No._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2021

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***INES COLLEEN ROBINSON*, Petitioner**

v.

***FLORIDA*, Respondent.**

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

ROBINSON WAS DENIED DUE PROCESS WHEN THE FLORIDA COURT OF APPEAL REFUSED TO GRANT HER A RESENTENCING AFTER THE SAME FLORIDA COURT HAD GRANTED A WRIT OF PROHIBITION AND DISQUALIFIED HER SENTENCING JUDGE DUE TO HIS JUDICIAL BIAS IN HER SENTENCING.

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The Petitioner, INES COLLEEN ROBINSON, respectfully prays that a writ of certiorari be issued to review the decision of the Florida Fifth District Court of Appeals in this case.

OPINION BELOW

The Florida Fifth District Court of Appeals decision, *Robinson v. Florida*, is reported at 307 So. 3d 697. The decision, similar to over 90% of all Florida appellate decisions, is simply a written order stating "affirmed" without any written opinion or citation of authority. The decision entered December 8, 2020. Rehearing *en banc* was denied by decision entered January 12, 2021. Copies of the two orders are included

in the attached appendix as Appendix A and Appendix B, respectively.

JURISDICTION

This Court has jurisdiction to review the decision of the Florida Fifth District Court of Appeals pursuant to Title 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

The Due Process Clause of the Fifth Amendment to the United States Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime . . . without due process of law.

STATEMENT OF THE CASE

The Judge who presided over this case at the trial court level through and including sentencing was Judge Howard M. Maltz. Counsel for Robinson had heard rumors that Judge Maltz had a sentencing policy that he applied to all drug cases. Robinson's case was a drug case.[1] Counsel emailed Attorney Norma Wendt, a Division Chief in the Public Defender's Office in St. Augustine, to ask whether she knew what Judge Maltz's policy was with respect to drug cases, and if she knew the policy, whether she could provide an affidavit to counsel stating what the Judge's sentencing policy in drug cases was. July 23, 2019 Attorney Wendt emailed counsel

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[1] On November 15, 2017 Robinson was charged in a six-count information alleging trespass, possession of methamphetamine with intent to sell, and four counts of possession of a controlled substance in case number CF 17-1660. On January 4, 2018 a one count information was filed alleging a sale of methamphetamine within 1000 feet of a child care facility or school. R-195 Also on January 4, 2018 a one count information was filed alleging a sale of hydromorphone within 1000 feet of a child care facility of school.

After initially entering pleas of not guilty on all charges, on June 15, 2018 Robinson entered no-contest open pleas to Count I of case CF 17-1901, sale of hydromorphone within a thousand feet of a school; Count I of case CF 17-1899, sale of methamphetamine; and Counts II and III of case CF 17-1660, possession of methamphetamine with intent to sell or deliver and possession of hydromorphone. R-137. The remaining charges were nolle prossed. Id.

On November 28, 2018 Robinson was sentenced to 15 years in the custody of the department of corrections on Count I of CF 17-1901, Count II of CF 17-1660 and Count I of CF 17-1899, concurrent to 5 years in the custody of the department of corrections on Count III of CF 17-1660.

two items, a written Memorandum authored by Judge Maltz dated November 17, 2017 addressed to the Office of the State Attorney and the Office of the Public Defender titled "Plea Bargains on Sale, Manufacture, Delivery and Trafficking in Opiate Cases," [Appendix C], and a newspaper article of an interview with Judge Maltz published in the St. Augustine Record newspaper November 20, 2017 in which Judge Maltz made statements consistent with those in the Plea Bargain Memorandum. [Appendix D]

In the Memorandum Judge Maltz made the following statements:

