

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Horry County

Honorable Kristi F. Curtis, Circuit Court Judge

SARAH L. TONEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-000962

APPENDIX

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1 STATE OF SOUTH CAROLINA

2 County of Horry

3

4 The State of South Carolina,
5 Plaintiffs

Guilty Plea
2015-GS-26-05651

6 vs.

7

8 Sarah Lane Toney,
9 Defendant

January 11, 2017
Conway, S.C.

10

11 BEFORE THE HONORABLE Steven H. John,

12 Judge.

13

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

15 Mr. Scott Rian Hixson,
16 Assistant Solicitor for the State

17 Mr. Jonathan E. Fox,
18 Public Defender for Defendant

19 Margaret T. Sullivan,
20 Court Reporter

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1 MR. HIXSON: The State versus Sarah Toney.
2 Sarah Lane Toney, Your Honor. Standing before you,
3 or she's seated before you at this time, on Docket
4 No. 2015-GS-26-05651. It's the State of South
5 Carolina versus Sarah Lane Toney. I'm looking at
6 the true billed copy of indictment, Your Honor. I
7 believe Your Honor has the original, of a homicide
8 by child abuse, Your Honor. And we believe, the
9 State alleges in that indictment, that Sarah Lane
10 Toney did in Horry County on or about November 3rd
11 2015, cause the death of **Minor**, a 5-month-old child,
12 while committing child abuse or neglect. Your
13 Honor, the child's death occurred under
14 circumstances manifesting as an extreme indifference
15 to human life in violation of the appropriate
16 statutory section of our South Carolina Code of
17 Laws.

18 Your Honor, the State's understanding is
19 Ms. Toney is before the court today with her
20 attorney, Eric Fox, for the purpose of a guilty plea
21 to this charge, under the indictment of homicide by
22 child abuse, Your Honor. And the State is prepared
23 to go forward in that matter. As Your Honor is well
24 aware, Ms. Toney was ordered a court mandated
25 competency evaluation. That was ordered and

1 performed by the Medical University of South
2 Carolina. In addition to that, there was a criminal
3 responsibility examination performed.

4 Your Honor, I believe it's appropriate at
5 this time to go forward on a Blair Hearing in the
6 matter for the court to determine her competency and
7 capacity to conform prior to entering or acceptance
8 of any guilty plea.

9 THE COURT: Mr. Fox, what's your position?

10 MR. FOX: I think that would be
11 appropriate way to proceed, Your Honor. I have had
12 copies available to review the reports, Your Honor.

13 THE COURT: Very good. Solicitor, if you
14 want to proceed on with the Blair Hearing then
15 please.

16 MR. HIXSON: Thank you, Your Honor. At
17 this time, we call Dr. Emily Gottfried from the
18 Medical University of South Carolina,

19 THE COURT: Ma'am, if you would please
20 come around right up here, and meet the clerk and be
21 sworn, please ma'am.

22 Emily Gottfried, being first duly sworn,
23 testified as follows:

24 THE CLERK: State your name and spell your
25 last name.

1 A. Dr. Emily Gottfried. G-O-T-T-F-R-I-E-D.

2 THE COURT: You may proceed, Solicitor.

3 Direct Examination by Mr. Hixson:

4 Q. Good afternoon, ma'am, how are you.

5 A. Good afternoon.

6 Q. Welcome to Horry County.

7 A. Thank you.

8 Q. What do you do for a living?

9 A. I am a forensic psychologist. I'm on the
10 at faculty at Medical University of South Carolina.
11 I work in the Department of Psychiatry and Behavior
12 Services, where I complete forensic evaluations in
13 that department.

14 Q. Well this is a simple question, but do you
15 need any specialized training or expertise in order
16 to perform your job there?

17 A. Yes, you do.

18 Q. And specifically, what type of education
19 do you have?

20 A. I have a bachelor degree in Psychology. I
21 have a master's degree also in Psychology. And then
22 got a master's of Science degree in Clinical
23 Psychology. And I have a Ph.D. in Clinical
24 Psychology as well. As part of my doctoral
25 training, a 40 or a 2,000-hour, which is 40 hours a

1 week, internship training as necessary. And I did
2 that at Patton State hospital, which is the largest
3 state forensic hospital in the country. And I
4 specialized in forensics when I was there. After
5 graduating, I did a one-year post-doctorial
6 fellowship in forensic psychology at the Medical
7 College of Georgia.

8 Q. So in fact the best way to describe
9 yourself, and I'll offer you of course as a expert
10 in a moment. But you are an expert in forensic
11 psychology.

12 A. Yeah.

13 Q. And that's the role that you perform at
14 the Medical University of South Carolina?

15 A. Correct.

16 Q. Can you please just give the court a small
17 idea of how you come to forensically evaluate a
18 particular criminal defendant in a case.

19 A. Certainly. So the Medical University of
20 South Carolina has a contract with Department of
21 Mental Health. So in this particular case, there
22 was a court order for a Ms. Toney to be evaluated
23 for both her competency to stand trial and her
24 criminal responsibility. That case was assigned to
25 me. Also involved in that case was one of our

1 forensic psychiatry fellows, a medical doctor
2 getting his training in forensics, so we did that
3 case together.

4 So the way that I perform forensic
5 evaluations is I request all of the collateral
6 records in the case. So that would include all of
7 the medical records, any mental health records,
8 psychiatric hospitalizations. As well as, all of
9 the legal documents associated with the case. So
10 any interviews with the police, all of the police
11 reports, toxicology reports. All of the discovery
12 in the case. And then if necessary, I make
13 collateral contacts so I might call a family member
14 or call a nurse at the detention center. And then
15 bring the defendant in for an interview, where I do
16 a full comprehensive background interview. I do a
17 mental status examine. I administer a psychological
18 testing if it's necessary. I'm going to go through
19 semi-structured questions to answer the legal
20 questions at hand, be it competency to stand trial
21 or criminal responsibility.

22 Q. And before we get into any kind of
23 specifics, about how many times have you asked to
24 perform this task for the courts for the State of
25 South Carolina?

1 A. For competency, I am going to say about
2 150 times.

3 Q. And have you testified in courts in the
4 State of South Carolina?

5 A. Yes, sir, I have.

6 Q. And have you been determined by the court
7 to be an expert in the area of forensic psychology
8 before?

9 A. Yes, I have.

10 MR. HIXSON: Your Honor, at this time we
11 would offer the doctor as an expert in the area of
12 forensic psychology.

13 THE COURT: Mr. Fox, do you wish to voir
14 dire the witness as to her qualifications, or
15 challenge the State's offer as to her being an
16 expert in the field of forensic psychiatry?

17 MR. FOX: No, I don't, Your Honor.

18 THE COURT: And again, Solicitor, you want
19 to offer her in the field of?

20 MR. HIXSON: Forensic psychology.

21 THE COURT: So regarding forensic
22 psychology, the court finds her to be qualified to
23 testify as to her opinions in this matter, based
24 upon the credentials and the examinations and
25 experience that she has explained to the court. You

1 may proceed.

2 MR. HIXSON: Thank you, Your Honor.

3 Direct Examination by Mr. Hixson:

4 Q. So, Doctor, now let's talk about this
5 specific case. Did you have an opportunity to come
6 in contact of the matter of the State versus
7 South -- of South Carolina versus Sarah Lane Toney.

8 A. Yes, I did.

9 Q. And I believe you also indicated to the
10 court some of the items that you use in determining
11 your ultimate clinical regarding Ms. Toney's
12 competency, is that right?

13 A. Yes.

14 Q. Can you just start from there. Start back
15 over what we were talking about before. In fact, I
16 think you said you had an in person interview, and
17 could you go from there?

18 A. Yes, I met with Ms. Tony on May 23, 2016,
19 for approximately 3 hours and 15 minutes. And that
20 was the purpose to evaluate both of psycho-legal
21 questions. At that time, during the three hour and
22 15 minute evaluation, we interviewed her regarding
23 her background history, family history, relationship
24 history, school, work, substance abuse. Her
25 psychiatric history. I also performed a mental

1 status examine to make sure that she was alert,
2 oriented, paying attention, didn't have any
3 cognitive deficits which would be impacting her
4 competency to stand trial.

5 I asked her a number of symptom related
6 questions to find out her history of symptoms. And
7 I also went through a semi-structured competency
8 interview where I asked her questions accessing the
9 three prongs of competency that we use here in South
10 Carolina.

11 Q. I'm going to jump to the end and then go
12 back to the middle again, if that's okay.

13 A. Sure.

14 Q. Were you ultimately able to a reasonable
15 degree of medical or scientific certainty, determine
16 in your opinion whether Ms. Toney is competent to
17 stand trial in the courts of South Carolina?

18 A. Yes.

19 Q. And what was your finding?

20 A. It was my opinion that she was competent
21 to stand trial.

22 Q. Thank you. And as it relates to secondary
23 issue also, as it relates to criminal
24 responsibility, were you able to after your
25 evaluations to a reasonable degree of medical or

1 scientific certainty, determine whether or not in
2 your opinion you believe that Ms. Toney was
3 criminally responsible for her actions on
4 November 3rd of 2015?

5 A. Yes, I did.

6 Q. And what were your findings?

7 A. It was opinion that she was both
8 criminally responsible, and she had the capacity to
9 conform her behavior with the law.

10 Q. After you made those findings, did you
11 enter those into a written report?

12 A. Yes, I did.

13 Q. And in fact have you provided that report
14 to the State of South Carolina, the solicitor's
15 office?

16 A. Yes, I did.

17 MR. HIXSON: Your Honor, I believe I need
18 to mark, I've provided the court previously,
19 Mr. Fox has one. I have a copy, of the doctor's, a
20 35-page evaluation. We would like to make that a
21 Court's Exhibit, Your Honor.

22 THE COURT: All right, sir. Did you show
23 that to the witness to make sure that....

24 A. Yes.

25 Q. That's it.

1 A. Uh-huh. (Affirmative.)

2 MR. HIXSON: Thank you, Your Honor.

3 THE COURT: Is there any objection to the
4 introduction into this hearing as an exhibit, as
5 Exhibit 1, The Criminal Responsibility Evaluation as
6 well as the Capacity to Conform Evaluation?

7 MR. FOX: No objection, Your Honor.

8 THE COURT: So received into evidence.
9 You may proceed.

10 (Evaluation marked Court's Exhibit No. 1
11 for Id.)

12 MR. HIXSON: Your Honor, I'd just like to
13 develop a few details out of their findings on when
14 they came to that conclusion.

15 Q. So let's go back relating to, was there
16 any question in your mind as much as you can say, in
17 your opinion, was she definitely competent? Was
18 that the main issue of your evaluations?

19 A. Yeah, the first question was whether or
20 not she was competent before I evaluated criminal
21 responsibility. And I found her to be competent.
22 It was my opinion that she was competent.

23 Q. Now let's move to the second part. Were
24 there any specific findings that you have contained
25 in your report that you found the most probative in

1 making your determination, whether it was
2 corporation of law enforcement, or her conduct after
3 the fact? Or any specific findings that may aid the
4 court in moving forward.

5 A. For competency?

6 Q. For the criminal responsibility.

7 A. For criminal responsibility, how I conduct
8 those is, I have the defendant take me through all
9 of the aspects of the alleged offense that they can
10 recall. And then I also review all of the
11 collateral information. So there were a couple --
12 there was a lot of data that I relied on;
13 specifically, all of the interviews that Ms. Toney
14 gave to the police. So some of that provided me
15 with information that helped me form my opinion of
16 whether or not she was criminally responsible.
17 There were also toxicology reports that I
18 considered.

19 Q. Did you find at the time of the incident
20 that Ms. Toney was under the influence of illegal
21 narcotics?

22 A. She did have a positive urinalysis, which
23 indicated that she was under the influence of
24 methamphetamine, amphetamines and opioids.

25 Q. And as far as part of your diagnosis, is

1 of some of the self diagnosis reporting the history
2 of substance abuse, is that part of your
3 diagnosis---

4 A. Yes.

5 Q. ---that you relied on? Could you expand
6 on that?

7 A. On her diagnosis?

8 Q. Yes, just on the facts that support your
9 diagnosis; specifically, a lifelong history of
10 substance abuse and amphetamine abuse.

11 A. Yes. Part of my diagnostic impressions
12 were that Ms. Toney met diagnostic criteria for
13 three separate substance use disorders. The first
14 being an opioid use disorder. Which I thought was
15 in the severe range of substance use disorders. She
16 also met for a simulant use disorder. And that was
17 for both cocaine and methamphetamine use. And
18 again, I thought that that was in the severe range
19 of substance use disorders. And then finally I
20 diagnosed her with a moderate alcohol use disorder.

21 Q. And did you find that those were probative
22 not only in her history, but in the days leading up
23 to the death of the child the ultimate, and again on
24 November 3rd?

25 A. Yes. Per her own report, she was using

1 substances approximately 3 days before the alleged
2 offenses. And her toxicology screens were positive
3 for those substances.

4 Q. Thank you. As it relates to I guess the
5 psychiatric episodes, whether they be substance
6 abuse psychiatric episodes, or whether they actually
7 exist from an organic mental disease or defects.
8 What are some of the indicators that you would look
9 for to determine that they were substance episode
10 abuse episodes versus organic psychiatric episodes?
11 Can you expand on that, please.

12 A. Sure. Well when I look for a major
13 mental illness, usually a psychotic spectrum
14 disorder, we know that substances can induce those
15 kind of symptoms. So in differentiating between a
16 primary psychotic disorder and a psychotic disorder
17 due to substances, I look at the period of time in
18 which that occurs. So I went to see if the
19 individual is exhibiting psychotic symptoms when
20 they've been abstinent from a substance for a while.
21 I also look at mental health records. So I noted
22 that Ms. Toney had had several inpatient psychiatric
23 hospitalizations, but not for psychosis. And it was
24 never reported that she either reported experiencing
25 psychotic symptoms, and they were not noted in her

1 hospitalizations.

2 So generally psychotic symptoms don't
3 spontaneously remit in the absence of medications.
4 So she wasn't medication, so that speaks to those
5 symptoms if she were experiencing them, that they
6 were likely substance induced.

7 Q. So let's go to roughly November 1st, which
8 was several days prior, as I recall, miscellaneous
9 statements law enforcement generated about the use
10 of methamphetamine and Adderall, or any amphetamine
11 type of product during that period of time. And her
12 conduct towards law enforcement. Did you review
13 some of the interviews and the transcripts of
14 interviews that Detective Lin and others from the
15 Horry County during the search for Ms. **Minor**?

16 A. Yes. I reviewed all of the videos that
17 were provided to my office.

18 Q. And during the course of those interviews,
19 was she cooperative with law enforcement in the
20 efforts to find her daughter in your opinion?

21 A. Mostly she was not cooperative.

22 Q. And in fact, during that period of time,
23 did she make statements in regards to, well that's
24 your job, you go find her. And invoke her right to
25 counsel, and not cooperate to try to find the child.

1 A. That's correct.

2 Q. Would that be consistent in your
3 professional opinion relating to an organic
4 psychiatric disorder or a substance abuse? In other
5 words, coming down 3 days after an episode, and the
6 difference between those two?

7 A. In my opinion, and based on the people
8 that I evaluate, it did not appear to be consistent
9 with psychosis. It seemed more related to
10 personality pathology and possibly to substances.

11 MR. HIXSON: I beg the court's indulgence.

12 THE COURT: Yes, sir.

13 MR. HIXSON: Your Honor, I have no further
14 questions for the doctor. Please answer any
15 questions Mr. Fox may have for you.

16 THE COURT: Cross examination, Mr. Fox.

17 MR. FOX: Very briefly.

18 Cross Examination by Mr. Fox:

19 Q. Dr. Gottfried, you just mentioned
20 Ms. Toney's cooperation or lack thereof with law
21 enforcement after Ms. [Minor] went missing. And you
22 mentioned her substance abuse. You felt that was
23 more the issue or personality pathology. Is
24 personality pathology another way of saying mental
25 illness?

1 A. Yes, personal disorders do fall under
2 mental illnesses.

3 Q. And in fact I think you diagnosed or
4 agreed with previous diagnosis Ms. Toney as having
5 borderline personality disorder?

6 A. Yes. It was my opinion that that was her
7 primary diagnosis.

8 Q. And there was for Ms. Toney and through
9 her mother, a related history that she had been
10 previously diagnosed as bipolar. But you did not
11 have any records at that time to enable you to
12 substantiate that, is that correct?

