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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to Lexington County
The Honorable Donald B. Hocker, Plea Judge
The Honorable William P. Keesley, Sentencing Judge
The Honorable Brooks P. Goldsmith, PCR Judge

Appellate Case No. 2020-000013

DESTINY H. MILLS,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUES ON CERTIORARI

Petitioner's Statement of Issues Presented

- I. Did the post-conviction relief court err in denying Petitioner relief when her defense attorneys provided ineffective representation by failing to move to suppress the State's blood-alcohol evidence after the vial containing a blood sample for Petitioner to have independently tested was destroyed by a law enforcement officer, thus preventing her from asserting her statutory right to conduct her own investigation?
- II. Did the post-conviction relief court err in denying Petitioner relief when her public defender provided ineffective representation by not informing her of her Fifth Amendment right to remain silent when she informed him that she was involved in dram shop litigation related to the accident from which her charge arose?
- III. Did the post-conviction relief court err in denying Petitioner relief when the assistant solicitor on her case bifurcated her plea in order for her to be sentenced by a judge known to be harsh on crimes of this nature?

Respondent's Counterstatement of Issues Presented

- I. Did the PCR court correctly find Petitioner failed to prove that her defense attorneys were constitutionally ineffective for not moving to suppress the blood-alcohol evidence when Petitioner decided to plead guilty before her attorneys had the opportunity to move to suppress?
- II. Did the PCR court correctly find Petitioner failed to prove that Mauldin was constitutionally ineffective for not advising Petitioner of her right not to testify at a deposition in the victim's estate's dram shop litigation when Petitioner testified at the deposition without giving Mauldin the full opportunity to consider matter and properly advise Petitioner and when Petitioner failed to prove that there is a reasonable likelihood that the fact of her testifying at the deposition caused her to plead guilty?
- III. Did the PCR court correctly find Petitioner failed to prove that she is entitled to post-conviction relief due to the fact that Petitioner's guilty plea hearing was bifurcated into one hearing where she entered her guilty plea and a second hearing where she was sentenced, with different judges presiding over each when Petitioner did not prove that the bifurcation was improper and that she suffered any prejudice?

STATEMENT OF THE CASE

Destiny H. Mills (“Petitioner”) is presently incarcerated in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. During its December of 2015 term, the Lexington County Grand Jury indicted Petitioner for felony driving under the influence with death resulting (2015-GS-32-02929). David Michael Mauldin, Esquire, initially represented Petitioner, but Petitioner ultimately retained Robert T. Williams, Sr., Esquire. Assistant Todd Michael Wagoner of the Eleventh Circuit Solicitor’s Office prosecuted Petitioner. On November 2, 2017, Petitioner appeared before the Honorable Donald B. Hocker (“plea court”) and pleaded guilty as indicted, and the parties agreed to defer sentencing. On November 16, 2017, Petitioner appeared before the Honorable William P. Keesley (“sentencing court”), who sentenced her to imprisonment for ten years with credit for time served, assessed a fine of \$10,000 plus costs and assessments against Petitioner, and ordered that an ignition interlocking device be installed on her vehicle. Williams moved unsuccessfully for reconsideration, requesting that Petitioner be given sentencing credit for the time she served on house arrest. Petitioner did not appeal her conviction or sentence.

Petitioner filed an application for post-conviction relief on May 11, 2018, claiming she was entitled to relief because (1) her guilty plea was involuntarily give due to her being misled and (2) she was afforded the constitutionally ineffective assistance of counsel due to her attorneys’ lack of research. On August 17, 2018, the State (“Respondent”) made its return, request an evidentiary hearing. On March 27, 2019, Petitioner, through counsel, filed an amended application, setting forth the additional claims that (1) counsel was constitutionally ineffective for failing to move for the suppression of the blood-alcohol evidence, (2) counsel was

ineffective for failing to move for the suppression of video recordings, (3) counsel was ineffective for failing to move to suppress Petitioner's statements, (4) counsel was ineffective for failing to advise Petitioner to assert her right to remain silent during a civil deposition, (5) counsel was ineffective for failing to attend the civil deposition of Petitioner, (6) counsel was constitutionally ineffective for failing to adequately advise Petitioner of her trial rights, (7) counsel was ineffective for misadvising Petitioner that she would receive a five-year sentence or a house arrest sentence if she pleaded guilty, (8) counsel was ineffective for advising Petitioner she would gain some benefit in sentencing if she assisted the victim's family in its civil case, (9) counsel was ineffective for failing to adequately advise Petitioner regarding her case, the evidence of her guilt, and defense theories, and (10) not all plea offers were conveyed to Petitioner.

