

Supreme Court, U.S.  
FILED

SEP 21 2017

OFFICE OF THE CLERK

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

---

IN THE  
SUPREME COURT OF THE UNITED STATES

---

KEITH FREMIN

PETITIONER

VS.

STATE OF LOUISIANA

RESPONDENT(S)

---

ON PETITION FOR A WRIT OF CERTIORARI TO  
FIFTH CIRCUIT COURT OF APPEAL, STATE OF LOUISIANA  
DOCKET NO. 16-30915

PETITION FOR WRIT OF CERTIORARI

---



KEITH FREMIN  
RAYBURN CORRECTIONAL CENTER  
27268 HWY 21 N  
ANGIE, LOUISIANA 70426

### **QUESTIONS PRESENTED**

Whether the 22<sup>nd</sup> Judicial District Court failed to uphold the plea agreement in exchange for a guilty plea?

Whether Counsel for the Petitioner was ineffective, by allowing the Petitioner to enter a guilty plea and have him castrated in exchange for good time, knowing this promise could not be fulfilled?

---

---

**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:

---

## TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE .....	4
REASONS FOR GRANTING THIS PETITION .....	5-13
CONCLUSION .....	13
PROOF OF SERVICE .....	14
APPENDIX .....	15

---

## **TABLE OF AUTHORITIES CITED**

<b><u>CASE</u></b>	<b><u>PAGE NUMBER</u></b>
680 F.3d 1243, U.S. v. Oakes, (C.A.10 (Okla.) 2012) .....	5
United States v. Stemm, 847 F.2d 636, 637 (10th Cir.1988) .....	5
States v. Werner, 317 F.3d 1168, 1170 (10th Cir.2003) .....	5
Santobello v. New York, 404 U.S. 257, 263, 92 S. Ct. 495, 30 L.Ed.2d 427 (1971) .....	5,6
Allen v. Hadden, 57 F.3d 1529, 1534 (10th Cir.1995).....	5
643 F.3d 209, U.S. v. O'Doherty, (C.A.7 (Ill.) 2011) .....	6
U.S. Court of Appeal, Fifth Circuit has held int 722 F.3d 257.....	6
U.S. v. Long, (C.A.5 (Tex.) 2013) .....	6
United States Supreme Court has held in 92 S. Ct. 495, 404 U.S. 257 .....	6
Moore v. Michigan, 355 U.S. 155, 78 S.Ct. 191, 2 L.Ed.2d 167 (1957) .....	6
Lynch v. Overholser, 369 U.S. 705, 719, 82 S. Ct. 1063, 1072, 8 L.Ed.2d 211 (1962);	6
State v. Louis, 645 So. 2d, 1144 (La. 1994).....	8
State v. Dixon, 449 So. 2d 463, 464 (La. 1984).....	9
State v. Lewis, 421 So.2d 224, 226 (La.1982) .....	9

## **STATUTES AND RULES**

Louisiana Revised Statute 14:42.1 .....	4
to Louisiana Revised Statute 14:81.1 .....	4
Louisiana Revised Statute 15:574.4 A (1).....	4
Fed. Rule Crim. Proc. 11.....	6
LSA-R.S.15:538 (A) (1) .....	8
La. C.C. Art. 1966 .....	8
La. C.C. Art. 1968 .....	8
La. C.C. Art. 2030 .....	8

## **OTHER**

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

Petitioner respectfully prays that a writ of certiorari be issued to review the judgment below.

**OPINIONS BELOW**

☐ For cases from **federal courts**:

The opinion of the United States Court of Appeals appears at Appendix “A” to this petition and is:

☒ reported at 16-30915 or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States District Court appears at Appendix “B” to this petition and is:

☐ reported at 16-2951 “Section A (3); or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court, Louisiana Supreme Court, to review the merits, appears at Appendix “C” to the petition and is:

☒ reported at 2010-KP-0954; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the First Circuit Court of Appeal appears at Appendix “D” to the petition and is:

☐ reported at 2014 KW 1218; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was June 2017. .

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals, Fifth Circuit on the following date: August 7, 2017, and a copy of the order denying rehearing appears at Appendix E.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_\_ A-\_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided the case was Nov. 24, 2010. A copy of that decision appears at Appendix "F".

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix "\_\_\_\_".

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_\_ A-\_\_\_\_\_.

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

### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

- VI and XIV Amendment of the United States Constitution – Counsel for the Petitioner failed to have the plea agreement rendered by the 22<sup>nd</sup> Judicial District Court, Parish of St. Tammany, State of Louisiana adhered to.
- VIII Amendment of the United States Constitution, State coerced Petitioner into entering a plea of guilty and offered him good time and parole if he would castrate himself, and petitioner is currently castrated and the State failed to fulfill their promise.