> Due to the heroin and opioid crisis plaguing this community, this Court will,as a general rule, no longer accept plea bargains in cases in which a Defendant is charged with the sale, manufacture, delivery or trafficking in heroin or opioids. The President of the United States and Florida's Governor Scott have recently declared the opioid epidemic constitutes a public health emergency. The Florida Legislature is addressing multiple proposals to deal with the opioid crisis, including but not limited to limits of opioid prescriptions. While the executive and legislative branches of our government have taken significant steps to address this crisis, it is imperative the judicial branch also take certain steps to assure public confidence in addressing this crisis. . . .
>
> St. Johns County had approximately 2000 felony cases last year. That number is only expected to increase with our rapidly increasing population. Without plea bargaining a significant increase in the limited resources of the judicial branch would be needed. Plea bargaining typically takes place behind closed doors between prosecutors and defense counsel addressing issues in a case outside of the public's view. The public never sees or hears what went into the decision, but merely sees the end result. However, there comes a time when efficiency must take a backseat to transparency and the public's need to observe the

> entire process. Such is the case when our society is facing the current opioid crisis. Because this issue is such a problem in our society today, the public must have the confidence that the criminal justice system is doing its part to address this problem. Public confidence can be achieved by sentences decided by evidence presented and arguments made in the fully transparent setting of a public courtroom.
>
> It is for this reason that I will generally no longer accept plea bargains in cases in which a Defendant is charged with sale, manufacture, delivery, or trafficking in heroin or opioids. Defendants facing such charges may open plea to the court or proceed to trial. Upon an open plea or conviction following trial, the Court will consider all legally permissible aggravating and mitigating circumstances and impose the sentence it deems appropriate. The Court acknowledges there may be situations in which a negotiated plea bargain may be appropriate, for example where a Defendant has provided substantial assistance to law enforcement, in which case safety of those involved may dictate a negotiated disposition. The Court will address those situations on a case-by-case basis. The Court will continue to entertain negotiated plea agreements for those defendants charged only with possession of heroin or opioids.

[Appendix C, pp. 1-2, 5-6]

In the St. Augustine Record newspaper interview Judge Maltz was quoted as saying:

> With the nation, state and county reeling from the ongoing opioid epidemic, a local circuit judge says he will no longer accept plea deals in cases against people accused of selling the powerful drugs that include heroin and fentanyl. . . .
>
> Maltz rattled off a few statistics - some of which are included in a memo from him about the decision, released Friday evening - about the number of deaths throughout the state caused by the powerful drugs. . . . And with Florida Gov. Rick Scott, and even President Donald Trump,

> having declared the epidemic a health emergency, as well as the state Legislature set to consider new laws to help with the problem, Maltz said it was time for him to do something as well.
>
> "While the executive and legislative branches of our government have taken significant steps to address this crisis," his memo says, "it is imperative the judicial branch also take certain steps to assure public confidence in addressing this crisis."
>
> Maltz said plea deals are an important part of the criminal justice system as they help many cases clear busy courtrooms, but because they often get made behind closed doors between the assistant state attorneys, defense teams and defendants, very little is ever learned about the circumstances of the alleged crimes.
>
> "In the overwhelming majority, the judge goes along with it because he or she doesn't know much about the case," he said.
>
> Refusing to accept a deal in the sale or manufacturing cases will force defendants either to go to trial or to enter an open plea to the court. If they opt for a trial, guilt or innocence will be decided by a jury. If they plead guilty in front of Maltz, each side will have the opportunity to argue mitigating and aggravating factors before he imposes sentence.
> . . .
>
> His new rule, he said, will apply to any case involving the sale, delivery, manufacturing or trafficking of any opioid but there will be room for some exceptions, including for those who are cooperating with authorities as informants.
>
> It also won't apply to the addicts who find themselves caught up in the epidemic.

Undersigned counsel for Robinson had been retained by Robinson to take over her pending appeal of her plea and sentencing, the appeal being taken to the Florida

Fifth District Court of Appeal, Case Number 5D18-3978. The Fifth District Court of Appeal entered an order permitting undersigned counsel to be substituted for the Regional Conflict Counsel on June 14, 2019.

Counsel determined that under Florida's rules of criminal procedure a Rule 3.800(b) motion was required to be filed at the lower tribunal before proceeding with the direct appeal to first request the trial court to vacate the sentencing order based on Judge Maltz's bias. At the same time, counsel filed a motion to disqualify Judge Maltz.

