

No.

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IN THE SUPREME COURT OF THE UNITED STATES

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BERNIER JACKSON,

*Petitioner,*

v.

STATE OF FLORIDA,

*Respondent.*

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On Petition for a Writ of Certiorari  
to the Fifth District Court of Appeal  
For the State of Florida

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**PETITION FOR A WRIT OF CERTIORARI**

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## **QUESTION PRESENTED**

Whether the Sixth Amendment right to the effective assistance of counsel requires counsel to advise his client to accept a plea offer which is clearly in his best interest?

## **PARTIES TO THE PROCEEDING**

Parties to the proceeding include Bernier Jackson (Appellant/Petitioner), Dane K. Chase, Esquire (Appellant/Petitioner's Counsel), and Ashley Moody, Esquire (Attorney General, State of Florida).

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## **PETITION FOR WRIT OF CERTIORARI**

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### **OPINION BELOW**

The decision of the Fifth District Court of Appeal, State of Florida, *infra*, is attached as Appendix A.

### **JURISDICTION**

The Judgment of the Fifth District Court of Appeal, State of Florida, was entered on March 2, 2021. A Motion for Written Opinion was timely filed and denied on April 5, 2021. This Court's jurisdiction is invoked under Title 28 U.S.C. § 1257(a).

### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

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. VI.

### **STATEMENT OF FACTS**

Mr. Jackson was charged by Information in Orange County, Florida, with Robbery with a Firearm, Grand Theft, and Carrying a Concealed Firearm. Due to Mr. Jackson's prior record, he faced a mandatory minimum term of life imprisonment if convicted of Robbery with a Firearm, or the lesser included offense of Robbery with a Weapon. The state's discovery materials indicated that the victim, who knew Mr. Jackson, would testify that Mr. Jackson robbed him of \$1,295. The victim would

further testify that Mr. Jackson used a firearm during the incident and made no attempt to conceal his identity. The discovery materials also reflected that Mr. Jackson was apprehended immediately after the incident and confessed to taking the victim's money, though he denied using a firearm.

Prior to trial, the state offered Mr. Jackson a plea agreement of 8 years imprisonment, which he rejected. Mr. Jackson ultimately proceeded to trial where the state's witnesses testified in accordance with the discovery materials. Mr. Jackson was ultimately convicted of the lesser included offense of Robbery with a Weapon and Grand Theft. Mr. Jackson received a mandatory term of life imprisonment for the Robbery conviction, and 5 years imprisonment for the Grand Theft conviction.

Thereafter, Mr. Jackson filed a Motion for Post-Conviction Relief arguing that he was deprived of his right to the effective assistance of counsel. Specifically, Mr. Jackson argued that acceptance of the state's plea offer was clearly in his best interest, yet trial counsel failed to advise him to accept the offer, and thus performed ineffectively by failing to do so. A hearing was held on the issue, and it was undisputed that trial counsel failed to offer any advice as to whether Mr. Jackson should accept or reject the offer. Instead, trial counsel simply advised Mr. Jackson of the offer and left him to decide for himself whether to accept or reject the offer. Nonetheless, the post-conviction court concluded that trial counsel had appropriate discussions with Mr. Jackson concerning the state's plea offer and therefore had not performed deficiently.

Mr. Jackson then appealed to the Fifth District Court of Appeal. An oral argument was held during which the court made clear its belief that trial counsel was not required to advise Mr. Jackson whether acceptance of the state's plea offer was in his best interest. The court ultimately affirmed without a written opinion.

This Petition follows.

## REASONS FOR GRANTING THE PETITION

### I. THIS COURT SHOULD GRANT REVIEW TO ESTABLISH THAT WHERE ACCEPTANCE OF A PLEA OFFER IS CLEARLY IN THE DEFENDANT'S BEST INTEREST, DEFENSE COUNSEL HAS A DUTY TO ADVISE THE CLIENT TO ACCEPT THE OFFER UNDER THE SIXTH AMENDMENT.

