Honor today. She was -- it's by the grace of God that
2 she stands before you today. She was in the hospital for
3 several months and suffered extreme injuries based upon Ms.
4 Lewis' decision that night.

5 Your Honor, as you know, Highway Patrol gets involved in
6 this cases, MAIT takes over, they start investigating. Upon
7 their investigation, they interviewed an occupant of Ms.
8 Lewis' car, Ms. Abbigail Price. According to Ms. Price, Ms.
9 Lewis had taken a Xanax approximately thirty minutes before
10 the collision occurred and she had also witnessed her smoking
11 a dime-size crack, Your Honor. She did test positive for
12 those things; I'll get to her toxicology report in a minute.
13 Most disturbing in this case was Ms. Abbigail Price's
14 statement to the MAIT team, Your Honor, that Ms. Lewis upon
15 approaching the stop sign made the comment that she was gonna
16 run the stop sign and they begged her not to. She turned
17 around and she looked as Ms. Price and she said, You think I
18 won't? What's consistent with that is what we have commonly
19 referred to as the black box. It -- they pulled that, the
20 MAIT team pulled that. At approximately 2.5 seconds before
21 impact, she was traveling sixty miles per hour. Half a second
22 before impact, she was going sixty-five miles per hour,
23 meaning that she's increasing in speed. Her pedal was at
24 ninety-nine percent. No -- she never hits the brakes, Your
25 Honor, she floors it right through that stop sign and she t-

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1 bones these two young kids, three young kids. We did get her
2 toxicology report back. She had little to no alcohol in her
3 system. She did have THC metabolite, Your Honor, cocaine.
4 Also, she had -- I won't even attempt to explain it -- it's
5 spelled C-O-C-A-E-T-H-Y-L-E-N-E, and when I spoke to the
6 toxicologist about what specifically that was, he said that
7 was the metabolite for the cocaine. And what that tells him
8 with cocaine and that specifically being in her system that he
9 had no problem testifying under oath that she was under the
10 influence of cocaine when this wreck occurred.

11 Your Honor, as they commonly do, they tested Ms. Cohen
12 who was the driver of the blue Taurus. She tested negative
13 for everything.

14 The victims are present. They would like to address Your
15 Honor at the appropriate time. Ms. Lisa Fisher and Mr. Allen
16 Cohen are here for Jackie Cohen. Ms. Cheryl Marsh and Shaun
17 Mace are here for Ryan Marsh. And, again, Ms. Christina Frink
18 is accompanied by her mom. She is here as well and would like
19 to address, Your Honor. In addition, Your Honor, the
20 courtroom is packed as you can tell with supporters of these
21 victims.

22 THE COURT: All right. Let me complete the qualification
23 and then I'll hear from victims.

24 MS. RICHARDSON: Thank you, Your Honor.

25 THE COURT: All right. Ms. Lewis, is that what happened?

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1 MS. LEWIS: No, sir.

2 THE COURT: Well, tell me what happened.

3 MS. LEWIS: I was coming up Bucksport Road and ---

4 THE COURT: Well, let me ask you this, had you consumed
5 crack cocaine?

6 MS. LEWIS: Not that day.

7 THE COURT: Had you consumed Xanax?

8 MS. LEWIS: I did take Xanax.

9 THE COURT: Okay. Were you under the influence? And by
10 that what I mean was, Was your mental and physical faculties
11 impaired to the point that you could not safely operate that
12 motor vehicle?

13 MS. LEWIS: No. I mean, yes.

14 THE COURT: You believe that to be the fact. Okay. Did
15 you run a stop sign?

16 MS. LEWIS: Yes, sir.

17 THE COURT: Okay. And is there any doubt in your mind
18 that these victims died as a result of that?

19 MS. LEWIS: No, sir.

20 THE COURT: Is that why you're pleading guilty?

21 MS. LEWIS: Yes, sir.

22 THE COURT: Are you pleading guilty because you are
23 guilty?

24 MS. LEWIS: Yes, sir.

25 THE COURT: Has anyone promised you anything, threatened

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1 you in any way? Has anyone did anything inappropriate, I
2 mean, anyone?

3 MS. LEWIS: No.

4 THE COURT: Has anyone did anything inappropriate to make
5 you feel as though you have to enter a guilty plea in this
6 matter?

7 MS. LEWIS: No, sir.

8 THE COURT: Are you pleading freely and voluntarily?

9 MS. LEWIS: Yes, sir.

10 THE COURT: Have you had all the time that you need to
11 think about this?

12 MS. LEWIS: Yes, sir.

13 THE COURT: Do you believe that this plea is in your best
14 interest and the best resolution that you can have for these
15 charges?

16 MS. LEWIS: Yes, sir. It's only right.

17 THE COURT: I want to advise you, Ms. Lewis, that you
18 have a right to appeal my sentence but only if you file a
19 notice of intent to appeal within the next ten days. If you
20 fail to do so, you will lose your right of appeal. I'm sure
21 you don't know how or where to do that but Ms. Wilson does and
22 Ms. Wilson will be glad to assist you in that. Right, Ms.
23 Wilson?

24 MS. WILSON: Yes, sir.

25 THE COURT: Thereafter, if you cannot afford an attorney

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1 to prosecute an appeal for you, one will be appointed for you
2 at no cost. You understand?

3 MS. WILSON: Yes, sir.

4 THE COURT: Okay. I find that there is a substantial
5 factual basis for the plea and the plea is made freely,
6 voluntarily and knowingly and intelligently after the advice
7 of a very competent attorney with whom she is satisfied and I
8 will accept the plea as to both charges.

9 All right, Ms. Richardson?

10 MS. RICHARDSON: Thank you, Your Honor.

11 THE COURT: Ms. Richardson, before we proceed, is there a
12 prior criminal record?

13 MS. RICHARDSON: There is, Your Honor.

14 THE COURT: You want to give it to me now?

15 MS. RICHARDSON: I can, Your Honor. As far as
16 convictions, Your Honor, which you know we are limited by, we
17 have an '07 forgery; an '08 forgery; an '08 grand larceny; a
18 '08 possession of marijuana; a 2012 use of vehicle without
19 permission; 2013 obtaining signature under false pretenses.
20 Your Honor, she went to prison for that obtaining signature
21 under false pretenses in 2013 and she went May 17th of 2013.
22 She was released December 31st, 2013. This was -- occurred
23 approximately one month from that.

24 THE COURT: All right. I'll hear from your victims.

25 MS. MARSH: Hi. My name is Cheryl Marsh. I understand

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1 that you don't want me to read to you.

2 THE COURT: I'd much rather have you just tell me how you
3 feel.

4 MS. MARSH: I'm gonna do my best to do that.

5 THE COURT: Okay.

6 MS. MARSH: I appreciate your patience. My son was Ryan
7 Alexander Marsh and I lost him and his beautiful girlfriend
8 Jackie at the hands of Brittany Lewis. I always thought this
9 was a murder case instead of a DUI case because of the intent.
10 I understand the prosecutor's concerns and I understand why it
11 wasn't prosecuted that way but I want to make sure it's clear
12 not only the callous disregard for others but the actual
13 intent behind what she did. This isn't a case where a drug
14 addict made a terrible choice to get behind the wheel and her
15 impaired abilities caused her to accidentally take someone
16 else's life. According to police interviews with each of the
17 three people in her truck, each of them says she announced
18 well ahead of time that she intended to run the stop sign.
19 All three of them begged her to stop. According to the MAIT
20 report -- I'm sorry, all of that has been covered it and I'm
21 just gonna skip it. Christopher Bennett, who was the front-
22 seat passenger in her vehicle testified to the police that the
23 last thing he remembers is her saying and I'm gonna quote --
24 and I apologize -- the last thing he remembers is her saying,
25 what me run these motherfuckers down and stomping on the gas

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1 and that's exactly what she did. But by the grace of God, she
2 could have six victims instead of just two people dead. The
3 three people in her truck could have been killed and Christina
4 Frink, the only surviving passenger in Jackie's car was
5 gravely injured and almost killed. She'll suffer life-long
6 physical and emotional damage as a result of Ms. Lewis'
7 actions.

8 I listened to the interview, her police interview. She
9 never took no -- she never took responsibility nor showed
10 remorse. When she was advised that two people were dead and a
11 third was in a comma, she only had two questions before she
12 asked for a lawyer. She wanted to know was she in trouble and
13 she wanted to know if her best friend, Abby Price, in her
14 truck was killed.

