CR-12-0229

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In the Court of Criminal Appeals of Alabama

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AMY BISHOP ANDERSON,
Appellant,

v.

STATE OF ALABAMA,
Appellee.

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On Appeal from the Circuit Court of
Madison County
(CC-11-1131)

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BRIEF OF APPELLEE

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STATEMENT REGARDING ORAL ARGUMENT

The State does not request oral argument. See Ala. R. App. P. 34(a)(3).

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STATEMENT OF THE CASE

Amy Bishop Anderson appeals from her guilty plea convictions of one count of capital murder and three counts of attempted murder and her resulting sentences of life imprisonment without the possibility of parole (for the capital murder conviction) and life imprisonment (for each of her attempted murder convictions). See (C. 11-12, 676, 685; R. 162, 167; Supp. R. 1, 8-9). Madison County Circuit Court Judge D. Alan Mann presided over Anderson's guilty plea, trial, and sentencing proceedings. See (C. 1; R. 1; Supp. R. 1).

On March 11, 2011, the Madison County Grand Jury indicted Anderson for one count of capital murder based on the intentional murders of three people pursuant to one scheme or course of conduct in violation of § 13A-5-40(a)(10) of the Code of Alabama, and three counts of attempted murder in violation of §§ 13A-4-2 and 13A-6-2 of the Code of Alabama. (C. 2, 15-17) On September 22, 2011, Anderson waived arraignment and pleaded not guilty by reason of mental disease or defect.[1] (C. 416)

[1] The waiver of arraignment form indicates that Anderson only pleaded not guilty by reason of mental disease or defect. (C. 416) But the trial court stated during

Anderson eventually entered into separate plea agreements with the State, one for the capital murder charge and one for the three attempted murder charges, and on September 11, 2012, she pleaded guilty to all four charges. (C. 11-12, 668-69, 676-78; Supp. R. 1, 8-9) Because one of the charges was capital murder, the trial court held a jury trial on that charge as required by § 13A-5-42 of the Code of Alabama.[2] See (C. 676, 685; R. 1-164).

On September 24, 2012, the trial of the capital murder charge began. See (R. 1). Prior to trial, Anderson, her attorneys, and the prosecutors entered into numerous stipulations, among them stipulations to the authenticity of various items of evidence and the causes of death of each victim, as well as a stipulation that Anderson was competent to stand trial and had been "able to understand the nature and quality, or wrongfulness, of her actions" at the time of the offenses. (C. 765-69; R. 5) At the

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Anderson's guilty plea colloquy that she had also pleaded not guilty. (Supp. R. 5)

[2] Section 13A-5-42 provides that, while a defendant may plead guilty to a capital offense, the State must nevertheless prove her guilt to a jury beyond a reasonable doubt.

conclusion of the one-day trial, the sworn jury returned a verdict finding Anderson guilty of capital murder as charged in the indictment. (C. 676, 685; R. 1, 10, 162)

Immediately after the trial, the trial court sentenced Anderson, pursuant to the plea agreements, to a term of life imprisonment without the possibility of parole for her capital murder conviction and to consecutive terms of life imprisonment for her attempted murder convictions. See (C. 11-12, 668, 676-77). Anderson did not reserve any issues for appeal before pleading guilty, see (Supp. R. 2-10), nor did she file any post-trial motions. Nevertheless, she filed a notice of appeal on November 5, 2012. (C. 698-99, 704-05) This appeal now follows.

STATEMENT OF THE ISSUES

1. Should Anderson's appeal be dismissed, where she waived her right to appeal as part of the plea agreements she made with the State?

2. Has Anderson preserved her arguments for appellate review where she did not first present those arguments to the trial court?

3. Is Anderson entitled to a reversal based on her challenges to the voluntariness of her guilty pleas, where the trial court complied with the requirements of Rule 14.4(a) of the Alabama Rules of Criminal Procedure in all respects and, more importantly, the record establishes that Anderson knowingly and voluntarily pleaded guilty?

4. Is Anderson entitled to a reversal based on her claim that the trial court erred when it sentenced her without informing her that she would be able to appeal if she first moved to withdraw her guilty pleas, where the trial court was not required to inform her what she needed to do to appeal and, in any event, she had no right to appeal?

STATEMENT OF THE FACTS

On February 12, 2010, Amy Bishop Anderson, a professor in the biology department at the University of Alabama in Huntsville, stood up during a faculty meeting and shot six of her colleagues. See (R. 69-71, 83-84, 101, 105). In the assault on her co-workers, Anderson killed three people: Dr. Gopi Podila, Dr. Adriel Johnson, and Dr. Maria Davis. See (C. 16, 770-71, 778-79, 786-87; R. 89-95, 104-05, 112-13; Supp. R. 8-9). She also wounded three others, and she tried to shoot at least one more. See (C. 16; R. 89-95, 102; Supp. R. 8-9).

The genesis of Anderson's violent outburst appears rooted in the fact that she had recently been denied tenure. See (R. 76-77, 82, 84, 108-09). Anderson had begun the process of applying for tenure in 2008, when she was in her fifth year at the university. See (R. 72, 75-76). However, the departmental faculty recommended that her application for tenure be denied, and the provost of the university, who had the final decision, ultimately concurred. (R. 76-77, 108-09)

Anderson appealed the denial of tenure to the faculty senate, which lacked the power to actually overrule the

denial of tenure, but nevertheless could recommend that tenure be granted. See (R. 77) In Anderson's case, however, the faculty senate ultimately decided not to recommend overturning the denial of Anderson's tenure application. (R. 77) Accordingly, the denial of Anderson's request for tenure became final in the Fall of 2009, and because Anderson had been working on yearly contracts up until that point, the denial of tenure meant that her contract would not be renewed and that the 2009-2010 school year would be her last at the university. See (R. 72, 78, 82, 84, 108-09).

During the course of the appeal process, Anderson repeatedly asked Dr. Debra Moriarty, another biology professor who was friendly with Anderson but had voted against her tenure request, to change her recommendation and help her have the denial of her tenure application reversed. (R. 68-69, 71-72, 78-79, 97) Anderson also continued "bugging" other faculty members by soliciting their assistance with her quest for tenure. (R. 81) She even went so far as to try to speak directly to the provost and the university president about her case; however, they refused to see her. (R. 96)

According to Dr. Moriarty, Anderson "was very agitated about" the denial of tenure, and she was far more "boisterous about the denial" than most other professors who are denied tenure. (R. 79-81) At one point, Anderson told Dr. Moriarty that she had thought about suing, and she did file a complaint with the Equal Employment Opportunity Commission. (R. 79) Anderson also told Dr. Moriarty that her "life [was] over" and "that she felt like she should just kill herself." (R. 79, 96-97, 100)

Even after the decision to deny her tenure application became final, Anderson continued to ask Dr. Moriarty for help in having the decision reversed. (R. 81-82) Finally, in December of 2009, Dr. Moriarty told Anderson that there was nothing else that could be done and that she needed to start looking for another job. (R. 82)

Then came the February 12th faculty meeting. The meeting was held in a small room on the third floor of the building that housed the biology department. See (R. 83-84, 91). Besides Anderson, there were twelve people present. (R. 105) When Anderson arrived for the meeting, she sat in a chair by the door. (R. 85-86) The conference room was small; Dr. Moriarty described it as "a very narrow room,"

and she said that "[w]hen the tables are there and the chairs have people in them, you can almost not get through there." (R. 86) Dr. Moriarty added, "with somebody sitting in [Anderson's] position, it's very hard to get in and out of that door." (R. 87)

