

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff,

v.

Case No.: 2019-CF-002108

KASSANDRA LEIGH MOORE,

Defendant.

**FINAL ORDER FOLLOWING EVIDENTIARY HEARING GRANTING
DEFENDANT'S INITIAL MOTION FOR POSTCONVICTION RELIEF; VACATING
DEFENDANT'S SENTENCE IMPOSED ON MAY 10, 2022; AND ORDERING A
RESENTENCING HEARING TO BE SCHEDULED**

THIS MATTER came before the Court for an evidentiary hearing on February 23, 2026, on Defendant's "Initial Motion for Postconviction Relief," e-filed by postconviction counsel on March 26, 2025, pursuant to Fla. R. Crim. P. 3.850. By Order rendered on August 18, 2025, the Court directed the State to respond to Defendant's sole claim that her defense counsel rendered ineffective assistance by failing to timely provide the State with a psychological evaluation report prior to the plea negotiation deadline. Upon review of the State's Response, filed on October 17, 2025, the Court found it necessary to grant an evidentiary hearing (the "PCR Hearing").

At the PCR Hearing, Defendant was present with postconviction counsel, Attorneys Laura Cepero and William Ponall; Assistant State Attorney Scott Callin represented the State. Defendant presented the testimony of Dr. Christine Ryan, Andrew Pouget, and James Fowler. Defendant also testified on her own behalf. The State's sole witness was former Assistant State Attorney Lauren Benson. During the PCR Hearing, the Court also received as evidence emails between Dr. Ryan, Mr. Pouget, and Mr. Fowler. Following the closing arguments, the Court notified the parties that it would take the matter under advisement and issue a written ruling.

The Court has now reviewed the testimony and evidence presented at the PCR Hearing, Defendant's Initial Motion for Postconviction Relief with associated attachments, the State's Response with associated attachments, the court file, and applicable law, has considered the parties' oral arguments, and is otherwise duly advised of the premises and hereby makes the following findings of fact and conclusions of law:

Findings of Fact

Defendant was arrested on June 24, 2019, for four counts of Sexual Battery Upon a Person 12 or Older but Less Than 18 by a Person in Familial/Custodial Authority, a first-degree felony in violation of § 794.011(8)(b), Fla. Stat., and one count of Transmission of Material Harmful to Minors, a third-degree felony in violation of § 847.0138(2), Fla. Stat. Soon thereafter, James Fowler and Andrew Pouget filed notices of appearances to jointly represent Defendant in this matter (hereinafter collectively referred to as “Defense Counsel.”)¹

Both Mr. Pouget and Mr. Fowler testified at the PCR Hearing that, shortly after receipt of the discovery, which they characterized as containing “overwhelming” evidence of Defendant’s guilt, they collectively determined that the most prudent course of action was to pursue plea negotiations with the State rather than present the evidence to a jury. Defendant also testified that she did not wish to take this case to trial and sought a negotiated plea with the State. Both attorneys testified that they believed the State would not engage in plea negotiations absent a mitigation report. Accordingly, Defense Counsel petitioned the Court and obtained authorization for a JAC-funded psychological evaluation of Defendant on August 22, 2019.² They testified that they subsequently hired Dr. Christine Ryan to conduct this evaluation.

Dr. Ryan testified that her initial meeting with Defendant occurred on September 9, 2019, followed by a subsequent meeting on October 9, 2019. She further stated that the onset of the COVID-19 pandemic impeded her ability to complete the evaluation in a timely manner. Additionally, Dr. Ryan testified that her report was delayed when she temporarily paused the evaluation to arrange counseling for Defendant due to concerns about Defendant’s mental health. Following the continuation of the evaluation, Dr. Ryan indicated that her final meeting with Defendant was on September 6, 2021, and that she finalized and issued her report on October 4, 2021. Testimony from Mr. Fowler and Mr. Pouget indicated that this initial report failed to provide the defense with essential mitigation information and contained statements that, according to their assertions, would not have been favorable to achieving a negotiated resolution with the State.