## STATEMENT OF THE CASE

Petitioner was charged in and for the Parish of St. Tammany, 22<sup>nd</sup> Judicial District Court by an amended Bill of Indictment to Louisiana Revised Statute 14:42.1 Forcible rape, two (2) counts, and to Louisiana Revised Statute 14:81.1 Molestation of a Juvenile, two (2) counts.

After Petitioner's arraignment, a **plea of not guilty** and format proceedings, Petitioner was before the Honorable Court, on July 12, 2005, to withdraw his former plea of **not guilty** in exchange for a **plea of guilty**. Petitioner was subsequently sentenced to 25 years at hard labor for the **amended** charge of Forcible Rape Louisiana Revised Statute 14:42.1 and 15 years at hard labor for the charge of Molestation of a Juvenile Louisiana Revised Statute 14:81.2 in exchange for the agreement of the amended charges and good time of 12 ½ years good-time as led to believe by defense counsel, plus the special programs offered by DPSC at Elaine Hunt Correctional Center.

Petitioner entered into a plea agreement with the State in the Parish of St. Tammany, 22<sup>nd</sup> Judicial District Court, and in exchange for that plea and the surgical castration, as condition(s) thereof, the Appellant would enter that plea to the amended charge(s) and as a result, he would become parole eligible under Louisiana Revised Statute 15:574.4 A (1).

The plea agreement to this day has not been honored by the State.

## REASON FOR GRANTING THIS PETITION

CONFLICTING DECISIONS. THE DECISION OF THE FIFTH CIRCUIT COURT OF APPEAL, AND THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA CONFLICTS WITH THE TENTH CIRCUIT COURT OF APPEAL AND SEVENTH CIRCUIT COURT OF APPEAL AND THE SUPREME COURT OF THE UNITED STATES, ON THE SAME LEGAL ISSUE.

The legal issue involved in this case is whether a plea agreement promised in exchange for a guilty plea should be fulfilled.

U.S. Court of Appeal, Tenth Circuit held in *680 F.3d 1243, U.S. v. Oakes, (C.A.10 (Okla.) 2012)*, Plea bargains cannot be "unilaterally broken with impunity or without consequence." *United States v. Stemm, 847 F.2d 636, 637 (10th Cir.1988)*. Any promises the government makes in a plea agreement "must be fulfilled to maintain the; 1223; 1223 integrity of the plea." *United States v. Werner, 317 F.3d 1168, 1170 (10th Cir.2003)*. Accordingly, when the government breaches a plea agreement, this court remands for one of two possible remedies: specific performance by the government or withdrawal of the defendant's guilty plea. *Santobello v. New York, 404 U.S. 257, 263, 92 S. Ct. 495, 30 L.Ed.2d 427 (1971)*; *Allen v. Hadden, 57 F.3d 1529, 1534 (10th Cir.1995)*. The former remedy is sometimes described as resentencing, and typically occurs before a different judge. *See, e.g., Santobello, 404 U.S. at 263, 92 S. Ct. 495.*

Also held in U.S. Court of Appeal, Tenth Circuit *680 F.3d 1243, U.S. v. Oakes, (C.A.10 (Okla.) 2012)* Ensuring that a defendant receives specific performance or rescission following a breach is therefore essential to "preserv[ing] the integrity of the criminal justice process, and the public's faith in its integrity." *Id.* at 1204.

U.S. Court of Appeal, Seventh Circuit has held in *643 F.3d 209, U.S. v. O'Doherty, (C.A.7 (Ill.) 2011)*, The Court of Appeals interprets the terms of a plea agreement according to the parties' reasonable expectations and construe any ambiguities against the government, and in favor of the defendant.

*U.S. Court of Appeal, Fifth Circuit has held int 722 F.3d 257, U.S. v. Long, (C.A.5 (Tex.) 2013)*; If the government breaches a plea agreement, the defendant is entitled to specific performance of the agreement with sentencing by a different judge.

*United States Supreme Court has held in 92 S. Ct. 495, 404 U.S. 257, Santobello v. New York, (U.S.N.Y. 1971)* However, all of these considerations presuppose fairness in securing agreement between an accused and a prosecutor. It is now clear, for example, that the accused pleading guilty must be counseled, absent a waiver. *Moore v. Michigan, 355 U.S. 155, 78 S.Ct. 191, 2 L.Ed.2d 167 (1957)*. *Fed. Rule Crim. Proc. 11*, governing pleas in federal courts, now makes clear that the sentencing judge must develop, on the record, the factual basis for the plea, as, for example, by having the accused describe the conduct that gave rise to the charge. The plea must, of course, be voluntary and knowing and if it was induced by promises, the essence of those promises must [404 U.S. 262] in some way be made known. There is, of course, no absolute right to have a guilty plea accepted. *Lynch v. Overholser, 369 U.S. 705, 719, 82 S. Ct. 1063, 1072, 8 L.Ed.2d 211 (1962)*; *Fed. Rule Crim. Proc. 11*. A court may reject a plea in exercise of sound judicial discretion.