During the meeting, Anderson did not speak, something which was unusual for her. (R. 88-89, 94) Dr. Moriarty noticed Anderson's uncharacteristic silence, and thinking that Anderson seemed depressed, she made a mental note to talk to her after the meeting to ask how her job search was going. (R. 88, 94)

At some point during the meeting, Dr. Moriarty looked down at her agenda, at which point she heard "a loud bang." (R. 89-90) She "ducked and covered [her] head. And before [she] could look up, there was a second loud bang[.]" (R. 89-90, 94) When Dr. Moriarty looked up, she heard a third "bang" and saw Dr. Johnson "slump." (C. R. 89-90) She then saw that Anderson had stood up and begun firing a gun. (R. 90) Then Dr. Moriarty saw Anderson "point the gun at Dr. Davis and shoot her." (C. R. 90, 105) According to Dr. Moriarty, Anderson did not say anything and "looked extremely determined" during the shooting. (R. 91, 94-95)

Dr. Moriarty took cover under the table, and in an effort to stop Anderson, grabbed her legs as she fired yet another shot. (R. 90) But Anderson "stepped out" of Dr. Moriarty's grasp. (R. 90) Dr. Moriarty yelled, "Amy, stop. Stop. Don't do this. I helped you before; I will help you again. Think of my daughter. Think of my grandson. Don't do this." (R. 90) Brushing aside Dr. Moriarty's pleas, Anderson turned the gun on her and pulled the trigger. (R. 90, 105) However, the gun jammed and did not fire. (R. 90, 105, 114-15, 123) Dr. Moriarty then crawled out of the room into the hallway, and Anderson followed her, still trying to shoot her. (R. 90-92)

Recognizing that the gun was not firing, Dr. Moriarty "threw [her]self" back into the conference room, and one of her colleagues "came flying across the room and locked the door" in order to keep Anderson outside. (R. 91-92, 105) Some of the people inside the room were on their telephones calling for help. (R. 92) Six people were wounded, three of whom were dead or dying, and "[e]verybody that wasn't shot was quickly trying to help someone who was." See (R. 92-94; Supp. R. 8-9).

While Dr. Moriarty and her colleagues were trying to help the wounded (R. 92-94), Anderson went to a restroom on the second floor, apparently washed the gun in the sink, and dropped it in the trash bin. (R. 106-07, 114, 122) She then put her jacket in the same trash receptacle and covered it with tissue paper. (R. 106, 113-14, 122) After she left the restroom, Anderson entered a laboratory class on the second floor and asked to borrow a telephone. (R. 106-07, 122-24) She then called her husband and asked him to pick her up outside the building. (R. 106-07, 123) After she talked to her husband, Anderson exited the rear of the building through a loading dock. (R. 107) But police officers were stationed near the loading dock, and they took Anderson into custody when she came outside. (R. 107)

Three of Anderson's victims died. Dr. Johnson and Dr. Davis each died from gunshot wounds to the head, (C. 778-79, 786-87; R. 112-13) Dr. Podila died from a gunshot wound that penetrated his chin, passed into his chest, and then exited his back. (C. 770-71; R. 113) In addition to the three people she killed, Anderson wounded three other members of her department: Stephanie Monticciolo, Joseph Leahy, and Roger Cruz-Vera. See (R. 92-93; Supp. R. 8)

Once Anderson was taken into custody, Huntsville Police Department Investigator Charlie Gray interviewed her. (R. 101, 107) During the interview, Anderson denied shooting anyone. (R. 107) According to Investigator Gray, Anderson "would say, It didn't happen. I wasn't there. It wasn't me.' That's pretty much the theme of the interview." (R. 107) After the interview concluded, Investigator Gray arrested Anderson. (R. 108)

STANDARDS OF REVIEW

1. "[A] defendant can waive [her] right to appeal as part of a negotiated plea agreement so long as [s]he is fully advised of the implications of doing so and [s]he voluntarily agrees to enter into the agreement." Ex parte Sorsby, 12 So. 3d 139, 146 (Ala. 2007).

2. "'Review on appeal is restricted to questions and issues properly and timely raised at trial.' . . . '"[T]o preserve an issue for appellate review, it must be presented to the trial court by a timely and specific motion setting out the specific grounds in support thereof."' Ex parte Coulliette, 857 So. 2d 793, 794 (Ala. 2003)(citations omitted).

3. "The longstanding test for determining the validity of a guilty plea is 'whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.'" Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985) (citation omitted).

4. In cases where a defendant has pleaded guilty, the trial court is not required to inform her that she has a right to appeal before it pronounces sentence unless she

either reserved a particular issue or issues for appeal when she pleaded guilty or she has moved to withdraw her guilty plea(s) and the trial court has denied that motion. See Ala. R. Crim. P. 26.9(b)(4)(i-ii).

SUMMARY OF THE ARGUMENT

On appeal, Anderson argues that her guilty pleas were not knowingly and voluntarily entered because the trial court did not comply with various provisions of Rule 14.4(a) of the Alabama Rules of Criminal Procedure. Specifically, Anderson argues that the trial court failed to: 1) correctly inform her of the minimum sentence she faced for each of the attempted murder charges; 2) inform her that, by pleading guilty, she was waiving her right to appeal unless she reserved specific issues for appeal or appealed from the denial of a motion to withdraw her guilty pleas; 3) afford her the opportunity to comment on her attorneys' performance; 4) determine that she understood the charges and the elements of the charges against her; 5) give her accurate information about her guilty plea to the capital murder charge because it told her that she was waiving her right to a trial by pleading guilty but then she was still tried on that charge; and 6) inform her that, by pleading guilty, she was waiving the right to personally confront the State's witnesses, as well as the right to have the aid of compulsory process in having her own witnesses appear at trial. Anderson also claims that the

trial court failed to comply with the provisions of Rule 26.9(b)(4) of the Alabama Rules of Criminal Procedure at sentencing because it did not inform her that she could appeal if she first moved to withdraw her guilty pleas. However, for the reasons stated below, Anderson is not entitled to a reversal based on any of these claims.

First, Anderson voluntarily waived her right to appeal as part of her plea agreements with the State. Therefore, this Court must dismiss this appeal.

Second, even if this appeal were properly before this Court, Anderson's claims are not. Anderson never presented any of her claims to the trial court; therefore, her claims are not preserved for appellate review.

Finally, even if Anderson's claims were properly before this Court, she would not be entitled to a reversal based on them. First, Anderson's challenges to the voluntariness of her guilty pleas are meritless. The record shows that the trial court fully complied with the provisions of Rule 14.4(a) during Anderson's guilty plea proceedings. More significantly, the record also shows that Anderson knowingly and voluntarily pleaded guilty. Thus, Anderson is

not entitled to a reversal based on any of her challenges to the voluntariness of her guilty pleas.

Likewise, Anderson's claim that the trial court failed to comply with the provisions of Rule 26.9(b)(4) is meritless. Anderson argues that the trial court erred because it did not tell her that she could appeal if she filed a motion to withdraw her guilty pleas. However, Rule 26.9(b)(4) does not require the trial court to inform a defendant who has pleaded guilty what she must do to be able to pursue an appeal. In fact, under the facts of this case, Anderson had no right to appeal, and Rule 26.9(b)(4) did not require the trial court to tell her s. Therefore, Anderson is not entitled to a reversal based on this claim.