Four days after this report was sent to Defense Counsel, on October 8, 2021, after stipulating to continue the trial scheduled for October 25, 2021, Mr. Fowler signed a “Stipulation for Trial” agreeing to set the trial during the trial period beginning March 14 or 21, 2022, with a

¹ See Attachment 1, Notices of Appearance filed on June 28, 2019, and July 3, 2019.

² See Attachment 2, Motion to Authorize Funds for Mental Health Expert, filed August 20, 2019; Attachment 3, Order Authorizing Funds for Mental Health Expert, rendered August 22, 2019.

final docket sounding set for March 1, 2022.³ This document also set a “Negotiated Plea Cutoff” date for “10 days before trial” and contained an order signed by the trial judge warning the parties that, “[f]ailure to comply with the deadline dates may constitute a waiver of certain issues.”⁴ Subsequently, on February 11, 2022, the Court issued notice to Defense Counsel confirming the trial date for the week of March 14, 2022.⁵

At the PCR hearing, Mr. Pouget testified that he had represented clients in numerous proceedings before this judge and was cognizant of the Court's strict plea deadlines for accepting negotiated pleas. He further testified that, based on his experience before the trial judge and his knowledge of the judge's reputation within the legal community, he believed that if a stipulated resolution had been presented in a timely fashion, it would have been likely accepted by the Court.

Despite the approaching trial date, there appears to have been no further documented correspondence between Defense Counsel and Dr. Ryan until February 28, 2022. At the PCR hearing, Mr. Fowler testified that he does not recall any contact with Dr. Ryan during this period; however, Mr. Pouget indicated that he engaged in a telephone call with her, the specifics and timing of which were not documented in his records.

On February 28, 2022, Defense Counsel filed a Stipulated Motion to Continue Trial Schedule, citing the failure to receive a finalized report from Dr. Ryan. The motion states: “Dr. Ryan’s report has been significantly delayed due to a dramatic increase of volume associated with the Covid pandemic. Moreover, the evaluation of the Defendant was temporarily paused due to medical concerns during this process.”⁶ The Court denied this motion by written order signed February 28, 2022.⁷

After the Motion to Continue was denied on February 28th, Mr. Pouget emailed Dr. Ryan to inform her of this fact and inquire about the revised report “with marked changes.”⁸ This email appears to reference a prior discussion between Dr. Ryan and Mr. Pouget as he explains that the State was prepared to enter into a negotiated plea deal, “as long as she has a report that *explains what we discussed* (specifically, that Ms. Moore is not a good candidate for prison, given her size,

³ See Attachment 4, Stipulation for Trial, filed October 8, 2021.

⁴ *Id.*

⁵ See Attachment 5, Notice of Court Date, sent to the parties on February 11, 2022.

⁶ See Attachment 6, Stipulated Motion to Continue, filed February 28, 2022.

⁷ See Attachment 7, Order Denying Stipulation to Continue, rendered March 1, 2022.

⁸ See State Exhibit 2, Email dated February 28, 2022.

congenital defect, and mental adolescence.)”⁹ Dr. Ryan responded approximately one hour later, indicating that she would be able to complete the requested modifications by the following week, and inquired whether the defense had obtained the additional JAC funding they had apparently previously discussed.¹⁰ During the PCR Hearing, Dr. Ryan explained that she had exhausted the previously approved JAC funds and knew she would not be reimbursed for unapproved hours. She stated that she had requested that Defense Counsel obtain additional funding to compensate her for the additional changes they requested.

On the morning of March 1, 2022, the day *after* Dr. Ryan reminded Mr. Pouget that she needed additional funding, Defense Counsel moved for authorization to incur additional costs for Dr. Ryan.¹¹ The Court granted this motion the same day with the written warning that “[t]his request for additional funds shall not form the basis for a continuance of the currently set trial set for 2 week period beginning 3/14/22.”¹² Mr. Pouget emailed the signed order to Dr. Ryan at 1:36 p.m.¹³ After March 4th, there are two more emails from Mr. Pouget inquiring about the status of the revised report, with Dr. Ryan stating that she intended to complete it by the end of the day on March 7, 2022.

