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577 EDA 2022

IN THE
SUPERIOR COURT OF PENNSYLVANIA
EASTERN DISTRICT

No. 577 EDA 2022

COMMONWEALTH OF PENNSYLVANIA,
Appellee

V.

JAMIE LYNN SILVONEK,
Appellant

BRIEF FOR APPELLEE

Appeal from the Order of the Honorable Anna-Kristie Marks of the Court of Common Pleas, Lehigh County, denying Defendant's Petition seeking Post-Conviction Relief in Case No. CP-39-CR-2141-2015.

JAMES B. MARTIN
District Attorney
HEATHER F. GALLAGHER
Chief of Appeals
JEFFREY S. DIMMG
Chief Deputy District Attorney
EDRIANA R. SYMIA
Assistant District Attorney

Office of the District Attorney
Lehigh County Court House
455 W. Hamilton Street
Allentown, PA 18101
(610) 782-3100

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COUNTER-STATEMENT OF QUESTIONS INVOLVED

1. Is defendant's stand-alone claim that her guilty plea was invalid because the lower court purportedly participated in plea bargaining waived and, in any event, meritless??

   (The PCRA court did not address waiver and denied the claim on its merits).

2. Was counsel was prior ineffective where his actions and strategy were eminently reasonable?

   (Answered in the negative by the PCRA court).

COUNTER-STATEMENT OF CASE

Defendant was an active participant in the planning and murder of her mother. Defendant pled guilty to Murder in the First-Degree, Criminal Conspiracy, Tampering with Evidence, and Abuse of a Corpse. She now appeals from the PCRA court's dismissal of his petition for relief under the Post-Conviction Relief Act (PCRA), 42 Pa.C.S.A. § 9541 *et seq*. Because the factual findings and legal conclusions of the PCRA court are fully supported by the record, no relief is due.

Factual and Procedural History

At defendant's guilty plea hearing, the prosecutor set forth the relevant facts as follows:

> …the defendant met a Caleb Barnes, who at that time was 20 years old, at a concert in Philadelphia, Pennsylvania on the 4th of October, 2014.
>
> Upon meeting him, she indicated to him that she was 17 years of age. He was 20 years old. At some point later in their relationship he became aware that she may be 16 years of age, but at no time in the early stages of her relationship did she make known to him her true age.
>
> That relationship continued via – obviously, with the large distance between Fort Meade, Pennsylvania, where or, excuse me, Fort Meade, Maryland where Caleb Barnes was stationed in the U.S. army as a linguist and her residence here in Upper Macungie Township.

They continued that relationship over the period of months, initially through social media, text messaging, phone calls, phone applications that would even include video conferencing similar to Skype, but an application called Oovoo, which would allow then to communicate in a method similar to, must people understand Skype.

They met, also, in person approximately once a month beginning in late October, and continuing through the period of the murder of her mother, about once a month in the area of Jim Thorpe in Carbon County, Pennsylvania. Jim Thorpe is the place where her grandmother and grandfather reside and she would be permitted to go up there to stay with her mother – or grandmother and during those times she was able to meet Caleb Barnes who had a vehicle and drove up from Fort Meade, Maryland.

That relationship continued in that way and also in, as I indicated, text messaging and I think as the Court is aware from previous hearings in this case that by text messaging we're talking about daily contact, hours of contact, hundreds of e-mails, or hundreds of texts a day at times. And, so, that is the basis for the relationship.

That relationship continues until March 6, 2015 which is a Friday in March. At that time Caleb Barnes comes to Upper Macungie Township and goes out with Ms. Silvonek in the evening and then returns to 1516 Randi Lane which is the residence of Jamie Silvonek, her mother, her father, David Silvonek, and a brother.

Her brother is away, normally at college. At this time he's actually – her brother and her father are away in Mexico on a vacation. So the only people in the home are Jamie Silvonek and Ms. – and Cheryl Silvonek.

Caleb Barnes stays the evening in the basement without her mother knowing that. Her mother discovers them in the morning hours of March 7, 2015.

And at that time her mother first confronts Ms. Silvonek, Jamie Silvonek, about it and then goes downstairs and actually talks to Caleb Barnes by himself briefly.

At that time Mr. Barnes indicates to – tells Cheryl Silvonek that he's 20 and that he's in the Army. And that's the first that Cheryl Silvonek learns of that.

At that point she tells him the relationship is over. She tells Jamie Silvonek the relationship is over.

Caleb Barnes remains in the area for a period of time and then returns to Maryland. Jamie Silvonek has her friend, which we have generally called juvenile witness number one, who comes to the home that evening to make a phone call.

She makes a phone call to Caleb Barnes. During that phone conversation she discusses the killing of her mother, maybe her parents, broadly, but certainly the discussion of killing her mother and there are specifics about that.

There's the specifics about a knife. There's the specifics about luring her mother away from the home.

Juvenile witness number one, as you know, Judge, is aware of that and ultimately provides information about that to the police.

Those types of conversations continue and some of what I'm telling you has been told, you know, has been provided to us in just the past 48 hours.

Those conversations continue daily for the period between Sunday and the killing a weekend later where essentially similar facts are discussed.

There are concert tickets that have already been purchased for the weekend of March 14th in Scranton, Pennsylvania by Mr. Barnes. He – she is aware of that. He's aware of that and that is part of their discussion as well.

He comes in the early morning hours of not the early morning hours, but the morning hours of March 14th back to the Randi Lane residence.

Jamie Silvonek took the SAT's that morning. She's an eighth grade student at Orefield Middle School.

After taking her SAT's she hopes to maybe talk her mother into allowing her to go to this concert with Caleb Barnes.

And, again, in the past 48 hours she indicates that she was able to often talk her mother into many things by various means of discussing them and that was her hope.

Ultimately, she's not able to do that and there's some text messages that the Court has also seen that support that she, Ms. Silvonek, being Cheryl Silvonek, indicates that she will take them but they're not to go by themselves, that she will take them to the concert.

And that will be the last hurrah, so to speak, between the two of them, that they will end their relationship at that point.

Caleb Barnes shows up at the house at 1516 Randi Lane sometime probably around noon. Text messages support that.

Initially he meets relatively quickly with Cheryl Silvonek. And at this point it's Jamie Silvonek's hope that potentially she could talk her mother into allowing this relationship to continue. But it becomes apparent to Jamie Silvonek that she cannot, that her mother will not and, in fact, her mother has gone and shown Caleb Barnes a passport to indicate her true age.

