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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Anderson County

Honorable R. Scott Sprouse, Circuit Court Judge

JOANIE HOLCOMBE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2020-000495

APPENDIX

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1 State of South Carolina
 2 County of Anderson In the Court of General Sessions

3
 4 State of South Carolina,)
 5) 2016-GS-04-01016
 6 -vs-) July 13, 2017
 7 Joanie Holcombe,)
 8 Defendant.)
 9) Transcript of Record
 -----)

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B E F O R E:

The Honorable R. Lawton McIntosh, Judge

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

Catherine Huey, Assistant Solicitor
 Tenth Circuit Solicitor's Office
 Attorney for the State

Rodney Richey, Esquire
 Attorney for the Defendant

Diane L. Marcengill, RPR, CRR, CRC
 Circuit Court Reporter

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 11:10 a.m.)

4 MS. HUEY: Your Honor, may it please the court.
5 Before you is Joanie Holcombe. She's pleading guilty
6 to homicide by child abuse, 2016-GS-04-1016. There is
7 no recommendation from the State.

8 THE COURT: No recommendation?

9 MS. HUEY: Without negotiations, Your Honor.

10 (WHEREUPON, the defendant was sworn.)

11 THE COURT: Ma'am, I need you to speak loud enough
12 for me to hear you. Okay?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You're Joanie Faith Holcombe?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: That's not loud enough. If you need
17 to come around, you can.

18 Why don't we come in front over here, maybe I can
19 hear her a little bit better.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Ms. Holcombe, it says that you're
22 24 years of age; is that correct?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: How far have you gone in school?

25 THE DEFENDANT: Tenth.

1 THE COURT: Tenth grade?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you have a GED?

4 THE DEFENDANT: (Shaking head.)

5 THE COURT: Give me verbal responses, please.

6 Okay?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: So do you not have a GED?

9 THE DEFENDANT: No, sir.

10 THE COURT: Before you were incarcerated, did you
11 work anywhere?

12 THE DEFENDANT: Subway.

13 THE COURT: Subway?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: How long did you work at Subway?

16 THE DEFENDANT: Six months.

17 THE COURT: Six months?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And what's the longest you have ever
20 held a job?

21 THE DEFENDANT: Those six months.

22 THE COURT: And before that, did you work at any
23 other occupation?

24 THE DEFENDANT: No, sir.

25 THE COURT: Why not?

1 THE DEFENDANT: I just -- I never did.

2 THE COURT: I don't know if this child was the
3 victim in this case, but do you have children?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: How many?

6 THE DEFENDANT: I have one son.

7 THE COURT: Ma'am?

8 THE DEFENDANT: I have one other son.

9 THE COURT: One other son?

10 MR. RICHEY: Yes, additional child.

11 THE COURT: Is this victim her child?

12 MR. RICHEY: Yes, sir.

13 THE COURT: So she had two children?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. Are you married?

16 THE DEFENDANT: No, sir.

17 THE COURT: You're pleading guilty today without a
18 recommendation from the State; without any negotiations
19 from the State. Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand the minimum that I
22 could sentence you to today --

23 THE DEFENDANT: Yes, sir.

24 THE COURT: -- is 20 years?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Ma'am?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand that I could
6 actually sentence you to life in prison today?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And in South Carolina, life means
9 life. It means you are to serve day for day. Do you
10 understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Knowing that, do you still want to go
13 forward with your plea?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Are you under the influence of any
16 medications, drugs, or alcohol today?

17 THE DEFENDANT: No, sir.

18 THE COURT: Ma'am?

19 THE DEFENDANT: No, sir.

20 THE COURT: Also, this would be classified as a
21 violent crime and most serious crime. Do you
22 understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: South Carolina, assuming you get back
25 out, that you could have one more most serious and you

1 would go to jail and would die in jail. Do you
2 understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you still want to go forward with
5 your plea?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Has anybody forced, threatened, or
8 promised you anything to get you to plead guilty?

9 THE DEFENDANT: No, sir.

10 THE COURT: Are you pleading guilty of your own
11 free will?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand that you have a
14 constitutional right to a jury trial on this charge?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: During that trial, you would be
17 presumed innocent and the State would have to prove
18 each and every element of the charge of homicide by
19 child abuse by proof beyond a reasonable doubt before
20 you could be found guilty. Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand that proof beyond a
23 reasonable doubt is the highest burden of proof that we
24 recognize in South Carolina?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: If you go forward today with your
2 plea, you will give up that right. Do you understand
3 that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Is that what you want to do?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you freely and voluntarily give up
8 your right to a jury trial in favor of pleading guilty
9 today?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Ma'am?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: I saw you kind of look toward
14 Mr. Richey. Do you want to talk to him for a second?

15 THE DEFENDANT: Yes, sir.

16 (WHEREUPON, an off-the-record discussion was held
17 between Mr. Richey and the defendant.)

18 THE DEFENDANT: Sir, I don't -- I agree to do the
19 plea.

20 THE COURT: Do you want to go forward today, is
21 that what you're telling me?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now, while we're on the subject, have
24 you had sufficient time, do you feel like, to speak
25 with Mr. Richey?

1 Ma'am?

2 THE DEFENDANT: Yes, sir.

3 (WHEREUPON, an off-the-record discussion was held
4 between Mr. Richey and the defendant.)

5 THE COURT: So there is a little bit of confusion.

6 Do you feel like you have had sufficient time to
7 speak with Mr. Richey?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Has he met with you and showed you the
10 State's discovery in this case?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you feel like he's had sufficient
13 time to investigate this case?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you feel like he's conducted a
16 sufficient investigation of the case?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Is there anything, as we sit here
19 today, do you feel like, he hasn't done before you
20 going forward with the plea?

21 THE DEFENDANT: No, sir.

22 THE COURT: Do you feel like he's done everything
23 he needs to do?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now, Ms. Holcombe, if you were to go

1 to trial on this charge, during that trial you could
2 exercise the following constitutional rights: Number
3 one, through Mr. Richey or through yourself, you would
4 have a right to confront and cross-examine any witness
5 who comes before you from the State and testifies
6 against you. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You also have the right to present
9 evidence in your own defense. Do you understand?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You would have a right to subpoena
12 other people to come to court, including experts, to
13 testify on your behalf. Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Also, you would have a right to remain
16 silent under the Fifth Amendment of the United States
17 Constitution, which means a right not to testify. Do
18 you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: If you were to go to trial and you did
21 not testify, the trial judge would instruct the jury
22 that they may not and shall not consider your failure
23 to testify in their deliberations whatsoever because
24 that's your right under the United States Constitution
25 and that the State has the burden at all times to prove

1 your guilt by proof beyond a reasonable doubt. Do you
2 understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Now, Ms. Holcombe, if you go forward
5 today, you, just like with the jury trial, you will
6 give up the constitutional protections I've just gone
7 over with you. Do you understand?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Is that what you want to do?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you freely and voluntarily give up
12 your constitutional rights in favor of pleading guilty
13 today?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Under indictment 2016-1016, are you
16 guilty of homicide by child abuse?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Are you satisfied with the service of
19 Mr. Richey?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Has he reasonably done all that you've
22 asked him to do?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: As we stand here today, do you have
25 any complaints about your representation whatsoever?

1 THE DEFENDANT: No, sir.

2 THE COURT: You're totally and completely
3 satisfied with his services?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Mr. Richey, have you gone over the
6 elements of this charge with Ms. Holcombe, have you
7 explained to her the minimum time and the maximum time
8 that she could get, and it's day-by-day service, looked
9 to see if she had any defenses or mitigating
10 circumstances to her case as well as her constitutional
11 rights?

12 MR. RICHEY: Yes, sir. I've talked to her and
13 discussed that.

14 THE COURT: Do you agree with her decision to
15 plead in this case?

16 MR. RICHEY: Yes, sir, I do, absolutely.

17 THE COURT: Do you feel like you engaged in
18 sufficient discovery with the case to determine whether
19 or not there is a good charge against her?

20 MR. RICHEY: We got discovery and reviewed it with
21 Ms. Holcombe.

22 THE COURT: And you do agree with her decision to
23 plead?

24 MR. RICHEY: Yes, sir, I do.

25 THE COURT: Have you explained to her that,

1 regardless of her voluntary plea in this matter, she
2 would still have a ten-day window to appeal this
3 sentence that I may hand down?

4 MR. RICHEY: I've explained to her she has a right
5 to appeal and she has a right to go to trial at any
6 point in this proceeding.

7 THE COURT: Do you understand that, Ms. Holcombe?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You still want to proceed?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay.

12 Ms. Huey.

13 MS. HUEY: Your Honor, may it please the court.

14 On or about December 13th of 2015, this defendant,
15 Joanie Holcombe, who was age 23 at the time, gave birth
16 to a girl at her trailer located at 1050 Cherokee
17 Circle in Anderson County. Upon delivering the baby on
18 her own, the defendant placed the baby in the toilet.
19 When the baby continued to cry, she placed her in a
20 trash bag causing her to asphyxiate.

21 Over the next several days, the defendant buried
22 the newborn in the woods more than once, as she was
23 discovered by dogs and dug up. The severely decomposed
24 body of this newborn was discovered by a passer-by in
25 the woods near this trailer, and law enforcement was

1 called out as a result.

2 When law enforcement got there, the defendant's
3 own mother and sister came out, in shock, essentially,
4 and said that they thought Ms. Holcombe had been
5 pregnant but had been concealing that pregnancy and
6 that she no longer looked pregnant. So, of course,
7 things turned toward her direction.

