IN THE CIRCUIT COURT FOR MADISON COUNTY ALABAMA

AMY BISHOP ANDERSON	)	
Petitioner	)	
	)	
v.	)	**CC11 -1131.60DAM**
	)	
STATE OF ALABAMA	)	
Respondent	)	

RESPONSE

COMES NOW the State of Alabama, by and through its Assistant District Attorney Shauna R. Barnett , and responds to the petition of Amy Bishop Anderson, for Post Conviction Relief pursuant to Rule 32 of the Alabama Rules of Criminal Procedure.

STATEMENT OF THE CASE

1. The Defendant was arrested on or about February 12th, 2010 as the result of a shooting on the campus of UAH that left multiple people dead and several people seriously injured.
2. The Defendant was subsequently indicted for one Count of Capital Murder and 3 Counts of Attempted Murder.
3. As the result of a negotiated plea wherein the State agreed not to seek the Death Penalty, the Defendant pleaded guilty as charged to all counts in the indictment on September 11th, 2012.
4. Pursuant to law, a trial was set on the Capital charge for September 24th, 2014.
5. After the trial on September 24th, 2012, the Defendant was found guilty of the Capital Murder charge.
6. Due to the previously entered plea agreements, the Court went immediately into the sentencing and the Defendant was sentenced to Life Without Parole on the Capital charge and Life in Prison on each of the Attempted Murder Counts. Each of the plea terms was agreed upon by the parties prior to entering the plea before the Court. This was not a "blind" plea.
7. All sentences were ordered to run consecutively to one another as agreed to in the aforementioned plea agreement.
8. On or about February 11th, 2013, the Defendant, through counsel, filed an appeal in this matter.
9. On or about April 26th, 2013, the Court of Criminal Appeals affirmed the Defendant's convictions on all counts.
10. Defendant's request for rehearing was denied and a Certificate of Judgment issued on or about August 16th, 2013.
11. The Defendant filed this, her first Rule 32 petition on or about July 29th, 2014.
12. This Court issued an Order to Respond to the State shortly thereafter and the State requested an additional 60 days to file its Response on Augut 22nd, 2014. That request was granted by the Court.

ALLEGATIONS OF THE PETITIONER
AS UNDERSTOOD BY THE STATE

The Defendant/Petitioner's pro se brief in support of her Rule 32 is in excess of 40 pages in single spaced hand written format. Within the brief, the Petitioner makes multiple claims that range from challenges to the voluntariness of her plea, to the effectiveness of her trial counsel, to claims that appear to fall outside the purview of the available Rule 32 grounds such as inadequacies with her psychological evaluations and various trial tactic complaints. Further, the Petitioner's brief at first appears to use particular headings and subheadings but quickly devolves into a format void of any further guidance for the reader as the petition jumps back and forth to different claims and issues with each one filled with what appear to be quotes and citations from legal treatises and the like which offer little or nothing to the substance of the petition. What follows is the State's understanding of the allegations as they appear in the Petitioner's brief, in roughly the order in which they appear:

1. Plea was involuntary and in violation of Due Process and the 14th Amendment to the Constitution.
    i. Petitioner alleges the Court failed to properly advise her as to the range of punishment despite her acknowledgement of reading and understanding the "Ireland" form which had the firearms enhancement duly marked.
    ii. Petitioner further alleges that she was not properly advised of her right to appeal.
        1. Specifically petitioner takes issue with not being informed of her right to reserve issues for appeal before pleading and that she was not again told of her appeal rights after sentencing.
    iii. Petitioner alleges that she was not given an opportunity to object to the services provided by her defense counsel during her plea.
    iv. Petitioner alleges the Court did not explain the elements of Capital Murder. Specifically, there was no specific explanation of "intent."
    v. Petitioner claims she was misinformed during the colloquy when the Court stated that a plea would waive a jury trial when, in fact, a jury trial was had because of the Capital Murder count.
    vi. Petitioner claims she was not addressed by the court specifically as to the right to "compulsory process" to get witnesses to court on her behalf nor was it explained that she could confront the witnesses directly.
    vii. Petitioner alleges that the issues of her competency and/or sanity were not properly resolved before taking her plea.
        1. Petitioner spends several pages rehashing this issue under different subheadings as she meanders through complaints about her mental health evaluations performed pursuant to Court orders, her mental health treatment in the jail

subsequent to her arrest (including claims of degradation of her mental health based on jail conditions such as 24 hour lighting and noise, being stared at and taunted, and inadequate nutrition from jail food), and her claimed overarching history of mental health issues since adolescence.

viii. Lastly under this "section" of her brief, the Petitioner claims the Court was without jurisdiction to take her plea because the Court didn't comply with Rule 14 and Rule 26 of the Alabama Rules of Criminal Procedure.