ARGUMENT

I. Anderson Waived Her Right To Appeal As Part Of Her Plea Agreements With The State, And This Court Should Dismiss Her Appeal.

In her brief on appeal, Anderson argues that her guilty pleas were not knowingly and voluntarily entered because the trial court failed to comply with various provisions of Rule 14.4(a) of the Alabama Rules of Criminal Procedure. See (Appellant's Brief at 12-30). Anderson also argues that the trial court failed to comply with Rule 26.9(b)(4) of the Alabama Rules of Criminal Procedure when it sentenced her without advising her that she could appeal if she first moved to withdraw her guilty pleas. (Appellant's Brief at 20-21) However, Anderson waived her right to appeal when she entered into her plea agreements with the State. Therefore, this Court should dismiss this appeal.

Before she pleaded guilty, Anderson entered into two separate plea agreements with the State. (C. 668-69, 677-78) In one of the agreements, Anderson agreed to plead guilty to the three attempted murder charges, and the district attorney agreed to recommend sentences of life imprisonment that would run consecutively with one another and with her sentence for the capital murder conviction.

(C. 668-69) In the other agreement, Anderson agreed to plead guilty to capital murder, and the district attorney agreed to recommend a sentence of life imprisonment without parole, which would run consecutively with her sentences for the attempted murder convictions. (C. 677-78) Anderson signed both of these agreements, as did her attorneys, the district attorney, and two assistant district attorneys. (C. 669, 678)

The last provision in each of the plea agreements was a waiver of the right to appeal. (C. 669, 678) On both forms, the waiver provision read as follows: "The Defendant agrees that by accepting the terms of this plea agreement that he/she voluntarily and with full knowledge of the [r]ights he/she is surrendering, waives any rights to appeal or otherwise collaterally attack this guilty plea." (C. 669, 678) In addition to her signature at the end of each plea agreement, Anderson initialed the waiver provisions on both forms. (C. 669, 678)

"[A] defendant can waive [her] right to appeal as part of a negotiated plea agreement so long as [s]he is fully advised of the implications of doing so and [s]he voluntarily agrees to enter into the agreement." Ex parte

Sorsby, 12 So. 3d 139, 146 (Ala. 2007). "[A] colloquy with the defendant that reflects that he or she was informed of the right to appeal and that he or she chose to waive this right is sufficient to show a valid and enforceable waiver. A signed plea agreement that indicates that the defendant has waived the right to a direct appeal is also sufficient." Watson v. State, 808 So. 2d 77, 80 (Ala. Crim. App. 2001).

Again, Anderson signed two plea agreements in which she waived her right to appeal her convictions, and she separately initialed the waiver provisions on each form. See (C. 669, 678). This alone was sufficient to establish that she voluntarily waived her right to appeal. Watson, 808 So. 2d at 80. But, in addition, Anderson also told the trial court at sentencing that when she entered into the plea agreements, she knew she had the right to appeal and that she voluntarily waived that right when she pleaded guilty. (R. 167-68)

In light of the signed plea agreement, Anderson's initials on the waiver section of the plea agreement, and the trial court's subsequent colloquy with Anderson at sentencing, the record establishes that Anderson's waivers

of her right to appeal were voluntary and are therefore "valid and enforceable[.]" Watson, 808 So. 2d at 80. Thus, because Anderson waived her right to appeal, "[t]here are no issues for this Court to consider in this appeal; therefore, this appeal is due to be . . . dismissed."[3] Id. at 81.

II. Anderson Failed To Preserve Her Claims For Appellate Review.

Even if Anderson's appeal were properly before this Court, her specific claims are not. It is, of course, well-settled that "'[r]eview on appeal is restricted to questions and issues properly and timely raised at trial.' . . . '"[T]o preserve an issue for appellate review, it must be presented to the trial court by a timely and specific motion setting out the specific grounds in support

[3] To the extent that Anderson may argue that her challenges to the voluntariness of her guilty pleas also call into question the voluntariness of her waivers, that issue is not properly before this Court. This Court "will consider the issue of the voluntariness of the waiver of the right to appeal only if that issue is properly presented to the trial court, either by way of a motion to withdraw the plea or a motion for new trial." Watson, 808 So. 2d at 81. Anderson did not move to withdraw her guilty plea, nor did she move for a new trial. Therefore, this Court will not consider any challenge to the voluntariness of her waivers. Id.

thereof.'" Ex parte Coulliette, 857 So. 2d 793, 794 (Ala. 2003)(citations omitted). "'Even constitutional claims may be waived on appeal if not specifically presented to the trial court.'" Shouldis v. State, 953 So. 2d 1275, 1280 (Ala. Crim. App. 2006)(quoting Brown v. State, 705 So. 2d 871, 875 (Ala. Crim. App. 1997)).

Anderson never moved to withdraw her guilty pleas, nor did she present her challenges to the voluntariness of her guilty pleas to the trial court by any other means. Likewise, Anderson never presented the trial court with her claim that it failed to comply with the provisions of Rule 26.9(b)(4) when it sentenced her. Because Anderson never presented her claims to the trial court, she has failed to preserve those claims for this Court's review. See Coulliette, 857 So. 2d at 794. Therefore, even if this Court were to determine that Anderson's appeal were properly before it, her claims are not, and this Court need go no further to affirm the judgment of the trial court.

But even if Anderson's claims were properly before this Court, she would not be entitled to a reversal based on those claims because, for the reasons stated below, they are meritless.

III. Anderson's Challenges To The Voluntariness Of Her Guilty Pleas Are Meritless.

As noted above, Anderson claims that her guilty pleas were involuntary because the trial court failed to comply with various provisions of Rule 14.4(a) of the Alabama Rules of Criminal Procedure. See (Appellant's Brief at 12-30). Rule 14.4(a) provides that, before a defendant pleads guilty, the trial court is to engage her in a colloquy to confirm that she understands her rights and to ensure that her plea is being entered knowingly and voluntarily. Specifically, Rule 14(a) provides that, in felony cases:

> [T]he court shall not accept a plea of guilty without first addressing the defendant personally in the presence of counsel in open court for the purposes of:
>
> (1) Ascertaining that the defendant has a full understanding of what a plea of guilty means and its consequences, by informing the defendant of and determining that the defendant understands:
>
> (i) The nature of the charge and the material elements of the offense to which the plea is offered;
>
> (ii) The mandatory minimum penalty, if any, and the maximum possible penalty provided by law, including any enhanced sentencing provisions;
>
> (iii) If applicable, the fact that the sentence may run consecutively to or concurrently with another sentence or sentences;

> (iv) The fact that the defendant has the right to plead not guilty, not guilty by reason of mental disease or defect, or both not guilty and not guilty by reason of mental disease or defect, and to persist in such a plea if it has already been made, or to plead guilty;
>
> (v) The fact that the defendant has the right to remain silent and may not be compelled to testify or give evidence against himself or herself, but has the right, if the defendant wishes to do so, to testify on his or her own behalf;
>
> (vi) The fact that, by entering a plea of guilty, the defendant waives the right to trial by jury, the right to confront witnesses against him or her, the right to cross-examine witnesses or have them cross-examined in the defendant's presence, the right to testify and present evidence and witnesses on the defendant's own behalf, and the right to have the aid of compulsory process in securing the attendance of witnesses;
>
> (vii) The fact that, if the plea of guilty is accepted by the court, there will not be a further trial on the issue of the defendant's guilt; and
>
> (viii) The fact that there is no right to appeal unless the defendant has, before entering the plea of guilty, expressly reserved the right to appeal with respect to a particular issue or issues, in which event appellate review shall be limited to a determination of the issue or issues so reserved[.]