8 The defendant was also nearby, Your Honor, and she
9 was confronted with the allegation of having been
10 recently pregnant. Later coworkers thought the same
11 thing. She was even on video at her workplace
12 appearing to have a bump in her stomach.

13 She eventually confessed to this crime, Your
14 Honor, after a voluntary waiver of rights, and this was
15 video recorded.

16 An autopsy later confirmed asphyxia was the
17 infant's cause of death, and the report also notes
18 puncture marks consistent with canine teeth.

19 Those would essentially be the facts, Your Honor.

20 There are a few other things I need to put on the
21 record, but if you want to go over that with the
22 defendant.

23 THE COURT: Go ahead, please.

24 MS. HUEY: Your Honor, naturally, given these
25 gruesome facts, the State was concerned with the mental

1 status of the defendant. She was evaluated under Blair
2 and McNaughton by DMH. While she did have a history of
3 mental health treatment for depression and adjustment
4 disorder, examiners opined that she was competent to
5 stand trial, knew right from wrong, and could conform
6 her conduct. I would pass up those reports and make
7 that part of the record, though, if you would like to
8 see them, Judge.

9 THE COURT: If you would mark those Court's
10 Exhibits 1 and 2.

11 Mr. Richey, have you reviewed those reports?

12 MR. RICHEY: Yes, sir, I have them, and I reviewed
13 them with my client.

14 THE COURT: And after reviewing those reports, you
15 feel satisfied that that was an appropriate evaluation?

16 MR. RICHEY: Yes, sir. And when you get to us,
17 I'll go into a little more detail.

18 THE COURT: While we're doing this, let me ask
19 you: This sounds like there was a confession in this
20 case. Do you feel like there are Jackson/Denno
21 voluntariness issues about her confession?

22 MR. RICHEY: I went over that with her, and it was
23 completely voluntary. Completely.

24 THE COURT: Ms. Huey, any other issues you would
25 like to put on the record?

1 MS. HUEY: The only other thing is I would like to
2 speak to sentencing, and Mr. Richey is aware that I'm
3 going to speak to sentencing although there are no
4 negotiations.

5 (WHEREUPON, Court's Exhibit Numbers 1 and 2 were
6 marked for identification.)

7 MS. HUEY: Judge, I'll pass these up.

8 Your Honor, I just wanted to further add, in terms
9 of sentencing, if you're ready for that, or I can speak
10 later.

11 THE COURT: Just one second. Go ahead.

12 MS. HUEY: Your Honor, I did just want to mention
13 that Investigator Tracy Call, who was the lead
14 investigator on this case, is present, if you have any
15 questions for him, and he is in agreement with this.

16 Your Honor, the State amended this charge to
17 homicide by child abuse. It was initially charged as
18 murder, but we amended it, given the extreme
19 indifference to human life that homicide by child abuse
20 requires. And while there's no negotiation in this
21 case other than that --

22 THE COURT: Say that again, please.

23 MS. HUEY: There's no negotiation in this case
24 other than knocking that mandatory minimum down to the
25 20 as opposed to 30. We certainly feel that the facts

1 in this case warrant an extreme sentence and a life
2 sentence.

3 THE COURT: Officer, anything you want to state on
4 the record?

5 OFFICER CALL: We just agree with the solicitor's
6 office that it's a horrific event, and we ask for the
7 maximum.

8 THE COURT: Mr. Richey.

9 MR. RICHEY: Thank you, Your Honor, if it please
10 the court. Your Honor, obviously, we're not going to
11 try to minimize the death of this child. We are just
12 going to try to enlighten the court on the situation.

13 I will tell the court, when I got this case,
14 Hervery Young had previously had it. I called
15 Mr. Young to discuss, basically, her mental state, what
16 he thought. He had talked to -- he had a lady come up
17 and examine her, an independent party. And I talked to
18 Mr. Young, and Mr. Young told me that they did not do a
19 report, that they felt she was competent. And so I had
20 that information, but I still sent her to Columbia just
21 to have a second wheel in this thing.

22 So my discussion with her, she is as competent as
23 any client I've had. I mean, she can discuss the
24 facts. She knows what's going on, so I don't have an
25 issue as to her mental state, whether she's competent

1 to stand trial.

2 I will tell Your Honor, Ms. Holcombe, this was --
3 unfortunate for her, she had an extreme family dynamic,
4 and she basically walked around nine months pregnant
5 with no assistance from anyone -- her mom, her sister,
6 nobody. And these disorders that she's had, one of
7 them is depression. And because of how this child was
8 conceived, it was conceived by a friend of the mother's
9 boyfriend in the household. Okay?

10 I'm going to explain that. The mother was dating
11 a gentleman. The gentleman had a friend. She started
12 dating the gentleman her mother was dating, okay, and
13 had a child by this other guy. And all these people
14 were in the house. She had this dynamic that she did
15 not feel comfortable with -- the child was an
16 interracial child, and she thought that was going to
17 present issues in the household as well. Okay?

18 And so she essentially walked around all this time
19 with nobody and no assistance from anybody, nobody
20 saying, "Hey, how you doing? You pregnant?" Everybody
21 just let her walk around, walk around, walk around
22 without nobody. After the fact, they said, "Oh, we
23 believed she was pregnant," this and that. But she
24 pretty much was a lonely young girl at this time
25 without a lot of assistance with a history of

1 depression.

2 THE COURT: What age was she? 2015, so she was --

3 MR. RICHEY: 23. She was 23.

4 And I know 23 is an adult, Your Honor. I
5 understand that, but I think 23, getting my age, is a
6 younger age. She's a young person. And I just believe
7 that -- I think in the report, I think nobody is going
8 to disagree that she had a depression issue with her,
9 and I just think she was pretty much isolated. And
10 when she made this decision, it wasn't a great
11 decision.

12 I talked to her about it. She still cannot
13 believe she actually did this. And one thing she
14 expressed to me is, in light that she has another
15 child, that's the thing she don't understand. She does
16 have another child that I think her mom is rearing
17 right now. So she has another child, and she explained
18 to me she don't understand how she could do this,
19 having another child.

20 So she's very remorseful. The statement that she
21 gave, I talked to her about, "Hey, we can suppress this
22 statement. We can do all this stuff," and her response
23 simply was, "I went down and took responsibility for
24 what I done." That's her whole thing. "I took
25 responsibility for what I did."

1 And I explained to her -- I used this word --
2 consequences of doing that, whether the statement is
3 going to be voluntary.

4 But, Judge, I ask the court, you know, she's going
5 to have to do a lot of time. We discussed this. I
6 mean, if the court gave the minimum, she will still do
7 a ton of time. We're not standing up here not
8 understanding you're going to get a ton of time, but I
9 would just ask that this young girl, the court consider
10 the minimum sentence for this young girl. I would ask
11 the court to consider it.

12 She was working the whole time. It was amazing
13 she went to Subway every day, worked every day. I just
14 think she was just a girl that was up there extremely
15 lost, and she had nowhere to go, nowhere. And I just
16 ask the court to consider that.

17 She's been great with me. I mean, when I say
18 great -- I don't want to use the word. It's not been a
19 very difficult case because she has said, "I did this.
20 I'm extremely sorry. I'm not going to trial because I
21 did this." And sometimes, when you explain to clients,
22 "You have a right to a trial. I don't care whether you
23 did it or not, whether you want to accept
24 responsibility, you still have a right to a trial."
25 And she's just been the whole time, "No, I did this and

1 I want to take responsibility for it."

2 And so I still think there's some good in this
3 girl. I do.

4 THE COURT: How far have you gone in school -- did
5 she go in school?

6 MR. RICHEY: Tenth grade.

7 THE COURT: Do you have any indication there are
8 educational issues at all? I mean --

9 MR. RICHEY: Well, the school records said that --
10 she has a twin sister. And what the school talked
11 about, there was a lot of -- not a lot of interest
12 there. There was not a lot of parental interest also.
13 The school had made contact before she dropped out with
14 the mother, and the mother scheduled a time, didn't
15 show up. And I think the mother said in the records,
16 "Hey, they're planning on dropping out anyway." So I'm
17 just saying, you can't -- there's no reason for what
18 happened at all, but this is a girl that was basically
19 out there fending for herself, and some of the
20 relationships that she's had access to through this
21 home environment was very questionable. Very
22 questionable.

23 THE COURT: Anything further from the State?

24 MS. HUEY: Nothing further, Your Honor.

25 THE COURT: All right. Stay here. I want to go

1 look at these reports, and I'll come back and issue an
2 order.

3 We'll be in recess for a few minutes.

4 MR. RICHEY: Your Honor -- never mind.

5 Will she have a chance to speak when you come
6 back?

7 THE COURT: Oh, absolutely.

8 MR. RICHEY: Thank you, Your Honor.

9 (WHEREUPON, a recess was taken from 11:30 a.m. to
10 12:00 p.m.)

11 THE COURT: Ms. Huey, I didn't ask you, I don't
12 think, about prior criminal record. If I did, I don't
13 have a memory of it.

14 MS. HUEY: I didn't mention it, Judge. She does
15 not have a prior record.

16 THE COURT: I thought I read something about a
17 juvenile justice. She went into --

18 MS. HUEY: I apologize. I don't have the juvenile
19 record with me. I can try to get that, if you like.

20 THE COURT: All right.

21 Mr. Richey, your client wants to make a statement.
22 I'd be glad to hear from her.

23 MR. RICHEY: Yes, sir.

24 THE DEFENDANT: Your Honor, there's no excuse for
25 what happened. I don't really understand why it

1 happened, but I truly, truly am sorry. And I have to
2 live with it every single day of my life. It hurts.
3 It -- it's a hard thing to go through. And whatever I
4 get today is, I believe, you know, is God's will.