13 A. It was my opinion that she did meet
14 diagnostic criteria for a bipolar disorder. She
15 never experienced a manic episode outside of
16 substance use. And it was my opinion that the mood
17 symptoms she was reporting, the mood swings, the
18 intense anger and rage, were all better accounted
19 for by her diagnosis of borderline personality
20 disorder. I did not think that she met for bipolar
21 disorder.

22 MR. FOX: Thank you. That's all the
23 questions I have.

24 THE COURT: Any redirect questions?

25 MR. HIXSON: I do not have. I just have a

1 motion. Unless the court would like to ask the
2 witness some questions.

3 THE COURT: Let me one or two questions,
4 ma'am. You regarding any potential opioid use or
5 stimulant use or any of those types of issues, you
6 were using as a criteria that voluntary substance
7 abuse does not meet South Carolina's definition for
8 a mental disease or defect, is that correct?

9 A. That's correct. For NGRI considerations,
10 voluntary substance abuse does not meet the
11 standard.

12 THE COURT: Thank you. Anything on that
13 question from the State?

14 MR. HIXSON: No, Your Honor.

15 THE COURT: From the defense?

16 MR. FOX: No, Your Honor.

17 THE COURT: I will be glad to hear from
18 you, Solicitor.

19 MR. HIXSON: Thank you, Your Honor. We
20 just ask the witness be excused, or at least from
21 the witness stand perhaps.

22 THE COURT: Any objection to that,
23 Mr. Fox?

24 MR. FOX: No, Your Honor.

25 THE COURT: You may stand down, ma'am.

1 Thank you very much.

2 MR. HIXSON: Your Honor, at this time, we
3 would just move the court to make a finding of facts
4 that are consistent with the report that's entered
5 as a Court's No. 1. And that is the findings from
6 the testifying Dr. Emily Gottfried, that this
7 defendant is in fact, capable and competent to stand
8 trial in the courts of the State of South Carolina.
9 And in addition to that, make a finding consistent
10 with a report that is entered into evidence, that
11 she has in fact had the capacity to conform her
12 actions to the requirements of the law for the State
13 of South Carolina on November 3, 2015. Around the
14 November time period.

15 THE COURT: Mr. Fox.

16 MR. FOX: Your Honor, I have no objection.
17 I've had a chance to review her reports. It's as
18 thorough reports as I've ever seen. And I have no
19 objections to the conclusions that they reached.

20 THE COURT: And did you wish to present
21 any type of testimony or evidence regarding that
22 particular issue?

23 MR. FOX: No, Your Honor.

24 THE COURT: Thank you. Based upon the
25 testimony of the witness presented, the report from

1 the Medical University of South Carolina that was
2 conducted on Ms. Toney by Dr. Gottfried in the
3 presence also of Dr. Adam Bloom, I do find in this
4 particular matter that first, she was submitted for
5 evaluations for criminal responsibility and capacity
6 to conform. Based upon the evidence presented, I do
7 find that and agree with the evidence presented,
8 that her actions were not due to mental disease or
9 defect, which impaired her appreciation or
10 understanding of right from wrong. And that she had
11 the capacity to distinguish between right and wrong,
12 on the day of of the alleged offenses; that she had
13 the capacity to conform her conduct to the
14 requirements of the law at the time of the alleged
15 offenses.

16 And that I do therefore find that as to
17 criminal responsibility that there is more than
18 sufficient evidence presented regarding that
19 standard. And again, that she had the capacity to
20 conform her behavior. And therefore the court
21 accepts and adopts the findings as set forth in
22 Exhibit 1 regarding criminal responsibility and
23 capacity to conform.

24 MR. HIXSON: Thank you, Your Honor. May I
25 proceed?

1 THE COURT: Yes, sir.

2 MR. HIXSON: May I approach, Your Honor.

3 THE COURT: Yes, sir, please.

4 MR. HIXSON: This is the sentencing sheet
5 in the matter.

6 THE COURT: If you want to call the matter
7 for a plea, please, sir.

8 MR. HIXSON: Thank you, Your Honor. The
9 caption of the case once again this is the State of
10 South Carolina versus Sarah Lane Toney. We believe
11 we are moving to the guilty plea phrase of it;
12 specifically, that's 2015-GS-26-05651. That is a
13 homicide by child abuse true billed indictment, Your
14 Honor. She stands before the court with her
15 attorney, Eric Fox, for the purposes of this guilty
16 plea. And it's on the indictment, Your Honor. And
17 this case comes before you with no recommendation as
18 to sentence. She is facing a mandatory sentence of
19 20 years up to a maximum sentence of life
20 imprisonment. And the sentencing is entirely in
21 Your Honor's discretion. Obviously we would like to
22 get into the facts of the case and give Your Honor a
23 better idea of what transpired on that day.

24 THE COURT: Very good. Would you place
25 Ms. Toney understand oath, please, ma'am?

1 (Whereupon, the defendant Ms. Toney is
2 sworn.)

3 THE COURT: Ms. Toney, I am going to be
4 asking you a series of questions that require your
5 response. If at any point and time, you do not
6 understand the question, you have a question about
7 what is happening, there is any confusion on your
8 part, anything of that nature, you need to indicate
9 that to the court. You can raise your hand. You
10 can tell your attorney, but you've got to
11 affirmatively in some way indicate to me that you
12 have a problem, you have a question, there is some
13 matter you need to bring to the court's attention.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Are we in agreement on that?

16 THE DEFENDANT: Yes, sir..

17 THE COURT: Very good. Ms. Toney, you are
18 coming before the court and pleading guilty to the
19 crime of homicide by child abuse, is that correct?

20 THE DEFENDANT: Yes.

21 THE COURT: Now regarding this particular
22 crime, this crime has been listed by the State of
23 South Carolina as a violent and most serious offense
24 by the State of South Carolina. Do you understand
25 that?

1 THE DEFENDANT: Yes.

2 THE COURT: And you have talked about that
3 with your attorney Mr. Fox.

4 THE DEFENDANT: Yes.

5 THE COURT: You understand that it being
6 listed as violent, affects the amount of time that
7 you will spend in the Department of Corrections.
8 And you have discussed this fully with your
9 attorney, correct?

10 THE DEFENDANT: Yes.

11 THE COURT: The most serious you
12 understand that gives you a strike under the State's
13 2-strike law, that should you be plead guilty or be
14 convicted of another most serious offense then the
15 sentence asked by the State would then be life in
16 prison without the possibility or parole. You
17 understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: The potential sentence in this
20 particular matter is a minimum of 20 years up to
21 life in prison. Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: You understand then or do you
24 understand all these things that the court asked of
25 you?

1 THE DEFENDANT: Yes.

2 THE COURT: Is it your intention then to
3 go forward with your guilty plea at this time?

4 THE DEFENDANT: Yes.

5 THE COURT: Are you currently under the
6 influence of any drugs or intoxicants of any kind,
7 or currently have them in your system?

8 THE DEFENDANT: No.

9 THE COURT: Are you suffering from any
10 kind of physical, mental, emotional problem that
11 would keep you from understanding what you are doing
12 here today?

13 THE DEFENDANT: No.

14 THE COURT: When you plead guilty, you
15 give up your constitutional rights. Among those,
16 the right to remain silent. When you speak to me,
17 you give those rights up. Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Other rights are, presumption
20 of innocence. The right against self incrimination
21 at a trial. The State has to prove you guilty
22 beyond a reasonable doubt. When you plead guilty
23 you give up those rights. Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: You are entitled to a jury

1 trial. Twelve men and women would listen to the
2 facts and the evidence presented by the State to see
3 if there are indeed enough facts and evidence to
4 prove you guilty beyond a reasonable doubt. When
5 you plead guilty, you give up your jury trial. Do
6 you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: In that jury trial with your
9 attorney, you can question the witnesses and the
10 evidence presented by the State. If you wanted to,
11 you could present a defense, testify, call
12 witnesses, present evidence. When you plead guilty,
13 you give up those rights. Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: You are coming before the
16 court and you are pleading guilty to the crime of
17 homicide by child abuse.

18 THE DEFENDANT: Yes.

19 THE COURT: Are you pleading guilty to
20 that crime freely and voluntarily?

21 THE DEFENDANT: Yes.

22 THE COURT: Of your own free will and
23 accord.

24 THE DEFENDANT: Yes.

25 THE COURT: Pleading guilty because you

1 are guilty of this crime.

2 THE DEFENDANT: Yes.

3 THE COURT: Did anybody promise you
4 anything, threaten you, force you in any way, to get
5 you to plead guilty?

6 THE DEFENDANT: No.

7 THE COURT: You are here today with your
8 attorney Mr. Fox, is that correct?

9 THE DEFENDANT: Yes.

10 THE COURT: Did you tell him everything
11 you wanted to tell him about this case?

12 THE DEFENDANT: Yes.

13 THE COURT: Have you had enough time to
14 talk to him?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you need any more time to
17 talk to him?

18 THE DEFENDANT: No.

19 THE COURT: Are you satisfied with his
20 help and representation?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you think that he did
23 everything that he could do to try to help you in
24 this situation?

25 THE DEFENDANT: Yes..

1 THE COURT: Any complaints about his help
2 or representation?

3 THE DEFENDANT: No.

4 THE COURT: Mr. Fox, you represent the
5 interest of your client Ms. Toney in this matter.

6 MR. FOX: I do, Your Honor.

7 THE COURT: She comes before the court
8 tendering her plea of guilty to the offense named,
9 do you concur?

10 MR. FOX: I do.

11 THE COURT: Do you believe she's come
12 before the court of her own free will and accord?

13 MR. FOX: Yes, sir.

14 THE COURT: And have you explained to her,
15 her constitutional rights and any defenses she might
16 have, as well as the information, the evidence in
17 the possession of the State?

18 MR. FOX: I have, Your Honor.

19 THE COURT: Thank you very much.
20 Solicitor, the factual presentation, please.

21 MR. HIXSON: Thank you, Your Honor. The
22 events surrounding this occurred beginning on
23 November 3, 2015, here in Horry County, Your Honor.
24 A call came in. Several calls to 911; specifically,
25 from a lady's house at [REDACTED]. Sarah

1 Toney had come up. There's a small creek that runs
2 behind her house. If Your Honor recalls during that
3 period of time, we had substantial rains here in
4 South Carolina. All the little estuaries and
5 waterways were extraordinarily flooded around here.
6 There was some record flooding going on at that
7 period of time. It was on the way down.

8 But ultimately, Ms. Toney, the 911 call
9 came in and said, there is a lady running around in
10 my back yard, soaking wet on my deck, talking the
11 gibberish. The officers respond to that, and ask
12 what's going on. And she indicated that she at that
13 time had her baby in her arms and had taken it into
14 the creek behind the house. In that area. And all
15 that recording has been captured on body camera
16 footage from Officer John Gregory. During that
17 time, she acknowledges trying to put her baby in the
18 water. The baby wouldn't stop crying. A lot of
19 random comments. She is taken back to the scene,
20 and then a substantial search ensued. And it ensues
21 from this Horry County Law Enforcement, DNR. I
22 think three or four, every agency that could assist,
23 was down there with divers to see if they could
24 find. What's going on with a 6-month old child,
25 [Minor] . [Minor] . It's [Minor] . It's

1 Carleson Cruz. The name is baby **Minor**.

2 Ms. Toney was taken to the hospital for a
3 welfare check, because she had been in the water and
4 was given dry clothes. After that, she gave
5 statements to law enforcement at ML Brown building.
6 During the course of those interviews, she continued
7 to reiterate her statements of having taken the
8 child into the water. And during the course of that
9 interview, she became combative and accused law
10 enforcement for holding her for no reason.

11 Some of the narrative that's contained in
12 Court's Exhibit 1, when they continued to ask where
13 is your child, we're trying to find her. She
14 continued to say, you go find her. Go find her.
15 What are you do sitting around. Why don't you go
16 out and go find her with an angry tone. Continues
17 to use explicates towards law enforcement.
18 Ultimately she invokes her right to remain silent
19 and is transported. By that time, they got the
20 search warrant for her blood to get an idea of what
21 her toxicology results, because it was apparent to
22 law enforcement on the scene that she wasn't
23 behaving appropriately at that time, whether it was
24 from substance abuse or anything else.

25 As law enforcement continued to canvas the

1 area to see whether or not the child was anyplace
2 else, they interviewed several neighbors, which said
3 that they saw Ms. Toney in front of the house at
4 7 to 8 o'clock in the morning that morning, holding
5 her child, Your Honor. That morning was very cold
6 that morning. And the witnesses remember seeing the
7 child in her arms, because they could see bare skin
8 in the driveway. Her house at that time, backed up
9 against the same creek just upstream from the
10 ultimate location where Ms. Toney came out of the
11 water.

12 Those witnesses all said they saw her
13 clearly. They didn't understand why Ms. Toney was
14 out in the driveway with the child, when you can see
15 the child wasn't properly clothed. It was drizzling
16 rain. And as a result of that, they were able to
17 continue to narrow down the fact of what she was
18 talking about, about taking this child in the water
19 was true. The child was in her possession just
20 minutes before the child became missing, and she was
21 found downstream.

22 As the statements continue to develop,
23 Your Honor, another day goes by. And based on her
24 acknowledgment that she put the child in the water,
25 but the child has not been recovered yet. She was

1 charged with unlawful abuse or neglect of a child.
2 No death resulted at that time based on her
3 admissions on in car cameras that I killed my child,
4 as some things like that, that were rather
5 inconsistent, that are contained in the material
6 that the court has.

7 On November 4th, the search continued
8 through the nighttime hours. And on the early
9 morning hours, I guess on November 5th, Lieutenant
10 Bonner, among others from the Horry County Police
11 Department, as well as DNR dive teams, finally found
12 the child, the body of baby **Minor** in the water. She
13 was wearing a pink onesie and a diaper at the time.

14 Your Honor, I've already shown this to
15 counsel. The photograph one is the child prior to
16 anything happening to her. I know that counsel
17 would want to take to look at that. The child, the
18 second is actually a thumbnail sheet of multiple
19 photographs and the condition of the child and the
20 condition of the creek in which the young victim was
21 recovered. They're intentionally kept small,
22 because they are rather graphic. And the ultimately
23 the third photograph is the condition of Ms. Toney
24 for Your Honor to get an idea of what Ms. Toney's
25 shape was that morning..

1 THE COURT: Could you have those marked by
2 court reporter as a State's Exhibits, please. Mark
3 each one of them separately.

4 MR. HIXSON: And, Your Honor, we would
5 actually move, if you do mark these in evidence, we
6 would move to have the thumbnails, if we can keep
7 those under seal. It wasn't my attention to have
8 that.

9 THE COURT: I understand that. Is there
10 any objection to that, Mr. Fox?

11 MR. FOX: No, Your Honor. We would join
12 in that request.

13 (Photographs marked State's 1, 2 and 3
14 into evidence.)

15 MR. HIXSON: Your Honor, I'm handing the
16 court, State's 1, 2 and 3.

17 THE COURT: Thank you. The court accepts
18 into evidence, State's Exhibit 1, 2, and 3. The
19 court cedes to the State's request without objection
20 from the defense, to place State's Exhibit 2 under
21 seal by the Clerk of Court's Office. So, Madam
22 Clerk, if you will place this exhibit under seal
23 when I end the proceedings, please. Thank you,
24 ma'am.

25 MR. HIXSON: Thank you, Your Honor. Upon

1 recovery of **Minor**, of course, there was concern
2 about making sure the child was viable prior to
3 entering the water. She was sent to forensic
4 pathology at the Medical University of South
5 Carolina who have a little more of a specialty
6 infant or child related fatalities. They generate a
7 report that was issued. Let's see, indicating the
8 the appropriate amount, that there was water in her
9 stomach, great granular fluid, as well as water in
10 her lungs. Their findings are clear, that she was
11 viable and alive prior to her dying from the
12 asphyxiated water, and being killed in the water. The
13 decedent died as a result of a drowning. I just
14 wanted to make sure that there was no confusion as a
15 result of the death. It was drowning at the hands
16 of another. It was not due to any other fatality
17 prior to entering the water.