At the docket sounding held on March 1, 2022, the Court again considered the motion to continue and noted that he had appointed Dr. Ryan more than two and a half years ago, which should have been sufficient time to complete the report.¹⁴ The Court again denied the continuance, but agreed to Mr. Pouget’s request to extend the plea cut-off until March 11, 2022, at 5:00 p.m.¹⁵

On March 11, 2022, Defense Counsel filed a renewed motion to continue, reiterating the previously stated reasons and providing further information regarding the delay.¹⁶ In the renewed motion, Defense Counsel specifically noted that “the delays in completing the psychological evaluation cannot be fairly attributed to either the Defense or the State; *rather, they were a result of the mental health examiner based upon her concerns for the Defendant’s wellbeing and capacity*

⁹ *Id.*

¹⁰ *Id.*

¹¹ See Attachment 8, “Defendant’s Motion for Authorization to Incur Additional Costs for Previously Appointed Mental Health Expert,” filed March 1, 2022.

¹² See Attachment 9, “Order Authorizing the Defense to Incur Additional Costs for a Previously Appointed Mental Health Expert,” rendered March 1, 2022. See also State Exhibit 2.

¹³ State Exhibit 2, Email dated March 1, 2022.

¹⁴ Defendant’s Motion, Exhibit D at p. 3.

¹⁵ *Id.* at p. 5.

¹⁶ See Attachment 10, Defendant’s Renewed Motion to Continue, filed March 11, 2022.

*to safely complete the evaluation.”*¹⁷ Despite this assertion, the undisputed testimony received at the PCR Hearing reflects that these concerns had been fully resolved prior to the issuance of the October 4, 2021, initial report. The delay *after* October 4th was caused by Defense Counsel's failure to communicate with Dr. Ryan or, alternatively, to timely seek additional JAC funding.

At the hearing held on March 11, 2022, the Court acknowledged receipt of the renewed motion to continue and inquired of Defense Counsel regarding the possibility of a negotiated plea. Upon Defense Counsel's representation that no agreement had been reached, the Court considered the renewed motion to continue and ultimately denied it.¹⁸ The Court reiterated that Defendant had been given until 5:00 p.m. to enter into a negotiated plea, and advised that, absent a stipulated resolution, Defendant's options were to enter an open plea or proceed to trial.¹⁹ The Court further observed that Defense Counsel's "failure to do the things that you're supposed to do to defend your client is between [Defendant] and [Defense Counsel.]"²⁰ After a brief recess, Defendant entered an open plea, and the matter was scheduled for a sentencing hearing on May 10, 2022.²¹

During the PCR Hearing, Mr. Pouget testified that the amended report was received by his office in "early March." Likewise, Dr. Ryan also stated it was completed in "early March." Lauren Benson, the prosecutor, testified that she believed she received the final report "a week or two prior to the open plea." Unfortunately, the report is undated, and none of the witnesses could specifically recall when it was received.²²

Ms. Benson testified that prior to receiving the mitigation report, she had made an offer in the case. Defense Counsel informed her that they were not satisfied with the offer and asked her to review the mitigation report to determine whether the information contained therein would enable the State to make a more favorable offer. Due to the nature of the case, she testified that she was required to obtain approval from her superiors at the State Attorney's Office to change the offer. Ms. Benson stated that all of the parties were "very" aware of the plea cutoff, and that she believed she received the mitigation report "a week or two prior to the open plea." After discussing the case with her supervisor, she told Defense Counsel that the State was willing to recommend 13 years' incarceration. Ms. Benson testified that, to the best of her recollection, the offer did not

¹⁷ *Id.* at p. 2 (emphasis added).

¹⁸ See Attachment 11, Order on Motion, filed in open court on March 11, 2022.

¹⁹ Defendant's PCR Motion, Exhibit F at p. 6.

²⁰ *Id.* at p. 5.

²¹ *Id.* at pp. 18-23.