Robinson argued that Judge Maltz's judicial bias expressed in his policy memorandum and interview with the press required him to be disqualified from any further proceedings and required the sentence he had imposed on Rohinson to be vacated and for Robinson to be resentenced before a neutral and detached judicial officer. Robinson argued that Judge Maltz's policy and press interview violated Due Process and various canons of judicial ethics and that it was obvious that the Judge who created the Due Process sentencing error could not be the judge to rule on a motion challenging the error.

Robinson was charged among other matters with sale of an opiate. Because of the Court's policy, Robinson's prior trial counsel was not permitted to negotiate a plea agreement (under Florida law, a negotiated plea agreement permits a sentence

below the otherwise binding state sentencing guidelines and so long as the plea agreement is accepted by the court, binds the court to impose the sentence agreed to in the plea agreement), but was required to either go to trial or plea Robinson guilty without benefit of a plea agreement in which case under Florida sentencing law the judge in his absolute discretion could impose any sentence up to the statutory maximum. Judge Maltz's policy deprived Robinson of the opportunity for a below guideline sentence without having otherwise to establish a basis for a downward departure.

Florida's legislature created a policy whereby defendants such as Robinson have a statutorily created opportunity to negotiate a reduced or specified sentence, one which may be lower than after trial and lower than required by the Florida Sentencing Guidelines.

The Judge's policy forced Robinson to attempt to provide substantial assistance as a cooperating informant, endangering herself and possibly others in an effort to get around the Court's policy of no plea agreements. Additionally, the Judge's blanket policy constituted an improper involvement of the Court in the plea bargaining process.

As noted above, Robinson promptly filed a motion to disqualify Judge Maltz on this basis within ten days of counsel and Robinson learning of the no plea

agreement policy. Judge Maltz promptly denied the motion to disqualify.

After Judge Maltz denied the motion to disqualify, Robinson filed the anticipated Rule 3.800(b) sentencing correction motion asking that her sentence imposed by Judge Maltz be vacated and that she be given a *de novo* resentencing before an impartial judge.

Robinson also filed a Petition for Writ of Prohibition and Request for Stay of Proceedings with the Florida Fifth District Court of Appeal in case number 19-2372 seeking to have Judge Maltz removed from Robinson's case based on his bias.

On August 28, 2019 the Fifth District Court of Appeal issued an opinion granting Robinson's Petition for Writ of Prohibition removing Judge Maltz from Robinson's case.

September 19, 2019, after being reassigned to a new judge, Robinson's sentencing correction motion was denied leaving the sentence imposed by the judge who had been disqualified for bias to stand.

Robinson then appealed that order to the Florida Fifth District Court of Appeal which affirmed without any written opinion or explanation. This petition for certiorari followed in a timely manner challenging that decision.

REASONS FOR GRANTING THE WRIT

ROBINSON WAS DENIED DUE PROCESS WHEN THE FLORIDA COURT OF APPEAL REFUSED TO GRANT HER A RESENTENCING AFTER THE SAME FLORIDA COURT HAD GRANTED A WRIT OF PROHIBITION AND DISQUALIFIED HER SENTENCING JUDGE DUE TO HIS JUDICIAL BIAS IN HER SENTENCING.

Robinson was charged among other matters with sale of an opiate. Her plea and sentencing judge had a blanket policy of no plea agreements (without substantial assistance) in opiate cases. Because of the Court's policy, Robinson's counsel was required to plea Robinson guilty without benefit of a plea agreement. This in turn deprived Robinson of the opportunity for a below guideline sentence without having otherwise to establish a basis for a downward departure.

Florida's legislature created a policy whereby defendants such as Robinson have a statutorily created opportunity to negotiate a reduced or specified sentence, one which may be lower than after trial and lower than required by the Sentencing Guidelines. As the Florida First District Court of Appeal recently noted in an *en banc* decision:

> The United States Supreme Court has "squarely held that a State may encourage a guilty plea by offering substantial benefits in return for the plea." *Corbitt v. New Jersey*, 439 U.S. 212, 219, 99 S. Ct. 492, 58 L. Ed. 2d 466 (1978). These substantial benefits can include sentences lower than what would be possible after trial, or even sentences lower than would be required after trial. Id.; cf. also § 921.0026(2)(a) (authorizing

> downward departure if it "results from a legitimate, uncoerced plea bargain").

