DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

ERICA J. WALKER,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D18-2958

[December 5, 2019]

Appeal of order denying rule 3.850 motion from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Joseph Marx, Judge; L.T. Case Nos. 50-2008-CF-001537-AXXX-MB and 50-2008-CF-001781-BXXX-MB.

Erica J. Walker, Florida City, pro se.

Ashley Moody, Attorney General, Tallahassee, and Mitchell A. Egber, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Affirmed.

MAY, CIKLIN and CONNER, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

Appendix "F"

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

January 09, 2020

CASE NO.: 4D18-2958
L.T. No.: 502008CF001537A,
502008CF001781B

ERICA J. WALKER v. STATE OF FLORIDA

Appellant / Petitioner(s) Appellee / Respondent(s)

BY ORDER OF THE COURT:

ORDERED that appellant's December 19, 2019 motion for rehearing and request for written opinion is denied.

Served:

cc: Attorney General-W.P.B. Mitchell Alan Egber Erica J. Walker

kr

Lonn Weissblum

LONN WEISSBLUM, Clerk
Fourth District Court of Appeal

Appendix "6"

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401

January 6, 2011

CASE NO.: 4D09-4049
L.T. No. : 2008CF001537A

ERICA J. WALKER v. STATE OF FLORIDA

Appellant / Petitioner(s), Appellee / Respondent(s).

BY ORDER OF THE COURT:

Pursuant to the notice of voluntary dismissal filed herein this appeal is dismissed.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

State Attorney-P.B.
Erica J. Walker
Sharon R. Bock, Clerk
Attorney General-W.P.B.
Ronald Andersen Hurst, Jr.

kb

Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal

Appendix "A"

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401

ACTION REQUIRED

June 1, 2012

CASE NO.: 4D11-4412
L.T. No. : 2008CF001537A
and 2008CF001781BXX

ERICA J. WALKER v. STATE OF FLORIDA

Appellant / Petitioner(s), Appellee / Respondent(s).

BY ORDER OF THE COURT:

ORDERED that the petition for belated appeal is granted. In accordance with Fla. R. App. P. 9.141(c)(6)(D), this order shall be filed with the lower tribunal and treated as the notice of appeal of the judgment and sentence entered around September 3, 2009. Upon receipt, the clerk of the lower court shall certify a copy of this order to this court in accordance with Fla. R. App. P. 9.040(g). The appeal shall proceed under a new case number, which shall be assigned upon receipt in this court of the certified order. All time requirements of the Florida Rules of Appellate Procedures shall run from the date of this order. If the petitioner qualifies for appointed counsel, the trial court shall appoint counsel to represent petitioner on appeal.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Sharon R. Bock, Clerk
Public Defender-P.B.

Erica J. Walker

Attorney General-W.P.B.

dl

FILED
2012 JUN -4 PM 2:18
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CRIMINAL

Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal

DISTRICT COURT OF APPEAL
FOURTH DISTRICT
STATE OF FLORIDA

000227

Appendix "A"

000603

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2013

ERICA J. WALKER,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D12-2109

[May 1, 2013]

PER CURIAM.

Affirmed. We remand to strike the designation of count one in case no. 2008CF001781BXX as a life felony, and direct that this offense be re-designated a first degree felony punishable by life. *Porter v. State*, 737 So. 2d 1119 (Fla. 2d DCA 1999).

GROSS, TAYLOR and DAMOORGIAN, JJ., concur.

* * *

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Karen Miller, Judge; L.T. Case Nos. 2008CF001537AXX and 2008CF001781BXX.

Michael R. Hanrahan of Michael R. Hanrahan, P.A., for appellant.

No appearance required for appellee.

Not final until disposition of timely filed motion for rehearing.

APPENDIX "A"

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY FLORIDA

STATE OF FLORIDA

v.

ERICA J. WALKER,

Defendant.
_____/

CRIMINAL DIVISION "X"
CASE NO.: 2008CF001537AXXXMB
2008CF001781BXXXMB

ORDER DENYING IN PART AND GRANTING AN EVIDENTIARY HEARING IN PART, DEFENDANT'S MOTION FOR POST-CONVICTION RELIEF

THIS CAUSE came before the Court on the Defendant's *pro se* Motion for Post-Conviction Relief ("Motion") filed on May 20, 2015, and *pro se* Amended Motion for Post Conviction Relief ("Amended Motion") filed on April 2, 2018, pursuant to Florida Rule of Criminal Procedure 3.850. The Court has carefully considered the Motion, the Amended Motion, the State's Response, the court file, and is otherwise fully advised in the premises.

STATEMENT OF THE CASE AND FACTS

1. Defendant, Erica Walker, was charged by Indictment in case number 2008CF001781 with the following charges:

Count 1 – First Degree Murder with a Firearm
Count 2 – Robbery with a Firearm

2. Defendant was charged by Information in case number 2008CF001537 with the following charges:

Count 1 – Robbery with a Weapon
Count 2 – Aggravated Battery (Deadly Weapon Bodily Harm)

3. On September 3, 2009, Defendant entered a negotiated plea settlement resolving her charges in case number 2008CF001781. Under the settlement, Defendant pled guilty to the

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lesser-included offense of Second Degree Murder with a Firearm and to Robbery with a Firearm. Defendant was sentenced to thirty-five (35) years in the Department of Corrections with both counts running concurrently and with credit for time served of 585 days.

4. On September 3, 2009, Defendant also entered a negotiated plea settlement resolving her charges in case number 2008CF001537. Under the settlement, Defendant pled guilty as charged to Robbery with a Weapon and Aggravated Battery (Deadly Weapon Bodily Harm). Defendant was sentenced to thirty (30) years' imprisonment in the Department of Corrections on Count 1. On Count 2, the Court sentenced the defendant to fifteen (15) years in prison, with both counts running concurrently and with credit for time served of 585 days. The Court ordered the sentence in case number 2008CF001537 to run concurrent with the sentence imposed in case number 2008CF001781.

5. On May 20, 2015, Defendant filed the presently pending Motion. The State filed a written response on December 6, 2016. On April 2, 2018, Defendant filed an Amended Motion for Post Conviction Relief, which amended Ground Thirteen of her original Motion. The instant Order resolves both Motions.

ANALYSIS AND RULINGS

To prevail on a claim of ineffective assistance of counsel, a defendant must show that counsel's performance was deficient and the deficient performance prejudiced the defendant so as to deprive him of a fair trial. *See Strickland v. Washington*, 466 U.S. 688 (1984); *see also Wiggins v. Smith*, 539 U.S. 510 (2003) (reaffirming the *Strickland* two-prong analysis for claims of ineffective assistance of counsel). In reviewing counsel's performance, the court must be highly deferential to counsel, and in assessing the performance, every effort must "be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's

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challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Strickland*, 466 U.S. at 689; *see also Rivera v. Dugger*, 629 So. 2d 105, 107 (Fla. 1993).

