

06/06/2022

No. ~~21-80-562~~
22-5158

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

APR 18 2022

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BERNARD J. BATTLE

PETITIONER

VS.

UNITED STATES OF AMERICA

RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

DISTRICT OF COLUMBIA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

BERNARD J. BATTLE 09516-007

USP THOMSON P.O. BOX 1002

THOMSON IL 61285

question(s) presented

Whether "[a]n guilty plea obtained" in direct contravention of the express provisions of [an applicable statute], render the sentence illegal, and consequently the judgment of conviction a nullity.

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the state trial court appears at Appendix B to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from state courts:

The date on which the highest state court decided my case was FEB 2, 2022.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

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SUPREME COURT OF THE UNITED STATES

BERNARD J. BATTLE,

petitioner

VS.

CASE NO. FEL-6549-94

UNITED STATES OF AMERICA,

Respondent

APPEAL FROM THE DISTRICT OF COLUMBIA
COURT OF APPEALS

BRIEF FOR THE PETITIONER

STATEMENT OF THE CASE

On July 11, 1994, petitioner was charged by 17-count indictment with armed carjacking and related offenses arising from a series of incidents occurring on or about June 5, 1994 (R. 1, 6, 8). On September 28, 1994, petitioner entered a plea of guilty to one count of PFCV, D.C. Code 22-3204 and to unarmed carjacking, D.C. Code 22-2803 (R. 9). On December 5, 1994 the court denied petitioner's request for a sentence under the Youth Rehabilitation Act, D.C. Code 24-801 and sentence

the petitioner to consecutive mandatory-minimum terms of incarceration of seven (7) to twenty-one (21) years for carjacking and five (5) to fifteen (15) years for PFCV, for an aggregated prison term of twelve (12) to thirty-six (36) years (R.12).

THE TRIAL COURT PROCEEDINGS AND THE GUILTY PLEA AND SENTENCING

On September 28, 1994, petitioner orally and in writing, waived his right to a trial by jury and entered a plea of guilty to PFCV and to unarmed car-jacking (R.9). During that proceeding, the trial court advised the petitioner that, should the trial court choose to sentence him pursuant to the YRA, petitioner would be subject to an 15-year term of imprisonment, rather than the mandatory-minimum and maximum sentencing provisions on both charges for which he plead (see R.32 at 5, 11). When Judge Weisberg sentenced petitioner on December 5, 1994, he considered the following in deciding against a YRA sentence and in favor of a sentence to consecutive mandatory-minimum terms of incarceration on both charges:

Although the defendant was twenty years old at the time of conviction and eligible for sentencing under the Youth Rehabilitation Act, D.C. code 24-801, the court concluded that he would not benefit from the provisions of that act. The court also concluded that defendant should serve his two adult mandatory sentences consecutively rather than concurrently. These were separate criminal acts against separate victims, albeit committed on

the same night. The crimes, and related crimes, were exceptionally violent, defendant's own words describing his motivation in the pre-sentence report are particularly chilling. Defendant has prior adult criminal convictions, including a conviction for a possession of a gun, and several adult arrests for very serious crime of violence that were dismissed under circumstances that do not demonstrate defendant's innocence of those offenses. Defendant also has numerous juvenile arrests and adjudications, including one adjudication of manslaughter on a petition that had charged the defendant with first degree murder.

At defendant's sentencing on December 5, 1994, the court concluded that defendant would not benefit from sentencing under the Youth Rehabilitation Act and that the sentences on his two convictions should be served consecutively (R.5 at 2.).

Standard of Review and Applicable
Legal Principles of The Youth
Rehabilitation Act

The objective of the Youth Rehabilitation Act ("YRA"), D.C. code 24-801 to 806, are "to give the court flexibility in sentencing a youth offender according to his individual needs;" to separate youth offenders from more experienced offenders", and to provide an "opportunity" for a deserving youth offender to start anew through expungement of his criminal record, see "Report from chairperson of the judiciary to council members on Bill

6-47, June 19, 1985, The YRA is available if a plea of guilty or verdict of guilty is entered before the defendant's twenty-second birthday, D.C. Code 24-801 (2), (6); see also *Williams v. United States*, 656 A.2d 288, 295 (D.C. 1995) ("YRA" sentencing not available to defendant who withdraws guilty plea and is convicted after trial, having turned twenty-two in interim. All crimes except murder and convictions for a second crime of violence while armed are eligible for youth act treatment. ("The important issue with both exclusion is the crime of conviction, not the original charge").

The Youth Act can serve as an "Exemption" from the mandatory-minimum sentencing provisions for first offenses committed while armed with a gun, D.C. Code 22-3202 and Possession of a firearm during a dangerous or violent crime, D.C. Code 22-3204(b)). To impose a Youth Act sentence, the court must determine that the defendant is a "youth offender" and "will derive benefit from the provisions of this chapter," making a statement of its reasons on the record, D.C. Code 24-803 (c); see *Veney v. United States*, 681 A.2d 428 (D.C. 1996) (en banc). Before making the determination of benefit, the court may order the defendant "committed for observation and study at an appropriate classification center or agency." D.C. Code 24-803 (e). This study will be prepared within sixty days or after any additional period that the court may grant. The defendant is entitled to present relevant facts, see D.C. Code 24-803 (c).