This phase of the process of criminal justice, and the adjudicative element inherent in accepting a plea of guilty, must be attended by safeguards to insure the defendant what is reasonably due in the circumstances. Those circumstances will vary, but a constant factor is that when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.

Wherefore the decision rendered by the U.S. Court of Appeal and the United States District Court, Eastern District of the State of Louisiana, conflicts with the decision of Santobello, rendered by this Honorable Court..

Petitioner in the case sub judice learned that his plea bargain was impossible to fulfill after the PETITIONER WAS MISLED BY ALL PARTIES of the Court; Judge; Prosecutor; and Defense Counsel. He was led to believe by his defense counsel, that he would receive parole eligibility (credit for time served) after serving twelve and a half (12½) years of the twenty - five (25) years imposed at sentencing. Petitioner was also led to believe by the court, he would receive good time and parole benefits as well.

The Courts have held that a defendant's due process is denied when the State fails to comply with the material representation or promise, which induced defendant's plea. Despite the fact that the plea is impossible to fulfill, the Court still assured the Petitioner that he would receive eligibility for parole but only as a condition of him taking the plea and executing the surgical castration (Bilateral Orchiectomy) as a condition of that plea, which those conditions are simply shocking to the reasonable man; but under the threat of a life sentence the Appellant reluctantly, after a session of heartbreaking counseling with his wife and his attorney, accepted the plea agreement.

LSA-R.S.15:538 (A) (1) states and more specifically **Subsection (C) (8)** in pertinent part:

**A. (1) No sexual offender, whose offense involved a minor child, shall be eligible for probation, parole, or suspension of sentence unless, as a condition thereof, the sexual offender is prohibited from engaging in any business activity which provides goods, services, instruction, or care to and requires the offender to engage in a significant amount of direct contact with minor children.**

**C. (8) if an offender voluntarily undergoes a permanent, surgical alternative to hormonal chemical treatment for sex offenders, he shall not be subject to the provisions of this Subsection.**

The Louisiana Supreme Court generally refers to the Rules of Contract Law for application by analogy in determining conditional plea agreements. See *State v. Louis*, 645 So. 2d, 1144 (La. 1994). Under the Civil Code, “An obligation cannot exist without a lawful cause.” La. C.C. Art. 1966. Therefore, “The cause of an obligation is unlawful when enforcement of the obligation would produce a result prohibited by law or against public policy.” La. C.C. Art. 1968.

The contract cannot exist under Article 1966, and is an absolute nullity and impossible to fulfill under La. C.C. Art. 2030, which provides, in pertinent part:

**“... A contract is null when it violates a rule of public order, as when the object of the contract is illicit or immoral. A contract that is null may not be confirmed. Absolute nullity may be invoked by any person or may be declared by the court on its own initiative.”**

It is well settled that a guilty plea is constitutionally infirm when a defendant is induced to enter that plea by a plea bargain and that bargain is not kept. *State v. Dixon*, 449 So. 2d 463, 464 (La. 1984).

The Court allows two alternatives to remedy a breached plea bargain. In this case, the Defendant seeks to have the plea set aside for further hearings, because the plea bargain cannot be enforced in the manner the judge and the counsel for the defense intended for it to be, nor is it the plea agreement the Defendant understood it to be. Therefore, Defendant's plea cannot be characterized as knowingly and voluntary, contrary to what some want this Honorable Court to believe.

In *Dixon, supra*, a guilty plea is constitutionally infirm when it is not entered freely and voluntarily, if the *Boykin colloquy* was inadequate, or when a defendant is **induced to enter the plea by a plea bargain or what he justifiably believes was a plea bargain and that bargain is not kept**. *State v. Lewis*, 421 So.2d 224, 226 (La.1982).

In the instant matter, the Trial Court Judge over stepped his Judicial Authority and violated the Laws of the State of Louisiana by ordering the Appellant to submit to a procedure that is not authorized by the Legislature of the State of Louisiana. The moment the Trial Court Judge ordered this radical procedure as a condition of a plea agreement, that procedure **was no longer a voluntary measure.**

The enforcement of this immoral and criminal act has done irreparable harm to the Appellant, by maiming, disfiguring, and degrading the dignity of the Appellant, and in reality, this has totally destroyed the Appellant's identity as a man not to mention subjecting the Appellant to the cruel and unusual punishment before he was found guilty of a crime.

