No. 20-1095

In The
Supreme Court of the United States

DARIUS WAYNE HAWS,

Petitioner,

v.

STATE OF IDAHO,

Respondent.

On Petition For Writ Of Certiorari To The Idaho Supreme Court

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a criminal defendant's purported waiver of the right to appeal in a plea agreement is knowing, intelligent, and voluntary—as required by the Due Process Clauses of the Fifth and Fourteenth Amendments—when the trial court incorrectly informs the defendant, during the colloquy in which the court accepts the defendant's guilty plea, that the defendant has reserved the right to appeal.

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INTRODUCTION

The Supreme Court of Idaho addressed the question of whether a misstatement by the district court during the plea colloquy that Haws reserved his right to appeal his sentence despite express waivers of that right in the written plea agreements, "demonstrated that Haws did not understand he was waiving his appellate rights." App. 14a. It answered that question negatively, holding that "any misstatement by the district court should merely be a fact to consider when determining whether the defendant made a knowing, intelligent, and voluntary waiver of his appellate rights." App. 17a-18a.

Haws asserts a split of authority on federal constitutional due process grounds as the basis for granting his writ. The flaw in his argument is that not all procedures related to all waivers are mandated by constitutional due process principles. To the contrary, state procedures employed to assure valid waivers of nonconstitutional rights, such as the right to appeal, do not necessarily involve federal due process questions. Moreover, this Court has also held that procedures designed to assure valid waivers of even constitutional rights are not constitutionally mandated. Because Haws has failed to show that the State of Idaho's procedures for assuring a valid waiver of the right to appeal is properly reviewed by this Court, his petition should be denied.

STATEMENT OF THE CASE

Darius Wayne Haws entered into written plea agreements on charges of delivery of a controlled substance and battery on a law enforcement officer. App. 26a-39a. In exchange for Haws's guilty pleas the prosecution, among other terms, agreed to recommend sentences on each conviction of five years with two years to serve before becoming parole eligible, to be served consecutively as required by statute, and that the trial court retain jurisdiction for up to a year to evaluate Haws's suitability for probation. App. 27a, 34a. *See* App. 57a (trial court explaining the retained jurisdiction or "rider" program).

As part of those plea agreements Haws waived his "right to appeal . . . the sentence imposed." App. 30a, 38a. He further agreed he was "signing this agreement willingly, without force or duress, and of [his] own free will and choice," App. 30a, 37a, and had "read this written plea agreement and understand[s] its terms and the consequences of [his] entering into this plea agreement," App. 31a, 38a. At the plea hearing Haws represented that he had read, understood, and had signed the plea agreements, and that "by signing the agreement" he "agree[d] to all the terms contained therein." App. 61a. Haws's counsel also represented to the trial court that he believed Haws understood "what he's signed." *Id.*

The following exchange later occurred during the plea colloquy:

> THE COURT: Do you understand that if you plead guilty, you're giving up all your defenses to this case and basically only reserving your right to appeal the sentences that will come down later?
>
> THE DEFENDANT: Yes.

App. 65a. At the conclusion of the plea colloquy the district court found that Haws "understood and consented to the terms of the plea agreements." App. 72a.

The district court ultimately imposed consecutive sentences of six years with parole eligibility after two years on the controlled substance conviction and four years with parole eligibility after one year on the battery on a law enforcement officer conviction, and retained jurisdiction in both cases. App. 5a.[1] After the evaluation period the district court elected to not place Haws on probation because his "overall performance" in the evaluative and treatment program was "poor." App. 5a-6a.

Haws appealed, challenging the district court's sentences and its decision to not grant probation after the evaluative period. App. 24a. On appeal, the Idaho Court of Appeals first dismissed the challenge to the sentences, concluding that Haws had waived any

[1] The district court's sentence ultimately imposed the same amount of overall time (ten years) as the prosecution's recommendations, but reduced the amount of time to serve before parole eligibility by one year, from four years to three years.

challenge to the appeal waivers by failing to raise the validity of the appeal waivers in his initial brief on appeal. App. 24a-25a. It then reached the merits of Haws's challenge to the order denying probation after the evaluative period, found no error, and affirmed that order. App. 25a.

The Idaho Supreme Court granted discretionary review and concluded Haws had not waived his appellate challenge to the appeal waivers by not raising it in his initial brief because it was the State's obligation to raise the waivers, whereupon a defendant/appellant could challenge the validity of the waivers. App. 8a-12a.