5 THE COURT: Well, let me ask you this,
6 Ms. Holcombe: If I read this report right, you lost a
7 child. You had a son, correct?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And your son, the father asked you to
10 abort the child, and you didn't want to do it, but you
11 were considering adoption up to the last days of the
12 pregnancy?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Why didn't you do that in this
15 situation?

16 THE DEFENDANT: I didn't have the heart to.

17 THE COURT: Ma'am?

18 THE DEFENDANT: I didn't have the heart to.
19 That's why I don't understand what happened. I don't
20 understand what came down to it.

21 THE COURT: Any indication, Ms. Huey -- I tell you
22 a concern of mine is these other folks are in this
23 household and like they didn't know what was going on.
24 Any indication of complicity by anybody else out there?

25 MS. HUEY: Not that we're aware, Judge.

1 THE COURT: Anybody here to speak on her behalf
2 other than you?

3 MR. RICHEY: Just me, Your Honor. Like I said,
4 she's got a real challenging situation in her family,
5 real challenging with her mother. She's got a real
6 challenging situation. And, Your Honor, I would say
7 that, although her mother was with her, she pretty much
8 feels like she was alone throughout. And I said that,
9 but -- she's -- she said, "Hey, I did it. There's no
10 excuse. I'm sorry." That's the way she's been with me
11 the whole time.

12 THE COURT: Let me say this. I mean, of note, she
13 does have some psychological issues. Not such as to
14 render her unfit to plea or not understand the
15 wrongness, but she did, in fact, attempt to hide the
16 child, which is indication of her knowledge of the
17 wrongfulness of what she's doing.

18 I think it's important in this case you tried to
19 overstate the psychiatric issues as to the extent that
20 your evaluation was invalid. In other words, that you
21 manipulated. I'm sure you have been manipulated, too.

22 Something that stood out to me that when you, in
23 the report, when you said, "My mother is always up
24 my -- I think I shall end the sentence, whatever. I
25 never had time for myself." I can't help but feel that

1 part of your conduct, your actions in this case, deal
2 with, "Oh my goodness, I've got another child to deal
3 with. I don't have time to deal with it now."

4 With that being said, I'm going to respectfully
5 decline to give her life. I understand the suggestion.
6 I'm going to sentence you to 50 years. You have ten
7 days to appeal. Good luck.

8 I did note on the sentencing sheet, Mr. Richey,
9 that I'm recommending mental health evaluation in the
10 Department of Corrections and appropriate treatment.

11 MR. RICHEY: Thank you, Your Honor.

12 THE COURT: Good luck.

13 MS. HUEY: Thank you, Judge.

14 THE DEFENDANT: Thank you.

15 (WHEREUPON, proceedings concluded at 12:05 p.m.)

16 ***END OF REQUESTED TRANSCRIPT OF RECORD***

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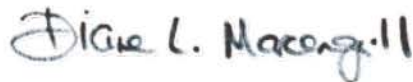
Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Anderson County, South Carolina, on the 13th day of July 2017.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

June 5, 2018



Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF)

Joanie Holcombe #373202)

2018CP0400667)

Full name and prison number (if any) of Applicant.)

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF)

FILED-CLERK'S OFFICE
ANDERSON SC

2018 APR - 5 AM 9:14

COMMON PLEAS AND
GENERAL SESSIONS

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 Leah Correctional Institution 2809 Airport Rd. Greenwood SC 29644
2. Name and location of Court which imposed sentence Anderson County 10th Circuit
3. Name(s) of co-defendant(s) (if any) None
100 S. Main St.
Anderson SC 29624
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2016-04-1016

(b) _____

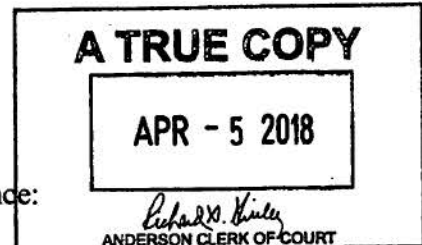
2016-GS-0401016

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 7/13/17

(b) _____



- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty yes
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Lawyer did not appeal.
- (b) _____
- (c) _____
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) _____
- (c) _____

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

- (a) My attorney wasn't in this for me. I asked about another plea was denied - I believe he could have went harder in the mental health
- (b) _____ situation - / post prison - I just feel like more could have been done.
- (c) _____

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

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

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

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

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Ineffective assistance of counsel I had no other avenues due
- (b) to my attorney not filing an appeal for me
- (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? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

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. Hertz/Young P.O. Box 11433 Columbia SC 29211
 - ii. Bradley Wade Pichey P.O. Box 10916 Greenville SC 29603
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Met with me a few times, and got me half of my Motion.
 - ii. Represented me through my plea/mental evaluation
 - iii. _____

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

Relief I am requesting is a new trial / sentence reduction

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

NO

STATE OF SOUTH CAROLINA)
)
County of)

VERIFICATION

Joanie Holcombe

I, Joanie Holcombe, 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.

Joanie Holcombe

SWORN to and subscribed before me this 30th
day of March, 2018

Sandra Dorothea Hill (L.S.)
Notary Public

My Commission Expires: *Jan. 8, 2023*

FILED-CLERK'S OFFICE
ANDERSON SC
2018 APR - 5 AM 9:14
COMMON PLEAS AND
GENERAL SESSIONS

A TRUE COPY
APR - 5 2018
Richard X. Kinley
ANDERSON CLERK OF COURT

Janie Holcombe #373202
Leath Corr. Inst. A2-104
2809 Airport Rd.
Greenwood SC 29646

FILED-CLERK'S OFFICE
ANDERSON SC
2018 APR - 5 AM 9:18
COMMON PLAS AND
GENERAL PERSONS

Richard A. Shirley
Clerk of Court
P.O. Box 8002
Anderson SC 29622

2018 CP0400667

A TRUE COPY
APR - 5 2018
Richard A. Shirley
ANDERSON CLERK OF COURT



GREENVILLE SC 29602
02 APR 2018 PM 4 11



STATE OF SOUTH CAROLINA)
 COUNTY OF ANDERSON)
)
 Joanie Holcombe, #373202,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE TENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-04-00667

**RETURN AND MOTION FOR A MORE
 DEFINITE STATEMENT**

Respondent, making its Return to the application for post-conviction relief filed on April 5, 2018, would respectfully show this Court:

I.

Joanie Holcombe (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. During its June 2016 term, the Anderson County Grand Jury indicted Applicant for murder (2016-GS-04-01016). Rodney W. Richey, Esquire, represented Applicant on this charge. Assistant Solicitor Catherine Huey, of the Tenth Circuit Solicitor’s Office, prosecuted the case. On July 13, 2017, Applicant appeared before the Honorable R. Lawton McIntosh and pled guilty to the lesser-included offense of homicide by child abuse. Judge McIntosh sentenced Applicant to a term of imprisonment for fifty years. Applicant did not appeal her conviction or sentence.

II.

On December 13, 2015, Applicant gave birth to a baby girl at her trailer. Tr. 12. Upon delivering the baby, Applicant placed the baby in the toilet. Tr. 12. The baby continued to cry, so Applicant placed her in a trash can, causing the baby to asphyxiate. Tr. 12. Applicant then buried the baby in the woods, but some dogs discovered the body and dug the baby up. Tr. 12. Thereafter,

Applicant again buried the baby in the woods. Tr. 12.

A passerby then discovered the decomposed body near Applicant's trailer. Tr. 12. Law enforcement responded to the scene and spoke with Applicant's mother and sister. Tr. 13. Both indicated Applicant had been pregnant, but had been concealing her pregnancy, and no longer looked to be pregnant. Tr. 13. Applicant's coworkers described her similarly. Tr. 13. Law enforcement then took Applicant into custody and interviewed her. Tr. 13. Following a waiver of her rights, Applicant confessed. Tr. 13.

III.

In her application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully based on”

1. Ineffective Assistance of Counsel
 - a. “Lawyer did not appeal;” and
 - b. “My attorney wasn’t in this for me. I asked about another plea was denied—I believe he could have went harder in the mental health situation-/post pardon [sic]—I just feel like more could have been done.”

Applicant wholly fails to set forth any facts to support this general allegation.

Attached to this Return and incorporated by reference are the records of the Anderson County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the transcript from Applicant's guilty plea proceeding, and the post-conviction relief application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

Additionally, Applicant must specify any claims she intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief 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), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the post-conviction relief 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), SCRPC.

IV.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a post-conviction relief action, Applicant bears the burden of proving the allegations in her 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). The 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 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. In order to satisfy the prejudice prong of this test following a guilty plea, the applicant "must show that there is a reasonable probability that, but for counsel's errors, [s]he would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Respondent submits Applicant can satisfy neither requirement of the *Strickland* test, particularly in light of Applicant's complete failure to list any facts to support her general allegations. However, the allegation of ineffective assistance of counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See *Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Applicant further alleges she was denied effective assistance of counsel because her plea counsel did not appeal her conviction. The decision of the South Carolina Supreme Court, in *White v. State*, 263 S.C. 110, 119, 108 S.E.2d 35, 39 (1974), holds that even though the post-conviction relief court finds the applicant had never voluntarily and intelligently abandoned her appeal, the court has no jurisdiction to grant a belated appeal. However, where an accused establishes in a post-conviction relief hearing that she was unconstitutionally deprived of her statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected. *Id.* at 119, 108 S.E.2d at 39-40.

