

1 during the recess I reviewed the exhibits and I
2 would like to wind this case up now. If you've
3 got another case you want me to read, I'll be glad
4 to read it. We'll take a recess, and I don't know
5 how long it will take me to announce my decision.

6 MR. HARMAN: I am confident the Court has
7 reviewed the law; I would suggest that the Court
8 consider the case of Miller vs. State of Missouri.
9 That's found in 498 S.W. 2d 779.

10 (Closing arguments were off
11 the record.)

12 FINDINGS OF FACT AND CONCLUSIONS OF LAW

13 BY JUDGE CONNETT:

14 The Court has reviewed its notes from the
15 first hearing, and the Court has looked at the
16 exhibits. It has made a cursory examination of
17 the hospital records. I haven't thoroughly analyzed
18 them all; but I don't think it's necessary to make
19 the decision in this case.

20 The Court is now going to pronounce the find-
21 ings of fact and conclusions of law in this case.
22 (I have instructed the court reporter to transcribe
23 this so it will be in the file; and the attorney
24 for the Movant and attorney for the State will have
25 a copy after the decision has been made.)

1 The Court finds that the defendant in this
2 case pleaded guilty to capital murder in this Court
3 before the Honorable Fred Schoenlaub on April 10,
4 1981. This plea of guilty was the result of a
5 bargain between the State and the defendant through
6 her attorney. The State promised to waive the
7 death penalty, and the State did waive it; the plea
8 bargain was carried out.

9 The Court finds from the petition to plead
10 guilty, State's Exhibit 15, and the transcript of
11 the plea proceedings (and I don't know what the
12 exhibit number was, and I couldn't find it while I
13 was working back there, but I think there's no
14 question what transcript we're referring to) that
15 the defendant was fully aware of the charge and
16 the minimum and maximum penalties provided by law.
17 Her right to plead guilty or not guilty. Her right
18 to trial by jury with the assistance of counsel.
19 Her right to confront and cross-examine the witness
20 against her; and that by pleading guilty she
21 waived her right to such a trial. That, in fact,
22 she was aware of her right to seek a change of
23 venue.

24 The Court further finds that Judge Schoenlaub
25 fully examined defendant personally and determined

1 that there was a factual basis for her plea before
2 accepting it.

3 From this record and the testimony presented
4 before this Court, the Court finds that Movant was
5 informed and fully aware of all her constitutional
6 rights including those included in the phrase of
7 "Due process of law;" however, if Movant did not
8 have the effective assistance of counsel at that
9 time then she cannot be said to have voluntarily
10 pleaded guilty even though the record so shows she
11 did.

12 The test to determine whether or not her
13 counsel was ineffective in the guilty plea pro-
14 ceeding is set out in the case of Ragan vs. State,
15 595 S.W. 2d 734. The Movant must prove that her
16 counsel was ineffective and that this ineffective-
17 ness in turn rendered her guilty plea involuntary;
18 and that she was prejudiced by his ineffectiveness.

19 The Movant alleges in this case that her at-
20 torney was ineffective by: 1) He failed to
21 advocate appropriate defenses. 2) Failed to fully
22 investigate the case. 3) Failed to file the ap-
23 propriate motions. 4) Failed to be more than a
24 bargaining agent.

25 On these issues the Court finds that the

1 defendant's attorney was not a mere plea bargaining
2 agent, and that the facts in this case come nowhere
3 near those in State vs. Hall, 496 S.W. 2d 300. The
4 Court finds Movant's attorney did fully investigate
5 this case in order to determine what course of
6 action would be best for his client.

7 The Court finds that her attorney could have
8 advocated the use of the defense of not guilty by
9 reason of mental disease or defect; however, counsel
10 was not unaware of this possibility and deliberately
11 chose not to do so. Certainly, he cannot be
12 faulted for this decision. This would have been a
13 jury question on which the defendant would have had
14 the burden of proof. If it failed defendant was
15 exposed to the death penalty or the Movant was
16 exposed to the death penalty -- excuse me. If she
17 had gone to trial on that defense she would have
18 lost her bargaining position.

19 The Court now comes to the application of the
20 principles of Miller vs. State, 498 S.W. 2d 779.
21 This case holds that where defendant's attorney
22 has an honest belief his client lacks present
23 capacity for rational understanding and cooperation
24 that he must ask the Court for an adjudication by
25 the Court of the issue of such capacity.

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1 The Court concludes that the term "present
2 capacity" refers to his client's capacity at the
3 time of the decision to plead guilty, and at the
4 time of the plea itself. The Court concludes that
5 this case, the Miller case, does not apply to the
6 issues of whether or not defendant was mentally
7 competent at the time of the crime.

8 The Court considers and finds Mr. Sullivan's
9 testimony to mean that he thought his client might
10 have been suffering from a mental disease or defect
11 which would exclude her responsibility for her con-
12 duct at the time of the crime. Mr. Sullivan did
13 not say anything which would cause the Court to
14 believe that he thought or suspected his client had
15 a mental disease or defect which would cause her to
16 lack capacity to understand the proceedings against
17 her or assist him in her defense. Nor is the Court
18 able to find anything in this record which the
19 Court believes would give Mr. Sullivan reason to
20 believe Movant was in such a condition when she
21 decided to and did plead guilty; in fact, the
22 contrary appears. Defendant's attorney talked to
23 her many times and he investigated her stories at
24 the time she pleaded guilty.

25 When she discovered that Judge Schoenlaub was

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not going to accept her plea but would require her to go to trial she then related the facts of the case; and the State stated that such statement matched the State's evidence.

The Court concludes that the Movant's plea of guilty was voluntary and not the result of ineffective assistance of counsel; and there was then and now no evidence suggesting that Movant was not competent to understand the proceedings against her and assist her attorney at the time of the plea of guilty. Her motion to set aside her plea of guilty is denied and defendant is remanded to the Department of Corrections.

THE COURT: Does anyone have any motions at this time?

MR. HANMAN: Nothing from the Movant at this time.

THE COURT: Court will be at recess.

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