The Idaho Supreme Court next applied Idaho precedent enforcing an appellate waiver "if the record shows the waiver was made knowingly, intelligently, and voluntarily" and addressed the question of "whether the misstatement by the district court that Haws had reserved his right to appeal his sentence, in direct conflict with the written plea waiver, demonstrated that Haws did not understand he was waiving his appellate rights." App. 14a. Reasoning that a "statement made by the district court cannot *retrospectively* negate the defendant's knowing, intelligent, and voluntary waiver because it did not influence the defendant's decision to plead guilty and waive his appellate rights," the Idaho Supreme Court held that "any misstatement by the district court should merely be a fact to consider when determining whether the defendant made a knowing, intelligent, and voluntary waiver of his appellate rights." App. 17a-18a (emphasis original). The

Idaho Supreme Court then affirmed the trial court's finding that Haws understood and consented to the terms of the plea agreements and that "the district court's conflicting statement did not invalidate Haws' knowing, intelligent, and voluntary waiver of his appellate rights." App. 19a.

Finally, the Idaho Supreme Court addressed the merits of Haws's unwaived appellate claim that the district court erred by not granting him probation at the conclusion of the evaluative period and affirmed the district court's order on the merits. App. 19a-22a.

REASONS TO DENY THE PETITION

I. State procedures for establishing the validity of a written appeal waiver are not controlled by the due process guarantees of the Constitution

Haws asserts a split in lower courts arises from application of different due process standards. Pet. 8-16. Haws's argument fails for two reasons. First, established federalism standards prohibit due process review of state criminal procedures that do not involve fundamental principles of justice and, second, although the Constitution mandates that waivers of constitutional rights be knowing and voluntary, it does not mandate any procedure to assure that such waivers are knowing and voluntary. The decision of the Idaho Supreme Court deciding what effect a trial court's statements at a guilty plea hearing have on a

previously executed written appeal waiver does not meet either of these established standards. The decision therefore does not merit review by this Court.

1. Federalism prohibits the due process review Haws seeks in this case. Standard due process analysis requires evaluation of (1) "the private interest that will be affected by the official action," (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards," and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). However, this "balancing test does not provide the appropriate framework for assessing the validity of state procedural rules which . . . are part of the criminal process." *Medina v. California*, 505 U.S. 437, 443 (1992). This is so because "'[b]eyond the specific guarantees enumerated in the Bill of Rights, the Due Process Clause has limited operation.'" *Id.* (brackets original, quoting *Dowling v. United States*, 493 U.S. 342, 352 (1990)). "The Bill of Rights speaks in explicit terms to many aspects of criminal procedure, and the expansion of those constitutional guarantees under the open-ended rubric of the Due Process Clause invites undue interference with both considered legislative judgments and the careful balance that the Constitution strikes between liberty and order." *Id.* Thus, a state criminal procedure "'is not subject to proscription under the Due Process Clause unless it

offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.'" *Id.* at 445 (internal quotation marks omitted) (quoting *Patterson v. New York*, 432 U.S. 197, 201-02 (1977)). *See also Dist. Attorney's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 69 (2009) ("Federal courts may upset a State's postconviction relief procedures only if they are fundamentally inadequate to vindicate the substantive rights provided.").

Idaho's procedure for obtaining a valid appeal waiver does not implicate any explicit Constitutional right and is not so "rooted" in "traditions and conscience" as to be deemed "fundamental." "[I]t is well settled that there is no constitutional right to an appeal." *Abney v. United States*, 431 U.S. 651, 656 (1977). Indeed, "a State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all." *Griffin v. Illinois*, 351 U.S. 12, 18 (1956). Although this Court has "imposed constitutional constraints on States when they choose to create appellate review," *Smith v. Robbins*, 528 U.S. 259, 270 (2000); *see also Evitts v. Lucey*, 469 U.S. 387, 393 (1985) ("if a State has created appellate courts as an integral part of the . . . system for finally adjudicating the guilt or innocence of a defendant, the procedures used in deciding appeals must comport with the demands of the Due Process and Equal Protection Clauses of the Constitution" (quotation marks and citations omitted, ellipse original)), such constraints are still based on explicit constitutional or fundamental rights such as the right to equal protection, *see, e.g.*, *Griffin v. Illinois*,

351 U.S. 12, 17 (1956) (right to indigent to transcript at government expense), and the right to effective assistance of counsel, *see Evitts*, 469 U.S. at 393-94.

