

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JASON SLAUGHTER
Petitioner

v.

STATE OF DELAWARE
Respondent

**APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF DELAWARE**
Volume II
(A145-A242)

Christopher S. Koyste, Esq. (#3017)
Law Office of Christopher S. Koyste, LLC
709 Brandywine Boulevard
Wilmington, Delaware 19809
(302) 762-5195

Counsel of Record for Petitioner
Jason Slaughter

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE

v.

LD. No. 1207010738

JASON SLAUGHTER,
Defendant.

**PETITIONER JASON SLAUGHTER'S REPLY TO STATE'S RESPONSE TO
AMENDED MOTION FOR POSTCONVICTION RELIEF**

Christopher S. Koyste, Esquire (# 3107)
Law Office of Christopher S. Koyste LLC
Attorney for the Petitioner
709 Brandywine Blvd.
Wilmington, DE 19809
(302) 762-5195

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A145

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ARGUMENT I. MR. SLAUGHTER'S SECOND POSTCONVICTION CLAIM, ALLEGING THAT DEFENSE COUNSEL'S WAIVER OF THE 120-DAY IAD TIME LIMIT WAS INVOLUNTARY AND THEREFORE INVALID, RESULTING IN AN UNCONSTITUTIONAL PROSECUTION OF MR. SLAUGHTER, IS NOT PROCEDURALLY BARRED OR WAIVED AND IS MERITORIOUS.

The State unpersuasively contends that Mr. Slaughter's claims are "unavailing" and therefore should be dismissed without further proceedings.¹ For the reasons explained below, the State is wrong.

A. This claim is neither procedurally barred nor waived.

The State asserts that claim II is procedurally barred under Rule 61(i)(4) and/or Rule 61(i)(3). (Response at 18-19). The State asserts that Mr. Slaughter's claim was already adjudicated by this Court and to the extent the claim is different, it is barred for failure to raise on appeal. (Response at 18-19). However, as Mr. Slaughter explained in the Amended Motion, this Court was never asked to decide, and therefore never ruled upon, the issue of whether Mr. Slaughter's guilty plea is unconstitutional because the State no longer had the power to prosecute him at the time of the guilty plea or whether defense counsel's waiver of Mr. Slaughter's IAD right was voluntary despite the false information given to him by State. As such, this claim cannot be barred as a former adjudication.²

Relatedly, this claim is not barred for failure to raise on appeal, because, as Mr. Slaughter explained in the Amended Motion, defense counsel advised Mr. Slaughter that he had waived his right to appeal the IAD issue via the entering of his guilty plea, and this advice was incorrect.

¹ February 12, 2020 State's Response to Defendant's Amended Motion for Postconviction Relief at 15, hereinafter cited as "Response at ____".

² Mr. Slaughter's May 14, 2019 Amended Motion for Postconviction Relief at 36, hereinafter cited as "Amended at ____".

(Amended at 36-37). As explained throughout the Amended Motion, as well as below, an issue that disputes the very power of the State to prosecute is an exception to the general rule that a valid guilty plea waives all pre-guilty plea issues, even those of constitutional dimension.³ As such, Mr. Slaughter received ineffective assistance of counsel that caused him to fail to raise the issue on appeal. Although the State asserts that Mr. Slaughter cannot “demonstrate any actual prejudice because his IAD claim lacks merit”, for the reasons set forth in the Amended Motion and below, the State is wrong.

The State also asserts that Mr. Slaughter’s state constitutional claim has been waived, for failure to discuss and analyze the textural language, legislative history, preexisting state law, structural differences, matters of particular state interest and/or local concern, state traditions, or public attitudes in relation to the corresponding United States constitutional provision. (Response at 20-21). While the State is correct that conclusory claims of a constitutional violation are insufficient to sustain such an allegation, as Mr. Slaughter noted in the Amended Motion, the Delaware Supreme Court has held that the phrase “due process of law” as found in the Fourteenth Amendment and the phrase “law of the land” as found in Article I, § 7 of the Delaware Constitution are synonymous and both incorporate the concept of fundamental fairness.⁴ (Amended at 30 n.57).

³ *Class v. United States*, 138 S.Ct. 798, 803 (2018) (citing *Blackledge v. Perry*, 417 U.S. 21, 30 (1974) (quoting *Tollett v. Henderson*, 411 U.S. 258, 266-67 (1973))) (“The Court noted that a guilty plea bars appeals of many claims, including some “‘antecedent constitutional violations’” related to events (say, grand jury proceedings) that had “‘occurred prior to the entry of the guilty plea.’”).

⁴ *Moore v. Hall*, 62 A.3d, 1203, 1208 (Del. 2013); *Hammond v. State*, 569 A.2d 81, 87 (Del. 1989) (recognizing “fundamental fairness, as an element of due process” under Article I, § 7 of the Delaware Constitution); *Gann v. State*, 2011 WL 4985701 at *2 (Del. Oct. 19, 2001) (“[F]undamental requirements of fairness which are the essence of due process govern all judicial proceedings.”)).