SUMMARY OF ARGUMENT

The District of Columbia Court of Appeals erred in its summary

affirmance of petitioner's 23-110 motion grounds raised for relief as procedurally barred when his claim of error were made pursuant to super. ct. crim. R. 52 (b),

ARGUMENT

The Appellate court Abused Its Discretion By Summary Affirming Petitioner's 23-110 motion when He Alleged The Trial Court Erred In Failing To Comply With The Requirements of Super. Ct. Crim. R. 11(c)(1)

The petitioner contends that the appellate court erred in its summary affirmance of his 23-110 post conviction collateral attack of his sentence, and judgment of conviction Rule 11 Violation grounds raised for relief, as procedurally barred when his claims of error were made pursuant to super. ct. crim. R. 52 (b). The plain error rule was designed in substantial part to ensure that trial judges is apprised of any alleged error on his or her part and has an opportunity to correct the error and avoid an unnecessary appeal. *Dixon v. United States*, 565 A.2d 72, 80 (D.C., 1989)

Moreover, the D.C. Court Reform and Criminal Procedure Act of 1970, collateral attack of conviction provides in relevant part that: although the superior court is not required to entertained a second or successive motion for similar relief on the behalf of the same prisoner, there is nothing in the statute that bars the court from entertaining a second motion or third if the interest of justice so require.

The petitioner assert that a plea of guilt and the ensuing conviction

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comprehend all the factual and legal elements necessary to sustain a binding, final judgment of guilt and a lawful sentence;

Accordingly, when the judgment of a conviction upon a guilty plea has become final and the offender seeks to reopen the proceeding, the inquiry is ordinarily confined to whether the underlying plea was both counseled and voluntary. *Tollett v. Henderson*, 411 U.S. 258, 266-67, 36 L.Ed. 2d 235, 93 S.Ct. 1602 (1977); see also *Lorimer v. United States*, *supra*, 425 A.2d at 1308, "[I]f the answer is in the affirmative then the conviction and the plea, as a general rule, foreclose the collateral attack."

There are however exceptions where on the face of the record the court had no power to enter the conviction or impose the sentence. see *United States v. Broce*, 488 U.S. 563, 102 L.Ed. 927, 109 S.Ct. 757 (1989).

The petitioner asserts that his guilty plea is invalid under his constitutional right of the fourteenth Amendment to due process because it was obtained in "direct contravention of the express provisions of the statutory sentencing scheme of the YRA, D.C. code 24-801, and consequently should be treated as a nullity," see *Gaston v. United States*, 535 A.2d 893 (1988) (1988) (quoting *United States v. Journe*, 544 F.2d 633, 636 (2d Cir. 1976).

The petitioner contends that he is entitled to relief because the trial court failed in its duty to comply fully with Rule 11(c)(1) and advise him of the nature of the charges to which his guilty plea was premised made him ineligible for youth act sentencing as a subsequent while armed crime of violence offender.

On September 28, 1994, the trial court held a plea hearing during

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which it reviewed the terms of the government's plea agreement with petitioner, and erroneously provided him with manifest incorrect information of his eligibility for alternative sentencing pursuant to the terms of the Youth Rehabilitation Act, D.C. code 24-801,

specifically, the trial court "[a]dvised petitioner that "if it should decide to sentence him as an youth offender, that it would impose a 15 year term of imprisonment instead of the mandatory minimum and maximum sentencing provisions on both charges to which he plead guilty. (see, R.9)

The petitioner was materially misinformed to the extent that he was lead to believe that consideration for youth act treatment was available to him, Thereby he is entitled to relief because the difference between some possibility of alternative sentencing and no possibility of alternative sentencing is too distinction is enough to warrant inquiring whether petitioner wanted to adhere to his guilty plea that was based, in part upon manifest incorrect information, and afford him an opportunity to withdraw his guilty plea to correct manifest injustice,

The petitioner assert that his guilty plea was not knowingly, voluntarily or intelligently entered and because a plea represents "an intentional relinquishment or abandonment of a known right or privilege, Johnson V. Zerbst, 304 U.S. 458, 464, 82 L.Ed 1461, 58 S.Ct. 1019 (1938); the plea must be "guilty voluntary and knowing, McCarthy, 394 U.S. at 466.

"[A]n guilty plea does not qualify as knowing and intelligent unless a criminal defendant "first receive "real notice" of the true nature of the charges against him, the first and most universally recognized requirement of due process. Smith v. O'Grady, 312 U.S.

329, 334, 61 S.Ct. 572, 85 L.Ed 859 (1941). For example, in *Bousely v. United States*, 523 U.S. 614, 118 S.Ct. 1604, 140 L.Ed 2d 828 (1998); this court held that a guilty plea is constitutionally valid only to the extent it is "voluntary and intelligent". *Id.* 618". The petitioner assert that it has been well settled by precedent case law decisions held by this court that a court errs if it accepts a guilty plea not entered into voluntarily and intelligently. see i.g. *Santobello v. New York*, 404 U.S. 257, 92 S.Ct. 4955, 30 L.Ed 2d 427 (1971); *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S.Ct. 1709, 23 L.Ed 2d 274 (1969). A valid guilty plea must represent a voluntary and intelligent choice by the defendant between available alternatives. *Byrd v. United States*, *supra* 4, 377 A.2d at 404 (citing *Boykin v. Alabama supra*).

Overwhelming proof of a defendant's guilt proffered by the government does not overshadow the fundamental right of a defendant (to choose) between proceeding to trial or, in the alternative, making a voluntary and intelligent waiver of that right and other rights pursuant to a plea agreement. *Byrd v. United States*, *supra* note 4, 377 A.2d at 405).

The petitioner assert that because a guilty plea waives several constitutional right in order to accord due process the trial court must be sure that the defendant has entered the plea "voluntary" after proper advice and with full understanding of the likely consequences. *Machibrod v. United States*, 368 U.S. 487, ~~488~~ 493 7, L.Ed 2d 473, 82 S.Ct. 510 (1962) (quoting *Kercheval*, 274 U.S. 223); see also *United States v. Ruiz*, 536 U.S. 622, 629, 122 S.Ct. 2450, 153 L.Ed 2d 586 (2002).

consequently, if a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is

therefore void. Moreover, because a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts, *McCarthy, supra*, note 4, 394 U.S. at 466, 89 S.Ct. at 1171).