And now not only is her mother stopping the relationship, she's also pointing out the lie about her age.

At that point Jamie Silvonek joins the discussion that they've been discussing about, for the entire week, about killing her mother in order to allow the two of them to have a relationship.

And at that point, Jamie – the text messages, which the Court is aware of, the two continue to communicate at different parts of the house. Sometimes they're by themselves. Sometimes they're not. Sometimes they're communicating by text. Sometimes they're communicating in person.

Some of the texts the Court is aware of. "I can't stand her lying to you like this. She's lying about my age. Just do it. I'm going to go to the bathroom while you do it, okay?"

Nothing happens and, obviously, Mr. Barnes, and I should say, as I provide these facts and throughout this hearing, the Commonwealth is well aware of the fact that Mr. Barnes has a pending trial and so some – I will leave out some of what Mr. Barnes is saying in response, but the Court certainly is aware of much of that communication.

Nothing happens at the house, but it's agreed upon to go to the concert. They leave in her mother's car, a Ford Freestyle, and depart for Scranton, Pennsylvania via the turnpike, northeast extension.

They get – it's important to know as the Court's aware, that at 5:56 that Ford Freestyle – 1516 Randi Lane is very close to the exchange to get onto the northeast extension, maybe five, ten minutes. They get on via EZ pass records at 5:56.

Simultaneously, at 5:56 Caleb Barnes is texting in the rear of that car. While Cheryl Silvonek drives, Jamie and Caleb are in the rear of the car. At 5:56 Caleb Barnes texts her, "Next time we're out of sight."

Jamie Silvonek texts back, "Okay, baby." She texts, "I love you. We can do this." She texts, "We'll just drive her car then, right?"

Caleb Barnes texts back, "No. That leaves us as the suspects."

Texts continue. The last text that Jamie Silvonek sends is, "I want her to shut her fucking face and stop being fake. She just God damn lied to you about my age and now she's pulling this."

They go to this concert. Her mother stays in the lobby area of this concert while they attend the concert. They come out of the concert. They return home. They go to Chris's Diner.

Cheryl Silvonek stays in the parking lot and Caleb Barnes and Jamie Silvonek go in to have dinner.

During the course of that, again, information learned in the 48 hours from Jamie Silvonek is that they discuss in great detail the killing of her mother, to include the plan to choke her. Mr. Barnes indicates he will choke her.

They get back in the car. They drive to their house, 1516 Randi Lane. At this time this is – they leave the diner, Judge, at 12:55 and I know you've seen that video.

They arrive at the home, which is about a five minute drive, almost about 1:00 o'clock a.m.

As you read in transcripts, there's neighborhood – testimony from a neighbor and there's additional reports from other neighbors, but this particular neighbor reports that at 1:06 a horn starts blowing from a car parked in the driveway of the Silvonek residence.

As the car pulls up and stops, Caleb Barnes is seated directly behind her. Jamie Silvonek is seated in the passenger rear. He's seated directly behind Cheryl Silvonek.

He reaches around and attempts to do a choking maneuver that ultimately is not successful. And Ms. Silvonek,

Cheryl Silvonek, at times is able to converse. She pleads for her life. She becomes injured. He continues to punch her. And the Court is aware of the forensic autopsy that was conducted in this case. She is brutally beaten, choked and when that all fails Caleb Barnes pulls a knife out and stabs her repeatedly in the right side of her neck causing her death.

Jamie Silvonek is present in the vehicle. She does not intervene. And she indicates that is also what she desired to have happen.

After she is stabbed, Caleb Barnes moves her body into the passenger side of the vehicle. There is an attempt to try and clean the vehicle. The plan was to choke her, not to stab her.

There is not adequate cleaning supplies. A decision is made to go to Walmart to try to purchase cleaning supplies to clean the vehicle.

Jamie Silvonek and Caleb Barnes drive to the Trexlertown Walmart and the Court has seen that video. The two of them together pick out and purchase cleaning supplies from the Walmart.

They do that in her Camaro, which is parked outside the house. They return back in the Camaro.

The whole time the vehicle with Ms. Silvonek's body is in – has been parked. It's been moved now to a cul de sac right outside the house.

They return. They attempt to dispose of evidence, to include a knife which is placed in a back picnic table of the house.

They take the vehicle, put bleach in the vehicle, and then they attempt to drive the vehicle to dispose of the body.

They go to Haasadahl Road where the body is taken out. A suitable place is found. A shallow grave is dug by Caleb Barnes. Jamie is present for that.

Her body is taken out of the car, taken down and placed in a shallow grave.

During that time a local homeowner directly across from the area, Ray Werley, hears her dogs barking, comes down with a flashlight and discovers the car, which is unoccupied at that point because they are down by the creek burying the body.

He sees a large amount of blood. He calls – he's concerned for her own safety. He returns to the house, or actually to safety of her wife. He returns to her home, calls the police.

Before the police can get there and before he can come back, the car is gone. The car is disposed of. They drive the car back to the Silvonek residence.

They take the shovels out and they get the car ready – and some other additional evidence. They get the car ready to be taken to a pond.

They decide to take it to a pond which is maybe less than a mile from their house, attempt to drive the car into the pond, which is generally a failure. It's still exposed. The lights are still on.

They walk away from the car. It's a close enough distance that they're able to walk home. When they get home, they get rid of their clothing, in regards to putting it in the laundry. They clean up.

They attempt to burn some evidence and they go upstairs to her second floor bedroom and remain there from approximately 5:00 o'clock to 8:00 o'clock a.m.

David Silvonek has been home since approximately midnight, after working twelve hours, he has remained in the house, took a Ambien and was asleep.

At different times he did wake up and attempt to contact her wife or look around but he felt that they had likely gone somewhere else or had not come back from the concert.

Those are the facts, Judge, as the Commonwealth understands them and some of which was additional information provided to the Commonwealth by Jamie Silvonek.

THE COURT: Ms. Silvonek, is that what you did?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Specifically, do you admit that you planned the murder of your mother, Cheryl Silvonek?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And that you did that with Caleb Barns.

THE DEFENDANT: Yes, Your Honor.

THAT COURT: And that you participated in the murder and subsequent attempt to clean up after the murder. Is that correct?

THE DEFENDANT: Yes, Your Honor,

N.T. 2/11/16, 9-21.

Defendant was fourteen-years-old at the time of the planning and murder of her mother. Based on the charges, the court of common pleas had jurisdiction over defendant's case. Defendant subsequently filed a petition

seeking to decertify her case to juvenile court. Following a hearing, the Honorable Maria L. Dantos denied the petition.

