

No. \_\_\_\_\_  
\_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

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BRANDON MORAGNE-EL- PETITIONER

vs.

SUPERIOR COURT OF PENNSYLVANIA- RESPONDENT

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ON PETITION FOR A WRIT OF CERTIORARI TO  
SUPERIOR COURT OF PENNSYLVANIA

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PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Does the denial of the Petitioner's Motion to Withdraw his Guilty Plea contradict Precedent case law from the Superior Court of Pennsylvania, the Supreme Court of Pennsylvania, and the Supreme Court of the United States? Other Defendants have been allowed to withdraw their pleas for the same exact reason... is the Petitioner's case any different?

## **LIST OF PARTIES**

- All parties appear in the caption of the case on the cover page.
- All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

OPINIONS BELOW

The opinion of the Superior Court of Pennsylvania appears at Appendix C to the petition and is unpublished.

## JURISDICTION

The date on which the highest state court decided my case was April 17, 2018. A copy of that decision appears at **Appendix B**.

A 'Petition for Writ of Certiorari' was filed to the United States Supreme Court on June 26, 2018.

This 'Petition for Writ of Certiorari' was returned to the Petitioner on June 27, 2018.

A 60-day extension to file this Petition was granted pursuant to Rule 14.5 (see **Appendix D**).

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- The 14th Amendment to the United States Constitution:

— ..." Nor shall any state deprive any person of life, liberty, or property, without Due Process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

- Pennsylvania Rule of Criminal Procedure 591

Rule 591. Withdrawal of Plea of Guilty or Nolo Contendere

(a) At any time before the imposition of sentence, the court may, in its discretion, permit, upon motion of the defendant, or direct, *sua sponte*, the withdrawal of a plea of guilty or nolo contendere and the substitution of a plea of not guilty.

## STATEMENT OF THE CASE

1. On September 8, 2016, the Petitioner pled guilty in Case No. 2221-2014 to Possession of a Controlled Substance. He admitted to the charge, but was never questioned during his written or oral colloquy about his RRRI eligibility or requirements. (RRRI is a program in the Pennsylvania Prison System where participants could potentially receive 16.6% - 25% less of their ordered sentence.)
2. On September 15, 2016, before sentencing, the Petitioner made an oral motion to withdraw his guilty plea. His reasons for withdrawing his guilty plea were his assertion of innocence, and his belief that he would be RRRI eligible, when in fact he wasn't.
3. On October 3, 2016, the Petitioner's motion was denied and on October 5, 2016, without the Defendant even being present, he was sentenced to 7-14 years imprisonment.
4. On October 31, 2016, the Petitioner timely filed his Notice of Appeal to the Superior Court of Pennsylvania.
5. The Superior Court of Pennsylvania affirmed the judgement of sentence by a memorandum decision filed October 27, 2017. (see Appendix A). (Opinions and Dissent are on Appendix C).
6. The Petitioner timely filed his Petition for Allowance to Appeal to the Supreme Court of Pennsylvania on
7. The Supreme Court of Pennsylvania denied this Petition for Allowance of Appeal on April 17, 2018.
8. The Petitioner filed a Writ of Certiorari to the United States Supreme Court on June 26, 2018. This Petition was returned, and a 60-day extension was granted on June 27, 2018 pursuant to Rule 14.5.

## REASONS FOR GRANTING THE PETITION

The trial court and the Superior Court of Pennsylvania affirmed the denial of the Petitioner's Motion to Withdraw his Guilty Plea based on the fact that by asserting his innocence, it contradicts the Petitioner's admission of guilt during his guilty plea. The Honorable Eugene B. Strassburger, III, of the Superior Court agrees that the trial court and The Superior Court erred in denying the Petitioner's motion.

In Judge Strassburger's dissenting memorandum (see **Appendix C**), he correctly points out that the Superior Court recently reaffirmed that "a defendant's participation in a guilty plea may not be used to negate his later assertion of innocence when seeking to withdraw" in Commonwealth v. Islas, 156 A.3d 1185, 1191 (Pa. Super. 2017) (citing Commonwealth v. Katonka, 33 A.3d 44, 49 (Pa. Super. 2011)).

"[B]ecause 'it is necessary for a criminal defendant to acknowledge his guilt during a guilty plea colloquy prior to the court's acceptance of a plea, such an incongruity will necessarily be present in all cases where an assertion of innocence is the basis for withdrawing a guilty plea'." *Id.* (quoting Katonka, 33 A.3d at 49). Using a defendant's admissions of guilt against him when he seeks to withdraw his plea prior to sentencing based on a claim of innocence "would convert the liberal- allowance standard into a rule of automatic denial." *Id.* Thus, when determining that the Petitioner's Motion to Withdraw his Guilty Plea should be denied, the Majority and the trial court should not have relied upon the contradiction between his acknowledgement of guilt at the plea colloquy and his later assertion of innocence when seeking to withdraw his plea.

The second reason why the Petitioner should have been allowed to withdraw his guilty plea is because when stating why he wished to withdraw this plea, he said on the record that he was confused about his RRRI eligibility requirements. Judge Strassburger further agrees that this is another reason why the Petitioner should have been allowed to withdraw his plea. He argues that the Majority "summarily dismisses this reason without explanation" despite the "[Superior Court] having recognized previously that 'the failure to discuss or raise the issue of RRRI may also be a fair and just reason' to permit a plea withdrawal" in Commonwealth v. Pardo, 435 A.3d 1222, 1224 n.4 (Pa. Super. 2011).

There was no questioning to the Petitioner during his oral or written colloquy regarding his RRRI eligibility, so there is no indication in the record whether the Petitioner understood the meaning of RRRI prior to pleading guilty. By the Petitioner being confused about the consequences of his plea, this plea was not made knowingly and intelligently. "A guilty plea operates as a waiver of important rights, and is valid only if done voluntarily, knowingly, and intelligently, with sufficient awareness of the relevant circumstances and likely consequences." Bradshaw v. Stumpt, 545 U.S. 175, 183, 125 S.Ct. 2398, 162 L.Ed 2d 143 (2005).

The "knowing, voluntary and intelligent" standard of a guilty plea "requires the defendant to 'be advised of and understand the direct consequences of a plea'". Gov't of the V.I. v. Greenaway, 379 Fed. Appx. 247, 250 (3d. Cir. 2010). In the case at hand, the Petitioner's decision to plead guilty was not done knowingly and intelligently because his comments solidify that he was not aware of the direct consequences of his plea.

The Supreme Court of the United States "explicitly included 'the permissible range of sentences' as one of the factors that defendants must be aware of before pleading guilty". Jamison v. Klem, 544 F.3d 266, 277 (3d. Cir. 2008). In the Petitioner's case, his comments prove that he was clearly under the assumption that he was RRRII eligible, and that the consequences of his plea would be a shorter sentence as opposed to someone who was not RRRII eligible.

The decision of the trial court and the Majority is erroneous because it does not follow the Precedent of Supreme Court cases that have resolved this same issue in a fair and constitutional manner. When stating why he wished to withdraw his plea, the Petitioner asserted his innocence, as well as explained to the Court that he was not aware of the direct consequences of his plea, as it was made 'unknowingly', and 'unintelligently'.

## CONCLUSION

For the foregoing reasons the Petition for a Writ of Certiorari should be granted.

Respectfully Submitted,



BRANDON MORAGNE-EL

JULY 4, 2018