15 I also took the opportunity to review her many pages long
16 arrest records and I know that the prosecutor has been able to
17 present some of that to you today. I counted forty-two
18 charges since 2003, her whole adult life, including things
19 like forgeries, petit and grand larcenies, first degree
20 burglary, trespassing, drug possessions, failure to stop for
21 blue lights, assault and batteries, harassments, with a prior
22 conviction within ten years while there was a restraining
23 order in effect. And interestingly enough, disregarding a
24 stop sign. She's been convicted of at least twenty-four
25 crimes with four charges still pending to my count. However,

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1 it looks like she's gotten a lot of slaps on the wrist and a
2 lot of opportunities to change her life around. She's been
3 ordered to treatment, to pay restitution, although I noticed
4 that there were also judgments indicating that she hadn't paid
5 at least some of her restitution. She's been given suspended
6 sentences, she's been incarcerated for small periods of time
7 and she's never taken advantage of any of these opportunities.
8 In fact, she appeared before you in May of 2013 at which time
9 you found her guilty of use of a vehicle with intent to
10 deprive. However, with credit for time served, she was still
11 out in time to kill our children.

12 I want to just take a couple of minutes to talk to you
13 about Alex. I call him Alex although his name was Ryan
14 because his father is Ryan as well. And I did get a chance at
15 our last hearing to talk to you a little bit about him. He
16 loved music, cooking and being silly. He loved the Lord, his
17 family and he really loved Jackie. When his life was cut
18 short, Alex was working as a dog groomer, which was a good job
19 for him because of his kind and gentle spirit. But he was
20 exploring pursuit of becoming an EMT and that's really what he
21 wanted to do for his career. He was excitedly shopping around
22 for his first car. He was looking forward with optimism to
23 his and Jackie's future. He suffered adversity in his life
24 and I was watching with such pride the incredible young man
25 into whom he was growing. The book he was reading when he

1 passed was called *The Man in the Mirror: Solving the 24*
2 *Problems Men Face*. And I mention that to you because I think
3 it speaks to his awareness of self-responsibility and his
4 drive for self-improvement. I want to tell you that I'm a
5 little in awe of Alex's devotion to the Lord. He carried his
6 Bible everywhere, he read every day. His pastor shared a
7 story and his and Jackie's memorial service about how Alex
8 drove on his moped thirty miles each way to church, rain or
9 shine, a few times a week. When he first started coming the
10 pastor thought it's because of Jackie but he was so devoted to
11 be there so frequently until he started to observe that Alex
12 came even if Jackie wasn't able. He held him up as an example
13 to kids Alex's age as well as older members of the
14 congregation. Alex and Jackie were growing in their
15 responsibilities in the church and he would've had an
16 opportunity to really make an impact on young people in this
17 way.

18 I want to tell you how Brittany Lewis heinous and
19 intentional crime has affected me. I've been robbed not only
20 of my first-born son and the daily interactions that we had.
21 For example, he was an awesome cook and we spent a lot of time
22 in the kitchen together. Also, being able to watch him
23 continue on life's journey, have the career he dreamt about,
24 get married and have a family. Now, I'll never be able to
25 wrap my arms around him or have him wrap his arms around me

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1 again. I'll never be able to eat another meal he cooked for
2 me, while he waits impatiently for my critique. I'll never be
3 able to hold and cuddle what may've been the most beautiful
4 grandbabies on earth. Every day I'm haunted by the image of
5 my dead son, how battered he was, how purple his lips were and
6 how cold he was when I touched him. Every day I'm sick
7 thinking about whether he suffered. I have to admit that my
8 faith is shaken to the core and that every day I wonder, I
9 worry about where he is and if he's okay. I'm racked with
10 overwhelming guilt that I wasn't there to greet him and help
11 him on the other side. And I still can't wrap my head around
12 how horribly unnatural and unjust it is for him to be gone
13 before me.

14 And I am just gonna read this to you real quick. It's a
15 Supreme Court statement they put out recently in order to
16 uphold a conviction related to recidivism. And they said
17 among the justifications for a sentence, alongside retribution
18 and rehabilitation, incapacitation, making the offender
19 incapable of preying on the public could also be used. I ask
20 you to consider that and beg you to please make her sentences
21 consecutive. I thank you for your time today and appreciate
22 you offering me the opportunity to speak.

23 THE COURT: Thank you.

24 MS. FISHER: Good afternoon, Your Honor. I'm Lisa Fisher
25 and this is Allen Cohen, we're Jacqueline Cohen's parents.

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1 Two people are dead and one is injured. This was not your
2 typical DUI. This was no accident but planned. Brittany
3 Lewis decided to disregard the stop sign and run it. She then
4 proceeded to tell her occupants her plans. This was a joy
5 ride or game to her. She accelerated, went into the opposing
6 lane and aimed for my daughter's car. She applied no brakes
7 or did anything to prevent hitting the car. Brittany Lewis
8 exceeded a sixty-five mile per hour impact. Our children had
9 no chance. Look at the destruction of the car. The officers
10 had told us that Ms. Lewis was facing sixty-five years. One
11 year later and four days before the sentencing here, we were
12 told by the Solicitor here that she was gonna be recommending
13 twenty years. I'm outraged. Twenty years for killing two
14 people and injuring a person permanently, making them
15 disfigured. She was driving like a lunatic with the
16 intentions of hitting another car with total disregard for
17 life, the laws of this state and repercussions. An example
18 needs to be set. Show this conduct unacceptable. How many
19 times do we have to break the law before harsh punishing is
20 imposed. Brittany Lewis has not learned from her mistakes.
21 The punishment has to fit the crime for one to learn from
22 their mistakes. This wreck, everyone knows about and many
23 people will be watching to see the sentence you impose. South
24 Carolina is one of the top states for DUIs. I wonder how many
25 people have to die before something is changed. Stiffer

State v. Lewis - 2015-GS-26-00365, 00366
BY THE COURT

23

1 sentencing is needed especially with repeat offenders. South
2 Carolina has said it's a tough state for DUIs, Sober and
3 Slammer campaign. We can't change the loss of Jacqueline or
4 Ryan but let's hope to prevent further useless deaths.

5 Jacqueline had four siblings and this has destroyed our
6 family. We've had marital problems. A daughter has left home
7 because she couldn't handle losing her sister. They shared a
8 bedroom together and it's just been too much for her to
9 handle. I've gone from eight people sitting at my dining room
10 table down to four people. The hole in my heart is
11 unbearable. The loss of my beautiful daughter, our family --
12 and we've had to adjust without Jacqueline being there as part
13 of the conversation. It's like a sentence with words missing
14 because she's not there to say them. She had a good life, she
15 had lots of good friends. She was only eighteen and had just
16 graduated from high school. She was planning on further
17 education and she was a productive member of society. She
18 never had trouble. She was a beautiful girl inside and out.
19 She enjoyed drawing. She love drawing people and herself in
20 particular. She took a job at Highway 55 and she was an asset
21 to the company. She was there for a year and a half and on
22 January 30th the company closed the doors so all the employees
23 could attend the memorial.

24 I hadn't realized how many people Jackie had affected out
25 there until the memorial and it was filled with people, it was

State v. Lewis - 2015-GS-26-00365, 00366
BY THE COURT

24

1 loaded with people way before I even thought about that. But
2 the outpouring of love has been wonderful. Like Cheryl was
3 saying they were good Christians, they attended church
4 regularly and we're never gonna get to see our daughter get
5 married or have children or succeed in her life. Please make
6 an example of Brittany Lewis. Don't let the loss of their
7 lives be for nothing. Thank you, Your Honor.

8 THE COURT: Thank you.

9 MS. FRINK: Good afternoon. My name is Annette Frink,
10 Your Honor. I'm the mother of Christina. Since this has
11 happened, it's been very hard to look at her and see that
12 she's affected by being in this accident. There are days when
13 she walks out she's carefree and doesn't even think about this
14 car wreck but then again, it may be the next day or a week
15 later, she comes out and she's all covered up because she
16 doesn't want anyone to see what has been left as a result of
17 her being in this accident. We have problems at home also
18 because of some things that have happened after his accident
19 that has affected her emotionally. And I just feel that she
20 needs to really think about what she has done and suffer the
21 consequences. I still have my daughter here, yes, but at a
22 price. And I really am sorry that Jackie and Ryan had to lose
23 them to her. The law really needs to be changed and I hope
24 she gets the fullest extent of the law that's happened for
25 her. I thank you very much.

State v. Lewis - 2015-GS-26-00365, 00366
BY THE COURT

25

1 THE COURT: Thank you.

2 MS. RICHARDSON: Your Honor, I would like to recognize in
3 addition, First Sergeant Causey who is here in support of the
4 prosecution of the case. He does not wish to address Your
5 Honor but he is here in support of that prosecution.

