

# APPENDIX

**Ines Colleen Robinson v. State of Florida**

**APPENDIX**

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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

INES COLLEEN ROBINSON,

Appellant,

v.

Case No. 5D18-3978

STATE OF FLORIDA,

Appellee.

/

Decision filed December 8, 2020

Appeal from the Circuit Court  
for St. Johns County,  
Howard M. Maltz, Judge.

William Mallory Kent, of Kent & McFarland,  
Jacksonville, for Appellant.

Ashley Moody, Attorney General,  
Tallahassee, and Bonnie Jean Parrish,  
Assistant Attorney General, Daytona  
Beach, for Appellee.

PER CURIAM.

AFFIRMED.

COHEN, LAMBERT and HARRIS, JJ., concur.

# APPENDIX

B

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

INES COLLEEN ROBINSON,

Appellant,

v.

CASE NO. 5D18-3978

STATE OF FLORIDA,

Appellee.

/

DATE: January 12, 2021

**BY ORDER OF THE COURT:**

ORDERED that Appellant's Motion for Rehearing En Banc, filed December 23, 2020, 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: En Banc Court

CC:

Bonnie Jean Parrish  
William Mallory Kent

Office of the Attorney  
General

Ryan Edward McFarland

# APPENDIX

C

STATE OF FLORIDA  
CIRCUIT COURT SEVENTH JUDICIAL CIRCUIT  
RICHARD O. WATSON JUDICIAL CENTER  
4010 Lewis Speedway, Room 344  
St. Augustine, Florida 32084

*Howard M. Maltz*  
*Circuit Judge*

*Susan Miller, Judicial Asst.*  
*Tel.: (904) 827-5600*  
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**MEMORANDUM**

Date: November 17, 2017

To: Office of the State Attorney  
Office of the Public Defender

From: Howard M. Maltz, Circuit Judge *(Hm)*

RE: Plea Bargains on Sale, Manufacture, Delivery and Trafficking  
in Opiate Cases

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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.<sup>1</sup> The President of the United States and Florida's Governor Scott have recently declared the opioid epidemic constitutes a public health emergency.<sup>2</sup> 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

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<sup>1</sup> I recognize that heroin is a form of opioid. Heroin and opioids will at times herein be referred to separately.

<sup>2</sup> State of Florida, Office of the Governor, Executive Order 17-146, May 3, 2017; [www.usatoday.com/story/news/politics/2017/10/26/www.usnews.com/news/best-states/florida/articles/2017-10-10/florida-legislature-looks-at-combatting-opioid-epidemic](http://www.usatoday.com/story/news/politics/2017/10/26/www.usnews.com/news/best-states/florida/articles/2017-10-10/florida-legislature-looks-at-combatting-opioid-epidemic)

imperative the judicial branch also take certain steps to assure public confidence in addressing this crisis.

### **A. Background**

The heroin and opioid crisis is a cancer that has grown and metastasized in the body politic of the United States.<sup>3</sup> Florida has not been spared this epidemic. Heroin and opioids are different from other addictive substances. The principal difference lies in the fact that recreational use is too often deadly. The questionable level of potency in each dose of heroin too often causes overdose.<sup>4</sup> All too often news stories emerge of “bad batches” that cause a deluge of fatal overdoses.<sup>5</sup> Furthermore, users develop a tolerance over time and, as a result, seek out the highest potency possible without regard to the related risk of death. The Centers for Disease Control and Prevention (“CDC”) found that between 2012 and 2014, heroin caused the most overdose deaths of any drug.<sup>6</sup> The number of heroin overdose deaths continues to rise at an alarming rate.

Heroin use has increased across the United States in all genders, in most age groups, and in all income levels.<sup>7</sup> “Some of the greatest increases [have] occurred in demographic groups with historically low rates of heroin use: women, the privately insured, and people with higher incomes.”<sup>8</sup> It is estimated that 580 people initiate heroin use each day.<sup>9</sup> This rapid increase in heroin use has had deadly

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<sup>3</sup> See *U.S. v. Walker*, Case No.: 2:17-CR-0010 (S.P.W.V. 2017). Much of the information contained herein is taken from U.S. District Judge Joseph Goodwin’s June 26, 2017 order rejecting a plea agreement in a sale of heroin case.