On February 11, 2016, defendant pled guilty to Murder in the First-Degree, Criminal Conspiracy to Commit Homicide, Tampering with Evidence and Abuse of Corpse. In return for defendant's plea, the Commonwealth agreed defendant's minimum sentence would be thirty-five years and the maximum sentence would be life imprisonment. Judge Dantos accepted defendant's plea and imposed the agreed upon sentence.

Defendant appealed and on August 9, 2017, this Court affirmed the judgments of sentence. Defendant filed an *allocatur* petition in the Pennsylvania Supreme court, which was denied on February 8, 2018.

On May 6, 2019, defendant filed a counseled petition pursuant to the Post Conviction Relief Act, 42 Pa.C.S.A. § 9541 *et seq*. On January 22, 2021, defendant filed an amended PCRA petition. Following an evidentiary hearing, on January 31, 2022, the PCRA court denied defendant's petition. This appeal followed.

SUMMARY OF ARGUMENT

Defendant's challenge to his guilty plea is waived because she failed to raise the claim on direct appeal. In any event, her claim that her plea was invalid due to the trial court's participation is meritless. The Commonwealth and trial counsel reached an agreement prior to seeking whether the trial court would accept this agreement. The trial court did not improperly insert itself into the negotiations. Defendant freely made her decision to plead guilty based on the overwhelming evidence of her guilt and the Commonwealth's agreement on a sentence that gives her an opportunity to be paroled.

Trial counsel's representation was effective. Counsel rigorously represented defendant at each phase of the case up through direct appeal. His actions and strategic decisions were eminently reasonable and defendant suffered no prejudice as a result of counsel.

The PCRA court denied defendant's petition after evidentiary hearings and after careful consideration of all of the testimony and evidence presented in this case. Because the record and law supports the denial of defendant's PCRA petition, this ruling should be affirmed on appeal.

ARGUMENT

Defendant claims that her guilty plea was not knowing and voluntary due to participation by the trial court in the plea bargaining. She further assails trial counsel's representation for a multitude of reasons. The PCRA comprehensively reviewed defendant's claims and properly rejected them. No appellate relief is due.

This Court's standard of review when examining a PCRA court's denial of relief is limited to determining whether the court's findings are supported by the record and free from legal error. Commonwealth v. Carpenter, 725 A.2d 154, 159-160 (Pa. 1999); Commonwealth v. Quaranibal, 763 A.2d 941 (Pa.Super. 2000). "The court's scope of review is limited to the findings of the PCRA court ... viewed in the light most favorable to the prevailing party." Commonwealth v. Fitzgerald, 979 A.2d 908, 910 (Pa.Super. 2009).

To be entitled to PCRA relief based on a claim of ineffective assistance of counsel, a defendant must establish, *inter alia*, "[i]neffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place." 42 Pa.C.S.A. § 9543(a)(2)(ii). Trial counsel is presumed to be effective and the defendant bears the burden

of proving otherwise. Commonwealth v. Rivers, 786 A.2d 923, 927 (Pa. 2000); Commonwealth v. Marshall, 633 A.2d 1100, 1104 (Pa. 1993). Specifically, a defendant must demonstrate that: (1) the underlying claim has arguable merit; (2) counsel had no reasonable basis for his actions; and (3) counsel's actions prejudiced the defendant. Commonwealth v. Allen, 732 A.2d 582, 587 (Pa. 1999); Commonwealth v. Jordan, 772 A2d 1011 (Pa.Super. 2001). Prejudice is established only if the defendant demonstrates that, but for counsel's alleged ineffectiveness, there exists a reasonable probability that the outcome would have been different. Allen, *supra*; Commonwealth v. Kimball, 724 A.2d 326 (Pa. 1999). The failure to meet any prong of the ineffective assistance of counsel test will defeat the claim. Commonwealth v. Wright, 961 A.2d 119, 149 (Pa. 2008), *citing* Commonwealth v. Rainey, 928 A.2d 215, 224 (Pa. 2007).

I. DEFENDANT'S GUILTY PLEA WAS KNOWING, INTELLIGENT AND VOLUNTARY.

Defendant claims that her guilty plea was not knowing and voluntary because the trial judge improperly participated in plea negotiations. Her claim is waived and, in any event, meritless.

A. Defendant's challenge to her guilty plea is waived because she failed to properly preserve it.

Defendant's claim is waived because she did not raise this claim on direct appeal. To obtain post-conviction relief, a petitioner is required to plead and prove that "the allegation of error has not been previously litigated or waived." 42 Pa.C.S.A. § 9543(a)(3); Commonwealth v. Banks, 656 A.2d 467, 469 (Pa. 1995). An issue is waived if it could have been raised before trial, at trial, on direct appeal or in a prior state post-conviction proceeding. 42 Pa.C.S.A. § 9544(b); Commonwealth v. Judge, 797 A.2d 250, 260 (Pa. 2002); Commonwealth v. Payne, 794 A.2d 902, 905 (Pa.Super. 2002).

Defendant here could have raised the instant challenge to her guilty plea on direct appeal. However, she did not. For this reason, the claim is waived. *See* Commonwealth v. Rachak, 62 A.3d 389, 395–96 (Pa.Super. 2012) (claim that plea was not voluntarily, knowingly, and intelligently entered is one that could have been raised previously and because defendant failed to, he is barred from raising it in collateral proceedings), *citing* 42 Pa.C.S.A. § 9544(b). *See also* Commonwealth v. Johnson, 179 A.3d 1153, 1159 (Pa.Super. 2018) (claim that defendant coerced to plead guilty waived on PCRA review because defendant failed to challenge voluntariness of the plea on direct appeal); Commonwealth v. Turetsky, 925 A.2d 876, 879 (Pa.Super. 2007) (claim that guilty plea was constitutionally deficient

because it was not intelligent, voluntary and knowing waived for purposes of PCRA because it could have been raised on direct appeal and was not).

In any event, the PCRA court properly deemed the claim to be meritless.