6 In addition, Your Honor, Ms. Marsh, as you know, they had
7 typed out their statements ahead of time, she would like for
8 me to hand you up her statement if that would be possible.

9 THE COURT: I have Mr. Marsh's and I've had an
10 opportunity to read it and I'll make it a part of this record
11 as well.

12 MS. RICHARDSON: That is all that we will be addressing,
13 Your Honor.

14 THE COURT: Okay. I would make this a part as well.

15 COURT'S EXHIBITS NUMBER ONE AND TWO

16 MARKED FOR IDENTIFICATION

17 THE COURT: Ms. Wilson -- anything else you need to add?

18 MS. RICHARDSON: No, sir, Your Honor.

19 THE COURT: Okay. All right, Ms. Wilson, let me hear
20 from you?

21 MS. WILSON: Thank you, Your Honor. Your Honor, from my
22 first appointment in this case to represent Ms. Lewis, our
23 discussions centered around how she could do what was right in
24 this case. It is from day one been a plea in her mind.

25 THE COURT: Well, could it have been anything else?

State v. Lewis - 2015-GS-26-00365, 00366
BY THE COURT

26

1 MS. WILSON: Well, she was anticipating a trial, Your
2 Honor, as a possibility and I explained to her what her rights
3 were and she immediately told me that this was not something
4 that she was fighting, that she understood that there was a
5 responsibility to be met in this case and that she wanted to
6 do so. And I know that it may seem very small in the face of
7 what has occurred in this case and what she has caused through
8 actions. There has not been one day that she hasn't been
9 remorseful. There's not been one day that she hasn't cried
10 when we've spoken about this case. There's not been one day
11 that she hasn't felt the responsibility and the weight of what
12 occurred in this case, what she did, the choices that she made
13 and the consequences of those choices. She is very well aware
14 and it's -- you know, I've always told her from the get that
15 it was going to be a lengthy prison sentence. With that being
16 said, Your Honor, my client wanted to read a letter to the
17 victims in this case and to the victims' families. And if the
18 Court is inclined to hear from her, I would ask the Court to
19 let her speak or hear her read her letter into the hearing of
20 the families and then I'd like to address the Court just
21 briefly.

22 THE COURT: Certainly.

23 MS. LEWIS: To the families, first I would like to say I
24 am truly sorry from the bottom of my heart. I never meant to
25 hurt them. I'm a mother and I can only imagine the pain I've

State v. Lewis - 2015-GS-26-00365, 00366
BY THE COURT

27

1 caused all of you. I just want you to know that if I was on
2 the other side, I would feel the same way. I know justice has
3 to be served and that's only right. Dealing with this has
4 been the worst thing in my life I've ever had to deal with.
5 And being away from my family. This was truly an accident. I
6 would never hurt someone on purpose. And while I'm away, I'm
7 gonna pray every day for forgiveness.

8 MS. WILSON: Your Honor, I know that it will probably
9 seem very small comfort to the families that my client is
10 apologizing but she does mean it from the bottom of her heart
11 and I think that knowing that she is remorseful, I hope that
12 they will be able to find it in their hearts to forgive her
13 for these actions. With that being said, Your Honor, you
14 stated earlier, she explained that she is twenty-nine. She
15 does have children. We talked about the fact that a twenty-
16 year recommendation, she won't see them before they're
17 probably adult people walking around, possibly married, having
18 graduated from high school, even college, out working. She
19 won't be there for those things, she understands that. She's
20 gonna be a much older woman once she's released if the Court
21 is agreeable. This is an eighty-five percent offense. She
22 understands she won't be out in the next couple of years or
23 the next ten years walking around with this sentence. We are
24 asking the Court to accept this recommendation. Thank you.

25 THE COURT: Ms. Lewis, do you want to tell me anything?

State v. Lewis - 2015-GS-26-00365, 00366
BY THE COURT

28

1 MS. LEWIS: I just wanted to say that I was truly sorry,
2 that I never meant to hurt anybody and it was truly an
3 accident. I didn't do it on purpose.

4 THE COURT: Ms. Lewis, let me ask you one thing. Who
5 were the people in the truck with you?

6 MS. LEWIS: Honestly, Your Honor, they really -- the only
7 person I really knew well was Abigail Price.

8 THE COURT: Can you tell me then why these people would
9 say that you purposely ran that stop sign, that you said you
10 were gonna run it?

11 MS. LEWIS: Your Honor, I didn't say that.

12 THE COURT: Well, can you tell me why they would say
13 that?

14 MS. LEWIS: No, sir.

15 THE COURT: Why did you run the stop sign?

16 MS. LEWIS: I'm gonna be honest, Your Honor, my phone
17 fell in the floor. I reached down to pick it up and by the
18 time I looked up, I was going through the stop sign.

19 THE COURT: Anything further?

20 MS. WILSON: Yes, sir. And, Your Honor, I would like to
21 say that given the intoxication, the lack of reaction time, I
22 certainly had an expert to review the MAIT report and by all
23 counts, everything that was in the report was absolutely
24 correct. And I believe that when my client was looking down,
25 I think her reaction time was slower and that is part of what

State v. Lewis - 2015-GS-26-00365, 00366
SENTENCE OF THE COURT

29

1 caused her to go through. Certainly, being intoxicated is not
2 a defense and we have discussed that ad nauseam, so she is
3 very clear that that does not excuse her behaviors and it is
4 part of why she is standing in front of the Court today,
5 accepting responsibility.

6 THE COURT: Ms. Wilson, you and I both are very familiar
7 with that intersection.

8 MS. WILSON: Yes, sir.

9 THE COURT: You can see it for a great distance.

10 MS. WILSON: Yes, sir.

11 THE COURT: Anything further from the State?

12 MS. RICHARDSON: No, sir.

13 SENTENCE OF THE COURT:

14 THE COURT: I'm not going to follow the recommendation.
15 Sentence of the Court is two each count is twenty-five years.
16 That's the maximum I can give. These are concurrent
17 sentences.

18 MS. WILSON: Thank you, Your Honor.

19 THE COURT: Thank you.

20 MS. RICHARDSON: Thank you, Your Honor.

21 (ADJOURNED.)

22

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25C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus Brittany Lewis, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on February 24, 2015.

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

Kay H. Richardson
Official Court Reporter

June 30, 2015.

State v. Lewis - 2015-GS-26-00365, 00366
CERTIFICATE OF COURT REPORTER

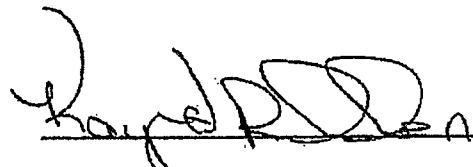
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C E R T I F I C A T E

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



Kay H. Richardson
Official Court Reporter

June 30, 2015.

4

FORM 5

STATE OF SOUTH CAROLINA

County of Horry

Brittany Lewis 330208
Full name and prison number (if any) of Applicant

v.
Alan V. Wilson
State of South Carolina

IN THE COURT OF COMMON PLEAS

15

29/16

APPLICATION FOR
POST-CONVICTION REVIEW

2015 APR 20 PM 4:32
CLERK OF COURT
Horry County

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 C.G.C.I 4950 Broad river Rd
Columbia S.C. 29210
2. Name and location of Court which imposed sentence Horry County
General Session
3. Name(s) of co-defendant(s) (if any) NA
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015 - C15
 - (b) 2014 C15

- (c) NA
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) February 17, 2015 DUI Results in death
- (b) February 17, 2015 DUI Results in death
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty YES
- (b) after a plea of not guilty NA
- (c) after a plea of nolo contendere NA
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NA
8. If you answered Ayes@o (7), list:
- (a) the name of each Court to which you appealed:
- i. NA
- ii. NA
- iii. NA
- (b) the result in each such Court to which you appealed:
- i. NA
- ii. NA
- iii. NA
- (c) the date of each such result:
- i. NA
- ii. NA
- iii. NA
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NA
- ii. NA
- iii. NA
9. If you answered Ano@o (7), state your reasons for not so appealing:
- (a) Atty did not file an APPEAL
- (b) After discovered Evi

(c) NA

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

- (a) Breach of Guilty Plea Contract Agreement
- (b) Prosecution Mis Conduct fraud on the pleading
- (c) Atty S. Client doctrine Violation

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Guilty Plea Contract was signed for 20 years sen
- (b) solicitor agree to the 20yr. Signature on contract plea
- (c) Trail Counsel Canceled Plea Agreement depriv. Due Process

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NA
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NA
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (B)? NA
- (d) any other petitions, motions or applications in this or any other Court? NA

13. If you answered Ayes@o any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. NA
 - ii. NA
 - iii. NA
 - iv. NA
- (b) the name and location of the Court in which each was filed:
 - i. NA
 - ii. NA
 - iii. NA
 - iv. NA

(c) the disposition thereof:

- i. NA
- ii. NA
- iii. NA
- iv. NA

(d) the date of each such disposition:

- i. NA
- ii. NA
- iii. NA
- iv. NA

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

- i. NA
- ii. NA
- iii. NA
- iv. NA

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?