The petitioner contends that his guilty plea was not voluntarily, knowing or intelligently entered because during the plea colloquy the trial court provided him with manifest incorrect information of his eligibility for youth act sentencing. By misleading petitioner as to the consequences of his plea the trial court deprived him of an accurate basis upon which to make a knowing and intelligent decision whether to enter his guilty plea or decide to go to trial. In the sentencing context, an error that affects a defendant's substantial right is where there is a reasonable likelihood that the sentencing court's obvious error affected his sentence. *United States v. Head*, 817 F.3d 354, 361 (422 C.D.C. Cir. 2016). The petitioner asserts that the trial court's Rule 11 procedure error affected his sentence in that he did not know the direct consequences of his plea because, at the time he entered into his guilty plea he was misled to believe that the range of possible punishment included the possibility of alternative sentencing, pursuant to the terms of the YRA. "[I]n *Brady v. United States*, 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed 2d 747 (1970); this court established the proposition that a defendant must know the direct consequences of a plea before he can plead intelligently. The consequences of a plea are direct when they have a definite and immediate impact on the range of defendant's punishment. *CERIC GOODALL V. United States*, 584 A.2d 560, 563 (D.C. 1990); see also *Culthrell V. Director*, 475 F.2d 1364, 1365 (4th Cir.), cert. denied 414 U.S. 1005, 94 S.Ct.

362, 38 L.Ed. 2d 241 (1973). Those aspects which are "automatic" upon sentencing and "absolutely" part and parcel of the sentence itself are considered "direct consequences of a guilty plea. See *Holland v. United States*, 584 A.2d 13, 15-16 (D.C. 1990) (quoting *Carlos Goodall v. United States*, 759 A.2d 1077 (2000)). The government agrees that one of the "core concern" the trial court must address when conducting a Rule 11 inquiry is whether he or she comprehends the direct consequences of the plea. *McCarthy v. United States*, 394 U.S. 459, 466-67, 89 S.Ct. 1166, 1170-71, 22 L.Ed. 2d 418 (1969); "[B]ecause the consequences are so grave Rule 11 lays down stringent procedural requirements regulating the entry of guilty pleas, ..." *Gooding v. United States*, 529 A.2d 301, 304-05 (1987). See also *Coleman v. Burnett*, 155 U.S. App. D.C. 302, 477 F.2d 1187 (1973): "[a] plea of guilty consummating a voluntary and intelligent choice of available alternatives has serious ramifications for the criminal proceeding. It operates as an admission of all material facts alleged in the count or counts pleaded to, and thus dispenses with the need to prove them. *Boykin v. Alabama*, 395 U.S. 238, 242, 23 L.Ed. 2d 274, 89 S.Ct. 1709 (1969). More important, however, is the effect of the plea beyond this service for the Government: '[T]he plea is more than an admission of past conduct; it is the defendant's consent that judgment of conviction may be entered without a trial a waiver of his right to trial before a jury or judge. Thereby, the policies behind Rule 11 are important and should be strictly enforced, ..." *United States v. Gonzalez*, 820 F.2d 575, 578 (2d Cir. 1987) (quoting *Del Vecchio v. United States*, 556 F.2d 106, 109 (2nd Cir. 1977); and in failing

to ascertain whether or not petitioner knew the direct consequences of his plea to wit a maximum stay in prison of thirty-six (36) years rather than an fifteen (15) year term of imprisonment the trial court clearly failed to address a core concern of Rule 11, *Goodall v. United States*, 584 A.2d 560 (1990). The defect in petitioner's plea proceeding was not that he was given a longer sentence than he believe possible, but that he was precluded unknowingly at the time, from any possibility of alternative sentencing.

Although petitioner knew he could be sentence to a mandatory minimum of twelve (12) to thirty-six (36) years, even a remote possibility of alternative sentencing pursuant to the YRA of an fifteen (15) year term of imprisonment never exist. The issue presented by petitioner's motion does not arise because he failed to receive alternative sentencing. Rather, the question is whether manifest injustice results where a trial court accepts a guilty plea unknowingly based, in part, on manifestly incorrect information.

The petitioner assert that the appellate court for the District of Columbia were ultimately required to decide was whether the trial court "clearly abused" its discretion in denying his motion to withdraw his plea, *Wilson v. United States*, 592 A.2d 1009, 1011 (D.C. 1991). This embodies two sub-questions: first, what standard must a defendant meet to win post sentencing withdrawal of a plea; and second, did appellant meet that standard. The most appropriate procedure for post-conviction relief to withdraw a guilty plea can be made either under super. Ct. crim. R. 32 (e) or D.C. code ~~28~~ 28-110 are subject to the "manifest injustice standard. See *Carmichael v. United States*, 479 A.2d 325, 327 (D.C. 1984) | (Rule 32 (e) motion citing *Willis v. United States*, 468 A.2d 1320,

1322 (D.C., 1983); *McClurkin v. United States*, 472 A.2d 1348, 1352 (D.C., cert. denied, 469 U.S. 838, 105 S.Ct. 136, 83 L.Ed. 2d 76 (1984)); *Lofimer v. United States*, 425 A.2d 1306, 1308-09 (1981). See also *United States v. Watson*, 179 U.S. App. D.C. 103, 103, 548 F.2d 1063 (1977) ("request for relief under 28 U.S.C. 2255 subject to the manifest injustice standard of Fed. R. Crim. P. 32 (d) which is the same as Super. Ct. Crim. R. 32 (e). The material portion of Rule 32 (e), providing, "[a] motion to withdraw a plea of guilty, . . . may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice, the court after sentence may set the judgment of conviction aside and permit the defendant to withdraw the plea," has been moved to Super. Ct. Crim. R. 11. See Super. Ct. Crim. R. 32 cmt. to 2016 Amendments.