As to the first prong, the defendant must establish that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Strickland*, 466 U.S. at 687; *see also Cherry v. State*, 659 So. 2d 1069, 1072 (Fla. 1995). In determining the second prong, the reviewing court must determine whether there is a reasonable probability that but for the deficiency, the result of the proceeding would have been different. *See Strickland*, 466 U.S. at 694; *see also Valle v. State*, 705 So. 2d 1331, 1333 (Fla. 1997). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. "Unless a defendant makes both showings, it cannot be said that the conviction . . . resulted from a breakdown in the adversary process that renders the result unreliable." *Id.* at 697. These standards have been adopted by the Florida Supreme Court. *See Kelly v. State*, 569 So. 2d 754 (Fla. 1990).

In the context of a plea, the analysis shifts slightly. To establish prejudice when the defendant has pleaded guilty, he "must demonstrate a reasonable probability that, but for counsel's errors, [he] would not have pleaded guilty and would have insisted on going to trial." *Farr v. State*, 124 So. 3d 766, 774-75 (Fla. 2012) (internal quotation marks and citation omitted). "A defendant must do more than speculate that an error has affected the outcome" to satisfy this standard. *Bradley*, 33 So. 3d at 672. "[I]n determining whether a reasonable probability exists that the defendant would have insisted on going to trial, a court should consider the totality of the circumstances surrounding the plea, including such factors as whether a particular defense was likely to succeed at trial, the colloquy between the defendant and the trial court at the time of the plea, and the difference between the sentence imposed under the plea and the maximum possible

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sentence the defendant faced at trial." *Id.* at 1181-1182. A post conviction motion may be denied without an evidentiary hearing when its claims are facially invalid or conclusively refuted by the record. *Prince v. State*, 964 So. 2d 783, 784 (Fla. 4th DCA 2007). Each of Defendant's claims will be addressed in turn.

GROUNDS ONE, TWO, AND THREE– COUNSELS' FAILURE TO REQUEST A COMPETENCY EVALUATION

Defendant claims in Ground One that counsel was ineffective for failing to move for a competency evaluation. Specifically, Defendant argues she was insane at the time of the crime and was incompetent to proceed with a negotiated settlement agreement. Defendant alleges that had counsel moved for a competency evaluation, she would not have entered a plea of guilty and would have instead proceeded to trial.

A claim of ineffective assistance of counsel for the failure to request a competency hearing may form the basis of a postconviction motion. *Thompson v. State*, 88 So. 3d 312, 316 (Fla. 4th DCA 2012). To prevail on such a claim a movant must "allege specific facts showing that a reasonably competent attorney would have questioned competence to proceed" and "set forth clear and convincing circumstances that create a real, substantial, and legitimate doubt as to the movant's competency." *Id.* at 319. This is a high burden to carry because "a postconviction movant is presumed to have been competent, and the burden is on the movant to show otherwise." *Id.* at 320. Evidentiary hearings regarding competency "are reserved for extraordinary situations where the movant makes a strong preliminary showing that competency to proceed was legitimately in question at the relevant stage." *Id.* at 321. A "movant must set forth circumstances that create a real, substantial and legitimate doubt as to his or her ability to understand the charges or assist counsel" in order to receive an evidentiary hearing." *Id.* "Conclusory allegations of incompetency are not enough to warrant an evidentiary hearing." *Id.*

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at 319. In determining whether there is a real, substantial and legitimate doubt as to competency, a court may consider the totality of the circumstances, including:

> (1) the nature of the mental illness or defect which forms the basis for the alleged incompetency; (2) whether the movant has a history of mental illness or documentation to support the allegations; (3) whether the movant was receiving treatment for the condition during the relevant period; (4) whether experts have previously or subsequently opined that defendant was incompetent; and (5) where there is record evidence suggested that the movant did not meet the *Dusky* standard during the relevant time period.

Id. at 320. The *Dusky* test is "whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding – and whether he has a rational as well as factual understanding of the proceedings against him." *Maxwell v. State*, 974 So. 2d 505, 509 (Fla. 5th DCA 2008).

Here, Defendant has not made a strong preliminary showing that her competency to proceed was legitimately in question when she pleaded guilty. The record indicates that Defendant was housed in the psychiatric unit at the jail and was receiving treatment for various mental illnesses. Although Defendant alleges a history of mental illness and past commitment under the Baker Act, the record indicates that she was able to consult with her lawyer and understand the proceedings against her. The transcript of the plea colloquy contains the following exchange:

THE COURT:	Are you under the influence of any alcohol, drugs or medication today?
THE DEFENDANT:	Medication.
THE COURT:	Is it medication that's clouding your thought process?
THE DEFENDANT:	No ma'am.
THE COURT:	And you've been able to speak with your attorney, ask him questions and understand his answers?
THE DEFENDANT:	Yes, Ma'am.

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THE COURT:	You've spoken with your client, been able to communicate back and forth?
THE DEFENDANT:	Yes, Your Honor.
THE COURT:	Okay. Have you ever been treated for any mental or emotional condition?
THE DEFENDANT:	Yes I have.
THE COURT:	Are you currently being treated?
THE DEFENDANT:	Yes.
THE COURT:	Do you feel like you're competent to proceed?
THE DEFENDANT:	Yes I do.
THE COURT:	And you've spoken to your client? Do you feel like she's competent to proceed?
DEFENSE COUNSEL:	Yes, Your Honor. And Judge, she is currently housed in the – I guess where they treat psychiatrists in the main jail and that's what she's referring to.
THE COURT:	Okay. But you are competent to – you are confident that she is competent to proceed?
DEFENSE COUNSEL:	Yes ma'am.

(State's Ex. "F," Plea and Sentence.) Further, Defendant acknowledged having discussed the waiver of rights form with counsel and stated that she understood the consequences of pleading guilty to the charges. Defendant has not established a real, substantial and legitimate doubt that she did not understand the charges against her or was unable to assist counsel at the time of her plea. Accordingly, Grounds One, Two, and Three are denied.

GROUND THREE – FAILURE TO FILE NOTICE OF INTENT TO RELY ON INSANITY DEFENSE

In addition to alleging that defense counsel should have requested a competency

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evaluation, Ground Three of Defendant's Motion also alleges that counsel was deficient for failing to investigate an insanity defense. Defendant alleges that had defense counsel filed the required Notice of Intent to Rely on Insanity Defense she would not have pleaded guilty and instead would have insisted on going to trial.