²² Defendant's PCR Motion, Exhibit A, Psychological Evaluation filed with the Court on May 9, 2022.

change substantially based upon Dr. Ryan's report. Instead, the offer was based on her policy of making more favorable offers when the minor victim is not required to testify at either a deposition or a motion hearing. Finally, she affirmed that, had she received the report earlier, she would have made the same offer.

At the PCR Hearing, Defendant testified that the State's 13-year offer was first discussed before the March 1st hearing in a phone call between her and one of her attorneys. She stated that she told Defense Counsel that she would accept this offer and remained willing to agree to this resolution. Defendant later clarified that during the recess at the March 11th hearing, she was told that if she entered an open plea, the State would "assist" her in obtaining the 13-year sentence at a subsequent sentencing hearing. Despite this testimony, the transcripts of the plea colloquy reflect that when the Court asked whether anyone had promised Defendant a specific sentence at the sentencing hearing, Defendant replied, "No, your Honor."²³

On May 10, 2022, the State represented to the Court that the parties had reached an agreement regarding sentencing and recommended a thirteen-year sentence, to be followed by probation.²⁴ Defense Counsel also urged the Court to consider their motion for a downward departure. In the written sentencing memorandum submitted by Defense Counsel on the day of trial, they stated that, "[b]y docket sounding, the State and Defense counsel had a plea agreement in principle but were unable to finalize the terms of a negotiated plea prior to the plea cutoff."²⁵ Similarly, on the day of the hearing, the State represented to the trial court that at the time Defendant entered her open plea, "we were still in negotiations, so we had run up against your deadline."²⁶ Ultimately, the Court rejected both the negotiated resolution and Defendant's motion for a downward departure and sentenced Defendant to twenty-two years in prison, followed by ten years of supervision.²⁷

Analysis of Claim

Deficient representation

This case presents an unusual claim of ineffective representation during plea negotiations. Defendant does not assert the more typical claim that Defense Counsel failed to convey the State's

²³ *Id.* at 16.

²⁴ Defendant's PCR Motion, Exhibit G at p. 4

²⁵ See Attachment 11, Defendant's Memorandum of Law and Sentencing Recommendation, filed in open court on May 10, 2022.

²⁶ Defendant's PCR Motion, Exhibit G at p. 4.

²⁷ See Attachment 12, Sentence and Special Provisions form signed in open court on May 10, 2022.

offer, misrepresented the potential sentence, or otherwise misadvised Defendant.²⁸ Instead, Defendant contends that Defense Counsel's negligent delay in the procurement of Dr. Ryan's revised report following October 4, 2021, impeded the parties' ability to finalize plea negotiations before the established plea cutoff. Specifically, during oral arguments on this motion, Defendant's postconviction counsel argued that waiting until two weeks before trial to obtain this report was objectively unreasonable when all parties agree that, based upon the aggravating facts of the case, it was in Defendant's best interest to seek a negotiated resolution and Defense Counsel knew that the Court had a strict plea-cutoff deadline.

Both the United States and Florida Supreme Courts have recognized that plea negotiations constitute a "critical stage" in the criminal process, during which the Sixth Amendment guarantees criminal defendants the right to effective assistance of counsel.²⁹ Consequently, a "counsel's acts or omissions bearing on a defendant's decision to reject a plea offer and proceed to trial could establish the basis for a legally sufficient ineffective assistance claim under *Strickland*."³⁰ In ascertaining whether counsel was deficient, Defendant bears the burden of proving that counsel's representation was "unreasonable under prevailing professional standards and was not a matter of sound trial strategy."³¹ Thus, Defendant must identify specific acts or omissions of Defense Counsel that were "manifestly outside the wide range of reasonably competent performance."³² Further, when assessing whether the claimed act or omission was deficient, this Court is required to "make every possible effort to eliminate the distortion caused by hindsight, to reconstruct the circumstances that surrounded the challenged conduct, and to evaluate the conduct from the perspective of counsel at the time counsel engaged in the challenged conduct."³³

As argued by Defendant's postconviction counsel at the conclusion of the PCR Hearing, a lawyer is required to act with reasonable diligence and promptness in representing a client.³⁴ As outlined in the commentary to Rule 4-1.3 of the Florida Rules of Professional Conduct, "no

²⁸ See e.g., *Morgan v. State*, 991 So. 2d 835, 840 (Fla. 2008) (noting that in addition to failure to communicate an offer or misrepresenting potential sentence during plea negotiations, a claim of ineffective assistance of counsel can be based on advice from counsel to reject a plea offer when a specific deficiency on the part of counsel is proven.)