18 THE COURT: You have received a copy of
19 that report in discovery, Mr. Fox?

20 MR. FOX: I have, Your Honor.

21 THE COURT: And do you have any objection
22 to it as far as those findings?

23 MR. FOX: No, sir.

24 THE COURT: Very good.

25 MR. HIXSON: Your Honor, as we fast

1 forward somewhat through that period of time,
2 Ms. Toney was then, her charge was upgraded from
3 unlawful conduct towards a child not resulting in
4 death. And she was charged with homicide by child
5 abuse. It became apparent early on in the process
6 and through the investigation of process, that there
7 was a potential for some mental health concerns
8 surrounding this.

9 I believe counsel as we well the State,
10 entered into a consent order to have Ms. Toney
11 evaluated. That happened. And then that pretty
12 much puts us up to where the court is now. You have
13 heard the results of that evaluation. We were put
14 on notice of an intent to seek an insanity defense
15 if this case went to trial. Ultimately we are
16 before the court, she is entering a guilty plea and
17 accepting responsibility for. Your Honor, the rest
18 that we have would be relating to the sentencing.
19 But that's a factual recitation. And we want to be
20 heard at the sentence when we get to that part.

21 THE COURT: Very good. Mr. Fox, first,
22 it's indicated by the State that you formerly filed
23 with the State a notice of insanity defense, or did
24 you just have discussions with the State about that?

25 MR. FOX: I formerly filed that pursuant

1 to statute, Your Honor, in the late summer, early
2 fall. As much as anything, as a precaution, in
3 case I did need to have that stance if this went to
4 trial.

5 THE COURT: All right, sir.

6 MR. FOX: And I'll explain more in
7 mitigation some of the steps that we took, and
8 expiration we had along those lines. But I did
9 formerly file that notice, Your Honor.

10 THE COURT: So with that, having formerly
11 filed that motion and not in any way to keep you
12 from using it in mitigation regarding the sentence,
13 do you -- have you talked about your -- talked about
14 that with your client as a formal withdrawal of
15 that, and that is not an issue before this court.

16 MR. FOX: I have, Your Honor.

17 THE COURT: Ms. Toney.

18 THE DEFENDANT: Yes.

19 THE COURT: You understand your attorney
20 had filed that notice of insanity defense on your
21 behalf, correct.

22 THE DEFENDANT: Yes.

23 THE COURT: And you have discussed with
24 him the fact that that is being withdrawn by the
25 defense, by you, in this particular guilty plea.

1 Is---

2 THE DEFENDANT: Yes.

3 THE COURT: ---that correct?

4 THE DEFENDANT: Yes.

5 THE COURT: And that is your choice, is
6 that correct?

7 THE DEFENDANT: Yes.

8 THE COURT: Now as to the factual
9 rendition of the case given by the solicitor, there
10 is also a brief summary of that set forth in the
11 indictment, albeit a very brief discussion of the
12 factual basis. My question to you is, are those
13 facts true and correct?

14 THE DEFENDANT: Yes.

15 THE COURT: And you understand when you
16 engaged in that kind of activity, you were
17 committing a crime. You understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Have you understood my
20 questions here today?

21 THE DEFENDANT: Yes.

22 THE COURT: Have all your answers to me
23 been the truth.

24 THE DEFENDANT: Yes.

25 THE COURT: Anybody tell you how to answer

1 my questions?

2 THE DEFENDANT: No.

3 THE COURT: And you understand you have
4 the right to appeal your guilty plea within 10 days.

5 THE DEFENDANT: Yes.

6 THE COURT: I just noticed there was
7 apparently on the face part of the indictment, a
8 typographical error regarding the -- it's not in the
9 body of the indictment, it has nothing to do with
10 the body of the indictment, but on the face page,
11 homicide is misspelled. Is there any objection to
12 the court correcting that misspelling on the face of
13 the indictment from the State?

14 MR. HIXSON: Absolutely not, Your Honor.

15 THE COURT: From the defense?

16 MR. FOX: No, Your Honor.

17 THE COURT: Very good, so corrected. I
18 find there has been a substantial factual basis for
19 the plea. I find the defendant's decision to plea
20 guilty has been done freely, voluntarily, knowingly
21 and intelligently made. She's had the advice of
22 competent counsel with whom she's satisfied.
23 Therefore Ms. Toney's decision to plead guilty to
24 the crime of homicide by child abuse is accepted.
25 Solicitor, you indicated you want to make

1 a presentation or say things further regarding a
2 potential sentence in this matter.

3 MR. HINSON: Yes, Your Honor. Just
4 basically, Your Honor, contacts of those were kind
5 of vague through the mental health concerns. But
6 it's apparent this is a voluntary intoxication based
7 on excessive methamphetamine and drug abuse. And
8 there is no better example that I can imagine of the
9 real life consequences of excessive drug use. It's
10 not a victimless crime. It results in death of
11 family members, and a death of a six-month-old
12 innocent human being in this case for absolutely no
13 reason.

14 There was an effort to look at an
15 attempted suicide attempt. Anything else that could
16 help explain this, other than the fact that looking
17 to law enforcement when a six-month old is gone and
18 tell them basically, to go to hell. You go find her
19 yourself, based on rampant methamphetamine use. We
20 do understand now based on this case law, there is a
21 mandatory minimum. You can get life in prison for
22 doing things like this. Obviously the sentence
23 falls to Your Honor's discretion, but we not believe
24 that she deserves the mandatory minimum in this
25 matter. She certainly deserves credit. And she

1 should deserve credit for facing her
2 responsibilities and standing before the court and
3 pleading guilty, admitting her guilt, and that's a
4 powerful thing. But this is a lifelong history of
5 drug abuse resulting in the murder of a child. Or
6 the abuse of a child resulting in death.

7 THE COURT: Thank you very much. Mr. Fox,
8 I will be glad to hear from you.

9 MR. FOX: Thank you, Your Honor. I've
10 thought long and hard the best way to present the
11 mitigation that I believe is substantial, and do so
12 in an orderly fashion and not just ramble on. But I
13 will tell Your Honor at the outset, that there's a
14 great deal that I want to cover and forgive me.

15 THE COURT: I understand that. And
16 that's your responsibility and you go proceed, sir.

17 MR. FOX: First of all, I do appreciate
18 the solicitor basically giving us some room to
19 breath on this, as we explored defenses. Your
20 Honor, I'll touch on first, we did because of
21 Sarah's demonstrable history of mental illness, and
22 I am going to go into that in a little more detail.
23 But because of that and because we had not just
24 Sarah who is good historian, but her mother who is a
25 very good historian, and able to get us more records

1 on a client than I think I have ever had, going to
2 back to her. She is now 34. This happened when she
3 was 32. And these records go back to her teenage
4 years. I never had that kind of documentation. And
5 so we did of course explore farther.

6 Judge, after the evaluation done by the
7 Dr. Gottfried, and I have 0 questions about those
8 conclusions. That's as a thorough report as I've
9 ever read. It doesn't just say, here are the
10 conclusions. It lays out all of the things that she
11 considered and all the reasons why she reached those
12 conclusions. But one thing that she did not focus
13 on, and frankly it's something that I wouldn't have
14 even suggested that she do, was the whole issue of
15 the spectrum of illnesses called postpartum
16 depression or postpartum issues.

17 I'm sure, Your Honor, most familiar that a
18 great number of women perfectly healthy, mentally
19 healthy, never had a history of any problems, suffer
20 from what we commonly call the baby blues. And that
21 may be a very mild thing, being again depressed,
22 sad, and not being able to explain after the birth
23 of a child, which is for most people, one of the
24 very happiest moments but having unexplained bouts
25 of crying or depression or just sadness. And

1 usually they're very mild. And not all women have
2 them, but a significant number of women will. It
3 can go to a much more serious situation where it is
4 outright depression with all of the same kind of
5 symptoms of the person having depression in general
6 would have. And it can in very extreme cases, go
7 all the way to psychosis. And I've got to circle
8 back to this, Your Honor. But my point right now
9 is, I was unaware other than very generally that
10 that might be an issue in this case.

11 In June of this year, someone contacted
12 Ms. West, my boss, from a national outfit, the
13 center for postpartum issues. And they said
14 somewhere they had heard about this case and others,
15 and said, here is some information you need to know.
16 And here are some things you need to look at, and
17 here are people you should talk to. And so I began
18 to do that. I talked to doctors at the University
19 of North Carolina I went up to Chapel Hill and met
20 with them. I had talked to psychiatrists at the
21 University of Columbia, Margaret Spinelli, who is
22 acknowledged to be the expert in this field.

23 I talked to a Phillip Resnick, who is a
24 professor at Case Western. He although not
25 specifically in postpartum issues, deals very much

1 with hallucinations and delusional thinking whether
2 it's the result of drug use or mental illness. I
3 spoke with attorneys who had represented women
4 accused of in these situations, women who had killed
5 their children. And the further I went along, the
6 more I began to believe that there really might be,
7 this really might be a case of psychosis.

8 Judge, and that is a small percentage of
9 women. But as one doctor told me, a friction of a
10 percent. But if take the total number of births in
11 any given year in this country, the number of women
12 that have verifiable diagnoseable postpartum
13 psychosis, is about the same number of children that
14 are diagnosed with Down's Syndrome every year.
15 Down's Syndrome is rare, but it's not unheard of.
16 It's something that probably all of us in this
17 courtroom know someone who has a child or a
18 friend -- you know, a child or friend, someone that
19 has a child with Down's Syndrome. So again, it is
20 a rare thing, but it is not uncommon. The numbers
21 are fairly large.

22 Now the problem is, the drug use. With
23 any diagnoses, physical health, mental health,
24 you've got to be able to check all the boxes. And
25 if can't check all the boxes, then you can't make

1 that diagnosis. So as a circumstantial issue,
2 Judge, I feel and the people that I consulted with,
3 feel very strongly that there was -- it all pointed
4 in one direction. The problem was making that last
5 step, because her own admitted and verifiable drug
6 use, whether she was still under the influence at
7 the time. It was certainly her system. So cloudy.
8 It muddies the water. It's impossible to sort that
9 out. It's impossible for any doctor to say, this
10 would have been psychosis. And that of course was
11 the voluntary drug use on her part.

12 So that's where we went down that path,
13 Your Honor. That actually came after we requested
14 the evaluation at MUSC. And that was the reason for
15 filing that notice, because we felt the further we
16 went along, that there really was. And the thing
17 about the psychosis is, Your Honor, the postpartum
18 psychosis, you can again have absolutely no history
19 in your background of any mental illness. You could
20 have 10 children before and not had any problem. It
21 can be several months up to even a year or more down
22 the road after the birth of a child before it
23 manifests itself. The onset can be very, very
24 quick. There's not always a warning. But again,
25 sorting out whether this was, and how much was due

1 to the drug use is just impossible.

2 So in the end, we could not use that
3 because we would not have had anyone to testify that
4 this was in fact psychosis rather than drug use or
5 anything else. But the very strong suspicious is,
6 that may have been. My own suspicion is perhaps
7 although Sarah has a long history of drug use and
8 self medicating, in the weeks and months prior, she
9 had actually reduced that a a great deal; had not
10 used Meth. in a while. And part of me suspects that
11 postpartum issues may have triggered her use of
12 methamphetamine. But it's impossible to sort that
13 out and to know that. That is a suspicion on my
14 part, but I cannot base that on that any kind of
15 diagnosis.

16 Your Honor, I'd like to fill in a few of
17 the gaps. The report does a very good job. The
18 evaluation of Dr. Gottfried does a very good job
19 relating Sarah's history. One thing Dr. Gottfried
20 did not have at the time of the evaluation, because
21 we didn't have them yet was, and that's what most of
22 this stack is, are her records from Catholic
23 Community Services in Bellum, Washington. And
24 that's where she -- Bellingham, Washington, which is
25 where she grew up.

1 She was diagnosed as an early teenager,
2 she was having, there were suicidal thoughts,
3 suicidal attempts. And so they sought help, and she
4 was diagnosed, it gets to be frustrating, Judge.
5 Sometimes they say opposition, borderline
6 personality. Sometimes you will see another doctor
7 will step in and say it's bipolar. And that is a
8 diagnosis. And then the next doctor will come
9 along, because she was in and out treatment. She'd
10 be there for awhile. And then she would feel better
11 and stop, and then she would go back through her
12 teenage years.

13 So then another doctor would come along a
14 year or two later and he might say, well, this
15 doctor said it's borderline personality, so I'm
16 going with that. But then another doctor comes
17 along, well I think it's bipolar. There is a
18 diagnosis of bipolar, but I will admit it's a real
19 jumble when you go through all this. But no
20 question, mental illness. And I understand why
21 Dr. Gottfried couldn't make that from her own
22 observations, as well as the records she had before
23 her. And I believe there is strong, in the medical
24 records, strong evidence that Sarah suffered from
25 bipolar disorder as well.

1 Judge, you've read the history verified by
2 Sarah's mother, Ms. Fowler. Sexually abused at a
3 very young age by someone known to her, at the age
4 of 6. Sexually abused again as a young teenager
5 again by someone known to her. A family history of
6 suicide, her grandfather and her uncle. I suspect
7 that that's the case of family history of mental
8 illness. Although not verified. Her mother and
9 father both constantly struggling with alcohol and
10 substance abuse. Her father, most of her, Sarah's
11 life, in prison. Her mother mostly an alcoholic
12 during Sarah's growing up years.

13 These things were dumped on her before
14 she was even a partially formed human being, let
15 alone an adult. She has dealt with this literally
16 her entire life. No surprise that she began to self
17 medicate once she was old enough to appreciate that
18 was something she could do. As a young teenager,
19 abusing prescription medication, abusing alcohol,
20 marijuana, opiates. I mean it's all in there and
21 all related by Sarah. To make a distinction both
22 with regard to that and on the day she went into the
23 creek with her baby, between someone who just said,
24 I like to get high and it's fun, and someone who
25 self medicates because of a verifiable and

1 documented mental illness.

2 The same way, Judge, I think we see quite
3 frequently in this court where people that start out
4 with a legitimate need for painkillers, a bad injury
5 in a car wreck and so forth start out, and are
6 unable to stop. And then we seek out through
7 illegal means ways to deal with that addiction. I
8 think this was close to that than someone who just
9 said, the hell with everybody, I like to be high,
10 I'm going to have fun whatever the hell the
11 consequences are. I don't think that's the
12 situation here.

13 Judge, in terms of the incident itself,
14 when you read through the incident report, there are
15 a fairly large number of people in the neighborhood,
16 in Sarah's own home, who encountered her both on
17 this day and a few days before. She was definitely
18 acting erratically. I have no doubt some of that
19 was from the Meth. use. But her daughter who was
20 only 9-years old at the time, but her daughter they
21 did an interview with her. Of course they took her
22 out of the home. It seemed to be something
23 different. Her daughter unfortunately had grown up
24 watching her mother use illegal substances from time
25 to time. This behavior seemed to be different. Her

1 roommate related somewhat the same. But certainly
2 consistent, her incoherence, her lack of logical
3 thinking. The kind of strange and bizarre behavior
4 is certainly very consistent with Meth. use, and
5 that she admitted she used, and we know that she did
6 because that was in her toxicology screen.

7 She was taken to the hospital by law
8 enforcement. In part, and you can again, you can
9 see it in the officers. But many, many obviously
10 many officers responded, because there's a missing
11 baby, as far as they knew at the time. And Sarah's
12 behavior was so strange and bizarre, that they felt
13 she needed to be taken to the hospital. Not just to
14 see if she was under the influence, but because it
15 was erratic. I disagree, and this is probably the
16 only area that I disagree with Mr. Hixson in terms
17 of interpreting her contact with law enforcement.
18 Her initial contact with law enforcement was there
19 in her neighborhood. Her initial statements to law
20 enforcement was, I took the baby into the creek.

21 There were conflicting statements about
22 the reason why. But some of that as you see in the
23 report, was statements about wanting to find God.
24 Statements that the baby was directing her
25 movements. And this is a 5-month old baby, a

1 preverbal child. But that the child was verbally
2 giving directions. That may well have been. And I
3 don't doubt methamphetamine use was at play. But
4 she initially was telling law enforcement, me, I
5 took the child. Now at that point, she might have
6 been in the denial, but she did not know that **Minor**
7 was dead.

8 Now later when she gets to the police
9 station, this is several hours later. I don't
10 disagree with Mr. Hixson's description. She is at
11 times combative with law enforcement. I saw it a
12 little bit differently. She says, you need to go
13 find her. I saw it more as an exhortation rather
14 than a belligerent middle finger. I saw it as, you
15 need to go do it. But she's all over the place.
16 Within a matter of seconds, she's up, she's down,
17 she's weeping. She's confrontational. She's
18 getting up and asking if she can leave. And it's
19 all, not a person in their right mind. And I don't
20 mean that in a sense of McNaughton criminal
21 responsibility thing, but clearly is not a person
22 thinking straight.