To be entitled post-conviction relief for an allegedly involuntary guilty plea, the petitioner must plead and prove by a preponderance of the evidence that he was "induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent." 42 Pa.C.S.A. § 9543(a)(2)(iii). Moreover, when a defendant enters a guilty plea, it is presumed that he was aware of what he was doing, and he carries the burden of proving the plea was involuntary. Commonwealth v. Lewis, 708 A.2d 497, 502 (Pa.Super. 1998). Courts can permit a defendant to withdraw a guilty plea after sentence is imposed only where the defendant makes a showing of prejudice that amounts to manifest injustice. Id. at 502-503; Commonwealth v. Blackwell, 647 A.2d 915, 921 (Pa.Super. 1994). To prove manifest injustice, a defendant must show that his or her plea was involuntary or unknowing. Commonwealth v. Shaffer, 446 A.2d 591, 593 (Pa. 1982); Commonwealth v. Stork, 737 A.2d 789, 790 (Pa.Super. 1999). To ascertain whether defendant entered into a guilty plea knowingly, intentionally, and voluntarily, a reviewing court must examine

the guilty plea colloquy, focusing specifically on the trial court's inquiry into six areas:

> (1) the nature of the charges; (2) the factual basis of the plea; (3) the right to a trial by jury; (4) the presumption of innocence; (5) the permissible range of sentences; and (6) the judge's authority to depart from any recommended sentence

Commonwealth v. Muhammad, 794 A.2d 378, 383 (Pa.Super. 2002), *quoting* Commonwealth v. Burkholder, 719 A.2d 346, 349 n.5 (Pa.Super. 1998); Comment to Pa.R.Crim.P. 590. The adequacy of a guilty plea colloquy and the voluntariness of the resulting plea must be examined under the totality of the circumstances surrounding the entry of the plea. Muhammad, 794 A.2d at 383-384.

The record here plainly demonstrates that defendant knowingly, intelligently, and voluntarily pled guilty. At the outset of the plea hearing, the prosecutor set forth the terms of the plea agreement: defendant would plead guilty to Murder in the First-Degree, Criminal Conspiracy to Commit Criminal Homicide, Abuse of Corpse, and Tampering with Physical Evidence. In exchange for this plea, the Commonwealth agreed that defendant minimum sentence would be thirty-five (35) years imprisonment and her maximum sentence would be life imprisonment[1] (N.T. 2/11/16, 4-5).

[1] At the time of defendant's plea, a person convicted of First-Degree Murder, who at the time of the offense was under 15 years of age, shall be sentenced to a term of life

Defendant confirmed that this was her understanding (*Id.* at 5). The lower court then reviewed the statutory maximum sentences each of her crimes carried.

During the lower court's thorough oral colloquy, defendant averred that she reviewed the written colloquy with the assistance of his counsel, answered all of the questions truthfully, and had no questions for the court regarding it (*Id.* at 6-7). The prosecutor set forth the facts supporting underlying defendant's crime and defendant affirmed these facts (*Id.* at 9-21). Defendant further avowed that she planned the murder of her mother and did so with co-defendant, Caleb Barnes, and that she "participated in the murder and subsequent attempt to clean up after the murder" (*Id.* at 21).

Defendant further asserted to the court that it was her decision to give up her right to proceed to trial as well as the rights associated with a trial, that she was pleading guilty of her own free will and that no one was forced, threatened, or made promises to her in order for her to plead guilty (*Id*. at 7). Finally, defendant affirmed that she was "very much" satisfied with her lawyer (*Id.* at 7-8). Defendant is bound by these statements made under oath and is not entitled to relief based on any post-sentence contentions contradicting these statements. *See* Commonwealth v. Pollard,

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imprisonment without parole, or a term of imprisonment, the minimum of which shall be

832 A.2d 517, 523 (Pa.Super. 2003) ("The longstanding rule of Pennsylvania law is that a defendant may not challenge his guilty plea by asserting that he lied while under oath . . . A person who elects to plead guilty is bound by the statements he makes in open court while under oath and he may not later assert grounds for withdrawing the plea which contradict the statements he made in his colloquy."); Muhammad, 794 A.2d at 384 (where defendant represented to court that plea was voluntary, he was later precluded from asserting it was not). *See also* Commonwealth v. Cortino, 563 A.2d 1259, 1262 (Pa.Super. 1989) (appellant's assertion that he lied and only gave responses he considered to be appropriate as a matter of form cannot, by itself, act to postpone the final disposition of this case).

Defendant's guilty plea colloquy was comprehensive and clear. Based on the totality of the evidence presented surrounding the plea – including defendant's statements made during the colloquy, her interactions with the trial court, and the testimony of trial counsel, which was credited by the PCRA court -- defendant's decision to plead guilty was knowing, intelligent and voluntary. *See* Commonwealth v. Sauter, 567 A.2d 707, 708-709 (Pa.Super. 1989) (where written plea colloquy supplemented oral colloquy, it strongly suggests that appellant's plea was knowing and

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at least 25 years with the maximum of life. 18 Pa.C.S.A. § 1102.1(a)(2).

intelligent). *See also* Commonwealth v. Howard, 749 A.2d 941, 946 (Pa.Super. 2000) (where a PCRA court's credibility determinations are supported by the record, they are binding on the reviewing court). She now wants to pretend otherwise by asserting that the lower court improperly participated in the plea negotiations thereby rendering her plea invalid. This claim, even if reviewable, is meritless and was properly rejected by the PCRA Court.

B. Defendant's reliance on Commonwealth v. Evans, 252 A.2d 689 (Pa. 1969) is misplaced.

Notwithstanding the lower court's thorough colloquy or defendant's own statements and affirmations made during it, she claims her plea is invalid because, according to her, "trial judges are barred from any participation in Plea bargaining before the offer of a guilty plea." Brief for Appellant, p. 27. She relies primarily on Commonwealth v. Evans, 252 A.2d 689 (Pa. 1969) as support. This reliance, however, is misplaced and defendant's assertion that the lower court improperly "participated" is belied by the record.

The appellant in Evans appealed the dismissal of his post-conviction petition, arguing that discussions between the trial judge and counsels regarding possible resolution by way of a guilty plea and the sentence to be imposed were improper and rendered his subsequent guilty plea involuntary.

In granting him a new trial, our Supreme Court held that "any participation by the trial judge in the plea bargaining prior to the offering of a guilty plea" is forbidden. Evans, 252 A.2d at 691.