Davis v. State, 268 So. 3d 958, 967 (Fla. 1st DCA 2019).

It is contrary to public policy and violates Due Process for an individual judge to predetermine that an entire class of defendants will not be permitted to even attempt to negotiate such an agreement and if they do so, their agreement will not be considered by the Court, not because of the facts of the case, but as a matter of blanket policy by the Judge. Due Process prohibits judges from establishing blanket policies which affect sentencing.

Upon learning of Judge Maltz's policy, Robinson promptly filed a motion to disqualify Judge Maltz. After he denied the disqalification motion, the Florida Fifth District Court of Appeals granted a writ of prohibition removing him from the case.

The Judge's policy forced Robinson to attempt to provide substantial assistance as a cooperating informant, endangering herself and possibly others in an effort to get around the Court's policy of no plea agreements.

The judge's policy further violated Due Process because it constituted an improper involvement of the Court in the plea bargaining process. Although Courts have the discretion, upon learning the terms of a plea agreement to reject a plea agreement, it is a violation of Due Process for a Court to have a flat policy of

rejecting all plea agreements for an entire class of cases without knowing any of the facts of the case or defendant and without exercising individualized discretion based on the particular facts of the case and defendant before deciding whether to accept a plea agreement or not.

The Court's announcement in advance of Robinson's case of a policy to apply to all such cases violates fundamental Due Process. See, e.g., *Cromartie v. State*, 70 So. 3d 559 (Fla. 2011), *Fraser v. State*, 201 So. 3d 847 (Fla. 4th DCA 2016), *Tyson v. State*, 228 So. 3d 652 (Fla. 1st DCA 2017), *Woolsey v. United States*, 478 F.2d 139 (8th Cir. 1973), and *United States v. Hartford*, 489 F.2d 652 (5th Cir. 1974).

In *United States v. Robertson*, 45 F.3d 1423 (10th Cir. 1995), the trial court rejected a last minute plea agreement pursuant to a local rule that required all plea negotiations be presented no later than 10 days prior to trial. The local ruled provided that if a plea agreement was not presented timely, the defendant had the option to either plead guilty to the indictment or go to trial. On appeal, the Tenth Circuit held that the rejection of the plea agreement on that basis was an abuse of discretion. *Robertson* 45 F.3d at 1438- 1439.The court in *Robertson* additionally held that "in order to insure [courts] exercise sound judicial discretion . . . courts must set forth, on the record, the prosecution's reasons for framing the bargain and the court's justification for rejecting it." The Court in *Robertson* joined other federal courts that

require trial court to articulate their reasons for rejecting a plea agreement on the record. See *United States v. Moore*, 916 F.2d 1131, 1135-1136 (6th Cir. 1990); *United States v. Miller*, 722 F.2d 562, 566 (9th Cir. 1983); *United States v. Delegal*, 678 F.2d 47, 50 (7th Cir. 1982); *United States v. Ammidown*, 162 U.S. App. D.C. 28, 497 F.2d 615, 623 (D.C.Cir. 1973); *United States v. Maddox*, 310 U.S. App. D.C. 379, 48 F.3d 555, 558 (D.C.Cir. 1995).

Other States have found such a policy an abuse of discretion:

> A defendant does not have an absolute right under the United States Constitution to have the court accept his guilty plea. *N. Carolina v. Alford* (1970), 400 U.S. 25, 38, 91 S.Ct. 160, 27 L.E.2d 162, fn.11. Rather, the decision to accept or reject a guilty plea is within the sound discretion of the trial court. *City of Akron v. Ragsdale* (1978), 61 Ohio App.2d 107, 399 N.E.2d 119, paragraph one of syllabus. Accordingly, this court may not reverse a trial court's rejection of a plea agreement absent an abuse of that discretion. *State v. Jenkins* (1984), 15 Ohio St.3d 164, 222-223, 15 Ohio B. 311, 473 N.E.2d 264. A trial court, however, abuses its discretion when it rejects a plea agreement by relying on a blanket policy rather than considering the facts and circumstances of the particular case.