<sup>4</sup> Audrey Redford, *Still Searching for Tzutzu Flower: Cautions Against Extending the Federal Analogue Act of 1986*, 27 U. Fla. J.L. & Pub. Policy, 111, 119 (2016) (some heroin overdoses occur because of varying presence of fentanyl renders users unaware of the drug’s true potency).

<sup>5</sup> See e.g., Pat Beall, *Ten Overdoses in One Day: Is There a Bad Batch of Heroin on the Street*, Palm Beach Post, [www.palmbeachpost.com/news/local/ten-overdoses-on-one-day](http://www.palmbeachpost.com/news/local/ten-overdoses-on-one-day) (March 17, 2017); Jeremy Gorner, *74 Overdoses in 72 Hours: Laced Heroin to Blame*, Chi. Trib. (Oct. 2, 2015) [www.chicagotribune.com/news/local/breaking/ct-heroin-overdose.met.20151002-story](http://www.chicagotribune.com/news/local/breaking/ct-heroin-overdose.met.20151002-story).

<sup>6</sup> Margaret Warner, et al, *Drugs Most Frequently Involved in Drug Overdoses Deaths: United States, 2010-2014*, 65 Nat'l Vital Stats. Reps. No. 10 (Dec. 20, 2016).

<sup>7</sup> *Today's Heroin Epidemic*, Ctrs. For Disease Control & Prevention, <https://www.cdc.gov/vitalsigns/heroin/index.html> (last updated July 7, 2015).

<sup>8</sup> *Id.*

<sup>9</sup> U.S. Dep’t of Health and Human Servs., *The Opioid Epidemic: By the Numbers* 1 (2016), <https://www.hhs.gov/sites/default/files/Factsheet-opioids-061516.pdf>

consequences. Between 2002 and 2013, the rate of heroin related overdose deaths per 100,000 people increased 286%.<sup>10</sup> The number of drug overdoses involving heroin tripled from 2010 to 2014.<sup>11</sup> In 2015, heroin caused 12,989 deaths nationwide.<sup>12</sup>

In addition to heroin, there is a surge in the presence of fentanyl and other powerful synthetic opioids.<sup>13</sup> The DEA estimates that “[a]bout two milligrams of fentanyl – about what comes out with a single jiggle of a salt shaker – is considered lethal.<sup>14</sup> Fentanyl and synthetic opioids are particularly dangerous because they can be – and often are – mixed with other drugs without the consumer’s knowledge.<sup>15</sup> The national overdose death rate from synthetic opioids increased 72.2% from 2014

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<sup>10</sup> *Supra* note 7.

<sup>11</sup> *Drug Overdose Deaths Hit Record Numbers in 2014*, Ctrs. for Disease Control & Prevention, <https://www.cdc.gov/media/releases/2015/p1218-dru-overdose.html> (last updated Dec. 18, 2015).

<sup>12</sup> *Understanding the Epidemic*, Ctrs. For Disease Control & Prevention, <https://www.cdc.gov/drugoverdose/cpidemic/index.html> (select “Heroin Use” tab) (last updated Dec. 16, 2016).

<sup>13</sup> Fentanyl is an extremely powerful synthetic opioid. It was originally introduced as an intravenous anesthetic in the 1960s. U.S. Dep’t of Justice & Drug Enf’t Admin. Diversion Control Div., *Fentanyl* (2016), [http://www.deadiversion.usdoj.gov/drug\\_chem\\_info/fentanyl.pdf](http://www.deadiversion.usdoj.gov/drug_chem_info/fentanyl.pdf). Today, those with otherwise untreatable pain, such as terminal cancer patients, use fentanyl for pain management. *Id.*; see also David Armstrong, “*Truly Terrifying*”: *Chinese Suppliers Flood US and Canada with Deadly Fentanyl*, STAT News (Apr. 5, 2016), <https://www.statnews.com/2016/04/05/fentanyl-traced-to-china/>. For opioid dependent individuals, fentanyl can serve as a substitute for heroin. U.S. Dep’t of Justice & Drug Enf’t Admin. Diversion Control Div., *supra*. However, because it is much more potent than heroin, fentanyl is a very dangerous replacement. *Id.* Fentanyl’s use results in frequent overdoses, which can cause respiratory depression and death. *Id.* Additionally, because fentanyl can be absorbed through the skin in some forms, fentanyl can be deadly if touched. *18 Swat Officers Hospitalized After Possible Exposure to Fentanyl During Raid*; [www.cbsnews.com/news/swat-officers-hospitalized-possible-exposure-fentanyl-raid](http://www.cbsnews.com/news/swat-officers-hospitalized-possible-exposure-fentanyl-raid) (Aug. 9, 2017).