NA

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

(a) which grounds have been presented:

- i. NA
- ii. NA
- iii. NA

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

- i. NA
- ii. NA
- iii. NA

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) Att'y S. Client Doctria violation/fraud upon the Court
- (b) _____
- (c) _____

18 USCA

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? yes guilty plea trial
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NA
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NA

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. Kia Wilson / Horry County
Public defender Division
 - ii. Horry S.C. 29524
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. General Session Court plea trial
 - ii. ~~_____~~
 - iii. ~~_____~~

- 19. State clearly the relief you seek in filing this application:
Sentence reduce to time serve motion
For write of madames of Guilty Plea
Contracted Fed. RCP Rule 59(c) After the Judgment
- 20. Are you now under sentence from any other court that you have not challenged?
NA - NA

STATE OF SOUTH CAROLINA)
 County of Horry)

VERIFICATION

I, Brittany Lewis, 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.

Brittany Lewis

SWORN to and subscribed before me this 15 day of April, 2015.

Judson P. Hyatt (L.S.)
 Notary Public

My Commission Expires: 8-23-21

2015 APR 20 PM 4: 32
 MELANIE HUGHES-WARD
 CLERK OF COURT
 HORRY COUNTY

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

I, Brittany Lewis, 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.

Brittany Lewis
Applicant

SWORN or affirmed to and subscribed before me this
15 day of April, 2015.

Juanita P. Bryant
Notary Public

My Commission Expires 8-13-21

CLERK OF COURT
2015 APR 20 PM 4:32
MELANIE JOHNSON-SWARD

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
Brittany Lewis, #330208,)	Case No. 2015-CP-26-2916
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
)	

Respondent, making its Return to the Application for Post-Conviction Relief filed April 20, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In January 2015, the Horry County Grand Jury indicted Applicant for two counts of driving under the influence death resulting (2015-GS-26-0365; -0366). Kia Wilson, Esquire, represented Applicant. On February 24, 2015, Applicant pled guilty as indicted. The Honorable Larry B. Hyman, Jr. sentenced Applicant to twenty-five (25) years' imprisonment for each count, to be served concurrently. Applicant did not appeal her plea or sentence.

II.

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Breach of guilty plea contract agreement"
2. "Prosecutorial Misconduct"
 - a. "Solicitor agree to the 20 yr. signature on contract plea" [sic]
3. Due Process Violation

- a. "Trail counsel canceled plea agreement deprive due process [sic]"

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRPC.

Attached to this return and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegation of ineffective assistance of plea counsel is without merit. 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, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes plea counsel rendered adequate assistance and made all

significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show 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, 59 (1985).

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of plea counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

Respondent submits Applicant's allegation of breach of guilty plea contract agreement and is without merit. 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, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)).

IV.

Applicant's allegations regarding prosecutorial misconduct should be dismissed. PCR "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.” S.C. Code Ann. § 17-27-20(b). See also Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) (“It is uniformly held that an application for [PCR] is not a substitute for an appeal.”). Applicant could have raised this issue at trial or on appeal. In failing to do so, she has waived this allegation as ground for relief. Therefore, Respondent requests this allegation be dismissed pursuant to Rule 12(b)(6), SCRPC.

V.

Applicant also alleges due process violations. These allegations appear to be merely recitations of her grounds for ineffective assistance of counsel. Therefore, Respondent submits these allegations are without merit and incorporates its response in Part III, supra.

In the event Applicant alleges independent claims of due process violations, Respondent submits such claims are likewise without merit. A due process violation only occurs “when a defendant in a criminal trial is denied the fundamental fairness essential to the concept of justice.” State v. Hornsby, 326 S.C. 121, 129, 484 S.E.2d 869, 873 (1997) (citing 21 Am.Jur.2d, Criminal Law § 640 (1981)). Respondent submits the record fully demonstrates Applicant’s plea procedures fully complied with the requirements of due process. Accordingly, Respondent submits this allegation should be dismissed pursuant to Rule 12(b)(6), SCRPC.

VI.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

Remainder of page intentionally left blank.

VII.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JESSICA E. KINARD
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

July 3, 2015

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
)
 BRITTANY LEWIS, #330208)
)
) Applicant,)
)
) vs)
)
 STATE OF SOUTH CAROLINA,)
)
) Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS


2015-CP-26-2916

AFFIDAVIT OF SERVICE BY MAIL

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

James K. Falk, Esquire
38 Broad St., Suite 350
Charleston, SC 29401

DATED this 3RD day of February, 2016.


 Norma Bigbee, Legal Assistant
 For Respondent

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State of South Carolina) Court of Common Pleas
County of Horry) 2015-CP-26-02916

Brittany Lewis)
vs.) Transcript of Record
State of South Carolina)

May 11th, 2016
Conway, South Carolina

BEFORE:
Honorable Paul M. Burch, Judge.

APPEARANCES:
James K. Falk, Esq.
Attorney for the Applicant
Caitlin B. Hastings, Esq.
Attorney for the State

Teresa J. F. Bautz, RPR
Official Court Reporter

I N D E X						
1	WITNESS		DIRECT	CROSS	REDIRECT	RECROSS
2						
3	Brittany Lewis					
4	Mr. Falk	4	--	9	--	
5	Ms. Hastings	--	7	--	--	
6	Kia Wilson					
7	Ms. Hastings	11	--	--	--	
8	Mr. Falk	--	20	--	--	
9	Lauree Richardson Ortiz					
10	Mr. Falk	25	--	--	--	
11	Ms. Hastings	--	--	--	--	

12

13

14

E X H I B I T S

15

EXHIBIT NO.	DESCRIPTION	ID	EV
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16

No exhibits submitted.

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21

22

23

Exhibits retained by Clerk of Court.

24

25

1 (The hearing commenced at approximately
2 10:02 a.m.)

3 THE COURT: You may be seated. Good morning,
4 everybody. We got everybody we need?

5 MS. KINARD: Yes, Your Honor, we do. And I
6 believe we are going to go in order this morning and
7 start with Brittany Lewis.

8 THE COURT: Okay.

9 MS. KINARD: I believe her packet is to your left
10 on the bench. Ms. Hastings is presenting this.

11 THE COURT: All right.

12 MS. HASTINGS: Your Honor, may it please the
13 Court. This is the case of Brittany Lewis versus the
14 State of South Carolina, Case No. 2015-CP-26-2916. The
15 Applicant is presently confined in the South Carolina
16 Department of Corrections pursuant to the orders of
17 commitment of the Horry County Clerk of Court.

18 In January 2015 the Horry County Grand Jury
19 indicted the Applicant for two counts of driving under
20 the influence, death resulting. The Applicant was
21 represented by Kia Wilson, and on February 24th, 2015,
22 the Applicant pled guilty as indicted. The Honorable
23 Larry B. Hyman, Jr., sentenced the Applicant to 25
24 years imprisonment for each count to be served
25 concurrently.

BRITTANY LEWIS-DIRECT BY MR. FALK

5

1 case.

2 A Ms. Kia Wilson came to Horry County Detention
3 Center and said that they had agreed --

4 Q Wait a minute. Kia Wilson is your attorney?

5 A Yes.

6 Q Okay.

7 A The public defender said the solicitor and the
8 judge had agreed to a 20-year plea and that that's what
9 I probably would get.

10 Q Did she go over with you what the maximum was for
11 the charges that you're going to plead to?

12 A Um-hum. She said that they -- if I'm right, she
13 said they would drop two and I would plead to one, and
14 that would be the -- and I would get 20 years.

15 Q Okay. And you said you signed a piece of paper?

16 A Um-hum, at the jail house.

17 Q Okay. You have a copy of that?

18 A No. No.

19 Q And so when you went into court that day, what did
20 you think was going to happen?

21 A That I was going to get the 20 years.

22 Q Okay. When did you find out that you were not
23 going to get the 20 years?

24 A When they gave me 25.

25 Q Okay. Did you know what the maximum was that you

1 could get if you'd gone to trial on this charge?

2 A 25.

3 Q Okay. Did you express to your lawyer that if I'm
4 going to get 25, I might as well go to trial?

5 A No, I didn't.

6 Q Did you ever want to go to trial in this case?

7 A No. I knew I was wrong.

8 Q How many times did you have a conversation with
9 your lawyer about a plea offer?

10 A Once.

11 Q Okay. And when you signed that piece of paper,
12 what was the time period between that time and when you
13 went in for court?