In a strongly worded dissenting opinion, Chief Justice Bell, made the following observation:

> Defendant, while represented by counsel, pled guilty to robbery and to several related crimes. Approximately a year later, he filed a petition under the Post Conviction Hearing Act, contending that his guilty plea, and therefore his sentence, was unconstitutional because the trial Judge participated in the plea bargaining and the probable sentence.
>
> It has been a frequent practice in Pennsylvania for countless years for a defendant's attorney and the District Attorney And the trial Judge to have a conference and in many cases agree on a plea And a sentence. Provided this conference is requested by the defendant's attorney and the district attorney is present throughout all these conferences and the agreement was fairly arrived at-and not by chicanery, partiality, politics or compulsion or concealment of material facts as to each and all of which the burden of proof would be upon the defendant-it would result in greatly shortening the time of trial and eliminating the practical possibility that a guilty man may be acquitted. Furthermore, it would punish the guilty, give some additional protection to law-abiding citizens, expedite litigation, and avoid or reduce backlogs*-and for each and all these reasons, benefit Society. Moreover, in practical effect, it would in very many cases also benefit the accused by enabling him to obtain a lighter sentence than if he were tried and convicted.
>
> For these reasons, I very, very strongly dissent to this newly created prohibition of a long-standing practice which has so often produced so may benefits.

Id, 252 A.2d at 692 (Bell, C.J., dissenting).

Justice Bell's dissent proved to be judicious. Subsequent to the Evans decision Rule of Criminal Procedure 319, in relevant part stated:

> (b) Plea Agreements
>
> (1) The trial judge shall not participate in the plea negotiations preceding an agreement.

In 1995, Rule 319 was amended and subsequently renumbered 590. The amendment omitted this language set forth above in Rule 319(b). In acknowledgement of the ill-advised and overly broad holding in Evans, and as forewarned by Chief Justice Bell, the Comment to Rule 590, explained:

> The 1995 amendment deleting former paragraph (B)(1) eliminates the absolute prohibition against any judicial involvement in plea discussions in order to align the rule with the realities of current practice. For example, the rule now permits a judge to inquire of defense counsel and the attorney for the Commonwealth whether there has been any discussion of a plea agreement, or to give counsel, when requested, a reasonable period of time to conduct such a discussion. Nothing in this rule, however, is intended to permit a judge to suggest to a defendant, defense counsel, or the attorney for the Commonwealth, that a plea agreement should be negotiated or accepted.

Evans, as well as other caselaw cited by defendant to challenge the validity of her guilty plea predates the amendments and Comment cited above.

Presently, there is no prohibition against the parties seeking a conference with the judge to determine whether agreements reached will be accepted. Doing so is not improper and is precisely what occurred here. Accordingly, defendant's reliance on Evans is outdated and misplaced.

C. The trial court did not improperly "participate" in plea negotiations.

"The Pennsylvania Rules of Criminal Procedure grant the trial court broad discretion in the acceptance and rejection of plea agreements. There is no absolute right to have a guilty plea accepted." Commonwealth v. Hudson, 820 A.2d 720, 727–28 (Pa.Super. 2003); Pa.R.Crim.P. 590(A)(3) ("[t]he judge may refuse to accept a plea of guilty"). "Accordingly, our Courts have reaffirmed that '[w]hile the Commonwealth and a criminal defendant are free to enter into an arrangement that the parties deem fitting, the terms of a plea agreement are not binding upon the court. Rather the court may reject those terms if the court believes the terms do not serve justice.'" Commonwealth v. Chazin, 873 A.2d 732, 737 (Pa.Super. 2005), *quoting* Commonwealth v. White, 787 A.2d 1088, 1091 (Pa.Super. 2001).

Here, based on the testimony and evidence presented, the PCRA court found:

> In the within matter, after the Court denied the Defendant's Motion to Transfer Proceedings to the Juvenile Court pursuant to 42 Pa. C.S.A. § 6322, the evidence established that Attorney Waldron reached out the Lehigh County District Attorney to begin plea negotiations.[2] In late

[2] Attorney Waldron believed, in his professional opinion, that the case strongly hinged on the decertification hearing, as there was mounting evidence of the Defendant's involvement in her mother's murder. In fact, as time elapsed, according to Attorney Waldron, the Defendant became more truthful and forthcoming, and her version of the events of March 15, 2015 evolved into a factual scenario in which the Defendant was a more active participant in her mother's murder. Therefore, in the eyes of her counsel, the

> January 2016, discussions occurred among Attorney Waldron, District Attorney James B. Martin, and members of his staff. (C. PCRA Ex. 10). Ultimately the Commonwealth offered the Defendant a cap of the minimum sentences at thirty-five years (35) in exchange for a guilty plea to Murder of the first-degree.[3] However, as Attorney Waldron was familiar with Judge Dantos' strict sentencing practices, he was concerned that she would not accept this plea offer. Consequently, Attorney Waldron and the prosecutor scheduled a conference with Judge Dantos in order to determine if she would accept this fully-formed plea proposal.[4] During this conference, it became clear that Judge Dantos would not accept a plea that entailed a minimum sentence of less than thirty-five (35) years. Hence, the thirty-five (35) years mentioned by Judge Dantos had already been a part of the agreement arrived at between the prosecutor and Attorney Waldron. In light of the fact that this Court finds it extremely clear that the trial Court did not participate in plea negotiations, the Defendant's claim that the plea was involuntary in this regard must fail.[5]

The PCRA court's conclusions are supported by the record and the law. *See* Commonwealth v. Clark, 961 A.2d 80, 87-88 (Pa. 2008) (where a PCRA court's credibility determinations are supported by the record, they

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focus of the case was no longer an innocence defense, but rather a decertification to juvenile court.

[3] During these negotiations, District Attorney Martin made it clear, in no uncertain terms, that the Commonwealth would not accept a plea to anything less than Murder of the first-degree.

[4] Attorney Waldron did not want to present the Defendant with the plea offer that entailed a cap of the minimum sentence at thirty-five (35) years, only to have it be rejected later by the Court. The purpose of this conference was to avoid such a situation by quantifying the minimum sentence ahead of time.

[5] Judge Dantos' footnoted Order of June 6, 2019 expressly and explicitly indicates that the Court did not interject itself into plea negotiations between the Commonwealth and trial counsel for the Defendant. (C. PCRA Ex. 15). Judge Dantos succinctly stated that "at no point did this Court directly participate in plea negotiations in this matter.

are binding); Commonwealth v. Vega, 754 A.2d 714, 716 (Pa.Super. 2000) (the reviewing court will grant great deference to the findings of the PCRA court, which will not be disturbed unless they have no support in the certified record).