A claim that counsel was ineffective for failing to investigate an insanity defense requires a court to consider (1) whether defense counsel's failure to investigate an insanity defense under the facts presented was outside the broad range of reasonably competent performance under the prevailing professional standards, and (2) whether the defendant can establish a reasonable probability that an investigation into an insanity defense would have ultimately resulted in the presentation of a viable insanity defense, and but for counsel's unprofessional errors, the result of the proceeding would have been different. *Cotto v. State*, 89 So. 3d 1025-1029-30 (Fla. 3d DCA 2012). A viable insanity defense requires a defendant to prove that (1) a defendant had a mental infirmity, disease, or defect, and (2) because of this condition, the defendant did not know what she was doing or its consequences or, alternatively, if the defendant did know what he or she was doing and its consequences, that the defendant did not know that what he or she was doing was wrong.

A review of the record indicates that an insanity defense would likely not be viable. The facts set forth in the Probable Cause Affidavit, to which Defendant stipulated were true, suggest that Defendant acted deliberately and knew her actions were wrong. For example, the Probable Cause Affidavit indicates that Defendant admitted to stealing the gun that was used to commit the crime and sending a text message to her co-defendant telling him to wipe down the door of the victim's residence. (State's Ex. "A," Probable Cause Affidavit.) Thus, defense counsel's failure to investigate an insanity defense is not outside the broad range of reasonably competent

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performance, and this claim must be denied.

GROUNDS FOUR AND FIVE – COUNSEL'S INCORRECT PLEA ADVICE

Defendant argues that she received ineffective assistance of counsel because her counsel advised her to plead guilty while she was under the influence of psychotropic medication. Specifically, Defendant alleges that as a result of being under the influence of psychotropic medication her pleas were not knowingly and voluntarily entered. "A claim of ineffective assistance of counsel for failure to object to a plea's entry based on the appellant's use of psychotropic medication during the plea hearing may be refuted where an appellant affirmatively states that his medication does not affect the knowing and voluntary nature of his plea." *Russ v. State*, 937 So. 2d 1199, 1201 (Fla. 1st DCA 2006). "In addition, while it has long been recognized that written plea agreements and plea colloquies may not be sufficiently specific to conclusively refute the appellant's later postconviction claims, where an appellant makes a clearly and wholly inconsistent affirmance which contradicts his later postconviction claim, such claim may be summarily denied." *Id.*

In *Iacono v. State*, the Fourth District Court of Appeal upheld the denial of a defendant's post conviction motion alleging ineffective assistance of counsel where the defendant's statements during the plea colloquy refuted his claim that he was "too messed up" to enter a knowing and voluntary plea. 930 So. 2d 829 (Fla. 4th DCA 2006). In upholding the denial of the postconviction motion, the Fourth District Court of Appeal reasoned that "the signed waiver of rights form and appellant's sworn statements to the court during the plea colloquy conclusively refute the postconviction claim that he was 'too messed up' to understand the plea." *Id.* at 831.

Defendant's claim is conclusively refuted by the recorded. At Defendant's plea colloquy,

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the following exchanges occurred:

THE COURT:	Are you under the influence of any alcohol, drugs or medication today?
THE DEFENDANT:	Medication.
THE COURT:	Is it medication that's clouding your thought process?
THE DEFENDANT:	No ma'am.
THE COURT:	And you've been able to speak with your attorney, ask him questions and understand his answers?
THE DEFENDANT:	Yes, Ma'am.
THE COURT:	You've spoken with your client, been able to communicate back and forth?
THE DEFENDANT:	Yes, Your Honor.
THE COURT:	Okay. Have you ever been treated for any mental or emotional condition?
THE DEFENDANT:	Yes I have.
THE COURT:	Are you currently being treated?
THE DEFENDANT:	Yes.
THE COURT:	Do you feel like you're competent to proceed?
THE DEFENDANT:	Yes I do.
THE COURT:	And you've spoken to your client? Do you feel like she's competent to proceed?
DEFENSE COUNSEL:	Yes, Your Honor. And Judge, she is currently housed in the – I guess where they treat psychiatrists in the main jail and that's what she's referring to.
THE COURT:	Okay. But you are competent to – you are confident that she is competent to proceed?
DEFENSE COUNSEL:	Yes ma'am.

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(State's Ex. "F," Plea and Sentence.) During the plea colloquy, the Court asked Defendant specific questions about the effects her medication had on her. Defendant denied that the medication was affecting her judgment or ability to understand the proceeding. Thus, Grounds Four and Five are denied.

GROUND SIX – FAILURE TO INVESTIGATE VIABLE DEFENSES

In Ground Six of her Motion, Defendant alleges that counsel was ineffective for failing to investigate viable defenses. Specifically, Defendant claims that defense counsel should have investigated the defenses of insanity and duress. "A claim of ineffective assistance of counsel for failure to advise a defendant of a potential defense can state a valid claim if defendant was unaware of the defense and can establish that a reasonable probability exists that he would not have entered the plea if properly advised." *Jacobson v. State*, 171 So. 3d 188, 191 (Fla. 4th DCA 2015).

To establish a defense of duress, a defendant must show: "(1) the defendant reasonably believed that a danger or emergency existed that he did not intentionally cause, (2) the danger or emergency threatened significant harm to himself or a third person, (3) the threatened harm must have been real, imminent, and impending, (4) the defendant had no reasonable means to avoid the danger or emergency except by committing the crime, (5) the crime must have been committed out of duress to avoid the danger or emergency, and (6) the harm the defendant avoided outweighs the harm caused by committing the crime." *Driggers v. State*, 917 So. 2d 329, 331 (Fla. 5th DCA 2005). Defendant claims that counsel should have investigated a duress defense in case number 2008CF001537 because her co-defendant threatened to kill her if she did not commit the crime and had a box of knives with him at the time he made this threat. The record does not refute Defendant's assertion that defense counsel failed to discuss the defense

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with her, but does refute her assertion that this defense likely would have been successful at trial. For example, the Probable Cause Affidavit indicates that Defendant entered the victim's house alone and later summoned her co-defendant into the home. Thus, the record refutes Defendant's claim that a duress defense would be successful because the harm was not imminent and defendant had a reasonable means to avoid the harm. Accordingly, this claim is denied.

GROUND SEVEN –WAIVER OF PRE-SENTENCE INVESTIGATION AND FAILURE TO PRESENT MITIGATING FACTORS

Defendant alleges that counsel was ineffective for allowing Defendant to sign a waiver for a Pre-Sentence Investigation ("PSI"), where Defendant was a first time felon. Florida Rule of Criminal Procedure 3.710(a) provides:

> In all cases in which the court has discretion as to what sentence may be imposed, the court may refer the case to the Department of Corrections for investigation and recommendation. No sentence or sentences other than probation shall be imposed on any defendant found guilty of a first felony offense or found guilty of a felony while under the age of 18 years, until after such investigation has first been made and the recommendations of the Department of Corrections received and considered by the sentencing judge.