State v. Switzer, 2010-Ohio-2473, 2010 Ohio App. LEXIS 2039 ** | 2010 WL 2206399 (Ohio Ct. App. 2010). *See* also *People v. Jasper*, 984 P.2d 1185 (Colo. Ct. App. 1999), *State v. Hern*, 133 Haw. 59, 323 P.3d 1241 (Haw. Ct. App. 2013), *Sandy v. Fifth Judicial Dist. Court*, 113 Nev. 435 (Nevada 1997), *State v. Loveless*, 2010 UT 24, 232 P.3d 510 (Utah 2010), and *State v. Sears*, 208 W.Va. 700 (Sup. Ct. App.

W.Va. 2000).

Judge Maltz's policy violates Due Process and the Constitutional principle of separation of powers. The Due Process concern is the lack of proper, individualized exercise of discretion in sentencing:

> The proper judicial role in the sentence bargaining process is not raised by this case. Additionally, the extent of judicial discretion over individual charge bargains is not at issue. Rather, we need only decide whether a court may implement a categorical rule limiting the types of charge bargains it will accept. In the case at bar, the district court sought to preserve its sentencing power by refusing to accept any charge bargains that left standing only one count of a multiple count indictment. We hold that such categorical rules to govern charge bargaining are impermissible. There are three bases for our holding.
>
> First, as a general rule, the existence of discretion requires its exercise. E.g., *Dorszynski v. United States*, 418 U.S. 424, 443, 41 L. Ed. 2d 855, 94 S. Ct. 3042 (1974). Categorical rules for setting bail are improper, e.g., *Stack v. Boyle*, 342 U.S. 1, 5, 96 L. Ed. 3, 72 S. Ct. 1 (1951), categorical rules for sentencing are improper, *United States v. Lopez-Gonzales*, 688 F.2d 1275, 1276-77 (9th Cir. 1982), and we hold that categorical rules limiting charge bargains are improper. Rule 11 permits district courts to assess the wisdom of plea bargains; this grant of power carries with it the duty to exercise it responsibly. When a court establishes a broad policy based on events unrelated to the individual case before it, no discretion has been exercised. When dealing with issues as fundamental as a person's freedom or imprisonment, our judicial system can -- and must -- give every case independent consideration.
>
> Second, separation of powers requires that the judiciary remain independent of executive affairs. See, e.g., *United States v. Cox*, 342 F.2d 167, 171 (5th Cir.), cert. denied, 381 U.S. 935, 14 L. Ed. 2d 700, 85 S. Ct. 1767 (1965). Charging decisions are generally within the

prosecutor's exclusive domain. Prosecutors -- representatives of the executive branch of the government -- are not mere servants of the judiciary. The tradition of prosecutorial independence is recognized both by case law, see, e.g., *Bordenkircher v. Hayes*, 434 U.S. 357, 364, 54 L. Ed. 2d 604, 98 S. Ct. 663 (1978), and the Federal Rules of Criminal Procedure, see Fed. R. Crim. P. 48(a).

Although courts are free to accept or reject individual charge bargains, they should avoid creating broad rules that limit traditional prosecutorial independence. Generally, courts should be wary of second-guessing prosecutorial choices. Courts do not know which charges are best initiated at which time, *United States v. Lovasco*, 431 U.S. 783, 793-94, 52 L. Ed. 2d 752, 97 S. Ct. 2044 (1977), which allocation of prosecutorial resources is most efficient, *United States v. Ammidown*, 162 U.S. App. D.C. 28, 497 F.2d 615, 621 (D.C. Cir. 1973), or the relative strengths of various cases and charges. See Vorenberg, Decent Restraint of Prosecutorial Power, 94 Harv. L. Rev. 1521, 1547 (1981). Categorical limitations on charge bargains may force prosecutors to bring charges they ordinarily would not, or to maintain charges they would ordinarily dismiss as on-going investigations uncover more information. Such rules thus constitute an impermissible intrusion into what is properly the executive's exclusive domain.