Moreover, Mr. Slaughter noted, but for defense counsel's objectively unreasonable waiver of Mr. Slaughter's IAD speedy trial right, the State would have lost its power to prosecute Mr. Slaughter on February 6, 2015. (Amended at 31-32). There can be no real question that the continued prosecution of a defendant against whom the State has lost the power to prosecute is a violation of federal constitutional due process,⁵ and as the Delaware Supreme Court has held that "due process of law" as found in the Fourteenth Amendment of the federal constitution is synonymous with the phrase "law of the land" as found in Article I, § 7 of the Delaware Constitution,⁶ and it would be fundamentally unfair to prosecute and convict an individual of an offense that the State is no longer authorized to prosecute and convict, such a violation of federal due process is likewise a violation of state due process.

As such, the State's contention that Mr. Slaughter waived his state constitutional claim by not including a discussion and analysis in the Amended Motion of textural language, legislative history, preexisting state law, structural differences, matters of particular state interest and/or local concern, state traditions, or public attitudes in relation to the Due Process Clause of the United States Constitution is unpersuasive.

⁵ See *Blackledge*, 417 U.S. at 30-31 (holding that the defendant's claim was not barred by his guilty plea, because "the nature of the underlying constitutional infirmity", vindictive prosecution, "implicates 'the very power of the State' to prosecute the defendant", as "[t]he very initiation of the proceedings" against the defendant "operated to deprive him of due process of law"); see also *Menna v. New York*, 423 U.S. 61, 63 and n.2 (1975) (holding that "a plea of guilty to a charge does not waive a claim that—judged on its face—the charge is one which the State may not constitutionally prosecute . . . no matter how validly his factual guilt is established").

⁶ *Moore*, 62 A.3d at 1208 (holding that the phrase "due process of law" as found in the Fourteenth Amendment and the phrase "law of the land" as found in Article I, § 7 of the Delaware Constitution are synonymous and both incorporate the concept of fundamental fairness); *Hammond*, 569 A.2d at 87 (recognizing "fundamental fairness, as an element of due process" under Article I, § 7 of the Delaware Constitution).

B. This claim was not waived when Mr. Slaughter knowingly, intelligently and voluntarily entered a guilty plea.

The State alleges that Mr. Slaughter's reliance on United States Supreme Court precedent rather than on Delaware Supreme Court precedent, is misplaced; however, the State misunderstands Mr. Slaughter's argument, and therefore, the State's rebuttal is unpersuasive and inapplicable to the Mr. Slaughter's postconviction claim. (Response at 21-22).

The State cites to *Benner v. State*,⁷ *Brunhammer v. State*,⁸ and *Alexander v. State*,⁹ in which the Delaware Supreme Court held that errors which occurred prior to the entry of a voluntary guilty plea, including a violation of the IAD, are waived and asserts that they are controlling. (Response at 22). Mr. Slaughter does not dispute that generally, errors which occurred prior to the entry of a guilty plea are waived, and in fact, acknowledged in the Amended Motion that a knowingly, intelligently and voluntarily entered guilty plea typically waives errors that occurred prior to the entry of the guilty plea. (Amended at 37, 39, 42). However, what the State's Response fails to fully take into account is that Mr. Slaughter is raising a claim that the United States Supreme Court has held is *not* waived by the entry of a voluntary guilty plea—specifically, the power of the State to constitutionally prosecute the admitted conduct.¹⁰ (Amended at 39-42).

The State acknowledges this in its Response, stating: “[] the Court found that Class's constitutional claims challenged the Government's power to criminalize Class's admitted conduct, thereby calling into question the Government's power to constitutionally prosecute him.” (Response

⁷ 2007 WL 4215005 (Del. Nov. 30, 2007).

⁸ 2017 WL 991081 (Del. 2017).

⁹ 2008 WL 4809624 (Del. Nov. 5, 2008).

¹⁰ *Class*, 138 S.Ct. At 801-06; *Blackledge*, 417 U.S. at 30-31; *Menna*, 423 U.S. at 63 and n.2; *United States v. Broce*, 488 U.S. 563, 569 (1989).

at 25). Nevertheless, the State asserts that this principle—that a voluntarily entered guilty plea does not waive for appellate purposes a claim that implicates the government or state's very power to prosecute the admitted conduct—is inapplicable to Mr. Slaughter's situation. (Response at 26). However, as explained in detail in the Amended Motion, this is the very principle at issue in Mr. Slaughter's case. As Mr. Slaughter explained, from February 7, 2015 onward, the State no longer had the power to prosecute Mr. Slaughter, which renders his conviction and sentence unconstitutional. (Amended at 23, 31, 33, 35, 49-50). As such, Mr. Slaughter's claim raises the issue of whether the State had the power to prosecute the admitted conduct at the time of the guilty plea. Thus, this falls within the scope of the exceptions to the general principle that a valid guilty plea waives all pre-plea issue as described in *Class*, *Blackledge*, *Menna*, and *Broce*.

