No. 20-7291

In the Supreme Court of the United States

JOHN HARRIS,

Petitioner,

v.

STATE OF ILLINOIS,

Respondent.

On Petition for a Writ of Certiorari to the Illinois Appellate Court

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the trial court's decision to reinstate petitioner's knowingly and voluntarily entered guilty plea, after erroneously vacating it, violated the United States Constitution.

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BRIEF IN OPPOSITION

Following admonishments by the state trial court, petitioner knowingly and voluntarily pleaded guilty to first-degree murder and was sentenced to twenty-five years in prison. When he subsequently sought to withdraw his guilty plea, alleging ineffective assistance of counsel, the trial court erroneously granted his motion without allowing the State to respond. On the State's motion for reconsideration, the court corrected its error and reinstated the plea. On appeal, the Illinois Appellate Court held that neither Illinois law nor the United States Constitution prohibited the trial court from reinstating an erroneously vacated guilty plea.

Petitioner does not dispute either that his initial guilty plea was valid or that the trial court erred in granting his motion to withdraw his plea before allowing the State to respond. Instead, petitioner contends that the trial court's erroneous decision to vacate his guilty plea entitled him once more to a presumption of innocence, and therefore that the reconsideration of that decision and reinstatement of his plea violated his rights under the United States Constitution, a position he asserts finds support in decisions of this Court and lower federal and state courts. Petitioner is mistaken. The Illinois Appellate Court's rejection of petitioner's federal constitutional claim is consistent with this Court's precedents and with the decisions of every court to have addressed the same argument on the merits. The Court should deny the petition.

STATEMENT

1. In 2013, petitioner was charged with first-degree murder for shooting and killing Sanchez Garner. C30.[1] Illinois law imposes a sentence of twenty to sixty years for murder, but if a defendant personally discharged a firearm that resulted in death, an enhancement of twenty-five years to life is added to the base sentence. 730 ILCS 5/5-8-1(a) (2012); see C81. Petitioner therefore faced a sentencing range of forty-five years to life in prison. R32.

2. To avoid the sentence enhancement, petitioner entered a negotiated plea of guilty. R66-69. In October 2015, the State dismissed the original charge and filed an amended charge alleging that petitioner killed Garner by "injur[ing him] in the back with a dangerous weapon." C149, R67.

When questioned by the trial court, petitioner confirmed that he discussed the plea offer with his attorneys and was satisfied with their advice. R66-67. Petitioner understood that he was waiving his constitutional rights to "require the State to prove [him] guilty beyond a reasonable doubt"; to "a trial . . . before a jury of 12 people or before a judge"; to "confront the witnesses that the State would call to prosecute this case"; to "call witnesses in [his] defense"; and "to testify if [he] chose to waive [his] right to remain silent." R67. Petitioner chose to plead guilty and stated that he was doing so "without any pressure or force." R68.

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[1] References to "C" are to the common-law record and references to "R" are to the report of proceedings, both of which are lodged with the Illinois Appellate Court.

The State presented a factual basis that supported the amended charge, describing eyewitness testimony that petitioner killed Garner by injuring him in the back with a deadly weapon. R67-68. The court accepted petitioner's guilty plea, finding that petitioner "knowingly, understandingly and voluntarily entered into the plea and sentencing agreement." R68. In conformance with the parties' agreement, the trial court sentenced petitioner to twenty-five years in prison. C150, R69.

3. The following month, petitioner filed a pro se motion to withdraw his plea, asserting ineffective assistance of counsel. C154-156. Petitioner's appointed attorney asked the court to investigate his allegation, R72, pursuant to the procedures in *People v. Krankel*, 464 N.E.2d 1045 (Ill. 1984), and its progeny. Under those cases, if a defendant raises a pro se allegation of ineffective assistance of counsel after his conviction, a trial court must conduct a "preliminary inquiry" to ascertain the factual basis of his claim and, if warranted, appoint new counsel to investigate and present the claim. See *People v. Jolly*, 25 N.E.3d 1127, 1133-1134 (Ill. 2014). This preliminary inquiry is non-adversarial; the State is not permitted to participate, and the purpose is solely to determine whether new counsel should be appointed and the claim allowed to proceed further. *Id.* at 1136.

