

No.
IN THE
SUPREME COURT OF THE UNITED STATES

JOHN HARRIS, Petitioner,
-vs-

PEOPLE OF THE STATE OF ILLINOIS, Respondent.

On Petition For Writ Of Certiorari
To The Appellate Court Of Illinois

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether a trial court's non-consensual reinstatement of a defendant's guilty plea, without admonishments or the opportunity to plead anew, violates the presumption of innocence and other fundamental constitutional rights.

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To The Appellate Court Of Illinois

The petitioner, John Harris, respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The decision of the Illinois Appellate Court is published at *People v. Harris*, 2020 IL App (5th) 170158. A copy of the opinion is attached as Appendix A. A copy of the order of the Illinois Supreme Court denying leave to appeal is attached as Appendix B.

JURISDICTION

On February 25, 2020, the Appellate Court of Illinois issued an opinion affirming Petitioner's conviction. (App. A) No petition for rehearing was filed. The Illinois Supreme Court denied a timely filed petition for leave to appeal on September 30, 2020. (App. B) The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(a). This petition is timely filed under this Court's order issued on March 19, 2020. (Order List: 589 U.S.).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. V.

The Fifth Amendment of the United States Constitution provides:

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

U.S. Const. amend. VI.

The Sixth Amendment of the United States Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. Const. amend. XIV, § 1

The Fourteenth Amendment of the United States Constitution provides, in relevant part: “No State shall *** deprive any person of life, liberty, or property, without due process of law.”

STATEMENT OF THE CASE

This Court has long held that the decision to plead guilty belongs solely to the defendant. *Brookhart v. Janis*, 384 U.S. 1, 7 (1966). Once a defendant pleads guilty to a crime, he has given up the right to have a trial by jury, his privilege against compulsory self-incrimination, and the right to confront his accusers. *Boykin v. Alabama*, 395 U.S. 238, 243 (1969). In this case, after allowing Mr. Harris to withdraw from his guilty plea, the trial court forcibly reinstated Mr. Harris' guilty plea without his consent or desire to plead anew. (C.208-09) The Illinois Appellate Court upheld the trial court's ruling, based on the premise that a trial court has the inherent authority to reconsider any decision that is interlocutory in nature. *People v. Harris*, 2020 IL App (5th) 170158, ¶ 23. The Illinois Supreme Court denied Mr Harris' petition for leave to appeal, which asked the Court to consider the issue of whether a trial court's inherent authority to reconsider its decisions, in this context, violated Mr. Harris' fundamental constitutional rights. (App. B)

Guilty Plea

Mr. Harris pled guilty to one count of first degree murder, pursuant to a fully-negotiated plea agreement. (C.164) Following admonishments and a factual basis, the trial court accepted the plea, and sentenced Mr. Harris to 25 years of imprisonment. (C.164-67) Mr. Harris filed a timely *pro se* motion to withdraw his plea. (C.171) Mr. Harris stated that he received ineffective assistance of counsel and was coerced into taking the plea deal. (C.171)

Pursuant to Illinois procedural law, the trial court conducted an initial inquiry¹ into Mr. Harris' allegations of ineffective assistance of counsel. (C.183-87) On April 22, 2016, the trial court granted Mr. Harris' motion to withdraw his guilty plea, based on the court's finding that a *prima facie* basis of ineffective assistance of counsel existed. (C.190) The State filed a timely motion to reconsider on the basis that the trial court's ruling was premature, as it was not allowed to participate during the hearing. (C.191-93)

The trial court appointed Mr. Harris new counsel, and post-plea counsel filed a response to the State's motion to reconsider. (C.195,198) After a hearing was held on the State's motion, the trial court found, on September 16, 2016, that the ruling on Mr. Harris' motion to withdraw guilty plea was premature, set aside its ruling, and set the case for a hearing on the claim of ineffective assistance of counsel. (C.200,208-09) The trial court also reinstated Mr. Harris' guilty plea *sua sponte*. (C.208-09)

After the trial court reinstated Mr. Harris' vacated guilty plea, without Mr. Harris' desire to plead anew, post-plea counsel filed a new motion to withdraw guilty plea. (C.215-17) A hearing was conducted on the motion to withdraw, and the trial court found there was no basis for ineffective assistance of counsel, found the plea to be knowing and voluntary, and subsequently denied the motion to withdraw guilty

¹ In *People v. Krankel*, 102 Ill. 2d 181, 189 (1984), the Illinois Supreme Court imposed an obligation on trial courts to fully address criminal defendants' *pro se* post-trial claims of ineffective assistance of counsel. During this inquiry, the trial court determines if the defendant's claim has any merit. *People v. Ayres*, 2017 IL 120071, ¶ 11. If the trial court concludes that the allegations "show possible neglect of the case, new counsel should be appointed." *People v. Jolly*, 2014 IL 117142, ¶ 30. The State is not allowed to participate in an adversarial manner during this preliminary inquiry. *Id.* at ¶ 48.

plea. (C.221-69,272-73)