14 A Three days. That was on a Friday I signed it, and
15 I was in court on Tuesday.

16 Q Okay. And it's your testimony that she told you
17 it was a 20-year deal?

18 A Yes, sir.

19 Q And you signed that piece of paper thinking it was
20 a 20-year deal?

21 A Yes, sir.

22 Q You signed that piece of paper thinking it was
23 locked in; is that correct?

24 A Yes, sir.

25 MR. FALK: I don't believe I have any further

BRITTANY LEWIS-CROSS BY MS. HASTINGS

7

1 questions.

2 THE COURT: All right. Madam Attorney General.

3 CROSS-EXAMINATION

4 BY MS. HASTINGS:

5 Q Good morning, Ms. Lewis, how are you?

6 A I'm fine.

7 Q Do you recall taking an oath to tell the truth at
8 your plea hearing similar to the one you took today?

9 A Yes, ma'am.

10 Q And at the beginning of your plea hearing, Judge
11 Hyman asked you if you understood the nature of your
12 charges and whether you had a full opportunity to
13 discuss these charges with your lawyer, and you replied
14 yes; isn't that correct?

15 A Yes, ma'am.

16 Q You also told him that you were satisfied with
17 your attorney and that you felt that she had met your
18 expectations; isn't that right?

19 A I did say that, because she also said that I was
20 going to get the 20 years.

21 Q Judge Hyman also asked you if you had an
22 opportunity to discuss with your lawyer the potential
23 penalties of your charges, and you replied, yes?

24 A Yes, ma'am.

25 Q In fact, Judge Hyman, didn't he even stress to you

1 that you could receive a sentence up to 25 years in
2 this plea hearing?

3 A Yes, ma'am.

4 Q And you told him that you understood that?

5 A Um-hum.

6 Q And when Judge Hyman asked you if you fully
7 understood why you were there for the plea hearing and
8 what was going to occur, you replied that you did
9 understand; isn't that correct?

10 A Again, I thought that I signed the paper, I was
11 going to get 20 years.

12 Q But didn't Judge Hyman tell you that at any time
13 you had any questions about the potential consequences
14 of the plea hearing that you could ask him?

15 A I don't -- I mean, yes, I'm sure. But I don't
16 really remember all that, I was...

17 Q And you pled guilty to a recommended sentence;
18 isn't that correct?

19 A Yes, ma'am.

20 Q And you did not file a direct appeal of your
21 sentence; isn't that correct?

22 A No, ma'am, I didn't.

23 MS. HASTINGS: No further questions, Your Honor.

24 MR. FALK: Brief redirect, Your Honor?

25 THE COURT: Yes, sir.

BRITTANY LEWIS-REDIRECT BY MR. FALK

1 MR. FALK: May I approach the witness?

2 THE COURT: Yes.

3 REDIRECT EXAMINATION

4 BY MR. FALK:

5 Q What I'm going to show you is a transcript of the
6 plea hearing. Could you just look over that page
7 three, just read it to yourself, please.

8 Okay. So now do you recall being in court that
9 day?

10 A Yes, sir.

11 Q As I read the transcript, the third line, it's
12 Ms. Richardson saying, Your Honor, this is the State of
13 South Carolina versus Brittany Lewis. Is it your
14 recollection, is that how the proceedings started that
15 day?

16 A Yes, sir.

17 Q Did anybody ask you -- now, this transcript
18 doesn't show that you were under oath when the judge
19 asked you the first question, were you somehow put
20 under oath prior to the commencement of these
21 proceedings?

22 A I'm not sure.

23 Q Okay.

24 A Explain what you're saying.

25 Q What I'm saying is there was no time -- if I'm

1 looking -- when I'm looking at the transcript, and of
2 course I wasn't there, you were there. And there's
3 this first paragraph by Ms. Richardson. And then on
4 line 10 of the transcript, the Court asks you a
5 question.

6 A Um-hum.

7 Q And then there's a colloquy, but the conversation
8 is between the Court and you?

9 A Right.

10 Q I don't see any point in here where somebody asked
11 you to put your hand on the Bible and be sworn?

12 A They didn't.

13 MR. FALK: No further questions.

14 MS. HASTINGS: No questions, Your Honor.

15 THE COURT: You may step down, thank you.

16 (Witness excused.)

17 MR. FALK: I call trial counsel to the stand,
18 please.

19 THE COURT: Come around and be sworn, please.

20 KIA WILSON, after being duly sworn, testified as
21 follows:

22 THE CLERK: Have a seat, and state your name for
23 the Court.

24 THE WITNESS: All right. Kia Wilson.

25 DIRECT EXAMINATION

KIA WILSON-DIRECT BY MR. FALK

11

1 BY MR. FALK:

2 Q Ms. Wilson, when did you start representing
3 Brittany Lewis?

4 A It looks like I was appointed February 10th of
5 2014.

6 Q And is it your recollection you were the only
7 counsel appointed to her?

8 A Yes.

9 Q Nobody was replacing, something like that?

10 A I don't believe so, no.

11 Q Okay. Can you discuss what you recollect as the
12 plea negotiations on this case.

13 A Yes. Looks like from my notes, it says that there
14 was a 20-year plea offer that was made on, I'm sorry,
15 hold on one second. I can't seem to find it in here.
16 But at any rate, I have a note in my file that says
17 that on 11/10/14 I spoke to Ms. Lewis about a 20-year
18 plea offer that was made in her case.

19 Q Okay. And what was that offer, was it a
20 recommended offer, was it a negotiated offer?

21 A No. The offer was a recommendation for 20 years.
22 I'm sorry. Bear with me one more second. This was
23 apparently at a status conference. I have a note that
24 says, Defendant being offered 20 years, schedule for a
25 plea for February 17th or a trial March 23rd, 2015.

1 Q Okay. So did you communicate that offer to
2 Ms. Lewis?

3 A Yes. And she would have --

4 Q Was she present at the status conference?

5 A I believe she was.

6 Q Okay. And so she heard the words that there was a
7 20-year plea offer?

8 A Right. We would have talked about it as well.

9 Q Okay. And at that time how much investigation
10 into this case had you done?

11 A Apparently it was preliminarily -- we had gone
12 through the file itself with the discovery -- but
13 apparently at that same time I was asking the judge,
14 and apparently it was Judge John, for fees for my
15 expert to review the MAIT results.

16 Q And can you explain to me what the MAIT is.

17 A What specifically you want to know? I mean,
18 essentially, these are the --

19 Q Is it a black box?

20 A Yes. We are talking about the information about
21 the impact, the speeds of the vehicles. It's a lot of
22 data rich information that looks like, you know, the
23 most complicated math ever, frankly. It doesn't read
24 easily. So I wanted someone to interpret those results
25 in a way that I could understand it, so I would know if

KIA WILSON-DIRECT BY MR. FALK

13

1 we had something that we could use to maybe help her
2 case along.

3 Q And just my understanding, this is the MAIT, or
4 was there some kind of computer on the car itself?

5 A Yes. It was a box in this case, yes.

6 Q So it really is like the black box that you find
7 on an airplane?

8 A Yes. It would be data information from that box.
9 But it would also be things about where the cars ended
10 up, you know, what happened during the case. Basically
11 a recreation of -- for, I guess, our purposes for what
12 would likely have occurred in this case.

13 Q Okay. And what conclusions did you draw once you
14 talked to your expert?

15 A Well, it was unfortunate because she had
16 originally told me anyway from the very first that this
17 was not going to be a trial for her. She said she knew
18 she didn't want a trial. I still had to prep the case.
19 So when I spoke to her with an eye towards maybe having
20 a negotiating chip to help get a better deal for her,
21 we didn't really have that. And we didn't have it
22 after his review.

23 He called me back and he was like, look,
24 Ms. Wilson, he was like, I've got gone through this
25 information. He was like, there's nothing here that is

1 out of place. He was like, these results are exactly
2 what they appear to be. It was like, they are saying
3 what's correct.

4 Q And those results were that the car was -- what
5 did those results tell you about --

6 A Basically that she was speeding. In fact, she was
7 actually going faster the closer she got to the car,
8 which is -- was always an issue. But there is no
9 question that there was no slowing down or trying to --
10 it appeared that there was no effort to avoid the
11 accident. That was the result.