<sup>14</sup> *DEA Issues Carfentanil Warning to Police and Public*, U.S. Drug Enforcement Admin. (Sept. 22, 2016), <https://www.dea.gov/divisions/hq/2016/hq092216.shtml> (noting that fentanyl can “be lethal at the 2-milligram range, depending on route of administration and other factors” and that “[t]he dosage of fentanyl is a microgram, one millionth of a gram – similar to just a few granules of table salt”).

<sup>15</sup> *Supra* note 14 (“Fentanyl, a synthetic opiate painkiller, is being mixed with heroin to increase its potency, but dealers and buyers may not know exactly what they are selling or ingesting. Many users underestimate the potency of fentanyl.”).

Drug dealers may sell fentanyl pills disguised as other painkillers because prescription drugs fetch a higher price on the street, even though they are less potent than fentanyl. Armstrong, *supra* note 13.

Nine people died in Florida from taking counterfeit Xanax pills containing fentanyl. David Armstrong, *Dope Sick*, STAT News (Aug. 2, 2106), <https://www.statnews.com/feature/opioid-crisis/dope-sick/>.

to 2015.<sup>16</sup> Illegally made fentanyl is likely the driving force of this increase.<sup>17</sup> Florida saw a 69.3% increase in the presence of fentanyl in decedents and a 74.3% increase in the presence of heroin in decedents from 2014 to 2015.<sup>18</sup> The recently released 2016 statistics are even more staggering. Florida saw a 35% increase in opioid deaths from 2015, occurrences of fentanyl increased by 80% and deaths caused by fentanyl skyrocketed by 97%.<sup>19</sup>

The heroin and opioid epidemic is one of the greatest public health problems of our time. The CDC found that opioids, primarily prescriptions pain relievers and heroin, are the chief drugs associated with overdose deaths.<sup>20</sup> In 2015, opioids were involved in 33,091 U.S. deaths,<sup>21</sup> which is more than 63% of all U.S. drug overdose deaths.<sup>22</sup> On average, ninety-one Americans die from opioid overdose every day.<sup>23</sup>

In a November 2016 report, the DEA referred to opioid prescription drugs, heroin, and fentanyl as the most significant drug-related threats to the United States.<sup>24</sup> Opioid overdoses have quadrupled nationally since 1999.<sup>25</sup> According to

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<sup>16</sup>*Synthetic Opioid Data, Ctrs. for Disease Control & Prevention, <https://www.cdc.gov/drugoverdose/data/fentanyl.html> (select "Synthetic Opioids Data" tab)* (Last updated Dec. 16, 2016); *see also* Rose A. Rudd et al., *Increases in Drug and Opioid-Involved Overdose Deaths – United States, 2010-2015*, 65 *Morbidity & Mortality Wkly. Rep.* 1445, 1446 (2016).

<sup>17</sup>R. Matthew Gladden, *Fentanyl Law Enforcement Submissions and Increases in Synthetic Opioid-Involved Overdose Deaths – 27 States., 2013-2014*, 65 *Morbidity & Mortality Wkly Rep.* 837, 840 (2016) ("Given the strong correlation between increases in fentanyl submissions (primarily driven by [illegally manufactured fentanyl]) . . . and increases in synthetic opioid . . . deaths (primarily fentanyl deaths), and uncorrelated stable fentanyl prescription rates, it is hypothesized that [illegally manufactured fentanyl] is driving the increases in fentanyl deaths. Findings from DEA state, and CDC investigations documenting the role of [illegally manufactured fentanyl] in the observed increases in fentanyl deaths further support this hypothesis."). The rate at which physicians prescribe fentanyl, however, has not increased. Rudd, et al.