The trial court thus explained to petitioner that "whenever a person raises the issue of ineffective assistance of counsel," the judge must "make a preliminary inquiry regarding whether or not there is a basis for the claim," and asked petitioner to state

the basis for his allegation. R72. Petitioner told the court that he felt pressured to take the plea and "didn't want to take the 25 years." *Ibid.* The court took the matter under advisement. R73, C163. The following month, however, rather than either appoint new counsel to investigate petitioner's claim of ineffective assistance of counsel or deny his motion, the trial court issued a one-line order granting petitioner's motion to withdraw his guilty plea. C164.

The State moved to reconsider, explaining that the purpose of the preliminary inquiry was to determine solely whether petitioner should receive a new attorney to investigate his claim of ineffective assistance. C165-167. At that initial hearing, the State reminded the court, Illinois law prohibited it from responding to petitioner's ineffective assistance claim. C167 (citing *Jolly*, 25 N.E.3d at 1135-1136). The State argued that the trial court erred by granting petitioner's motion to withdraw his plea without permitting the State to respond and asked the trial court to vacate its order, appoint new counsel for petitioner, and set the matter for an evidentiary hearing. *Ibid.*

The trial court appointed a new attorney for petitioner, C169, who argued that the presumption of innocence had reattached when the trial court granted petitioner's motion to withdraw the guilty plea and that any reinstatement of his guilty plea would violate principles of due process, C172, R76. The trial court agreed with the State, vacated its prior order granting petitioner's motion to withdraw his guilty plea

as "premature," and ordered that his sentence be reinstated pending further examination of his ineffective assistance claim with the benefit of the new counsel appointed under *Krankel*. C175-177.

Having corrected its erroneous decision to set aside petitioner's guilty plea, the trial court held a hearing to assess whether petitioner should be permitted to withdraw his guilty plea based on his assertion of ineffective assistance of counsel. See R79-93. At that hearing, at which petitioner was represented by new counsel, one of his original attorneys testified that she explained to petitioner "that the evidence was pretty strongly against him," the minimum sentence petitioner faced if convicted at trial was forty-five years in prison, and the prosecutor had offered to amend the charge to permit a lower sentence as part of a plea deal. R82-83. Petitioner, she explained, chose to accept a negotiated plea to avoid the sentence enhancement. See R83, R88. Petitioner, who also testified at the hearing, agreed that he had stated during the plea colloquy both that he was given "plenty of time" to consider the plea agreement and that he was "satisfied with the services" rendered by his original attorneys. R89. After hearing testimony from all parties, the trial court held that petitioner had not proven ineffective assistance of counsel and had entered his plea "knowingly, understandingly, and voluntarily," and denied his motion to withdraw his guilty plea on that basis. C187-189.

4. Petitioner appealed, contending that the trial court was barred from reinstating his guilty plea after it granted his motion to withdraw the plea. Petitioner did not renew his claim of ineffective assistance of counsel or argue that the trial court's initial decision to vacate the plea was correct.

The Illinois Appellate Court affirmed, holding that the trial court properly exercised its "inherent power to reconsider and correct its ruling" granting petitioner's motion to withdraw his guilty plea. *People v. Harris*, 2020 IL App (5th) 170158, ¶¶ 16-22 (citing *People v. Mink*, 565 N.E.2d 975 (Ill. 1990), and *People v. Bryant*, 860 N.E.2d 511 (Ill. App. Ct. 2006)) (Pet. App. A). It rejected petitioner's argument that reinstatement of the guilty plea violated Illinois Supreme Court Rules governing guilty pleas. *Id.* at ¶¶ 22-24. The court further held that the trial court did not "infringe upon" petitioner's constitutional rights, citing Illinois precedent reasoning that reinstatement of a valid guilty plea does not violate the constitutional presumption of innocence. *Id.* at ¶ 21; see *Bryant*, 860 N.E.2d at 518. Moreover, the court explained, by insisting that the trial court was bound by its own initial error, petitioner was "attempting to invoke a remedy to which he . . . has never been entitled." *Harris*, 2020 IL App (5th) 170158, ¶ 25.