The Idaho Supreme Court held that the written plea agreements between Haws and the State effectuated a knowing and voluntary waiver of the right to appeal the sentence that was not rendered unknowing or involuntary by the district court's subsequent misstatement that Haws retained the right to appeal his sentence, declining Haws's invitation to distinguish between statements by a trial court made during a plea colloquy from statements made at sentencing. App. 12a-19a. In doing so, the Idaho Supreme Court did not cite to any federal or constitutional right. *Id.* Instead, the Idaho Supreme Court concluded the written plea agreement was properly reviewed as a "bilateral contract" between the State and Haws. App. 8a-9a. Likewise, the bright-line rule Haws seeks—that a trial court's comments necessarily invalidate a prior appeal waiver—is not a "principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Medina*, 505 U.S. at 445. To conclude otherwise would make virtually all state criminal procedures regarding waivers subject to federal control contrary to the principles stated in *Medina*. Haws has therefore failed to show that review by this Court is appropriate.

2. In addition, this Court's precedents demonstrate that the Constitution does not mandate any particular procedures to obtain valid waivers. A guilty plea and attendant waiver of constitutional rights

must be "an intentional relinquishment or abandonment of a known right or privilege." *McCarthy v. United States*, 394 U.S. 459, 466 (1969) (quotation marks omitted). Thus, a guilty plea and "related waivers" of "accompanying constitutional guarantees" such as the "privilege against self-incrimination," the "right to confront one's accusers," and the "right to trial by jury" must be knowing and intelligent. *United States v. Ruiz*, 536 U.S. 622, 628-29 (2002). It is error to "accept[ ] a defendant's guilty plea without creating a record affirmatively showing that the plea was knowing and voluntary." *Parke v. Raley*, 506 U.S. 20, 29 (1992) (citing *Boykin v. Alabama*, 395 U.S. 238, 242 (1969)). It does not follow that all State procedures surrounding waivers to which a court applies the knowing and voluntary standard are federal questions.

Moreover, even in relation to waivers of constitutional rights, this Court has never held that the Constitution itself requires any specific on-record colloquy or other process to show that the guilty plea and waiver of accompanying constitutional rights was knowing and intelligent. *See*, *e.g.*, *Bradshaw v. Stumpf*, 545 U.S. 175, 183 (2005) ("[T]he constitutional prerequisites of a valid plea may be satisfied where the record accurately reflects that the nature of the charge and the elements of the crime were explained to the defendant by his own, competent counsel."). To the contrary, procedures designed to assure a valid guilty plea and waiver of attendant constitutional rights are prophylactic and generally not constitutionally mandated. *See United States v. Davila*, 569 U.S. 597, 610 (2013) ("Rule

11(c)(1) was adopted as a prophylactic measure, not one impelled by the Due Process Clause or any other constitutional requirement." (citations omitted)); *United States v. Dominguez Benitez*, 542 U.S. 74, 83 (2004) (drawing distinction between violation of Rule 11 and a violation of due process); *Libretti v. United States*, 516 U.S. 29, 42 (1995) ("We are unpersuaded that the Rule 11(f) inquiry is necessary to guarantee that a forfeiture agreement is knowing and voluntary."); *McCarthy*, 394 U.S. at 465 ("the procedure embodied in Rule 11 has not been held to be constitutionally mandated").

The principles articulated in these cases show that (1) although this Court has established standards for a constitutionally valid guilty plea and waiver of attendant constitutional rights, it has not held that such standards apply to waivers of non-constitutional rights (such as the statutory right to appeal) and (2) that specific procedures for accepting waivers, even in the context of a guilty plea and attendant waivers of constitutional rights, are not constitutionally required.

The Idaho Supreme Court concluded that a district court's statements in the guilty plea hearing about the scope of a previously executed appeal waiver, while a relevant consideration in the enforceability of that waiver, are not controlling. App. 12a-19a. Its analysis does not claim to be applying constitutional due process standards. *Id.* Rather, this holding flows at least in part from the Idaho Supreme Court's analysis of the written plea agreement as a "bilateral contract." App. 8a-9a. In this case the Idaho Supreme Court simply rejected Haws's proposed bright-line rule that

written waivers are never knowing and voluntary if a trial court makes a statement incompatible with the written waiver at a plea hearing. This decision is consistent with this Court's precedents holding that States are free to adopt their own procedures and that the Constitution does not mandate any particular procedures to obtain valid waivers.