Indeed, consistent with common practice, Attorney Waldron and the Commonwealth reached an agreement that it then presented to the trial court for consent to proceed. This was done to avoid the disappointment of defendant, as well as the victims' family, should an agreed upon resolution be rejected. Had the trial court rejected the plea based upon the agreed upon sentence, defendant either would have had to re-institute plea negotiations in hopes of reaching an agreement the trial court would accept, plead guilty with no agreement to sentence, or proceed to trial. Had defendant entered an open guilty plea or proceeded to trial and been convicted of Murder in the First-Degree, notwithstanding her age, she faced a potential sentence of life imprisonment without the possibility of parole. Clearly, this was not a resolution either defendant, counsel, or the victim's family desired.

The trial court never suggested the defendant plead guilty nor did it encourage her to plead guilty. Even under the overly broad holding in Evans, there is no credible evidence here that defendant was coerced or

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Instead, trial counsel and the Commonwealth requested a meeting with the Court to

intimidated into pleading guilty by the trial court, which is what Evans sought to prevent. *See, e.g.,* Commonwealth v. Vealey, 581 A.2d 217 (Pa.Super. 1990). Rather, it is clear here that after discussions with her defense team, reviewing the overwhelming and damning evidence against her and the law, defendant faced reality and freely made the decision to plead guilty in exchange for a minimum sentence of thirty-five (35) years and the possibility of parole. Her challenge to her guilty plea and agreement are nothing more than buyer's remorse and was properly rejected by the PCRA court. *See* Id., at 220–21 (notwithstanding that purported agreement between court and counsel was reached before agreement discussed with defendant, guilty was valid and defendant not entitled to withdraw the plea; "although court may have acted erroneously in appearing to enter into an arrangement with trial counsel that error did not result in prejudice to appellant."). *See also* Stork, *supra* (where appellant voluntarily agreed to plead guilty, negotiated a favorable plea bargain, and completed colloquy indicating he was aware of consequences of plea, claim plea was not knowing or voluntary was rejected). *Compare* Lewis, 708 A.2d at 503 (appellant made a conscious decision to plead guilty to avoid the chance of exposure to a death sentence; appellant must live with that decision);

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determine if this Court would reject a potential plea. (C. PCRA Ex. 15).

Commonwealth v. Barnes, 687 A.2d 1163, 1167 (Pa. Super. 1996) ("a plea of guilt that is motivated by a fear that the prosecution may obtain the death penalty is valid as long as the guilty plea is entered knowingly and voluntarily").

Accordingly, defendant's challenge to the voluntariness of her plea is waived and, in any event, meritless. No appellate relief is due.

II. ATTORNEY WALDRON EFFECTIVELY REPRESENTED DEFENDANT.

Defendant claims that Attorney Waldron was ineffective at each stage of the proceedings. The PCRA court properly rejected these claims.

A. Decertification.

Defendant claimed that Attorney Waldron's representation with regard to the decertification hearing was ineffective. Upon review of the facts and applicable law, the Commonwealth has determined that the Commonwealth's Post-PCRA Hearing Brief and PCRA court's thorough and well-reasoned opinion sufficiently address defendant's claims with regard to the decertification stage of the proceedings. Thus, the Commonwealth relies upon its brief, attached hereto as "Exhibit A," and the opinion, attached hereto as "Exhibit B," in support of its request that the PCRA court's rejection of these claims be affirmed.

In addition, the Commonwealth offers the following guidance in support of the PCRA court's order:

"When evaluating ineffectiveness claims, 'judicial scrutiny of counsel's performance must be highly deferential.'" Commonwealth v. Lesko, 15 A.3d 345, 379 (Pa. 2011), *quoting* Strickland v. Washington, 466 U.S. 668, 689 (1984). "Indeed, few tenets are better settled than the presumption that counsel is effective." Lesko, *supra, citing* Commonwealth v. Daniels, 963 A.2d 409, 427 (Pa. 2009).

As a general rule, trial counsel has broad discretion to determine the tactics employed. "Strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable." Strickland, 466 U.S. at 688. Moreover, "[a] defendant is not entitled to relief simply because the strategy was unsuccessful." Commonwealth v. Davis, 554 A.2d 104, 111 (Pa.Super. 1989). *See also* Kimball, 724 A.2d at 336.

Indeed, counsel's strategic decisions, such as those challenged here, can only be deemed ineffective if defendant proves that "in light of all the alternatives available to counsel, the strategy actually employed was so unreasonable that no competent lawyer would have chosen it." Commonwealth v. Dunbar, 470 A.2d 74, 77 (Pa. 1983), *quoting*

Commonwealth v. Miller, 431 A.2d 233, 234 (Pa. 1981). *See also* Commonwealth v. Albrecht, 511 A.2d 764, 776 (Pa. 1986) (to prove ineffectiveness, defendant must show that counsel's conduct was so lacking in reason that "no competent lawyer would have chosen it"). Hindsight claims that counsel could have followed a different course -- even an arguably more logical course -- are insufficient to rebut the presumption of effective representation. Commonwealth v. Paolello, 665 A.2d 439, 454 (Pa. 1995). *See* Commonwealth v. Rollins, 738 A.2d 435, 441 (Pa. 1999) ("we do not question whether there were other more logical courses of action which counsel could have pursued; rather, we must examine whether counsel's decisions had any reasonable basis"), *citing* Commonwealth v. Pierce, 527 A.2d 973, 975 (Pa. 1987). *Accord, e.g.,* Dunbar*, supra* (standard is whether counsel had "some reasonable basis," not "whether other alternatives were more reasonable, employing a hindsight evaluation of the record").

Moreover, the reasonableness of counsel's investigation and preparation depends critically on the information supplied by the defendant. Commonwealth v. Fears, 836 A.2d 52, 72 (Pa. 2003); Commonwealth v. Bond, 819 A.2d 33, 45 (Pa. 2002); Commonwealth v. Basemore, 744 A.2d 717, 735 (Pa. 2000). A defendant certainly cannot "fault trial counsel for his

own failure to provide his advocate with the facts necessary to mount a timely defense" Commonwealth v. Lott, 581 A.2d 612, 617 (Pa.Super. 1990). *See, e.g.,* Commonwealth v. Kesting, 417 A.2d 1262, 1265 - 1266 (Pa.Super. 1979) (based on information given to counsel – i.e. denials of guilt --, counsel's advice to appellant to cooperate with police was not ineffective assistance). *See also* Fears, *supra, citing* Strickland, *supra* ("an evaluation of counsel's performance is highly deferential, and the reasonableness of counsel's decisions cannot be based upon the distorting effects of hindsight. Furthermore, reasonableness in this context depends, in critical part, upon the information supplied by the defendant."); Commonwealth v. Uderra, 706 A.2d 334, 340 (Pa. 1998) ("Appellant's own failure to cooperate with counsel in order to apprise him of allegedly relevant information cannot now provide a basis for his ineffectiveness claims").