²⁹ See *Missouri v. Frye*, 566 U.S. 134, 140 (2012); *Lafler v. Cooper*, 566 U.S. 156, 160 (2012); *Alcorn v. State*, 121 So. 3d 419, 422 (Fla. 2013).

³⁰ *Alcorn*, 121 So. 3d at (Fla. 2013) (*Cottle v. State*, 733 So. 2d 963, 966-67 (Fla. 1999)).

³¹ *Lynch v. State*, 2 So. 3d 47, 56 (Fla. 2008), as revised on denial of reh'g (Jan. 30, 2009) (quoting *State v. Williams*, 797 So.2d 1235, 1238 (Fla. 2001)).

³² *Id.* (citing *Grosvenor v. State*, 874 So.2d 1176, 1179 (Fla. 2004)).

³³ *Taylor v. State*, 87 So. 3d 749, 758 (Fla. 2012).

³⁴ FL ST BAR Rule 4-1.3.

professional shortcoming is more widely resented than procrastination” and “[a] client's interests often can be adversely affected by the passage of time or the change of conditions.” Furthermore, all attorneys, whether publicly appointed or privately retained, have a professional duty to diligently address *all* legal matters entrusted to them.³⁵ Indeed, this ethical duty mandates prompt attention to legal matters confronting their client, including the responsibility to diligently and timely pursue plea negotiations in appropriate cases.³⁶

Applying these legal principles to the facts of this matter, Defense Counsel’s failure to communicate with Dr. Ryan to ensure the timely completion of a revised mitigation report constituted deficient performance. At the PCR Hearing, all parties, including Mr. Pouget, Mr. Fowler, Dr. Ryan, and the prosecutor, concurred that there was substantial evidence to convict Defendant, and that the facts of the case were aggravating. Defendant, in conjunction with her Defense Counsel, elected to pursue a negotiated plea from the outset of the case in 2019. Both Mr. Pouget and Mr. Fowler testified that, in their professional judgment, obtaining a satisfactory mitigation report was critical to the defense’s strategy. Furthermore, Mr. Pouget indicated that he had prior experience before the trial judge and was aware of the judge's strict policy regarding the acceptance of a negotiated plea after the plea-cutoff date.

Despite this knowledge, upon receipt of the initial unsatisfactory report on October 4, 2021, and subsequent stipulation four days later that the case was scheduled for trial with a plea cut-off date in early March, Defense Counsel failed to take corrective action for over four months, intervening only days before the deadline. This delay was compounded by Defense Counsel’s failure to promptly pursue additional JAC funding for Dr. Ryan’s report. Lastly, while the misrepresentations made by Defense Counsel in the two motions to continue may not have resulted in prejudice to the Defendant, the Court also considers this, along with the other factors previously outlined, and finds that Defense Counsel’s delay in securing and finalizing Dr. Ryan’s report represented a gross deviation from accepted professional standards.

Prejudice

The conclusion that counsel’s performance was deficient does not end the Court’s inquiry. Defendant also must establish that she was prejudiced by this deficiency. The *Alcorn* court outlined

³⁵ *Turner v. State*, 588 So. 2d 1042, 1044 (Fla. 5th DCA 1991).

³⁶ See e.g., *Malespin v. State*, 873 So.2d 596 (Fla. 3d DCA 2004); *Brown v. State*, 138 So. 3d 510, 512 (Fla. 4th DCA 2014).

the correct prejudice inquiry to be applied when an ineffective assistance of counsel claim arises out of a defendant's decision to reject a plea offer as follows: that (1) defendant would have accepted the offer had counsel advised her correctly; (2) the prosecutor would not have withdrawn the offer; (3) the court would have accepted the negotiated plea; and (4) the sentence under the offer would have been less severe than the sentence imposed.³⁷ The Court shall, therefore, examine each of these prongs individually below.