2. Petitioner alleges her trial counsel(s) were ineffective. The nature and variety of claims within this area are myriad and include the following:
    i. Trial counsel(s) did not subject the State's case to meaningful adversarial testing at trial. This allegation is repeated in several subsections of this claim.
    ii. Trial counsel(s) failed to employ an insanity defense based on steroid effect on any psychological problems she may have been suffering.
    iii. Trial counsel failed to withdraw her guilty plea.
    iv. Trial counsel(s) failed to request competency hearing(s) prior to her pleas and trial.
        1. This allegation goes on to intertwine claims of improper assertion of various aspects of insanity defense/medication interaction/etc.
    v. Trial counsel(s) were unprepared to present a defense as the trial date approached.
    vi. Trial counsel(s) failed to adequately prepare and present an insanity defense.
    vii. Trial counsel(s) failed to request that her mental health evaluations take place at a facility other than the Madison County Jail.
    viii. Trial counsel(s) were ineffective at the trial on several levels including the following:
        1. Failing to challenge State's assertion of intent to kill. This issue of "intent" is alleged multiple times in various subsections.
        2. Failure to cross examine State's witnesses.
        3. Failure to bring out evidence of a "student stalker."
        4. Failure to bring out evidence as to how she came to carry a gun and how several faculty members encouraged her to own and learn how to shoot a pistol.
        5. Failure to challenge various details about the denial of her tenure.
        6. Failure to challenge the reason why she was at the faculty meeting at all. Specifically that she was under contract and mandated to be there.

7. Failure to call Defense Expert regarding sanity and competency. This point is challenged in several subsections within this overriding allegation.
8. Failure to present mitigating circumstances.
9. Failed to present information about her past discovered during pretrial investigation.
10. Failure to make objections during trial.
11. Stipulating to State's evidence.
12. Telling the jury the facts were not in dispute, thus relieving the State of its burden of proof. Petitioner reiterates this claim in multiple subsections.
13. Failure to bring out relevance of various seating options available in the fateful meeting.

3. Petitioner alleges she received an inadequate psychiatric evaluation. It is unclear which particular subsection of the Rule 32 grounds of relief this is pleaded under.
    i. Specifically the Petitioner claims a "constitutionally inadequate psychiatric evaluation" and that the Court was required to "commit" her for observation in order to facilitate a proper insanity defense.
    ii. Petitioner reasserts various issues regarding her past diagnoses, and the State, Defense, and "jail" experts' diagnoses with regards to the instant crime.
    iii. Petitioner intertwines additional mention of the competency issue within these claims. In fact, it appears that Petitioner may use the terms insanity and competency somewhat interchangeably from time to time within her petition despite their distinctly separate and unique meanings within the context of criminal procedure and prosecution.
    iv. Petitioner spends several pages recounting, often multiple times, what she feels are facts relevant to her mental health that were on display during the shooting and after her arrest.
4. Petitioner argues that the State withheld exculpatory evidence in violation of constitutional principles. She goes on to list several things that would not have readily been within the State's knowledge but that occurred prior to the shooting and would have been known at the time of the arrest, plea, trial, and appeal to the Petitioner. Such items include Petitioner's discussions with Ms. Moriarty about carrying a gun, Petitioner's attendance at target practice, Petitioner's assertion that Larry's Pistol and Pawn was a social gathering place for other faculty and their families, the existence of previous staff meetings, and the list of attendees at both previous meetings and the meeting where the Petitioner opened fire.