On June 28, 2019, an evidentiary hearing was convened at the Lexington County Courthouse with the Honorable Brooks P. Goldsmith ("PCR court") presiding. Petitioner was present and represented by Tommy A. Thomas, Esquire, while the undersigned represented Respondent. At the conclusion of the hearing, Respondent asked the PCR court to hold the court open for the submission of additional testimony from the State's witnesses in response to an issue raised without notice during the course of the hearing. Petitioner had no objection to that request, and the PCR court instructed that the parties would reconvene at a later date in order to take additional testimony. On September 9, 2019, the parties appeared before the PCR court again, this time at the Allendale County Courthouse, in order to take additional testimony. The PCR court allowed the parties to submit closing argument by letter in lieu of closing in court at Petitioner's request. The PCR court then issued its order of dismissal on November 9, 2019,

finding Petitioner failed to prove that she was entitled to post-conviction relief, and denying the application with prejudice. Petitioner's appeal follows.

STATEMENT OF FACTS

At around 2:00 a.m. on the morning of September 1, 2015, Joseph Mozingo was driving himself and twenty-one-year-old Olivia Johnson (“the victim”) around in her car. App. 6. Mozingo’s shift at Domino’s had just ended and the two were on I-26 headed to Waffle House. App. 6. Mozingo was driving at a speed of 55 or 60 miles per hour in the far right lane. App. 6. Mozingo noticed from the headlights in his rearview mirror that another car was approaching them quickly, and the victim took off her seatbelt and reached behind her seat to get something out of her purse. App. 6-7. Petitioner, with Andrew Graham in the passenger seat of Petitioner’s Kia Soul, collided with the victim’s car from behind. App. 7. Mozingo remembered waking up in the car and calling 9-1-1. App. 7. While on the recorded phone call, Mozingo found the victim outside the car; she had been ejected. App. 7. The victim died from the wounds she sustained in the crash. App. 10.

The fire department, EMS, and police responded. App. 7. Petitioner told law enforcement officers on the scene that she had had a single beer. App. 7. One of Petitioner’s friends who arrived at the scene told the law enforcement officers that he, Petitioner, and Graham had been at “Wild Wings” and the British Bulldog Pub in the Harbison area of Columbia earlier in the evening. App. 7-8. Trooper Bennett questioned Petitioner while she was in the back of the ambulance at the scene, at which point he observed her slurred speech and the strong odor of alcohol about her. App. 8. Petitioner told Trooper Bennett that she had been at a friend’s house and had had a single beer, and that she had not seen the victim’s car because it had been travelling slowly in the far right lane. App. 8.

After she was transported to the hospital, Petitioner was arrested and given warnings as required by Miranda v. Arizona, 384 U.S. 436 (1966). App. 8. Petitioner then told the law enforcement officers that she had been at a friend's house and Applebee's that night, and that she had had one beer. App. 8. She described the crash by saying that she had been switching lanes, looked at her phone in order to change the song playing in her car, and did not see the victim's car. App. 8. She described her "buzz level" as two out of ten. App. 8. After she was informed of her implied consent rights, Petitioner consented to submit a blood sample. App. 8. Although two vials of Petitioner's blood were taken, either a law enforcement officer or a nurse dropped one of the samples, and the vial shattered on the hospital floor. App. 9.

Petitioner gave another statement to police at the hospital once the blood draw was complete, telling them she first went to Applebee's but did not drink any alcohol there, went to Ale House and had one beer, went to Wild Hare, went to Wild Wings where she had two beers between 9:00 p.m. and midnight, and finally went to the British Bulldog Pub where she had two beers and "two sips" of Bud Light. App. 9. Graham asked her to drive him home at the end of the night, and made repeated attempts to kiss her during the ride, distracting her from the road. App. 9.