Anderson claims that the trial court failed to comply with the provisions of Rule 14.4(a) because it did not: 1) correctly inform her of the minimum sentence she faced for

each of the attempted murder charges; 2) inform her that, by pleading guilty, she was waiving her right to appeal unless she reserved specific issues for appeal or appealed from the denial of a motion to withdraw her guilty pleas; 3) afford her the opportunity to comment on her attorneys' performance; 4) determine that she understood the charges and the elements of the charges against her; 5) give her accurate information about her guilty plea to the capital murder charge because it told her that she was waiving her right to a trial by pleading guilty but then she was still tried on that charge; and 6) inform her that, by pleading guilty, she was waiving the right to personally confront the State's witnesses, as well as the right to have the aid of compulsory process in having her own witnesses appear at trial. (Appellant's Brief at 12-30)

However, for the reasons set forth below, each of Anderson's claims is meritless. Accordingly, Anderson is not entitled to a reversal based on those claims.

A. Anderson's Claim That Her Guilty Pleas Were Rendered Involuntary Because of the Trial Court's Failure to Inform Her of the Correct Minimum Potential Sentence for the Attempted Murder Charges During the Guilty Plea Colloquy Is Meritless.

Anderson first claims that her guilty plea to the attempted murder charges was rendered involuntary because the trial court told her the incorrect range of punishment during her guilty plea colloquy.[4] (Appellant's Brief at 12-17) Anderson is correct that, during her plea colloquy, the trial court misinformed her of the minimum punishment applicable to the attempted murder charges. Nevertheless, the record shows that the trial court correctly informed her of the minimum possible sentence for the attempted murder charges by using and accepting the Explanation of Rights and Plea of Guilty form, otherwise known as an Ireland[5] form. Furthermore, and more significantly, it is also clear from the record that, despite the trial court's mistake, Anderson knowingly and voluntarily pleaded guilty. Therefore, she is not entitled to relief based on this claim.

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[4] Anderson is not challenging the voluntariness of her guilty plea to the capital murder charge in this particular claim.

[5] Ireland v. State, 47 Ala. App. 65, 250 So. 2d 602 (1971).

1. The trial court's use and acceptance of the Ireland form satisfied the requirements of Rule 14.4(a)(1)(ii) of the Alabama Rules of Criminal Procedure.

As set out above, Rule 14.4(a)(1)(ii) of the Alabama Rules of Criminal Procedure requires the trial court to ensure that the defendant understands the minimum and maximum range of punishment before she pleads guilty. Of course, the purpose for the requirements imposed by Rule 14.4(a), including those set out in Rule 14.4(a)(1)(ii), is to ensure that a defendant knowingly and voluntarily pleads guilty. See, e.g., Ala. R. Crim. P. 14.4(a)(1-2). The Alabama Supreme Court held in Twyman v. State, 300 So. 2d 124, 130 (Ala. 1974), "that an Ireland form executed by the defendant and acknowledged by defense counsel and the trial judge may establish that a guilty plea was voluntarily and intelligently made, '*provided* there is other evidence in the record supporting that fact.'" Waddle v. State, 784 So. 2d 367, 370 (Ala. Crim. App. 2000)(quoting Davis v. State, 348 So. 2d 844, 846 (Ala. Crim. App. 1977)(emphasis in Davis). Similarly, Rule 14.4(d) of the Alabama Rules of Criminal Procedure provides that "[t]he court may comply with the requirements of Rule 14.4(a) by determining from a personal colloquy with the defendant that the defendant has

read, or has had read to the defendant, and understands each item contained in Form C-44B, CR-51, CR-52, or Form C-44A, as the case may be."

In this case, Anderson completed and signed four separate Ireland forms (Form CR-51). (C. 670-75, 679-80) The three Ireland forms for the attempted murder charges informed Anderson that attempted murder is a class A felony for which the punishment is imprisonment for life or some term between ten years and ninety-nine years.[6] (C. 670, 672, 674) The Ireland forms also advised Anderson that, because she used a firearm in the commission of the offenses, the minimum period of incarceration for each of the attempted murder charges was twenty years instead of ten.[7] (C. 670, 672, 674) Anderson signed a statement on each of the forms declaring that she had either read the form or had had it read to her, that she understood the charges, and that she

[6] Section 13A-4-2(d)(1) of the Code of Alabama classifies attempted murder as a class A felony. A class A felony is punishable by life imprisonment or a term of no more than ninety-nine nor less than ten years. Ala. Code § 13A-5-6(a).

[7] Section 13A-5-6(a)(4) provides that if a firearm or deadly weapon is "used or attempted to be used in the commission of [a class A] felony," the minimum sentence is twenty years.

understood her rights. (C. 671, 673, 675) All three of her attorneys also signed the forms. (C. 671, 673, 675)

Anderson also signed two separate plea agreements in which she stated that there had been "discussion and negotiation between the parties" and that "a full explanation of rights ha[d] been given to [her] as evidenced by the" Ireland forms, which were attached to the plea agreements. (C. 668, 677) All three of Anderson's attorneys also signed these agreements. (C. 669, 678)

During the plea colloquy, Anderson informed the trial court that she had signed each of the Ireland forms and that she had had enough time to go over those forms with her attorneys. (Supp. R. 4) She also acknowledged that she had reviewed the plea agreements with her attorneys and signed them. (Supp. R. 3-4) The trial court then asked Anderson's attorneys if they were "convinced that she [was] fully able to comprehend and understand the proceedings that [the trial court and the parties were] going through" that day. (Supp. R. 4) All three of Anderson's attorneys replied in the affirmative. (Supp. R. 4-5) The trial court then asked Anderson's attorneys whether they believed that "she [was] acting in full knowledge of her rights and [was]

knowingly and voluntarily entering" her guilty plea to the attempted murder charges. (Supp. R. 5) One of Anderson's attorneys replied, "Yes, sir." (Supp. R. 5) The trial court then asked whether "there [was] any evidence to the contrary that any of" her attorneys wanted to present. (Supp. R. 5) Another of Anderson's attorneys replied, "No, Judge." (Supp. R. 5) The trial court then proceeded with Anderson's guilty pleas. (Supp. R. 5)

The trial court's colloquy with Anderson and her attorneys was sufficient to satisfy it that Anderson had read the Ireland forms or had had them read to her and that she understood the information contained in them, including the potential range of punishment. Thus, the use of the Ireland forms was sufficient to comply with the provisions of Rule 14.4(a)(1)(ii). See Waddle, 784 So. 2d at 370; Ala. R. Crim. P. 14.4(d). See also Brown v. State, 695 So. 2d 153 (Ala. Crim. App. 1996)("The presence of the executed Ireland form in the record-which contained the rights set out in Rule 14.4(a)(1)(iv), trial counsel's reaffirmation to the court during the colloquy that he had advised the appellant of his rights, and the extensive colloquy that took place in this case-convince this court that the

requirement of Twyman has been met and that the appellant pleaded guilty knowingly, voluntarily, and intelligently.").