STATE'S RESPONSE
Procedural Arguments

At the outset, it is the State's position that the entirety of this Rule 32 petition is precluded from consideration because the Petitioner waived her right both to appeal and to collaterally attack her convictions by virtue of her signature on the plea agreements and accompanying forms in these cases and by acknowledgement of same during the colloquy performed by the trial Court in this matter verifying with the Petitioner her voluntary entry into the terms of said agreement.

Petitioner's claims regarding the inadequacy of her psychiatric evaluation(s) [claims listed under "Allegations" section 3 above] are procedurally barred as being outside the purview of the Rule 32 proceedings altogether. Further as to this issue, there was no challenge made at the trial level or on her appeal to the nature and/or quality of the various inquiries into her sanity with regards to criminal culpability for the acts the Petitioner was convicted of or her competency to participate in the criminal process. The claims under section 3 are barred as not being proper claims under Rule 32.1 or, in the alternative, they are procedurally barred because they were not raised at trial or on appeal as required by Rule 32.2(a)(3) and Rule 32.2(a)(5).

Finally, Petitioner's claims of "withholding exculpatory evidence" [listed under "Allegations" section 4 above] are also barred by Rule 32.2(a)(3) and Rule 32.2(a)(5) and the holding in Ex parte Pierce, 851 So. 2d 606 (Ala. 2000) because no such claims were made at the trial level or in the Petitioner's appeal. Despite Petitioner's self-serving affidavit submitted at the conclusion of her brief in these matters, the specific things she alleges were withheld, were neither newly discovered nor were they withheld by the State.

Arguments on the Merits

In the alternative, and without waiving the procedural grounds set out *supra*, the claims made in the instant petition are without merit and due to be summarily dismissed, without an evidentiary hearing, pursuant to Rule 32.7(d) of the Alabama Rules of Criminal Procedure.

Petitioner's first claim under the umbrella of "voluntariness of her plea" [Allegation 1 *supra*] is that the plea was not voluntary because this Court did not properly advise her of the correct minimum and maximum punishment she faced on the 3 counts of Attempted Murder. During the colloquy with the petitioner, this Court correctly stated that the range of punishment for Attempted Murder, absent prior felony convictions, is 10 years to 99 years/ Life in Prison. Also during the colloquy with regards to the Attempted Murder charges, this Court discussed with the Petitioner the submission to the Court of an Explanation of Rights form, commonly referred to as an "Ireland" form, that contained the normal range of punishment for the Attempted Murder charges, a multitude of other constitutional rights and procedural safeguards afforded to criminal defendants, and warnings regarding potential ramifications of a guilty plea. Clearly marked with that form just below the "normal" range of punishment is the explanation of what is often referred to as the "firearms enhancement" provision under Alabama law. Also present on

that first page of the "Ireland" form are the Petitioner's initials at the bottom of the page. Of course, present in the appropriate location on the second page of the "Ireland" form are her complete signature along with those of all three of her attorneys. The transcript of the plea colloquy clearly shows that this Court engaged in a thorough discussion with the Petitioner where the form and its contents were acknowledged by the Petitioner and the Petitioner answered in the affirmative when asked if she had enough time to go over the document(s) with her lawyers. *See*; Plea Transcript Pages 3 and 4 [attached] and Explanation of Rights form present in the Court's file in this matter.

Much is attempted to be made by the Petitioner of this Court not specifically telling her as part of the verbal dialogue between the Court and the Petitioner during the plea colloquy that the firearms enhancement makes the minimum term 20 years, rather than 10, in her Attempted Murder cases. Petitioner cites multiple cases that stand for the proposition that a criminal defendant must be made aware of the correct range of punishment they are facing in order for a plea to be deemed voluntarily made. And while the State agrees that the defendant's awareness of the range of punishment that is faced is a prerequisite to a voluntary plea, the Petitioner's case cites provide nothing on point to support her proposition that the she was not properly informed by this Court in this case.