At issue in this Petition is whether trial counsel performs ineffectively by failing to advise a client to accept a plea offer, where acceptance of the offer is clearly in the client's best interest.

In *Missouri v. Frye*, 566 U.S. 134, 132 S. Ct. 1399, 182 L. Ed. 2d 379 (2012), the Court explained that "criminal defendants require effective counsel during plea negotiations." *Frye*, 566 U.S. at 144, 132 S. Ct. at 1407–08. In *Lafler v. Cooper*, 566 U.S. 156, 132 S. Ct. 1376, 1381, 182 L. Ed. 2d 398 (2012), the Court explained that the *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) performance prong applies to the plea negotiation process, specifically stating:

Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process. *Frye*, *ante*, at 1386 – 1387, 132 S.Ct. 1399; see also *Padilla v. Kentucky*, 559 U.S. \_\_\_, \_\_\_, 130 S.Ct. 1473, 1486, 176 L.Ed.2d 284 (2010); *Hill*, *supra*, at 57, 106 S.Ct. 366. During plea negotiations defendants are "entitled to the effective assistance of competent counsel." *McMann v. Richardson*, 397 U.S. 759, 771, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970). In *Hill*, the Court held "the two-part *Strickland v. Washington* test applies to challenges to guilty pleas based on ineffective assistance of counsel." 474 U.S., at 58, 106 S.Ct. 366. The performance prong of *Strickland* requires a defendant to show "‘that counsel's representation fell below an objective standard of reasonableness.’" U.S., at 57, 106 S.Ct. 366 (quoting *Strickland*, 466 U.S., at 688, 104 S.Ct. 2052).

*Lafler*, 566 U.S. at 162–63, 132 S. Ct. at 1384.

In *Boria v. Keane*, 99 F.3d 492, 497 (2d Cir.1996) the Court observed that defense counsel "must give the client *the benefit of counsel's professional advice on this crucial decision*" of whether to plead guilty. *Boria v. Keane*, 99 F.3d 492, 497 (2d Cir.1996) (quoting Anthony G. Amsterdam, *Trial Manual 5 for the Defense of Criminal Cases* (1988)) (emphasis in original); *see also, Cullen v. United States*, 194 F.3d 401, 404 (2d Cir.1999) ("*Boria* recognizes a lawyer's general duty to advise a defendant concerning acceptance of a plea bargain."). Further still, the Court in *Agan v. Singletary*, 12 F.3d 1012 (11th Cir. 1994) explained that with respect to advising a defendant which plea to enter, "counsel must...make an independent examination of the facts and circumstances and **offer an informed opinion to the accused as to the best course to follow.**" *Agan*, 12 F.3d at 1018 (citing, *Wofford v. Wainwright*, 748 F.2d 1505, 1508 (11th Cir.1984))(emphasis added). Simply put, the fact that "the right to effective assistance of counsel encompasses the accused's right to be informed by his attorney as to the relative merits of pleading guilty and proceeding to trial, [i]s hardly novel, having been articulated clearly by the Supreme Court nearly a half-century [ago], *see Von Moltke v. Gillies*, 332 U.S. 708, 721, 68 S.Ct. 316, 92 L.Ed. 309 (1948) ("Prior to trial **an accused is entitled to rely upon his counsel to make an independent examination of the facts, circumstances, pleadings and laws involved and then to offer his informed opinion as to what plea should be entered.**")." *Roccisano v. Menifee*, 293 F.3d 51, 59 (2d Cir. 2002) (emphasis added).