But, as Anderson asserts, when the trial court reviewed the charges with Anderson, it told her that the range of punishment for the attempted murder charge was life imprisonment or imprisonment for a term between ten and ninety-nine years. (Supp. R. 3) It did not tell her that the weapon enhancement applied to those charges and that, as a result, the minimum sentence for those charges was twenty years. (Supp. R. 3) But, as discussed above, Anderson had previously been informed of the correct sentencing range via the Ireland forms. She signed those forms, thereby indicating that she understood the sentencing range, and she cites no authority to support the proposition that the trial court's misstatement during the guilty plea colloquy rendered the explanation given on the Ireland forms inadequate.[8] Thus, Anderson is not entitled to relief based on this claim.

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[8] Anderson does cite Riley v. State, 892 So. 2d 471 (Ala. Crim. App. 2004), in which this Court held that the fact that the appellant's attorney had advised him of the correct sentencing range did not render the trial court's failure to do so harmless. See Riley, 892 So. 2d at 475-76;

2. Despite the trial court's misstatement during the colloquy, Anderson knowingly and voluntarily pleaded guilty.

But even if the trial court's failure to inform Anderson about the applicability of the weapon enhancement somehow vitiated the fact that the Ireland form had advised her of the correct sentencing range, Anderson still would not be entitled to relief because she knowingly and voluntarily pleaded guilty. "The longstanding test for determining the validity of a guilty plea is 'whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.'" Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985)(citation omitted). See also Alderman v. State, 615 So. 2d 640, 644 (Ala. Crim. App. 1992)(holding same). In Trice v. State, 601 So. 2d 180, 183 (Ala. Crim. App. 1992), this Court stated:

> Before accepting a guilty plea, a trial judge "should undertake a factual inquiry to determine if the plea is voluntarily made with an understanding of the nature of the charge and the consequences of the plea." Cashin v. State, 428 So.2d 179, 182 (Ala.Cr.App.1982). The record of

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Appellant's Brief at 16-17. However, the requirements of Rule 14.4(a) are not satisfied by information a defendant's attorney gives him; they are, however, satisfied by the trial court's use and acceptance of an Ireland form. See Waddle, 784 So. 2d at 370; Ala. R. Crim. P. 14.4(d).

> the plea proceedings must affirmatively "reflect sufficient facts from which such a determination could properly be made." Dingler v. State, 408 So.2d 530, 532 (Ala.1981). While a trial court's inquiry on these matters need not follow "any particular ritual," the inquiry must be "sufficient to determine that the defendant understands the charges against him and the consequences of his plea, and that *the defendant's plea is truly voluntary*." United States v. O'Donnell, 539 F.2d 1233, 1235 (9th Cir.), cert. denied, 429 U.S. 960, 97 S.Ct. 386, 50 L.Ed.2d 328 (1976) (emphasis added).

This Court also said in Trice that "[a] plea must be voluntary both in that it 'constitute[s] an intelligent admission that [the defendant] committed the offense,' and in that it is 'free of coercion[.]'" Id. at 183 (internal citations omitted). Anderson does not allege that she was coerced into pleading guilty, so the only question remaining is whether her guilty pleas constituted "intelligent admission[s] that [she] committed the offense[s]." They did.

It is of course true that, "[i]n order for a guilty plea to be considered knowing and voluntary, the defendant must be properly advised of the minimum and maximum sentences possible." Pritchett v. State, 686 So. 2d 1300, 1304 (Ala. Crim. App. 1996). This Court has repeatedly held that "'"[t]he accused's right to know the possible sentence

[s]he faces is absolute,"' and 'the trial court's failure to correctly advise a defendant of the minimum and maximum sentences before accepting [her] guilty plea renders that guilty plea involuntary.'" McCary v. State, 93 So. 3d 1002, 1006 (Ala. Crim. App. 2011)(citations omitted). Accord White v. State, 4 So. 3d 1208, 1212, 1215 (Ala. Crim. App. 2008); Riley, 892 So. 2d at 475; White v. State, 888 So. 2d 1288, 1290 (Ala. Crim. App. 2004)(trial court's failure to advise the defendant of the applicability of the weapon enhancement required reversal); Gordon v. State, 692 So. 2d 871, 872 (Ala. Crim. App. 1996); Handley v. State, 686 So. 2d 540, 541 (Ala. Crim. App. 1996)(on return to remand); Peoples v. State, 651 So. 2d 1125, 1127 (Ala. Crim. App. 1994); Clemons v. State, 542 So. 2d 331, 332 (Ala. Crim. App. 1989); McClaren v. State, 500 So. 2d 1325, 1327 (Ala. Crim. App. 1986)("Even in the case of a negotiated plea, our higher courts require that the accused be informed of the correct range of maximum and minimum penalties.").

But in Trice, this Court took a somewhat different position. In that case, the trial court incorrectly informed the defendant of the minimum punishment applicable in his case. Trice, 601 So. 2d at 181-82. However, this

Court made a distinction between a trial court's giving the defendant incorrect information about the range of punishment and the trial court's failure to give the defendant any information about the range of punishment. Id. at 185. Because the trial court had misinformed Trice, and not completely failed to advise him regarding the range of punishment, this Court declined to follow the automatic reversal rule and held instead that, when the defendant is given sentencing misinformation, "the dispositive question is 'whether [he] was aware of actual sentencing possibilities, and, if not, whether accurate information would have made any difference in his decision to enter a plea.'"[9] Id. (Quoting Williams v. Smith, 591 F.2d 169, 172 (2d Cir. 1979)).

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[9] In Peoples, this Court, quoting Trice, stated that "we must reaffirm our earlier holding that '[w]here the trial court fails to apprise the defendant of both the maximum and minimum sentences, or either of the two, a reversal is automatically mandated.'" Peoples, 651 So. 2d at 1127 (quoting Trice, 601 So. 2d at 185). Anderson relies on this same quotation from Trice in her argument. (Appellant's Brief at 17) But the Peoples court misread Trice, and so has Anderson. To be sure, the quotation from Trice is accurate; but it has been taken out of context. In Trice, this Court did state that its prior practice had been to automatically reverse cases where the defendant was misinformed about the possible sentencing range. Trice, 601 So. 2d at 185. This was the source of the quote that this Court used in Peoples and that Anderson uses in her brief.

In addition to Trice, this Court has also considered the possibility that the trial court's giving the defendant misinformation about the minimum available sentence may not affect the voluntariness of her guilty plea. See Pritchett, 686 So. 2d at 1305 ("We do not foreclose the possibility that the state may be able to demonstrate . . . that

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See Peoples, 651 So. 2d at 1127; Appellant's Brief at 17. But after making the statement in question, this Court stated:

> That standard of automatic reversal has been applied by this Court to cases where the trial court incorrectly informed the defendant of the maximum and minimum penalties. Recently, however, we have espoused the view of several of the federal circuit courts:
>
> > "[W]here the defendant is given sentencing misinformation, the mere fact that he was given such misinformation
> >
> > > "'"does not end the matter. 'The standard was and remains whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.' North Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 160, 164, 27 L.Ed.2d 162, 168 (1970). *The dispositive issue ... is whether [the defendant] would have or would not have pleaded guilty had he been given the correct [information].* See Pitts v. United States, 763 F.2d 197, 201 (6th Cir.1985); Williams v. Smith, 591 F.2d 169 ([2nd Cir.] 1979)."'"