For example, in the case of Gordon v. State, 692 So 2d 871 (Ala. Crim. App. 1996) offered by the Petitioner, the Court incorrectly advised the range of punishment for the wrong class of crime *and* the "Ireland" form also listed the incorrect range of punishment. Likewise, in the Petitioner's cited case of Riley v. State, 892 So. 2d 471 (Ala. Crim. App. 2004), the defendant was specifically told by the Court prior to his plea that the provisions of the Habitual Felony Offender Act *would not* apply due to the timing of his convictions but the defendant was later sentenced to a life term based on that same plea under the HFOA. In the Petitioner's cited case of Trice v. State, 601 So. 2d 180 (Ala. Crim. App. 1992) the facts are equally distinguishable from the case at bar. In Trice, not only was the Court mistaken about the class of felony (and therefore the accompanying range of punishment) on at least one of the defendant's charges, the Court's only inquiry into the defendant's understanding of what was going on was asking the defendant if entering a guilty plea was what he "wanted to do." In yet another case cited by the Petitioner in this vein, Heard v. State, 687 So. 2d 212 (Ala. Crim. App. 1996), the disparity between the facts of that case and the instant case are readily apparent. In Heard, not only did the Court misinform the defendant of the range of punishment, but the firearms enhancement provision on the "Ireland" form was not chosen (as it was in the instant case). Furthermore, the defendant in Heard was pleading "blind" rather than to a predetermined length of sentence previously agreed upon by the parties. In the case at hand, not only was the range of punishment for Attempted Murder properly explained by this Court to the Petitioner and the firearms enhancement properly addressed in the "Ireland" form, but the Petitioner was pleading guilty to an agreed upon term of the maximum. She knew exactly what her sentence would be and knew it would be the maximum before she ever walked into the courtroom on September 11th, 2012.

Despite the Petitioner's multiple case cites as to this particular range of punishment issue, the Petitioner utterly fails to cite any case that stands for the proposition that each and every provision of an "Ireland" form must be the subject of specific discussion between the Court and the defendant during a guilty plea. Quite the contrary is true. While courts have held that the "Ireland" form, without more, is

insufficient to meet the requirements of Boykin v. Alabama, 395 U.S. 238 (1968), *see* Trice, *supra*, the use of the "Ireland" form, when accompanied by a personal colloquy between the Court and the defendant not only satisfies the constitutional concerns of Boykin, it is what's specifically allowed under Rule 14.4(d) if the Alabama Rules of Criminal Procedure. *See*; Twyman v. State, 300 So. 2d 124 (Ala. 1974) and Waddle v. State, 784 So. 2d 367 (Ala. Crim. App. 2000). To require the courts to specifically address each and every provision contained in the entirety of the "Ireland" form with a defendant during the plea colloquy would make the use of the form itself superfluous. The Court need not address each specific thing in turn but only ensure, by a personal interaction with the defendant, oft aided for the past forty plus years by what's referred to as an "Ireland" form, that the defendant understands his or her rights and is entering the plea voluntarily. Brown v. State, 695 So. 2d 153 (Ala. Crim. App. 1996). Very recently, the Alabama Court of Criminal Appeals came down squarely against the Petitioner on this exact issue in the case of Herring v. State, 2014 Ala. Crim. App. Lexis 80 (Released Oct. 3rd, 2014). The trial court in that case engaged in a colloquy with the defendant but did not specifically address the range of punishment in the case. The trial court instead referenced the "Ireland" form and asked if the defendant if he had read, understood, and signed the form. The court upheld the plea as knowing and voluntarily made and one that satisfied the requirements of Rule 14 and Boykin.

As to the second issue under Allegation 1, that this Court failed to properly advise Petitioner of her right reserve issues for appeal before she pleaded and then subsequently failed to inform her as to her rights to appeal at sentencing, the record in this case and the aforementioned cases of Waddle and Brown cited *supra* clearly show that this claim is factually and legally unsupported. The "Ireland" form clearly sets out the fact that a guilty plea waives the appeal of any issues unless they are specifically reserved for appeal. That particular section is even in all capital letters for emphasis. *See* Plea Transcript page 4 (acknowledging review and understanding of terms in the "Ireland" form) and Trial/Sentencing Transcript page 167, 168 [attached] (wherein Petitioner acknowledged she had waived her right to appeal as part of the plea agreements and that she knew she had that right prior to waiver).

It is important to note at this juncture that the Petitioner had two separate "Ireland" forms and two separate plea agreements. One set of paperwork was for the Attempted Murder counts and the other for the Capital Murder count. With the exception of the issues specific to the range of punishment in the Attempted Murder counts as set out above, the remainders of the "Ireland" form provisions are identical between the Attempted Murder and Capital Murder counts.