Third, the Federal Rules themselves suggest that courts must show proper respect for prosecutorial choices. Although the general rule governing plea bargaining grants courts broad discretion, Fed. R. Crim. P. 11, the specific rule governing prosecutorial charging decisions gives courts only a limited supervisory power over such decisions. Fed. R. Crim. P. 48(a). That rule requires courts to grant prosecutors leave to dismiss charges unless a dismissal is "clearly contrary to manifest public interest." *Rinaldi v. United States*, 434 U.S. 22, 30, 54 L. Ed. 2d 207, 98 S. Ct. 81 (1977) (per curiam). Many of the policies underlying Rule 48 are equally applicable to judicial consideration of charge bargains. Although Rule 48 antedates Rule 11, we should not refuse its guidance when we interpret the Federal Rules.

To assure that judicial discretion is exercised with due regard for

> prosecutorial independence, we hold that courts must review individually every charge bargain placed before them. They must set forth, on the record, both the prosecutor's reasons for framing the bargain as he did and the court's justification for rejecting the bargain. See *United States v. Ammidown*, 162 U.S. App. D.C. 28, 497 F.2d 615, 623 (D.C. Cir. 1973) (trial judge must state reasons on the record for rejecting plea bargain).
>
> By requiring that rejection of a charge bargain be accompanied by a more complete trial court record, we uphold the separation of powers in two ways. First, we guarantee that the trial court is aware of and gives due deference to the prosecutorial choices reflected in a particular plea bargain. Second, we facilitate appellate review of rejected plea bargains. If the prosecutorial decisions reflected in specific charge bargains deserve broad deference, the discretion of the trial court to reject these bargains is fairly narrow. By requiring a more complete statement of the trial court's basis for rejecting a bargain, we make it possible to apply more careful appellate review. See *United States v. Cowan*, 524 F.2d 504, 513 (5th Cir. 1975), cert. denied, 425 U.S. 971, 96 S. Ct. 2168, 48 L. Ed. 2d 795 (1976).

United States v. Miller, 722 F.2d 562, 564-66 (9th Cir. 1983).

The Court's announcement in the Memorandum and the Court's statements made to a journalist for publication in advance of Robinson's case violate Canon 3 of the Florida Code of Judicial Conduct. In particular Canon 3B(9) provides:

> (9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing.

and Canon 3B(10) provides:

> (10) A judge shall not, with respect to parties or classes of parties, cases,

> controversies or issues likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

Impartial performance of judicial duties prohibits a judge from establishing a judicial policy as to a class of cases and defendants without consideration on a case by case basis what the appropriate decision should be. The comments and statements in the Memorandum and newspaper article would cause a reasonable person to believe that Judge Maltz would not accept a plea agreement in a opiate drug sale case irrespective of the facts of the particular case or circumstances of the particular defendant. The comments and statements made by Judge Maltz in the Memorandum and newspaper article would cause a reasonable person to believe that if charged with sale of an opiate, that Judge Maltz would interfere in the plea bargaining process by prohibiting any plea agreement no matter what its terms were and no matter what the circumstances of the case and defendant were. These comments and statements made by Judge Maltz thereby violate Cannon 3B(9) and (10) of the Florida Code of Judicial Conduct. *See*, e.g., *Inquiry Concerning a Judge (Kinsey),* 842 So.2d 77 (Fla. 2003).

Based on Judge Maltz's policy memorandum and media interview, Judge Maltz has preemptively rejected all negotiated pleas in a discreet class of cases rather than exercising individualized discretion in determining whether to accept or reject a negotiated plea. This policy objectively demonstrates a clear prejudice towards those

accused of the class of crimes involving the of sale, delivery, and trafficking of heroin and fentanyl. The demonstrated prejudice to those facing such an offense (and Robinson is a member of that class of defendants) certainly and logically gives rise to the fear they will ultimately be sentenced more harshly. It is clear that Robinson was deprived of the opportunity for a downward departure based on the statutory basis of an agreed sentence under a plea agreement constituting a legally valid downward departure.