While trial counsel is required to make certain the defendant is made fully aware of the right

to appeal, the standard for a guilty plea differs. *Turner v. State*, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are non-frivolous 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. *Id.* at 225, 670 S.E.2d at 374 (citing *Roe v. Flores-Ortega*, 528 U.S. 470 (2000); *Weathers v. State*, 319 S.C. 59, 459 S.E.2d 838 (1995)). “Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver.” *Bonnette v. State*, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981).

Respondent submits the allegation counsel was ineffective for failing to file a direct appeal is without merit. However, Respondent submits an evidentiary hearing is warranted. *See Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

VI.

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to “support each ground” or to explain with any specificity whatsoever the facts upon which her claims are based. 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 his 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 his claims are based.

VII.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VIII.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

KELLY OPPENHEIMER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

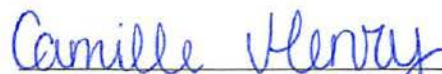
June 11, 2018

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON)	
)	2018-CP-04-00667
)	
JOANIE HOLCOMBE, #373202)	
)	
Applicant,)	
)	
vs)	CERTIFICATE OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent,)	
_____)	

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

Linda Vallar Whisenhunt, Esquire
Linda Vallar Whisenhunt, LLC
213 South Main Street
Anderson, South Carolina 29624

DATED this the 11th day of June, 2018.



Camille Henry, Legal Assistant
For Respondent

Joanie Holcombe v. State of South Carolina 2018-CP-04-00667 February 18, 2020

1 State of South Carolina In the Court of Common Pleas
2 County of Anderson

3
4 Joanie Holcombe,)
5 Applicant,) 2018-CP-04-00667
6 -vs-) February 18, 2020
7 State of South Carolina,)
8 Respondent.)
9 _____) Transcript of Record

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B E F O R E:

The Honorable R. Scott Sprouse, Judge

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

Taylor Z. Smith, Esquire
S.C. Attorney General's Office
Attorney for the State

Linda Whisenhunt, Esquire
Attorney for Applicant

Diane L. Marcengill, RPR, CRR, CRC
Circuit Court Reporter

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I N D E X

PAGE

WITNESSES

JOANIE FAITH HOLCOMBE

Direct Examination

4

By Ms. Whisenhunt

Cross-Examination

9

By Mr. Smith

RODNEY RICHEY

Direct Examination

12

By Ms. Whisenhunt

Cross-Examination

19

By Mr. Smith

Redirect Examination

22

By Ms. Whisenhunt

EXHIBITS

No.	Description	ID'd	Rec'd
	None offered		

Joanie Holcombe v. State of South Carolina 2018-CP-04-00667 February 18, 2020

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 10:11 a.m.)

4 MR. SMITH: Your Honor, this is the case of Joanie
5 Holcombe v. State, 2018-CP-04-667.

6 Ms. Holcombe is confined in SCDC serving a
7 sentence for homicide by child abuse.

8 In June of 2016, the grand jury indicted her for
9 murder. Rodney Richey represented her, and Assistant
10 Solicitor Catherine Huey prosecuted the case on behalf
11 of the solicitor's office.

12 In July of 2017, Ms. Holcombe appeared before
13 Judge McIntosh and pleaded guilty to the offense of
14 homicide by child abuse. He sentenced her to prison
15 for 50 years. She did not file a notice of appeal
16 after that and has since filed this application for
17 postconviction relief.

18 And Ms. Whisenhunt has informed me that she has
19 one issue today, that Ms. Holcombe did not knowingly
20 and voluntarily waive her right to a direct appeal.

21 THE COURT: Okay. All right. Ms. Whisenhunt.

22 MS. WHISENHUNT: She actually raises two issues in
23 her appeal, your Honor, and we will provide some
24 testimony through her direct about the second issue,
25 that she wishes that her attorney, Mr. Richey, had

1 provided additional information to the court on the
2 mental health issues.

3 We're going to touch on that briefly, your Honor,
4 but the principal issue is the failure to file the
5 notice of appeal.

6 THE COURT: Okay. All right. Call your first
7 witness.

8 MS. WHISENHUNT: Your Honor, we call Ms. Holcombe
9 to the stand.

10 **JOANIE FAITH HOLCOMBE,**
11 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**
12 **DIRECT EXAMINATION**

13 BY MS. WHISENHUNT:

14 Q Good morning, Ms. Holcombe. Please state your
15 full name for the court.

16 A Joanie Faith Holcombe.

17 Q Ms. Holcombe, I'm going to ask you three sets of
18 questions. First, we're going to talk about the PCR
19 itself, then talk about your representation, and then
20 talk about the issues you raised in your PCR
21 application. Okay?

22 The first is the PCR itself. You and I have
23 spoken on the phone several times about this
24 application, correct?

25 A Yes.

1 Q And I have explained to you the purposes of a PCR,
2 correct?

3 A Yes, ma'am.

4 Q And do you understand that the purpose is not to
5 lessen your sentence, but the purpose is to give you a
6 chance to start over; do you understand that?

7 A Yes.

8 Q Do you understand that we've discussed the risks
9 of a PCR, that, in starting over, you may not get less
10 time but, in fact, could get more time; do you
11 understand that?

12 A Yes, ma'am.

13 Q And knowing those risks, have you decided that you
14 would like to proceed with this PCR?

15 A Yes, ma'am.

16 Q Okay. Let's talk about the background of your
17 representation just so the court understands.

18 You were initially appointed a lawyer. It wasn't
19 Mr. Richey, it was Mr. Young; is that correct?

20 A Yes, ma'am.

21 Q And you only had him a short time, though?

22 A Right.

23 Q And then you were appointed a new attorney, and
24 that was Mr. Richey?

25 A (Nodding.)

1 Q Did you have the opportunity to meet with
2 Mr. Richey?

3 A Yes, ma'am.

4 Q How many times did you meet?

5 A I would say about ten, maybe.

6 Q And during the course of meeting with him, did you
7 discuss your case and the evidence?

8 A Yes, ma'am.

9 Q Did you focus on your desire to plead guilty in
10 the case?

11 A Uh-huh.

12 Q Did you talk about what would happen at the guilty
13 plea?

14 A Yes, ma'am.

15 Q Okay. And did you talk about some mitigating
16 factors, things that happened in your life that may
17 have contributed to this event?

18 A Yes, ma'am.

19 Q And, in fact, did he request that you be
20 evaluated, have a mental health evaluation?

21 A Yes, ma'am.

22 Q Did the State also request that you have a mental
23 health evaluation?

24 A Yes, ma'am.

25 Q And did you have those?

1 A Yes, ma'am.

2 Q In the course of meeting with Mr. Richey, did you
3 discuss with him what would happen if you pled guilty
4 and you were sentenced and you had a reason to appeal?

5 A No, ma'am.

6 Q Did you ever discuss appeal at all?

7 A (Shaking head.)

8 Q Did you know what that was prior to your plea?

9 A No, ma'am.

10 Q Following your plea, did you ever have the
11 opportunity to discuss an appeal with Mr. Richey?

12 A No, ma'am.

13 Q Okay. You filed a PCR application, and in it, you
14 allege two things; is that right?

15 A Yes, ma'am.

16 Q The first thing that you allege is that Mr. Richey
17 failed to provide the court enough information about
18 your mental health; is that correct?

19 A Yes, ma'am.

20 Q Did you also complain in your PCR application that
21 Mr. Richey did not raise the issue of postpartum
22 depression?

23 A Right.

24 Q In your PCR application, did you also raise the
25 issue that he did not file an appeal?

1 A Right.

2 Q I know you said prior to the plea you didn't
3 discuss an appeal with him and he didn't explain that.
4 What about following your plea? Is it true that during
5 the plea the judge mentioned that you have a right to
6 appeal?

7 A The judge did, but I don't -- I didn't know what
8 that was at the time.

9 Q So what did you do after the plea? Did you say
10 anything to Mr. Richey?

11 A No. I just asked him about the appeal, like, what
12 it was.

13 Q Okay. And what did he tell you after the plea?

14 A He didn't mention it. He didn't say anything.

15 Q Okay. Did he say he would come talk to you about
16 it?

17 A Yes.

18 Q And did he come talk to you about it?

19 A No.

20 Q Were you -- you were sentenced at that plea to
21 50 years. Were you surprised by that sentence?

22 A Yes, ma'am.

23 Q Was it more than you expected it to be?

24 A Yes, ma'am.

25 Q Was it more than you and Mr. Richey had discussed

1 that it might be?

2 A No.

3 Q Okay. You hadn't discussed that with Mr. Richey?

4 A No.

5 Q Okay. Because of the length of the sentence, did
6 you have a desire to appeal that sentence?

7 A Ma'am?

8 Q Because the sentence was so long, did you have a
9 desire to appeal that sentence?

10 A Yes, ma'am.

11 Q Okay.

12 MS. WHISENHUNT: I have no further questions.

13 THE COURT: All right.

14 Cross-examination.

15 CROSS-EXAMINATION

16 BY MR. SMITH:

17 Q Ms. Holcombe, I just have a few questions for you.

18 At the plea hearing, Judge McIntosh did tell you
19 before you pled guilty that you could be sentenced to
20 anywhere between 20 years to life?

