19-8203

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

RASHAN HUNT — PETITIONER, *pro se*

vs.

STATE OF OHIO — RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE

OHIO COURT OF APPEALS, EIGHTH APPELLATE DISTRICT

PETITIONER'S MOTION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

FIRST QUESTION PRESENTED FOR REVIEW: WAS PETITIONER'S PLEA AGREEMENT VIOLATED, AND HIS CONSTITUTIONAL DUE PROCESS PROTECTIONS VIOLATED, WHEN THE TRIAL COURT IMPOSED A SENTENCE FOR A REPEAT VIOLENT OFFENDER SPECIFICATION TO WHICH HE NEVER ENTERED A GUILTY PLEA?

SECOND QUESTION PRESENTED FOR REVIEW: WAS PETITIONER'S CONSTITUTIONAL PROTECTION AGAINST CRUEL AND UNUSUAL PUNISHMENT VIOLATED WHEN THE TRIAL COURT IMPOSED AN AGGREGATE SENTENCE OF 19 YEARS ON THE COUNT 1 OFFENSE OF VOLUNTARY MANSLAUGHTER?

THIRD QUESTION PRESENTED FOR REVIEW: WAS PETITIONER DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL THROUGH THE DEFICIENT PERFORMANCE OF HIS TRIAL COUNSEL?

LIST OF PARTIES

[X] 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 judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts:**

The opinion of the Unites States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; 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[ ] is unpublished.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 _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from **state courts:**

The opinions of the highest state court to review the merits, the Ohio Eighth District Court of Appeals appears at Appendix A and C to the petition and is

[X] reported at *State v. Hunt*, Case No. 107125, 2019-Ohio-1643 and 2019-Ohio-4053; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Supreme Court of Ohio appears at Appendix B and D to the petition and is

[X] reported at *State v. Hunt*, 2019-Ohio-4600 and 2020-Ohio-122; 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 _____.

[ ] No petition for rehearing was timely filed in my case.
[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____ and a copy of the order denying rehearing appears in Appendix _____

[ ] An extension of time to file the petition for writ of certiorari was Granted to and including _____ 9date) on _____ (date) in Application No. ___A_____.

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

[X] For cases from **state courts:**

The dates on which the highest state court decided my case were May 2, 2019 as and September 30, 2019. A copy of those decisions appears at Appendix A and Appendix C.

[ ] 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 writ of certiorari was Granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Involved herein are Amendments V, VI, VIII and XIV to the United States Constitution:

Amendment V:

"No person shall be deprived of life, liberty, or property, without the due process of law..."

Amendment VI:

"In all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defence."

Amendment VIII:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Amendment XIV:

"...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; 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."

STATEMENT OF THE CASE

The Petitioner, Rashan Hunt, and the victim, Tierra Bryant, had been involved in an ongoing and consensual sexual relationship. On March 30, 2015, the two met at a Motel 6 to further engage in sex. However, that day, while she was performing oral sex on Petitioner, Ms. Bryant suddenly maced him in advance of a pre-conceived plan to rob him. Temporarily blinded and fearing for his life, Petitioner pushed Ms. Bryant in order to get her off him. Unfortunately, in doing so he caused her to strike her head on a door jamb, causing her death. In a panic, Petitioner then disposed of Ms. Bryant's body, burying it in a concealed location.

As a result of the foregoing chain of events, on July 5, 2017, Petitioner was indicted on the following charges:

> Count 1: Voluntary manslaughter, a felony of the first degree, R.C. 2903.03(A), with a notice of prior conviction ("NPC"), R.C. 2929.13(F)(6), and a repeated violent offender ("RVO") specification, R.C. 2941.149.
>
> Count 2: Felonious assault, a felony of the second degree, R.C. 2903.11(A)(1), with an NPC and an RVO.
>
> Count 3: Tampering with evidence, a felony of the third degree, R.C. 2921.12(A)(1).
>
> Count 4: Gross abuse of a corpse, a felony of the fifth degree, R.C. 2927.01(B).
>
> Count 5: Obstructing official business, a misdemeanor of the second degree, R.C. 2921.31(A).
>
> Count 6: Obstructing official business, a misdemeanor of the second degree, R.C. 2921.31(A).
>
> *State v. Hunt*, 2019-Ohio-1643 ("*Hunt I*") at ¶ 5.

On March 12, 2018, the State of Ohio amended the indictment to nolle Count 2, and Petitioner pleaded guilty to the remaining charges. *Id.* at ¶ 6 On April 9, 2018, the trial court sentenced Petitioner to 11 years for Count 1, 8 years for the RVO specification in Count 1, 12 months for Count 3 and 36 months for Count 4, ordering all sentences to be served consecutive for a total sentence of 23 years. (On Counts 5 and 6 he received a sentence of 90 days in jail on each count, concurrent to the other sentences.)

Through court-appointed counsel, Petitioner filed a timely appeal raising the following assignments of error:

> I. The trial court's sentence was contrary to law.
>
> II. The record does not support the findings that consecutive sentences were appropriate.

I. The appellant received ineffective assistance of counsel.

Id. at ¶ 7.

The Ohio Eighth District Court of Appeals overruled all three assignments of error and affirmed the trial court's judgment. *Id.* at ¶ 55. Petitioner filed a timely Ohio App.R. 26(A) application for reconsideration to the appellate court, which was also denied. He also timely appealed to the Supreme Court of Ohio, who declined jurisdiction. See *State v. Hunt*, 2019-Ohio-4600 (decided on November 12, 2019).

Petitioner also timely filed an Ohio App.R. 26(B) application for reopening of his direct appeal, challenging that he received ineffective assistance of appellate counsel based upon counsel's failure to raise the following claims: (1) breach of plea agreement; and (2) failure to merge allied offenses. The application was denied by

the Ohio Eighth District on September 30, 2019. *State v. Hunt*, 2019-Ohio-4053 ("*Hunt II*") at ¶ 28. Petitioner timely appealed that decision to the Supreme Court of Ohio, who declined jurisdiction. See *State v. Hunt*, 2020-Ohio-122 (decided on January 21, 2020). This Petition for a Writ of Certiorari now follows.

REASONS FOR GRANTING PETITION

I. THE COURT SHOULD GRANT THE PETITION BECAUSE THE PETITIONER'S PLEA AGREEMENT WAS BREACHED BY THE TRIAL COURT WHEN IT IMPOSED A SENTENCE FOR A REPEAT VIOLENT OFFENDER SPECIFICATION TO WHICH PETITIONER NEVER ENTERED A GUILTY PLEA.

"Plea agreements are contractual in nature. In interpreting and enforcing them, we are to use traditional principles of contract law." *United States v. Robison* (6th Cir. 1991), 924 F.2d 612. See also *Puckett v. United States*, 556 U.S. 129 (2009), citing *Mabry v. Johnson*, 467 U.S. 504 (1984) ("plea bargains are essentially contracts").

In the present case, Petitioner contends that the trial court breached his plea agreement when it imposed a sentence for a repeat violent offender specification to which he did not plead guilty, and for which the trial court never entered a finding of guilt.

Petitioner had been charged in Count 1 of his indictment with voluntary manslaughter under O.R.C. § 2903.03(A). Count 1 included specifications under O.R.C. § 2929.13(F)(6) and § 2941.149 charging Petitioner with a notice of prior conviction ("NPC") and as a repeat violent offender ("RVO"), respectively. After lengthy discussions between Petitioner, his defense counsel, and the State of Ohio (represented the Cuyahoga County, Ohio Prosecutor's Office), he agreed to plead guilty to voluntary manslaughter (Count 1), tampering with evidence (Count 3), and gross abuse of a corpse (Count 4), along with two misdemeanor offenses (Counts 5

and 6). During the subsequent plea hearing, the record shows that the following exchange took place between Petitioner and the trial court:

> THE COURT: So in light of all that you're changing your initial view of no contest to Count 1 to pleading guilty to voluntary manslaughter, a felony in the first degree. Is that correct?
>
> [PETITIONER]: Yes.
>
> THE COURT: All right. And Count 3, tampering with evidence, a felony in the third degree, how do you plead?
>
> [PETITIONER]: Guilty.
>
> THE COURT: And Count 4, gross abuse of a corpse, felony in the fifth degree, how do you plead?
>
> [PETITIONER]: Guilty.
>
> THE COURT: And Count 5, obstructing official business, misdemeanor of the second degree, how do you plead?
>
> [PETITIONER]: Guilty.
>
> THE COURT: And finally Count 6, again obstructing official business, a misdemeanor of the second degree, how do you plead?
>
> [PETITIONER]: Guilty.
>
> THE COURT: Okay. Let the record reflect that [Petitioner] has knowingly, voluntarily and with a full understanding of his rights entered a change of plea with regard to Counts 1, 3, 4, 5 and 6.
>
> The Court accepts that change of plea and hereby makes a finding of guilty with regard to Count 1, voluntary manslaughter, a felony in the third[1] degree, Count 3, guilty, tampering with evidence, felony in the third degree, guilty with regard to Count 4, gross abuse of a corpse, and guilty with regard to Count 5, obstructing official business, misdemeanor of the second degree, and guilty with regard to Count 6 obstructing official business, again a misdemeanor of the second degree.
>
> If I didn't mention gross abuse of a corpse is a felony of the fifth degree, and the finding is guilty with regard to that count.

[1] Here the trial court misspoke and meant to say "first."

(Tr. 46-48)[2]

"Pursuant to the requirements of [Ohio] Crim.R. 11(F), when a negotiated plea of guilty in a felony case is offered, 'the underlying agreement upon which the plea is based shall be stated on the record in open court.'" *State v. Aponte*, 145 Ohio App. 3d 607 (2001). Although there was discussion of the RVO earlier in the plea hearing, the record clearly shows that Petitioner was never actually asked to enter a plea to the RVO specification attached to Count 1 (nor the NPC specification, but that is only ancillary to the issue at hand), nor did the trial court enter a finding of guilt to the RVO specification. Consequently, the RVO cannot be considered to be part of the underlying agreement.

"A conviction may arise in one of four manners: '[a] guilty plea, a no-contest plea upon which the court has made a finding of guilt, a finding of guilt based upon a bench trial, or a guilty verdict resulting from a jury trial * * *.' *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio- 5204, ¶ 12, 958 N.E.2d 142. At its core, a conviction represents 'the legal ascertainment of guilt.' *State v. Henderson*, 58 Ohio St.2d 171, 174, 389 N.E.2d 494 (1979). Thus, whatever the manner of conviction, it is axiomatic that a defendant's guilt must be 'legally adjudicated [] before an appropriate penalty or treatment is determined.' Id. at 178." *State v. Ortiz*, 2019-Ohio-822 at ¶ 11. The Supreme Court of Ohio had determined that "the sanctions imposed for the conviction

[2] As the Cuyahoga County, Ohio Court of Common Pleas does not as a rule utilize written plea agreements, and none exists in this case, the transcripts of the plea hearing stand on their own as the record.

of an underlying offense are separate from those imposed for conviction of the specification." *State v. Evans*, 113 Ohio St. 3d 100 (2007) at ¶ 16.

In denying Petitioner's Ohio App.R. 26(B) application for reopening, even the Ohio Eighth District Court of Appeals recognized that, "Generally, a *separate* charge, plea, and conviction for a specification that enhances a sentence is required." (Emphasis added.) *Hunt II* at ¶ 9. Yet the record clearly establishes that there was no separate plea or finding of guilt as to the RVO specification attached to Count 1.

By comparison, in *State v. Wilson*, 2018-Ohio-902, record from the defendant's plea hearing shows the trial court offering the following pronouncement:

> "Finding the pleas to have been knowingly, intelligently, and voluntarily made, I will accept the no contest pleas that have both been made orally and in writing here in open Court today. With the findings and the reasons previously stated by the Court, I will find the Defendant guilty of the crime of robbery in violation of 2911.02(A)(2) of the Revised Code, a felony of the second degree as set forth in Count 2 of the indictment. *I will also find him guilty of the repeat violent offender specification associated with Count 2 of the indictment as well.*" (Emphasis added.)
>
> *Id.* at ¶ 52.

There, the trial court clearly made separate findings of guilt for the base offense and the RVO specification. Such was not done during Petitioner's plea hearing. The RVO specification was therefore not a part of his final plea agreement (or plea contract).

"[E]ffect must be given to the intention of the state and the defendant in their plea bargain, and courts should enforce what they perceive to be the terms of the original plea agreement." *State v. Dye*, 127 Ohio St. 3d 357 (2010) at ¶ 22, citing *State v. Carpenter*, 68 Ohio St. 3d 59 (1993). As the RVO specification was not part of the

underlying plea agreement, enforcement of the agreement would not have included any sentence for the RVO specification. Consequently, the trial court breached the plea agreement when it later imposed an 8 year prison term on the RVO at sentencing.

That it was the trial court and not the prosecution that breached the plea agreement "is not a crucial difference." *State v. Stanley*, 1981 Ohio App. LEXIS 13510 at fn 1. Federal courts have found that where it was the court that breached a plea agreement the proper remedy was to rescind (or vacate) the agreement. See, e.g., *United States v. Vallego*, 463 Fed. Appx. 849 (11th Cir. 2012).

"Ordinarily, the result of the breach of the plea-bargain agreement is a matter lying within the sound discretion of the trial court and may be either rescission or specific performance; that is, either allowing withdrawal of the negotiated plea or requiring the state to fulfill its end of the bargain, depending upon the circumstances and lying within the sound discretion of the trial court." *State v. Hart*, 2005-Ohio-107 at ¶ 8, quoting *State v. Mathews* (1982), 8 Ohio App.3d 145, 146, citing *Santobello v. New York*, 404 U.S. 257 (1971). See also *State v. Burks*, 2005-Ohio-1262 at ¶ 21, citing *Santobello* (""The remedy for a breach of a plea agreement may be by either withdrawal of the negotiated plea or specific performance of the terms of the plea agreement."). Petitioner is amenable to either specific performance of the terms of his plea agreement or complete rescission of the agreement.

II. THE COURT SHOULD GRANT THE PETITION BECAUSE PETITIONER"S EIGHTH AMENDMENT PROTECTION AGAINST CRUEL AND UNUSUAL PUNISHMENT WAS VIOLATED WHEN THE TRIAL COURT IMPOSED AN AGGREGATE SENTENCE OF 19 YEARS ON THE COUNT 1 OFFENSE OF VOLUNTARY MANSLAUGHTER.

Petitioner pleaded guilty on Count 1 to voluntary manslaughter under O.R.C. § 2903.03(A), a first degree felony subject to a definite prison term ranging from 3 to 11 years. At sentencing, the trial court imposed the maximum 11 year sentence. In addition, the court imposed an additional 8 year sentence on Count 1 for the repeat violent offender (RVO) specification consecutive to the 11 year base sentence, for an aggregate sentence of 19 years. Based upon the facts and circumstances of his case, Petitioner contends the 19 year sentence constitutes cruel and unusual punishment.

"The Eighth Amendment to the United States Constitution states, 'Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.' That the Eighth Amendment prohibits torture is elemental. *Wilkerson v. Utah*, 99 U.S. 130, 136, 25 L.Ed. 345 (1878). But the bulk of Eighth Amendment jurisprudence concerns not whether a particular punishment is barbaric, but whether it is disproportionate to the crime. Central to the Constitution's prohibition against cruel and unusual punishment is the 'precept of justice that punishment for crime should be graduated and proportioned to [the] offense.' *Weems v. United States*, 217 U.S. 349, 367, 30 S.Ct. 544, 54 L.Ed. 793 (1910)." *In re C.P.*, 131 Ohio St. 3d 513 (2012). See also *Harmelin v. Mich.*, 501 U.S. 957 (1991), citing *Solem v. Helm*, 463 U.S. 277 (1983) at 288, 303 ("The Eighth Amendment does not require strict proportionality between crime and sentence.

Rather, it forbids only extreme sentences that are 'grossly disproportionate' to the crime."); *Graham v. Florida*, 560 U.S. 48 (2010), citing *Roper v. Simmons*, 543 U.S. 551 (2005) ("The judicial exercise of independent judgment requires consideration of the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question.").

A Sentencing Memorandum presented to the trial court at Petitioner's sentencing hearing reveals the following facts:

> [Petitioner] Rashan Hunt and [the victim] Tierra Bryant were friends and sexual partners for an extended time. Although they each had a significant other, they enjoyed a sexual relationship with each other.
>
> They would often meet and go to the Motel 6 to engage in their sexual relationship. However, on March 30, 2015, Tierra Bryant had other plans than just to have sex with Rashad [sic] Hunt. She planned to rob him and cause him physical harm. She discussed her plan with [sic] her friend, Ashante Sullivan. She said that while she was performing oral sex on him, she would mace him and steal his money. She made arrangements with Ashante and her boyfriend Antonio Etheridge to pick her up at th [sic] Motel 6 after she robbed Hunt.
>
> Ashante told this to the Middleburg Hts. Police on June 17, 2015 and subsequently mad [sic] a proffer to the FBI on January 28, 2016, confirming the plans to rob Rashad [sic] Hunt.
>
> While at the Motel, during their sxual [sic] encounter, Tierra **Bryant was texting** [emphasis in original] Ashante telling her what Hunt was doing to her and that she was getting ready to mace him and rob him.
>
> She did in fact mace him to the point where he could not see anything. He pushed her to get her off him and he felt he was struggling for his life. He pushed her with sufficient force causing her to strike her head on a door jamb. Still blinded by the mace he tried to nwash [sic] it out of his eyes in the bathroom. When he came out, Tierra was still not moving. He tried to check her out but discovered that she wsa not breathing.
>
> * * * *

> The FBI, during their investigation, had learned that Tierra Bryant had maced another man, prior to using the mace on Rashad [sic]. Wanda Leverette told the FBI that Tierra had maced her son, Shawn Leverette.
>
> (Sentencing Memorandum)

In light of the facts above, it is readily apparent that Petitioner's victim, Tierra Bryant, created the entire scenario that led to her unfortunate demise. Unprovoked, in the middle of a consensual sexual encounter, Ms. Bryant attacked Petitioner, blinding him with mace. Petitioner cannot be faulted for then attempting to defend himself. There is no evidence whatsoever that Petitioner intended to cause any serious physical harm to Ms. Bryant, let along cause her death. It is also evident from the Sentencing Memorandum that Petitioner was not Ms. Bryant's first victim.

O.R.C. § 2903.03(A), Ohio's voluntary manslaughter statute, provides that: "No person, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, shall knowingly cause the death of another[.]" It can be easily reasoned that Ms. Bryant's actions would have caused "sudden passion" or "a sudden fit of rage" in Petitioner as he attempted to defend himself from her assault. In fact, as will be addressed further in the Petitioner's next reason for granting the writ, had Petitioner taken his case to trial there is a very good change he would have been acquitted of Count 1 under the affirmative defense of self-defense.

Based upon the facts and circumstances of this case, a 19 year sentence for the offense of voluntary manslaughter was indeed grossly disproportionate to the

Petitioner's conduct in committing the offense. His 19 year sentence should be vacated and the matter remanded for resentencing.

III. THE COURT SHOULD GRANT THE PETITION BECAUSE PETITIONER WAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL THROUGH THE DEFICIENT PERFORMANCE OF HIS TRIAL COUNSEL.

"[A] person accused of a federal or state crime has the right to have counsel appointed if retained counsel cannot be obtained. [Citations omitted.] That a person who happens to be a lawyer is present at trial alongside the accused, however, is not enough to satisfy the constitutional command. The Sixth Amendment recognizes the right to the assistance of counsel because it envisions counsel's playing a role that is critical to the ability of the adversarial system to produce just results. An accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair. For that reason, the Court has recognized that 'the right to counsel is the right to the effective assistance of counsel.' *McMann v. Richardson*, 397 U.S. 759, 771, n. 14 (1970)." *Strickland v. Washington*, 466 U.S. 668 (1984). "Where, as here, a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice 'was within the range of competence demanded of attorneys in criminal cases.' *McMann v. Richardson*, 397 U.S. 759, 771 (1970). As we explained in *Tollett v. Henderson*, 411 U.S. 258 (1973), a defendant who pleads guilty upon the advice of counsel 'may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from

counsel was not within the standards set forth in *McMann.' Id.*, at 267." *Hill v. Lockhart*, 474 U.S. 52 (1985).

"A convicted defendant making a claim of ineffective assistance must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment. The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." *Strickland*, supra. In the present case, Petitioner asserts identifies the following acts or omissions that fell below a reasonable standard of judgment.

1. **Petitioner never should have pleaded guilty to voluntary manslaughter.**

"A criminal defendant has a right to expect at least that his attorney will review the charges with him by explaining the elements necessary for the government to secure a conviction, discuss the evidence as it bears on those elements, and explain the sentencing exposure the defendant will face as a consequence of exercising each of the options available." *Morrison v. United States*, 2014 U.S. Dist. LEXIS 47248, quoting *Smith v. United States*, 348 F.3d 545, 553 (6th Cir. 2003), citing *United States v. Day*, 969 F.2d 39, 43 (3d Cir. 1992).

Given the facts and circumstances of this case, as provided in the Sentencing Memorandum referenced earlier, had Petitioner taken his case to trial there is a great likelihood that on Count 1 he would have either (1) been found not guilty of voluntary manslaughter based on the affirmative defense of self-defense; (2) been found guilty of the lesser offense of third degree reckless homicide under O.R.C. § 2903.041; or (3)

been found guilty of the lesser offense of third degree involuntary manslaughter under O.R.C. § 2903.04(B) with first degree misdemeanor assault under O.R.C. § 2903.13 as the predicate. No reasonable jurist would have found Petitioner guilty of first degree voluntary manslaughter.

Convicted under the second or third outcome above, Petitioner would only have been subject to a maximum sentence of 5 years, and pursuant to O.R.C. § 2929.14(B)(2)(a)(iii), he would not have been subject to any sentence for the RVO specification. Counsel was thus deficient for advising Petitioner to agree to plead guilty to first degree voluntary manslaughter rather than pursuing his case at trial. There is also no evidence that counsel ever attempted to negotiate a plea agreement whereby Petitioner would plead guilty to third degree reckless homicide or involuntary manslaughter. In any case, there can be no doubt the outcome of Petitioner's sentence would have been drastically different had his counsel provided more competent assistance during the plea process.

A reviewing court "must consider the totality of the circumstances surrounding the plea in determining whether the appellant received any benefit in exchange for the plea." *State v. Underwood*, 1999 Ohio App. LEXIS 2234. "An attorney, who advises his client to plead guilty as charged when the client receives no benefit at all in exchange therefor, could possibly be deemed to have failed in his duty to competently represent his client." *Id.* The very maximum prison term Petitioner could have received on Count 1 by taking his case to trial and being found guilty of voluntary manslaughter was 21 years. In pleading guilty, Petitioner was sentenced

to the maximum prison term of 11 years on the base offense, and 8 out of a possible 10 years for the RVO specification. Thus, in receiving a sentence only two years lighter than the potential maximum sentence he could have received by exercising his right to pursue a trial, Petitioner effectively received no benefit by pleading guilty.

2. Repeat Violent Offender (RVO) Specification

Here, Petitioner's trial counsel was deficient first for ensuring that the RVO specification was not part of Petitioner's plea agreement. Throughout the plea negotiations Petitioner was adamant that he did not want to plead guilty to the RVO specification. "I'm not copping to an RVO." (Tr. 28) "That's why I put -- with all due respect, your Honor, that's why I put that motion to strike RVO in this case as unconstitutional, your Honor." (Tr. 28) Petitioner's counsel even acknowledged at that point, "I think this is his position." (Tr. 28) Asked later whether Petitioner understood that the RVO specification was part of the plea agreement presented by the State, he responded, "That's not what I understood." (Tr. 33)

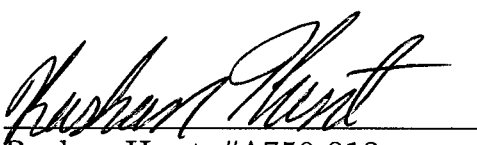
Based upon Petitioner's clearly stated intention to *not* plead guilty to the RVO specification, his counsel should have insured that it was not part of the final plea agreement. Further, after the trial court failed to directly inquire whether Petitioner was indeed pleading guilty to the RVO specification and failed to make a finding of guilt to the specification (as established earlier in this petitioner), counsel was further deficient for not challenging the imposition of an 8 year prison term for the specification at sentencing.

As argued above, counsel never should have advised Petitioner to plead guilty to first degree voluntary manslaughter. Had Petitioner pleaded guilty instead to third degree reckless homicide or third degree involuntary manslaughter, or gone to trial and been convicted of either, he would not have been subject to a sentence for the RVO specification, as third degree offenses cannot be subject to an RVO specification.

CONCLUSION

This Petition for Writ of Certiorari presents three grounds raising serious constitutional deprivations of due process and ineffective assistance of counsel, which have resulted in a clear manifest injustice. For this cause, Petitioner should be granted a Writ of Certiorari.

Respectfully submitted,



Date: February 10, 2020

Rashan Hunt, #A750-813
Trumbull Correctional Institution
P.O. Box 901
Leavittsburg, Ohio 44430-0901
Petitioner, *pro se*

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

RASHAN HUNT — PETITIONER, *pro se*

vs.

STATE OF OHIO — RESPONDENT

CERTIFICATION OF COMPLIANCE AND WORD COUNT

I hereby certify, under penalty of perjury, that this Writ of Certiorari was typed in 12-point type, using Century Schoolbook font pursuant to Rule 33.1(b).

The word count of the applicable sections is 4108 words, and does not exceed the 9,000 word limit pursuant to Rule 33.1(g).

Date: February 10, 2020

Rashan Hunt, #A750-813