Defendant's Acceptance of the Offer

A determination of whether there is a "reasonable probability" that the defendant would have accepted the plea must consider the "totality of the circumstances" that existed at the time the plea was rejected.³⁸ No single piece of evidence is sufficient in all cases to definitively establish or negate prejudice.³⁹ For instance, courts may accept the defendant's undisputed, albeit self-serving, assertion that she would have accepted the plea but for being misadvised regarding the statutory maximum as a basis for finding prejudice.⁴⁰

Conversely, the court is not precluded from rejecting such an unrefuted assertion when there is an articulable reason to disbelieve the defendant's testimony. The Fourth District Court of Appeal notes that,

[h]aving gambled on the possibility of acquittal at trial or that a better offer might be forthcoming, and now knowing the outcome and that the sentence turned out to be more harsh, the defendant will have great incentive to seek to resurrect and accept a lost offer and little disincentive from attempting to do so.⁴¹

³⁷ *Alcorn*, 121 So. 3d at 430 (citing *Frye*, 132 S. Ct. at 1410).

³⁸ *Lafler*, 566 U.S. at 171.

³⁹ *Alcorn*, 1221 So. 3d at 431-32.

⁴⁰ *Id.* See also *Thomas v. State*, 117 So. 3d 1191, 1194 (Fla. 2d DCA 2013) ("if a defendant's testimony is unrefuted and the postconviction court has not articulated a reason to disbelieve the defendant, the court cannot choose to disregard the defendant's testimony" (citing *Williams v. State*, 974 So.2d 405, 407-08 (Fla. 2d DCA 2007)); *Beasley v. State*, 964 So.2d 213, 216-17 (Fla. 2d DCA 2007) (holding that the postconviction court's findings were not supported by competent, substantial evidence where the postconviction court chose not to believe appellant's testimony even though it was unrefuted); *Matton v. State*, 872 So.2d 308, 312 (Fla. 2d DCA 2004) (holding that the postconviction court had no evidence whatsoever upon which to base a finding that appellant knowingly and voluntarily waived his right to previously accrued gain time where appellant's testimony was unrefuted); *Feldpausch v. State*, 826 So.2d 354, 356 (Fla. 2d DCA 2002) (finding that because there was no conflicting testimony that required the postconviction court to assess credibility of different witnesses, postconviction court erred by rejecting testimony of attorney simply because it did not wish to believe him).

⁴¹ *Sirota v. State*, 95 So. 3d 313, 320-21 (Fla. 4th DCA 2012), *decision quashed, cause remanded*, 147 So. 3d 514 (Fla. 2014).

However, if the defendant introduces un rebutted evidence demonstrating that she would have accepted the plea agreement, and such evidence remains uncontradicted by the State, the Court is compelled to consider it.⁴²

During the PCR Hearing, Defendant testified that from the very beginning of the case, she did not want to take this case to trial but wanted to enter into a negotiated plea with the State. This testimony was supported by both Mr. Pouget and Mr. Fowler, who stated that they advised Defendant that it would be in her best interest to negotiate because the evidence against her was “overwhelming.” Even the prosecutor, Ms. Benson, testified that she was constantly engaged in plea negotiations with Defense Counsel throughout the pretrial proceedings and that she had a “very strong case” with DNA, corroborating text messages, a willing victim, third-party witnesses, and incriminating photographs.

Defendant’s statement that she would have unequivocally accepted the State’s 13-year plea offer because she knew there was a possibility that she could be sentenced to even more time in prison was un rebutted at the PCR Hearing. This testimony was confirmed by Mr. Fowler who stated that Defendant would have accepted this offer prior to that date. Defendant’s belief that she faced a substantial sentence absent a negotiated plea is also corroborated by her scoresheet, which indicates a pronounced discrepancy between the plea offer and her minimum permissible sentence of over 47 years imprisonment, particularly when the offer is contrasted with the maximum statutory penalty of 125 years.⁴³

Finally, Defendant testified that, when she decided to enter an open plea on March 11, 2022, she believed she had accepted the State’s offer. At a minimum, the Court finds Defendant’s testimony that Defense Counsel advised her of an agreement with the State to recommend a 13-year sentence at the upcoming sentencing hearing to be credible, as it is consistent with the testimony of Ms. Benson, who affirmed that this was the existing offer on March 11, 2022. Based upon this evidence, the Court finds that Defendant would have accepted the State’s offer.