21 A Uh-huh.

22 Q Okay. And you remember telling him you
23 understood?

24 A (Nodding.)

25 Q Okay. Is that a "yes"?

1 A Yes, sir.

2 Q Okay. Do you remember when Judge McIntosh
3 mentioned at the plea hearing that you did have the
4 right to appeal?

5 A Yes, sir.

6 Q Okay. And did you -- do you remember affirming
7 that you understood?

8 A Yes, sir.

9 Q Okay. I'm sorry. I'm just asking you that so
10 it's clear on the record if you're saying yes or no.

11 And Ms. Huey did tell Judge McIntosh at your plea
12 hearing that you did have some mental health issues,
13 didn't she?

14 A Yes, sir.

15 Q She mentioned depression, too?

16 A I think so, yes.

17 Q Okay. And did Mr. Richey tell Judge McIntosh that
18 you had some issues as well?

19 A Yes, sir.

20 Q Mental health, depression, all of that?

21 A Uh-huh, yes, sir.

22 Q And didn't Judge McIntosh refer to that? He
23 mentioned, when he was getting ready to sentence you,
24 that you had psychiatric issues?

25 A Yes, sir.

1 Q Okay. And isn't it true that, when he sentenced
2 you, that he also ordered the Department of -- ordered
3 the Department of Corrections to give you mental health
4 treatment and evaluation?

5 A Yes, sir.

6 Q You testified earlier that you asked Mr. Richey
7 about appealing, and your testimony is that he didn't
8 say anything?

9 A Right.

10 Q Was he silent when you asked him that question, or
11 did he move on?

12 A No. I asked him what an appeal was, and he didn't
13 answer me -- I mean, he said he'd come and talk to me,
14 but he never did.

15 Q Did you ever send him any letters or anything
16 after that, asking about an appeal?

17 A Yes, sir.

18 Q Okay. Do you know how many letters you sent?

19 A I think just one.

20 Q Did he ever reply to your letter?

21 A No, ma'am -- I mean no, sir.

22 Q Do you remember, where did you mail that, to his
23 office?

24 A Yes, to his office.

25 Q How long after your plea hearing did you send that

1 letter?

2 A I would say a week.

3 Q Okay. Thank you.

4 MR. SMITH: No more questions.

5 THE COURT: Ms. Whisenhunt, any redirect?

6 MS. WHISENHUNT: No redirect, your Honor.

7 THE COURT: Thank you, ma'am. You may step down.

8 MS. WHISENHUNT: The Applicant calls Mr. Richey.

9 **RODNEY RICHEY,**

10 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

11 **DIRECT EXAMINATION**

12 **BY MS. WHISENHUNT:**

13 Q Please state your name for the record.

14 A Rodney Richey.

15 Q Mr. Richey, could you explain for the court how
16 you came to represent Ms. Holcombe.

17 A I was appointed to represent her.

18 Q Was there another attorney appointed prior to you?

19 A Yeah. Hervery Young was the PD, and he had it.

20 And I think he left, then I got it.

21 Q So he only had it for a short period of time?

22 A Yeah, six months or so.

23 Q And during the course of your representation, did
24 you have opportunity to meet with Ms. Holcombe?

25 A Yes, I did, several times.

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1 Q And your discussions with your client, did they
2 center around her desire to plea?

3 A Yeah. She -- when I met with her, she didn't want
4 a trial. She -- I mean, she just wanted to accept what
5 she had done, basically. That's what she said.

6 Q So was your focus on mitigating circumstances?

7 A Yeah. Hervery Young has -- she had an independent
8 evaluation that Hervery Young had done, so I called
9 Hervery. I got whatever documentation they had, and I
10 went from that reference point, and that's where I was
11 going.

12 Q Okay. What were the principal mitigating factors
13 relating to Ms. Holcombe in this case?

14 A Well, her age. I thought her age was a mitigating
15 factor. And I thought that she had another child, I
16 believe, that she had cared for. She didn't have a
17 criminal record, I don't think. So there was a lot of
18 mitigation, and I just felt like her mental health,
19 trying to develop that was difficult because she just
20 wanted to get on -- like I say, get on with the case.

21 I didn't necessarily agree with that, but she did
22 not want to, and I use the word "develop" the mental
23 issue in the case that I thought she had.

24 Q Yet you requested a mental health evaluation?

25 A Yeah, I did in spite of her saying that she was

1 fine.

2 Q And in it you uncovered that she had a
3 dysfunctional family, difficult background; is that
4 correct?

5 A Whole lot of stuff. You know, when talking to her
6 at the jail, she told me the dynamics of her family,
7 and it was complicated, to say the least. But still,
8 generally did not -- she just wanted to say "I did
9 this" and move on, and I didn't necessarily agree with
10 that, but that's what she wanted to do.

11 Because I thought this young lady had some serious
12 issues, but you just couldn't -- you know, I think
13 there's something more there that what was being let
14 on.

15 Q Was depression one of the issues that you thought
16 was there?

17 A I just think, really, if you look at it, when all
18 this happened when that baby was killed in that house,
19 there was a gentleman in that house. And the whole
20 time this gentleman was there, she was doing all this
21 stuff. And I just, you know, just for lack of better
22 words, I just felt like she was covering for this guy
23 because she didn't seem to be an aggressive, violent
24 person.

25 She -- you know, she just kept saying, you know,

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1 "I did this. I'm sorry," da, da, da. So whenever you
2 confronted her with issues about what happened, she
3 was, "Oh, no. It was all me. It was all me."

4 And we talked about this guy in the house. I
5 just -- I just think that -- I just got the feeling
6 that she was, and I'll say that she was covering for
7 this dude. That's just the feeling I got from it.
8 Because I just didn't -- I just didn't -- she just
9 didn't come across as somebody that would do this type
10 of stuff or walk around in the house like it never
11 happened. And I just felt like it was something with
12 this guy in this house and her. I just felt like I
13 wasn't getting the full story.

14 Q And in your information you presented to the
15 court, you explained some of that; is that correct?

16 A Yeah.

17 Q Did you ever discuss with her -- and I know you
18 didn't come on shortly after.

19 A Yeah.

20 Q Mr. Young was there for a period of time. But did
21 you ever discuss with her the issue of postpartum
22 depression?

23 A See, this is -- you know, in representing her, you
24 know, it's kind of a thin line on the defense side
25 where you think that you have a good defense and you're

1 trying to get your client to go along with it.

2 It's just a thin line of creating it and have your
3 client -- you know, I would say to her, "Look, there's
4 something going on here. You have some issues going on
5 here." Because with this kind of, and I use the word
6 horrific crime, I mean, there's something -- she just
7 didn't give me the impression that she would go out and
8 kill this baby, bury this baby, the dog dig it up, bury
9 it again. I mean, it was just a lot. That she just
10 didn't give me the impression, because when she talked
11 about her other child and her situation, she just
12 didn't give me the impression that she did this. I'll
13 use that phrase "did this."

14 But in representing her, you know, you can't make
15 her say what you want her to say. You can't make her
16 say, "I suffer from postpartum. This is really
17 distraught." You can't make her say that, and that
18 was --

19 Q So you tried to follow that sort of fine line?

20 A Yeah.

21 Q I think you even used a term similar to that in
22 the plea when you were providing information to the
23 court.

24 A Yeah. She just wouldn't do it. I mean, that's
25 fine. I can't make her do it. That's fine.

1 Q In your discussions with her, did you ever, prior
2 to the plea, talk about what the sentence might be?

3 A Yeah. I told her, "This is a bad deal." I told
4 her, I said, "Man," you know, "this is not going to
5 work out really good because" -- and that's why I
6 stressed to her when I was down at the jail about this
7 mental health. I said, "Hey, you know, we've got to
8 have something." We just go up there and nothing is
9 wrong with her and we did this, it's going to get
10 really ugly. It's going to get really, really ugly.

11 So -- but she just wanted to plead. It's a sad
12 story, I'll put it that way. It was sad.

13 Q In those discussions, did you talk about what
14 could be done if she was dissatisfied with the
15 sentence? Did you talk with her about the possibility
16 of appealing?

17 A I don't -- I don't -- I don't recall. I probably
18 would say prior to the plea, no. I mean, I don't -- I
19 mean, prior to the plea, I didn't discuss that with
20 her, no.

21 Q And as the State has pointed out, in the plea,
22 which is standard, the judge informed her of her right
23 to appeal; is that correct?

24 A That's correct.

25 Q Following the plea, you heard Ms. Holcombe's

1 testimony. She mentioned to you -- she testified that
2 she mentioned to you, "What's this about an appeal? I
3 want to know about that. I might want to do that."

4 Do you recall that conversation shortly after the
5 plea in the courtroom?

6 A Not -- no, I don't recall that. I'll tell you
7 what I do recall is I got a phone call from her mother,
8 I think it was, and they were discussing their options.
9 They said, "What are our options?" And we discussed
10 the appeal with them.

11 I told them that there were not any issues there,
12 but they could file a postconviction relief. Now,
13 that's not her. I don't know if they got that back to
14 her or not, but I don't recall expressly talking to
15 her. I will say that.

16 Q And you never went, after the plea, to talk -- to
17 consult with her about appeal?

18 A No, I did not.

19 Q So you never explained the pros and cons of the
20 appeal?

21 A No, I did not.

22 Q Or the advantages or disadvantages?

23 A No. I don't recall doing that.

24 Q Or whether there were grounds for the appeal?

25 A Right. I didn't -- I don't -- I don't recall

1 doing that, no.