Haws's petition should be denied.

II. Haws has failed to establish that different approaches to evaluating the effect of misstatements by a trial court on the validity of written appeal waivers is controlled by the Constitution

Haws contends that "in at least ten other jurisdictions, the appeal waiver in this case would have been unenforceable, because governing precedent would treat it as not knowing, intelligent, and voluntary, as required by the Due Process Clauses of the Fifth and Fourteenth Amendments." Pet. 8. Review of the cases Haws cites, however, shows these courts relied on procedural rules and underlying contract standards when they held that an oral statement by a court at a plea hearing modifies or nullifies a plea waiver in a written plea agreement. Specifically, courts vitiating waivers in written plea agreements because of contrary statements at plea hearings have adopted three different approaches, reasoning (1) that a district court's statements about the scope of an appeal waiver, if unobjected to, modify the plea agreement contract;

(2) that a district court's uncorrected statements about the scope of a plea waiver create contractual ambiguity that must be interpreted against the government; or (3) that Rule 11's requirement of an in-court judicial determination that an appeal waiver is understood must be complied with before any appeal waiver is enforceable against the defendant.

First, the Fourth Circuit has reasoned that the government's failure to correct a misstatement results in a contract modification. In *United States v. Wood*, 378 F.3d 342, 345-47 (4th Cir. 2004) (cited Pet. 8), the court addressed the enforceability of a drug weight clause in a plea agreement (which limited the scope of judicial findings at sentencing) in light of the district court's statements at the guilty plea hearing. The court acknowledged that "[t]he law governing the interpretation of plea agreements is an amalgam of constitutional, supervisory, and private contract law concerns." *Id.* at 348 (quotation marks and brackets omitted).

In its analysis, the court's application of due process principles, as opposed to supervisory or contract law standards, was limited to finding that a governmental breach of a plea agreement violates due process. *Id.* at 349. The court did not invoke constitutional due process principles when it determined that the government may modify a plea agreement by committing to a certain course of action beyond what is required by the plea agreement, including by failing to object to a trial court misstatement of the plea agreement. *Id.* (citing *United States v. Martin*, 25 F.3d 211, 217 (4th Cir. 1994)). The analysis of this court therefore

accepts that a defendant assumes a contractual duty to not appeal through a written plea agreement, but that the contract is modified by the prosecution's failure to object to a contrary statement by the court. This rationale is apparently based on a form of contractual estoppel rather than on the requirements of due process.

Second, the Tenth Circuit applies a different contractual modification theory, reasoning that the colloquy at the plea hearing required by Rule 11 can create ambiguity in the plea agreement, which must then be interpreted in defendant's favor. *United States v. Wilken*, 498 F.3d 1160, 1167-69 (10th Cir. 2007) (quotation marks omitted) (cited Pet. 11).

This same contractual approach has been followed in two of the three state courts cited by Haws. In *Ricci v. State*, 894 N.E.2d 1089, 1093 (Ind. Ct. App. 2008) (cited Pet. 12-13), the trial court "clearly and unambiguously stated . . . that, according to its reading of the agreement, Ricci had not surrendered the right to appeal his sentence." Because neither the prosecutor nor the defense counsel disputed that statement the appellate court concluded that "the prosecuting attorney, the defense attorney, and Ricci entered into the plea agreement with the understanding that Ricci retained the right to appeal his sentence." *Id.* at 1094.

In *State v. Smith*, 953 P.2d 810, 811 (Wash. 1998) (cited Pet. 13-14), Smith entered into a written plea waiver, but in open court defense counsel stated that Smith was retaining the right to appeal the denial of a

suppression motion. "Because this statement went uncorrected by opposing counsel or the court itself, it seems apparent that Smith and everyone else in the courtroom had the same understanding, even if this understanding is inconsistent with the language in the plea statement saying Smith waived his right to appeal a determination of guilt after a trial." *Id.* These cases apply the theory that an uncontradicted in-court statement reflects the parties' contractual intent.