A judge's public pronouncement indicating that he will reject all negotiated plea agreements involving a category of charges without the exercise of individualized discretion, is contrary to Fla. R. Crim. P. 3.171, which expressly states "...the prosecuting attorney and the defense attorney, or the defendant when representing himself or herself, are encouraged to discuss and to agree on pleas that may be entered by a defendant."

Pursuant to Rule 3.171(b)(1)(A), a prosecutor is encouraged to engage in plea negotiations with the goal of the defendant entering a plea to a charged offense or to a lesser or related offense. Once a prosecutor reaches an agreement with a defendant, the prosecutor is required to provide the trial judge with "all the material facts known to the attorney regarding the offense and the defendant's background prior to acceptance of a plea by the trial judge;" Fla. R. Crim. P. 3.171(b)(2)(A). "After an

agreement on a plea has been reached, the trial judge may have made known to him or her the agreement and reasons therefor prior to the acceptance of the plea. Thereafter, the trial judge shall advise the parties whether other factors (unknown at the time) may make his or her concurrence impossible." Fla. R. Crim. P. 3.171(d). Therefore, although the rules clearly indicate that a trial judge has discretion to reject a negotiated plea agreement and there is no constitutional right to a judge accepting a negotiated outcome in any case, the rules also clearly contemplate that a trial judge be made aware of all the reasons for the plea agreement before deciding whether to accept it. Only after being made aware of those reasons, and after considering the specific facts of the case and the defendant's personal history and characteristics, is it proper for a trial judge to reject a plea agreement because the judge concludes that the proposed resolution is not appropriate. See e.g. *Gonzalez v. State*, 156 So.3d 550 (Fla. 3d DCA 2015) (trial court properly rejected State's plea offer where it explicitly considered the defendant's prior record, the specific facts of the case, and the State's ability to prove the case against the defendant).

Before a negotiated plea has even been raised by either party and without the due process requirement that both sides have the opportunity to be heard, Judge Maltz has established a policy which excludes a negotiated sentence. "Judicial comments revealing a determination to rule a particular way prior to hearing any evidence or

argument have been found to be sufficient grounds for disqualification." *Thompson v. State*, 990 So.2d 482, 490 (Fla. 2008). "A trial judge's announced intention before a scheduled hearing to make a specific ruling, regardless of any evidence or argument to the contrary, is the paradigm of judicial bias and prejudice." *Gonzalez v. Goldstein*, 633 So.2d 1183, 1184 (Fla. 4th DCA 1994). Further, "[A] judge's announced policy or predisposition to rule in a particular manner is grounds for disqualification." *State v. Dixon*, 217 So.3d 1115, 1123 (Fla. 3d DCA 2017). "...a motion to disqualify a trial judge may rely on the judge's announcement of his policy in other cases in order to establish a well-founded fear that the judge will not be impartial in the case in which the motion to disqualify was filed." Id. at 1122.

Here, Judge Maltz has publicly stated his policy, through a media interview and written memorandum of law, of refusing to accept all negotiated plea agreements based on his independent research and strong personal feelings regarding offenses involving the sale, delivery, manufacturing, or trafficking in opioids.

Further, Judge Maltz demonstrated a strong personal opinion and predisposition of prejudice toward those facing accusations of distribution of opioids without regard to the individualized facts of the case. This publicly-stated policy, along with Judge Maltz' corresponding personal opinion, denied Robinson a fair sentencing and denied her fundamental Due Process.

Judge Maltz made it clear that he will not exercise individualized judicial discretion. Instead, he has preemptively rejected all negotiated plea bargains for anyone accused of an offense that involves the sale, manufacture, delivery, or trafficking in heroin or opioids. While a judge may form mental impressions and opinions, he may not prejudge the case. *Barnett*, 727 So. 2d at 312 (granting writ of prohibition where trial judge's comments could be reasonably interpreted to show that judge had prejudged the issue prior to the conclusion of the trial). Although, Judge Maltz has carved out a limited exception for this public policy for those willing to provide substantial assistance to law enforcement, as addressed below, this is an exception that proves the rule.

The Trial Court has Publicly Expressed Strong Personal Feelings and Opinions Regarding the Charged Offense.