Offer by the State

The test for whether there was a plea offer hinges on whether the “State extended an offer” that contained the “essential terms of the agreement.”⁴⁴ The United States Supreme Court has recognized that the sole advantage a defendant may receive from a plea agreement is a lesser

⁴² *Thomas*, 117 So. 3d at 1194.

⁴³ See Attachment 13, Scoresheet filed in open court on May 10, 2022.

⁴⁴ *Forbes v. State*, 269 So. 3d 677, 680 (Fla. 2d DCA 2019).

sentence. “This is typically the case when the charges that would have been admitted as part of the plea bargain are the same as the charges the defendant was convicted of after trial.”⁴⁵ Such was the State’s offer in this case to recommend 13 years’ incarceration based upon Defendant’s plea as charged. Thus, the Court finds that Defendant has demonstrated that the State “extended an offer.”

Moreover, Ms. Benson testified that, to the best of her recollection, while the mitigation report was a “piece” of information she and her superiors considered in making the offer, and affirmed that, had the defense given her the report in December 2021, she still would have made the same offer. Furthermore, the record clearly reflects that, despite not reaching an agreement prior to the plea cutoff, the State was still willing to, and in fact did, recommend a 13-year sentence at the May 10, 2022, sentencing hearing.⁴⁶ Based on this evidence, the Court finds that the prosecutor would have made a 13-year sentencing offer and would not have withdrawn it had the mitigation report been provided to them in a timely manner.

Court Acceptance of the Offer and Severity of Sentence

Despite the trial court’s rejection of the sentencing agreement proposed at the May 10, 2022, sentencing hearing, the un rebutted testimony and evidence presented at the PCR Hearing established a reasonable likelihood that the trial judge, who is also the undersigned judge in this order, would have accepted the proposed plea agreement had it been presented prior to the deadline established by the Court. Based upon the un rebutted testimony from Mr. Fowler and Mr. Pouget that they had “dozens” of negotiated pleas be accepted by the trial judge and an objective assessment of the circumstances at the time of the plea offer as contained in the Court record, the Court does not find any particular fact that would have caused the judge not to accept the State’s recommended sentence. Therefore, the Court finds that Defendant has proven that it was reasonably likely that the trial court would have accepted the proposed resolution.

Similarly, each of the witnesses testified at the PCR hearing that they had agreed to resolve the matter with a sentencing recommendation of 13 years’ incarceration. This uncontested fact was also documented in the transcripts of the sentencing hearing held on May 10, 2022.⁴⁷ Following Defendant’s sentencing hearing, the Court imposed four concurrent terms of twenty years’ imprisonment for Counts 1 through 4, in addition to two years of community control and eight

⁴⁵ *Lafler*, 566 U.S. at 171.

⁴⁶ See Defendant’s PCR Motion, Attachment G at p. 4.

⁴⁷ *Id.* at p. 3.

years of sex-offender probation. Such a sentence exceeded the proposed 13-year negotiated resolution. Accordingly, Defendant also demonstrated that the sentence under the offer's terms would have been less severe than the sentence that was ultimately imposed by the trial court. For these reasons, the Court concludes that the Defendant has established both deficient performance and prejudice as required by *Strickland* and *Alcorn*.