Nevertheless, the State asserts that *Blackledge*, *Menna* and *Class* “are inapplicable to Slaughter’s situation” because “[n]one of these cases address whether a defendant, by voluntarily pleading guilty, waives his or her speedy trial rights under the IAD and his or her related ineffective assistance of counsel claims.” (Response at 25). The State rests its argument in part on the contention that the IAD is statutory in nature and therefore does not implicate constitutional rights. (Response at 26-27). However, what the State fails to consider is that the United States and Delaware Constitutions are implicated in this situation, specifically because at the time Mr. Slaughter pleaded guilty, the State no longer had the power to prosecute him. The 120-day time period had expired and defense counsel’s waiver of the time period was invalid, due to constitutional ineffectiveness and/or the involuntariness of the waiver stemming from the multiple misrepresentations made by the State to defense counsel that induced the implicit waiver. As such, Mr. Slaughter was convicted of and sentenced for a crime that the State, through its own negligence,

lost the power to prosecute. It is precisely *this* that implicates Mr. Slaughter's constitutional right to due process and renders his conviction and therefore sentence in violation of the United States and Delaware Constitutions.¹¹ To the extent this issue has never been considered by the Delaware Supreme Court, the Third Circuit Court of Appeals or the United States Supreme Court in the context of the State's power to prosecute, the issue is one of first impression.

The State's emphasis on the fact that Mr. Slaughter does not allege his *statute* of conviction was unconstitutional is likewise misplaced. (Response at 25). As explained in the Amended Motion, the language of *Class* makes clear that the holding of *Class*, the prior precedent of the United States Supreme Court, is not limited to cases in which the defendant alleges the statute is unconstitutional; an allegation that the State did not have the power to prosecute is sufficient.¹²

The State repeatedly notes that *Class* did not establish a new principle of constitutional law. (Response at 25, n.64). Although the State does not explain the importance of this, Mr. Slaughter assumes the State is implying that this cannot be a means of overcoming a Rule 61 procedural bar. However, for the reasons explained above, as well as in the Amended Motion, none of Mr. Slaughter's claims are procedurally barred. Moreover, the State fails to acknowledge that the fact *Class* did not establish a new principle of constitutional actually supports Mr. Slaughter's third postconviction claim—that defense counsel was ineffective for failing to appeal the denial of the

¹¹ See *Blackledge*, 417 U.S. at 30-31 (holding that the defendant's claim was not barred by his guilty plea, because "the nature of the underlying constitutional infirmity", vindictive prosecution, "implicates 'the very power of the State' to prosecute the defendant", as "[t]he very initiation of the proceedings" against the defendant "operated to deprive him of due process of law"); *see also Menna* 423 U.S. at 63 and n.2 (holding that "a plea of guilty to a charge does not waive a claim that—judged on its face—the charge is one which the State may not constitutionally prosecute . . . no matter how validly his factual guilt is established").

¹² Amended at 39-41 (citing *Class*, 138 S.Ct. at 802-06; *Blackledge*, 417 U.S. at 30-31; *Menna*, 423 U.S. at 61-63 and n.2; *Broce*, 488 U.S. at 569, 575-76).

IAD motion on the basis that counsel mistakenly believed the claim had been waived by the entry of the guilty plea—as it demonstrates that defense counsel should have been aware of this principle at the time of Mr. Slaughter’s guilty plea and sentencing and during the 30-day period in which Mr. Slaughter had to file an appeal with the Delaware Supreme Court following sentencing.

The State places great emphasis on the fact that defense counsel acknowledged he provided ineffective assistance of counsel in agreeing to a trial date outside of the 120-day IAD time period and that defense counsel explained to Mr. Slaughter that the guilty plea would waive his right to appeal the IAD issue to the Delaware Supreme Court, arguing this “provides credibility to the fact that he and Ms. Woloshin adequately explained the collateral consequences of Slaughter’s guilty plea.” (Response at 30). To the State, this indicates that Mr. Slaughter voluntarily, intelligently and knowingly entered into the guilty plea, which is, the State asserts, the end of the issue. (Response at 27-30).

However, as explained in the Amended Motion, Mr. Slaughter does not dispute that he knowingly, intelligently and voluntarily entered into the guilty plea; rather, Mr. Slaughter has asserted that the issue boils down to whether the State had the power to prosecute Mr. Slaughter at the time of the guilty plea; accordingly, a valid guilty plea would not waive Mr. Slaughter’s right to appeal the issue to the Delaware Supreme Court. (Amended at 41, 49-50). Consequently, the fact that defense counsel advised Mr. Slaughter he would be waiving his right to appeal the IAD issue if he pleaded guilty only confirms that defense counsel was incorrect in their legal assessment of Mr. Slaughter’s ability to appeal the IAD issue and that they provided Mr. Slaughter with incorrect legal advice. Thus, the State’s argument does nothing to refute Mr. Slaughter’s postconviction claims, and in fact further supports Mr. Slaughter’s allegation that defense counsel was ineffective for failing

to appeal the IAD issue.