Judge Maltz's memorandum includes a salvo that leaves no room for interpretation as to his personal prejudice in cases involving allegations present in the instant case: "The heroin and opioid crisis is a cancer that has grown and metastasized in the body politic of the United States." Judge Maltz further explained: "The heroin and opioid epidemic is one of the greatest health problems of our time." "When a public statement so made is such as to indicate bias of the judge it can operate to disqualify him from hearing those matters..." *See Hayes v. State*, 686 So. 2d 694 (Fla.

4 th DCA 1996) (citing *State ex rel. Shelton v. Sepe*, 254 So.2d 12, 13 (Fla. 3d DCA 1971)). Additionally, "every litigant is entitled to nothing less than the cold neutrality of an impartial judge." *Albert v. Rogers*, 57 So. 3d 233, 236 (Fla. 4th DCA 2011). Buttressed by his own independent research, Judge Maltz has developed and publicly expressed his strong negative personal views on the subject. See *In re Guardianship of O.A.M.*, 124 So. 3d 1031, 1032 (Fla. 3d DCA 2013)("A judge's neutrality is destroyed when the judge himself becomes part of the fact-gathering process"). Unlike cases where a trial court has commented on the nature of a charged offense, but has not implemented a policy regarding those offenses, Judge Maltz has done both. *Compare Foy v. State*, 818 So. 2d 704, 706 (Fla. 5th DCA 2002) (judge's statements at sentencing) with *Torres v. State*, 697 So.2d 175 (Fla. 4 th DCA 1997) (judge's pre-announced policy). Judge Maltz has determined, based on his research and strongly expressed personal views in cases involving accusations of sale, manufacture, delivery, or trafficking in heroin or opioids, that he will reject all negotiated plea agreements unless the defendant engages in substantial assistance. This is a policy based on a predisposition of prejudice in a class of cases, not a mere trial court observation, and denied Robinson Due Process at her sentencing.

The Trial Court has Abandoned his Neutral Role and Become an Advocate in a Discreet Category of Cases that Includes the Defendant's Charges.

In cases involving sale, manufacture, delivery, or trafficking in heroin or opioids, Judge Maltz, in his zeal, has abandoned his role as a neutral arbitrator and become an advocate. Judge Maltz has stated: "While the executive and legislative branches of our government have taken significant steps to address this crisis, it is imperative the judicial branch also take certain steps to assure confidence in addressing this crisis."

Additionally, Judge Maltz stated the following:

> Plea bargaining typically takes place behind closed doors between prosecutors and defense counsel addressing issues in a case outside of the public's view. The public never sees or hears what went into that decision, but merely sees the end result. However, there comes a time when efficiency must take a backseat to transparency and the public's need to observe the entire process. Such is the case when our society is facing the current opioid crisis. Because this issue is such a problem in our society today, the public must have confidence that the criminal justice system is doing its part to address the problem.

Judge Maltz clearly cares deeply about this issue. However, by inserting himself into the negotiation process and pre-ruling that such a process is precluded because the trial court must "do its part," Judge Maltz has become an advocate in cases involving allegations of sale, manufacture, delivery, or trafficking in heroin or opioids.

Judge Maltz also states: "The Court acknowledges there may be situations in which a negotiated plea bargain may be appropriate, for example where a Defendant has provided substantial assistance to law enforcement, in which case safety of those involved may dictate a negotiated disposition." This exception proves Judge Maltz's rule. Not only has Judge Maltz required defendant's cooperation with law enforcement in order to have the ability to avail herself or himself of the opportunity to enter into a negotiated plea (evidencing a clear pro-State bias), it is only in cases where a defendant joins the cause and commits to the fight against opioids at great risk to their own safety that Judge Maltz deems a defendant worthy of a resolution available to every other defendant facing any criminal charge other than those involving the sale, manufacture, delivery, or trafficking in heroin or opioids. This is the definition of advocacy.

In light of Judge Maltz's advocacy on this issue, Robinson was denied Due Process throughout the litigation of this case and at sentencing.

CONCLUSION

Based on the foregoing argument, Petitioner Robinson respectfully requests this Honorable Court grant certiorari to decide the above question.

Respectfully submitted,

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