The State's analysis showed that Petitioner's blood-alcohol level was .127 at the time of the blood draw. App. 8. The South Carolina Highway Patrol Multi-Disciplinary Accident Investigation Team's investigation of the crash found that Petitioner was driving 75 miles per hour in a 65-mile-per-hour zone at the time of the crash, with neither Petitioner's nor the victim's vehicle experiencing a mechanical malfunction. App. 9.

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the PCR court's factual findings and will uphold them if there is probative evidence in the record to support them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, at 180-81, 810 S.E.2d at 839-40 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). However, pure questions of law will be reviewed de novo without deference to the lower court. Smalls, at 180-81, 810 S.E.2d at 839-40. Appellate courts will reverse the decision of the PCR court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

I. The PCR court correctly found Petitioner failed to prove that her defense attorneys were constitutionally ineffective for not moving to suppress the blood-alcohol evidence because Petitioner decided to plead guilty before her attorneys had the opportunity to move to suppress.

Petitioner argues that both Mauldin and Williams were constitutionally ineffective for failing to move for the suppression of the State's evidence of Petitioner's blood-alcohol content because the accidental destruction of one of the vials of her blood at the hospital prevented her from obtaining an independent analysis as guaranteed by S.C. Code Ann. § 56-5-2950. Petitioner argues the performances of Mauldin and Williams were deficient because their failure to moves for suppression kept them "from exploring the possibility of winning at trial," which, in turn, led to a prejudicial outcome for Petitioner.

The PCR court found Petitioner failed to prove Mauldin was constitutionally ineffective for failing to move for the suppression of the blood-alcohol evidence. App. 211. Mauldin was appointed to represent Petitioner initially, and remained as her attorney for approximately one year until Petitioner hired Williams. App. 132-33. While Mauldin represented Petitioner, he met with her and talked on the phone with her on multiple occasions, forwarded to her discovery he received from the State, represented Petitioner at two bond hearings, attended Petitioner's preliminary hearing,¹ discussed with her the fact that the victim's family was litigating a civil case because of the crash, discussed with her whether she could get sentencing credit for the time she spent on house arrest, and discussed the case with her. App. 133-38. Mauldin would have challenged the State's case, including through the use of reasonable motions, if Petitioner had gone to trial. App. 139, 211. Mauldin testified Petitioner's trial did not take place until about one

¹ Petitioner hired private counsel to represent her at the preliminary hearing only, but Mauldin attended the hearing anyway. App. 134.

year after Petitioner retained Williams. App. 140. He had not done much research into the issue of the admissibility of the blood-alcohol evidence because trial was some ways off in the future. App. 140, 142, 211. The PCR court found Mauldin's not filing a motion to suppress the blood-alcohol evidence was irrelevant to the question of whether the potential for the admission of the evidence at trial caused Petitioner to plead guilty. App. 211. The PCR court was required to "judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (S.C. Ct. App. 2014) (quoting Strickland v. Washington, 466 U.S. 668, 690 (1984)). The PCR court determined that Petitioner did not prove Mauldin was required by prevailing professional norms to move to suppress the State's blood-alcohol evidence one- to one-and-a-half years before trial, and the obligation for Mauldin to move to suppress the evidence could not have yet arisen at that time. App. 211-21.

The PCR court found Petitioner failed to prove Williams' performance was deficient when he did not move to suppress the State's blood-alcohol evidence. Williams made it clear at the PCR hearing he would have challenged the admissibility of the evidence if Petitioner had proceeded to trial. App. 211. Williams advised Petitioner he did not feel the attempt would be successful, though. App. 211. Petitioner's argument that Williams, because he did not move to suppress the evidence, failed to "explor[e] the possibility of winning at trial" ignores the evidence that Williams and Petitioner did discuss the issue. Williams testified he had unsuccessfully argued for the suppression of blood-alcohol evidence before. Because the record is clear that Williams would have moved for suppression had Petitioner proceeded to trial rather than pleading guilty, he could not possibly have been ineffective for not moving to suppress the