C. The State misunderstands the substance of Mr. Slaughter's claim.

Despite continually asserting that Mr. Slaughter's claim is either procedurally barred or waived, the State does briefly address the substantive portions of Mr. Slaughter's argument, which is that trial counsel's waiver of the 120-day time period was not voluntary. (Response at 30-32). However, the State's Response appears to misunderstand this argument, believing it to be an allegation that Mr. Slaughter's guilty plea was not voluntary. This is incorrect.

As Mr. Slaughter explained in the Amended Motion, defense counsel's waiver of Mr. Slaughter's IAD right did not need to be knowingly or intelligently made; however, it did need to be voluntarily made.¹³ (Amended at 42-49). The voluntariness of defense counsel's waiver has no bearing on the voluntariness of Mr. Slaughter's guilty plea, an issue which Mr. Slaughter has not even disputed, but rather the validity of the waiver itself and therefore, whether the State lost the power to prosecute Mr. Slaughter after February 6, 2015. Accordingly, the State's argument is unresponsive to the claim that the State had lost the power to prosecute Mr. Slaughter at the time of the guilty plea and that his conviction and sentence was therefore imposed in violation of the United States and Delaware Constitutions.

¹³ See *New York v. Hill*, 528 U.S. 110, 114-115 (2000); see also *United States v. Lawson*, 736 F.2d 835, 839 (2d Cir. 1984); see also *People v. Turner*, 79 Cal. Rptr. 2d 740, 744, 67 Cal. App. 4th 1258, 1265 (Cal. App., 1998) (citing *Drescher v. Superior Court*, 218 Cal. App. 3d 1140, 1148 (Cal. App., 1990)) ("Voluntariness [of a statutory right] requires a showing of record that the defendant or his attorney freely acquiesced [in the waiver]."); *Conn v. State*, 831 N.E.2d 828 (Ind. 2005) (holding that the defendant's failure to object to a trial date outside of the IAD time limit was not a voluntary relinquishment of his IAD right, as it was prompted by the trial court's failure to give timely notice of the trial date to the defendant and defendant's counsel)

ARGUMENT II. THE STATE'S RESPONSE ERRONEOUSLY CONTENDS THAT MR. SLAUGHTER'S INEFFECTIVENESS CLAIMS ARE WAIVED AND ARE WITHOUT MERIT.

The State correctly acknowledges that postconviction claims I and II are not procedurally barred, but erroneously contends that they were waived when Mr. Slaughter entered a guilty plea. (Response at 33). Additionally, the State's Response asserts that both of Mr. Slaughter's claims of ineffectiveness of defense counsel "have no merit" and therefore "should be dismissed without further proceedings because . . ." (Response at 18, 33). For the reasons described below, the State's assertions are unpersuasive

B. Defense counsel was constitutionally ineffective by non-strategically waiving Mr. Slaughter's IAD speedy trial right.

As the State concedes, defense counsel admits ineffectiveness in his affidavit. (Response at 38). The State half-heartedly disputes defense counsel's admission by noting that the trial judge previously stated that the Court believed trial counsel to have been effective with regard to the IAD issue. (Response at 39). However, trial counsel clearly admits ineffectiveness in his affidavit for unintentionally waiving Mr. Slaughter's IAD right and plainly states that he would have not have agreed to a trial date outside of the 120-day time period if he had known the IAD was applicable to Mr. Slaughter's case. Likewise, defense counsel asserts that he would have known that key fact if he had independently researched the issue rather than relying on the State's incorrect statement that this was not an IAD case.

Despite the clear record that defense counsel's performance was objectively unreasonable in this regard, the State contends that Mr. Slaughter's ineffective assistance of counsel claim still fails on the basis that Mr. Slaughter cannot demonstrate prejudice. The State is wrong.

The State argues that Mr. Slaughter's IAD rights never vested under 11 Del. C. § 2542(a), because he did not perfect actual delivery. (Response at 40). This is not in dispute. It is for precisely this reason that Mr. Slaughter does not allege a violation of his IAD rights under § 2542(a),¹⁴ triggering the 180-day time period, but rather under 11 Del. C. § 2543(c),¹⁵ triggering the 120-day time period. The failure to perfect actual notice has absolutely no relevance to the raised claim, which pertains solely to Mr. Slaughter's IAD rights under 11 Del. C. § 2543(c).

The State's Response does not dispute that lodging a detainer plus a Governor's Warrant triggered the provisions of 11 Del. C. § 2543(c) and the applicability of *Mauro*.¹⁶ Rather the State only asserts that “[t]o the extent the 120-day time limit was triggered here, Slaughter fails to consider . . . that applicable standard does not require Trial Counsel to agree to a trial date outside of the 120-day time limit.” (Response at 40-41). The State relies entirely on the fact that the Court could have granted a continuance of trial beyond the 120-day time limit and that this would not have violated

¹⁴ 11 Del. C. § 2542(a) (“Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, the prisoner shall be brought to trial within 180 days after the prisoner shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of imprisonment and the request for a final disposition to be made of the indictment, information or complaint; provided, that for good cause shown in open court, the prisoner or the prisoner's counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.”).