Failure to perform a PSI for all convictions prior to sentencing is error when a defendant is a first time felon and the defendant could have been sentenced to probation on at least one of the convictions. *See Hernandez v. State*, 137 So. 3d 542, 545 (Fla. 4th DCA 2014).

Defendant's claim is without merit for several reasons. First, the Fourth District Court of Appeal has explained that counsel may waive a PSI because the preparation of a PSI is a procedural right which does not require a defendant's personal waiver. *Culver v. State,* 163 So. 3d 622, 623 (Fla. 4th DCA 2015). Second, Defendant's claim is without merit because Defendant admits in her Motion that she signed the waiver for a PSI. Defendant's argument that counsel was ineffective for failing to present mitigating factors is also without merit. A court has no discretion to reduce a sentence that a defendant agrees to in a negotiated settlement. Because

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Defendant has failed to allege facts indicating her counsel was deficient, Ground Seven is denied.

GROUND EIGHT – FAILURE TO FILE A MOTION TO SUPPRESS

In Ground Eight of her Motion, Defendant alleges that counsel was ineffective for failing to file a motion to suppress statements that she made while under the influence of opiates and subject to police coercion. "An allegation that trial counsel provided ineffective assistance by failing to file a motion to suppress is a legally sufficient claim, which is not waived by entry of a plea." *Spencer v. State*, 889 So. 2d 868, 870 (Fla. 2d DCA 2004). In order to prevail on a claim of ineffective assistance of counsel for failure to file a motion to suppress, a defendant must demonstrate that the motion would have been granted. *See Freeman v. State*, 796 So. 2d 574 (Fla. 2d DCA 2001); *Gettel v. State*, 449 So. 2d 413 (Fla. 2d DCA 1984). If such a showing is not made, the prejudice prong of *Strickland* has not be satisfied and the motion must fail.

"Although, as a general rule, intoxicants or narcotic drugs affect the credibility rather than the admissibility of a confession, in some circumstances their influence may be so severe as to render the confession involuntary." *Slade v. State*, 129 So. 3d 461, 464 (Fla. 2d DCA 2014). "A police questioner's indication to a suspect that he or she would benefit from cooperation does not, itself, constitute coercion." *Nelson v. State*, 688 So. 2d 971, 973 (Fla. 4th DCA 1997). However, "it is well-settled that statements obtained through direct or implied promises are involuntary and, thus, inadmissible at trial." *Ramirez v. State*, 15 So. 3d 852, 855 (Fla. 1st DCA 2009).

Defendant alleges that counsel was ineffective for failing to move to suppress the incriminating statements she made while under the influence of opiates. Specifically, Defendant alleges that her confession was not knowing or voluntary because it was the result of police

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coercion. In her Motion, Defendant claims that her confession was the result of a promise by two detectives to give her the medication she needed for her withdrawal symptoms if she would "tell them what they wanted to know." In response, the State contends that Defendant could not prove prejudice because her father, brother, and codefendant could have testified to her guilt. The State's argument that overwhelming evidence existed to prove Defendant's guilt does not conclusively refute Defendant's claim that her confession was not knowing or voluntary. Further, the standard for prejudice where a defendant has pleaded guilty is not whether there is sufficient other evidence to support Defendant's guilt, but rather whether there is a reasonable probability that, but for counsel's errors, defendant would not have pleaded guilty and would have gone to trial. Defendant has sufficiently alleged prejudice because she contends that, had counsel filed a motion to suppress, such motion likely would have been successful, and she would not have pleaded guilty if the statements were suppressed. Because this claim is not refuted by the record, an evidentiary hearing is required.

GROUND NINE – FAILURE TO NEGOTIATE ASSISTANCE AGREEMENT

In Ground Nine of her Motion, Defendant argues that counsel was ineffective for failing to negotiate a substantial assistance agreement with the State. Defendant claims that defense counsel should have attempted to negotiate a substantial assistance agreement because she provided information to law enforcement officers about an unrelated murder. Pursuant to Section 921.186, Florida Statutes, the State may move the sentencing court to reduce the sentence of a defendant who has provided substantial assistance in the identification of another person who has committed a felony.

Defendant's claim must be rejected for two reasons. First, the substantial assistance provision of Section 921.186 became effective on July 1, 2010 and Defendant pleaded guilty in

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2009. Second, Section 921.186 is discretionary as it provides that the State may file a substantial assistance motion. For these reasons, Defendant cannot establish that the State would have filed the motion such that Defendant would have proceeded to trial in the absence of defense counsel's failure to negotiate a substantial assistance agreement. Accordingly, this claim is without merit.

GROUND TEN – COUNSEL'S FAILURE TO SEEK DOWNWARD DEPARTURE

In Ground Ten of her Motion, Defendant argues that counsel was ineffective for failing to present mitigating evidence and request a downward departure sentence. Defendant claims that had counsel presented evidence in support of a downward departure sentence, there is a reasonable probability that the court would have imposed a more favorable sentence. Defendant's claim is without merit. A court has no discretion to mitigate a specific sentence agreed to in a negotiated settlement agreement. *See Arango v. State*, 891 So. 2d 1195, 1196 (Fla. 3d DCA 2005) (holding, "since the plea bargain here did not give the trial court any discretion over the length of the sentence, it follows that the trial court would be without discretion to reduce the agreed sentence"). Accordingly, Defendant's claim is denied.

GROUND ELEVEN – COUNSEL'S STIPULATION

In Ground Eleven of her Motion, Defendant argues that counsel was ineffective for allowing her to enter a plea without being informed of the factual basis for the plea. Before accepting a guilty plea, the trial court must determine that a factual basis for the plea exists. Fla. R. Crim. P. 3.172(a). A "stipulation, standing alone, does not fulfill the requirements of the court to establish a factual basis as mandated by Florida Rule of Criminal Procedure 3.172(a)." *Farran v. State*, 694 So. 2d 877, 878 (Fla. 2d DCA 1997). Thus, a court "cannot rely on

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counsel's stipulation if there is no other factual basis in the record to support it." *Black v. State*, 664 So. 2d 1152, 1153 (Fla. 3d DCA 1995).

In this case, the Court found that there was a factual basis for the plea. (State's Ex. "F," Plea Conference Tr. at 7:10-15.) Although the factual basis was not explicitly read into the record during the plea colloquy, the probable cause affidavit included in the court file sufficiently set forth the factual basis for the plea. (State's Ex. "A," Probable Cause Affidavit.) Therefore, Defendant has failed to establish prejudice. *See James v. State*, 886 So. 2d 1032, 1033 (Fla. 4th DCA 2004) (although trial court failed to make a determination that there was a factual basis for the plea, there was no prejudice because the probable cause affidavit contained sufficient facts for the court to accept the plea). As there was a sufficient factual basis for the plea in this case, Defendant has failed to demonstrate that counsel was ineffective for failing to allow her to enter the plea. Accordingly, Defendant's claim is denied.