Although, "as a practical matter virtually every possible avenue of an appeal is waived by a guilty plea, see *Bettis v. United States*, 325 A.2d 190, 194 (D.C. 1974); a defendant who is sentenced after pleading guilty may later attack the voluntary and intelligent character of the plea. See *McClurkin*, supra, 472 A.2d at 1352. Under both Rule 32 (e) and 23-110, a trial court may permit a defendant to withdraw his plea after sentencing "only if the defendant affirmatively establishes that the trial court's acceptance of his guilty plea was manifestly unjust, and that the plea proceedings were fundamentally flawed such that there was a complete miscarriage of justice," see *Bradley*, 881 A.2d at 646 (quoting *(Linda) Johnson v. United States*, 631 A.2d 871, 874 (D.C. 1993) (alteration in original); see also *Upshur v. United States*, 742 A.2d 887, 892 (D.C. 1999) (applying "manifest injustice" standard).

To meet the "manifest injustice" standard, a defendant must establish "either that there was a fatal defect in the Rule 11 plea proceeding when

the guilty plea was taken' or that justice demands withdrawal under the circumstances of the case." *Wallace v. United States*, 936 A.2d 757, 768 (D.C. 2007) (quoting *Pierce v. United States*, 705 A.2d 1086, 1089 (D.C. 1997)).

"[T]here must be a showing of prejudice to the defendant to establish that manifest injustice did occur. (*Linda*) Johnson, 631 A.2d at 874-75. Upon appellate review, the District of Columbia Court of Appeals is required to review a Rule 11 violation claim in a defendant's 23-110 motion for the withdrawal of his guilty plea, to determine whether the trial court judge abused its discretion in applying the manifest injustice standard. *Loisner*, supra, 425 A.2d at 1308; *Byrd v. United States*, 377 A.2d 400, 405 (D.C. 1977).

Although the manifest injustice standard of Rule 32 (e) is appropriate in deciding post-conviction guilty plea withdrawal motions, the disposition of these collateral attacks on a defendant's sentence still remain subject to the hearing requirement of D.C. Code 23-110 (c). Upon appellate review of the summary denial of an defendant's 23-110 motion, the court is required to determine whether the trial court erred in disposing the defendant's motion without conducting a hearing. "[O]nly when the motion, files, or other records contain data which belie a prisoner's claim, and such contradiction is not susceptible of reasonable explanation, does 23-110 permit a court to deny a motion summarily. As a rule, therefore, in denying a 23-110 motion without a hearing, the court should be able to say 'that under no circumstances could the petitioner establish facts warranting relief.'" *Fontaine v. United States*, 411 U.S. 213, 215, 93 S.Ct. 1461, 1463, 36 L.Ed. 2d 169 (1973).

only three categories of claims do not merit hearings, "[P]robably incredible" (though not merely "improbable") claims are one category

of claims which may be summarily handled. *Machibroda v. United States*, 368 U.S. 487, 495, 82 S. Ct. 510, 514, 7 L. Ed. 2d 473 (1962). A motion that makes assertions which, even if true, would not constitute a claim which entitles movant to relief is another category of motions which can be denied without a hearing. *Gibson v. United States*, 388 A.2d 1214 (1978). Lastly, motions based on claims that are "vague and conclusory" do not mandate a hearing under 23-110. *Blackledge v. Allison*, 431 U.S. 63, 75, 97 S. Ct. 1621, 1630, 52 L. Ed. 2d 136 (1977). See generally *Pettaway*, *supra*, 390 A.2d at 984 and cases cited therein. Petitioner's motion to withdraw his plea of guilty under 23-110 cannot be characterized as either "vague and conclusory," "wholly incredible," or, "even if true, not meritorious of relief." "[A]n evidentiary hearing on a 23-110 motion alleging an Rule 11 violation claim should be resolved in favor of holding a hearing. See *Bellinger v. United States*, 127 A.3d 505, 514-15 (D.C. 2015).

In his 23-110 motion, petitioner affirmatively establish that the trial court's acceptance of his guilty plea was manifestly unjust, and that his Rule 11 plea proceedings was fundamentally flawed such that there was a complete miscarriage of justice. The petitioner contends that the manifest injustice in his case occurred when the trial court considered him for alternative sentencing pursuant to the terms of the Youth Rehabilitation Act, D.C. Code 24-801, and then concluded at sentencing that he would not derive benefit from the rehabilitative sentencing options of the act, for the same exact reasons that the statutory provisions of the act had precluded him from youth act treatment. The petitioner assert that the trial court's Rule 11 violation mislead him to his prejudice because had he

would have been adequately advised during the plea colloquy of the nature of the charges to which his guilty plea was premised, made him ineligible for youth act sentencing, as an subsequent while armed crime of violence offender, he would have never entered into his guilty plea and would had decided to go to trial. On appellate review of a defendant's post-conviction collateral attack of his sentence and judgment of conviction guilty plea withdrawal, discretion by its very definition is subject to changes in the manner in which it is informed and exercised. The inquiry that shall be most controlling is whether petitioner's guilty plea was indeed induced by manifest incorrect information, and is the error demonstrated on the record. Therefore, in applying the manifest injustice standard a plea is deem involuntary 'where the defendant does not receive "real notice of the nature of the charges against him and the direct consequences of his plea, see *Henderson v. Morgan*, 426 U.S. 637, 645, 96 S.Ct. 2253, 49 L.Ed. 2d 108 (1976),