23 We have a very remarkable video of her
24 being transported in the patrol car to the hospital.
25 About 20 minutes to the police station to Conway and

1 then out to the hospital. And then you have one of
2 the patrol cars where you can focus the camera in
3 back, to see what the person in the back seat doing.
4 The same thing. This is -- and again, Your Honor,
5 you see the recitation in the report. She veers
6 between, I don't know why I'm here. When I am I
7 going to go home. To, oh, my, God, I'm horrible.
8 I'm evil, I killed my baby. You know, and it's in
9 the snap of a finger. It's not a person who is
10 thinking in a straight line at all, is not
11 coherent. And I believe it's something more than
12 the drug use.

13 Sarah is adamant that she had not done
14 anything in the 2 or 3 days prior. It's still in
15 her system for sure, but she's adamant that she did
16 feel under the influence at that part. But again,
17 how you sort all that out, I just to me is an
18 impossibility.

19 Judge, Sarah Tony is absolutely devastated
20 by this. This was her child. If you talk to her
21 roommate, Ms. Jennifer Bruner, Sarah despite all of
22 her troubles, all of her history, in the months
23 after Ms. Minor's birth, they found Ms. Bruner.
24 Ms. Bruner allowed her to move in, Sarah and her
25 daughter from the same father as Minor, and moved

1 in. She had a support system. She was getting,
2 this is one of those times in her life when she was
3 getting mental health appointments and things like
4 that. She was doing pretty well. It's always been
5 a very, very rocky road for Sarah. And she was
6 doing pretty well. And by all accounts the child,
7 **Minor**, was healthy and thriving. She is absolutely
8 devastated. Whatever Your Honor does, the knowledge
9 that she has that she is responsible for the death
10 of her infant child, will never go away. However
11 many more days she has on this earth, that is
12 something that will never leave her. Sometimes I go
13 to talk to Sarah and we can't communicate because
14 she's overwhelmed with that. That's not any kind of
15 excuse. She offers no excuse. I do not think this
16 lady is a monster. I don't think this is a
17 situation like Susan Smith, who because they were
18 inconvenient, put her children in the back of a car
19 and rolled it into a lake, because they were in the
20 way of a boy she wanted to be with. It's not like
21 that. Whether it was mental illness, drug use or
22 both as I believe, she went into that water, and
23 again, you know, you have to picture this creek
24 which you could probably step across at normal time.
25 At time was 30, 40 feet wide, and moving very, very

1 fast. It was very deep. Almost as soon as she
2 went in the water, she was pulled along and lost
3 hold of **Minor**. She made an effort to drive once or
4 twice. She just told me at point, she wished she
5 had stayed under. But at the point that she went in
6 the water, fully and legally responsible for what
7 she was doing, she had no intent to harm that child.
8 It's impossible to compare this kind of case with
9 any other. But the closest I could come to, was
10 like a felony DUI where someone makes a conscious
11 decision to do an illegal act, to drink and drive an
12 automobile, and you see these single car collisions
13 where the person that dies is a loved one, a friend.
14 And the attitude quite often in the prosecution of
15 those cases is, it's bad, there has to be
16 punishment, the person is criminally responsible,
17 but there was no intent to harm anybody. It's
18 different than someone who burglarizes a home or
19 commits a murder, or sells drugs, where the intent
20 is to break the law.

21 At the time she went into the water, she
22 had no intent to harm her child. It doesn't make
23 any difference in terms of responsibility, but I
24 just think it's a different animal than other
25 crimes.

1 Judge, I am asking you for all these
2 reasons, to give her a minimum sentence. Twenty
3 years is a very long time. When you throw numbers
4 in this courthouse, decades worth defendant's lives
5 as if it was spare change sometimes. It is a very
6 long time. She will be in her 50's. She will be
7 54 if Your Honor does impose that sentence. She has
8 two children. Her daughter is in Washington with
9 the father. Her daughter will be adult. That
10 relationship will more than likely end. And she
11 also has a teenage son from a previous relationship.
12 Again, that's over. Her mother is elderly. Her
13 mother almost certainly will be gone. The people
14 that she knows and loves now in her world, will be
15 gone or moved well beyond. She will be past her
16 childbearing years at point.

17 She has a small criminal history of things
18 you would expect, drug use, a simple domestic
19 violence. I think it went both ways. But she has
20 the kind of things, I think a shoplifting. Judge,
21 but the kind of things you would expect from someone
22 with a history of mental illness and drug abuse. No
23 history of anything like this. There's no reason to
24 think that this would ever be an issue in the
25 future; that she's a danger to anybody after a

1 sentence like that. And for all those reasons,
2 Judge, I would ask you to impose what is a very
3 substantial sentence of 20 years.

4 THE COURT: Thank you, sir. Solicitor,
5 any response?

6 MR. HIXSON: Two quick points, Your Honor.
7 As relates to Ms. Toney's history, she did live in
8 Washington State, at Bellingham, Washington back in
9 2004. In 2003, she had a DUI and a DUS. In 2004,
10 was the first drug offense. She had a felony drug
11 possession without a prescription. And then she
12 comes to South Carolina. It looks like in 2009, she
13 has a CDV first offense conviction. In 2010, she
14 has a CDVHAN that's ultimately reduced and pled
15 guilty to CDV second offense. And there's a bunch
16 of misdemeanor arrests during that period of time,
17 but no disposition. For the 2012, she gets a DUS.
18 And then again she gets a DUS second, driving
19 without a license. And we believe that's DUI
20 related. In 2014, she has a false information to
21 police, possession of marijuana, then a shoplifting,
22 a third or subsequent enhancement offense. March of
23 2015, she has possession of crack cocaine, and
24 another shoplifting third or subsequent enhancement
25 offense. Ultimately she is on probation for that at

1 the time that this offense occurs. And she was
2 under arrest for that.

3 And I just have one quick comment relating
4 to the facts. And I would completely concur with my
5 colleague as it relates to the difficulty
6 understanding what's in Ms. Toney's mind given her
7 broad variety of statements and recanting and
8 cooperating, to being vociferously angry at law
9 enforcement for trying to find the child, to this.
10 We do have two anecdotal points that I wanted the
11 court to be aware. Two neighbors claimed that
12 Ms. Toney was complaining that the baby would not
13 stop crying that morning. She would not shut up.
14 Would not stop crying. Those are only aggravators
15 that we have been able find in deference to the
16 court, that indicated a criminal intent, by not just
17 mere abuse, but to shut that child up.

18 We would offer that to the court for what
19 it is. That's an independent witness said that.
20 And it is also relating in the mental health
21 evaluation. It's recounted in what's before the
22 court, Your Honor. Thank you for being heard.

23 THE COURT: Thank you.

24 MR.FOX: And, Your Honor, just for---

25 THE COURT: Yes, sir, Mr. Fox.

1 MR. FOX: Just to tie things up.

2 THE COURT: Yes, sir.

3 MR. FOX: She is currently still on
4 probation. I spoke to Mr. Anderson. Obviously this
5 plea and this conviction would be a violation. We
6 don't contest that. I spoke to Mr. Anderson. We
7 would ask Your Honor simply to revoke and just
8 terminate that probation. Because obviously
9 whatever Your Honor does, it will be a substantial
10 sentence way beyond what she is facing on the
11 probation evaluation.

12 THE COURT: Do you have the offense for
13 which she is currently on probation, Agent?

14 PROBATION AGENT: She is currently on for
15 shoplifting third or more, and possession of
16 cocaine.

17 THE COURT: Very good. First, as to the
18 probationary matters, based upon the severity of the
19 matter before the court, what I am going to do on
20 those probationary matters, is terminate those
21 matters and close them based on the severity of this
22 particular matter. And the minimum sentence here
23 being 20 years, which is far exceeds the sentences
24 imposed in those cases that she's on probation for.

25 PROBATION AGENT: Thank you, Your Honor.

1 THE COURT: Mr. Fox, your client has been
2 in jail since the offense date, as indicated in the
3 indictment November 3rd 2015. Do you know how long
4 she has been in jail?

5 MR. FOX: Since that day, Your Honor. I
6 honestly did not calculate that. But it is since
7 that date, Your Honor.

8 THE COURT: But that would be the -- do
9 you agree with that, Solicitor, that that would have
10 the date she had been incarcerated.

11 MR. HIXSON: November 4th.

12 THE COURT: November 4th.

13 MR. HIXSON: She was taken into custody
14 November 4th.

15 MR. FOX: Her bracelet from J. Rubin does
16 say November 3rd.

17 THE COURT: Very good.

18 MR. HIXSON: November 3rd. We'll give her
19 a day.

20 THE COURT: Very good. On
21 2015-GS-26-5651, State of South Carolina, County of
22 Horry, versus Sarah Lane Toney, regarding homicide
23 by child abuse. In this particular matter, the
24 court has had the benefit of the testimony of
25 Dr. Gottfried. I have further read through the

1 extremely thorough report produced in this matter as
2 indicated by the State and Mr. Fox. This 35-page
3 report, which details in much detail, the history of
4 Ms. Toney from an early age through her present
5 stage, setting forth all of the issues that she has
6 experienced throughout her life, and what she has
7 done frankly to her life, in this particular matter.

8 I have received from the defense their
9 information and the explanations of the psychosis of
10 Ms. Toney. Obviously has indicated by both parties,
11 there is intermixed with that, voluntary
12 intoxication over a long, long period of time by
13 Ms. Toney in various forms and substances, and at
14 the time of this particular crime. There this is no
15 question that she had an appreciation and
16 understanding of right from wrong. She had the
17 capacity to conform her conduct to the requirements
18 of the law. These mental diseases or defects or
19 issues that Ms. Toney has, the court has taken those
20 into consideration, but it is clear and as she has
21 pled guilty, she has accepted responsibility for the
22 crime that she committed in this matter; that by her
23 actions, she ended the life of the five-month child
24 **Minor**. Based upon that, in consideration of all
25 those issues, the sentence of this court is, the

1 defendant is committed to the State Department of
2 Corrections for a determinate term of 27 years.

3 The defendant is given credit for the time
4 she has served since November 3rd, 2015. She is
5 permanently placed on the central registry of child
6 abuse and neglect. Thank you very much.

7 MR. HIXSON: Thank you, Your Honor.

8 THE COURT: These proceedings are at an
9 end.

10 --End of Requested Transcript of Record--

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C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter,
for the Third Judicial Circuit of the State of South
Carolina, do hereby Certify that the foregoing is a
true, accurate and complete Transcript of Record of
the proceedings had and evidence introduced in
General Sessions Court on January 11, 2017, In Horry
County, Conway, South Carolina.

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

5/26/17

Margaret T. Sullivan

DATE

COURT REPORTER

My Commission expires: 9/7/21

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Sarah L. Toney 371030
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

20 17 SEP 26 3017

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
Horry County
2017 MAY 19 PM 2:48
CLERK OF COURT
SOUTH CAROLINA

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 Camile Griffin Gram
2. Name and location of Court which imposed sentence Horry County
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 ?
 (a) _____
 (b) _____
 (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) January 11th 2017 27 yrs
 (h) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) ☒ after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
no
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Trial counsel didn't consult with me
regarding an appeal from guilty plea
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective assistance of Counsel
 (b) Involuntary plea of guilty
 (c) Direct appeal not filed
 (d) rule 5 motion to discovery never viewed
11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Failing to prepare and present a defence on my behalf *See attached sheet*
 (b) Involuntary Guilty plea was unlawfully induced
 (c) Attorney failed to file direct appeal and I was prejudiced
 (d) see attached sheet
12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

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

- (a) the specific nature thereof:

- i. N/A
 ii. _____
 iii. _____
 iv. _____

- (b) the name and location of the Court in which each was filed:

- i. N/A
 ii. _____
 iii. _____
 iv. _____

- (c) the disposition thereof:

- i. N/A
 ii. _____
 iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) counsel did not file an appeal
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? no
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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. Eric Fox Conway public defenders
 - ii. office Conway SC 29526
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Sentencing Horry County General
 - ~~ii~~ sessions.
 - ~~iii~~ _____

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

New trial, Vacate sentence, sentence reduction

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

no

STATE OF SOUTH CAROLINA)

VERIFICATION)

County of Horry)

2017 MAY 26 3017

I, Sarah Toney, 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.

Sarah Toney

SWORN to and subscribed before me this 11th
day of May, 2017.

Crystal Jones
Notary Public

(L.S.)

My Commission Expires: July 22nd, 2026

FILED
Horry County
2017 MAY 15 PM 2:48
CLERK OF COURT
Horry County, SC

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

20 17 CP26 3017

I, Sarah Toney, 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.

Sarah Toney
Applicant

SWORN or affirmed to and subscribed before me this

11th day of May, 2017.

Cristal [Signature]
Notary Public

My Commission Expires: July 22nd, 2016

FILED
Horry County
2017 MAY 15 PM 2:48
CLERK OF COURT
HORRY COUNTY, SC

PCR Application
Toney, Continued

20 17 CP26 3017

#11

- A Failure to call expert witnesses concerning Mental Health; to include Post Pardum Depression. Failure to object to the sentence. Failed to object to solicitor's comments.
- B And not made voluntary or with a complete understanding of the nature of the charges and the inadequacies of the plea potential. I did not understand the nature of the constitutional rights being waved.
- C In all cases counsel has a duty to make certain the client is fully aware of the right to appeal.
- D I was prejudiced by not having knowledge of my motion of discovery before or after plea. This is a Brady violation.

FILED
JURY COUNTY
2017 MAY 15 PM 2:48
CLERK OF COURT
JURY COUNTY, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
Sarah L. Toney,	)	Case No.: 2017-CP-26-03017
S.C.D.C. No. 371030,	)	
	)	
Applicant,	)	
	)	RETURN, PARTIAL MOTION TO DISMISS,
v.	)	AND MOTION FOR MORE DEFINITE
	)	STATEMENT
State of South Carolina,	)	
	)	
Respondent.	)	

In response to the application for post-conviction relief filed by Sarah L. Toney (Applicant) on May 15, 2017, Respondent would show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the December 2015 term of the Horry County Grand Jury for homicide by child abuse (2015-GS-26-05651). J. Eric Fox, Esquire represented Applicant, and Scott R. Hixson, of the Fifteenth Circuit Solicitor's Office, prosecuted the case.

Underlying Crime

On November 3, 2015, law enforcement in Horry County dispatched to a private residence upon call that "a lady" was "running around" in the back yard, soaking wet, talking gibberish. Tr. 29, ll. 8-11. There, law enforcement met with said individual, Applicant, who indicated she had taken her crying baby into the flooded creek behind her house and placed the six-month-old child in the water. Tr. 29, ll. 12-18. Applicant became hostile towards law enforcement, invoked her right to remain silent, and was transported. Tr. 30, ll. 11-19. After a

desperate search, the Horry County Police Department and S.C. Department of Natural Resources dive teams found the child downstream, deceased, on November 5, 2015. Tr. 32, ll. 7-13. Forensic analysis affirmed that the child was alive prior to her drowning. Tr. 33, l. 25 – p. 34, l. 17.

Blair Hearing and Guilty Plea Proceeding

On January 11, 2017, Applicant appeared before the Honorable Steven H. John for the purpose of pleading guilty to the above indictment. The proceeding began with a competency hearing pursuant to State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981), at which time the Court heard expert testimony from Dr. Emily Gottfried, a forensic psychologist on faculty with the Medical University of South Carolina.¹ Dr. Gottfried testified that Applicant was both competent to stand trial and, at the time of her actions on November 3, 2015, was criminally responsible and had the capacity to conform her behavior with the law. Tr. 10, l. 14 – p. 11, l. 9. Dr. Gottfried also testified that Applicant was, at the time of the homicide, under the influence of methamphetamine, amphetamines, and opioids, and that she suffered from multiple, severe drug abuse disorders. Tr. 13, l. 17 – p. 15, l. 3. Applicant's history of psychiatric hospitalizations indicated no psychotic symptoms, and that any such symptoms she may have been suffering "were likely substance induced." Tr. 15, l. 4 – p. 16, l. 6. Dr. Gottfried concluded that Applicant's deficient cooperation with efforts to locate her child "did not appear to be consistent with psychosis[.]" but appeared to be "more related to personality pathology and possibly to substances." Tr. 16, l. 7 – p. 17, l. 10. When pressed to expand upon Applicant's personality disorder, Dr. Gottfried agreed that Applicant suffers from borderline personality disorder, but rejected a previous diagnosis of bipolar disorder. Tr. 18, ll. 3-21.