Next, Petitioner claims that she wasn't given the opportunity to object to her counsels' services. Like many of the Petitioner's claims, this one is directly refuted by the record in this case. *See*, Plea Transcript page 3 (Petitioner asked whether her lawyers had done everything she had asked them to do wherein she responded in the affirmative); *also* the "Ireland" form already part of this Court's file (stating just before the Petitioner's signature "I further state to the court that I am satisfied with my attorneys services and his/her handling of my case.").

Petitioner's next claim that the charges weren't explained to her, specifically the element of "intent," by the Court during the colloquy is without merit as well. *See*, Plea Transcript page 2 (wherein this Court reads the charges and asks the Petitioner she needs

any of the charges explained to which she replies "No."); *also* the "Ireland" form which states less than an inch above the Petitioner's signature "I understand the charge or charges against me...").

Petitioner next claims that her plea was not voluntary or knowing because, during the colloquy, she was informed she was waiving a jury trial but she actually ended up having one. Petitioner provides absolutely no legal support for how having a trial, when she thought she had waived one, is somehow to her detriment constitutionally speaking. Of course, were the situation reversed, the argument would have a chance. Under the auspices of a Rule 32 petition, getting a benefit that you claim to not have been aware you were entitled to is not a cognizable claim. The fact of the matter is that the petitioner pleaded all at once to 4 counts. Three of those counts were Attempted Murder for which waiver of the trial was part of the plea. Hence the relevance of the Court ascertaining that information via the colloquy and the "Ireland" form. The remaining count of Capital Murder, at the time of the Petitioner's plea, required a "mini-trial" to be had before a jury, even upon agreement of a defendant to plead guilty, to ensure the evidence against the defendant is such that a jury could find guilt beyond a reasonable doubt. This was undoubtedly a provision put in place by the legislature to ensure that in capital cases, there was zero chance that a defendant, especially one of low education level or from a disadvantaged background or maligned segment of society, could be "railroaded" into a plea or otherwise fall through the cracks of the system when the stakes are so high as life or death. This practice in situations such as the Petitioner's where the death penalty is no longer a viable sentence (due to the plea agreement that had been reached) has since been abolished by the legislature. *See*, Alabama Code §13A-5-42 (1975) (as amended in 2013). The "Ireland" form is ill equipped to handle the nuance of this type of plea as to that specific issue because capital cases are the rarest type of case and, to be sure, an event where they are pleaded as charged is something that is even less common.

The Petitioner next makes a claim that she was not informed of the right to compulsory process by the Court as it relates to the right to call witnesses should she desire to go to trial. The right to call witnesses on her behalf was explained by this Court during the colloquy. *See* Plea Transcript page 6. Additionally, the oft referred to "Ireland" form(s) in this matter clearly set out that the Petitioner had the right to have witnesses on her behalf subpoenaed and subject to order of the court to appear.

The Petitioner's penultimate claim within this particular "Allegation" is that the issue of her competency and/or sanity was not properly disposed of prior to her plea being taken. Like so many other claims in her brief, this one is also refuted by the record in this case. First, there was a written stipulation by the parties entered into the record that, based on an opinion rendered by Dr. Rosenzweig (a licensed clinical and forensic Psychologist) that the Petitioner was not only able to appreciate the wrongfulness of her actions on the date she shot 6 people, killing 3 and severely wounding the others, she was also competent to assist in her defense and engage in the criminal proceedings at hand. Hence, the Petitioner and her attorneys agreed in writing that she was "sane" at the time of the offense, and competent to stand trial. That stipulation was signed and submitted to the Court on September 24th, 2012 which was the date of her trial and sentencing. Second, this Court not only made its own observations of the Petitioner at the time of the plea proceedings on September 11th, 2012, this Court specifically addressed each of the Petitioner's three attorneys and asked if each of them felt she was fully able to understand

the plea proceedings that day. *See* Plea Transcript page 4 and 5. In Sanders v. State, 414 So. 2d 482 (Ala. Crim. App. 1982), the Court upheld the voluntariness of a plea when the judge who took the plea relied on his own interaction with the defendant and on the defense attorneys' affirmations that they saw no issues with the defendant's competency on the date of the plea. Likewise, this Court's reliance on its own observations of the Petitioner and her attorneys' representations on her behalf should not be disturbed. Of course, Petitioner's dissatisfaction with the accommodations, cuisine, and companionship at the jail are notwithstanding.