"[A]n appellate court's review for determination of whether a guilty plea is voluntary as a matter of due process under *Henderson* requires examination of the entire plea record and its analysis of the totality of the circumstances surrounding the plea. *Henderson*, *supra*, 426 U.S. at 644; see also *Brady v. United States*, 397 U.S. 742, 749, 25 L.Ed. 2d 747, 90 S.Ct. 1463 (1970); *State v. Priet*, *supra*, 289 Md at 287, 90 424 A.2d at 359-60. The critical inquiry is whether a defendant has been apprised 'adequately of the substance of an offense, rather than its formal legal components. *Henderson*, *supra*, 426 U.S. at 644; see also *State v. Priet*, *supra*, 289 Md. at 287-90, 424 A.2d at 359-60, surrounding

circumstances relevant to a reviewing court's inquiry concerning voluntariness include the complexity of the charge, the personal characteristics of the defendant, the defendant's familiarity with the criminal justice system, and the factual basis proffered to support the court's acceptance of the plea. *Wabasha v. Solem*, *supra*, 694 F.2d at 158; *Berry v. Mintzes*, 529 F. Supp. 1007 (E.D. Mich. 1981); see also *Commonwealth v. McEwrick*, *supra*, 376 Mass. at 344-48, 380 N.E. 2d at 666-68. The petitioner asserts that his principal contentions on appeal are that his guilty plea was not voluntarily or intelligently made because the trial court "[f]ailed in its duty to 'adequately advise him of the nature of the charges to which his guilty plea was premised, and the direct consequences of his plea pursuant to the holdings decided by this court in *Henderson v. Morgan*, 426 U.S. 637, 49 L.Ed. 2d 108, 96 S.Ct. 2253 (1976).

The Procedural Default Issue and The Trial Court's Rule 11 Violation

The petitioner asserts that in resolving an procedural default issue, ordinarily an appellate court is guided by the following legal principles.

"[I]f an appellant does not raise a claim of an Rule 11 violation during the pendency of the direct appeal, or in his first post-conviction motion, when at that time appellant demonstrably knew or should have known of the grounds for alleging the trial court's error, the procedural default will be a barrier to the court's consideration of appellant's claim." See *Washington v. United States*, 834 A.2d 899, 902 (D.C., 2003)

(quoting *Shepard v. United States*, 533 A.2d 1278, 1280 (D.C. 1987)): "where a defendant has failed to raise an available challenge to his conviction on direct appeal, he may not raise that issue on collateral attack unless he shows both cause for his failure and prejudice as a result, see *Head v. United States*, 489 A.2d 450, 451 (D.C. 1985)).

Relief under 23-110 is appropriate for serious defects in the trial which were not correctable on direct appeal or which appellant was prevented by exceptional circumstances from raising on direct appeal," *Head*, *supra*, 489 A.2d at 451

Here, both the trial and appellate court were presented with a rather unique and exceptional factual and procedural context on which to determine whether petitioner failed to raise a challenge to his sentence, based on facts that were all known or available to him at the time of his first motion. As such, the failure to include these claims in his first post-conviction motion is a procedural bar, which defendant cannot overcome absent a showing that he was prevented by exceptional circumstances" from doing so. *Head v. United States*, 489 A.2d 450, 451 (D.C. 1985); see *Bradley*, 881 A.2d at 646; *Matos*, 631 A.2d at 30 (absent a showing by defendant of both cause for his failure to raise an available challenge earlier and prejudice as a result of that failure, "abuse of writ doctrine generally bars subsequent consideration of claims not raised, and thus defaulted, in the first [collateral] proceeding," quoting *McCleskey v. Zant*, 499 U.S. 467, 489 (1991)). The petitioner contends that the appellate court abused its

discretion and erred by summarily affirming petitioner's sentence and judgment of conviction Rule 11 violation grounds raised for relief as procedurally barred.

In his 23-110 motion, petitioner asserted with sufficient precision [in the trial court] the factual allegations of his Rule 11 violation grounds raised for relief, and distinctly demonstrated both cause for his failure to include his claims of error in his first post-conviction motion and prejudice as a result, see *White v. United States*, 146 A.3d 101 (D.C. 2016).

The petitioner contended that during the entry of his guilty plea the trial court erroneously provided him with manifest incorrect information of his eligibility for alternative sentencing pursuant to the terms of the Youth Rehabilitation Act, D.C. code 24-801. The petitioner asserts that "[t]his statement and the failure of the court, trial counsel and the prosecutor to correct his misapprehension at the plea colloquy, constitute as cause as to why he could not raise his Rule 11 violation grounds raised for relief in his first post-conviction 23-110 motion, because at that time he had no reason to believe that his guilty plea had been entered based on manifest incorrect information.

The petitioner asserts that his case is analogous to though not entirely identical to *Gaston v. United States*, supra. In that case, Gaston was led to believe that she would be eligible for the addict exception to the mandatory minimum sentencing requirement of the Uniform Controlled Substances Act. The government had promised not to contest any evidence of her addiction. However, at allocution, the government

pointed out that Gaston was ineligible for the addict exception. The trial court then imposed a mandatory minimum sentence.

In reversing the trial court's denial of Gaston's 28-110 motion, the appellate court held that the trial court has a "duty to ensure that defendant's do not decide to plead guilty based on manifestly wrong information," *Gaston v. United States*, 535 A.2d 893 (1988); see also (ERIC) *Goodall v. United States*, 584 A.2d 560 (1990); (Carlos) *Goodall v. United States*, 759 A.2d 1077 (D.C. 2000). The petitioner contends that he is entitled to relief because the trial court's Rule 11 violation misled him to his prejudice, because had he would have been 'adequately' [a]dvised of the true nature of the charges to which his guilty plea was premised, he would have not entered into his guilty plea, and would had decided to go to trial.