The Illinois Supreme Court denied petitioner's petition for leave to appeal. Pet. App. B.

REASONS FOR DENYING THE PETITION

Petitioner argues that, upon the trial court's concededly erroneous decision to grant his motion to withdraw his plea, a presumption of innocence reattached, such that the court could not, consistent with the United States Constitution, correct its error. Contrary to petitioner's argument, no court has ever recognized such a claim; indeed, every court to have considered petitioner's constitutional argument has rejected it. The decision below is also consistent with this Court's decisions, none of which recognize the constitutional entitlement petitioner claims. Because the Illinois Appellate Court's opinion conflicts neither with this Court's own decisions nor with the decision of any lower court, the petition does not satisfy this Court's criteria for certiorari review, see S. Ct. R. 10, and it should be denied.

I. The Decision Below Does Not Conflict With Any Decision Of This Court.

Petitioner's primary argument is that the decision below conflicts with "long-standing precedent" of this Court purportedly denying trial courts the authority to reconsider any decision, even a concededly erroneous one, vacating a guilty plea. Pet. 9. Petitioner is mistaken: the Illinois Appellate Court's opinion does not conflict with any decision of this Court.

A criminal defendant may choose to plead guilty and waive his constitutional rights under the Fifth and Sixth Amendments. See *Boykin v. Alabama*, 395 U.S. 238, 242-243 (1969). The record must establish that a defendant's waiver of those rights

is knowing and voluntary. *Ibid.* Once a guilty plea is entered and accepted, however, a defendant may withdraw it only if he or she is able to establish a reason for doing so—such as, as petitioner asserted below, the ineffective assistance of plea counsel. See *Hill v. Lockhart*, 474 U.S. 52, 56-59 (1985).

The proceedings in petitioner's case comported with these requirements. At his plea hearing, he acknowledged the rights he was waiving and confirmed that his decision to plead guilty was voluntary. R66-68. Based on those representations, the trial court accepted petitioner's plea and, in accordance with the parties' agreement, sentenced him to twenty-five years in prison. R68-69. When petitioner subsequently sought to withdraw his plea, asserting ineffective assistance of plea counsel, the trial court proceeded to consider whether, under Illinois law, it should appoint a new attorney to help petitioner litigate that claim. But rather than decide that issue, the court prematurely vacated petitioner's guilty plea, without permitting the State to respond. When the State pointed out the court's error, the court corrected it, reinstating petitioner's guilty plea and appointing new counsel to present petitioner's motion to withdraw. *Supra* pp. 4-5. The court then proceeded to evaluate the motion and the claim on the merits, and rejected them.

Petitioner does not dispute that his guilty plea was validly entered or that the trial court's initial decision to vacate it was anything other than a ministerial error premised on a misunderstanding of Illinois law. Nor has petitioner renewed, either

in the Illinois Appellate Court or here, his ineffective-assistance-of-counsel claim. Instead, petitioner's argument is that the trial court's admittedly erroneous grant of his motion to withdraw his guilty plea could not be corrected without obtaining his consent, as if petitioner had never pleaded guilty at all. Pet. 9. But this Court has never held, or even intimated, that state courts are restricted from correcting a mistake of this kind in this manner, and petitioner cites no case to the contrary.