Trice, 601 So. 2d at 185 (emphasis in Trice, other citations and one footnote omitted).

despite any misinformation on the explanation of rights form, the appellant was properly informed and aware of the minimum sentence he faced upon conviction."). In fact, this possibility was realized in McDougal v. State, 526 So. 2d 897, 899 (Ala. Crim. App. 1988), a case similar to Anderson's. In McDougal, the defendant entered into a plea agreement with the State wherein he agreed to a fifteen-year sentence for the crime of assault in the first degree. McDougal, 526 So. 2d at 897-98. He subsequently challenged the voluntariness of his guilty plea in a petition for writ of error coram nobis on the ground that, due to his counsel's ineffectiveness, he was not informed of the correct minimum punishment for the assault charge. Id. at 898.

The trial court denied the petition. Id. at 897. In its written order, the trial court found that the range of punishment had been misstated on the Ireland form. Id. at 899. Specifically, the trial court found that the form incorrectly advised McDougal that the minimum punishment for the assault charge was ten years when it was actually two years. Id. at 898. But the trial court also found that the fifteen-year sentence to which McDougal agreed was the

minimum sentence to which the State would agree and that McDougal's attorney had made him aware of that fact. Id. at 898-99. The trial court also found that McDougal's counsel properly advised him about the sentencing range he would face if he were convicted by a jury. Id. at 898. Finally, the trial court found that the error on the Ireland form "'had no bearing on the defendant entering a guilty plea in [his case], and was harmless error, if anything[.]'" Id. at 899.

This Court affirmed the trial court's denial of McDougal's petition. Id. In the course of its opinion, this Court said, "[I]t appears that McDougal received exactly that for which he bargained. He should not now be permitted to complain because he has subsequently become dissatisfied." Id. Ultimately, that same principle is applicable in this case.

Indeed, the issue here is whether Anderson's guilty pleas to the attempted murder charges were voluntary. First and foremost, even the modicum of evidence that the State presented against Anderson during the trial of the capital murder charge was overwhelming. Because her guilt on all of the charges was clear, Anderson was facing certain

conviction on all four charges, and it was at least possible that the State could seek the death penalty for the capital murder charge. Presumably based on the strength of the State's evidence, Anderson agreed to plead guilty to the capital murder charge in exchange for the State's recommendation of a sentence of life without parole. (C. 677-78)

Once Anderson agreed to accept a sentence of life without parole for the capital murder charge, the sentences she faced on the attempted murder charges became largely irrelevant, as the length of those sentences would have no bearing on the overall length of her incarceration. Perhaps because of that fact, Anderson also agreed to plead guilty to the attempted murder charges in exchange for the district attorney's recommendation that she be sentenced to terms of life imprisonment on each charge. (C. 668-69)

Anderson then signed and initialed two separate plea agreements – one for the capital murder charge and one for the attempted murder charges – setting out the agreed-upon terms. (C. 668-69, 677-78) Thus, the plea agreement for the attempted murder charges explicitly set out what Anderson's sentences for those charges would be (if the trial court

accepted the plea agreement). (C. 668-69, 677-78) So, like the defendant in McDougal, Anderson knew exactly what her sentences would be when she pleaded guilty. See McDougal, 526 So. 2d at 898-99.

But now Anderson is asking this Court to find that her guilty plea to the attempted murder charges was involuntary, not because she did not understand what the consequences were, not because she did not freely choose to plead guilty, but because the trial court, after fully complying with the provisions of Rule 14.4(a)(1)(ii) by its use and acceptance of the Ireland form, made a mistake during the colloquy and did not tell her that the weapon enhancement applied in her case. (Appellant's Brief at 12-17) According to Anderson, the trial court's misstep, although it clearly had no effect on the voluntariness of her guilty plea, nevertheless rendered her plea involuntary. But the rule Anderson proposes – that her knowing and voluntary guilty plea was rendered involuntary because of what was essentially a clerical error – is a rule of Pharisaical rigidity, and its application in this case "would be a triumph of form over substance." Bank of

Anniston v. Farmers & Merchants State Bank of Krum, Tex., 507 So. 2d 927, 930 (Ala. 1987).

In this case, Anderson "received exactly that for which [she] bargained. [She] should not now be permitted to complain because [she] has subsequently become dissatisfied." McDougal, 526 So. 2d at 899. Indeed, because Anderson knowingly and voluntarily pleaded guilty and then got precisely what she bargained for, this issue, even if it were properly before this Court, is meritless.

B. Anderson's Claim That Her Guilty Plea Was Rendered Involuntary Because the Trial Court Failed to Inform Her That She Was Waiving the Right to Appeal by Pleading Guilty Is Meritless.

Anderson next claims that her guilty plea was not voluntarily entered because the trial court failed to inform her that she was waiving her right to appeal by pleading guilty as it was required to do by Rule 14.4(a)(1)(viii) of the Alabama Rules of Criminal Procedure. (Appellant's Brief at 18-21) However, for the reasons stated below, this claim fails.

First, the Ireland forms Anderson signed advised her that by pleading guilty, she was waiving her right to appeal unless she either: 1) reserved a particular issue or issue before pleading guilty (which she did not); or 2)

filed a timely motion to withdraw her plea and sought to appeal from the denial of that motion (she did not). (C. 671, 673, 675, 680) The trial court's use and acceptance of these forms, along with its subsequent colloquy with Anderson and her attorneys, satisfied the provisions of Rule 14.4(a)(1)(viii). See Waddle, 784 So. 2d at 370; Brown, 695 So. 2d at 154; Ala. R. Crim. P. 14.4(d). Thus, for this reason alone, this claim fails. Second, separate from the waivers inherent in the guilty pleas themselves, Anderson knowingly and voluntarily entered into two separate plea agreements with the State in which she waived her right to appeal from her attempted murder and capital murder convictions.[10] (C. 669, 678)

As the record shows, the trial court complied with the provisions of Rule 14.4(a)(1)(viii) by ensuring that Anderson was aware that she was waiving her right to appeal by pleading guilty, and Anderson knowingly and voluntarily waived that right, both in the plea agreements and in her guilty pleas. Moreover, for the reasons stated in sub-issue A above, the record establishes that Anderson voluntarily

[10] Anderson also told the trial court at sentencing that she understood that she was waiving her right to appeal when she pleaded guilty and that she had voluntarily chosen to waive that right. (R. 167-68)

pleaded guilty in exchange for sentences of life without parole for the capital murder charge and life imprisonment for the attempted murder charges (C. 668-69, 677-78), and she has "received exactly that for which [she] bargained." McDougal, 526 So. 2d at 899. For these reasons, Anderson's argument is meritless. Therefore, even if this issue were properly before this Court, Anderson would not be entitled to a reversal based on it.

C. Anderson's Claim That Her Guilty Pleas Were Rendered Involuntary by the Trial Court's Alleged Failure to Give Her an Opportunity to Comment on Her Attorneys' Performance Is Meritless.

Anderson next claims that her guilty pleas were rendered involuntary because the trial court did not afford her the opportunity to make a statement regarding the performance of her attorneys, which it was required to do by Rule 14.4(a)(3) of the Alabama Rules of Criminal Procedure. (Appellant's Brief at 22-23) Specifically, Rule 14.4(a)(3) requires the trial court to give "the defendant an opportunity to state any objections he or she may have to defense counsel or to the manner in which defense counsel has conducted or is conducting the defense." As the record shows, the trial court fully complied with this rule. Thus, this claim fails.