¹ Much of Dr. Gottfried's testimony was pursuant to an extensive evaluation performed upon Applicant, for which Dr. Adam Bloom, MUSC, was also present.

Based upon Dr. Gottfried's testimony and associated written report, Judge John found Applicant criminally responsible. Tr. 20, l. 24 – p. 21, l. 23. Applicant proceeded to pled guilty as indicted without a negotiated or recommended sentence.² In mitigation, plea counsel argued extensively that Applicant suffered from postpartum depression, but that her voluntary drug use made it an impossible diagnosis and defense. Tr. 41, l. 6 – p. 45, l. 15. Plea counsel thereafter detailed Applicant's long history of sexual abuse and mental health issues and the difficulty in securing a firm, reliable diagnosis. Tr. 45, l. 16 – p. 48, l. 12. Judge John sentenced Applicant to imprisonment for a term of 27 years.³

II.

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

1. Ineffective assistance of counsel, in that:
 - a. Counsel failed "to prepare and present a defense on my behalf"
 - b. "Failure to call expert witnesses concerning Mental Health, to include [postpartum] Depression."
 - c. "Failure to object to the sentence."
 - d. "Failed to object to solicitor's comments."
2. Involuntary guilty plea, in that:
 - a. "Involuntary Guilty Plea was unlawfully induced"
 - b. "And not made voluntary or with a complete understanding of the nature of the charges and the inadequacies of the plea potential."
 - c. "I did not understand the nature of the constitutional rights being [waived]."
3. "Direct appeal not filed"
 - a. "Attorney failed to file direct appeal and I was prejudiced"
 - b. "In all cases counsel has a duty to make certain the client is fully aware of the right to appeal."
4. "Rule 5 motion to discovery never viewed"

² In the course of pleading, Applicant denied suffering from any kind of mental or emotional problem, or from being under the influence of any intoxicating substances that would prevent her from understanding the proceeding. Tr. 25, ll. 5-13.

³ Judge John also terminated pending probation violation matters, since the minimum sentence in the subject crime "far exceeds the sentences imposed in those cases that she's on probation for." Tr. 57, ll. 17-24.

- a. "I was prejudiced by not having knowledge of my motion of discovery before or after plea. This is a Brady violation."

Applicant requests relief as follows:

- "New trial, vacate sentence, sentence reduction"

Attached to and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

III.

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered

adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

One of Applicant's ineffective assistance allegations raises a question of mental competence. Due process prohibits the conviction of a person who is mentally incompetent, and that right cannot be waived by a guilty plea. Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 595 (1992) (citing Bishop v. U.S., 350 U.S. 961 (1956); Pate v. Robinson, 383 U.S. 375 (1966)). The test of competency to enter a plea is the same as required to stand trial: the accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him. Id., 417 S.E.2d at 596 (citing State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976); Carnes v. State, 275 S.C. 353, 271 S.E.2d 121 (1980)). An applicant alleging incompetence in fact must show by a preponderance of the evidence he was incompetent at the time of his plea. Id.

An applicant alleging ineffective assistance of counsel for failure to seek a mental health evaluation, however, must still satisfy the two prongs of Strickland: applicant must demonstrate (1) a ‘reasonable probability’ that he was not competent at the time of the crime or at the time of

the plea, and (2) that counsel's failure to seek an evaluation was unreasonable. Id. at 233, 417 S.E.2d at 596. Counsel may reasonably rely on his own perceptions in deciding if a client is competent to stand trial. Id.

Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant further claims her plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his 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. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. 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)).

Applicant presented no reasons to show that she should be allowed to depart from the truth of the statements he made during her guilty plea hearing.

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.

V.

Applicant alleges a violation of Brady v. Maryland, 373 U.S. 83 (1963). Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment: Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)).

Respondent submits that this ground for relief is without merit. However, the allegation concerning a Brady violation probably raises questions of fact that are not conclusively refuted by the record. Respondent requests an evidentiary hearing on this ground for relief. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

VI.

Applicant's third allegation, that counsel failed to inform her of her right to appeal from her guilty plea, and that she should therefore be permitted an appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), is without merit as a matter of law. Though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a *trial*, a different standard applies to a guilty plea:

Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.

Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (citations omitted).

Therefore, in a collateral action attacking a guilty plea, the "bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief." Jones v. State, 382 S.C. 589, 598, 677 S.E.2d 20, 23-24 (2009) (quoting Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)).

Applicant does not claim that she asked counsel to file an appeal, nor does she offer any other extraordinary circumstances that would entitle him to relief pursuant to White. Applicant only claims that plea counsel and the State failed to affirmatively advise her of the right to appeal. Therefore, even if taken as true, Applicant's claim does not entitle her to relief, and the White claim should be summarily dismissed.

VII.

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth sufficient facts to "support each ground" or to explain with sufficient specificity the facts upon which his claims are based. In particular:

- Applicant's allegation that plea counsel failed to object to the sentence does not indicate any basis for objection, and Respondent cannot upon initial review discern any such basis.
- Applicant's allegation that plea counsel "[f]ailed to object to solicitor's comments" does not indicate with any specificity which comments to which counsel allegedly should have objected.

The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend her application to set forth specific facts upon which her allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend her application to set forth specifically the grounds on which her claims are based.

VIII.

Applicant must specify any claims she intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCPP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCPP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments

withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, if Applicant should seek to present any expert witnesses, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

IX.

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

[Conclusion and signature on following page]

X.

WHEREFORE, Respondent respectfully requests that this Court convene an evidentiary hearing on the allegations that plea counsel was ineffective, that Applicant's guilty plea was involuntarily entered, and that the State committed Brady violations. Respondent further requests grant of its motion for a more definite statement set forth in Section VII of this Return. As to Applicant's White claim, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

Respectfully submitted,

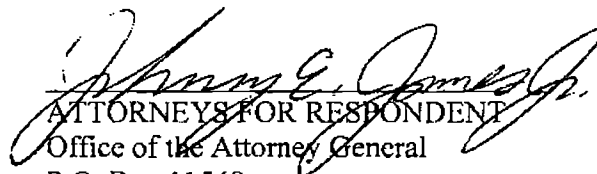
ALAN WILSON
Attorney General

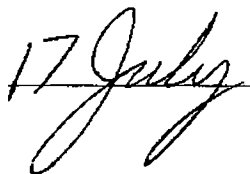
ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

SARAH L. TONEY, #371030,)

2017-CP-26-3017

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

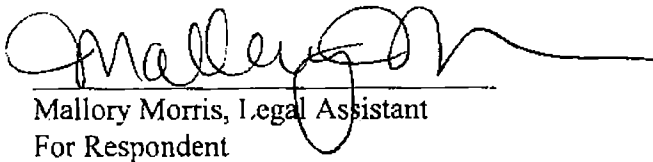
Respondent.)

2017 JUL 19 PM 1:29
 Horry County, SC
 Clerk of Court

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; Partial Motion to Dismiss; and Motion for More Definite Statement** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire
 Falk Law Firm, LLC
 PO Box 1058
 Charleston, SC 29402

DATED this 17th day of July, 2017.


 Mallory Morris, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	2017-CP-26-03017
SARAH L. TONEY,	)	
	)	
Applicant,	)	Transcript of Record
	)	
vs.	)	
	)	November 27, 2018
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

B E F O R E:

Honorable Kristi F. Curtis
Horry County Courthouse
Conway, South Carolina

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

James K. Falk, Esquire
Attorney for Applicant

Johnny E. James, Jr., Esquire
Attorney for Respondent

TAKEN BY:

Dixie C. Eubank
Retired Circuit Court Reporter

PREPARED BY:

Kay H. Richardson
Circuit Court Reporter

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E X H I B I T S

No.

ID

EV

(No exhibits were marked or admitted.)

Toney v. State - 2017-CP-26-03017
BY JAMES

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1 **NOVEMBER 27, 2018**

2 BY JAMES:

3 MR. JAMES: If it may please the Court?

4 THE COURT: Yes, sir.

5 MR. JAMES: Your Honor, this is the matter of Sarah Toney
6 v. State of South Carolina, docket number 2017-CP-26-03017.
7 Ms. Toney is present here in the courtroom today and is
8 represented by Jim Falk, Esquire.

9 Ms. Toney was indicted at the December 2015 term of the
10 Horry County Grand Jury for homicide by child abuse. She was
11 represented on that charge by Mr. Eric Fox, Esquire, who is
12 present here in the courtroom, and that case was prosecuted by
13 Mr. Scott Hixson of the Fifteenth Circuit Solicitor's Office.

14 Your Honor, on January 11th, 2017, Ms. Toney appeared
15 before the Honorable Steven H. John for the purpose of
16 pleading guilty. The proceeding began with an extended
17 competency hearing pursuant to *State v. Blair*, at which time
18 the Court found that she was competent to proceed.

19 Applicant proceeded to plead guilty as indicted without
20 any negotiated or recommended sentence. Your Honor, she was
21 ultimately sentenced to 27 years' incarceration by Judge John.
22 She did not appeal that plea or that sentence.

23 Unless there are further questions from Your Honor at
24 this time, I will cede the floor to Mr. Falk.

25 THE COURT: Mr. Falk?

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ERIC FOX - DIRECT BY FALK

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1 MR. FALK: Yes, Your Honor. We would call Mr. Fox to the
2 stand.

3 THE COURT: Mr. Fox, you're still under oath.

4 MR. FOX: Okay. Yes, ma'am.

5 DIRECT EXAMINATION OF ERIC FOX BY MR. FALK:

6 Q: Mr. Fox, do you recall Ms. Toney's case?

7 A: Very well.

8 Q: Can you tell me about the representation on the case,
9 were you always the attorney? Did she have private counsel?

10 A: I'm almost positive it was always me.

11 Q: Okay.

12 A: I'll have -- I'm fairly sure it was.

13 Q: Okay. Now, just generally, what were the facts in this
14 case?

15 A: In, I want to say, 2015, we had some -- well, really
16 statewide, some very, very heavy flooding locally, and Ms.
17 Toney lived in the Socastee area of Horry County and she took
18 her young child, I think was three or four months old, in her
19 arms and went to what was a very swollen, very fast moving
20 creek behind her home, went into the water with the child,
21 lost the child. The child -- the water carried the child away
22 and ultimately, the baby drowned. So, she was charged with
23 homicide by child abuse.

24 Q: And what was the -- what was the evidence in this case?
25 Do you recall what the Rule 5 returns were?

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ERIC FOX - DIRECT BY FALK

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1 A: Basically, Sarah had given a statement, not that it was
2 intentional but that she had gone into the water with the
3 baby. There were neighbors that morning that she had -- at
4 least one -- that she had knocked on the door and really was
5 kind of talking nonsense about things the baby was doing,
6 directing her to do this, do this and that, kind of strange,
7 and then she was gone. So, I don't -- nobody saw her go in
8 but when she was questioned -- I can't remember if her
9 roommate, she was living with another woman. I can't remember
10 if the woman gave police some information about
11 identification, but really it came from Sarah in terms of how
12 she ended up in the creek and how the child ended up in the
13 water.

14 Q: So, did -- was that -- was that statement video recorded
15 or was it ---

16 A: It was.

17 Q: In her PCR application, Ms. Toney is alleging that you
18 never shared with her Rule 5 materials. Do you have any
19 records as far as visits that you made to see her while she
20 was in custody?

21 A: We had many, many visits, and I'll look real quick
22 through my notes. My recollection was that Ms. Toney and I
23 had spoke in terms -- and I had suggested based on that this
24 case was all over the papers, she was on T.V. The notoriety
25 of the case, I advised her not to have discovery materials

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ERIC FOX - DIRECT BY FALK

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1 with her at the jail because people will go through and then
2 lie about you and try to help themselves. But we definitely
3 reviewed things as they came in, as all discovery came in
4 sometimes in different pieces.

5 Q: So, what were the -- there were some discussions that
6 were there not ---

7 A: Plea negotiations?

8 Q: Plea negotiations.

9 A: We discussed -- I wouldn't -- we had some initial plea
10 offer that was not worth considering. It became really clear
11 with Sarah very early, even before I met with her, just
12 reading the description that this was a strange situation.
13 Again, the neighbor said she came with the baby and said the
14 baby was directing her to do this. This was three-month-old
15 child, the child didn't talk, probably could barely hold its
16 head up. So, there were things that were very bazaar, and
17 then we got really quickly in discovery, because of the way
18 she was behaving, they came to talk -- and I can't remember, I
19 think that may've been reported as a missing child. So, the
20 police were out there looking for the child, and then began to
21 realize that there may be more to it. But, when they took her
22 into custody, Sarah into custody, she was in the squad car and
23 they had the camera on, and they happened to have one of those
24 cars where the camera was pointed at the back where she was.
25 At first I listened to it and it was clear that she was very

1 -- I'm not using this in the correct medical terms, but manic.
2 She would be rapid and speaking and kind of very confused, and
3 was very strange, and then very calm, almost strangely calm
4 for -- focused on, frankly, a little irrelevant things. But,
5 it became very clear to me there might be something going on.
6 So, a long of say we began to explore just general mental
7 health issues, and then in speaking with Sarah, then there was
8 a history of that and some issues, and then we began to
9 explore some postpartum issues with the goal of getting away
10 from that mandatory 20 to life that she was in. The solicitor
11 gave us a lot of time to explore those issues. She was
12 evaluated for competency and found to competent.

13 The solicitor's position always was unless there was a
14 diagnosis of some kind of postpartum depression or psychosis,
15 which is a subset of postpartum depression, that without that,
16 from what they considered to be credible doctor, that they
17 were never gonna offer less than the 20 to life. My goal was
18 that we would get that diagnosis and have a good argument to
19 get it to -- and also preparing for trial, I mean, we're also
20 thinking, all right, this may be a defense at trial. Short
21 answer is the plea negotiations came really at the end after
22 we've explored everything in terms of the medical diagnosis
23 and then Solicitor Hixson was very much -- I think they
24 recommended 25 to 30 and we ended up pleading straight up
25 because based on our conversation, I thought I had a lot of

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ERIC FOX - DIRECT BY FALK

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1 good mitigation and a chance to keep it closer to 20. So,
2 even though we went in, I -- that was at my request that we
3 did it without that recommendation because I was very sure the
4 sure the Judge would follow that and I was hopeful that we
5 might keep it closer to 20. So, those were the plea
6 negotiations there were.

7 Q: If you review the plea transcript, that plea hearing sets
8 off with Dr. Gottfried from MUSC testifying.

9 A: Yes.

10 Q: And so, she did an evaluation for criminal
11 responsibility.

12 A: Yes.

13 Q: In addition to ---

14 A: She did, right.

15 Q: Was that at your request? Did you file notice of
16 intention to seek a NGRI or was it ---

17 A: I don't know if we got to the point of filing of that
18 notice, but we made that request. But, of course, that would
19 be a precursory, we'd have to do that. We were certainly
20 preparing on kind of a parallel track that if we went to trial
21 that that may well be an issue. So, that's why it was done.
22 I don't think I ever got to the step of filing that notice in
23 terms of the defense at trial.

24 Q: What did you do to try and seek an independent evaluation
25 for criminal competency?

1 A: Gosh. Well, we started with Sarah. She was a very good
2 historian about things that happened. Her whole life she'd
3 had issues, mental health issues going back to her teenage
4 years. She was in her early 30s and she had mental --
5 documented mental health issues going back 20 ---

6 Q: What types of issues, schizophrenia?

7 A: Schizophrenia, I believe bipolar. She had suffered
8 sexual and physical abuse. Her mother was very good
9 historian. She had been in treatment different places. We
10 were able to get hospital records that were 20 years old,
11 which was unusual.