Additionally, the Court in *United States v. Leonti*, 326 F.3d 1111 (9th Cir. 2003), explicitly found that the failure to advise a client to accept a plea-agreement

when it is clearly in the client's best interest to do so constitutes ineffective assistance of counsel under *Strickland*. See, *Leonti*, 326 F.3d at 1117 ("If it is ineffective assistance to fail to inform a client of a plea bargain, **it is equally ineffective to fail to advise a client to enter a plea bargain when it is clearly in the client's best interest.**" (emphasis added)(citing, *Boria v. Keane*, 99 F.3d 492, 497 (2d Cir.1996) (examining counsel's failure to advise client of wisdom of accepting a plea); *See also, Padilla v. Kentucky*, 559 U.S. 356, 370, 130 S. Ct. 1473, 1484, 176 L. Ed. 2d 284 (2010) (Observing that during plea negotiations counsel cannot remain silent on matters of great importance, as doing so is "at odds with the critical obligation of counsel to advise the client of 'the advantages and disadvantages of a plea agreement.'" (quoting, *Libretti v. United States*, 516 U.S. 29, 50–51, 116 S.Ct. 356, 133 L.Ed.2d 271 (1995)).

Conversely, in a line of cases stemming from *Purdy v. United States*, 208 F.3d 41 (2d Cir. 2000), some courts have concluded an exception exists to *Von Moltke*. According to the *Purdy* line of reasoning, as long as defense counsel advises the client of his legal rights he is not required to advise the defendant whether acceptance of a plea offer is in his best interest. *Purdy*, 208 F.3d at 48. According to the *Purdy* line of reasoning, this exception exists because in *Von Moltke* "the defense lawyer not only failed to give an opinion... but also failed to educate the defendant as to her legal rights..." *Purdy*, 208 F.3d at 48. The problem, of course, is that *Von Moltke* carved out no such exception. The *Von Moltke* Court did not conclude that under x, y, & z circumstances an attorney could decline to offer his informed opinion as to what plea should be entered. Instead, the *Von Motlke* Court stated flatly, and without

exception, that “Prior to trial an accused is entitled to rely upon his counsel to make an independent examination of the facts, circumstances, pleadings and laws involved and then to offer his informed opinion as to what plea should be entered.” *Von Moltke*, 332 U.S. at 721, 68 S.Ct. 316.

As with all legal issues, there are arguments to be made on both sides of the coin. *See*, Steven Zeidman, *To Plead or Not to Plead: Effective Assistance and Client-Centered Counseling*, 39 B.C. L. Rev. 841 (1998) (Examining arguments on both sides of whether trial counsel should be constitutionally required to advise their client which plea to enter). Given the prevalence of plea bargaining in the criminal justice system, *see*, *Frye*, 566 U.S. 134, 132 S. Ct. at 1402 (“97 percent of federal convictions and 94 percent of state convictions are the result of guilty pleas.”), the issue is in need of resolution by this Court. Furthermore, because “it is the attorney, not the client, who is particularly qualified to make an informed evaluation of a proffered plea bargain,” *In re Alvernaz* (1992) 2 Cal.4th 924, 933, this Court should resolve the issue by finding that trial counsel has a duty to advise whether acceptance of a plea offer is in the client’s best interest. *See also*, Zeidman, *To Plead or Not to Plead: Effective Assistance and Client-Centered Counseling*, 39 B.C. L. Rev. 841 (Explaining in depth why counsel should be required to offer informed advice regarding which plea to enter).

Additionally, Mr. Jackson’s case is the ideal vehicle for resolving this issue. There is no dispute regarding whether trial counsel advised Mr. Jackson that the state’s plea offer was in his best interest; he did not. The state has likewise not

disputed that it should have been obvious to trial counsel that acceptance of the offer was in Mr. Jackson's best interest. The state has also not disputed that the lack of advice prejudiced Mr. Jackson. The facts are straightforward and the legal question presented is clear cut: does the Sixth Amendment's guarantee of the effective assistance of counsel require counsel to advise his client to accept a plea offer when it is clearly in his best interest to do so?

Consequently, because the issue is of vital importance –impacting virtually every criminal prosecution nationwide – and Mr. Jackson's case provides the Court with a clean record upon which to decide the issue, this Court should grant review, and establish that trial counsel has a duty to advise his client to accept a plea offer which is clearly in his client's best interest, quash the decision below, and grant relief accordingly.