GROUND TWELVE – COUNSEL'S FAILURE TO FILE A MOTION TO SEVER

In Ground Twelve of her Motion, Defendant argues that counsel was ineffective for failing to file a motion to sever the charges in case number 2008CF001781B from the charges in case number 2008CF001537A. Defendant's argument that counsel provided ineffective assistance by failing to file a motion to sever is incorrect. Pursuant to Florida Rule of Criminal Procedure 3.152(1), "in case 2 or more offenses are improperly charged in a *single* indictment or information, the defendant shall have a right to a severance of the charges on timely motion." (emphasis added) Defendant's claim is conclusively refuted by the record which shows that the charges in case number 2008CF00178B were charged by Indictment whereas the charges in case number 2008CF001537A were charged by Information. (State's Ex. "A," Indictment and Information.) Therefore, Defendant's claim is without merit.

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GROUND THIRTEEN – FAILURE TO INVESTIGATE WITNESSES

In her Amended Motion, Defendant argues that counsel deficiently performed in failing to depose the victim, Debra Carpio-Gibb. According to Defendant, Ms. Carpio-Gibb would have provided testimony inconsistent with statements she made to police while in the hospital immediately following the incident. The Court finds such argument to be speculative and conclusory. "Postconviction relief cannot be based on speculation or possibility." *Maharaj v. State*, 778 So. 2d 944, 951 (Fla. 2000).

Defendant also argues that counsel deficiently performed in failing to investigate or depose her co-defendant, Travis Carroll, and her father, brother, and sister. Defendant does not allege the substance of these witnesses' testimony. Because such argument is merely conclusory, it must be denied. Thus, Ground Thirteen is denied.

GROUND FOURTEEN – CUMULATIVE ERROR

Defendant alleges the cumulative effect of the above claims creates error justifying relief. Such a claim necessarily fails where post conviction claims are either procedurally barred or without merit. *Parker v. State*, 904 So. 2d 370, 380 (Fla. 2005). As the Court has denied all claims except Ground Eight, Defendant's claim of cumulative error must be denied.

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Accordingly, it is hereby,

ORDERED that Defendant's Motion for Post-Conviction Relief is **DENIED IN PART** as to all grounds except Ground 8. The Court will **SET FOR AN EVIDENTIARY HEARING** Ground 8.

The Court hereby adopts and incorporates the exhibits attached to the State's Response. This Order is a non-final, nonappealable Order and the Defendant has no right to appeal this Order until the entry of a final order.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida this 24 day of April, 2018.

SAMANTHA SCHOSBERG FEUER
CIRCUIT JUDGE

COPIES FURNISHED:

Erica J. Walker, DC# 163764
Homestead Correctional Institution
19000 S.W. 377th Street
Florida, FL 33034-6409

Office of the State Attorney
401 North Dixie Highway
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Appendix B

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

CRIMINAL DIV: "X"

CASE NO. 2008CF001781B, 2008CF001537A

STATE OF FLORIDA

vs.

ERICA WALKER,

Defendant.
_____/

ORDER DENYING MOTION TO APPOINT THE PUBLIC DEFENDER/COUNSEL

This matter came before the Court on the Motion to Appoint the Public Defender/Counsel for Defendant, Erica Walker. The Court reviewed the Motion filed on May 14, 2018, (D.E. 183), the case file and the applicable case law and being otherwise fully advised in the premises, it is hereby,

ORDERED AND ADJUDGED that the Motion is Appoint the Public Defender/Counsel is **DENIED.**

DONE AND ORDERED in Chambers, at West Palm Beach, Palm Beach County, Florida, this 23rd day of May, 2018

SAMANTHA SCHOSBERG FEUER
Circuit Court Judge

Copies Furnished to:
Erica Walker, DC# 163764, Homestead Correctional Institution, 19000 S.W. 377th Street, Suite 200, Florida City, FL. 33034
Renelda Mack, Assistant State Attorney, email: rmack@sa15.org

Appendix C

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

STATE OF FLORIDA

v.

ERICA WALKER,
Defendant.
_____/

CRIMINAL DIVISION: X
CASE NO.: 2008CF001537AXXXMB
2008CF001781BXXXMB

ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OF APPOINTMENT OF COUNSEL

THIS CAUSE came before the Court upon Defendant's Motion for Reconsideration of Appointment of Conflict Counsel, received in Chambers July 20, 2018. The Court has considered Defendant's Motion, the case file, and is otherwise fully advised in the premises.

Florida Rule of Criminal Procedure 3.850(f)(7) provides the Court with discretion to appoint counsel to represent Defendant in these proceedings. Pursuant to the rule, the factors to be considered in determining whether to appoint counsel include the adversary nature of the proceeding, the complexity of the proceeding, the complexity of the claims presented, the defendant's apparent level of intelligence and education, the need for an evidentiary hearing, and the need for substantial legal research.

While this Court has granted an evidentiary hearing in this case, that hearing is limited only to one claim: whether Defendant's trial counsel rendered ineffective assistance of counsel for failing to file a motion to suppress her statements to police. Although the Court acknowledges Defendant is not a lawyer, the Court finds that Defendant's claim is not so complex as to require the appointment of counsel to represent her at the upcoming evidentiary hearing.

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The Court recognizes Defendant is acting *pro se*, and is confident that it can conduct the proceedings in such a manner that will maintain fairness and preserve her due process rights throughout the proceeding.

Accordingly, it is hereby

ORDERED that Defendant's Motion for Reconsideration of Appointment of Conflict Counsel is **DENIED**.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this 25 day of July, 2018.

JOSEPH MARX
Circuit Judge

Copies provided to:

Erica Walker, DC #163764, Homestead Correctional Institution, 19000 S.W. 377th Street, Florida City, Florida 33034-2424

Renelda Mack, Esq., Assistant State Attorney, 401 North Dixie Highway, West Palm Beach, Florida 33401 (rmack@sa15.org) (e-postconviction@sa15.org)

Appendix D

OFFICE OF THE STATE ATTORNEY

FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY

DAVID ARONBERG
STATE ATTORNEY

August 27, 2018

Honorable Joseph Marx
Palm Beach County Courthouse
205 North Dixie Highway
West Palm Beach, FL 33401

RE: State of Florida vs. Erica J. Walker
Case No. 2008CF001537AMB and 2008CF001781BMB

Dear Judge Marx:

Pursuant to your request at the conclusion of the evidentiary hearing on August 17, 2018, a proposed Order Denying Ground Eight of the Defendant's Motion for Postconviction Relief is enclosed for your review and consideration.