Third, most of the cases cited by Haws premise their analyses on the foundation that compliance with Fed. R. Crim. P. 11 is a prerequisite to a valid waiver, and failure to comply with this rule renders any appellate waiver provision unenforceable.[2] *See United States v. Godoy*, 706 F.3d 493, 495-96 (D.C. Cir. 2013) (cited Pet. 10) (erroneous statement of the scope of the appeal waiver during plea hearing meant defendant "had no chance to demonstrate that he understood and accepted what it meant" as required by Rule 11); *United States v. Ready*, 82 F.3d 551, 557 (2d Cir. 1996) (cited Pet. 11) (appeal waiver "requires the special attention of the district court" (quotation marks omitted)); *United States v. Saferstein*, 673 F.3d 237, 243 (3d Cir. 2012) (cited Pet. 10-11) ("a plea colloquy that fails to meet the requirements of Rule 11(b)(1)(N) can prevent a defendant from knowingly and voluntarily

[2] That rule currently provides that "[b]efore the court accepts a plea of guilty . . . the court *must* inform the defendant of, and determine the defendant understands . . . the terms of any plea agreement provision waiving the right to appeal. . . ." Fed. R. Crim. P. 11(1)(b)(N) (emphasis added).

waiving his appellate rights"); *United States v. Manigan*, 592 F.3d 621, 627-28 (4th Cir. 2010) (cited Pet. 10) ("a plea colloquy that fails to meet the requirements of Rule 11(b)(1)(N) can prevent a defendant from knowingly and voluntarily waiving his appellate rights"); *United States v. Bushert*, 997 F.2d 1343, 1351 (11th Cir. 1993) (cited Pet. 11-12) ("for a sentence appeal waiver to be knowing and voluntary, the district court must have specifically discussed the sentence appeal waiver with the defendant during the Rule 11 hearing"). One circuit "decline[s] to enforce an appeal waiver when the record does not establish that the district court engaged in the colloquy required by Rule 11(b)(1)(N)." *United States v. Boneshirt*, 662 F.3d 509, 516 (8th Cir. 2011).

Similarly, the third state court cited by Haws also applied procedural rules to answer the question of which conflicting statement represented the terms of a plea agreement. In *State v. Macke*, 933 N.W.2d 226 (Iowa 2019) (cited Pet. 13), a written plea agreement and defense counsel's in-court representations provided for a joint sentencing recommendation, but the court's written order provided that the State had reserved its recommendations until after it reviewed the pre-sentence investigation report. *Id.* at 236. In resolving this discrepancy the court "view[ed] the record in light of the governing rules," which mandated that the "controlling terms" of the plea agreement "are those described on the record during the plea hearing rather than the conflicting terms of the written order." *Id.* at 236-37.

Review thus shows that the courts holding that statements at a plea hearing control over the written appeal waiver have done so on more than one theory. Those theories are based on contractual standards and the requirements of Fed. R. Crim. P. 11 or state procedural rules. Haws's claim of a split in authority on application of federal constitutional due process requirements is not borne out. Review shows that the various approaches courts have employed rely mostly or even exclusively upon contract principles and rules of procedure, rather than principles of constitutional due process.

Importantly, this Court has repeatedly held that procedures seeking to secure a voluntary and knowing waiver do not rise to constitutional requirements. *E.g.*, *McCarthy*, 394 U.S. at 465 ("the procedure embodied in Rule 11 has not been held to be constitutionally mandated"); *Libretti*, 516 U.S. at 42 ("We are unpersuaded that the Rule 11(f) inquiry is necessary to guarantee that a forfeiture agreement is knowing and voluntary."). *See also Crosby v. United States*, 506 U.S. 255, 261 (1993) (Fed. R. Crim. P. 43 "treats midtrial flight as a knowing and voluntary waiver of the right to be present"). Haws has failed to show that the Idaho Supreme Court or any of the other courts he cites were employing constitutional due process standards when they addressed whether comments at a guilty plea hearing would nullify or modify an appeal waiver contained in a written plea agreement. He has therefore failed to show a split of authority on an important federal question.