## CONCLUSION

For the reasons stated above, this Court should grant Mr. Jackson's Petition for Writ of Certiorari, establish that trial counsel has a duty to advise his client to accept a plea offer which is clearly in his client's best interest, quash the decision below, and grant relief accordingly.

Respectfully Submitted,



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# APPENDIX A

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

BERNIER GERARD JACKSON,

Appellant,

v.

Case No. 5D20-899

STATE OF FLORIDA,

Appellee.

/

Decision filed March 2, 2021

3.850 Appeal from the Circuit  
Court for Orange County,  
Tom Young, Judge.

Dane K. Chase, of Chase Law Florida,  
P.A., St. Petersburg, for Appellant.

Ashley Moody, Attorney General,  
Tallahassee, and Roberts J. Bradford, Jr.,  
Assistant Attorney General, Daytona  
Beach, for Appellee.

PER CURIAM.

AFFIRMED.

EVANDER, C.J., EDWARDS, and HARRIS, JJ., concur.

# APPENDIX B

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

BERNIER GERARD JACKSON,

Appellant,

v.

CASE NO. 5D20-0899

STATE OF FLORIDA,

Appellee.

/

DATE: April 05, 2021

**BY ORDER OF THE COURT:**

ORDERED that Appellant's "Motion for Issuance of a Written Opinion," filed March 16, 2021, is denied.

*I hereby certify that the foregoing is  
(a true copy of) the original Court order.*

*Sandra B. Williams*



SANDRA B. WILLIAMS, CLERK

Panel: Judges Evander, Edwards and Harris

CC:

Dane K. Chase

Office of the Attorney  
General

Roberts J. Bradford, Jr.

# APPENDIX C

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,  
Plaintiff,

CASE NO.: 2012-CF-13345-A-O  
DIVISION: 14

vs.

BERNIER GERARD JACKSON,  
Defendant.

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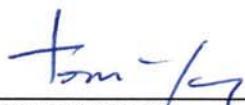
FINAL ORDER DENYING  
DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF

THIS MATTER came before the Court on the Defendant's Motion for Postconviction Relief, filed on February 9, 2017, pursuant to Florida Rule of Criminal Procedure 3.850. The Court held an evidentiary hearing on February 25, 2020. Defendant was present with counsel. The Court reviewed the motion, court file, and record, and heard the testimony presented at the evidentiary hearing. For the reasons stated on the record at the evidentiary hearing, Grounds 2, 3, and 4 of Defendant's motion are denied.

Therefore, it is hereby ORDERED AND ADJUGED that:

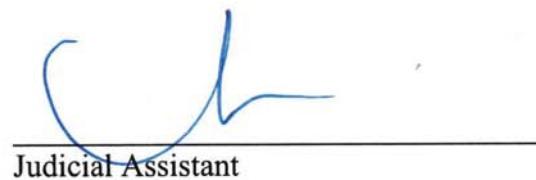
1. Defendant's Motion for Postconviction Relief is DENIED.
2. The Court's previous ruling on Ground 1 remains unchanged and is incorporated into this final order.
3. The Defendant has **thirty (30)** days from the date of rendition of this Order to file a notice of appeal.
4. The Clerk of Court shall promptly serve a copy of this Order upon the Defendant, including an appropriate certificate of service.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 28th day  
of February, 2020.

  
\_\_\_\_\_  
TOM YOUNG  
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Order has been furnished by U.S. Mail / E-portal this 28 day of February, 2020, to Bernier Jackson, 19027342 M-1I, P.O. Box 4970, Orlando, Florida 32802-4970 ; Dane K. Chase, Esq., 111 2nd Ave. NE, Suite 334, St. Petersburg, Florida 33701, Dane@chaselawfloridapa.com; and to Daniel Williams, Assistant State Attorney, Postconviction Felony Unit, Post Office Box 1673, 415 North Orange Avenue, Suite 200, Orlando, Florida 32802-1673, PCF@sao9.org.



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Judicial Assistant