The legislative history of the YRA provide support for petitioner's Rule 11 violation claim of error. The committee on the Judiciary Report accompanying the legislation that became the YRA includes the following statements:

[The legislation] provides that a youth offender who is convicted of a second armed offense is ineligible for sentencing under the act. Also, a youth offender convicted of murder (including felony murder) is precluded from benefiting from the rehabilitative sentencing options of the act. see, D.C. Council Report on Bill 6-47 at 3 (June 19, 1985) (the "YRA Report"). The committee's focus on exclusions from "sentencing under the act" and from the "sentencing options of the act" for second-time violence-while-armed offenders and offenders convicted of murder while

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armed arguably supports petitioner's claim of error who was convicted for the second-time of an while-armed crime of violence (1) Manslaughter and (2) Possession of a firearm during a crime of violence or dangerous offense; ("Armed Robbery") and ("Assault With Intent To commit Robbery While-Armed") as set forth in counts fourteen and fifteen of the indictment. see also count (9). In support of his claim of error the petitioner cites *Briscoe v. United States*, 18/ A.3d 651 (2018), the District of Columbia court of Appeals held in its analysis of the interplay between the YRA and 22-4502 and 22-4504 ("formerly 22-3204") start where all such < statutory construction > must begin with the language of the statute itself. see *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241, 109 S.Ct. 1026, 103 L.Ed. 2d 290 (1989) ("where, ..., the statute's language is plain, the sole function of the court is to enforce it according to its term"). As the petitioner's grounds raised for relief involved a Rule 11 violation of being materially 'misinformed of his eligibility for youth act treatment, the trial court was required to look first to the statutory construction of the legislative intent of the sentencing criteria of the 'Youth Rehabilitation Act, D.C. code 24-801. As such, the petitioner contends that the trial court abused its discretion in the summary denial of his 23-110 motion without a hearing because the appellate court for the district of Columbia have held that it cannot find error that is obvious or readily apparent i.e., plain "where the court has not spoken on the subject, *Carrledge v. United States*, 100 A.3d 147, 150 (D.C. 2014). There could, however, be situations where a statute is so clear on its face that a decision of the court is unnecessary to make it obvious what the correct interpretation is. And, in appropriate context review for plain error entails if there is

"authority that appears to be to the contrary," *Alexander v. United States*, 116 A.3d 444, 449 n.5 (D.C. 2015).

The plainness of the error can depend on well-settled legal principles as much as legal precedent. Accordingly, the unambiguous statutory language of the Youth Rehabilitation Act, D.C. code 24-801 is well settled enough to have made it clear and obvious to the court the correct interpretation of its legislative intent.

Thus, the failure of a trial court judge to become informed of the relevant facts "applicable" to a rule of law bearing on a defendant's guilty plea... ("where the defendant is materially misinformed of the nature of the charges to which his guilty plea is premised, and the "Edirect consequences of his plea... is error sufficient enough under the due process clause of the fourteenth Amendment to warrant automatic reversal of his sentence and judgment of conviction. The petitioner contends that it cannot be disputed that his guilty plea was obtained in direct contravention of the express statutory sentencing provisions of the YRA. Therefore, the District of Columbia Court of Appeals abused its discretion and erred in its affirmance of the petitioner's sentence and judgment of conviction Rule 11 violation grounds raised for relief, as procedurally barred, when his claim of error were made pursuant to super. Ct. Crim. R. 52 (b). The text in Rule 52, in both its parts, is brief. It states:

(a) Harmless Error. Any error, defect, irregularity, or variance

that does not affect substantial rights must be disregarded, —

(b) PLAIN ERROR. A plain error that affect substantial rights may be considered even though it was not brought to the court's attention.

The petitioner assert that in interpreting and applying paragraph (b) of the Rule, is this court's decision held in United States v. Olano, 507 U.S. 725 (1993). Olano instructs that a court of appeals has discretion to remedy a forfeited error provided certain conditions are met. First, there must be an error that has not been intentionally relinquished or abandoned, *Id.*, at 732-733. Second, the error must be plain—that is to say, clear or obvious, *Id.*, at 734. Third, the error must have affected the defendant's substantial rights, *ibid.*, which in the ordinary case means he or she must "show a reasonable probability that, but for the error," the outcome of the proceedings would have been different. See United States v. Dominguez Benitez, 542 U.S. 74, 76, 82 (2004). Once these three conditions have been met, the court of Appeals should exercise its discretion to correct the forfeited error if the error "seriously" affects the fairness, integrity or public reputation of the judicial proceedings. Olano, *supra*, at 736.

The fourteenth Amendment guarantees a criminal defendant due process in the course of criminal proceedings that would

deprive him of life, liberty or property. Accordingly, the integrity of the judicial process demands that each defendant who chooses to plead guilty enters a knowing and voluntary plea.

The impact of a guilty plea upon a defendant's fundamental right cannot be overstated because the choice to plead guilty is his alone to make after he has been fully informed of the nature of the charges against him and the direct consequences of his plea.

Therefore, the waiver of a defendant's substantial right to trial by jury, and the right to confront one's accusers, based on an constitutional invalid plea undermines the credibility and public reputation of the judicial proceedings, and fails to foster confidence that they will result in a "fair and reliable determination of guilt, rather than a conviction obtained contrary to constitutional principles. Thus, to permit convictions based on an constitutional invalid guilty plea to stand would undermine the structure integrity of the judicial process, because there should be no instances where such a plea is accepted for the sake of obtaining a conviction, particularly where a defendant who does not receive notice of the true nature of an criminal offense, and the consequences of his plea, might unknowingly forgo the opportunity to raise an available defense.

Moreover, the failure to exercise discretion to correct the forfeited error in petitioner's case, contrary to the legislative mandate of the YRA would "serious" affect the fairness, integrity or public reputation of judicial proceedings,

See *Lowery v. United States*, 3 A.3d 1169, 113 S.Ct. 1770, 123 L.Ed. 2d 508 (1993).