¹⁵ 11 Del. C. § 2543(c) (“In respect of any proceeding made possible by this section, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or the prisoner's counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.”).

¹⁶ *United States v. Mauro*, 436 U.S. 340, 363-64 (1978) (holding that “whenever the receiving State initiates the disposition of charges underlying a detainer it has previously lodged against a state prisoner,” the IAD requires commencement of trial within 120 days of the defendant's arrival in the receiving State).

the IAD. (Response at 41). The State would be correct, *had a party requested a continuance*; neither did.

Had trial counsel refused to waive the 120-day time period, as trial counsel attests he would have done in his affidavit if had he been aware of the applicability of the IAD, the State would presumably have requested a continuance and if the Court had found good cause, the Court could certainly have granted the continuance and set a trial date outside of the 120-day time period. However, none of those actions occurred. The State is simply asserting retroactively that the Court could have and would have granted a continuance, without providing any case law to support the assumption that this type of retroactive analysis is permitted in assessing the merit of an IAD claim. The State repeatedly asserts that the case could not have been tried within 120-days; however, trial counsel avers in his affidavit that he would not have agreed to a trial date outside of the 120-day deadline, and although the State alleges that to be unreasonable, the State is not privy to trial counsel's thought processes or how he could have prioritized his case load to make such a trial date feasible. The proper course of action would have been for the State to have requested a continuance, at the appropriate time, if it did not believe the case could be tried within 120 days, not for the State to retroactively assert that trial counsel could not possibly have been prepared for trial within 120 days and therefore, despite the violation of Mr. Slaughter's speedy trial rights, no harm, no foul.

The State also disputes Mr. Slaughter's contention that his prolonged custody in Delaware impeded his ability to engage in the appeal process of his Georgia convictions on the basis that Mr. Slaughter had counsel in Georgia handling his appeal. (Response at 43). However, as explained in the Amended Motion, not only was Mr. Slaughter impeded in his ability to engage in the appeal process in Georgia, but his motion for a new trial in Georgia was also delayed pending the resolution

of his proceedings in Delaware. (Amended at 32).

Additionally, the State's Response alleges that Mr. Slaughter "misapprehends the import of *Brown* and *Harris*", asserting that they are unhelpful to Mr. Slaughter's case as the 120-day time period in *Brown* had already expired prior to trial counsel agreeing to a trial date outside of the time period and because the State's decision to enter a *nolle prosequi* in *Harris* was unrelated to any IAD issues. (Response at 43-44). However, the State misunderstands Mr. Slaughter's references to *Brown* and *Harris*. As Mr. Slaughter explained, the motion to dismiss in *Harris* was significant, because it involved the same defense attorney and an almost identical set of facts, and in the motion, defense counsel admitted ineffectiveness and asserted that had he been aware of the IAD's applicability, he would have "sought continuances of his other trials or would have asked the Office of Conflicts Counsel to appoint different counsel for Mr. Harris" rather than waive Mr. Harris' speedy trial rights. (Amended at 21-22). Mr. Slaughter referred to *Harris* to refute the State's anticipated argument that Mr. Slaughter's case could not possibly have been brought to trial within 120 days, because there is no reason to believe that defense counsel would have been unwilling to take the same course of actions—seeking continuances of other trials or seeking different appointed counsel—in order to ensure that Mr. Slaughter's case could be tried within 120 days.

Likewise, Mr. Slaughter cited to *Brown* in the Amended Motion, because the Superior Court discussed in *Brown* the State's inability "to cite to any case in which a Delaware court has retroactively determined that 'good cause' existed to grant a continuance sought after the expiration of the applicable UAD time limit." (Amended at 34). Just as in *Brown*, the State argues that this Court should retroactively find that good cause existed to grant a continuance of the IAD time period. Although in this case defense counsel agreed to a trial date outside the IAD time period

before that time period had expired, the State still cites to no case law supporting its contention that the Superior Court could have and would have found good cause to grant a continuance if one had been requested. Likewise, the State fails to consider that defense counsel's concession to a trial date outside the IAD time period was, per trial counsel, due to the State's affirmative misrepresentations on the manner in which Mr. Slaughter was extradited to Delaware and the applicability of the IAD to Mr. Slaughter's case.

C. Defense counsel was constitutionally ineffective by failing to file a direct appeal challenging the denial of the second motion to dismiss.

The State's Response asserts that defense counsel was not ineffective for failing to appeal the denial of the second motion to dismiss but appears to misunderstand Mr. Slaughter's argument. First, the State argues that Mr. Slaughter's plea was knowing, intelligent and voluntary, a fact not disputed by Mr. Slaughter, but one that has no relevance on the question of whether defense counsel incorrectly advised Mr. Slaughter that he could not appeal the denial of the second motion to dismiss. (Response at 45). The State also asserts in footnote that Mr. Slaughter is apparently alleging defense counsel was ineffective for advising him that they would appeal the IAD issue but then not doing so. (Response at 45 n.118). This is incorrect.