2 Q And so you never determined from her, conversation
3 with Ms. Holcombe, whether in fact she wanted to go
4 forward with an appeal or not?

5 A No, I don't -- no, I don't think I did that. I
6 don't think so, no.

7 MS. WHISENHUNT: I have no further questions.

8 THE COURT: Mr. Smith.

9 CROSS-EXAMINATION

10 BY MR. SMITH:

11 Q Mr. Richey, I just have a couple questions.

12 You did tell Judge McIntosh at the plea hearing
13 that you had had her evaluated and you did not doubt
14 Ms. Holcombe's competency?

15 A No, I didn't.

16 Q What do you remember telling him in your attempt
17 to mitigate?

18 A I don't -- whatever is in the transcript. I can't
19 remember. I know -- you know, it's a tough case
20 because, you know, basically, like I said, it's a thin
21 line from your client saying, "I'm fine. I'm fine.
22 I'm fine," and you have to offer mitigation almost in
23 opposition to what she's saying.

24 I mean, that's what the tough part about this is,
25 you know. Hervery Young expressed the same thing.

1 We're just like, there's something. But Joanie, she
2 was just like, "No, I'm fine." And I just told her,
3 "If you're fine and did this, it's not going to be
4 good."

5 Q You told Judge McIntosh at the hearing that you
6 had discussed with her and knew that she would probably
7 receive a substantial sentence. Did you have any
8 reason to believe that she didn't understand that she
9 could be exposed to a lengthy prison sentence?

10 A Oh, yeah, she knew that. That's my whole
11 conversation with her is, "Hey, let's figure out what's
12 wrong with you so we can try to mitigate some of this
13 sentence because if, you know, if we don't have
14 anything wrong with us and we did this, it's just not
15 going to be good."

16 Q Did you inform her before she pled guilty that she
17 could potentially receive a life sentence?

18 A Yeah.

19 Q Did you ever receive a letter from her saying she
20 wanted to appeal or asking the question about the
21 appeals process?

22 A I can't remember. But I do remember her mom
23 called me about that subject. Whether she sent a
24 letter, I don't know. I don't remember getting it.
25 That don't mean she could have sent it, but I don't

Rodney Richey - Cross

Joanie Holcombe v. State of South Carolina 2018-CP-04-00667 February 18, 2020

1 remember getting it. But I do remember talking to her
2 mom about this issue.

3 Q Do you remember how long after the plea hearing
4 that phone call with her mom would have been?

5 A It was within a week, probably within a -- I would
6 say it might have been within the time limit. I'm not
7 sure, but I'll give the benefit of the doubt and say it
8 was within the time limit. I would say that.

9 Q Okay.

10 A And the mother asked me what their options were,
11 and I went through them and --

12 Q After -- after Judge McIntosh sentenced her, did
13 you have reason to believe that she would want to
14 appeal, or what was your understanding of her desire at
15 that point?

16 A It's -- well, I don't know what was in her head,
17 but -- I mean, I don't know what's in anybody's head.
18 She had just said, "Whatever I get, that's what I get."

19 I mean, she -- see, that's what I'm saying. This
20 representation of her whole position was, "I did this.
21 Whatever I get, I get, and I'm going to do my time and
22 be done with it." And so that's why I said there was
23 some friction between us just saying, "Hey, let's try
24 to mitigate this thing."

25 I mean, but her whole point was, "Hey, I did this,

1 and whatever I get" -- I think I went to the jail and
2 said, "Hey you might get a life sentence."

3 "Well, whatever I get, I get." I mean, that kind
4 of logic.

5 Q Okay. Thank you.

6 MR. SMITH: No more questions.

7 MS. WHISENHUNT: I have one follow-up question.

8 THE COURT: Yes, ma'am.

9 REDIRECT EXAMINATION

10 BY MS. WHISENHUNT:

11 Q The State asked you about having consulted with
12 Ms. Holcombe about the possibility of the sentence
13 length. I assume you consulted with her that you were
14 able to negotiate getting the charge reduced from
15 murder to homicide by child abuse.

16 A Right.

17 Q And you were able to get the mandatory minimum
18 reduced from 30 to 20 years; is that correct?

19 A Yes, that's correct.

20 Q Over the course of that, you talked to her about
21 the fact she was young?

22 A Uh-huh.

23 Q She had no prior record?

24 A Uh-huh.

25 Q And there were these mental health mitigating

1 factors; is that correct?

2 A Right.

3 MS. WHISENHUNT: I have no further questions.

4 THE COURT: Anything further from this witness?

5 Thank you, Mr. Richey. You can step down.

6 MS. WHISENHUNT: We have no additional witnesses,
7 your Honor.

8 THE COURT: Any witnesses from the State?

9 MR. SMITH: The State relies on its cross.

10 THE COURT: All right. I will allow each attorney
11 to make a summation. Since the Applicant has the
12 burden of proof, I'll have the State go first.

13 Mr. Smith.

14 MR. SMITH: Your Honor, I would just cite some
15 case law to you. But as to the issue of mitigation, I
16 think the record and the testimony from Mr. Richey and
17 Ms. Holcombe makes it clear that Mr. Richey did bring
18 all these issues up at her plea hearing, attempted to
19 mitigate as much as possible without having her pursue
20 a defense of some kind of mental health issue.

21 The State even mentioned in its sentencing and the
22 record makes it clear that Judge McIntosh understood
23 that she had issues, even ordered that she undergo
24 mental health services at the Department of
25 Corrections. So on that point, I think the record

1 shows that Mr. Richey did what he could in mitigation
2 and which, understandably, was difficult in this kind
3 of case considering how terrible the crime was.

4 As to the issue of the appeal, I would just rely
5 on a couple cases. *White v. State* basically says this
6 court can decide -- make a finding as to whether or not
7 Ms. Holcombe voluntarily and intelligently waived her
8 right to appellate review.

9 And there are some instructive case law on what is
10 counsel's duty to discuss appealing -- issues of appeal
11 with a defendant after a hearing. And we would cite to
12 *Roe v. Flores-Ortega*, 528 U.S. 470, which says that
13 counsel has the duty to consult with the defendant
14 about an appeal when there is a reason to think either
15 that a rational defendant would want to appeal or that
16 this defendant reasonably demonstrated to counsel that
17 he or she was interested in appealing and that counsel
18 is performing in a professional and reasonable manner
19 by failing to follow an express instruction about an
20 appeal.

21 We would just ask your Honor to make a decision
22 based off the testimony here about whether she asked
23 him to appeal and, secondly, whether there would have
24 been an obligation on him to consult with her about
25 that based upon the sentence.

1 THE COURT: Thank you, Mr. Smith.

2 All right, Ms. Whisenhunt.

3 MS. WHISENHUNT: May it please the court, your
4 Honor. In regard to the failure of Mr. Richey to
5 provide enough information to the court regarding
6 mitigating factors, we would leave to the court the
7 testimony of Ms. Holcombe, Mr. Richey, and the plea
8 transcript as to that issue, your Honor, for the
9 court's review.

10 As to the issue of the failure to file notice of
11 appeal, I'd like to expand a little bit more on that
12 case law that counsel has mentioned to the court, in
13 particular, *Roe v. Flores-Ortega*.

14 I believe that the court -- it's a U.S. Supreme
15 Court case. It's long, and it's very instructive as to
16 the test and the standard and the steps that the courts
17 must take in reviewing whether this failure to file the
18 appeal is an issue that could be grounds for granting a
19 PCR.

20 The first issue, your Honor, is actually did the
21 lawyer advise the client of the right to appeal. The
22 court uses the word "consult." The idea there is that
23 the attorney had taken the time to talk about the
24 advantages and disadvantages of an appeal.

25 Mr. Richey testified that he did not prior to the

1 appeal -- prior to the plea sit down and talk with her
2 about an appeal. He did not consult with her about the
3 appeal. He did not talk about the advantages and
4 disadvantages.

5 Ms. Holcombe, in her testimony, indicates he
6 didn't talk about an appeal when they met several times
7 and talked about the plea. The first time she had
8 heard about an appeal was when the judge instructed her
9 about it. She was confused. She didn't know what that
10 was. And the plea, she testified she asked Mr. Richey,
11 "What is that? Can we talk about that?" She testified
12 she thought her sentence was excessive, and she would
13 have liked the opportunity to talk about an appeal and
14 make an appeal.

15 So as to whether the lawyer advised the client of
16 rights to appeal, the answer in this case is no. It's
17 pretty clear from the record that he did not advise her
18 of her right to appeal and consult with her, as *Roe v.*
19 *Flores-Ortega* requires.

20 In that case, then, the court says, well, if he
21 didn't, is that objectively unreasonable. The court
22 looks at whether that's objectively unreasonable.

23 There's two ways they did that, a rational person
24 standard, or this particular person, this defendant,
25 Ms. Holcombe. And we would assert to your Honor that

1 there was an indication of a desire to appeal from this
2 defendant. She asked him about that. Mr. Richey
3 further testifies her family called and asked about
4 that.

5 So we would believe, your Honor, that there is an
6 indication that she had a desire to appeal, and so the
7 failure to consult with her about that or to do that is
8 objectively unreasonable.

9 If it's objectively unreasonable, the final thing
10 that *Roe vs. Flores-Ortega* requires is to show
11 prejudice, that but for the counsel's failure to file
12 the appeal, this client would have filed an appeal.