12 Q Hadn't she told you that she was reaching for her
13 phone?

14 A What she had said was that, yes, she thought she
15 must have dropped something. But at the end of the
16 day, that doesn't change the fact that she's
17 intoxicated. And at the end of the day, she says she
18 was -- she had -- was reaching for the phone, but the
19 other information from other people who were in her
20 vehicle indicated that she had actually been trying to
21 speed up and that she was telling them, you know, kind
22 of, look at me, watch this.

23 Q You said that she was intoxicated?

24 A She had cocaine, and they said that -- I want to
25 say the word marijuana metabolites. And then there was

KIA WILSON-DIRECT BY MR. FALK

15

1 some indication, I believe, if I remember correctly, of
2 some pills, Xanax specifically.

3 Q They also said there was cocaine metabolites; is
4 that correct?

5 A There were also cocaine metabolites if I remember
6 correctly. So cocaine, cocaine metabolites, marijuana
7 metabolites and I want to say Xanax. And I think I'm
8 right on that, I'm not 100 percent.

9 Q I think the transcript just refers to the fact
10 that they saw the cocaine metabolites.

11 A Okay. Well, I stand corrected.

12 Q I'm just saying, that's how --

13 A I'm sorry, that wasn't my recollection. But I'm
14 certainly going to defer to what's in print.

15 Q So did you get a -- did you try and get an
16 independent toxicologist report?

17 A I did not. That was consistent with what she'd
18 indicated to me.

19 Q Did you consider hiring a toxicology expert to
20 review their reports?

21 A No. Because that was consistent with what she had
22 indicated to me.

23 Q Because certainly you could have cocaine
24 metabolites in your system after you are no longer
25 intoxicated; isn't that your understanding?

1 A I would think that would be correct, yes.

2 Q Okay. And there was no breathalyzer in this?

3 A No. I don't believe that there was any thought
4 that she was drunk.

5 Q And so the reason why you didn't try to
6 investigate whether or not controlled substances were
7 the cause of the accident was based on what she had
8 told you?

9 A Yes.

10 Q But she had also told you that she was reaching
11 for the phone?

12 A Yes. At one point she did tell me that. And I
13 will say this about the reaching. Again, in hindsight
14 everything always seems so much, you know, sometimes it
15 seems very different. In this instance I don't know
16 that I really believe it is. Because it didn't change
17 the fundamental problems that we still had with the
18 case, the intoxication, the issue of the other people
19 in her car, technically victims in a sense, also
20 corroborating that this was an intentional act, this
21 was -- and that was the real problem.

22 I know she had said from the get that that was not
23 how it occurred, and I believe that's also borne out in
24 her statement to the Court in the transcript. But
25 those were the problems that we were dealing with.

KIA WILSON-DIRECT BY MR. FALK

17

1 Q Okay. So then she went in on the 24th of February
2 to take this plea? That's the date on the transcript;
3 does that sound right?

4 A I think that's correct, yes.

5 Q Okay. She thought that she had a 20-year deal?

6 A She thought -- she should have thought she had a
7 20-year plea offer from the State. And I'm pretty
8 sure -- and, again, I can't say 100 percent absolutely,
9 you know, at this specific moment I told her this, this
10 and this. But I have been doing my job for 12 years
11 now. And I do know that I tell every single client,
12 you don't have a guarantee of a sentence. I say it
13 over and over because people, the clients tend to want
14 to pigeon hole you, they want to nail you to the wall
15 about a specific thing.

16 And a plea offer is one of those things that you
17 can't be specific about, you can't be nailed to the
18 wall because it's not up to me. It is not up to the
19 client, and it's not really up to the State. It is
20 going to be up to the judge who is hearing that case.

21 So I know she was aware that this charge carried
22 one to 25, because I want to make sure that my clients
23 are informed if nothing else, and that they are making
24 decisions based on what could occur without any
25 promises of an outcome. This was never a negotiation,

1 and the State never signed a contract with us. They
2 issued her a plea offer, she knew it was 20. And I
3 know she knew it was only 20 because -- that that was
4 the offer, because she was even wanting me to go back
5 to the back with the solicitor prior to the plea to
6 feel out the judge's thought process about this plea.

7 And so Lauree and I did that. And I came back and
8 I told, I said, I think he's inclined to do it. But
9 you don't have a promise. That's not a promise that
10 the judge is going to do it, I can't make him do it.

11 Q Well, there's a difference between the judge not
12 accepting a plea and then allowing the person to
13 withdraw their offer and a judge not following, not
14 agreeing to follow a recommendation; is that correct?

15 A That would be a negotiation.

16 Q Right.

17 A She didn't have a negotiation, she never had one.
18 She had a recommendation from the State for a plea.
19 She knew that. This was not a negotiation. A
20 negotiation is where you get an offer from the State,
21 and the judge is either bound to do it or not do it if
22 they're going to hear it. That's not what we had. And
23 she was under no illusion that we ever had a
24 negotiation. That did not come up in our conversation.

25 Q But she certainly was under the impression that

KIA WILSON-DIRECT BY MR. FALK

19

1 you were negotiating for her; right?

2 A No. She was under the impression that I was going
3 to the back to talk to the judge to see if he was
4 inclined to do what we wanted, which was to give her
5 the 20.

6 Q Okay. But in November of the prior year, you said
7 you brought her a 20-year plea offer?

8 A Yeah. That was the recommendation from the State.

9 Q Okay. And so this is now four months later. So
10 she was under the impression that you were negotiating
11 back with the State; right?

12 A What do you mean, negotiating back with the State?
13 You mean asking them to do something different than the
14 20?

15 Q Yes.

16 A That was constant.

17 Q Okay.

18 A That never stopped. And I would call the
19 solicitor up and talk to her and try to get them to do
20 something different. And it wasn't -- it started with
21 Donna, Donna Elder, I believe, was the original
22 prosecutor. When Donna left I ended up with Lauree, I
23 hate to say ended up. We were working the case, her
24 for the State, me for my client.

25 It was a constant effort, which it is almost in

1 every single case I have, to try to get a better deal.
2 I spend more time talking to the State about can you
3 reduce this than I do sometimes talking to my clients.

4 Q Sure.

5 A But everybody wants a better deal than they've
6 got. And I tried to manage this one off the bat with
7 Donna simply because I knew that she was going to be
8 looking at more serious time. So, yes, it's constantly
9 negotiation with the State. But there was no
10 negotiated plea, ever. That was never, ever something
11 that happened, ever. It was never on the table.

12 MR. FALK: No further questions.

13 CROSS-EXAMINATION

14 BY MS. HASTINGS:

15 Q Good morning, Ms. Wilson.

16 A Good morning.

17 Q How are you?

18 A I'm good, thank you.

19 Q Can you tell us how long you've been practicing
20 law.

21 A April 1st was 12 years.

22 Q And what portion of that has been criminal law?

23 A The entire -- correction. I have been at the
24 public defender doing criminal law since -- for 12
25 years as of April 1st. I actually started practicing

1 in -- it shouldn't be this hard to remember at this
2 point -- probably about 13, 14 years total.

3 Q And in that time you've handled, let's say, a
4 really large number of guilty pleas?

5 A Yes.

6 Q And you typically with your clients explain to
7 them the difference between a recommendation and a
8 negotiation?

9 A Absolutely.

10 Q And you did this with Ms. Lewis?

11 A I would -- I don't know that negotiation came up.
12 If it did, we would have discussed the difference. But
13 I don't recall -- I can't say with a hundred percent
14 certainty that I told her, this is not a negotiation,
15 this is a recommendation.

16 Typically the negotiation comes up in when the
17 client is wanting one and the State usually is not
18 offering one. I don't recall us even talking about a
19 negotiation. This was a recommended plea offer from
20 the State. And, again, again, I can't be a hundred
21 percent certain about that, I just don't recall it.
22 But if we did and the State refused, which obviously
23 had to have been the case here, I would have explained
24 what was going on. Because otherwise, the client
25 wouldn't know what the negotiation was supposed to be

1 about.

2 Q So to the best of your knowledge, Ms. Lewis was
3 under the impression that the agreement she had was not
4 binding on the Court?

5 A Yes.

6 Q Okay. And was it always her decision to plead
7 guilty?

8 A Yes.

9 Q And you supported this decision?

10 A I did, after review.

11 Q Okay. And she never asked you to file a direct
12 appeal?

13 A No, I don't recall that she did. As a matter of
14 fact, I remember going in because I was -- I know she
15 wanted a better plea offer than she had. I was unable
16 to successfully procure that from the State. So I was
17 hoping that, you know, we could get what we wanted from
18 the judge.

19 I knew it probably wouldn't be lower, but I
20 certainly didn't want it to be higher. And there was a
21 room for the five years on the high end on this case, I
22 knew that. She also was aware of that. I spoke to her
23 before to prep her for the plea, and then I went into
24 the lockup with her afterwards. And I explained
25 basically what I thought had gone wrong during her

1 plea, okay.