Respectfully yours,

RMack

Renelda E. Mack
Assistant State Attorney

RM/paw

Enclosure

cc Erica Walker, Jacket # 0367314, Assigned Cell# M-W-06-A-05-B, PBSO Main Detention Center, 3228 Gun Club Road West Palm Beach, FL 33406

401 N. Dixie Highway, West Palm Beach, Florida 33401-4209
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Appendix "E"

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

DIVISION "X" CASE NO. 2008CF1537AXX✓
2008CF1781BXX✓

STATE OF FLORIDA

v.

ERICA WALKER,

Defendant. /

PROPOSED
ORDER DENYING GROUND EIGHT OF DEFENDANT'S MOTION FOR POST CONVICTION RELIEF FOLLOWING EVIDENTIARY HEARING

STATEMENT OF THE CASE

1. Defendant, Erica Walker, was charged by Indictment in case number 2008CF001781 with the following charges:

   Count 1 — First Degree Murder with a Firearm

   Count 2 — Robbery with a Firearm

2. Defendant was charged by Information in case number 2008CF001537 with the following charges:

   Count 1 — Robbery with a Weapon

   Count 2 — Aggravated Battery (Deadly Weapon Bodily Harm)

3. On September 3, 2009, Defendant entered a negotiated plea settlement resolving her charges in case number 2008CF001781. Under the settlement, Defendant pled guilty to the lesser-included offense of Second Degree Murder with a Firearm and to Robbery with a Firearm. Defendant was sentenced to thirty-five (35) years in the Department of Corrections with both counts running concurrently and with credit for time served of 585 days.

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4. On September 3, 2009, Defendant also entered a negotiated plea settlement resolving her charges in case number 2008CF001537. Under the settlement, Defendant pled guilty as charged to Robbery with a Weapon and Aggravated Battery (Deadly Weapon Bodily Harm). Defendant was sentenced to thirty (30) years' imprisonment in the Department of Corrections on Count 1. On Count 2, the Court sentenced Defendant to fifteen (15) years in prison, with both counts running concurrently and with credit for time served of 585 days. The Court ordered the sentence in case number 2008CF001537 to run concurrent with the sentence imposed in case number 2008CF001781.
5. On May 20, 2015, Defendant filed the presently pending Motion. The State filed a written response on December 6, 2016. On April 2, 2018, Defendant filed an Amended Motion for Post Conviction Relief, which amended Ground Thirteen of her original Motion. Both Defendant's Motion for Post Conviction Relief and Amended Motion for Post Conviction Relief were addressed in this Court's Order Denying In Part And Granting An Evidentiary Hearing In Part, Defendant's Motion For Post-Conviction Relief dated April 27, 2018.
6. Accordingly, on August 17, 2018, this Court conducted an evidentiary hearing on Ground Eight of Defendant's motion. At the hearing, Defendant testified on her own behalf and called LaRonnie Mason, Esquire as a witness. The Court has examined and considered Defendant's Motions, the State's Response, the testimony and evidence presented at the hearing, the argument of counsel, the case file, the record on appeal, the applicable law, and is otherwise fully advised in the premises.

DISCUSSION AND LEGAL ANALYSIS

As set forth in its Order Denying In Part and Granting an Evidentiary Hearing In Part, Defendant's Motion For Post-Conviction Relief dated April 27, 2018, Defendant alleges in

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Ground Eight that counsel was ineffective for failing to file a motion to suppress statements that she made while under the influence of opiates and subject to police coercion. "An allegation that trial counsel provided ineffective assistance by failing to file a motion to suppress is a legally sufficient claim, which is not waived by entry of a plea." *Spencer v. State,* 889 So. 2d 868, 870 (Fla. 2d DCA 2004). In order to prevail on a claim of ineffective assistance of counsel for failure to file a motion to suppress, a defendant must demonstrate that the motion would have been granted. *See Freeman v. State,* 796 So. 2d 574 (Fla. 2d DCA 2001); *Gettel v. State,* 449 So. 2d 413 (Fla. 2d DCA 1984). If such a showing is not made, the prejudice prong of *Strickland* has not been satisfied and the motion must fail.

"Although, as a general rule, intoxicants or narcotic drugs affect the credibility rather than the admissibility of a confession, in some circumstances their influence may be so severe as to render the confession involuntary." *Slade v. State,* 129 So. 3d 461, 464 (Fla. 2d DCA 2014). "A police questioner's indication to a suspect that he or she would benefit from cooperation does not, itself, constitute coercion." *Nelson v. State,* 688 So. 2d 971, 973 (Fla. 4th DCA 1997). However, "it is well-settled that statements obtained through direct or implied promises are involuntary and, thus, inadmissible at trial." *Ramirez v. State,* 15 So. 3d 852, 855 (Fla. 1st DCA 2009).

Defendant alleges that counsel was ineffective for failing to move to suppress the incriminating statements she made while under the influence of opiates. Specifically, Defendant alleges that her confession was not knowing or voluntary because it was the result of police coercion. In her Motion, Defendant claims that her confession was the result of a promise by two detectives to give her the medication she needed for her withdrawal symptoms if she would "tell them what they wanted to know."

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As further stated in its Order of April 27, 2018, the standard for prejudice where a defendant has pleaded guilty is whether there is a reasonable probability that, but for counsel's errors, defendant would not have pleaded guilty and would have gone to trial. Here, Defendant failed to meet her burden of proof.

Defendant Failed To Establish Prejudice

Mr. Mason, an experienced criminal defense attorney, who, at the time of the evidentiary hearing had been a practicing attorney for approximately thirty (30) years, testified that he was familiar with the law as it relates to requirements that a confession must be freely and voluntarily entered. Mr. Mason testified that prior to September 3, 2009, he had filed many motions to suppress statements. The testimony of attorney Mason revealed, that based upon the portion of Defendant's statement that he was able to review prior to the evidentiary hearing, there was no indication that law enforcement officers made a promise to induce Defendant's admissions. Mr. Mason further testified that based upon his longstanding relationship with the prosecutor, the prosecutor would not have proceeded with a statement induced by a law enforcement officer's promise. Mr. Mason testified that he participated in discovery, met with Defendant, reviewed discovery with Defendant and discussed the strengths of the State's with Defendant prior to the plea conference.