Furthermore, with regard to the prejudice prong, our Supreme Court in Lesko observed:

> The *Strickland* test for prejudice requires the defendant to prove **actual prejudice,** that is, a reasonable probability that, but for counsel's lapse, the result of the penalty proceeding would have been different. *Strickland,* 466 U.S. at 694, 104 S.Ct. 2052. "In making this determination, a court hearing an ineffectiveness claim must consider the **totality of the evidence** before the judge or jury.... Moreover, a verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with

> overwhelming record support." *Id.* at 695–96, 104 S.Ct. 2052 (emphasis added). Ultimately, a reviewing court must question the reliability of the proceedings and ask whether "the result of the particular proceeding [was] unreliable because of a breakdown in the adversarial process that our system counts on to produce just results." *Id.* at 696, 104 S.Ct. 2052.

Lesko, 15 A.3d at 383.

The Court in Lesko further cautioned that reviewing courts "must be careful not to conflate the roles and professional obligations of experts and lawyers" and that lawyers cannot be expected to raise certain questions or issues that involve matters within the expert's purview. The failure to raise such issues may call into questions an experts' professional performance, "but that is not the same thing as providing a basis to fault trial counsel's legal performance." Id., at 382. *See also* Commonwealth v. Rivera, 108 A.3d 779, 805–09 (Pa. 2014) ("courts must be careful not to conflate the roles and professional obligations of experts and lawyers."; "Trial counsel cannot be found to lack a reasonable strategy merely because he did not consult an additional mental health expert in the hopes of obtaining a more favorable conclusion for his client. This is especially true where trial counsel knew that the Commonwealth's expert, Dr. Michals, was ready to testify that Appellant suffered from no mental impairment at the time of the offense."); Commonwealth v. Stevens, 739 A.2d 507 (Pa. 1999) ("This is not an instance where counsel failed to present a mental health mitigation

case despite the presence of evidence to support such a case. Rather, this is a case where a more competent evaluation by the professionals retained by Appellant may have resulted in a more thoroughly developed mental health mitigation case. However, our review of the PCRA hearing indicates that such failures, if any occurred, do not rest at the feet of Appellant's counsel, and that the court properly denied Appellant's claim of trial counsel's ineffectiveness.").

It is with this guidance, that the Commonwealth relies on the arguments presented in Exhibit A, and the conclusions reached in Exhibit B, in support of its request that the order below rejecting defendant's challenges to counsel with regard to the decertification proceedings be affirmed.

B. Guilty Plea.

Defendant again attacks the validity of her guilty plea. This time she asserts that counsel was ineffective with regard to the trial court's "participation" in plea negotiations. As previously explained, the lower court did not improperly participate in plea negotiations. Moreover, counsel's actions with regard to defendant's guilty plea were eminently reasonable.

"Allegations of ineffective assistance of counsel in connection with entry of the guilty plea will serve as a basis for relief only if the

ineffectiveness caused the defendant to enter an involuntary or unknowing plea." Commonwealth v. Moser, 921 A.2d 526, 531 (Pa.Super. 2007) (citation omitted). *See also* Commonwealth v. Morrison, 878 A.2d 102, 105 (Pa.Super. 2005); Lewis, 708 A.2d at 500-501, *quoting* Commonwealth v. Yager, 685 A.2d 1000, 1004 (Pa.Super. 1996) (*en banc*). As set forth in Section I of Brief for Appellee, defendant's plea was knowing, intelligent and voluntary.

With regard to guilty pleas, our Supreme Court has reflected:

> A guilty plea is an acknowledgement by a defendant that he participated in the commission of certain acts with a criminal intent. He acknowledges the existence of the facts and the intent. The facts that he acknowledges may or may not be within the powers of the Commonwealth to prove. However, the plea of guilt admits that the facts and intent occurred, and is a confession not only of what the Commonwealth might prove, but also as to what the defendant knows to have happened.
>
> A defendant may plead guilty for any reason: to shield others, avoid further exposure, to diminish the penalty, to be done with the matter, or any secret reason that appeals to his needs. What is generally and most objectively accepted is that a plea is offered to relieve conscience, to set the record straight and, as earnest of error and repentance, to accept the penalty.
>
> …
>
> A guilty plea is not a ceremony of innocence, it is an occasion where one offers a confession of guilt. If a defendant voluntarily, knowingly, and intelligently wishes to acknowledge facts that in themselves constitute an offense, that acknowledgement is independent of the procedures of proving or refuting them. How they would be proved, what burdens

> accompany their proof, what privileges exist to avoid their proof, what safeguards exist to determine their accuracy, and under what rules they would be determined, by whom and how, are irrelevant. The defendant is before the court to acknowledge facts that he is instructed constitute a crime. He is not there to gauge the likelihood of their proof. He is there to voluntarily say what he knows occurred, whether the Commonwealth would prove them or not, and that he will accept their legal meaning and their legal consequence.

Commonwealth v. Anthony, 475 A.2d 1303, 1307-1308 (Pa. 1984). This is precisely what defendant did in this case, and her decision to do so was knowing, intelligent and voluntary. Accordingly, plea counsel was not ineffective. *See* Commonwealth v. Johnson, 771 A.2d 751, 757 (Pa. 2001) (plurality) ("[i]f the underlying issue does not have any arguable merit, we need look no further since counsel will not be deemed ineffective for failing to pursue an issue without merit"). The PCRA court's denial of this claim should be affirmed.

C. Appeal

Defendant claimed that counsel failed to properly challenge the trial court's decision not to decertify her. Specifically, she claims that the lower court's finding that defendant lacked a recognized mental health diagnosis rendered her not amenable treatment and trial counsel ineffectively raised this claim to this Court on direct appeal. The PCRA court properly deemed this claim meritless.

"To succeed on a stand alone claim of appellate counsel's ineffectiveness, a PCRA petitioner must demonstrate that appellate counsel was ineffective in the manner by which he litigated the claim on appeal." Commonwealth v. Koehler, 36 A.3d 121, 141 (Pa. 2012), *citing* Commonwealth v. Paddy, 15 A.3d 431, 443 (Pa. 2011). *See also id* at 476 (C.J. Castille, Concurring) (asserting that "[t]o prevail [on a stand alone claim of appellate counsel ineffectiveness], the PCRA petitioner must show exactly how appellate counsel was ineffective, by offering additional evidence or controlling authority, missed by direct appeal counsel, that would have changed the appeal outcome; or by specifically alleging the winning claim or distinct legal theory that appellate counsel failed to recognize; and then by showing how the appeal, as pursued, was incompetent by comparison").