III. The Idaho Supreme Court's analysis is consistent with this Court's precedents

The Idaho Supreme Court concluded that the knowing and voluntary appeal waivers in the written plea agreements signed by Haws were enforceable despite the district court's misstatement at the subsequent plea hearing. App. 14a-19a. This reasoning, that the waivers were voluntarily and knowingly made upon entry into the plea agreements rather than later at the plea hearing, is consistent with precedents of this Court holding that (1) the plea agreement containing the appeal waiver clause was a contract between Haws and the State of Idaho and (2) appeal rights do not rise to the same level of constitutional rights intrinsically intertwined with guilty pleas because, unlike the latter, appeal rights may be passively relinquished or forfeited by out-of-court actions.

First, a written plea agreement is essentially a contract. *Puckett v. United States*, 556 U.S. 129, 137 (2009) ("Although the analogy may not hold in all respects, plea bargains are essentially contracts."). Because the plea agreement was an enforceable contract, provisions contained in the written plea agreement were enforceable even if not specifically addressed in the plea hearing. For example, there is no serious argument that the State would be able to enforce the changes in circumstances clause (excusing the State's performance of its obligations upon certain conditions including commission of new crimes or violating the terms of bail), App. 30a-31a, 38a, even though that clause of the agreement was not specifically addressed

in the plea hearing, App. 43a-74a. The Idaho Supreme Court's determination that Haws's waivers of his right to appeal his sentences in his knowingly and voluntarily executed written plea agreements controlled over statements made by the trial court after the contracts were entered into is better understood as an application of contract principles than as an application of federal due process standards.

Second, unlike the constitutional rights necessarily waived with every guilty plea (e.g., the right against self-incrimination, the right to the presumption of innocence, the right to a jury trial, and the right to confront witnesses) the statutory right to appeal does not necessarily require an affirmative in-court waiver. Rather, the right to an appeal may be forfeited by inaction, such as failing to file a timely notice of appeal, *see Bowles v. Russell*, 551 U.S. 205, 213 (2007) ("As we have long held, when an appeal has not been prosecuted in the manner directed, within the time limited by the acts of Congress, it must be dismissed for want of jurisdiction." (quotation marks omitted)), or by actions contrary to the exercise of the appeal right, such as absconding in the course of that appeal, *Ortega-Rodriguez v. United States*, 507 U.S. 234, 239 (1993) ("an appellate court may dismiss the appeal of a defendant who is a fugitive from justice during the pendency of his appeal"), or failing to follow applicable appellate procedures, *Thomas v. Arn*, 474 U.S. 140, 155 (1985) (the "longstanding maxim that the State certainly accords *due* process when it terminates a claim for failure to comply with a reasonable procedural or

evidentiary rule . . . applies to the forfeiture of an appeal" (emphasis original, quotation marks and citations omitted)). That the statutory right to appeal may be waived passively, unlike the constitutional rights directly associated with a guilty plea, also suggests that due process does not mandate an in-court colloquy consistent with the written appeal waiver before that appeal waiver may be deemed knowing and voluntary.

Haws's argument that the in-court colloquy necessarily controls over the written appeal waiver ultimately depends on the appeal waiver being the equivalent of the constitutional rights waivers necessarily attendant to a guilty plea. For example, Haws argues that "when a trial judge erroneously advises a defendant that he retains the right to appeal, it cannot be said that the defendant was 'fairly apprised of [the plea's] consequences.'" Pet. 18 (quoting *Mabry v. Johnson*, 467 U.S. 504, 509 (1984), *disapproved of by Puckett*, 556 U.S. 129). However, in the Idaho courts Haws did not claim that his plea was not knowing and voluntary. App. 13a. Below, Haws implicitly acknowledged, contrary to his argument to this Court, that the validity of his plea is not implicated by the district court's statements about his appeal waiver. It necessarily follows that the appeal waiver *was not* a direct consequence of the guilty plea as articulated in *Mabry*, 467 U.S. 504, 508-10. Rather, it was the result of Haws's entering into a written plea agreements with the prosecution. Haws's attempts to tie the adequacy of his appeal waivers to his guilty plea are unavailing.