2 Because I did leave -- after we talked to the
3 Court, I was feeling pretty good about -- Judge Hyman
4 is not somebody who goes off on pleas and just ratchets
5 up the sentence, you know, off of a recommendation.
6 That's not typically how he works. And so I felt
7 pretty good when I went back to speak to him that we'd
8 likely get, you know, the actual 20-year
9 recommendation.

10 I think, and I told her this afterwards, that this
11 plea went south when she got up there and told the
12 judge that, no, that's not how this happened. The
13 victims and their families had spoken. And the
14 judge -- and then the State read off the recitation for
15 what occurred in this case, and then she tells the
16 judge, well, no, that's not how this went, that's
17 not -- those aren't the facts in this case.

18 His entire demeanor changed at that point. I saw
19 it, I think everybody saw it. And I'm sitting
20 there thinking to myself, you know, what exactly is
21 happening here. But I can't fix that. And I certainly
22 can't just jump in and stop her from talking, the judge
23 is talking to her. But anyway, that's what I think
24 happened. And I told her that.

25 Q And so you would say the increase in sentence

1 likely in your -- from your opinion or viewpoint was
2 from circumstances outside of your control during the
3 plea hearing?

4 A Yeah, it was specifically from what she said to
5 the Court.

6 Q All right. And lastly, during -- at any point
7 during the plea hearing, did Ms. Lewis ever express any
8 confusion as to what was going on, any hesitancy,
9 anything of that nature?

10 A You mean during the plea? I'm sorry.

11 Q During the plea hearing.

12 A No. She -- I think she was nervous. She had --
13 we had been trying to prep for the plea itself, you
14 know, just so she understood what was going to be
15 happening, who would be present, the fact that the
16 victim's families were likely speak. She had prepared
17 a statement to that end which she then read into the
18 Court's hearing. You know, I felt -- I felt that she
19 was ready to do the plea.

20 MS. HASTINGS: No further questions, Your Honor.

21 MR. FALK: No redirect.

22 THE COURT: You may step down, thank you.

23 THE WITNESS: Thank you.

24 (Witness excused.)

25 MR. FALK: We have no further witnesses.

LAUREE RICHARDSON-DIRECT BY MS. HASTINGS

25

1 MS. HASTINGS: Your Honor, the State would like to
2 call Ms. Lauree Richardson to the stand.

3 THE COURT: Come around and be sworn in.

4 LAUREE RICHARDSON, after being duly sworn,
5 testified as follows:

6 THE CLERK: Have a seat, and state your name for
7 the Court.

8 THE WITNESS: My name is Lauree Richardson.

9 DIRECT EXAMINATION

10 BY MS. HASTINGS:

11 Q Good morning, Ms. Richardson, how are you?

12 A Good.

13 Q Can you tell us for the record, how long you've
14 been practicing law.

15 A I graduated in 2007. I clerked with Judge John
16 for a year, and then I've been a prosecutor ever since.

17 Q Okay. And can you briefly describe your
18 involvement in this case.

19 A I was the prosecutor in this case for the guilty
20 plea. Ms. Elder was originally the solicitor.
21 Ms. Elder then left our office. When she left our
22 office, she did personally transfer this file to me. I
23 was on her team. And she just wanted to make sure that
24 these victims were taken care of and that the case
25 didn't go through the cracks. She gave the case to me,

1 and then I was the prosecutor on it from then on.

2 Q Okay. Did the State make any plea offers to
3 Ms. Lewis?

4 A I did make a plea offer.

5 Q Can you describe the conditions of this plea
6 offer.

7 A We send just a standard plea offer after reviewing
8 the case. And I did send Ms. Wilson a plea offer on
9 September 15th, 2014. I made a plea offer of 20 years.

10 Q Okay. And this offer, from your knowledge, was
11 not binding?

12 A Absolutely not. It was a recommendation. I would
13 have never considered a negotiated sentence in this
14 case because I had met with the victim's family. They
15 were upset with my plea offer. They thought that she
16 should deserve a lot more than that. And so I actually
17 explained to the victim's family that it was a
18 recommendation and that they could ask the judge for
19 more, that he had the ability to go higher or to go
20 lower but that it was a recommendation, it was not a
21 negotiation.

22 Q And to the best of your knowledge, was there ever
23 any miscommunications that this was a recommendation
24 and not a negotiation?

25 A No.

1 Q Okay.

2 MS. HASTINGS: No further questions, Your Honor.

3 MR. FALK: No redirect.

4 THE COURT: You may step down, thank you.

5 (Witness excused.)

6 MS. HASTINGS: State has no further witnesses,

7 Your Honor.

8 THE COURT: Anything further?

9 MR. FALK: No. But could we be heard.

10 THE COURT: Yes.

11 MR. FALK: I think there's been sufficient
12 testimony here that my client could have been under a
13 misunderstanding of whether or not this was a binding
14 plea offer. There's some of this testimony that there
15 was a negotiation going back and forth. Now, whether
16 or not my client is supposed to know the subtlety
17 between a negotiated offer and a recommended offer I'm
18 not sure is reflected in the transcript.

19 I don't -- I was just trying to look back over
20 here again to see if where I typically see a judge say,
21 now, you understand, you know, I don't have to accept
22 this offer and if I do, you can withdraw your plea, I
23 mean, some type of a discussion with that. And I
24 don't -- again, I've looked again, and I don't see
25 anything where the judge has told her that this was not

1 a binding offer.

2 All the discussion is is, you know, do you want to
3 plead guilty today, and it's a 20-year offer. I think
4 my client was under the impression that she was getting
5 a 20-year offer. Whether or not -- offer for
6 recommendation or offer for -- I mean, I don't think
7 she is a lawyer, hasn't been to law school, should be
8 held -- know the difference between the two. And
9 actually, trial counsel could not say with any hundred
10 percent certainty that she explained the difference
11 that this was still something that was a possibility
12 that the judge could get more.

13 And I think trial counsel's discussion about going
14 back in chambers and discussing it could very easily
15 have been whether or not the judge would accept the
16 offer. And, again, in that situation a judge could not
17 accept the offer. Had it been a negotiated offer, and
18 then she could have withdrawn her plea. Because as it
19 stands, she pled to one count and she got the maximum
20 that she could get. I think my client has made a case
21 that she thought she was getting a 20-year deal, and I
22 think she should be entitled to that bargain.

23 THE COURT: All right. Madam Attorney General.

24 MS. HASTINGS: The State would just briefly
25 maintain that the Applicant has failed to meet the

1 burden under the Strickland test of ineffective
2 assistance of counsel, that there was any deficiency on
3 Ms. Wilson's part or that any such alleged deficiency
4 caused any harmful error. Ms. Wilson in her testimony
5 explained that the judge had the ultimate decision to
6 her client, based on her client's plea, and that she
7 zealously advocated over months for the best possible
8 sentence for her client.

9 And, lastly, on page four of the transcript, the
10 judge does say to Ms. Lewis that she could receive up
11 to 25 years on her charges and did she understand that,
12 and she replied, yes. That's all the State has. Thank
13 you, Your Honor.

14 MR. FALK: My only response to that is, I'm not
15 sure, I mean, every judge is supposed to tell somebody
16 what the sentencing range is for the charges in any
17 kind of plea colloquy. I'm not sure that that is
18 sufficient to say that she was under notice that she
19 could get 25 years on here or that was the potential.

20 I think of any Boykin type colloquy that the judge
21 goes through, they always want to be on record to show
22 what the maximum somebody could get under the charge is
23 so they knew whether or not they were making a good
24 deal.

25 THE COURT: All right. I'm going to hold this

1 under advisement because I want to read that
2 transcript.

3 MR. FALK: Thank you, Your Honor.

4 MS. HASTINGS: Thank you, Your Honor.

5 THE COURT: I'll get an order out as soon as
6 possible.

7 (The hearing concluded at approximately
8 10:35 a.m.)

9 (End of Transcript of Record)

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
Brittany Lewis,)	Case No.: 2015-CP-26-02916
S.C.D.C. No. 330208,)	
Applicant,)	ORDER OF DISMISSAL
v.)	
State of South Carolina,)	
Respondent.)	