Petitioner's final claim under this subset of allegations is that the Court lacked jurisdiction to take her plea or sentence her based on the Court's non-compliance with Rules 14 and 26 of the Alabama Rules of Criminal Procedure. It is unclear to the undersigned whether the Petitioner's understanding of the concept of jurisdiction is amiss or if her claim of jurisdiction is a labelling choice such that she could subvert procedural bars that have previously been listed. At any rate, a court's jurisdiction in Alabama comes from state law and the constitution, Ex parte Seymour, 946 So. 2d 536 (Ala. 2006), not from the perfect performance of its tasks under the Rules of Criminal Procedure. So, regardless of the Petitioner's critical analysis of this Court's performance of the plea and sentencing in this matter, this Court was presiding over properly indicted felony charges and thus its jurisdiction falls outside the Petitioner's reach.

Petitioner's next omnibus claim [Allegation 2 *supra*] is one of ineffective assistance of counsel…presumably all three or her attorneys since, with rare exception, she doesn't single one from the group. This overarching allegation must be broken down into two subsets for ease of processing. First, there are multiple sub-claims within this main claim that deal with alleged failure to do certain things pre or post trial. This is subset 1. Second, there is a seemingly never ending list of things that occurred (or didn't as the case may be) during the "mini trial" that the Petitioner disapproves of. This is subset 2. As to both subsets within this claim, the same constitutional analysis of counsels' performance(s) is at play. A claim of ineffectiveness must clear two separate hurdles. The first is whether counsel's performance was so deficient that it fell below the constitutional meaning of "counsel" under the Sixth Amendment and the second is whether those deficiencies created a situation where there was a reasonable probability that, absent counsel's errors, the outcome of the case or proceeding would have been different. Strickland v. Washington, 466 U.S. 668 (1984). The Petitioner, despite spending page upon page of her brief attempting to rake her attorneys over the proverbial coals, never comes close to meeting either of the two required components to establish cause for relief under Strickland. Clearing both hurdles of the Strickland test is not even on the Petitioner's horizon.

Not only is the Petitioner fighting an uphill battle on this front from the start, given that she was provide with not 1, not 2, but 3 attorneys in this matter, but she had 3 of the best and most experienced attorneys available anywhere in this state to help ensure her constitutional rights were protected and that she would have the best chance possible for an outcome of something less than the death penalty in the face of overwhelming evidence of guilt. This was not a "whodunit" case. This was not a sad story of a weak minded or perennially downtrodden soul who was perceived by some as being scapegoated or railroaded. These three men were tasked with representing a woman with a PhD and a family who was so educated and presumably intelligent that she had been

entrusted as a professor at a state university with teaching the next generation of scientists. A woman who took a loaded pistol onto a college campus in the middle of the day while it was filled with people's kids and then took that loaded gun into a faculty meeting in a building where those kids were having class and then opened fire on the colleagues she had known for years, attempting to kill each of them in turn…only stopping when the gun jammed and would no longer fire. There is next to zero chance that anything these men representing her could or would have done could even come close changing the outcome of this case. Their only hope was to save her from death row…and they did.

Petitioner's claims under subset 1 largely revolve around the attempt to explore an insanity defense in this case. Despite Petitioner's claims that they failed to adequately prepare an insanity defense (or a specific type of insanity defense based on medication interactions), or that they failed to adequately inquire into her competency are without merit based on the record in this case and the case law in this area.

The record clearly reflects that, from the beginning of this case, Petitioner's counsel was in a near constant quest to obtain experts and funding for investigation of her defense. It was no secret that an insanity defense was in play, even before an official "plea" was made. The record clearly reflects that dogged efforts by defense counsel to have the Petitioner evaluated not only by the State's psychologist but by one (or more) of their choosing. The State never opposed and the Court endorsed these requests with the appropriate orders. The apparent battle over the approval of funds for these ventures between this Court and the folks in Montgomery who control the funds reached seemingly unprecedented proportions.