Petitioner's argument instead relies on a misreading of *Evans v. Michigan*, 568 U.S. 313 (2013), and *Kercheval v. United States*, 274 U.S. 220 (1927). See Pet. 8-9. Neither decision rests on any holding relevant to this case. *Evans* holds only that an acquittal, even if mistaken, bars retrial under the Double Jeopardy Clause and cannot be invalidated or rescinded. See 568 U.S. at 318-320. But petitioner was not acquitted; instead, he voluntarily pleaded guilty, admitting that he killed Garner by injuring him in the back with a deadly weapon. Petitioner's present conviction, which is premised on that admission of guilt, cannot violate *Evans*. Petitioner's reliance on *Kercheval*, which held that the prosecution may not introduce evidence of a vacated guilty plea at a criminal trial, 274 U.S. at 225, is also unavailing. The trial court in *Kercheval* made an informed and considered decision to vacate the defendant's guilty plea, see *id.* at 221, 224; here, the trial court's initial decision was concededly an error that the court acted quickly to correct. Because petitioner's guilty plea was not ultimately vacated, *Kercheval* has no application.

Petitioner's argument does not simply fail to find support in this Court's caselaw; it conflicts with this Court's precedents underscoring the finality of guilty pleas, and in particular negotiated pleas. See, *e.g.*, *United States v. Hyde*, 520 U.S. 670, 676-677 (1997) (reversing judgment permitting defendant to withdraw accepted and negotiated guilty plea without any justification). As this Court has explained, negotiated guilty pleas are "highly desirable," in part because they "lead[] to prompt and largely final disposition of . . . criminal cases." *Santobello v. New York*, 404 U.S. 257, 261 (1971). In addition, plea bargaining can be mutually beneficial. *Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978). "For a defendant who sees slight possibility of acquittal," like petitioner here, "the advantages of pleading guilty and limiting the probable penalty are obvious." *Brady v. United States*, 397 U.S. 742, 752 (1970).

Thus, to protect the interests of the State and those defendants who plea bargain, this Court's precedents make clear that a defendant who enters a negotiated plea of guilty is not automatically entitled to withdraw that plea. See *Hyde*, 520 U.S. at 676-677. Here, defendant sought to withdraw his plea on grounds of ineffective assistance of counsel, requiring him to show "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill*, 474 U.S. at 59. The trial court in this case erroneously permitted defendant to withdraw his negotiated guilty plea without making such a showing,

undermining the finality of his plea. Nothing in this Court's precedents prevented the court from then correcting that mistake.

II. The Decision Below Does Not Conflict With Any Decision By Any Lower Court On Any Federal Question.

Petitioner is also wrong to suggest that the Illinois Appellate Court's decision conflicts with the precedent of other state courts and federal courts of appeals. Petitioner asserts that "courts have struggled" with the reinstatement of guilty pleas and "are split on how to handle this situation," Pet. 10, but to the State's knowledge, no court has ever adopted petitioner's position on the federal constitutional question on which he seeks review.

Indeed, although petitioner cites a range of federal and state opinions that he asserts disagree over whether "a trial court can[] reconsider its decision to vacate a guilty plea," *ibid.*, in fact only two of these opinions address a federal constitutional claim on the merits, and both held, consistent with the decision below, that it does not violate the Fifth and Sixth Amendments to reinstate a knowing and voluntary guilty plea that has been erroneously vacated. See *State v. Riggins*, 378 P.3d 513, 518 (Idaho Ct. App. 2016) ("The defendant's constitutional rights do not absolutely restore upon granting of a motion to withdraw a guilty plea and thus, reconsideration does not automatically violate such rights."); *United States v. Jerry*, 487 F.2d 600, 607-608 (3d Cir. 1973) (similar). Petitioner cites no case holding, to the contrary, that the Constitution prohibits reinstatement of an erroneously vacated guilty plea.

Instead, those decisions that have found error in a decision to reinstate a guilty plea rest exclusively on non-constitutional grounds—often compliance with federal and state rules of criminal procedure. In *United States v. Olson*, 880 F.3d 873 (7th Cir. 2018), for instance, the Seventh Circuit concluded that "the irregular proceedings surrounding [defendant's] plea failed to comply with the rules of criminal procedure." *Id.* at 875. The district court, the court explained, failed to comply with Federal Rule of Criminal Procedure 11 in never fully admonishing the defendant before accepting his guilty plea—a rule that, the court emphasized, is "not itself of constitutional dimension" but "helps to ensure compliance with the constitutional rule that a guilty plea must be knowing and voluntary." *Id.* at 877 (citing *McCarthy v. United States*, 394 U.S. 459, 465, 467 (1969)).