FILED
 HORRY COUNTY
 2016 JAN -5 PM 2:18
 CLERK OF COURT
 HORRY COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed by Brittany Lewis ("Applicant") on April 20, 2015. Respondent made its return on or about February 3, 2016. The Court convened an evidentiary hearing into the matter on Wednesday, May 11, 2016, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by James K. Falk, Esquire. Caitlin B. Hastings, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on her own behalf at the evidentiary hearing. Applicant's plea counsel, Kia Wilson, Esquire ("Counsel"), and Lauree Richardson Ortiz, of the Fifteenth Circuit Solicitor's Office ("Solicitor"), also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Horry County Clerk of Court regarding the subject convictions, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. On January 27, 2014, the South Carolina

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Highway Patrol sought and obtained warrants for Applicant's arrest for one charge of felony driving under the influence, great bodily injury results (2014 A26 10700124), and two charges of driving under the influence, death results (2014 A26 10700125, 2014 A26 10700126). Kia T. Wilson, Esq. represented Applicant, and Lauree Richardson Ortiz, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On February 24, 2015, Applicant waived presentment to the grand jury for two indictments for driving under the influence, death resulting (2015-GS-26-00365, -00366), and pled guilty. Upon recommendation by the State of a sentence of 20 years incarceration, the Honorable Larry B. Hyman, Jr. sentenced Applicant to imprisonment for concurrent terms of 25 years. Applicant did not appeal her plea or sentence.

Present Application

In her post-conviction relief application, Applicant alleges she is being held unlawfully for the following reasons:

1. "Breach of Guilty Plea Contract Agreement"
 - a. "Guilty Plea Contract was signed for 20 years sen"
2. "Prosecution Misconduct fraud on the pleading"
 - a. "Solicitor agree to the 20yr. Signature on contract plea"
3. "Atty S Client Doctrine Violation"
 - a. "[Trial] Counsel canceled plea agreement [and deprived] due process"

Applicant requests relief as follows:

- "Sentence reduce to time serve motion for writ of [mandamus] of Guilty Plea Contracted Fed. RCP Rule 59(e) alter the judgment"

At the evidentiary hearing, the parties took testimony to address Applicant's claims of a plea deal for 20 years in both the context of ineffective assistance of counsel and prosecutorial misconduct.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel & Involuntary Guilty Plea

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "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." Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at

689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). “[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry at 117, 386 S.E.2d at 625 (citing Strickland at 688). Second, counsel's deficient performance must have prejudiced the 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 at 117-18, 386 S.E.2d at 625 (citing Strickland at 694). The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, she would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of her plea and the charges against her. See Boykin v. Alabama, 395 U.S. 238, 243 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Lecke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why she should be allowed to depart from the truth of her statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985)).

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. See Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

IAC Allegation #1 – Failure to Explain, Enforce Plea Deal

Applicant claims in her application, as well as in her testimony at the evidentiary hearing, that she signed a written agreement wherein she would receive a sentence of 20-years in exchange for her guilty plea. At the plea proceeding, Solicitor called the case and indicated that it was recommending a twenty-year sentence. Tr. 3, ll. 3-9. Applicant affirmed that she understood the nature of the charges and their elements. Tr. 3, ll. 13-22. Applicant further affirmed that she had discussed the potential penalties with her attorney and that she understood she could receive a sentence of up to twenty-five years. Tr. 4, ll. 8-15. The plea court invited

Page 5

Applicant to ask the court at any time if she had any question about the process or what the consequences would be. Tr. 10, ll. 5-11. The sentencing sheets signed by Applicant accurately reflect a recommendation by the state and an ultimate sentence of 25 years.

At the evidentiary hearing, Applicant testified that she signed "a 20 year plea," but that she got 25 years after pleading guilty. Applicant testified that Counsel informed her that the solicitor and the plea judge had agreed to a 20 year plea and that is what she would probably get. Applicant affirmed she believed she would get 20 years. Applicant denied ever wanting a trial, as she knew what she did was wrong.

Counsel testified that the offer made at a status conference was a recommendation for 20 years. Counsel confirmed Applicant never wanted a trial. Counsel testified she tells every client that no sentence is guaranteed, and that sentencing is not up to either the defendant or the State, but to the judge who hears the case. Counsel explained to Applicant the charges carried a potential sentence of between 1 and 25 years. Counsel denied that any contract was ever signed with the State and repeatedly stated that there was never any chance of a negotiated sentence, only a recommendation. Counsel testified she spoke with the plea judge alongside the Solicitor immediately prior to the plea and reported to Applicant her belief that the judge was inclined to take the recommendation, but cautioned that it was not a promise. Counsel testified Applicant was under no illusion that the 20 years was anything more than a recommendation.

The Solicitor testified she made a plea offer of a recommendation for 20 years. She further emphasized that a negotiated sentence was never an option, as the victim's family was already upset with the offer of a recommendation.

The Court finds no deficiency on the part of counsel and that Applicant knowingly, intelligently, and voluntarily entered her guilty plea. The record shows that the plea agreement

PHB

was for a recommendation of 20 years. The plea transcript and testimony of Counsel show that Applicant was fully apprised of the non-binding nature of the recommendation, that it was neither a guarantee nor a promise, and that her full range of sentencing exposure was up to 25 years on each charge. Applicant herself demonstrated an understanding of the charges against her and affirmed that she had no desire for a trial, but wished only to admit guilt for her actions. No evidence of any written agreement was introduced to this Court and, in light of Counsel's credible testimony denying any contract was ever signed, this Court finds Applicant's testimony to the contrary not credible. Applicant can show neither deficiency on the part of counsel nor prejudice therefrom and, accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

B. Prosecutorial Misconduct – Breach of Plea Agreement

Applicant also alleges the State breached a written plea agreement in which Applicant, in exchange for her plea, would receive a sentence of 20 years incarceration. There is no evidence before this Court to support Applicant's claim of a written agreement, let alone one for a negotiated sentence of 20 years. As explored above, the testimony of both Counsel and the Solicitor is that the offer and agreement was only for a recommendation of 20 years, not a negotiated sentence. Counsel specifically recalled the offer was made at a status conference and denied any written contract was ever signed. No written agreement has been produced to this Court. Accordingly, Applicant has failed to meet her burden and her request for relief by way of this allegation is **DENIED**.

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III. CONCLUSION

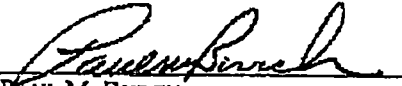
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant her application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

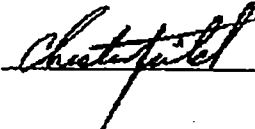
This Court notifies the Applicant that she must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 18th day of December, 2017.


 PAUL M. BURCH
 Presiding Judge
 Fifteenth Judicial Circuit


 _____, South Carolina

WITNESSES

Tracey L Phillips South Carolina Dept of Public Safety

ARREST WARRANT NUMBER

2014A2610700125
CDR: 0395 56-05-2945(A)(2)
DOA: 2/1/2014

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

C

DOCKET NO. 2015-GS-26-00365

The State of South Carolina

County of Horry

Lauree Richardson

14H00551

COURT OF GENERAL SESSIONS

JANUARY, 2015 TERM

THE STATE

vs.

Brittany Lewis
W/F

victim 1



ATTORNEY: Kia T. Wilson

Indictment for

**DRIVING UNDER THE INFLUENCE DEATH
RESULTING**

Jimmy A. Richardson, II, Solicitor

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT


At a Court of General Sessions, convened on January 22, 2015, the Grand Jurors of Horry County present upon their oath:

FELONY DRIVING UNDER THE INFLUENCE - DEATH

CDR: 0395 56-05-2945(A)(2)

That Brittany Lewis did in Horry County on or about January 25, 2014 drive a motor vehicle while under the influence of alcohol, drugs, or a combination of both, and did an act forbidden by law and/or neglected a duty imposed by law in the driving of the vehicle, to wit: failed to yield right away, and/or failed to stop at stop sign, and/or was speeding, which act or neglect proximately caused the death of Ryan Marsh in violation of Section 56-05-2945(A)(2), S. C. Code of Laws, 1976, as amended.

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



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Tracey L Phillips South Carolina Dept of Public Safety

DOCKET NO. 2015-GS-26- 00246

**The State of South Carolina
County of Horry**

Lauree Richardson

14H00551

COURT OF GENERAL SESSIONS

JANUARY, 2015 TERM

ARREST WARRANT NUMBER

2014A2610700126

CDR: 0395 56-05-2945(A)(2)

DOA: 2/1/2014

THE STATE

vs.

ACTION OF GRAND JURY

**Brittany Lewis
W/F**

victim 1

Foreperson of Grand Jury

Date:

ATTORNEY: Kla T. Wilson

VERDICT

Indictment for

**DRIVING UNDER THE INFLUENCE DEATH
RESULTING**

Jimmy A. Richardson, II, Solicitor

Foreperson of Petit Jury

Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

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


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR