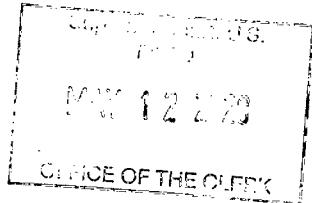


GENERAL  
COURT OF OHIO

No. 19-8553



IN THE  
SUPREME COURT OF THE UNITED STATES

DEVIAN PHILLIPS - PETITIONER

vs.

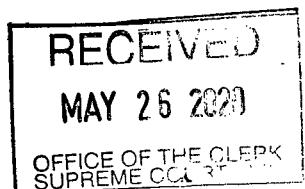
WANZA JACKSON - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF OHIO

PETITION FOR WRIT OF CERTIORARI

DEVIAN PHILLIPS  
5787 STATE ROUTE 63  
LEBANON, OHIO 45036



### **QUESTION(S) PRESENTED**

Whether guilty plea is voluntarily and intelligently made, which rests on a promise or agreement of the prosecutor, which can be said to be part of the inducement or consideration of that plea, and such promise cannot be fulfilled, does this satisfy due process and constitutionally valid.

### **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 issues to review the judgment below.

**OPINIONS BELOW**

For cases from **federal courts**:

The opinion of the United 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 is unpublished.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 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appear 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 is unpublished.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 Sixth District Court of Appeals, Lucas County, Ohio court  
Appears at Appendix B to the petition and is

reported at *State v. Phillips, 2019-Ohio-3707*;  
 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 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. §1254(1).

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

The date on which the highest state court decided my case was February 18, 2020. A copy of that decision appears at Appendix A.

[ ] 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 \_\_\_\_\_ on \_\_\_\_\_ in Application No. \_\_\_\_\_ A \_\_\_\_\_.

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

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **FOURTEENTH AMENDMENT**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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. The Fourteenth Amendment prohibits any State from depriving "any person life, liberty, or property, without due process of law." U.S. Const., amend. XIV, § 1. "The point is straightforward: the Due Process Clause provides that certain substantive rights - life, liberty, and property - cannot be deprived except pursuant to constitutionally adequate procedures.

### **ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION**

Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been

committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense.

R.C. 2903.02(A)

(A) No person shall purposely cause the death of another or the unlawful termination of another's pregnancy.

R.C. 2929.20

(A) As used in this section: (C) An eligible offender may file a motion for judicial release with the sentencing court within the following applicable periods: (5) If the aggregated nonmandatory prison term or terms is more than ten years, the eligible offender may file the motion not earlier than the later of the date on which the offender has served one-half of the offender's stated prison term or the date specified in division (C)(4) of this section.

R.C. 2941.145(A)

(A) Imposition of a three-year mandatory prison term upon an offender under division (B)(1)(a)(ii) of section 2929.14 of the Revised Code.

Ohio Crim. Rule 11

(C) Pleas of guilty and no contest in felony case: (a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and, if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.

## STATEMENT OF THE CASE

The Petitioner, Devian Phillips, appealed his October 24, 2017 judgment of the Lucas County Court of Common Pleas, denying his motion to withdraw his guilty plea in the Sixth District Court of Appeals. However, the court in its opinion stated petitioner's motion was barred by res judicata, and affirmed the trial court's judgment.

On November 1, 2002, petitioner was indicted with one count of murder in violation of R.C. 2903.02(A), with a firearm specification attached in violation of R.C. 2941.145(A). Petitioner entered a not guilty plea on March 25, 2003. On July 21, 2003, he withdrew his previously filed motion to suppress and entered a guilty plea to the murder charge. Pursuant to a plea agreement, prosecutors entered a nolle prosequi as to the firearm specification. Petitioner was sentenced on the same day to a prison term of fifteen years to life. No good time credit would be awarded and his sentence was mandatory. The plea agreement states: I understand the MAXIMUM penalty COULD be: a maximum basic prison term of life of which 15 years, during which I am eligible for judicial release or community control after serving a minimum of fifteen years. On March 11, 2009, Petitioner filed a motion to withdraw his guilty plea. The motion was denied by the trial court on March 26, 2009. Petitioner appealed that decision to this Court, but that appeal was later dismissed because of lack of assistance from the correctional institution law clerk, thereby, causing him not being able to properly file his assignments of error and appellate brief.

On February 22, 2017, Petitioner filed a motion for judicial release which was denied the following day. Thereafter, on July 26, 2017, petitioner filed another motion to withdraw his guilty plea. He argued that he did not enter his plea knowingly, intelligently, and voluntarily because he expected to be eligible for judicial release pursuant to R.C. 2929.20 at the end of his fifteen-year

mandatory sentence. Moreover, he contended as part of the plea agreement he would become eligible for judicial release after serving fifteen years. The Petitioner filed an affidavit in support of his motion. The affidavit asserts, that he was not properly informed and misled as to the terms of his plea agreement. Additionally, the plea agreement stated, that he would be on post-relief control, but in actuality he would be under APA [parole] for a lifetime of parole. Therefore, his judgment of conviction violates due process and is a miscarriage of justice.

The trial court ruled that Petitioner's motion was barred by res judicata, due to an earlier filing of a motion to withdraw his plea. The trial court also found that he had failed to demonstrate a manifest injustice because he failed to demonstrate that there was an affirmative representation of eligibility, or that there was a mutual mistake between himself and the prosecutor, rather than an error in the plea agreement. Thereafter, a timely appeal was ensued.

#### **Assignments of Errors on Appeal**

**Assignment of Error One:** Whether Appellant's plea was knowingly, intelligently, and voluntarily made, in violation of due process and Article I, Section 16 of the Ohio Constitution?

**Assignment of Error Two:** Whether a criminal defendant's plea agreement is binding and contractual in nature? Whether the guilty plea satisfied constitutional due process?

The crux of Petitioner's assignments of errors on appeal were; (1) his plea was not knowingly, voluntarily, or intelligently entered; and (2) that because he was misinformed of the terms of plea. The Petitioner argues, the motion should have been granted because his plea contract lead him to believe that he would be eligible for judicial release following his mandatory portion of his fifteen to life prison term, as stated in the plea agreement.

## REASONS FOR GRANTING THE PETITION

In *Santobello v. New York*, this Court stated that a plea must be voluntary and knowing, "and if it was induced by promises, the essence of those promises must in some way be known." *Santobello v. New York*, 404 U.S. 257, 261-262, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971). The Court continued that, "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." Id. at 262; see also *Smith v. Anderson*, 632 F.3d 277, 281-282 (6th Cir. 2011) (quoting *Santobello*). This is the clearly established federal law, as determined by this Court. The prosecutor in this case, cannot deny the existence of any promises or inducements in the plea agreement. Moreover, in *Santobello*, there was no dispute that a promise had been made. *Santobello*, 404 U.S. at 259. Here, that fact is undisputed that Petitioner's plea agreement stated that he would become eligible after serving a minimum of fifteen years in the Department of Rehabilitation and Corrections, yet the state court of appeals failed to even address this important fact that a promise had been made as part of the plea deal. A plea must be entered "voluntarily," i.e., not be the product of "actual mental coercion overbearing the will of the defendant or of state-induced emotions so intense that the defendant was rendered unable to weigh rationally his options. Moreover, a plea of guilty "must be [a] knowing, intelligent act [ ] done [\*\*15] with sufficient awareness of the relevant circumstances and likely consequences." *Brady*, 397 U.S. at 748. In *Boyd v. Yukins*, 99 Fed.Appx. 699 (6th Cir. 2004), the court explained the consequences a defendant must be aware of to render a plea knowing and intelligent:

For a plea to be intelligent and knowing, the trial court must ensure that the defendant is "aware of the direct consequences of the plea." *King v. Dutton*, 17 F.3d 151, 153 (6th Cir.

1994). Significantly, "the defendant must be aware of the maximum sentence that could be imposed." *Id.* at 154; *cf. Hart v. Marion Corr. Inst.*, 927 F.2d 256, 259 (6th Cir. 1991) (holding that a plea was not knowing or intelligent when a trial court incorrectly informed defendant that the maximum sentence was fifteen years when in fact it was seventy-five years). Additionally, the defendant must be informed about any mandatory minimum sentences, which may impact the defendant's decision to plead guilty. *See United States v. Stubbs*, 279 F.3d 402, 412 (6th Cir. 2002) (ruling that a guilty plea was invalid when defendant was not aware that he was not subject to a mandatory-minimum sentence); *United States v. Goins*, 51 F.3d 400, 405 (4th Cir. 1995) (holding that failure to inform a defendant of a mandatory-minimum sentence rendered a guilty plea invalid). *Id.* at 702-703.

The Sixth Circuit "has consistently held that a defendant's plea agreement consists of the terms revealed in open court." *Smith*, 632 F.3d at 282 (quoting *United States v. Johnson*, 979 F.2d 396, 398 (6th Cir. 1992)). Clearly established federal law is that a guilty plea which was made voluntarily, knowingly, and intelligently is constitutionally valid. *Brady*, 397 U.S. at 748; *Boykin*, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274; *Fitzpatrick*, 723 F.3d at 639. On appeal, the issue should have been whether the plea agreement comported with the requirements of constitutional due process. An underlying purpose of a plea agreement is to convey to the defendant certain information so that he can make a voluntary and intelligent decision whether to plead guilty. The core concerns of Ohio Crim. Rule 11 is that: "that the guilty plea is free from coercion, that the accused understands the nature of the charges against him, and that the accused knows the direct consequences of his guilty plea." An underlying purpose of a plea colloquy pursuant to Ohio Crim. Rule 11 "is to convey to the defendant certain information so that he can make a voluntary and intelligent decision whether to plead guilty." *State v. Ballard*, 66 Ohio St.2d 473, 479-480, 423 N.E.2d 115, 119 (1981). Insofar as the state court failed to recognize that a promise of a judicial release had been made as part of the plea deal after serving a minimum of fifteen years. There is

NOT

no record, other than the plea agreement itself, that the plea colloquy was sufficient to cure any misunderstanding as a result of the error in the plea contract. However, there is no record the trial court "thorough examination at the plea hearing, took careful and appropriate measures to dispel any confusion on [the Petitioner's] part before the plea was accepted. The trial court failed to advised the Petitioner that he understood that the conviction carried a maximum penalty of fifteen-years to life imprisonment without the possibility of judicial release. The plea agreement clearly demonstrates ineffective assistance of counsel. The materials Petitioner submitted along with his motion to withdraw his plea, was the actual plea agreement. (emphasis added)

This Court must examine whether Petitioners guilty plea satisfied constitutional due process. "If a defendant understands the charges against him, understands the consequences of a guilty plea, and voluntarily chooses to plead guilty, without being coerced [\*23] to do so," the guilty plea will be upheld. *DeSmyther*, 108 Fed. Appx. 364, 2004 WL 1921182; see also *Fitzpatrick*, 723 F.3d at 639; Cross, 57 F.3d at 591 (whether, under totality of circumstances, plea was voluntary and intelligent). The state court of appeals addressed failed to address Phillips claim under the following standard: "When a defendant enters a plea in a criminal case, the plea must be made knowingly, intelligently, and voluntarily." Therefore, the state court applied a rule which contradicts the governing law set forth in *Brady and Boykin*, and Philips plea agreement/contract, demonstrates that the state court decision is "contrary to" clearly established Supreme Court precedent. (**See Petitioner's Plea Agreement**) Even further, the state court also failed to recognized that, '[i]f a defendant is induced into pleading guilty based upon a promise by the court and the court does not fulfill that promise, the defendant's plea is not voluntary.' Again, therefore, the state court contradicted the governing law set forth in *Santobello*, and Phillip's has demonstrated that the state court decision is "contrary to" clearly established Supreme Court

precedent. Because a promise of a possibility of a judicial release had been made as part of the plea deal, and a review of the plea agreement support this assertion, certiorari must be granted.

## CONCLUSION

In the State of Ohio, many criminal defendants' guilty plea is induced by a promise, which deprive it of the character of a voluntary act. Moreover, a majority of guilty pleas or plea agreements in state courts fails to satisfy due process, because it is the product of cohesion. Additionally, the promise made by the state to the defendant cannot be fulfilled. Even further, countless defendants' plea agreements contain severe errors within the plea agreement, in which these errors are taken into consideration by the defendant in making their determination to accept the plea offered by the State. Thereafter, the State simply contends their plea was made voluntarily, knowingly, and intelligently and is constitutionally valid. Since 97% of all state cases are resolved by pleas, the safeguards surrounding the taking of pleas are crucial to the integrity of the entire criminal justice system. In sum, this Court must ensure the fairness and adequacy of the procedures on acceptance of pleas of guilty in the state court are in accordance with equal justice. Therefore, the petition for a writ of certiorari should be granted to ensure that guilty pleas, as such, in this instant case, meet the basic constitutional requirements of knowing and voluntary, without it being a product of cohesion.

Respectfully submitted,

Devian Phillips

Date: May 7, 2020