The Appellant must now take vast amounts of medication to offset the disease Osteoporosis normally known as a “woman’s disease,” that is the most common metabolic bone disease in women. This complication is enhanced by the lack of the male hormone Testosterone which promotes male characteristics and male behavior. Testosterone, and natural growth hormone, also promotes growth of the bony skeleton, tragically, the lack thereof increases the Appellant’s chances of contracting prostate cancer. The order of the Trial Court Judge has placed the Appellant in a position of severe health complications for which the Court should be held civilly and criminally liable.

With these heinous acts of injustice and subjecting the Appellant to the cruel and unusual punishment, along with the total disregard pertaining to the Appellant’s Constitutional Rights guaranteed in the United States Constitution’s Bill of Rights by the; 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup> Amendments, the lower courts both State and Federal have failed to right the wrongs and have overlooked those wrongs that were done to the Appellant by denying him his rights under the United States Constitution.

## **ISSUE PRESENTED**

### **#2**

According to the United States Supreme Court, the right to assistance of counsel does not mean that an attorney is present at his client's trial just to be a warm body in the court; it means an effective assistance is required by the 6<sup>th</sup> Amendment of the United States Constitution. Furthermore, a defendant in a criminal proceeding can be reasonably certain that the defense counsel will advise him or her and protect the right afforded to their client by using their expertise and knowledge of the law to ensure the protections for their clients.

In this particular case, the defense counsel advised his client to accept a plea agreement under the conditions set forth by the Trial Court, knowing full well that the plea agreement his client was pleading too, was nothing more than that defense attorney's opinion.

The Transcript testimony by Defense Counsel, Ralph Whalen, in the Evidentiary Hearing clarifies the promise made to the Petitioner also proves the claim of the gross ineffective assistance of counsel, to wit:

#### **EXAMINATION BY MR. BURKE:**

**Q:** Do you recall when Mr. Fremin initially pled guilty, that the sentence, the agreed-upon sentence was not imposed? Do you recall that?

**A:** No, not specifically, I wouldn't dispute that, but I just don't recall.

**Q:** Do you recall when Mr. Fremin talked to you about good time and you advised that he would be out in twelve and half years?

**A:** Yes, I do.

\*\* (Next question is objected to by the State and sustained by the Court and not transcribed) \*\*



**EXAMINATION BY MR. BURKE (CONTINUES WITH THIS QUESTION)**

**Q:** Well, did your client, did Mr. Fremin tell you that he would take the deal if he had to do twelve and a half years based on good time?

**A:** The good time calculation was very important in our discussions. It was key to his decision and my recommendation to him that he enter the plea. There was extensive discussion about it. I told him that that was my opinion. We looked at the law together. My feeling is that he entered the plea because he believed he would be out in twelve and a half years because I told him that was my opinion.

The normal procedures for a plea bargain, would lead one to believe, that the agreement is made when the Defense Counsel and the Judge plus the District Attorney or visa versa and they reach an agreed upon alternative sentence. For the State to say they were unaware of any agreement and for the defense counsel to say "it was just my opinion" undermines the fairness in the Judicial Process and denies the Appellant the opportunity to make an intelligent and voluntary decision concerning this life altering matter; and in furtherance, the Appellants right to Due Process guaranteed by the Constitution of the State of Louisiana of 1974 Art. 1 § 2, and the United States Constitution Amendments 5 & 14 have been viciously violated in an act of judicial vindictiveness and retribution.

At the end of those proceedings, when the Appellant was instructed to wait to be fingerprinted, the Judge made the comment to the Assistant District Attorney "see Ron, I could have given Fremin 2 years, but instead I decided to give him the 25, how about that." This statement was heard and remarked upon by witnesses in the courtroom most of them are the Appellant's family, most of whom are willing to verify by sworn affidavit of fact.

The constitutional issue presented before this Honorable Court is the fact a promise was

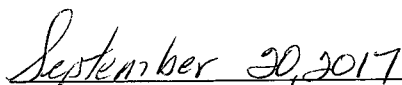
made to the petitioner by the State of Louisiana in and for the 22<sup>nd</sup> Judicial District Court, parish of St. Tammany. The Petitioner fulfilled his end of the plea agreement by having himself castrated and the State by offering the petitioner a promise it could not fulfill violated Petitioner's constitutional rights and clearly violation the ethics of the Constitution by promising the Petitioner something it had no control over to begin with, only to subject the Petitioner to a change of his physical appearance and mental state by castration. This is cruel and unusual punishment inflicted by the State of Louisiana and should be brought forth and answered to by this Honorable Court.

#### **CONCLUSION**

The petition for writ of certiorari should be granted.

Respectfully Submitted,

  
KEITH FREMIN

  
Date