According to defendant, trial counsel should have cited to Commonwealth v. Kocher, 602 A.2d 1308 (Pa. 1992) in his brief and, had he done so, there was a reasonable probability that this Court's decision would have been different. This contention is absurd.

First, defendant's reliance on Kocher is misplaced. According to defendant:

> In Kocher, the Superior Court held that requiring a mental defect or disorder to cause the crime "contravenes the legislative intent of the

> amendments to the .Juvenile Act that allow transfer of a murder case from criminal to juvenile proceedings." Id. at 1313 (citing 42 Pa.C.S. § 6322(a). Such a holding "precludes the weighing of any factors to determine amenability once the court establishes that no disease or defect caused the killing." Id. While a court may consider mental soundness, "to find that a lack of mental disorder is dispositive of the entire amenability question is to distort the clear legislative scheme." Id. at 1315. Therefore, even though the court in Kocher considered a variety of other factors, this portion of its holding required remand as an abuse of discretion. Id.

Defendant's Petition for Habeas Corpus and Post-Conviction Relief, 5/6/2019, p. 105.

In reality, the Court in Kocher instructed:

> The Court of Common Pleas in its discretion may find that a behavioral disorder is a factor to be considered in determining whether the child is amenable to treatment now; it may also find that a sound mind devoid of any disease or defect at the time of the murder is a factor weighing against transfer of the case to juvenile court. But to find that a lack of mental disorder is dispositive of the entire amenability question is to distort the clear legislative scheme.

Id., at 1315. Nothing in this holding prohibits a judge from taking such matters into consideration when determining whether or not a juvenile may be amenable to treatment.[6]

[6] Moreover, this is only one such consideration the lower court must undertake when determining whether or not to decertify a defendant. "Although the Juvenile Act requires that a decertification court consider all of the amenability factors, it is silent as to the weight that should be assessed to each factor." Commonwealth v. Ruffin, 10 A.3d 336, 339 (Pa.Super. 2010), *citing* Commonwealth v. Jackson, 722 A.2d 1030, 1034 (Pa. 1999). Nor is the lower court required to "address, *seriatim*, the applicability and importance of each factor and fact in reaching its final determination." Id. Indeed, the court will be presumed to have applied all of the factors presented to it and carefully considered the entire record in making its determination. Id.

Additionally, defendant presumes that this Court is ill-equipped to apply the law absent citation contained in an appellate brief and that does not conduct independent research on issues raised. This is insulting. This is not a case where counsel's brief was somehow undeveloped or deficient such that claims were waived. *See, e.g.,* Commonwealth v. Fetter, 770 A.2d 762, 771 (Pa.Super. 2001) ("It is not the function of this court to consider, and respond to, vacuous claims. When issues are not properly raised and developed in briefs, when the briefs are wholly inadequate to present specific issues for review, a court will not consider the merits thereof."), *quoting* Commonwealth v. Delligatti, 538 A.2d 34, 41 (Pa.Super. 1988). *See also* Pa.R.A.P. 2119(c Commonwealth v. Long, 753 A.2d 272, 278-279 (Pa.Super. 2000) (where appellant failed to develop any argument in support of his claim it is waived).

Indeed, counsel filed an exhaustive brief with citations of support, including a robust argument regarding defendant's amenability to treatment. He also argued this case before this Court. After reviewing the record and arguments presented, as well as the relevant law, this Court properly affirmed the order not to decertify defendant. To think that had counsel cited one more case, the outcome would have been different, is absurd. Accordingly, the PCRA court properly rejected this claim.

See Commonwealth v. Tedford, 960 A.2d 1, 25 (Pa. 2008) (rejecting stand-alone claim of appellate counsel ineffectiveness on the ground that the appellant did not demonstrate how appellate counsel's performance on direct appeal was defective pursuant to the requirements of *Strickland/Pierce*).

CONCLUSION

For these reasons, as well as those set forth in the Commonwealth's Post-Hearing PCRA brief and PCRA court's opinion, the Commonwealth respectfully requests that this Court affirm the order below denying PCRA relief.

Respectfully submitted,

JAMES B. MARTIN
District Attorney
JEFFREY S. DIMMIG
Chief Deputy District Attorney
EDRIANA R. SYMIA
Assistant District Attorney

/s/ Heather F. Gallagher
HEATHER F. GALLAGHER
Chief of Appeals

CERTIFICATE OF WORD COUNT COMPLIANCE

I hereby certify that the attached *Brief for Appellee* contains 9,154 words, based on word count from Microsoft Office Word 2019, which complies with the word count limit pursuant to 210 Pa. Code Rule 2135(d) and 2013 Amendments.

Respectfully submitted,

/s/ Heather F. Gallagher
HEATHER F. GALLAGHER
Chief of Appeals
Attorney for Appellee

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,

/s/ Heather F. Gallagher
HEATHER F. GALLAGHER
Chief of Appeals
Office of the District Attorney
Lehigh County Court House
455 W. Hamilton Street
Allentown, PA 18101
Tel. No. (610) 782-3100
Attorney for Appellee

IN THE
SUPERIOR COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA, Appellee	:	**Superior Court Docket 577 EDA 2021**
v.	:	
JAMIE LYNN SILVONEK, Appellant	:	**Trial Court Docket 2141/2015**

PROOF OF SERVICE

I hereby certify that I am this day serving a true and correct copy of the attached *Brief for Appellee* upon the person(s) in the manner indicated below, which service satisfies the requirements of Pa.R.A.P.121:

Service by Electronic-Mail through AOPC/PACFile procedures to:

Tracy Z. Quinn, Esquire
Victoria LeCates, Esquire
Holland & Knight LLP
2929 Arch Street, Suite 800
Philadelphia, PA 19104
Attorney for Appellant

Marsha Levick, Esquire
Juvenile Law Center
1800 JFK Blvd. Suite 1900 B
Philadelphia, PA 19103
Attorney for Appellant

Dated: October 7, 2022

/s/ Heather F. Gallagher
HEATHER F. GALLAGHER
Chief of Appeals
Office of the District Attorney
455 W. Hamilton Street
Allentown, PA 18101
Attorney for Appellee