13 She didn't know how to file an appeal herself.
14 She needed help to do that. And the help she needed
15 was from Mr. Richey. He didn't consult with her about
16 it. He didn't follow up on her request to do that, and
17 he in fact failed to do that. And so but for that
18 failure, she would have filed that appeal.

19 Your Honor, the case -- one particular thing that
20 strikes me as persuasive is the courts state, "We
21 cannot accord any presumption of reliability to a
22 judicial proceeding that never took place."

23 We don't know what would have happened if she
24 would have appealed her excessive sentence, but we
25 cannot presume any reliability. We can't say, well,

1 she didn't have any grounds to appeal, or those grounds
2 wouldn't have been effective because she never got the
3 chance to appeal. She never got that opportunity
4 because her attorney didn't consult about it, and he
5 didn't follow through with her desire to do that.

6 Your Honor, I have a copy of Roe vs.
7 Flores-Ortega. I'm sure the court has seen it before.
8 But putting with this file, I think it would be
9 instructive.

10 THE COURT: Thank you.

11 MS. WHISENHUNT: And I have nothing further, your
12 Honor.

13 THE COURT: All right. Well, I want to take a
14 little time to read the transcript and the materials
15 submitted, give you the applicable case law, so I'm
16 going to take this under advisement. I'll have my law
17 clerk e-mail you a decision. Thank you. Close the
18 record.

19 (WHEREUPON, proceedings concluded at 10:42 a.m.)

20 ***END OF REQUESTED TRANSCRIPT OF RECORD***

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Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina at the time of the proceedings, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Anderson County, South Carolina, on the 18th day of February 2020.

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

May 28, 2020



Diane L. Marcengill, RPR, CRR, CRC
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
 COUNTY OF ANDERSON)
)
 Joanie Holcombe, #373202,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE TENTH JUDICIAL CIRCUIT

Case No. 2018-CP-04-667

ORDER OF DISMISSAL

This matter comes before this Court by way of an application for post-conviction relief filed on April 5, 2018, by Joanie Holcombe (Applicant). The State (Respondent) filed its return on June 14, 2018, in which it requested that an evidentiary hearing be convened. An evidentiary hearing in the matter was held before the undersigned on February 18, 2020, at the Anderson County Courthouse. Applicant was present at represented by Linda V. Wisenhunt, Esquire, and Respondent was represented by Assistant Attorney General Taylor Z. Smith of the South Carolina Attorney General's Office. At the hearing, Applicant testified on her own behalf, and called as a witness Rodney W. Richey, Esquire (plea counsel). Following a thorough review of the record in its entirety and the testimony and evidence presented at the evidentiary hearing, this Court finds that Applicant has failed to meet her requisite burden of proof and denies this application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. During its June of 2016 term, the Anderson County Grand Jury indicted Applicant for murder (2016-GS-04-1016). Plea counsel represented Applicant, and Assistant Solicitor Catherine Huey of the Tenth Circuit

Solicitor's Office prosecuted the case. On July 13, 2017, Applicant appeared before the Honorable R. Lawton McIntosh, waived presentment, and pleaded guilty to homicide by child abuse. Judge McIntosh sentenced Applicant to imprisonment for fifty years. Applicant did not appeal her conviction or sentence.

CURRENT PROCEEDING

On April 5, 2018, Applicant filed an application for post-conviction relief, in which he alleged that he was being held in custody unlawfully based on the following grounds:

1. Ineffective assistance of counsel;
 - a. "Lawyer did not appeal;" and
 - b. "My attorney wasn't in this for me. I asked about another plea was denied—I believe he could have went harder in the mental health situation-/post pardon—I just feel like more could have been done."

At the start of the evidentiary hearing before the undersigned on February 18, 2020, Applicant affirmed that she would be proceeding upon two grounds only: (1) that she did not knowingly and voluntarily waive her right to direct appellate review of her conviction and sentence and (2) plea counsel was constitutionally ineffective for failing to present to the plea court in mitigation additional information about Applicant's mental health challenges. This Court finds that all allegations other than these two have been waived by Applicant and they will not be addressed in this order.

Testimony at PCR Hearing

Applicant testified on her own behalf at the PCR hearing. She testified Hervery B. O. Young, Esquire, was initially appointed to represent her, and did so for a brief time, after which point plea counsel was appointed as her attorney. She testified she met with plea counsel on approximately ten occasions before pleading guilty. She testified she and plea counsel discussed the case, the State's evidence against her, and mitigating factors. She testified that plea counsel

and the State requested that her mental health be evaluated by the South Carolina Department of Mental Health. She testified that she believes plea counsel did not provide the plea court with enough information about the status of her mental health, and testified that plea counsel did not notify the plea court of the fact that she was suffering from postpartum depression.

She testified she and plea counsel did not discuss at all before she pleaded guilty that she had the right to direct appellate review, and she testified she did not know what it meant "to appeal." She testified that they did not discuss an appeal after she pleaded guilty. She affirmed that the plea court informed her that she had the right to appeal her conviction and sentence, and testified that she asked plea counsel about that right after she pleaded guilty. She testified that plea counsel informed her that he would visit her in jail to discuss the right, but that he did not do so. She testified that plea counsel did not file a notice of appeal. She testified that she thought the sentence was excessive, and wanted plea counsel to file a notice of appeal regarding the length of the sentence.

During the State's cross-examination of Applicant, Applicant affirmed that the plea court had informed her that she could be subject to a prison sentence from twenty years up to life if she pleaded guilty, and that she affirmed to the plea court that she understood the potential sentences she could face. She affirmed that the plea court had informed her that she had the right to appeal and that she affirmed to the plea court that she understood the right. Applicant testified she mailed a letter to plea counsel approximately one week after pleading guilty in which she asked plea counsel about her right to appeal, but testified that plea counsel did not contact her in response.

Applicant affirmed that the State and plea counsel stated at her plea hearing that Applicant suffered from mental health issues and from depression. She affirmed that the plea

court referred to Applicant's mental health issues before he imposed the sentence. Applicant affirmed that the plea court ordered the South Carolina Department of Corrections to evaluate Applicant's mental health and to provide her with treatment.

Applicant called plea counsel as a witness at the PCR hearing. He testified he was appointed to represent Applicant after Young left the Public Defender's Office. He testified he met with Applicant on multiple occasions and that their conversations concerned mainly Applicant's desire to plead guilty instead of going to trial. He testified he and Applicant focused on the mitigating circumstances in the case, which he identified as her young age, her mental health challenges, the fact that Applicant was the mother to another young child, and that Applicant did not have a criminal record prior to committing homicide by child abuse. He testified that it was difficult to develop a defense centered on Applicant's mental health because she desired to plead guilty in order to "get on with the case." He testified he requested that the Department of Mental Health conduct a mental health evaluation, at which he discovered that Applicant also had domestic issues in her family. He testified he thought that Applicant wanted to plead guilty in order to protect a man who was living in the home at the time of the crime. He testified he mentioned these issues in mitigation during Applicant's plea hearing. He testified Applicant did not want him to make an issue with the plea court that she had been suffering from postpartum depression, and that he did not think he could force her to bring up the issue against her will. He testified he informed Applicant of the possible sentences she could receive, and that the possible outcomes did not look promising for her.

Plea counsel testified he did not recall discussing with Applicant the possibility of an appeal. He testified he did not discuss the possibility of an appeal before the plea hearing. He testified he did not recall Applicant asking him after her plea hearing about appealing. He

testified he received a phone call from Applicant's mother after the plea hearing in which she asked about the options available to Applicant. He testified he discussed with the mother the possibility of appeal and discussed with her the possibility that Applicant could file an application for post-conviction relief. He testified that the phone call may have been within the ten-day appeal deadline. He testified he did not consult with Applicant about appealing after the plea hearing and did not believe that there were any grounds for an appeal. He testified Applicant's attitude with the plea hearing was that she wanted to admit that she committed the crime and expressed to plea counsel her resignation that, "[W]hatever I get, I get."

On cross-examination, plea counsel testified he informed the plea court that Applicant's mental health had been evaluated, that she had mental health challenges, and that he did not doubt Applicant's mental competency to stand trial. He testified he believed that the sentence Applicant would receive after pleading guilty would be substantial because the evaluations showed that Applicant was competent in light of the heinous nature of her crime. He testified he shared his concern about a potentially lengthy sentence to Applicant and that she could potentially be sentenced to life in prison.

On redirect, plea counsel testified he consulted with Applicant about mitigating circumstances that could apply in her case. He testified he entered into plea negotiations with the State, and was able to work out that Applicant would plead guilty to homicide by child abuse rather than murder because it had a lower minimum sentence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses,

which allowed the Court to scrutinize their credibility. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in her post-conviction relief action and, when alleging that counsel was constitutionally ineffective, she 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, 466 U.S. at 686. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, at 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, at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, at 690). Applicant must overcome this presumption to receive relief. Cherry, at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Petitioner such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, at 117-18, 386 S.E.2d at 625. 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 (1985). The “prejudice prong ordinarily requires more than simply a defendant’s assertion that but for counsel’s deficient performance he would not have pled but would have gone to trial.” Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009).

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. 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. Strickland, at 668. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Id. at 697. Therefore, the function of the post-conviction relief court is to determine if “in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney. Id. at 690.

“A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (S.C. Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). “Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea.” Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that “guilty plea[s] must be treated as final in the vast

majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”).