12 Q: Who had been in treatment, her mother?

13 A: Well, Sarah, specifically.

14 Q: Her mother, too ---

15 A: Her mother had some issues but, yeah, so her mother was
16 able to lead us -- and this was places in Washington, if I
17 recall, maybe Arizona. We were able to run down a lot of the
18 records. Based on that and based on Sarah, what I knew, I
19 began to suspect that postpartum issues might be at play. At
20 the time the baby drowned, there was other hallucinations that
21 Sarah was having, that's just what the neighbor, I mean, her
22 description to police, you know, the whole reason that she
23 said she went into the water was because the baby was
24 directing her to do this not because she wanted to harm and
25 couldn't handle the baby as they wanted it to be -- the state

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ERIC FOX - DIRECT BY FALK

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1 wanted it to be, it was because -- and I don't think there was
2 any question she was having hallucinations.

3 So, somebody out of the clear blue, her case in the
4 paper, some organization out the clear blue contacted by boss
5 by email and said, hey, we deal with this and we can refer you
6 to different experts in the field. And so, we contacted them,
7 and they referred me to the -- there's a postpartum center at
8 UNC Chapel Hill. And then I began to do some research ---

9 Q: Is that a forensic postpartum center or ---

10 A: It is. It's connected with the -- with the medical --
11 with the hospital, with UNC hospital. I actually went up and
12 met with one of the -- one of the doctors there and went up --
13 she agreed to meet with me, went up, and she took the records
14 to review and -- so I did that, I began to do some research on
15 my own with the idea of trying to find someone who could do an
16 evaluation. Spoke with a professor at Columbia University who
17 was -- Margaret Spinelli, who is acknowledged to be probably
18 the expert in postpartum issues. I spoke with a gentleman at
19 Case Western University, who was an expert in hallucinations,
20 drug-induced and mental illness hallucinations, because there
21 actually is a distinction. People tend to hallucinate certain
22 types of things under the influence of drugs and they tend to
23 hallucinate a different way when it's a mental health issue.
24 I spoke with attorneys who represented women, including George
25 Parnham, who represented Andrea Yates in Texas, the woman who

1 drowned her children in the bathtub. I was able to track him
2 down and he spent a good deal of time talking with me. And
3 eventually, spoke with another expert in California --
4 eventually, we found one in our backyard, Geoffrey McKee. He
5 has done evaluations for the state hospital before for the
6 state and he literally wrote a book about these issues, why
7 woman harm or kill their children. He came down and did an
8 independent evaluation of Sarah at the jail.

9 Q: And what was his conclusion?

10 A: His conclusion was -- and this is what everyone told me
11 -- of course, the others that I spoke to on the phone didn't
12 have a chance to talk to Sarah one-on-one or in person. She
13 was admittedly under the influence of methamphetamine at the
14 time of the incident, that can cause hallucinations. What the
15 professor at the Case Western said, in his opinion, what she
16 described is more like a drug-induced hallucination rather
17 than a mental one, but it was impossible for him to -- because
18 they're very intertwined, I mean, in this particular case.
19 So, that was kind of -- that was Dr. McKee's conclusion that
20 he could not make that diagnosis. I believe that she might be
21 in even a smaller subset of postpartum psychosis, which is --
22 those are the people that kill their children. They literally
23 are psychotic, delusional and ---

24 Q: Brought on by hormonal changes ---

25 A: That's right.

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ERIC FOX - DIRECT BY FALK

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1 Q: --- related to the ---

2 A: Many women have the baby blues, many women have
3 postpartum depression, which is what it sounds like is very
4 serious, but not quite to the stage of harming children. Then
5 there's a subset of that, which is the psychosis, which is
6 where you get the Andrea Yates situation. The more I read and
7 learned and talked to people, I really believed we might be in
8 the situation. The stumbling block always was her admitted
9 use of -- and in fact, the toxicology that she was under the
10 influence of methamphetamine and no doctor was ever gonna be
11 able to give a diagnosis, even if they suspected that they
12 just couldn't make that final step.

13 Q: Was there a contemporaneous toxicology report done on
14 her?

15 A: I believe there was. I think that were a couple of
16 things -- I honestly don't recall without going through
17 everything. I believe there was and Sarah had admitted that
18 she was -- she had relapsed. She'd been a drug user off and
19 on for years and had been clean for quite a while and relapsed
20 not too long before.

21 Q: So, the doctor and -- the doctor you said at Case Western
22 who was the ---

23 A: He was the hallucination specialist.

24 Q: What was his name? Shecker or ---

25 A: I forget.

1 Q: It's fine.

2 A: Resnick.

3 Q: Resnick, okay. So, his opinion that he -- the
4 hallucinations could've been drug related was based on her
5 self-report that she was taking drugs or did you share
6 toxicology reports with him or ---

7 A: I would've shared anything I had. I think it was both.

8 Q: Okay.

9 A: And again, he couldn't say for sure but just hearing --
10 he said, with what you're telling me, I tend to believe it's
11 the drug-induced rather than the other, but ---

12 Q: And Geoff McKee, the same? Did he ---

13 A: The same, yeah, came to the same conclusion.

14 Q: And that was based on your report that she had ---

15 A: Yes, and he -- and Dr. McKee came and did a face-to-face
16 interview with her at the detention center as well.

17 Q: Now, I know, but the issue it seems with both the
18 gentleman from Case Western and Dr. McKee is whether -- is how
19 you can distinguish the delusions that could be drug-related
20 ---

21 A: That's right, right.

22 Q: --- versus chemically related to it.

23 A: Right.

24 Q: And his opinion about that they're drug-related is based
25 on her report that she'd been taking drugs?

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1 A: Yes. As well as that being then consistent with the type
2 of hallucination where you typically see with the drug use
3 rather than the others. I don't recall the distinction right
4 now but it's -- you get different types of hallucinations with
5 one rather than the mental illness, generally.

6 Q: And whether or not they were auditory or ---

7 A: Yes, yes. Like being directed -- and I'm not, again, I'm
8 not sure which is which anymore, but rather than maybe seeing
9 purple dragons, you hear auditory hallucinations or things
10 that you believe you're being directed or -- you know, the
11 voices through the T.V., that sort of thing. But that they
12 don't -- they're surprised -- overlap between the two, that
13 they do -- everyone I talked to seemed to agree that are
14 fairly distinct, and that's one way to tell what you're
15 dealing with.

16 Q: How would the fact that she was intoxicated at the time,
17 could you explain to her the effect that if she was
18 voluntarily intoxicated, how that would affect ---

19 A: We did -- you know, that voluntary intoxication wasn't
20 gonna provide a defense, that it probably wasn't gonna -- it
21 wasn't gonna help her with criminal responsibility. So, it --
22 to get anywhere, it's gonna be important to have someone
23 hopefully to be able to say despite the intoxication, she's
24 got this other mental health issue that overrides, but we
25 never could get there.

1 Q: Do you recall if she was on any prescription medications?

2 A: I believe she was. I honestly don't recall. She had
3 been off and on, but at that moment I honestly don't recall if
4 she was or not.

5 MR. FALK: One moment, Your Honor.

6 BY MR. FALK:

7 Q: So, she wound up pleading guilty straight up under the
8 (a) section of homicide by child abuse?

9 A: She did.

10 Q: What types of discussions were there about pleading under
11 the (b) section?

12 A: Well, as I said, for a long time the solicitor -- we
13 didn't have plea discussions. He was aware that I was looking
14 at -- I kept it in a mental health defense. Later on, I
15 shared with him exactly what we were trying to get at. When
16 we began discussions again, by that point I knew that I didn't
17 -- I wasn't gonna have that diagnosis for postpartum. And so
18 then we had sort of traditional plea negotiations. The
19 solicitor made it clear with a dead child, a young infant, and
20 he of course saw the voluntary intoxication use of meth if a
21 very, very bad thing, whether she intended harm to her child
22 or not. I made it very clear she did not. But, he was
23 completely unwilling to drop it to the (b) section. I mean,
24 that was a non-starter, brick wall, he was never doing that.

25 In terms of time, I think initially he wanted 30 and then

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ERIC FOX - DIRECT BY FALK

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1 I kind of got into a range, and then I decided, felt that it
2 may be better just to do it without, and that was based on --
3 we had some discussion with Judge John prior to the plea and I
4 had -- but he was aware of what the state's recommendation
5 would have been which was 25 to 30, and he went right down the
6 middle.

7 Q: Tell me, were there other mitigating factors as far as
8 her mental health at the time?

9 A: Well ---

10 Q: What did you know about her abuse -- sexual abuse as a
11 child?

12 A: I know that she'd been raped two times. I know that
13 there was a history of violence in her home with her natural
14 father and the mother. I know the mother had some mental
15 health issues. I think -- I believe the father did, too.
16 Sarah had been diagnosed and treated for mental illness from
17 the -- I think it was her teenage years, 14, 15. And as often
18 is the case, she self-medicated quite frequently with both
19 legal and illegal drugs. You know, she was sent down a
20 certain path at a very early age before she really had a say
21 in that. She was too young to have a say about a lot of that
22 stuff. You know, so I thought there was a lot of mitigation.
23 I'd represented Sarah before on little things, you know, drug
24 possession, shoplifting, and different stuff. You know, she
25 was kind of -- those things that go along with illegal drug

1 use, you know. But nothing like this, even close. And even
2 if the drug use was voluntary in the context of how she got
3 there, I thought that it was still a lot of mitigation. And
4 there was -- it wasn't gonna provide a great defense but there
5 was zero doubt in my mind that she meant no harm to that
6 child, that she really in truly thought we're going into this
7 -- that the baby wants me to do that and that rather than
8 letting go of the baby, the -- you know, you'd have to see the
9 -- a creek, that was normally two or three feet wide, was as
10 wide as this courtroom, eight or nine feet deep and moving
11 just as fast as could be.

12 Q: Was this the 100-year flood?

13 A: It was; that's right. And so, I mean, it is no surprise
14 to me once she stepped in there that that -- you know, that
15 the child was torn away from her.

16 Q: What were your thoughts about trying to take the case to
17 trial?

18 A: Well, without some kind of diagnosis, she was --
19 competency, I never had a question about. Sarah is very
20 intelligent. She understood. She asked questions. She
21 understood the process of what she was charged with. She was,
22 I think, a full participant in discussions about how to go and
23 understood what we were trying to get at. Without a diagnosis
24 of the postpartum issue, I'm not sure what the -- voluntary
25 intoxication isn't an issue.

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ERIC FOX - DIRECT BY FALK

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1 Q: Accident?

2 A: Maybe.

3 Q: The reality is you have unfortunately a dead child.
4 Experience teaches me that may be the worst thing to face a
5 jury with, you know, where the mother is -- supposedly at the
6 mother's hands. That's never good. And that's why we're
7 trying very, very hard to get to a diagnosis that we could
8 present either as mitigation and if we got a favorable plea or
9 as a defense, because if somebody -- if a doctor had given us
10 that diagnosis, postpartum psychosis and I -- I shared this
11 with Sarah, unless we had a really favorable plea, as in
12 single digit kind of number, then my advice would've been to
13 go to trial, but we never did have that available as a
14 defense.

15 Q: What about the -- you said that she had a history of
16 mental health diagnoses, you weren't sure whether it was
17 schizophrenia or bipolar, but those are all, it's my
18 understanding, prescribed medications for those.

19 A: Yes, and ---

20 Q: Was she on any bipolar meds or was she taking any
21 prescription psychiatric drugs?

22 A: I don't believe so at that time. She'd been -- her whole
23 like she'd been off and on. Sometimes it was an economic
24 issue, sometimes it was a I don't like how I feel. She'd been
25 off and on 20 years, and I don't think she -- I'm surprised

1 she was not at that at that time.

2 Q: One moment, please. I'd asked you at the beginning if
3 you thought that -- one moment. I'd ask you at the beginning
4 whether or not you were -- thought you were the only lawyer in
5 the case. Do you recall her being represented at one time by
6 Blaine Massey?

7 A: I do, actually; that's exactly right. After some period
8 of time, and I believe at her -- anyway, Mr. Massey went out
9 to see her and I think he was retained -- I'm not sure if
10 money had exchanged hands, but he did send a letter of
11 representation, which is how we learned about it. And I
12 discussed that with my boss, Ms. West. And at that point I
13 hadn't done all the things I -- all the research, but I'd
14 started down that path and so I was several months down the
15 road and I did feel like we were just in a better position to
16 continue than he would've been. I know Mr. Massey, and he's a
17 good lawyer, but I felt like this was a -- kind of a niche and
18 that we might -- and he's a sole practitioner and I have -- a
19 little small office, the entire public defenders, we have
20 investigators, we have some resources, ability to tap into
21 indigent defense money and things that I felt maybe Mr. Massey
22 wouldn't be able to, and that Sarah's family wouldn't be able
23 to afford. And so I felt like I was a good bit down the road
24 and I felt like we had a better overall situation with the
25 public defender's office. So, I went to Sarah and explained

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ERIC FOX - CROSS BY JAMES

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1 those things to her and told her I'd like to keep the case.
2 And I felt like I could do -- and she was aware of where we
3 were. And the things we were exploring, and I did, I went and
4 said, you know, I'd really like to keep trying on this one.
5 So, she agreed, contacted Mr. Massey, and I guess we did the
6 necessary order, I don't recall. We must've done the order
7 replacing him with myself again. I don't think he represented
8 her for more than a couple of days.

9 Q: Indigent defense paid for Geoff McKee?

10 A: Yes.

11 Q: Was it McKee or McGee?

12 A: McKee.

13 Q: Okay. I have no further questions.

14 THE COURT: Mr. James?

15 CROSS EXAMINATION OF ERIC FOX BY MR. JAMES:

16 Q: Did Ms. Toney ever ask you to file an appeal?

17 A: No, we would have if she had requested that. We don't do
18 it automatically on a plea, so she did not and we did not.

19 Q: You filed motions for Rule 5 and Brady?

20 A: Yes.

21 Q: And to your knowledge, did you get everything
22 appropriately responsive to those motions?

23 A: Yes. I don't believe there was anything that we were --
24 we had police reports, witness statements, toxicology,
25 autopsy, some pictures. I don't recall anything that we had

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SARAH LANE TONEY - DIRECT BY FALK

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1 to go and ask for additionally.

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

3 THE COURT: Anything else?

4 MR. FALK: No redirect.

5 THE COURT: Thank you, sir.

6 MR. FOX: Thank you.

7 MR. JAMES: Before we excuse Mr. Fox, since there is one
8 more witness from the applicant's case, we'd like to have you
9 stick around just a few more minutes.

10 MR. FOX: Sure.

11 THE COURT: Thank you.

12 MR. FALK: We'd call Ms. Toney to the stand.

13 SARAH LANE TONEY, HAVING BEEN
14 DULY SWORN, TESTIFIED AS FOLLOWS:

15 CLERK: Please have a seat and state your name for the
16 Court and spell your last name.

17 MS. TONEY: Okay.

18 CLERK: Thank you.

19 MS. TONEY: My name is Sarah Lane Toney. Last name, T-O-
20 N-E-Y.

21 DIRECT EXAMINATION OF SARAH LANE TONEY BY MR. FALK:

22 Q: Ms. Toney, I'm gonna try and not have you relive the
23 events but there are some specific questions I want to ask you
24 about.

25 A: Okay.

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SARAH LANE TONEY - DIRECT BY FALK

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1 Q: You heard Mr. Fox testify saying that you admitted that
2 you were taking methamphetamine at the time?

3 A: Uh-huh, (affirmative response), three days prior.

4 Q: Three days prior?

5 A: Three days prior to the event.

6 Q: Okay. So, it's -- what is your recollection of what you
7 told them as far as your methamphetamine use the day of?

8 A: I told them I hadn't done -- from the beginning I told
9 Mr. Fox and Orrie West that it was three days prior.

10 Q: Okay. And do you recall giving a urine test?

11 A: They took a blood test from me, the police did, but I'm
12 not sure even what the results of that was. I've never seen
13 those. But my probation officer -- as Mr. Fox said, I was on
14 -- he had represented me before on shoplifting. I was on
15 probation at the time and the probation officer, when they
16 booked me into J. Reuben Long, came and did a drug test on me
17 which completely wasn't right. It was a urinalysis and it was
18 reading things that I know for a fact I didn't do; I did meth
19 three days prior. I had no other drugs in my system.

20 Q: What was it showing?

21 A: She had a picture of it. I think it says opiates, it
22 said -- like Adderall, amphetamines, not methamphetamines, it
23 said -- and I think that's it.