First, Anderson stated on all four Ireland forms that she was "satisfied with [her] attorney's services and his/her handling of my case [sic]." (C. 671, 673, 675, 680) Again, the trial court's use and acceptance of the Ireland forms, along with its subsequent colloquy with Anderson and her attorneys, was sufficient to satisfy Rule 14.4(a)(3). See Waddle, 784 So. 2d at 370; Brown, 695 So. 2d at 154; Ala. R. Crim. P. 14.4(d). Second, the trial court *did* ask Anderson during her guilty plea colloquy whether her attorneys had "done everything for [her], to this point, that [she had] asked them to do." (Supp. R. 3) In response, Anderson replied, "Yes." (Supp. R. 3) Thus, despite her claim to the contrary, the trial court did give Anderson an opportunity to comment on her attorneys' performance when she pleaded guilty.

For the above-stated reasons, Anderson's argument fails. Accordingly, even if this argument were properly before this Court, Anderson would not be entitled to a reversal based on it.

D. Anderson's Claim That Her Guilty Pleas Were Rendered Involuntary by the Trial Court's Alleged Failure to Determine That She Understood the Nature and the Material Elements of the Charges against Her Is Meritless.

Anderson next claims that her guilty pleas were not voluntary because the trial court did not ensure that she understood the nature and the material elements of the charges against her, which it was required to do by Rule 14.4(a)(1)(i) of the Alabama Rules of Criminal Procedure. (Appellant's Brief at 23-27) It is true that the trial court did not explain the nature and the elements of the offenses to Anderson during her guilty plea colloquy. (Supp. R. 2-11) However, the trial court was not required to do this, and, therefore, this claim fails.

Anderson specifically complains that the trial court erred because it did not explain the elements of capital murder and attempted murder to her. (Appellant's Brief at 23-27) She even goes so far as to claim that the trial court was required to inform her that:

> the elements of capital murder, in [her] case, were that, with the intent to cause the death of Gopi Podilla [sic], Adriel Johnson, and Maria Davis, she did intentionally cause the death of Gopi Podilla [sic], Adriel Johnson, and Maria Davis, by one act or pursuant to one scheme or course of conduct, and by shooting them with a firearm.

(Appellant's Brief at 24-25)

But Anderson is traveling under a misconception. Rule 14.4(a)(1)(i) does not require the trial court to explain the charges to a defendant, or list the elements of those charges, or set out in detail what evidence the State must present to prove those charges. It only requires that the trial court "determin[e] that the defendant understands . . . [t]he nature of the charge and the material elements of the offense to which the plea is offered[.]" Ala. R. Crim. P. 14.4(a)(1)(i). The record establishes that the trial court did just that.

First, Anderson stated on the Ireland forms that she understood "the charge or charges against" her (C. 671, 673, 675, 680), and the trial court's use and acceptance of the Ireland forms, along with its subsequent colloquy with Anderson and her attorneys, was sufficient to satisfy Rule 14.4(a)(1)(i). See Waddle, 784 So. 2d at 370; Brown, 695 So. 2d at 154; Ala. R. Crim. P. 14.4(d). Second, the trial court did not explain the elements of capital murder and attempted murder to Anderson during the guilty plea colloquy because Anderson clearly said that she understood the charges and did not need anything about them explained

to her. (Supp. R. 2) By declining to have the trial court explain the charges to her, Anderson invited the error about which she now complains, and for that reason alone, she is not entitled to relief. See Cochran v. State, CR-10-0516, 2012 WL 2481649, at *22 (Ala. Crim. App. June 29, 2012)("'A defendant cannot invite error by his conduct and later profit by the error.'")(Citation omitted).

Third, Anderson was, prior to the shootings, a professor of biology at the University of Alabama in Huntsville. See (R. 70-72, 80). She had served in that position for five years before the shootings. See (R. 70-73). In that position, "[s]he worked with several different people in the [Biology] Department, on different projects," and during her tenure application process, she published at least two academic papers. (R. 78, 80) She also discussed writing a grant proposal with Debra Moriarty shortly before the shootings. (R. 83) Furthermore, when Anderson pleaded guilty, she stipulated that she was mentally competent to stand trial - meaning that she had "a rational *as well as factual understanding* of the proceedings against [her]." Nicks v. State, 783 So. 2d 895, 909 (Ala. Crim. App.

1999)(citations and extra quotation marks omitted and emphasis added). See also (C. 765-69; R. 5).

Anderson is clearly an intelligent and educated woman who is capable of understanding complex concepts. She was also in complete control of her mental faculties when she entered her guilty pleas. It is, therefore, difficult to accept her apparent claim that the trial court should not have believed her when she said that she understood the straightforward allegations that she, "by one act or pursuant to one scheme or course of conduct, did intentionally cause the death of [three people] by shooting them with a firearm," and that she "did, with the intent to commit the crime of Murder . . . attempt to commit said offense by shooting [each of the three other victims] with a firearm[.]"(C. 16)

As Anderson personally told the trial court, she understood the charges against her. She knowingly and voluntarily chose to plead guilty to those charges. This claim fails.

E. Anderson's Claim That Her Guilty Plea to the Capital Murder Charge Was Rendered Involuntary Because She Was Required to Proceed to Trial on That Charge Despite Being Told That She Was Waiving Her Right to a Trial by Pleading Guilty Is Meritless.

Anderson next claims that her guilty plea to the capital murder charge was rendered involuntary because the trial court did not give her accurate information about whether she was waiving her right to a trial. (Appellant's Brief at 27-29) Specifically, Anderson complains because the trial court informed her that she was waiving her right to a jury trial by pleading guilty but that, despite that waiver, she still had to face trial on the capital murder charge. (Appellant's Brief at 27-29) Thus, Anderson claims that because she "was not provided accurate information, she was unable to make a voluntary, informed plea." (Appellant's Brief at 29) But like Anderson's other claims, this claim has no merit. Thus, even if this claim were properly before this Court, Anderson would not be entitled to a reversal based on it.

At the outset, the State notes that this claim relates only to Anderson's capital murder plea. Thus, regardless of the outcome of this claim, it should not affect her guilty pleas to the attempted murder charges. As for the claim

itself, it is meritless. As discussed above, Anderson knowingly and voluntarily entered into a plea agreement with the State. (C. 668-69, 677-78) She then knowingly and voluntarily pleaded guilty pursuant to that agreement. See (Supp. R. 2-11). She has offered nothing but a bare allegation of error to substantiate her claim that her guilty plea to the capital murder charge was rendered involuntary because a jury had to effectively ratify her guilty plea as required by § 13A-5-42 of the Code of Alabama. Absent more, this claim fails.

F. Anderson's Claims That Her Guilty Pleas Were Rendered Involuntary Because the Trial Court Failed to Inform Her That She Had the Right to Personally Confront the Witnesses Against Her and That She Had the Right to Have the Aid of Compulsory Process in Securing the Attendance of Any Witnesses That She Wanted to Testify Are Meritless.