evidence at trial. His advice to Petitioner was based upon his experience dealing with the issue and with the law. In State v. Wickenhauser, 309 S.C. 377, 380, 423 S.E.2d 344, 346 (1992), this Court found the trial court did not err in denying a defendant's motion to suppress blood-alcohol evidence when the defendant's independent blood sample was lost by law enforcement personnel while he was in jail. In State v. Pipkin, 294 S.C. 336-38, 337, 364 S.E.2d 464, 465 (1988) (per curiam), this Court found the trial court erred by denying the defendant's motion to suppress the blood-alcohol evidence when the officer who took possession of the single vial of blood drawn from the defendant told the defendant that he could avail himself of an independent test only by having more blood drawn. In State v. Wilson, 296 S.C. 73, 76, 370 S.E.2d 715, 716 (1988), this Court found that, though the trial court erred in denying the defendant's motion to suppress the blood-alcohol evidence, the error was not prejudicial because the evidence of the defendant's intoxication was cumulative to other evidence. These cases show that Williams' advice to Petitioner fell within the bounds of reasonable professional norms. The fact that two vials of Petitioner's blood were drawn and the office or nurse attempted to give the second one to Petitioner shows that the State made a reasonable effort to give Petitioner the opportunity to do independent testing. The fact that two vials of blood were drawn, one for the State and one for Petitioner, and that she was properly advised of her independent testing rights, distinguishes this case from Pipkin. And there was other evidence of Petitioner's intoxication independent of the blood-alcohol evidence: Petitioner admitted to law enforcement in the wake of the crash and testified under oath at the deposition that she had consumed alcohol on the night of the crash; the circumstances of the crash show that it would have been unusual for Petitioner to crash into the victim's car, which was travelling slowly and solitarily in the far-right lane, if Petitioner had not

been intoxicated; and Petitioner's behavior while at the hospital would have reasonably led to a conclusion that she may have been under the influence of alcohol.

This Court should deny the petition for a writ of certiorari as to the first question presented.

II. The PCR court correctly found Petitioner failed to prove that Mauldin was constitutionally ineffective for not advising Petitioner of her right not to testify at a deposition in the victim's estate's dram shop litigation because Petitioner testified at the deposition without giving Mauldin the full opportunity to consider matter and properly advise Petitioner and because Petitioner failed to prove that there is a reasonable likelihood that the fact of her testifying at the deposition caused her to plead guilty.

Petitioner argues the PCR court erred in finding Mauldin was not constitutionally ineffective with respect to his advice to Petitioner regarding her right to remain silent at a civil deposition because by not giving proper legal advice to Petitioner, Mauldin violated his duty to protect Petitioner against the negative consequences of testifying under oath in a civil deposition while awaiting trial and because the testimony Petitioner gave at the deposition could have been used to impeach her had she proceeded to trial. Petitioner's argument fails because Petitioner's unilateral actions did not give Mauldin the opportunity to fully consider the matter and advise Petitioner thereafter and because Petitioner has failed to prove that there is a reasonable likelihood that she would have proceeded to trial had Mauldin advised her differently.

Mauldin represented Petitioner during the early stages of the underlying criminal case. While Mauldin was representing Petitioner, Petitioner was served with a subpoena commanding her to appear and give sworn testimony at a deposition in the dram shop civil suit brought by the victim's family against the bars and restaurants that served alcohol to Petitioner on the night of the crash. Supp. App. 1. Mauldin's testimony about the substance of his discussions with

Petitioner about the civil litigation—testimony that the PCR court found to be more credible than Petitioner’s about this topic—was that Petitioner made him aware of the civil suit, at which point he exercised caution because cooperation with the victim’s family in the matter could be beneficial but could also be harmful. App. 222. Mauldin’s more credible testimony was that he told Petitioner of other cases in which the cooperation of the defendants with the victims’ families’ civil suits resulted in benefits to the defendants in sentencing but warned her that any statements she made could be used against her in the criminal case. App. 218. Mauldin said his advice to a defendant faced with the choice to cooperate or not would depend upon the facts and circumstances of the particular case, and testified his approach in Petitioner’s case was a “let’s wait and see thing.” App. 218-19. Mauldin did not learn that Petitioner had been subpoenaed or testified in the civil deposition until she informed him of the fact afterwards. App. 222.² As the PCR court found, Petitioner kept Mauldin in the dark about the deposition, depriving him of the chance to consider the particular facts and circumstances of Petitioner’s case so that he could advise her whether or not to testify at the deposition or to assert her right to remain silent. App. 222-23.