24 Q: It showed opiates ---

25 A: Oh, and Xanax. I haven't done Xanax in years.

1 Q: It showed opiates in addition to methamphetamines.

2 A: Yes. And I hadn't done opiates in a month, at least. I
3 told that to the mental health evaluator.

4 Q: Okay. Did you have an opportunity to review discovery?

5 A: I've never looked at it. Mr. Fox did tell -- I did ask
6 him about it, and he did say you don't want to see it is what
7 he said. You know, but -- yeah, so, he said it wasn't
8 something I wanted to see nor did I want to have in the jail
9 for anybody to see.

10 Q: Did you see -- so that means that you didn't see a copy
11 of the statement that you had given to the police?

12 A: No.

13 Q: What -- what conversations did you have with him about
14 you suffering from postpartum depression and possibly
15 postpartum psychosis?

16 A: Well, while I was pregnant, I was with Dr. Sabbagh, and
17 she sent me to a specialist in Florence and he was very highly
18 worried that I would have that.

19 Q: I'm sorry. You talked to Dr. -- who?

20 A: My OBGYN was very concerned that I was in the -- because
21 of the mental health that I had and she knew I was off
22 medications during the pregnancy, she sent me to a specialist
23 in Florence and he was very worried that I would have
24 postpartum depression. She had a big case load -- the man in
25 Florence sent me back to her. She did prescribe me on Abilify

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1 and -- it's like Celexa, but it's not Celexa, it's same thing.
2 But I, of course, at the time was not taking my medication, as
3 well as Adderall, which I wasn't taking. That's why I was not
4 crazy about the drug test, so...

5 Q: So, what is your recollection of your mental health
6 diagnoses that you had over ---

7 A: Over the years?

8 Q: Did you ever have an admission for mental health?

9 A: I've been admitted into psychiatric hospitals almost four
10 times.

11 Q: What types of diagnoses?

12 A: I've been diagnosed with borderline personality disorder,
13 bipolar, schizophrenia.

14 Q: And what medications were prescribed for you for those?

15 A: I've been on Risperdal, Haldol. I'm on -- currently on
16 Lithium now.

17 Q: Also, antipsychotic.

18 A: Yes. And that was for the schizophrenia. And the mood
19 stabilizer, Depakote.

20 Q: And how long -- and so as soon as you got pregnant you
21 went off of those?

22 A: Uh-huh, (affirmative response).

23 Q: And did you go back on after your pregnancy?

24 A: I may have maybe for a few weeks, but I usually tend not
25 to -- no, actually, I didn't because I was breastfeeding; I

1 did not.

2 Q: I didn't want to ask you that in the courtroom.

3 A: I did not, because I was breastfeeding. I know they were
4 in my cupboard. They were up there. She had prescribed them
5 to me. So, I had them, I just was not taking them.

6 Q: When you talked to Geoff McKee, did you share that with
7 him?

8 A: That I wasn't taking medication?

9 Q: Right.

10 A: Yes, I did.

11 Q: Was he aware of the medications that you were on, Haldol
12 and that you were on -- so, you were on antipsychotics and ---

13 A: Right.

14 Q: Lithium?

15 A: Yeah, Risperdal.

16 Q: And Risperdal, and so was he aware that you weren't
17 taking those the day that your child died?

18 A: I'm pretty sure I let him know I wasn't taking any
19 medication. I don't know what area of drug testing or
20 whatever he was going on. I don't know what results of the
21 drug tests he was shown. I don't know any of that. But, I
22 did tell him it was three days prior I had done drugs.

23 Q: Okay.. I have had clients that have bought
24 methamphetamines without necessarily knowing what was in them.
25 Were you buying the methamphetamine or were you producing the

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SARAH LANE TONEY - DIRECT BY FALK

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1 methamphetamines?

2 A: Buying.

3 Q: Okay. So, let's talk about one of the -- one of your
4 claims is about a jury trial. Let's talk about the
5 discussions, as you recall them, with Mr. Fox about the jury
6 trial?

7 A: Uh-huh, (affirmative response). Really, basically, if
8 anybody knows anything about J. Reuben Long, it's 23-hour day
9 lockdown now for pretrial, that aren't allowed to work on the
10 laundry side because too many fights were going on. So, for
11 about a year and two months, I was in 23-hour a day lockdown.
12 In prison, you're only allowed to be locked down a maximum of
13 60 days that way. I knew that that was the way it was in
14 prison and I knew that once I got out of J. Reuben Long, then
15 I could handle anything. I really pretty much bugged Eric Fox
16 every time he came to see me to get me out of J. Reuben Long,
17 to find anyway, I'll take whatever, I'll do whatever, just get
18 me out. Mentally, I could not handle it. I was treated badly
19 because of the charges. There was a selective few officers
20 that weren't like that, but, you know, there was ones that
21 were the ones that were higher up that would keep me in
22 lockup. I was constantly put in suicide watch without being
23 asked. So, pretty much, I just took whatever I could take to
24 get out and I told him that. I said, do it now. Every time I
25 saw him, I said do it now. I asked him to take me up for bond

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SARAH LANE TONEY - DIRECT BY FALK

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1 multiple times and he said, it's not a good idea, it's not a
2 good idea. So, I never got bond. And I just, after a year
3 and two months, I couldn't -- I couldn't do it anymore. I
4 took 27 years just to get out J. Reuben Long.

5 Q: How long were you in J. Reuben Long?

6 A: A year and two months.

7 Q: What medications were you given while you there?

8 A: Vistaril, Risperdal, Haldol, Lithium, Terazosone; I think
9 that's it.

10 Q: So, you were sort of back on your antipsychotics?

11 A: Uh-huh, (affirmative response). My whole entire family
12 is shocked that I wouldn't sit and wait for the charges to go
13 down because my family knows for a fact that this isn't the
14 case and I should've just sat and waited and been a trooper
15 and sat for three years that they had to come down with the
16 charges. I mean, the father of my child is on my side, if
17 that tells you anything.

18 Q: On the day that your child died, I think I've asked this,
19 you weren't on any prescriptions medications on that day?

20 A: No, sir.

21 Q: Are you a victim of domestic violence between you
22 yourself and the father of your child?

23 A: At times.

24 Q: Did you discuss that with Mr. Fox?

25 A: Yes.

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1 Q: And what did you tell him?

2 A: That we had an abusive relationship and that's why I was
3 separated from him at the time.

4 Q: And you discussed that you believe Mr. Fox provided
5 ineffective assistance by not having a private psychiatrist to
6 testify. Did you give him any other names of a psychiatrist
7 to consider?

8 A: No, I didn't know of any.

9 Q: Okay. Let's talk about the conversation. What's your
10 recollection of the conversation you had with Mr. Fox
11 regarding the attorney that you went and retained?

12 A: He came and -- I had retained him and Mr. Fox said ---

13 Q: Did money change hands?

14 A: Huh?

15 Q: Had money changed hands?

16 A: Yes.

17 Q: Okay.

18 A: Yes, I had retained him. Mr. Fox came and said, you
19 know, I want to keep this case, I think I can do better. You
20 know, I'm just starting. I just don't think he can do what I
21 can do right now. At the time, Blaine Massey walked in and
22 saw what was going on and recused himself -- excused himself,
23 so, yeah.

24 Q: What else do you think Mr. Fox could've done to help you
25 in this case?

1 A: Really, there's not much he could've done because like he
2 said, he was stonewalled by the solicitor. The solicitor was
3 hell-bent on -- excuse my language -- was bent on making sure
4 that this was a homicide case as opposed to accident. And
5 there was nothing he could do and he clearly stated that
6 always. Like, if we had a different solicitor, maybe things
7 could go better. You know, just, there was basically -- by
8 the end, I said just take us in. Let's just go. I just want
9 -- I want to be done with it.

10 Q: What would you like this Court to do?

11 A: I would like the opportunity to get a different solicitor
12 and get a proper trial, because I feel like if, if -- if the
13 real evidence was heard and I was heard and my family was
14 heard, and my evidence -- like my history was heard, people
15 would just know. I don't feel like 12 people will convict me
16 of the homicide. Yeah, it is my fault. My daughter is dead
17 because of me. I killed my daughter but not on purpose. I
18 don't deserve a homicide on my record because I didn't kill
19 her on purpose, that's what my charges are, malice. There
20 never once was that nor will there ever be.

21 Q: What would you have -- what evidence would you have
22 wanted the jury to have heard?

23 A: My history. They really couldn't get a jury to hear that
24 because ---

25 Q: Your history, your history of sexual ---

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SARAH LANE TONEY - CROSS BY JAMES

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1 A: Mental health, mental health.

2 Q: I'm sorry I interrupted you. You said you wanted the
3 jury to hear ---

4 A: Yeah, my side.

5 Q: And what do you believe your family would've said?

6 A: I believe my family would've said the same, you know,
7 show my history and explained that there's no way I would've
8 ever intentionally harmed her. **Minor** would've -- was perfect.
9 I mean, there was no reason why I would ever hurt her.

10 Q: Do you understand the only remedy that this Judge can
11 grant is to grant you is to really send the case back to the
12 Horry County Solicitor's Office?

13 A: Yes.

14 Q: Is there anything else you would like to add?

15 A: No, sir.

16 MR. FALK: I have no further questions.

17 THE COURT: Mr. James?

18 CROSS EXAMINATION OF SARAH LANE TONEY BY MR. JAMES:

19 Q: Very briefly, Your Honor. Prompted by one of your
20 responses just now you indicated that really you want to have
21 the case tried by a different solicitor; is that correct?

22 A: Yes.

23 Q: All right. Are you aware that Scott Hixson was the
24 individual who was originally the solicitor on your case?

25 A: Yes, the assistant.

ERIC FOX - DIRECT BY JAMES

1 Q: Are you aware that he is still employed with the
2 Fifteenth Circuit Solicitor's Office?

3 A: Yes.

4 Q: And are you aware that there is a chance if not strong
5 likelihood that if PCR were to be granted, he would again be
6 the solicitor on your case?

7 A: Uh-huh, (affirmative response); yes, sir.

8 Q: And if he were going to again be the solicitor on your
9 case, would you still desire post-conviction relief?

10 A: Yes.

11 MR. JAMES: I have no further questions for this witness.

12 THE COURT: Thank you. Please step down.

13 Mr. Falk, anything further?

14 MR. FALK: Your Honor, we have no further witnesses.

15 THE COURT: Mr. James?

16 MR. JAMES: Very briefly, we'd like to put Mr. Fox back
17 on the stand.

18 DIRECT EXAMINATION OF ERIC FOX BY MR. JAMES:

19 Q: Mr. Fox, did you withhold any discovery from your client?

20 A: No.

21 Q: Were there any graphic photographs taken of the deceased
22 victim?

23 A: Yes.

24 Q: Did you present those to Ms. Toney?

25 A: No. We discussed -- I mean, if she had actually

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ERIC FOX - DIRECT BY JAMES

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1 insisted, but I definitely -- she's right, I told her I didn't
2 think that would be a good idea. And -- anyway, if she had
3 insisted on her right to see it, that would've happened, but
4 she followed my recommendation that she not do that.

5 Q: In her testimony just now, Ms. Toney indicated that she
6 bugged you repeatedly to get her out of J. Reuben Long and
7 that she would -- I'm paraphrasing, but take about any deal to
8 get out of there. Is that an accurate description of her
9 interaction with her?

10 A: At times. She absolutely -- I was looking back through
11 my notes as she testifying, she absolutely in many of our
12 discussions described that they were -- she was having a hard
13 time at the jail. One CO, that would be one officer that
14 would be a little sympathetic, might give her an extra blanket
15 when it was cold, and then the next one would use that as an
16 excuse to put her on lockdown because she had more blankets
17 that she was supposed to have, that type of thing. She had a
18 mental illness that was, you know, it's always tough being
19 treated in the detention center. Bottom line was she -- that
20 there were no resources to get her out on. You know, if we'd
21 had something with bond -- one avenue was bond, the other was
22 to plead. But she also understood when I said, look, we're
23 exploring these things because, you know, the medical
24 diagnosis and it's gonna take some time and it might lead us
25 hopefully to a really good outcome or a better outcome. So,

1 she definitely was -- I mean, one time I would go and she'd be
2 adamant to do that and the next time I would go and she would
3 be not happy to wait but understood that she would need to
4 wait.

5 Q: Did you consider to try and have her relocated to some
6 other jail facility or is there just not any other available?

7 A: There's really not. I'm not saying there's not, that's
8 never been done, but I'm not aware of it, and I didn't, I
9 didn't.

10 MR. JAMES: I have no further questions for this witness.

11 THE COURT: Anything further, Mr. Falk?

12 MR. FALK: Just briefly.

13 CROSS EXAMINATION OF ERIC FOX BY MR. FALK:

14 Q: I wasn't sure of what your testimony was before, if the
15 confusion was give her the discovery because you didn't want
16 somebody else to exploit that information if they found it but
17 was there actually some discovery that you were not showing
18 her?

19 A: Well, we definitely reviewed and I don't recall, you
20 know, sometimes with a client you go through it literally page
21 by page, sometimes it's more, hey, here's what's in here and
22 here's particular things. I know that we, you know, reviewed
23 in terms of discussed what was in there and I know I
24 definitely said for two reasons, don't have this in your
25 possession at the jail and I really don't think you should see

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ERIC FOX - CROSS BY FALK

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1 some of the material that you know shows pictures and other
2 things directly related to the child. I definitely told her
3 that. And she didn't really want to see those things, so...

4 Q: In other words, pictures of the child?

5 A: Photographs, mostly. I mean, there was other -- the
6 autopsy was just -- there was other things describing, you
7 know, the events and the condition of the child and everything
8 else. And so, she didn't -- my recollection is she didn't
9 push those specifics too much. She didn't really want to see
10 those things.

11 Q: So, what was the motivation to plead the case on the day
12 that you did? Was -- I mean, was she pushing you? Could the
13 case have gotten better had she waited it out?

14 A: Well, I don't think it would've gotten better at that
15 point. Somewhat, I know she was -- cause we had a discussion,
16 look, I've -- you know, let me her know I've not been able to
17 get anywhere with this postpartum thing. And I'd forgotten,
18 she actually had another doctor, Dr. Schwartz-Watts, also came
19 down and interviewed her. But I felt didn't quite have the
20 right -- not just because I didn't like the -- her conclusion,
21 but I felt she didn't quite have the focus that, you know,
22 looking at the things we're interested in anyway. Sarah was
23 definitely ready to be done. It was getting to the point
24 where it was gonna start working towards the trial roster over
25 the next few months. And at that point, I talked to all the

1 experts, you know, and just -- I got -- there's no doubt what
2 the answer was, and so, it wasn't gonna get better.

3 Q: But, I mean, was the solicitor's office putting the
4 pressure on to plead within the next weeks?

5 A: Only in the sense of it's time -- if it's not gonna be a
6 plea, then it's time to start working towards trial, you know,
7 with any issues we had with that. You know, so it was kind of
8 preliminary -- you know, if it's not gonna be -- so not
9 pressure exactly, but ---

10 Q: Did you plea straight up, really?

11 A: Again, we did in the end. When we first went back and
12 started plea negotiations, as the solicitor was saying, hey,
13 you know, we'll do -- they wanted a big number, like 30, and
14 they said oh, we can do a cap, but the number of the cap was
15 35. Well, I mean, that's -- to me, that was not worth really
16 considering. So, we went back and forth a little bit and they
17 kind of came to a range of 25 to 30, which is -- judges will
18 sometimes go lower, and I felt like the cap was too big, too
19 big a range. I felt like in that scenario, we could maybe get
20 it under 25, and the Judge went right down the middle of the
21 range, but the range was a lot smaller at that point, so...

22 Q: Thank you. No further questions.

23 REDIRECT EXAMINATION OF ERIC FOX BY MR. JAMES:

24 Q: There may've been some testimony on that and maybe I've
25 confused myself, my understanding that this was without a

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1 recommendation or negotiation?

2 A: It was. It was ---

3 Q: Was there sort of a soft recommendation that occurred off
4 the record?

5 A: It was kind of our option. The solicitor, again,
6 initially wanted to do like a cap of 35 and I was like, oh,
7 we're not gonna do that and don't like that. So, he said, I
8 can do a recommendation on the record for 25 to 30. We had
9 talked with Judge John kind of generally. So, yes, there was
10 kind of a soft recommendation and my feeling was we maybe
11 would come out better if we just did it -- the judge had
12 pretty well indicated I won't go above, you know, what the
13 state would recommend. You know, I'll listen to everything on
14 the record but, you know, Mr. Fox, it's not gonna be outside
15 that 25 or 30 range. And I had a lot of what I felt was
16 really good mitigation. So, in the end, it was my choice and
17 discussed with Sarah why we would do that straight up because
18 what recommendation there would've been I felt really would've
19 been likely to be worse.