Mr. Slaughter's argument, as explained in the Amended Motion, is whether trial counsel was legally incorrect when they advised Mr. Slaughter that his guilty plea waived his right to appeal the IAD issue. (Amended at 52-54). As Mr. Slaughter acknowledged, no appeal was filed because defense counsel advised that the issue was waived; however, in light of the holding of *Class*, and the precedent upon which *Class* was based, Mr. Slaughter asserts that he *could have* appealed the issue, because it questioned the very power of the State to prosecute Mr. Slaughter at the time of the guilty

plea. As explained in the Amended Motion and above, this is a type of issue that defies the norm and is *not* waived by a valid guilty plea. (Amended at 52-53).

The State also asserts that in any event, Mr. Slaughter cannot demonstrate prejudice, because defense counsel “admitted on several occasions that this case could not be tried within 120 days.” (Response at 46). However, the State fails to consider that defense counsel attests that he would not have agreed to a trial date outside of the 120 day time period if he had known the IAD applied and overlooks that in *Harris*, when presented with the same circumstances, defense counsel advised that he would have sought continuances in his other trial cases and/or would have requested the Office of Conflict Counsel appoint different counsel to represent the defendant. As such, the State’s reliance on defense counsel’s prior statements, made before he was aware of the applicability of the IAD to Mr. Slaughter’s case and therefore before he had evaluated his options and the best course of action to protect Mr. Slaughter’s speedy trial rights, is misplaced.

In light of the aforementioned, the State’s Response to Mr. Slaughter’s ineffective assistance of counsel claims is not fully responsive to Mr. Slaughter’s postconviction claims, misunderstands Mr. Slaughter’s arguments and is unpersuasive in refuting Mr. Slaughter’s claims.

CONCLUSION

WHEREFORE, based on the foregoing, Petitioner respectfully requests that this Court grant all appropriate relief, including withdrawal of the guilty plea and dismissal of the indictment with prejudice.

/s/ Christopher S. Koyste
Christopher S. Koyste (# 3107)
Law Office of Christopher S. Koyste LLC
709 Brandywine Blvd.
Wilmington, DE 19809
(302) 762-5195

Dated: May 1, 2020

1162

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE :
:
v. : I.D. No. 1207010738
:
:
JASON SLAUGHTER, :
Defendant. :
:

CERTIFICATE OF SERVICE

I, Christopher S. Koyste, attorney for Jason Slaughter, certify that on May 1, 2020, the foregoing Reply Brief was served upon:

Cari Chapman, Esquire
Phillip Casale, Esquire
Deputy Attorney Generals
Department of Justice
820 N. French Street
Wilmington, DE 19801

Prothonotary
New Castle County Courthouse
500 North King Street
Wilmington, DE 19801

Mr. Jason Slaughter
GDC ID# 1001131002
Phillips State Prison
2989 West Rock Quarry Road
Buford, Georgia 30519

/s/ Christopher S. Koyste
Christopher S. Koyste (# 3107)
Law Office of Christopher S. Koyste LLC
709 Brandywine Blvd.
Wilmington, DE 19809
(302) 762-5195

AP 63

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JASON SLAUGHTER,	:	
	:	
Defendant-Below,	:	No. 87, 2021
Appellant,	:	
	:	Court Below: Superior Court of the
v.	:	State of Delaware in and for New
	:	Castle County
STATE OF DELAWARE,	:	
	:	
Plaintiff-Below,	:	Case Below No. 1207010738
Appellee.	:	
	:	

APPELLANT'S OPENING BRIEF

Christopher S. Koyste, Esq. (#3107)
Law Office of Christopher S. Koyste, LLC
709 Brandywine Boulevard
Wilmington, Delaware 19809
(302) 762-5195
Attorney for Jason Slaughter
Defendant Below-Appellant

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NATURE OF PROCEEDINGS

Mr. Slaughter (“Slaughter”) was indicted on July 16, 2012 for one count each of Murder First Degree and Possession of a Firearm During the Commission of a Felony (“PFDCF”). (Docket Entry 1¹; Appendix 1²). At the time, Slaughter was awaiting trial for murder in Georgia. (DE9). On August 15, 2013, Slaughter was tried and convicted in Georgia of Murder First Degree and related charges and sentenced to life plus thirty years. (A396). On October 9, 2014, Slaughter arrived at James T. Vaughn Correctional Center. (*Id.*).

On March 31, 2015, Slaughter filed a motion to dismiss the indictment. (DE34). Following briefing and a July 30, 2015 hearing, the court denied the motion to dismiss on July 30, 2015. (DE40, 48). A motion for reargument was denied on December 23, 2015. (DE51, 64). On August 23, 2016, Slaughter filed a second motion to dismiss. (DE69). Following briefing, the court held a hearing on the motion on October 14, 2016. (DE76, 78, 82).