The petitioner asserts that based upon the defect in his Rule 11 guilty plea proceedings he has met the burden of the plain error test held in *United States v. Olano*, 507 U.S. 725 (1993); and demonstrated (1) error, (2) that is plain, and (3) that affected his substantial right of the fourteenth Amendment to due process. In the sentencing context, an error affects a defendant's substantial rights where there is a reasonable likelihood that the sentencing court's obvious errors affected his sentence. See *United States v. Head*, 817 F.3d 361, 422 U.S.App. D.C. 8 (D.C. Cir. 2016). This general principle is most applicable to petitioner because the trial court "erroneously" "[a]dvised him during the entry of his guilty plea, that he was eligible for alternative sentencing pursuant to the terms of the Youth Rehabilitation Act, D.C. Code 24-801, when even a remote possibility of youth act treatment never existed." [W]here a trial court judge erroneously provide a criminal defendant with manifest incorrect information of his eligibility for youth act treatment in "direct contravention of the statutory sentencing scheme of its legislative intent, the forth prong is met" when ever the third — prejudice to substantial rights — exist. The petitioner contends that his substantial right of the fourteenth Amendment to due process were violated when the trial court failed in its duty to

adequately advise him of the nature of the charges to which his guilty plea was premised, and the direct consequences of his plea as required pursuant to super. ct. crim. R. 11 (c)(1); mislead him to his prejudice and resulted in manifest injustice, because by misleading petitioner as to the consequences of his plea, the trial court deprived him of an accurate basis upon which to make a knowing and intelligent decision whether to enter his guilty plea or decide to go to trial.

The petitioner asserts that he is entitled to relief because the language of super. ct. crim. R. 11 is virtually identical to this court's construction of Fed. R. crim. P. 11 held in *McCarthy*, see *"Hicks"*, supra, 362 A.2d at 113-14; *Bettis*, supra, 325 A.2d at 193-94 (both analyzing super. ct. crim. R. 11 with the aid of cases construing Fed. R. crim. P. 11); see also *Sellers v. United States*, 401 A.2d 974, 978 (D.C. 1979) (stating that as a general matter, identical federal and superior court rules should be construed similarly).

In resolving an procedural default issue claim D.C. code 23-110 (e) provides that "[t]he [superior] [c]ourt shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner. This bar on second or successive motions originated with 28 U.S.C. 2255 (affording habeas relief to federal prisoners), see *Magwood*, 561 U.S. at 337, which, prior to its revision in 1996, contained language virtually identical

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to D.C. code 23-110. However, 28 U.S.C. 2255 is "nearly identical and functionally equivalent" to D.C. code 23-110, and petitioner may rely on federal court interpretation of 2255 in construing 23-110. See *Streater v. United States*, 429 A.2d 173, 174 (D.C. 1980) appeal dismissed and cert. denied, 451 U.S. 902, 68 L.Ed. 2d 289 101 S.Ct. 1966 (1981) (citing *Butler v. United States*, 388 A.2d 883, 886 n.5 (D.C. 1978); accord *Lorimer v. United States*, 425 A.2d 1306, 1308 (D.C. 1981); *Williams v. United States*, 408 A.2d 996, 997 n.1 (D.C. 1979); *Gibson v. United States*, 388 A.2d 1214, 1215 n.3 (D.C. 1978). The petitioner asserts that a motion under D.C. code 23-110 is not "a substitute for direct review," *Heard v. United States*, 489 A.2d 450, 451 (D.C. 1985), "where a defendant has failed to raise an available challenge to his conviction on direct appeal, he may not raise that issue on collateral attack unless he shows both cause for his failure to do so and prejudice as a result of his failure," (citing *United States v. Frady*, 456 U.S. 152, 167-68, 71 L.Ed. 2d 816, 102 S.Ct. 1584 (1982). See also *Norris v. United States*, 687 F.2d 899 (7th Cir. 1982) (applying *Frady* "cause and prejudice" standard to issue raised in 2255 motion); *Engle v. Isagac*, 456 U.S. 107, 71 L.Ed. 2d 783, 102 S.Ct. 1558 (1982) (same standard held applicable to motions under 28 U.S.C. 2254 (1982). Taking this requirement in reverse order, petitioner's Rule 11 violation claim has merit, based upon the statutory sentencing provisions of the YRA, he undeniably suffered "actual and substantial" prejudice, *Frady*, 456 U.S. at 170,

from his failure to raise it before now. The petitioner sustained such prejudice because his substantial right to due process mandated by the fourteenth Amendment was violated during the entry of his guilty plea, when the trial court failed in its duty to adequately "[a]dvice him pursuant to super. ct. crim. R. 11(c)(1) of the nature of the charges to which his guilty plea was premised and the 'direct consequences of his plea. *McCarthy v. United States*, 397 U.S. 459, 466-67, 89 S. Ct. 1166, 1170-71, 22 L. Ed. 2d 418 (1969). The failure to make a Rule 11(c) inquiry in petitioner's case is not the kind of Rule 11 violation that the Advisory Committee on Rules considered might constitute harmless error when it proposed the 1983 amendments adding subdivision (h). The Notes of the Advisory Committee illustrate a harmless error violation of Rule 11(c) by referring to the unpublished decision of the court of Appeals for the fourth circuit in *United States v. Peters*, 588 F.2d 1353 (4th Cir. 1978), cert. denied, 441 U.S. 948, 99 S. Ct. 2172, 60 L. Ed. 2d 1057 (1979) (affirmed without published opinion). In *Peters*, the judge failed to comply fully with Rule 11(c)(1) in that he did not correctly advise the defendant of the maximum years of special parole possible, but did inform him that the minimum special parole term was three years, and the defendant thereafter was sentenced to fifteen years imprisonment and a three-year special parole term. In the current case, petitioner was misled to his prejudice by the trial court when it erroneously provided him

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with manifest incorrect information of his eligibility for YRA sentencing, the trial court deprived him of an accurate basis upon which to make a knowing and intelligent decision whether to enter into his guilty plea, or in the alternative deciding to go to trial. In fact, it is the context in which the failure to advise petitioner pursuant to the requirement of superior court criminal Rule 11(c)(1) of the nature of the charges to which his guilty plea was premise, and the direct consequences of his plea which compels reversal of his sentence and judgment of conviction. The petitioner is entitled to relief because it seems ludicrous to have expect him to raise his Rule 11 violation claim in his first post-conviction 23-110 motion for the withdrawal of his guilty plea, when at that time he had no reason to believe that the plea had been entered based on erroneous information.