The PCR court correctly found that Petitioner failed to prove that there is a reasonable likelihood that Mauldin’s performance with respect to his advice to Petitioner about the civil suit affected Petitioner’s decision to plead guilty rather than proceed to trial. App. 223. The PCR court found that Petitioner presented sparse evidence that the civil suit and deposition affected her decision to plead guilty and that she instead was more concerned at the time with the blood-alcohol evidence that the State had. App. 223. The emphasis of Petitioner’s testimony at the PCR

² The PCR court provided in its order of dismissal a thorough summary of Petitioner’s testimony at the deposition. App. 220-22.

was weighted towards the blood-alcohol evidence. App. 223. Additionally, the substance of Petitioner's testimony at the deposition was "substantially similar" to the statements she made to law enforcement officers in the wake of the crash. Mauldin and Williams both thought Petitioner's testimony during the deposition was not very harmful to her defense. App. 223. The assistant solicitor would have tried Petitioner and believed he would have secured a conviction even if Petitioner had not testified at the deposition; he believed he would have used the deposition transcript at trial only to impeach Petitioner if she made statements that contradicted what she had said while under oath at the deposition. App. 223. As such, Petitioner has not proved that the transcript from her deposition was particularly harmful to her defense in light of the other evidence of her guilt and has not proved that there is a reasonable likelihood she would have proceeded to trial if she had not given the sworn testimony.

This Court should deny the petition for a writ of certiorari as to the second question presented.

III. The PCR court correctly found Petitioner failed to prove that she is entitled to post-conviction relief due to the fact that Petitioner's guilty plea hearing was bifurcated into one hearing where she entered her guilty plea and a second hearing where she was sentenced, with different judges presiding over each because Petitioner did not prove that the bifurcation was improper and that she suffered any prejudice.

Petitioner argues the PCR court erred in denying relief to her because the State engaged in "judge shopping" by bifurcating her guilty plea hearing so that she pleaded guilty before one judge and then was sentenced by another some days later. Petitioner argues the assistant solicitor offered contradictory explanations for the bifurcation and was actually motivated by a desire to have the sentencing judge "issue a sentence of a certain type." Petitioner's argument fails because the PCR court correctly found that the assistant solicitor offered reasonable reasons for

the bifurcation and Petitioner failed to prove that she suffered prejudice in any way by the bifurcation.

The PCR court found no impropriety in the assistant solicitor's actions. App. 230-31. The assistant solicitor testified about the general practice of the Eleventh Circuit Solicitor's Office, which is to have defendants plead guilty before the assigned trial judge once their cases have been set for trial. App. 230-31. If the typical practice had been followed, Petitioner would have entered her guilty plea before and then been sentenced by Judge Keesley. App. 230-31. In Petitioner's case, though, the assistant solicitor departed from the typical practice by having Petitioner enter her guilty plea before Judge Hocker not long before because he believed there was a chance Petitioner might change her mind and proceed to trial instead of pleading guilty if the parties waited for Petitioner to plead guilty before Judge Keesley on the scheduled trial date. App. 231.

The PCR court correctly found that Petitioner failed to prove any prejudice to her from the bifurcation. App. 231. In State v. Langford, 400 S.C. 421, 432-36, 735 S.E.2d 471, 477-79 (2012), this Court found a statute vesting the circuit solicitors with the exclusive authority to prepare dockets for courts of General Sessions was unconstitutional because it violated the doctrine of the separation of powers. This Court did not stop there, though, but required that Langford prove that he suffered prejudice as a result of the solicitor setting the date on which the case was called to trial. Id. at 436, 735 S.E.2d at 479.³ Notably, the Court "question[ed] the

³ The South Carolina Court of Appeals has required defendants to prove prejudice in similar contexts. See State v. Howard, 384 S.C. 212, 218, 682 S.E.2d 42, 45 (S.C. Ct. App. 2009) (finding the trial court did not err in denying Howard's motion to recuse him because there was no evidence that the court had any personal bias toward Howard); State v. Cheatham, 349 S.C. 101, 110-12, 561 S.E.2d 618, 623-24 (S.C. Ct. App. 2002) (finding the trial court did not err in

extent to which [the statute] actually permitted judge shopping,” but assumed that it did so for the sake of argument. Id. at 437, 735 S.E.2d at 479. Ultimately, this Court found Langford failed to establish any evidence of actual prejudice because “[t]he only support offered for the allegation of bias by the presiding judge, in this case, Judge Keesley, is the simple fact that he ruled in favor of the State on previous issues that arose. Yet there is not a shred of evidence that [Judge Keesley] did so out of any animus towards Langford or allegiance to the State.” Id. at 469, 735 S.E.2d at 480.