Thereafter, new information was revealed pertaining to the motions to dismiss, prompting Slaughter to renew the first motion to dismiss on November 14, 2016 and

¹ The Superior Court Docket Sheets for 1207010738 are attached as A1-26 and assigned DE #.

² Hereinafter referred to as (A__).

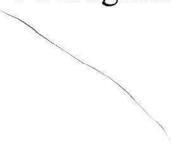
supplement the second motion to dismiss. (DE89, 90). On December 5, 2016, the State filed a response to Slaughter's renewal of the first motion to dismiss, as well as a response to questions asked by the court during oral argument held on the second motion to dismiss. (DE95, 96). On January 3, 2017, the court denied both Slaughter's renewed first motion and Slaughter's second motion to dismiss.

On January 18, 2017, Slaughter pleaded guilty to one count of Murder Second Degree. (DE118). Slaughter filed a *pro se* motion to withdraw the guilty plea on February 3, 2017. (DE119). Following a March 16, 2017 hearing on the motion, independent counsel was appointed to counsel Slaughter on withdrawing his plea. (DE123). Slaughter proceeded *pro se* on the motion to withdraw guilty plea, and on May 25, 2017, following oral argument, the court denied Slaughter's motion. (DE126). Slaughter was sentenced on August 4, 2017 to a term of fifty years at Level V, suspended after twenty years. (DE128). No direct appeal was taken.

Slaughter filed *pro se* motions for postconviction relief and appointment of counsel on September 25, 2017, and undersigned counsel was thereafter appointed to represent Slaughter in his Rule 61 postconviction proceedings. (DE129, 130). Following a May 14, 2019 Amended Motion for Postconviction Relief, an October 24, 2019 affidavit from defense counsel Patrick Collins, a December 11, 2019 affidavit from defense counsel Natalie Woloshin, a February 12, 2020 Response from the State

and a May 1, 2020 Reply from Slaughter, oral argument was held on November 20, 2020. (DE145, 158, 161, 162, 163). On February 16, 2021, the court issued an order denying Slaughter's Amended Motion for Postconviction Relief.³ (DE164). Slaughter timely appealed to this Court. (DE167).

This is Slaughter's Opening Brief on Appeal.



³ Attached as Exhibit A, hereinafter cited as ("Denial at __").

SUMMARY OF ARGUMENT

1. The Superior Court erred in denying Slaughter's claim of ineffectiveness for defense counsel's inadvertent waiver of Slaughter's IAD speedy trial right, as the claim was not waived by Slaughter entering a valid guilty plea and defense counsel's action was objectively unreasonable and resulted in actual prejudice to Slaughter, in that but for counsel's error, the indictment would have been dismissed with prejudice prior to entry of the guilty plea.

2. The Superior Court erred in denying Slaughter's claim that if the court found defense counsel to have acted reasonably in relying on the State's representations that this was a Governor's Warrant and not IAD case, then counsel's waiver of the 120 day time period was involuntary and therefore invalid, as the claim was not waived via the entry of a valid guilty plea, nor is the claim procedurally barred for failure to raise in a direct appeal.

3. The Superior Court erred in denying Slaughter's claim of defense counsel ineffectiveness for failure to file an appeal, as the court incorrectly found that Slaughter waived the ability to appeal the IAD issue.

STATEMENT OF FACTS

On December 14, 2007, officers responded to a shooting in Newark, Delaware involving two victims, Christopher Masters (“Masters”) and Jason Slaughter. (A395). Upon arrival, Masters was found deceased inside of his residence and Slaughter was transported to Christiana Hospital for a gunshot wound to the shoulder (*Id.*).

Slaughter advised officers that he was visiting Masters, and while standing outside of Masters’ trailer, they were approached by two black males asking whether they wanted to buy marijuana. (A395). They invited the individuals inside where a disagreement ensued over money, the two individuals attempted to rob them, and both Masters and Slaughter were shot. (*Id.*).

The two individuals were never identified, and Slaughter relocated to Georgia, moving in with his wife, Donna Slaughter, and a roommate, Michael Haegele (“Haegel”). (A395). On May 7, 2010, a male body was discovered on a secluded road in Macon County, Georgia, the victim of an apparent homicide. (*Id.*). On May 12, 2010, Slaughter contacted police to advise he believed the unidentified body was his roommate, Haegele. (*Id.*). During questioning, Donna Slaughter confessed to shooting Haegele in the back of the head at their shared residence and implicated Slaughter in the attempted cover up of the crime. (A396).

During the investigation into Haegele’s death, Georgia law enforcement

uncovered a life insurance policy on Haegele worth \$500,000 listing Slaughter as the beneficiary. (A395-96). The policy had been purchased online through HSBC, a life insurance company based out of Delaware. (*Id.*). An HSBC life insurance policy on Slaughter worth \$25,000 listing Haegele as the beneficiary was also found; this policy had likewise been purchased by Slaughter. (*Id.*).