This Court finds that Defendant failed to establish a reasonable probability that but for counsel's alleged deficient performance, she would not have entered a guilty plea and would have proceeded to trial. As established in Grosvenor *v. State*, 874 So.2d 1176 (Fla. 2004):

> In determining whether a reasonable probability exists that the defendant would have insisted on going to trial, a court should consider the totality of the circumstances surrounding the plea, including such factors as *whether a particular defense was likely to succeed at trial, the colloquy between the defendant and the trial court at the time of the plea, and the difference between the sentence imposed under the plea and the maximum possible sentence the defendant faced at a trial. Grosvenor,* 874 So.2d at 1181-82. (Emphasis added.) *See also, Capalbo v. State*, 73 So. 3d 838 (Fla. 4th DCA 2011).\

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a. The State's Evidence Against Defendant Was Strong

The record, as well as the testimony presented, establish that independent of Defendant's confession to detectives on February 2, 2008, the State's evidence against Defendant was strong. Mr. Mason testified that Defendant made the following admissions:

> On January 23, 2008, Defendant told her father, Glenn Holzer, that she had stolen his handgun a few months earlier.
>
> On January on 1/23/08, Defendant told her brother, Greg Holzer, that she had gone to the victim's house to get some prescription drugs. She said that she took her father's gun with her. She said that she stayed in the car with her baby while Travis Carroll went inside the victim's home to ask him for the drugs, but came back outside and said the victim refused to give him the drugs. She said she put tape around her father's gun to silence it and gave the gun to Carroll. Carroll went back into the victim's house and killed the victim. After the murder, she and Carroll burned and buried their clothes and shoes. She and Carroll threw the gun into Lake Catherine.
>
> On January 26, 2008, Defendant asked her brother, Greg Holzer, if he had told anyone what she had done.

The record shows that both Defendant's brother and father were listed as witnesses by the State. (Ex. "AA"). The Court also notes that Defendant's father, Glenn Holzer, and brother, Greg Holzer, were present in the courtroom during the course of the evidentiary hearing.

Furthermore, Mr. Mason testified, and the record shows, that the codefendant, Travis Carroll, entered guilty pleas in this case, and on August 18, 2009, Carroll was listed as a witness for the State. (Ex. "CC", Discovery). In his February 2, 2008 statement to detectives, Carroll admitted that he and Defendant went to the victim's house to rob the victim of his prescription pills. When the victim refused to sell pills because Carroll could not pay for them, Carroll shot the victim with the gun that Defendant had stolen from her father. Carroll admitted that he told Walker that he shot and killed the victim. Carroll stated that Defendant drove the car from the murder scene to Lake Catherine where he threw the gun into the lake, and burned their clothes and shoes. Defendant then drove the car from the scene. Significantly, Carroll would have testified to the text

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message that Defendant sent to him before he exited from the victim's residence; Defendant's text message urged Carroll to wipe the victim's door clean.

b. The Court Conducted A Thorough Plea Colloquy With Defendant

Both the testimony and record establish that the Court conducted a very thorough inquiry with Defendant. Mr. Mason testified, and this Court observed, Defendant is highly intelligent. Mr. Mason testified that prior to the Court's plea colloquy, he reviewed each and every one of the constitutional rights which appeared on the waiver of rights forms with Defendant and Defendant appeared to understand the rights she was waiving. Mr. Mason also testified that he reviewed the terms of the plea agreement and the plea contract addendum with Defendant prior to the Court's colloquy.

During the course of the evidentiary hearing, Defendant admitted that she was in fact present at the plea conference. Mr. Mason's testimony, as well as transcript of the plea colloquy establish that Defendant signed and understood each of the plea documents. Specifically, the record shows that on September 3, 2009, Defendant affirmed, under oath, that:

1. **She had an ample opportunity to sit down with her lawyer, talk to him about all of the cases at issue, all of the counts, the strengths, the weaknesses, the strategies and he answered all of her questions to her satisfaction.** (Exhibit "F", p. 13)

2. **She was satisfied with her lawyer that he had done everything she wanted him to do and that he had not done anything that she did not wish for him to do.** (Ex. "F", Transcript, p. 5)

3. She had been able to speak with her attorney, ask him questions and understand his answers. (Ex. "F", Transcript, pp. 3-4)

4. She had the opportunity to read, review and talk to her lawyer about her waiver of rights form, that counsel told her what each and every one of her rights meant as well as what it meant to waive her rights. (Ex. "F", Transcript, 9)

5. **She understood that she was waiving her rights and that she was not proceeding to**

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trial. (Ex. "F", Transcript, p. 9)

6. She had the chance to read, review and discuss the terms on the plea contract addendum with counsel, that counsel explained all the terms, conditions, consequences, and ramifications of the contract addendum. (Ex. "F", Transcript, pp. 9-10)

7. She had the chance to read, review and discuss the terms on the plea sheet and counsel explained all the terms, conditions, consequences, and ramifications of the plea sheet. (Ex. "F", Transcript, p. 10)

8. **No one, including her lawyer had threatened, promised or coerced her into entering the plea. No one had done anything whatsoever in efforts to get her to enter into the plea.** (Ex. "F", Transcript, p. 5)

Defendant also acknowledged that she understood the charges and the sentences being imposed:

> THE COURT: You understand that you're pleading guilty in case 08CF1781BMB, to second degree murder with a firearm. You're pleading guilty in case 08CF1781BMB to count II, robbery with a firearm. You're pleading guilty in case 08CF001537AMB count I, robbery with a weapon and count II aggravated battery. You're going to be adjudicated guilty on each case and each count. You're going to pay fines, fees and costs for each case. If you contest the fines an attorney will be appointed to assist you in that contest. You're going to be sentenced to 35 years in the Department of Corrections for counts I and II in case 08CF1781BMB. 30 years in the Department of Corrections on count I in case 08CF001537ANB and 15 years in the Department of Corrections as to count II in case 08CF001537ANB. The sentences are going to run concurrently with each count and on each case. You will receive 585 days credit for time served. You agree that's the correct credit and waive any claim to any additional credit?
>
> MS. WALKER: Yes.
>
> THE COURT: You're going to submit to a DNA swab, you agree that the facts set forth in the probable cause affidavit filed in each case are true and accurate. And there is no exculpatory DNA in either case to which you are pleading guilty. There is a civil restitution order in the amount of nine hundred and three dollars ($903) that's going to be entered on behalf of Paul and Joseph Ligus. Is that your understanding of the plea?
>
> MS. WALKER: Yes, Ma'am.
>
> THE COURT: You understand that once you're sentenced under this agreement you can't come back next week or next month or next year and say I don't like that agreement. I didn't get it. I was confused, I had issues, I had questions. **Do you have any issues with your lawyer?**

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MS. WALKER: **No, Ma'am.**

THE COURT: Do you have any questions of your lawyer?

MS. WALKER: No. –

THE COURT: Do you fully understand all the terms, conditions, consequences, ramifications of entering into this plea?

MS. WALKER: **Yes.**

THE COURT: You understand the sentence?

MS. WALKER: Yes.

THE COURT: You understand that you're (sic) convictions here today may subject you to greater enhanced penalties if you're (sic) found guilty of some future criminal offense?

MS. WALKER: Yes.