Remedy

Under the facts outlined above, the Court is tasked with finding a remedy that “neutralize[s] the taint of the constitutional violation,” while at the same time “not grant[ing] a windfall to the defendant or needlessly squander[ing] the resources the State properly invested in the criminal prosecution.”⁴⁸ As previously noted, the offer from the State reflected in the sentencing hearing transcripts, and through the testimony of the prosecution at the PCR Hearing, was that if Defendant pled as charged, the State would recommend a sentence of thirteen years' incarceration, followed by two years of probation and designation as a sexual predator pursuant to § 775.21, Fla. Stat.⁴⁹ Because there is no indication that the parties engaged in charge bargaining, and the charges that would have been admitted as part of the plea agreement are identical to the charges to which the defendant pled, the Court finds that vacation of Defendant's underlying judgment of guilt based upon her open plea is not appropriate. However, Defendant's sentence imposed on May 10, 2022, shall be vacated, and the Court shall hold a hearing to determine whether “the defendant should receive the term of imprisonment the government offered in the plea, the sentence he received [after the sentencing hearing], or something in between.”⁵⁰ Furthermore, because this hearing necessarily involves resentencing Defendant, she has the right to be present and to be represented by counsel.⁵¹

It is, therefore, **ORDERED** as follows:

1. Defendant's “Initial Motion for Postconviction Relief,” filed March 26, 2025, is **GRANTED**, and Defendant's Sentence, imposed on May 10, 2022, in Case No. 2019-CF-002108, as to all counts, is **VACATED**.

⁴⁸ *Alcorn*, 121 So. 3d at 428.

⁴⁹ *Id.* at p. 4.

⁵⁰ See also *Kohutka v. State*, 343 So. 3d 660, 665 (Fla. 2d DCA 2022) (noting that upon finding both deficiency and prejudice on these claims “the postconviction court must devise a proper remedy as discussed in the line of cases starting with *Lafler* and *Alcorn*.”)

⁵¹ *Hanna v. State*, 327 So. 3d 464, 467 (Fla. 2d DCA 2021).

2. Defendant's Postconviction Counsel is directed to contact the Court within 30 days of the filing date of this Order to schedule a resentencing hearing. Postconviction counsel shall be responsible for drafting any proposed orders necessary to transport Defendant for this hearing or otherwise obtaining a signed waiver of this right from Defendant.
3. This order is a non-final, non-appealable order. The Court will enter a final appealable order after the remedial hearing is concluded in this matter.

DONE in Chambers in Bradenton, Manatee County, Florida, on this 10 day of April 2026.


HON. FREDERICK P. MERCURIO
Circuit Court Judge

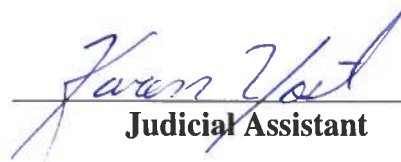
Attachments:

1. Notices of Appearance filed on June 28, 2019, and July 3, 2019
2. Motion to Authorize Funds for Mental Health Expert, filed August 20, 2019
3. Order Authorizing Funds for Mental Health Expert, rendered August 22, 2019
4. Stipulation for trial filed October 8, 2021
5. Notice of Court date sent to the parties on February 11, 2022
6. Stipulated Motion to Continue filed February 28, 2022
7. Order Denying Stipulation to Continue, rendered March 1, 2022
8. Defendant's Motion for Authorization to Incur Additional Costs for Previously Appointed Mental Health Expert, filed March 1, 2022
9. Order Authorizing the Defense to Incur Additional Costs for a Previously Appointed Mental Health Expert, rendered March 1, 2022
10. Defendant's Renewed Motion to Continue, filed March 11, 2022
11. Order on Motion, filed in open court on March 11, 2022
12. Sentence and Special Provisions form signed in open court on May 10, 2022
13. Scoresheet filed in open court on May 10, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this 10 day of April 2026, copies of the foregoing Order were furnished by U.S. Mail/hand delivery and/or electronic mail to: **Laura L. Cepero, Esq.**, 253 North Orlando Avenue, Suite 200, Maitland, Florida 32751, lcepero@ponalllaw.com; **William R. Ponall, Esq.**, 253 North Orlando Avenue, Suite 200, Maitland, Florida 32751, bponall@ponalllaw.com; and the **Office of the State Attorney**, saorounds@sao12.org.

By: _____


Judicial Assistant