Direct Appeal

Mr. Harris appealed, arguing that the trial court's reinstatement of his guilty plea violated his presumption of innocence, among other fundamental constitutional rights. The Illinois Appellate Court held that Mr. Harris' constitutional rights were not violated. *People v. Harris*, 2020 IL App (5th) 170158, ¶ 21. The appellate court found that *People v. Mink*, 141 Ill. 2d 163, 171 (1990),² and *People v. Bryant*, 369 Ill. App. 3d 54, 60-62 (1st Dist. 2006),³ supported its ruling that "the trial court did not exceed its authority or infringe upon the rights of [Mr. Harris] when it reconsidered its ruling that granted [Mr. Harris'] motion to withdraw his guilty plea." *Id.*

The appellate court further held that Illinois Supreme Court Rules 604(d)⁴ and 605(c)(3)⁵ did not bar a trial court from its inherent authority, as allowed by *Mink*, to

² In *Mink*, the Illinois Supreme Court held that "[a] court in a criminal case has inherent power to reconsider and correct its own rulings, even in the absence of a statute or rule granting it such authority."

³ In *Bryant*, the Illinois Appellate Court held, in a case of first impression, that the trial court was allowed to reconsider its decision to grant a defendant's motion to withdraw his guilty plea. The appellate court premised its decision on the holding in *People v. Mink*, 141 Ill. 2d at 171.

⁴ Illinois Supreme Court Rule 604(d) governs the procedure for a defendant who wishes to withdraw his plea of guilty. Rule 604(d) states, in part, "if allowed, the trial court shall modify the sentence or vacate the judgment and permit the defendant to withdraw the plea of guilty and plead anew."

⁵ Illinois Supreme Court Rule 605(c) governs the admonishments a trial court is required to give a defendant who enters into a negotiated guilty plea. Rule 605(c) states "if the motion [to withdraw] is allowed, the plea of guilty, sentence and judgment will be vacated and a trial date will be set on the charges to which the plea of guilty was made."

reconsider or correct its decision to reconsider a vacated guilty plea. *Id.* at ¶ 23. The court reasoned that “if a trial court’s inherent authority to reconsider or correct a ruling were to be rescinded or invalidated in the case of a ruling granting a motion to withdraw a guilty plea, the Illinois Supreme Court would have indicated so, explicitly, when originally promulgating, or later revising, Rules 604(d) and 605(c)(3).” *Id.* The appellate court affirmed Mr. Harris’ conviction. *Id.* at ¶ 27.

Mr. Harris timely appealed to the Illinois Supreme Court, which declined discretionary review. (App. B) Mr. Harris now respectfully petitions this Court for a writ of certiorari.

REASON FOR GRANTING CERTIORARI

The Illinois Appellate Court erroneously held that the trial court had the authority to reinstate a previously vacated guilty plea, without the consent of Mr. Harris, thus violating several of his fundamental constitutional rights. Furthermore, there is a split in authority on how to handle this situation.

This Court has held that the pivotal decision to plead guilty and waive several constitutional rights belongs solely to the defendant. *Brookhart v. Janis*, 384 U.S. 1, 7 (1966). Once a defendant pleads guilty to a crime, he has given up the right to have a trial by jury, his privilege against compulsory self-incrimination, and the right to confront his accusers. *Boykin v. Alabama*, 395 U.S. 238, 243 (1969). The defendant's decision concerning whether to enter a plea is critical because a plea obviates the prosecution's burden of proof and waives several of the defendant's constitutional rights. *Id.* at 242-43. "A plea of guilty is more than a confession which admits that the accused did various acts; it itself is a conviction; nothing remains but to give judgment and determine punishment." *Id.* at 242.

Because these rights are so fundamental to our justice system, the trial court is required to admonish the defendant about the constitutional rights he gives up by entering a plea of guilty, to protect against any coercion or incomprehension. See *Boykin*, 395 U.S. at 242-43; see also *Santobello v. New York*, 404 U.S. 257, 261-62 (1971). No one can force or coerce a defendant into pleading guilty. *Id.*

Additionally, this Court has held that a vacated guilty plea cannot be used

against a defendant in subsequent criminal proceedings. *Kercheval v. U.S.*, 274 U.S. 220, 224 (1927). “The effect of the court’s order permitting the withdrawal was to adjudge that the plea of guilty be held naught.” *Id.* This Court further held that giving the previously vacated guilty plea any weight would be inconsistent with the court’s previous order. *Id.*, See also Fed. R. Evid. 410(a)(1).

Once an accused has been permitted to withdraw his plea, he is entitled to all the privileges and presumptions that the law affords, including the presumption of innocence. U.S. Const. amend V, VI, XIV. Thus, allowing a trial court to reconsider its decision, and forcibly reinstate a guilty plea after its vacation of that plea, causes grave concerns for a defendant’s fundamental constitutional rights. *Id.*