Based on this standard set forth above, and the reasoning below, this Court finds Applicant has failed to meet her requisite burden of establishing any constitutional ineffectiveness of counsel. The allegations are addressed fully below:

Applicant did not knowingly and voluntarily waive her right to direct appellate review of her conviction and sentence.

Applicant argues that she did not knowingly and voluntarily waive her right to a direct appeal. She admits that the plea court informed her that she had the right to appeal her conviction and sentence, but claims that she informed plea counsel after the conclusion of her plea hearing that she desired to appeal. Her testimony was that plea counsel did not address her request for more information about appeals and to appeal, despite the fact that she raised the issue with him in person after the plea hearing and by letter within the days following the plea hearing. Plea counsel testified that he did not remember whether Applicant asked him about an appeal and whether he received a letter from Applicant about appealing her sentence; however, he testified he talked with Applicant’s mother shortly after her plea hearing about the topic.

Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470 (2000). In determining whether the duty attached, a post-conviction relief court “must take into account all the information counsel knew or should have known.” Id. at 480 (citation omitted). When counsel has consulted with the defendant regarding the right to appeal, “Counsel performs in a professionally unreasonable manner only by failing to follow the defendant’s express instructions with respect to an appeal.” Id., at 478 (emphasis

added). In order to establish he was prejudiced by counsel's failure to file an appeal, Applicant must show he would have appealed absent counsel's deficient performance. See Id., at 484.

In White v. State, 263 S.C. 110, 119, 108 S.E.2d 35, 39 (1974), the South Carolina Supreme Court held that even though the post-conviction relief court may find that an applicant did not voluntarily and intelligently waive his right to appellate review of the conviction and sentence, the PCR court does not have jurisdiction to grant a belated appeal. However, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his right to a direct appeal, the Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected. Id. at 119, 108 S.E.2d at 39-40.

This Court finds Applicant has not demonstrated that she did not knowingly and voluntarily waive her right to direct appellate review of her conviction and sentence. Applicant has failed to demonstrate that she reasonably demonstrated to plea counsel that she was interested in appealing. Plea counsel's testimony was that Applicant was highly motivated to plead guilty, understood that she could be facing as much as a life sentence, and understood that the sentence imposed would likely be substantial due to the fact that her actions were heinous and not excused by mental illness or incompetence. Applicant has failed to demonstrate that a rational defendant in her situation would want to appeal because she pleaded guilty to homicide by child abuse in order to leave the plea court with the option to sentence her to a lower minimum sentence that would have otherwise been available. This allegation is denied and dismissed with prejudice.

Plea counsel was constitutionally ineffective for failing to present to the plea court in mitigation additional information about Applicant's mental health challenges.

Applicant argues that plea counsel was constitutionally ineffective because he did not present more information about her mental health issues to the plea court, which may have helped to mitigate the sentence imposed by the court.

A defense attorney has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland at 691. Thus, “[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). A defense attorney’s “[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.” Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing Kibler v. State, 267 S.C. 250, 227 S.E.2d 199 (1976)). An applicant alleging that his attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome. Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997). Moreover, counsel’s decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel’s judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). “[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed as of the time of counsel’s conduct.” Id. at 690; Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (S.C. Ct. App. 2014).

At the plea hearing, Applicant affirmed to the plea court that there was anything further she wished plea counsel would do that he had not done, and affirmed that plea counsel had done

all that she asked of him. Plea Transcript 8, 10-11. The State informed the plea court that the Department of Mental Health had evaluated Applicant and concluded that she was competent to stand trial, understood the difference from right and wrong, and had the ability to conform her conduct to the requirements of law at the time of the crime, despite noting that Applicant had a history of mental health treatment for depression and adjustment disorder. Plea Transcript 13-14. Plea counsel informed the court that he agreed with those assessments. Plea Transcript 14. Plea counsel informed the plea court that he did not doubt Applicant's competency to stand trial, but noted that she had a history of mental disorders, including depression. Plea Transcript 17-18. Plea counsel explained to the plea court that Applicant had a "questionable" home environment and had dropped out of school at a young age. Plea Transcript 20. Before issuing its sentence, the plea court noted that Applicant has psychological issues. Plea Transcript 23. In issuing its sentence, the plea court also recommended the Department of Corrections conduct a mental health evaluation of Applicant. Plea Transcript 24.

Based upon the transcript from Applicant's plea hearing and the testimony present by the witnesses at the PCR hearing, this Court finds Applicant has failed to show any deficiency in plea counsel's performance with respect to mitigation at her plea hearing. The record shows that plea counsel made it clear to the plea court that Applicant had mental or emotional issues, among other problems, that suggested she was worthy of mercy in sentencing. It is difficult for this Court to see, in light of the statements of plea counsel and the State to the plea court, how it could have been any clearer to the plea court that Applicant was beset by troubles when she suffocated her newborn by placing him in a toilet and garbage can. Furthermore, Applicant has failed to show that there was any further information that should have been presented to the plea court.

This Court finds Applicant has failed to demonstrate that plea counsel's performance with respect to mitigation affected her decision to plead guilty rather than proceeding to trial. Applicant did not testify that she wanted a trial but was forced to plead guilty due to some failure on the part of plea counsel. On the contrary, plea counsel's undisputed testimony showed that Applicant desired to plead guilty throughout her criminal case. Applicant has failed to explain the benefit that would have been gained had plea counsel made some additional statement during the plea hearing about Applicant's mental health troubles.

This Court finds Applicant has failed to show that plea counsel was constitutionally ineffective for failing to supply the plea court with more information in mitigation during her plea hearing because she has not shown any deficiency in counsel's performance and resulting prejudice. This claim is denied and dismissed with prejudice.

CONCLUSION

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

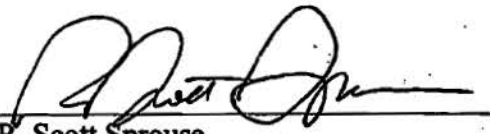
This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is

directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 6 day of March, 2020.



 R. Scott Sprouse
 Chief Judge for Administrative Purposes
 Tenth Judicial Circuit

3-6, South Carolina

20 MAR 9 AM 9:05:54
Anderson, SC CDC, CP/GS

DOCKET NO. 2016-GS-04-01016

WITNESSES

Anderson Co. Sheriff's Office
Tracy A. Call

The State of South Carolina
County of Anderson

ARREST WARRANT NUMBER

2016A0410200057

COURT OF GENERAL SESSIONS

JUN 21 2016, TERM

ACTION OF GRAND JURY

THE STATE

VS.

JOANIE FAITH HOLCOMBE

TRUE BILL

Foreperson of Grand Jury
Date: JUN 21 2016
[Signature]
Foreperson

VERDICT

INDICTMENT FOR

MURDER

SC Code: § 16-03-0010
CDR Code: 0116

Foreperson of Grand Jury
Date:

A TRUE COPY

APR - 5 2018

[Signature]
ANDERSON CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

INDICTMENT

At a Court of General Sessions, convened on JUN 21 2016, the
Grand Jurors of Anderson County present upon their oath:

MURDER

That Joanie Faith Holcombe did in Anderson County, on or about on or about
December 13, 2015, unlawfully and with malice aforethought, either express or implied,
kill a new born infant by means of asphyxiation, and the victim died as a proximate result
thereof. All in violation of §16-3-10, *South Carolina 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.

Catherine T. Huey
CATHERINE T. HUEY
SR. CAREER PROSECUTOR

2016-04-1016 85

COUNTY OF ANDERSON
STATE VS.

INDICTMENT/CASE#:
A/W: 2016A0410200057
Date of Offense: 12/13/2015
S.C. Code §: 16-03-0085(A)(1)(B)(1)
CDR Code #: 2356



JOANIE FAITH HOLCOMBE
AKA: Joanie Faith Holcombejoa, Joanie Faith Holcombe
Race: White Sex: F Age: 24
DOB: [redacted] SS#: [redacted]
Address: [redacted]
City, State, Zip: Anderson, SC 29625
DL# [redacted] SID# SC02231921

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

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

TO: Homicide By Child Abuse (20 to life)

In 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 §17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (def.'s initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:
Catherine T. Huey, Deputy Solicitor 68416 SC Bar # [redacted]
Joanie Holcombe, Defendant
[redacted], Attorney for Defendant 9506 SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 50 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service 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.
 The Defendant is to be placed on 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.

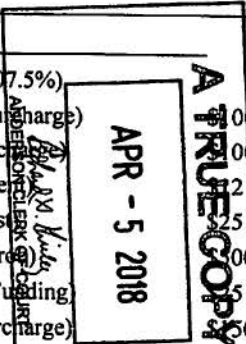
SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED

Set by SCDPPPS _____

Recipient: _____

*Fine:	\$	
§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$	100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$	
§56-5-2995 (DUI Assessment)	\$	
§56-1-286 (DUI Breath Test)	\$	
Proviso 61.6 (Public Def/Prob)	\$	25.00
§14-1-212 (Law Enforce. Funding)	\$	
§14-1-213 (Drug Court Surcharge)	\$	
§50-21-114 (BUI Breath Test Fee)	\$50	
§56-5-2942(J) (Vehicle Assessment)	\$40/day	
3% to County (if paid in installments)	\$	3.75
TOTAL		128.75



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 \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other: Recommendation mental health
evaluate while incarcerated & if
necessary appropriate treatment

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: [Signature]
Judge Bar ID: _____ Judge Code: 2155
Sentence Date: 7-13-17

Clerk of Court/Deputy Clerk: [Signature]
Court Reporter: D. Marcengill
SCCA/217 (07/2016)