20 Q: Thank you. No further questions.

21 THE COURT: Anything else from either side?

22 MR. FALK: No, Your Honor.

23 BY THE COURT:

24 THE COURT: Okay. I will take this under advisement and
25 read through it carefully,

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BY THE COURT

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1 MR. FALK: Thank you.

2 MR. JAMES: Thank you, Your Honor.

3 **ADJOURNED**

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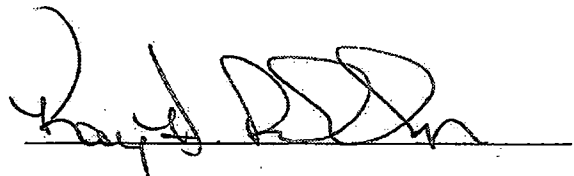
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CERTIFICATE OF COURT REPORTER

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C 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 Sara L. Toney v. State of South Carolina, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on November 27, 2018, as reported by Dixie C. Eubank.

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

A handwritten signature in black ink, appearing to read 'Kay H. Richardson', is written over a horizontal line.

Kay H. Richardson

Official Court Reporter

August 6, 2019.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FOR THE FIFTEENTH JUDICIAL CIRCUIT
)

Sarah L. Toney,) Case No.: 2017-CP-26-03017
S.C.D.C. No. 371030,)
)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

2019 APR 24 PM 12:16
HORRY COUNTY
CLERK OF COURT
HORRY COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed by Sarah L. Toney ("Applicant") on May 15, 2017. Respondent made its return on or about July 17, 2017. The Court convened an evidentiary hearing into the matter on Tuesday, November 27, 2018, at the Horry County Government & Justice Center in Conway, South Carolina. Applicant was present at the hearing and represented by James K. Falk, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on her own behalf at the evidentiary hearing. Applicant's plea counsel, J. Eric Fox, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea 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. Applicant was indicted at the December 2015 term of the Horry County Grand Jury for homicide by child abuse (2015-GS-26-05651). J. Eric

Fox, Esq. represented Applicant, and Scott R. Hixson, Esq., of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On January 11, 2017, Applicant pled guilty as indicted. The Honorable Steven H. John sentenced Applicant to imprisonment for a term of 27 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. Ineffective assistance of counsel, in that:
 - a. Counsel failed "to prepare and present a defense on my behalf"
 - b. "Failure to call expert witnesses concerning Mental Health, to include [postpartum] Depression."
 - c. "Failure to object to the sentence."
 - d. "Failed to object to solicitor's comments."
2. Involuntary guilty plea, in that:
 - a. "Involuntary Guilty Plea was unlawfully induced"
 - b. "And not made voluntary or with a complete understanding of the nature of the charges and the inadequacies of the plea potential."
 - c. "I did not understand the nature of the constitutional rights being [waived]."
3. "Direct appeal not filed"
 - a. "Attorney failed to file direct appeal and I was prejudiced"
 - b. "In all cases counsel has a duty to make certain the client is fully aware of the right to appeal."
4. "Rule 5 motion to discovery never viewed"
 - a. "I was prejudiced by not having knowledge of my motion of discovery before or after plea. This is a Brady violation."

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, 286 S.C. 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, 286 S.C. at 442, 334 S.E.2d at 814 (quoting Strickland, 466 U.S. 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.” Smjth 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, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. 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, 300 S.C. at 117-18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694). 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, 59 (1985).

Applicant further claims her plea was not entered knowingly or voluntarily. 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. Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also Boykin v. Alabama, 395 U.S. 238, 243 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought, and forestalls the spin-off of collateral proceedings that seek to probe murky memories."). 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. Leeke, 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) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are

contentions that in the face of the record are wholly incredible.”). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why she should be allowed to depart from the truth of her statements. Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by United States 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. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); Richardson v. State, 310 S.C. 360, 363, 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.

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

1. Failure to Develop, Present Mental Health Defense

Applicant alleges Counsel was ineffective in failing to develop and present a mental health based defense. In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Due process prohibits the conviction of a person who is mentally incompetent, and that right cannot be waived by a guilty plea. Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 595 (1992) (citing Bishop v. United States, 350 U.S. 961 (1956); Pate v. Robinson, 383 U.S. 375 (1966)). The test of competency to enter a plea is the same as required to stand trial: the accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him or her. Id., 308 S.C. at 232, 417 S.E.2d at 596 (citing State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976); Carnes v. State, 275 S.C. 353, 271 S.E.2d 121 (1980)). An applicant alleging incompetence in fact must show by a preponderance of the evidence that he or she was incompetent at the time of his or her plea. Id.

An applicant alleging ineffective assistance of counsel for failure to seek a mental health evaluation, however, must still satisfy the two prongs of Strickland: the applicant must demonstrate (1) a “reasonable probability” that he was not competent at the time of the plea, and (2) that counsel’s failure to seek an evaluation was unreasonable. Garren v. State, 423 S.C. 1, 12-13, 813 S.E.2d 704, 710-11 (2018)

The plea proceedings on January 11, 2017, started with a competency hearing pursuant to State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981), at which time the Court heard expert testimony from Dr. Emily Gottfried, a forensic psychologist on faculty with the Medical University of South Carolina.¹ Dr. Gottfried testified that Applicant was both competent to stand trial and, at the time of her actions on November 3, 2015, was criminally responsible and had the capacity to conform her behavior with the law. (Tr. 10-11). Dr. Gottfried also testified that Applicant was, at the time of the homicide, under the influence of methamphetamine, amphetamines, and opioids, and that she suffered from multiple, severe drug abuse disorders. (Tr. 13-15). Applicant’s history of psychiatric hospitalizations indicated no psychotic symptoms, and that any such symptoms she may have been suffering “were likely substance induced.” (Tr. 15-16). Dr. Gottfried concluded that Applicant’s deficient cooperation with efforts to locate her child “did not appear to be consistent with psychosis[,]” but appeared to be “more related to personality pathology and possibly to substances.” (Tr. 16-17). When pressed to expand upon Applicant’s personality disorder, Dr. Gottfried agreed that Applicant suffers from borderline personality disorder, but rejected a previous diagnosis of bipolar disorder. (Tr. 18, ll. 3-21). Based upon Dr. Gottfried’s testimony and associated written report, Judge John found Applicant criminally responsible. (Tr. 20-21).

¹ Much of Dr. Gottfried’s testimony was pursuant to an extensive evaluation performed upon Applicant, for which Dr. Adam Bloom, MUSC, was also present.

At the evidentiary hearing, Counsel testified Applicant gave manic statements recorded on the dash cam of a police squad car, which were alone enough to prompt him to investigate her mental health issues. Counsel had Applicant evaluated for competence and she was found competent to stand trial. Counsel also had Applicant evaluated for criminal responsibility and she was found criminally responsible. Counsel testified he was able to secure thorough treatment records for Applicant. Counsel recalled that Applicant suffered from auditory hallucinations at the time of the killing, and that Applicant's parents also suffered from their own mental health issues, such that Applicant was abused from an early age. Counsel testified Applicant inconsistently used medications prescribed to her, and expressed he was "pretty sure" she was not using her prescribed medications at the time of the killing.

Counsel testified that, in the course of his investigatory efforts, he was contacted "out of the blue" by advocacy organizations with referrals to very well-regarded experts who could be potentially helpful to Applicant's defense. However, Applicant's toxicology report from the time of the killing, as well as her own self-reporting, indicated she was under the influence of methamphetamine at the time. As a consequence, it was impossible for Counsel to find an expert who would conclude Applicant's mental health was the cause of her actions, rather than the drugs. Counsel explained that mental disturbance and drug use provide for very distinct kinds of hallucinations, with surprisingly little overlap between drug-induced and non-drug-induced hallucinations. Counsel noted that he looked for a diagnosis of postpartum psychosis, and that without any such diagnosis, the Applicant's case was difficult to defend.

Applicant testified she used methamphetamine three days prior to the incident, and that she consistently reported her drug use occurred three days prior. Applicant recalled that law enforcement tested her urine, but that the urinalysis was "all wrong." Applicant denied using

opiates or Xanax. Applicant also testified she never got the results of law enforcement's test of her urine, and that she never looked at her discovery. Applicant testified that her obstetrician referred her to a specialist in Florence during her pregnancy with Victim, but she was simply sent back to her OBGYN. Applicant recalled that she was prescribed medications for her mental health, but did not take them. She further recalled being admitted to mental health facilities at least four times, and was prescribed anti-psychotics and lithium. Applicant emotionally testified that she was on lockdown at the detention center twenty-three hours a day before trial, and that she begged Counsel to get her out of the detention center no matter what. Applicant testified she was prescribed various medications while detained at J. Reuben Long, and listed them. Applicant explained her father was extremely abusive of her.

Applicant conceded there was not much else Counsel could have done to assist her, and accused the State of stonewalling plea negotiations. Applicant expressed her desire "to be done with it," and admitted that Victim's passing was her fault. Applicant offered that "it wasn't on purpose" and that she never would have intentionally harmed Victim.

The Court finds no deficiency in Counsel's representation and no prejudice to Applicant from the deficiency alleged. Counsel exhaustively investigated Applicant's mental health history and spoke to numerous medical professionals with significant experience with postpartum psychosis. None, however, would be able to say with confidence that Applicant's actions were caused by postpartum psychosis alone because of Applicant's voluntary drug use at the time. Therefore, Counsel's representation fell well within what is expected of attorneys, and Applicant was not harmed by Plea Counsel's failure to present expert witness testimony on postpartum psychosis during the Blair hearing. Additionally, Applicant offered no expert testimony at the evidentiary hearing to support any finding that she was not competent at the time of her plea

proceeding, or that she was not criminally responsible at the time of the killing. Applicant has failed to meet her burden of proving either prong under Hill, and accordingly her request for relief by way of this allegation is **DENIED**.

2. Failure to Object to the Sentence

Applicant alleged in her application for relief that Counsel was ineffective in failing to object to the sentence imposed by the plea court. Homicide by child abuse is a felony punishable by imprisonment for life, but not less than a term of twenty years. S.C. Code Ann. § 16-3-85(C)(1). Applicant was sentenced within the statutory range. No testimony was taken on this allegation at the evidentiary hearing, and the Court perceives no basis for objection from the record and the sentence imposed. Applicant has failed to meet her burden under either prong of Hill, and accordingly her request for relief by way of this allegation is **DENIED**.

3. Failure to Object to Solicitor's Comments

Applicant alleged in her application for relief that Counsel was ineffective in failing to object to the Solicitor's remarks during her plea proceeding. Applicant did not identify in either the application or in her testimony at the evidentiary hearing any objectionable statements made by the solicitor during the plea proceeding. Applicant has failed to meet her burden under either prong of Hill, and accordingly her request for relief by way of this allegation is **DENIED**.

4. Failure to File a Notice of Appeal

Applicant alleged in her application for relief that Counsel was ineffective in failing to file a notice of appeal. Though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a *trial*, a different standard applies to a guilty plea:

Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in

appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.

Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (citations omitted).

The plea court informed Applicant of her right to appeal during the plea proceeding. (Tr., 38, ll. 3-5). Counsel testified Applicant never asked for an appeal. Applicant offered no testimony on this allegation at the evidentiary hearing. Applicant did not ask for an appeal pursuant to White v. State² in her application or at any time during the evidentiary hearing.

Applicant offered no evidence to support this allegation. Accordingly, she has failed to meet her burden under Turner, and her request for relief by way of this allegation is **DENIED**.

B. Brady Violation

Applicant alleges a violation of Brady v. Maryland, 373 U.S. 83 (1963), at least insofar as she claims to have never seen her discovery. Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 268 (1993). A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing United States v. Bagley, 473 U.S. 667 (1985)). In the context of a guilty plea, a Brady violation is material "when there is a reasonable probability that, but for the government's failure to disclose Brady

² 263 S.C. 110, 208 S.E.2d 35 (1974).

evidence, the defendant would have refused to plead guilty and gone to trial." Gibson, 334 S.C. at 525, 514 S.E.2d at 325.

During the Blair hearing prior to the plea, there was at least some fleeting inquiry by the Court to confirm Counsel received Victim's autopsy in discovery. (Tr. 34, ll. 3-23).

At the evidentiary hearing, Counsel testified he filed for and received discovery. Counsel explained that while he did discuss discovery with Applicant, and showed most of it to her, he advised her against keeping her own copy while she was incarcerated in the detention center, lest it be stolen. Applicant, in her own testimony, claimed she never looked at her discovery. Applicant claimed to have never received the results of her urine test, but thereafter contended the conclusions of her urinalysis was incorrect as she denied using opiates and Xanax. Testifying again when called by Respondent, Counsel denied withholding any discovery from Applicant, but recommended that she not look at the autopsy pictures of Victim, and Applicant agreed with his advice.

The Court finds Applicant has failed to establish any Brady violation. The limited testimony on this point indicates no failure on the part of the State to produce any relevant, material evidence to Applicant and Counsel. The only potential question raised by the testimony at the evidentiary hearing is whether Counsel withheld information from Applicant, and the answer provided by the same testimony is that Counsel advised Applicant that she should not personally review the autopsy photographs of her deceased child. The Court finds nothing credible in Applicant's testimony that she never looked at her discovery, or that she did not receive her own toxicology results. Applicant has failed to demonstrate any of the four points required as articulated in Gibson, and accordingly her request for relief by way of this allegation is **DENIED**.

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, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if 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 15th day of April, 2019.

Kristi F. Curtis

KRISTI F. CURTIS
Presiding Judge
Fifteenth Judicial Circuit

Sunter

, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on December 17, 2015, the Grand Jurors of Horry County present upon their oath:

HOMICIDE BY CHILD ABUSE
CDR: 2356 16-03-0085(A)(1)(B)(1)

That Sarah Lane Toney did in Horry County, on or about November 3, 2015, cause the death of ^{Minor} [REDACTED], a five month old year old child, while committing child abuse or neglect, and the child's death occurred under circumstances manifesting an extreme indifference to human life, in violation of Section 16-03-0085(A)(1)(B)(1), 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

DOCKET NO. 2015-GS-26-05651

WITNESSES

Greg Lent Horry County Police Department

The State of South Carolina

County of Horry

Scott R. Hixson

15H05306

COURT OF GENERAL SESSIONS

DECEMBER, 2015 TERM

FILED
Horry County
2016 JAN -7 PM 2:23
MELANIE HUGGINS-WARD
CLERK OF COURT
DATE RECEIVED FROM
GRAND JURY

ARREST WARRANT NUMBER

2015A2610202712

CDR: 2356 16-03-0085(A)(1)(B)(1)

DOA: 11/9/2015

ACTION OF GRAND JURY

TRUE BILL

Bob Harris, Jr.

Foreperson of Grand Jury

Date: DEC 17 2015

VERDICT

Foreperson of Petit Jury

Date:

THE STATE

vs.

Sarah Lane Toney

W/F

Myrtle Beach, SC 29588

ATTORNEY: J. Eric Fox

Indictment for

HOMICIDE BY CHILD ABUSE

Jimmy A. Richardson, II, Solicitor

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

135

COUNTY OF Horry
STATE VS.
Sarah Lane ToneyINDICTMENT/CASE#: 2015GS2605651A/W#: 2015A2610202712Date of Offense: 11/3/2015S.C. Code §: 16-03-0085(A)(1)(B)(1)CDR Code #: 2356

AKA:

Race: WHITE Sex: F Age: 34DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Myrtle Beach, SC 29588DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Homicide by Child Abuse20 yrs To LIFE

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-03-0085(A)(1)(B)(1) of the S.C. Code of Laws, bearing CDR Code # 2356☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ § 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury; (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTORNEY: Hixson, Scott R. SCB69635 SC Bar# [REDACTED] Defendant [REDACTED] Attorney for Defendant [REDACTED] SC Bar# 15123WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center.for a determinate term of 27 years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Since 11/3/15.☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135. Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 61.6 (Public Def/Probation)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$3.75

TOTAL:

\$128.75 + \$40.00 = \$168.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

Renee N. ElvisMargaret Sullivan

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 25.00 beginning 2/11/2014\$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel. Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code: 129Sentence Date: 1/11/17