<sup>18</sup>*Drugs Identified in Deceased Persons by Florida Medical Examiners*, 2015 Report of Florida Medical Examiners Commission.

<sup>19</sup>*Drugs Identified in Deceased Persons by Florida Medical Examiners*, 2016 Report of Florida Medical Examiners Commission.

<sup>20</sup>*Supra* note 16

<sup>21</sup>*Drug Overdose Death Data, Ctrs. for Disease Control & Prevention, <https://www.cdc.gov/drugoverdose/data/statedeaths.html>* (last updated Dec. 16, 2016).

<sup>22</sup>*Supra* note 16

<sup>23</sup>*Understanding the Epidemic, supra* note 12

<sup>24</sup>*Supra* note 16

<sup>25</sup>This statistic includes all overdoses, not only those that resulted in death. *Drug Overdose Death Data, supra* note 20.

the CDC, the significant increase in overdose death rates is attributable to synthetic opioids such as heroin with fentanyl.<sup>26</sup>

These drugs are far more dangerous and far more available for abuse. St. Johns County has likewise seen these increases over the past few years, including increased overdose deaths caused by heroin and fentanyl.

### **B. Plea Bargaining**

Plea bargaining occurs when a prosecutor, defense counsel and a defendant agree to a certain sentence in a criminal case. If the judge concurs in the agreed upon sentence, the defendant receives that sentence without the need for a lengthy and costly jury trial or sentencing hearing. Plea bargains are a necessary part of the American criminal justice system. Plea bargains are cost effective, efficient and result in a reduction in the burden on the court system.<sup>27</sup> Without plea bargaining, the criminal justice system would come to a screeching halt due to the number of jury trials that would have to take place with an insufficient number of trial judges, prosecutors and court-appointed defense counsel.

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

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<sup>26</sup> *Supra* note 16

<sup>27</sup> See e.g. William Stuntz, *Plea Bargaining and Criminal Law's Disappearing Shadow*, 117 Harv. L. Rev. 2548 (2004).

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

### D



## As opioid crisis continues, local judge says no more plea agreements for dealers

By **Jared Keever**

Posted Nov 20, 2017 at 12:01 AM

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.

"I just keep hearing the stories from the detectives about overdose deaths," Circuit Judge Howard Maltz said Wednesday morning seated behind the desk in his chambers.

"It's become such a pervasive problem," he added, pointing out that the stories, deaths and near-misses come from all over the county and cross socio-economic lines.

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.

For St. Johns County, the Sheriff's Office has said there were 47 overdose deaths here in 2016, and by May of this year, there had already been 18.

In Florida in 2015, opioids — including prescription painkillers, heroin and fentanyl — were determined to be responsible for 3,896 deaths, according to data from the state Medical Examiners Commission.

National numbers for 2015, which were provided by the Sheriff's Office when they announced that deputies would begin carrying a drug, known as Narcan, that can reverse the effects of an overdose, showed that more than 20,000 people died in prescription opioid-overdose-related deaths. In the same year, nearly 13,000 people died of heroin overdose.

"One is too many," Maltz said Wednesday.

"And that's just deaths," he added, noting that many are now saved by the deputies and county Fire Rescue personnel who all carry Narcan these days.

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.

That shines a bit of light on the process, he explained.

"I think it is important there be full transparency of what happens in these cases," he said.

"Because this issue is such a problem in our society today," the memo says, "the public must have the confidence that the criminal justice system is doing its part to address this problem."

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.

"This isn't the users that I am addressing, this is the people that are dealing the stuff that I am

addressing," Maltz said.

For those who find themselves arrested and charged with crimes associated with their addiction, particularly non-violent crimes, Maltz said he is usually willing to accept an arrangement that allows the defendant to get help either in a rehabilitation facility or have the case transferred to drug court, where individuals can avoid harsh penalties by participating in the program that requires that they seek help and complete other requirements like community service.

"If it's a simple possession we will try to get them help," Maltz said.