Next, Haws argues that "when defendants tell the court that they understand that, as a consequence of the plea, they are *not* waiving the right to appeal, the appeal waiver cannot be considered knowing, intelligent, and sufficiently aware." Pet. 18 (emphasis original, quotation marks omitted, citing *United States v. Ruiz*, 536 U.S. 622, 629 (2002)). Haws's argument that a defendant's in-court statement necessarily vitiates a prior knowing and voluntary waiver finds no support in *Ruiz*. Indeed, in *Ruiz* this Court rejected the claim that failure to disclose impeachment and affirmative defense evidence renders a guilty plea involuntary, even though "the more information a defendant has, the more aware he is of the likely consequences of a plea, waiver, or decision, and the wiser that decision will likely be." *Id.* at 629. If relevant at all, this Court's refusal in *Ruiz* to tie lack of disclosure of impeachment evidence to the voluntariness of the plea supports the Idaho Supreme Court's conclusion that the written plea agreements effectuated appeal waivers that were not undone by the district court's misstatement and Haws's response at the guilty plea hearing. Either way, Haws fails to address the core of the Idaho Supreme Court's decision, namely that entering the plea agreements effectuated the appeal waivers, and that subsequent events did not, at least under the facts of this case, show those appeal waivers were not voluntary or knowing.

Finally, Haws contends that the Idaho Supreme Court relied on cases that are "inapposite" because they addressed statements at the sentencing hearing

and not, as in this case, statements at the guilty plea hearing. Pet. 20-21. Far from being inapposite, this reliance merely highlights the Idaho Supreme Court's determination that the appeal waivers were accomplished by the written agreements, not the in-court colloquy. The Idaho Supreme Court reasoned that a "statement made by the district court cannot *retrospectively* negate the defendant's knowing, intelligent, and voluntary waiver because it did not influence the defendant's decision to plead guilty and waive his appellate rights." App. 17a (emphasis original). The Idaho Supreme Court's conclusion that knowing and voluntary appeal waivers were accomplished through the written plea agreements, and that events at the subsequent plea hearing did not render those waivers invalid or unenforceable, was entirely reasonable, consistent with this Court's precedents, and, more importantly, not a question answered by due process principles.

IV. This case is not a vehicle to address due process principles

1. Relying on the ubiquity of plea agreements to resolve criminal cases, combined with the frequency of appeal waivers included in such plea agreements, Haws contends the "substantive stakes could not be higher." Pet. 21-23. This rather overstates the issue. First, although a high percentage of cases resolve by plea agreement, and many of those agreements will contain appeal waivers, the number of cases where the trial court has made uncorrected statements contrary to written waivers is presumably quite low. Indeed, the

limited number of cases Haws cites, some of which do not address appeal waivers at all, suggests this is not a prevalent problem.

Second, as stated above, an appeal waiver is not on par with waivers of constitutional rights necessarily waived when entering a guilty plea. Appeals may be forfeited by simple inaction or through actions not intended to be waivers (such as absconding or failing to follow applicable procedures). A right that may be waived through inaction does not require the protections of procedures reserved for the most substantial of constitutional rights such as the presumption of innocence or the right to a jury trial.

Finally, as set forth throughout this brief, Haws has failed to articulate how constitutional due process standards establish whether the contractual terms of the written plea agreement or the trial court's misstatements at a guilty plea hearing control. The Idaho Supreme Court has concluded that Haws's appeal waivers were knowingly and voluntarily accomplished by entry into the written plea agreements, and that subsequent events, although relevant, are not controlling of his claim that the waivers were not knowingly and voluntarily made. Due process principles do not require that statements at the plea hearing are necessarily controlling.

2. Haws next contends this "case presents a clean and attractive vehicle to address the question presented." Pet. 23. In making this argument he quotes only part of the district court's question to Haws at the

plea hearing. *Id.* The question, in full, was compound: "Do you understand that if you plead guilty, you're giving up all your defenses to this case and basically only reserving your right to appeal the sentences that will come down later?" App. 65a. The first part of this question, that by pleading guilty Haws was waiving his defenses, is certainly accurate and consistent with the plea agreements.[3] Haws's answer, "Yes," therefore may have indicated his understanding that he was waiving his defenses, not that he understood he was preserving his right to appeal his sentences, a right he specifically waived in the written plea agreements. Moreover, this ambiguity shows why the Idaho Supreme Court took a reasonable approach when it determined that the trial court's statements "should merely be a fact to consider when determining whether the defendant made a knowing, intelligent, and voluntary waiver of his appellate rights." App. 18a. Haws has not shown that this case is a proper vehicle to address federal due process questions.

[3] The written plea agreements did not specifically address any waiver of defenses. App. 26a-39a.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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