During the investigation, law enforcement also discovered an HSBC life insurance policy on Masters worth \$250,000 listing Slaughter as the beneficiary. (A396). An HSBC life insurance policy for Slaughter worth \$25,000 with Masters as the beneficiary was also found. (*Id.*). After Georgia law enforcement learned that Masters was deceased, they relayed this information to Delaware law enforcement, who reopened the investigation into Masters' death. (*Id.*).

Slaughter was indicted for the first degree murder of Masters on July 16, 2012 but at the time, was incarcerated in Georgia pending trial for the first degree murder of Haegele. (DE1; A396). After being convicted of first degree murder, Slaughter was transported from Georgia to Delaware.

The majority of the litigation that occurred in this case focused on the manner in which Slaughter had been extradited to Delaware and whether the State had

sufficiently complied with the Interstate Agreement on Detainers (“IAD”),⁴ also referred to as the Uniform Agreement on Detainers (“UAD”), such that Slaughter was not entitled to dismissal of the indictment. Slaughter filed two motions to dismiss, a motion for reargument and a motion for renewal of the first motion to dismiss. The court held hearings on each of the motions to dismiss. Midway through the proceedings, the State discovered that it had relayed incorrect information to the Georgia Department of Corrections (“GDOC”) regarding the extradition of Slaughter and had erroneously informed defense counsel that the IAD was not implicated in Slaughter’s case. A time-line of events relating to Slaughter’s extradition is as follows:

- **July 16, 2012:** Slaughter is indicted in Delaware on First Degree Murder and PFDCF charges, and an authorization for extradition is signed by Deputy Attorney General Norris.
- **July 18, 2012:** notice that a Rule 9 warrant is issued.
- **August 15, 2013:** Slaughter is tried and convicted in Georgia of the first degree murder of Haegele.
- **October 4, 2013:** The State of Delaware lodges a detainer with the Georgia Department of Corrections.

⁴ Delaware codified the IAD at 11 Del. C. §§ 2540-2550; *see New York v. Hill*, 528 U.S. 110, 111 (2000) (“The Interstate Agreement on Detainers (IAD) is a compact entered into by 48 States, the United States, and the District of Columbia to establish procedures for resolution of one State’s outstanding charges against a prisoner of another State.”).

- **October 15, 2013:** GDOC acknowledges the detainer lodged by the State of Delaware.
- **October 24, 2013:** Slaughter requests disposition of the charges underlying the detainer, pursuant to IAD § 2542, by delivering the appropriate paperwork to the GDOC Warden.
- **October 24, 2013:** GDOC sends Slaughter's request under the IAD to "The Honorable Joseph R. Biden, III, Attorney General's Office, State of Delaware, Wilmington, Delaware" but fails to also send the IAD request to the Delaware Superior Court. Accompanying the IAD request is Georgia's offer of temporary custody and Form VII, "Prosecutor's Acceptance of Temporary Custody", which is to be completed by the State of Delaware and returned to Georgia.
- **November 5, 2013:** The date stamped on the Delaware Department of Justice's receipt of Slaughter's request for final disposition/IAD application.
- **April 14, 2014:** GDOC sends a letter to the Department of Justice informing them that Slaughter had been advised the IAD did not apply and that Delaware would need to use a Governor's Warrant to extradite him.
- **July 23, 2014:** Governor Markell of Delaware signs the Governor's Warrant.
- **July 28, 2014:** Governor Deal of Georgia signs the Governor's Warrant.
- **October 6, 2014:** An Authority to Release Custody of Offender is sent by the Delaware Department of Justice to the Georgia IAD coordinator.
- **October 9, 2014:** Slaughter arrives at James T. Vaughn Correctional

Institute.⁵

- **November 13, 2014:** Patrick Collins is appointed as defense counsel. (A264).
- **November 18, 2014:** An office conference is held to discuss scheduling. Both the prosecutor and defense counsel Collins advise the court that the case cannot be tried within one year. The court schedules trial for April 5, 2016 with no objection from either party.
- **November 19, 2015:** A joint request is made for a continuance of the April 5, 2016 trial date due to scheduling conflicts. The court sets a new trial date of January 9, 2017.⁶ (A265-66).

On March 31, 2015, Slaughter filed the first motion to dismiss, contending the IAD applied to his case and that the State had failed to timely extradite him from Georgia and try him within 180 days, as required by IAD § 2542.⁷ (A27-79).

⁵ The Superior Court confirmed through the Department of Corrections that Slaughter actually arrived in Delaware on October 9, 2014 and that the date listed on the docket sheet is an error. (DE18; A371; Denial at 5 n.4).

⁶ During a November 19, 2015 status conference, defense counsel stated: "Your Honor, just to put that on the record for today's conference. We moved this trial to accommodate all parties, including counsel in the Paladin Club capital murder trial, which has more lawyers and more parties in it. The decision was made to move this to sometime in January 2016." (A208). Thereafter, Slaughter's trial was scheduled to begin January 9, 2017. (A209). The trial date was later moved to January 24, 2017 during the August 29, 2016 office conference with no objection from either party. (A232-33).

⁷ 11 Del. C. § 2542(a) ("Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, the prisoner shall be brought to trial