In her final challenge to the voluntariness of her guilty pleas, Anderson claims that her pleas were rendered involuntary because the trial court failed to inform her that: 1) she had the right to personally confront the State's witnesses; and 2) she had the right to the aid of compulsory process in securing the attendance of any witnesses that she wanted to have testify at trial, both of which are notices required by Rule 14.4(a)(1)(vi) of the

Alabama Rules of Criminal Procedure. (Appellant's Brief at 29-30) However, these claims are meritless, and even if they were properly before this Court, Anderson would not be entitled to relief based on them.

Rule 14.4(a)(1)(vi) requires that, before the trial court accepts a defendant's guilty plea, it must ensure that she understands that she is waiving various rights associated with a trial. Among those rights are "the right to confront witnesses against [] her, the right to cross-examine witnesses or have them cross-examined in [her] presence, . . . and the right to have the aid of compulsory process in securing the attendance of witnesses[.]" Id. The record demonstrates that the trial court complied with this rule.

First, the transcript of Anderson's guilty plea colloquy shows that the trial court did tell Anderson that if she proceeded to trial, she "would be present with [her] lawyers and [she] could cross-examine all of the State's witnesses." (Supp. R. 6) Thus, Anderson's argument that the trial court failed to tell her during the colloquy that she had the right to personally confront the witnesses against her is factually incorrect.

Second, the Ireland forms, which Anderson signed, specifically told her that, if she proceeded to trial, she "would have the right to be present" as well as "the right to confront and cross-examine [her] accuser(s) and all the State's witnesses[.]" (C. 671, 673, 675, 680) The forms also informed her that she "would have the right to subpoena witnesses to testify on [her] behalf and to have their attendance in court and their testimony required by the court." (C. 671, 673, 675, 680) Anderson stated on each of the Ireland forms that she had read the form or had it read to her, that her "rights [had] been discussed with [her] in detail and fully explained," that she understood her rights, and that she understood the consequences of her guilty plea. (C. 671, 673, 675, 680)

Again, the trial court's use and acceptance of the Ireland forms, along with its subsequent colloquy with Anderson and her attorneys, was sufficient to satisfy Rule 14.4(a)(1)(vi). See Waddle, 784 So. 2d at 370; Brown, 695 So. 2d at 154; Ala. R. Crim. P. 14.4(d). Thus, despite Anderson's claims, she was properly informed of her rights to personally confront the State's witnesses and to have

the aid of compulsory process in securing the testimony of any witnesses that she wanted to testify.

Furthermore, for the reasons stated in sub-issue A above, the record establishes that Anderson voluntarily pleaded guilty in exchange for sentences of life without parole on the capital murder charge and life imprisonment on the attempted murder charges. (C. 668-69, 677-78) She "received exactly that for which [she] bargained. [She] should not now be permitted to complain because [she] has subsequently become dissatisfied." McDougal, 526 So. 2d at 899.

Because the trial court complied with the provisions of Rule 14.4(a)(1)(vi), and because Anderson knowingly and voluntarily pleaded guilty, her argument fails. Therefore, even if this issue were properly before this Court, Anderson would not be entitled to a reversal based on it.

G. Anderson Is Simply Not Entitled to a Reversal Based on Her Challenges to the Voluntariness of Her Guilty Pleas.

In the end, Anderson's challenges to her guilty pleas are simply without merit. Despite Anderson's claims to the contrary, the trial court complied with the provisions of Rule 14.4(a) in all respects. More importantly, the reason

Rule 14.4(a) exists is to ensure that a defendant who pleads guilty does so knowingly and voluntarily. The record establishes that Anderson did, in fact, knowingly and voluntarily plead guilty. For these reasons, even if Anderson's arguments were properly before this Court, she would not be entitled to a reversal based on them.[11]

Nevertheless, the State notes that, should Anderson ultimately prevail in this appeal and be allowed to withdraw her guilty pleas, she will be required to stand trial for both the attempted murder and capital murder charges, and she will once again run the risk of being subjected to the death penalty. See Ala. R. Crim. P. 14.4(e)("Upon withdrawal of a guilty plea, the charges against the defendant as they existed before any amendment, reduction, or dismissal made as part of a plea agreement shall be reinstated automatically.").

[11] It is also worth noting again that this is the first time Anderson has challenged the voluntariness of her guilty pleas. As such, "[t]he tardiness of [her] claim[s] reflect[] upon [their] good faith, sincerity, and credibility." Sanders v. State, 414 So. 2d 482, 484 (Ala. Crim. App. 1982)(addressing the defendant's claim that she was incompetent to enter her guilty plea, which was not raised until three weeks after she pleaded guilty).

IV. Anderson's Claim That The Trial Court Exceeded Its Authority When It Sentenced Her Because It Did Not Give Her Information About Her Right To Appeal Is Meritless.

Finally, Anderson claims that the trial court failed to comply with the provisions of Rule 26.9(b)(4) of the Alabama Rules of Criminal Procedure at sentencing because it did not inform her of her right to appeal. (Appellant's Brief at 20-21) Particularly, Anderson claims that the trial court "did not inform [her] that she could appeal by first filing a motion to withdraw her guilty plea." (Appellant's Brief at 21) But Anderson's reading of Rule 26.9(b)(4) is incorrect, and the trial court was not required to inform her what she needed to do to appeal. Indeed, in this case, Anderson had no right to appeal, and the trial court was not required to inform her otherwise. Therefore, this claim fails.

Rule 26.9(b)(4) does require the trial court to inform a defendant of her right to appeal when it pronounces sentence. However, in cases like this, where the defendant has pleaded guilty:

> the court shall advise the defendant of his or her right to appeal *only* in those cases in which the defendant (i) has entered a plea of guilty, but before entering the plea of guilty has expressly reserved his or her right to appeal with respect to a particular issue or issues, or (ii) has

> timely filed a motion to withdraw the plea of guilty and the motion has been denied, either by order of the court or by operation of law.

Ala. R. Crim. P. 26.9(b)(4)(emphasis added).

Contrary to Anderson's argument, Rule 26.9(b)(4) does not require the trial court, in any case, to inform a defendant that she "could appeal by first filing a motion to withdraw her guilty plea." Accordingly, the trial court did not err by failing to tell Anderson what she needed to do to be able to appeal.

Furthermore, in this particular case, Rule 26.9(b)(4) did not require the trial court to inform Anderson that she had any right to appeal at all. When Anderson pleaded guilty, she did not reserve any issues for appeal. See (Supp. R. 2-11). Likewise, at the time of sentencing, Anderson had not filed a motion to withdraw her guilty plea, much less had such a motion denied. Thus, because Anderson had not satisfied either of the two conditions set out in Rule 26.9(b)(4) at the time of sentencing, the trial court was not required to inform her that she had any right to appeal.

Finally, beyond the rule and its requirements, the fact remains that Anderson waived her right to appeal as part of

her plea agreements with the State. (C. 669, 678) In light of that fact, it would have made no sense for the trial court to inform Anderson that she had a right to appeal.

For the foregoing reasons, Anderson's argument fails. Thus, even if this argument were properly before this Court, Anderson would not be entitled to a reversal based on it.

CONCLUSION

Because Anderson waived her right to appeal as part of the plea agreements she made with the State, this Court should dismiss her appeal. But even if this Court should determine that Anderson's appeal is properly before it, it should affirm her convictions and sentences for the reasons stated above.

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By:

/s/ Michael G. Dean
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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of March, 2013, I electronically filed the foregoing and served a copy on counsel for the Appellant by e-mail, or by placing the same in the United States mail, first-class postage prepaid, and addressed as follows:

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