Despite this Court’s long-standing precedent, the Illinois Appellate Court held that the trial court had the authority to reconsider its decision in vacating Mr. Harris’ guilty plea, which forcibly stripped him of his presumption of innocence. *Harris*, 2020 IL App (5th) 170158, ¶ 23, citing *People v. Mink*, 141 Ill. 2d at 171 (1990). However, this Court has made it clear that a trial court does not have unfettered authority to reconsider and correct its own rulings in every situation, even if the court predicated its ruling based on “an erroneous interpretation of governing legal principles.” see generally *Evans v. Michigan*, 568 U.S. 313, 320 (2013) (holding that even where a trial court’s ruling was clearly wrong, a ruling of an acquittal cannot be reversed). Thus, this Court has recognized that, in certain circumstances, a defendant’s constitutional rights must be protected regardless of a mistake in the application of law. *Id.*

The constitution is clear; once the trial court vacated Mr. Harris’ guilty plea, he stood before the court as an innocent man. U.S. Const. amend V, VI, XIV. Mr. Harris

was presumed innocent for five months before the trial court reconsidered its decision, forcibly stripping him of his constitutional protections. (C.208-09) Mr. Harris was not required to take any actions to assert his rights, and suggesting that any affirmative action was required turns the constitution on its head. See *Harris*, 2020 IL App (5th) ¶¶ 23-24 (the appellate court posing the question of whether Mr. Harris was required to take affirmative action to reinstate his constitutional rights). However, the Illinois Appellate Court is not alone in making this erroneous decision. Numerous courts have struggled with this same issue and are split on how to handle this situation.

Many State courts have held that a trial court cannot reconsider its decision to vacate a guilty plea. *State v. York*, 252 S.W.3d 245, 249 (Mo. Ct. App. 2008)(holding that a trial court could not reconsider a motion to withdraw plea because “The effect of the withdrawal was to restore defendant to the position he occupied prior to entering such plea.”); *Williams v. State*, 762 So. 2d 990, 991 (Fla. Dist. Ct. App. 2000)(holding that a trial court could not reconsider a motion to withdraw plea because “When a plea of guilty or *nolo contendere* is withdrawn and accepted by the court, it is as if the plea had never been entered *ab initio*.”); *Turner v. Comm.*, 10. S.W.3d 136, 138-41 (Ken. Ct. App. 1999)(holding that the defendant had all of his constitutional rights “restored” when his guilty plea was vacated and the trial court did not have the authority to correct its decision); *State v. Beechum*, 23 Kan. App. 2d 519, 523 (Kan. Ct. App. 1997)(holding that a trial court could not reinstate a vacated guilty plea, only a defendant or his attorney could enter a plea, and that “[t]he presumption of innocence is fundamental to our system of justice and should not be abrogated absent clear and compelling authority”); See also *People v. McGee*, 232 Cal. App. 3d 620, 627-28 (Cal. Ct.

App. 1991); *People v. Franco*, 158 A.D.2d 33, 35 (1st Dep’t 1990).

Additionally, in *United States v. Olson*, the Seventh Circuit Court of Appeals held that new admonishments were required when the defendant’s guilty plea had been vacated and he expressed intent to re-enter into a new plea. *United States v. Olson*, 880 F.3d 873, 881 (7th Cir. 2018). The Seventh Circuit held that the court could not “reinstate” the initial plea, and once the court had granted the motion to withdraw guilty plea, “both the plea and accompanying agreement were off the table.” *Id.* at 877, 881.

In contrast, several other state courts and federal appeals courts have held that a trial court has the inherent authority to reconsider its previous decision to vacate a guilty plea. *State v. Riggins*, 160 Idaho 723, 728 (Idaho Ct. App. 2016)(holding that a “defendant’s constitutional rights do not absolutely restore upon granting of a motion to withdraw guilty plea and thus, reconsideration does not automatically violate such rights”); *Marshall v. United States*, 145 A.3d 1014, 1019 (D.C. 2016)(holding that there was no procedural restraint to a trial court’s reconsideration of its decision to reinstate a previously vacated guilty plea, as long as the reconsideration was interlocutory); *United States v. Jerry*, 487 F.2d 600, 608 (3rd Cir. 1973)(holding that a trial court should be free to change its ruling to permit the withdrawal of a guilty plea when justice requires). See also *People v. Wilkens*, 139 Mich. App. 778, 785 (Mich. Ct. App. 1984); *U.S. v. Farrah*, 715 F.2d 1097, 1099 (6th Cir. 1983).

The constitutional protections afforded to a criminal defendant are the bedrock of our justice system. The Illinois Appellate Court’s decision, as well as the decisions of many other courts, creates grave concern on the fairness of criminal proceedings

going forward, as a trial court can reconsider its decision to withdraw a guilty plea with no limitations or time-restraints. For these reasons, this Court should not allow the decision of the Illinois Appellate Court to stand. It is also imperative that this Court addresses the split in authority on this issue, so courts have guidance going forward and defendant's constitutional rights are protected.

In sum, the Illinois Appellate Court's decision that a trial court has the inherent authority to forcibly reinstate a previously vacated guilty plea threatens a defendant's clear and unequivocal fundamental constitutional rights. In addition, federal and state courts are deeply divided over this question. Because this issue is of critical importance for the administration of criminal justice, this Court should use this case to resolve the conflict among the various courts.

CONCLUSION

For the foregoing reasons, petitioner, John Harris, respectfully prays that a writ of certiorari issue to review the judgment of the Illinois Appellate Court.

Respectfully submitted,


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