By Petitioner's own admission in her brief, she was evaluated by at least two psychologists. One, Dr. McKeown was ordered to examine her for purpose of determining both competency to carry on with the proceedings and her mental state at the time of the offense to determine whether criminal culpability was mitigated. That was ordered at her attorneys' request within two months of her arrest. A second psychologist, Dr. Rosenzweig, came into play at some point subsequent because her findings of the Petitioner's appreciation of the wrongfulness of her acts (at the time of the offense) and her competency to engage in the criminal proceedings were those that were stipulated to by the parties at the time of the pleas and trial as mentioned *supra.* Petitioner herself advises of another psychiatrist at the jail, a Dr. Alafare, who was also involved in her mental health diagnosis and treatment. Having had the benefit of the assistance of at least 3 mental health professionals before the ultimate resolution of her case, at least one of which (more likely two) was the direct result of an early request made by Petitioner's counsel, can hardly be said at this point to be "ineffectiveness" on the part of her attorneys in an effort to explore any available insanity and competency issues. Counsel cannot be expected to continue to seek yet more experts in the hopes that their opinions might be more favorable. Waldrop v. State, 987 So. 2d 1186 (Ala. Crim. App. 2007). Smith v. State, 71 So. 3d 12 (Ala.Crim. App. 2008). Each of Petitioner's various permutations of this particular sub claim are meritless.

As to Petitioner's claims that her attorney(s) were ineffective in the trial setting for failing to put on what Petitioner now feels would have been a more "adversarial" show [subset 2 within the overriding IAC claim], those claims must also fail. The trial in this case was not a traditional one contemplated by the Constitution where the State starts

off with a steep uphill battle toward "proof beyond a reasonable doubt" and the Defendant's attorney stands ready every step of the way to block the State from reaching that goal…refusing to give even an inch of ground. This trial was a creature of legislative creation as mentioned above. The very fact that the Petitioner had pleaded guilty already was put into evidence before the jury as relevant proof of guilt under the law. The things the Petitioner suggest her defense team should have done, like cross examine the State's witness about where people normally sat at the faculty meetings or whether she was mandated by contract to be at the faculty meeting at all are completely irrelevant in the context of this trial. The fact that the Petitioner feels her belief that she had a "student stalker" should have been brought out at her trial would have had no net effect, especially as a suggestion of apprehension on her part or an act in self-defense. She was at a faculty meeting where she had been sitting for almost an hour when she opened fire on her colleagues, not walking to her car in a dark parking lot as she was suddenly startled and fired her weapon in fear of bodily harm.

Further, trial counsels' willingness to stipulate to many items, like autopsy results and the findings of the mental health expert, were not ineffectiveness. As mentioned above, the Petitioner had pleaded guilty to all counts previous to the "trial" and her plea agreements were admitted as exhibits for the jury. No amount of cross examination, objecting, or otherwise putting on a show for the jury would have changed the results. If there had been some wiggle room as to the sentencing in this case, or if defense counsel had still been fighting against the possibility of the death penalty, then Petitioner's critique of her counsels' "trial" performance may have some teeth. But, given the situation at hand, the "trial" was simply a formality and her counsel should be applauded for their work up to that point and for having the decency to spare the victims and the jury the gruesome details of autopsies and the like. As mentioned *supra*, this "trial" was an antiquated statutory requirement which the legislature has subsequently deemed unnecessary and altered the Alabama Code such that it is no longer required in these circumstances.

As is set out in Strickland, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance…[t]here are countless ways to provide effective assistance in any given case." 466 U.S. 668 at 689.. Further, it has been held that "[s]trategic choices made after a thorough investigation of relevant law and facts are virtually unchallengeable." Ex parte Lawley, 512 So. 2d 1370 (Ala. 1987). Assistance provided by counsel in this case goes above and beyond the mere baseline of "effectiveness" and exceeded the constitutional requirements under the Sixth Amendment. This claim is meritless and must fail.