In this case, Petitioner has offered no evidence that she suffered prejudice from being sentenced by Judge Keesley despite entering her guilty plea before Judge Hocker. The “potential for abuse” cannot be equated with the presence of abuse. Langford, at 440, 735 S.E.2d at 481. Petitioner had no evidence that the sentence she received before Judge Keesley was any harsher than the sentence she would have received from Judge Hocker. App. 231. The sentence she received was within the statutory range. App. 231. Petitioner presented mitigation to Judge Keesley, which included statements from two character witnesses and multiple letters written on Petitioner’s behalf. App. 231. Petitioner speculated that she may have received a more favorable punishment had she been sentenced by Judge Hocker instead of Judge Keesley, noting that perhaps Judge Hocker would have been swayed by; this mere speculation does not constitute evidence of prejudice because the father did not testify on Petitioner’s behalf at the PCR hearing and did not make any positive statements to Judge Hocker at the guilty plea hearing, though he

declining to recuse himself despite the fact that a second circuit judge announced an initial intention to make certain pre-trial rulings in Cheatham’s favor because there was no evidence to support the allegation that the trial court should have recused himself. Noting that the question of whether the solicitor acted improperly by not calling the case to trial before the judge who made the favorable comments did not affect the trial court’s ability to preside over trial.).

was there. App. 3-14, 24, 229; Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (1998)) (instructing that an “applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness’ failure to testify at trial.”); see also Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (holding that the PCR court’s finding that Dempsey was prejudiced by trial counsel’s failure to call an expert at trial to rebut the State’s expert was merely speculative when Dempsey failed to have an expert testify at his PCR hearing), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). The victim’s father chose not to speak at the sentencing hearing because he was too emotional, but asked the assistant solicitor to inform Judge Keesley that the victim was “a special person” and had artistic talent. App. 24. The only comments Judge Keesley heard from the victim’s family came from the attorney who represented the victim’s brothers, comments that “[a] significant jail sentence [was] warranted” App. 25-26.

Instead of proving prejudice, Petitioner wants to infer and presume it. Petitioner notes that Williams speculated at the PCR hearing that the solicitor’s office may prefer to control when cases are called to trial because the practice allows the solicitor to “make sure that whichever person that [he] put[s] on the trial roster that week can receive whatever sentence that [he] think[s] would be more beneficial to the State versus any other consideration.” App. 196. Petitioner argues that “judges become known for their habits in the courtroom and rulings, including their propensity to sentence in certain ways” and contends that her accusations of impropriety was not that Judge Keesley behaved inappropriately, but that the assistant solicitor

did so. Petitioner’s contention that Judge Keesley has a “propensity” for harsher sentencing than Judge Hocker is not only not unsupported, but is “untenable and insulting towards the court, and it would set a dangerous precedent were [this Court] to sanction it.” Langford, at 439, 735 S.E.2d at 480. Petitioner alleges she does not mean to impugn the integrity of Judge Keesley, but questions the motivations of the assistant solicitor in bifurcating the guilty plea hearing. That sleight of hand does not work because, even if the assistant solicitor was motivated to have Petitioner sentenced by Judge Keesley specifically, that motivation has significance only if Judge Keesley has some nefarious allegiance to the State.

This Court should deny the petition for a writ of certiorari as to the third ground presented.

CONCLUSION

For the foregoing reasons, this Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Return to Petition for Writ of Certiorari has been served upon opposing counsel by sending to opposing counsel's primary e-mail address as listed in the Attorney Information System (AIS):

Tommy Arthur Thomas, Esquire
thomaslaw@me.com

This 19th day of November, 2020.

s/Taylor Zane Smith
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