(Ex. "F", Transcript, pp. 10-12)(emphasis supplied)

At the time of the plea conference, the Court found that Defendant (1) made a knowing, voluntary and intelligent waiver of her rights; (2) understood the charges against her and appreciated the consequences of her plea; (3) was represented by a lawyer with whom Defendant said she was satisfied; (4) acknowledged her guilt; (5) acknowledged that a factual basis supported her plea and; (6) acknowledged that her plea was voluntarily entered. (Ex. "F", Transcript, p. 14).

c. Defendant Did Not Complain to Counsel That She Did Not Wish To Enter A Guilty Plea

Significantly, Mr. Mason testified that at no point prior to the plea conference, during the plea conference or immediately after the plea conference did Defendant complain that she did not wish to enter guilty pleas in the cases at issue. Rather, Defendant firmly expressed her desire to avoid sentences of life imprisonment without the possibility of parole. Thus, Defendant pressed counsel to seek a settlement offer which would entail a definite term of years of imprisonment.

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Mr. Mason testified that Defendant explained that she wanted a future in which she could spend time with her daughter outside of prison walls.

d. The Difference Between The Sentence Imposed Under The Plea Agreement And The Maximum Possible Sentences Defendant Faced At Trial Reflects That Defendant Received a Highly Favorable Settlement

An additional factor in *Grosvenor* focuses on the difference between the sentence imposed under the plea and the maximum possible sentence Defendant faced at trial. In the cases at bar, Defendant's negotiated settlement agreement shows that Defendant obtained a huge benefit from her plea deal. Cf. *Hollingshead v. State*, 80 So.3d 424, 425-26 (Fla. 4th DCA 2012).

Specifically, in Case Number **08CF1781,** Defendant was charged in Count 1 with First Degree Murder With A Firearm, a capital felony. See Sections 782.04(1)(a)1 and 2; 775.087(1), 775.087(2)(a)1,2 and 3; and 777.011, Florida Statutes. In Count 2, Defendant was charged with Robbery with A Firearm, a felony of the first degree punishable by life imprisonment. See, Sections 812.13(1) and (2)(a); 775.087(1); Section 775.087(2)(a)1, 2 and 32(3)(c), and 777.011, Florida Statutes. The State agreed to reduce the charge of First Degree Murder with A Firearm to Second Degree Murder with a Firearm, a Life felony. Defendant was sentenced in each count to a term of 35-years imprisonment to run concurrently.

Regarding Case Number **08CF1537,** Defendant was charged with and pled guilty to Robbery with a Weapon in Count 1, a felony of the first degree punishable by a maximum sentence of 30-years' imprisonment. See Section 812.13(1) and (2)(b), Florida Statutes. In Count 2, Defendant was charged with Aggravated Battery, a felony of the second degree, punishable by a maximum term of 15-years' imprisonment. See Section,784.045(1)(a)1 and 2, Florida Statutes.

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Had Defendant proceeded to trial, she faced consecutive life sentences without the possibility of parole as well as mandatory minimum 25-year prison terms for the crimes charged in Counts 1 and 2 of Case Number 08CF1781. In addition, she faced an aggregate sentence of 45-years' imprisonment for the crimes charged in Counts 1 and 2 of Case Number 08CF1537 to run consecutive to the life sentences in Case Number 08CF1781.

As such, based on the sheer disparity between the sentence imposed and the sentence she could have faced had she elected to proceed to trial, the difference of 35-year prison sentences in Counts 1 and 2 of Case Number 08CF1781 and 30-year prison sentences in counts 1 and 2 of Case Number 08CF1537 all running concurrently -- as opposed to consecutive life sentences in the former case and a consecutive aggregate sentence of 45-years imprisonment in the latter case, it is not reasonably probable that, but for counsel's alleged error, Defendant would not have entered guilty pleas and would have proceeded to trial.

e. Defendant Was Represented By A Skilled, Experienced, Criminal Defense Attorney

The record shows that Defendant was initially represented by the Office of the Public Defender. Due to a conflict of interest, the Office of the Public Defender withdrew and the Court appointed the Office of Criminal Conflict and Civil Regional Counsel ("OCCCRC"). The record shows that after Michael Takiff, Esq and Mark Canteell of OCCCRC were assigned to represent Defendant, attorney Mason served as legal counsel from September 28, 2008 through the plea conference of September 3, 2009. Mr. Mason testified that he was licensed to practice law in the State of Florida in 1989. Thus, at the time of the evidentiary hearing, he had been a practicing attorney for nearly three decades. Mr. Mason testified that he began his legal career at the Office of the Public Defender, Fifteenth Judicial Circuit in and for Palm Beach County. There, he served

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in the juvenile, county court, felony and the Habitual Division. In the latter division, he handled serious crimes which included murder and manslaughter. After five years as an assistant public defender, Mr. Mason testified that he entered private practice and served on the Criminal Law Conflict Team for the Fifteenth Judicial Circuit. Thereafter, he worked in a law firm with attorney James E.C. Perry who later became a Justice on the Florida Supreme Court. Thereafter, Mr. Mason continued to practice law as a criminal defense lawyer with OCCCRC from 2008 to 2015. Mr. Mason testified that he presently serves as legal counsel with the law firm of Gary Williams Parenti Watson and Gary, P.L.L.C. Mr. Mason testified that prior to September 3, 2009, he had handled over a 1000 felony cases including approximately a 12 murder cases. Notably, prior to September 3, 2009, Mr. Mason was qualified to serve as legal counsel in death penalty cases.

f. Issues of Credibility Are Resolved In Favor of Defense Counsel

This case presents an issue of credibility. Based upon the totality of the circumstances, this Court finds that Defendant's claim that (1) but for counsel's alleged error in failing to file a motion to suppress her admissions, she would not have pleaded guilty and would have gone to trial; and (2) she consistently requested counsel to take her case to trial, and therefore, never informed counsel that she wanted to enter guilty pleas, to be incredulous. This Court finds that the testimony of defense attorney Mason was straightforward and credible. Based upon the foregoing it is hereby,

ORDERED AND ADJUDGED that Ground Eight of Defendant's Motion for Post Conviction Relief is hereby **DENIED.** The Court adopts and incorporates its April 27, 2018 Order Denying In Part And Granting An Evidentiary Hearing In Part, Defendant's Motion For Post-Conviction Relief. Defendant has thirty (30) days from the rendition of this Order in which to file an appeal.

Appendix "E"

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this the 30th day of August 2018.

JUDGE JOSEPH MARX
CIRCUIT COURT JUDGE

CONFORMED COPY

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Copies furnished to:

Erica Walker, Jacket # 0367314, Assigned Cell# M-W-06-A-05-B, PBSO Main Detention Center, 3228 Gun Club Road West Palm Beach, FL 33406

Renelda E. Mack, Assistant State Attorney, 401 N. Dixie Highway, West Palm Beach, FL. 33401, at appealsEservice@sa15.org

Appendix E