Petitioner's next overriding claim [Allegation 3] is that she received an inadequate psychiatric evaluation. As mentioned above, it is unclear exactly which grounds of Rule 32.1 this is being pleaded under. Most of this claim is beset with lengthy recitations of Petitioner's past history and her self-serving statements of what mental health related ailments she was suffering from at the time of the shooting. While the Petitioner may have been a PhD, she's the wrong kind of doctor to be making the diagnosis in this matter. Regardless of what she now believes the problem was that caused her to engage in a mass shooting on a college campus, at least 2 properly trained experts in the mental health field thoroughly examined the Petitioner and found her both

competent to proceed with the case and able to appreciate the wrongfulness of her actions at the time of the shooting.

Petitioner complains that this Court didn't "commit" her to the Department of Mental Health for her evaluations as suggested by Alabama Code §15-16-22 (1975) but rather had the evaluations done at the local jail where she was housed. This Court has no obligation to send the Petitioner away for her evaluations. *See*, Moore v. State, 290 So. 2d 246 (Ala. Crim. App. 1974). Further, the provisions of Rule 11.2 and 11.3 of the Alabama Rules of Criminal Procedure make clear what this Court's duties are with regards to ensuring a defendant is properly evaluated when competency and/or sanity at the time of offense issues are raised. While commitment to a specific institution for evaluation is an option, the terms of how and where a defendant may be evaluated are written such that the Court has discretion as to where it's done. This Court complied fully with the provisions of Rule 11 of the Alabama Rules of Criminal Procedure and the Petitioner was provided with all necessary evaluations as required by law so this claim must fail.

Petitioner's final claim [Allegation 4] is akin to an omnibus attack on all of the things that she alleges the State did in violation of the constitution. She couches the claim in terms of violation of "Brady v. Maryland" but seems to utterly miss the point of that case. While Brady v. Maryland, 373 U.S. 83 (1963) does indeed require the State to turn over to the defense any items or information in its possession that are exculpatory in nature, the laundry list of things the Petitioner is claiming under the Brady umbrella are simply not things that the State would necessarily have known about, or even been able to learn, on its own. Each and every item on the list is something that would have been known to the Petitioner at the time of the offense and her subsequent arrest. Not to mention, none of the "evidence" Petitioner claims was withheld even come close to being exculpatory. If she chose not to share the information with one of her 3 defense attorneys, that is not a constitutional error on the part of the State but is instead a monumental failure of communication between the Petitioner and her attorneys.

At the end of her brief, the Petitioner attaches a handwritten affidavit chronicling her perceived battles with mental health issues and medications while in custody. At the conclusion of the affidavit she makes reference to her current ability, after adjusting to medication and speaking with counsel and another inmate, to now "grasp various facts elucidated…all of which has revealed exculpatory evidence…" The fact that the Petitioner's current meds or contemplative reflections have allowed new memories to surface does not retroactively create a constitutional violation on the State's part.

Each and every one of Petitioner's claims is nothing more than a desperate attempt to unravel the web which she has woven for herself. Not only did she commit an outrageous crime against innocent people but now she has the audacity in this petition to cast herself in the role as a victim of the system. There is little doubt that the Petitioner is one of the most, if not THE most educated defendant to ever stand before the courts of this county but now she complains that she didn't understand what was happening when she pleaded guilty. On the contrary, the Petitioner and her 3 attorneys negotiated a resolution to her case that, in the face of absolutely overwhelming evidence of her guilt, ensured that she serve out her remaining years in custody without fear of the death chamber. This plea was voluntarily and intelligently entered into by the Petitioner and she got exactly what she bargained for and the Courts have not entertained cries of "foul"

from someone who got exactly what they asked for. *See*, McDougal v. State, 526 So. 2d 897 (Ala. Crim. App. 1988). This Court should not entertain such a claim either.

This Court should deny each and every one of the Petitioner's claim and dismiss the instant petition, without a hearing, pursuant to Rule 32.7(d) of the Alabama Rules of Criminal Procedure.

Respectfully submitted this, the 17th day of October, 2014.

ROBERT L. BROUSSARD
DISTRICT ATTORNEY

s/Shauna R. Barnett
by: Shauna R. Barnett
Assistant District Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above on the Petitioner by placing a copy of the same in the U.S. Mail, postage prepaid, to Amy Bishop Anderson AIS#285694,Tutwiler Prison for Women, 8966 US Hwy 231 N, Wetumpka, Alabama 36092.

s/Shauna R. Barnett
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