The decisions of intermediate state appellate courts that petitioner identifies as purportedly in conflict with the Illinois Appellate Court's decision likewise rest on non-constitutional grounds—indeed, on state-law grounds. As one court considering (and rejecting) a constitutional claim like petitioner's has explained, these cases did not address a constitutional question, but instead rested on "the trial court's 'authority' to reconsider under applicable rules, statutes, or the inherent power of the court." *Riggins*, 378 P.3d at 515; see *State v. York*, 252 S.W.3d 245, 248-249 (Mo. Ct. App. 2008) (relying on broad scope of trial judge's discretion to permit withdrawal of guilty plea to hold that second judge lacked authority to revisit first judge's order

exercising that discretion); *Williams v. State*, 762 So. 2d 990, 991 (Fla. Dist. Ct. App. 2000) (holding that trial court was "without authority" to reconsider grant of motion to withdraw guilty plea because Florida rule governing withdrawal of guilty pleas "should be liberally construed" to bar reinstatement of plea); *Turner v. Commonwealth*, 10 S.W.3d 136, 139-140 (Ken. Ct. App. 1999) (finding that Kentucky "rules of criminal procedure . . . do not contain language that permits the trial court to reconsider its original order allowing withdrawal of a guilty plea") (quotations omitted); *State v. Beechum*, 934 P.2d 151, 153-154 (Kan. Ct. App. 1997) (emphasizing that "[t]here is no provision in [Kansas] law which allows the prosecution to move for reconsideration of an order allowing defendant to withdraw a guilty or nolo contendere plea"); *People v. McGee*, 232 Cal. App. 3d 620, 623-624 (Cal. Ct. App. 1991) (concluding that "[t]here is nothing in the [California] statute . . . authorizing guilty pleas to permit the court to reconsider its original order to withdraw the plea upon the application by the prosecution"); *People v. Franco*, 158 A.D.2d 33, 34-35 (N.Y. App. Div. 1990) (finding reinstatement barred under New York statute providing that court order granting withdrawal of guilty plea restored original indictment). These cases' state-law holdings do not furnish grounds for this Court's review.

Indeed, the decision below likewise rests primarily on the Illinois Appellate Court's analysis of the trial court's authority under Illinois law: It applied the state-law rule 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," *Mink*, 565 N.E.2d at 171, and concluded that reinstating an erroneously vacated guilty plea does not conflict with Illinois court rules governing guilty plea procedures. *Harris*, 2020 IL App (5th) 170158, ¶¶ 18, 21-24. The appellate court's holdings on state-law questions are not subject to review by this Court, see, *e.g.*, *Grubb v. Public Utilities Comm'n of Ohio*, 281 U.S. 470, 477 (1930) (declining to review, as matter of "local law only," scope of state court's jurisdiction to review administrative order), and in any event do not contribute to any division of authority on a federal question of law that could conceivably warrant this Court's attention.[2]

Because the cases that defendant cites holding that a state court erred in reinstating an erroneously vacated guilty plea rest on state laws not applicable in Illinois, they do not conflict with the decision below. Nor do they rest on any federal constitutional claim—on the contrary, petitioner's constitutional argument has been unanimously rejected by those courts that have considered it. The Court should deny review.

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[2] The Illinois Appellate Court's assessment of the scope of the trial court's authority is, in any event, consistent with the approach taken by other jurisdictions on this non-constitutional question. See *Marshall v. United States*, 145 A.3d 1014, 1018-1019 (D.C. 2016) (trial court properly exercised broad, inherent power to modify interlocutory order); *People v. Wilkens*, 362 N.W.2d 862, 865-866 (Mich. Ct. App. 1984) (trial court properly reinstated guilty plea under court rule that permitted modification of any order premised on "mistake").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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