Procedural Default Ineffective
Assistance of Counsel Claim

A state prisoner may overcome the prohibition on reviewing procedurally default claims of ineffective assistance of counsel if he can show "cause" to exclude his failure to comply with state procedural rule and "actual" prejudice resulting from the alleged constitutional violation. *Wainwright v. Sykes*, 433 U.S. 72, 84, 97 S.Ct. 2497, 53 L.Ed. 2d 594 (1977); *Coleman*, *supra*, at 750

111 S.Ct. 2546, 115 L.Ed. 2d 640). The petitioner assert that a defendant who claim ineffective assistance of counsel during the plea process must satisfy the two-prong test of *Strickland v. Washington*, 466 U.S. 668 (1984). See *Hill v. Lockhart*, 474 U.S. 52, 58 (1985). Specifically, the defendant must show that (1) counsel's representation was deficient; and (2) counsel's deficient performance prejudiced him. *Strickland*, 466 U.S. at 687.

In the plea context, the prejudice component of *Strickland* requires the defendant to "show the outcome of the plea process would have been different with competent advice." *Laffter v. Cooper*, 566 U.S. 156, 163 (2012); see also *Hill*, 474 U.S. at 59. ("[I]n order to satisfy the 'prejudice' requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors he would not have pleaded guilty and would have insisted on going to trial."). Because the trial court is not "required to entertain a second or successive motion for similar relief on behalf of the same prisoner, this procedural bar extends to ineffective assistance of counsel claims. *Shepard v. United States*, 533 A.2d 1278, 1280 (D.C. 1987). Thus, "if an appellant does not raise a claim of ineffective assistance of counsel during the pendency of the direct appeal, when at that time appellant demonstrably knew or should have known of the grounds for alleging counsel's ineffectiveness, that procedural default will be a barrier to the court's consideration of appellant's claim, *Id.*, *Doe v. United States*, 583 A.2d 670, 674 (D.C. 1990) (holding *Shepard* places duty on appellate counsel "to consider whether the client's

interest require the filing of a 23-110 motion based on ineffective assistance of counsel"). As with other claims not raised on direct appeal or in an appellant's first post-conviction collateral attack of his sentence and judgment of conviction, the "procedural default articulated in *Shepard*" may be overcome by a showing of cause and prejudice, *Washington v. United States*, 834 A.2d 899, 903 (D.C. 2003).

"To establish legally sufficient 'cause' for his failure to raise a claim on direct appeal or in his first post-conviction collateral attack 23-110 motion, appellant must show that he 'was prevented by exceptional circumstances from raising the claim at the appropriate time.'" *Washington*, 834 A.2d at 903 (quoting *Head*, 489 A.2d at 451).

In his 23-110 motion, petitioner demonstrated cause and asserted that he was prevented by exceptional circumstances from raising his ineffective assistance of counsel claim grounds raised for relief post-conviction collateral attack of his sentence and judgment of conviction, because at that time he had no reason to believe that his guilty plea had been entered based in part, upon manifest incorrect information.

The petitioner assert that his attorney Leroy Nesbit rendered ineffective assistance of counsel during the plea bargaining phase of his trial where his representative fell below the objective standard of reasonableness demanded of defense attorneys in criminal court proceedings. *Hill v. Lockhart*, 474 U.S. 52, 56 106 S.Ct. 366, 88 L.Ed. 2d 208 (1985).

Specifically, petitioner's trial counsel erroneously "[a]dvised him that because of his age that he would be eligible for alternative sentencing pursuant to the terms of the Youth Rehabilitation Act, D.C.

code 24-801. Thus, petitioner's decision to plead guilty was infected by counsel's erroneous assumption that the YRA would serve as an "[e]xemption from the mandatory and maximum sentencing provisions for first time while-armed crime of violence offenses.

The petitioner contends that he was misled to his prejudice by his trial counsel's assurances that he would qualify for youth act sentencing, and had he would have been provided with competent advice of his ineligibility for youth act treatment, as a subsequent while-armed crime of violence offender, he would not have entered into his guilty plea and would have insisted on going to trial. The petitioner asserts that he is entitled to relief because his trial counsel with his specialized knowledge of the law should have known the applicable laws governing the sentencing criteria for the District of Columbia's Youth Rehabilitation Act, D.C. code 24-801. *McMann v. Richardson*, 397 U.S. 759, 771, 90 S.Ct. 1441, 1449, 25 L.Ed. 2d 763 (1970). The petitioner contends that trial counsel has a duty to make reasonable investigations or to make an informed decision that make particular investigations unnecessary. See *Lundgren v. Mitchell* 440 F.3d 754, 771 (6th Cir. 2006) (citing *Strickland*, 466 U.S. at 690-91); *Cosio v. United States*, 927 A.2d 1106, 1123 (D.C. 2007) (en banc) ("under the sixth Amendment guarantee, a criminal defendant is entitled to the benefits of counsel's informed judgment and choice among reasonable alternatives, it is objectively unreasonable for defense counsel to make an uninformed decision about an important matter without justification for doing so."). The petitioner asserts that his trial counsel's erroneous advice and deficient performance during the plea bargaining

phase mislead him to his prejudice because by misleading him to the consequences of his plea, his trial counsel deprived him of an accurate basis upon which to make an knowing and intelligent decision, whether to enter into his guilty plea, or in the alternative deciding to go to trial. "[A] defendant's trial counsel's ("legal representation under the sixth Amendment cannot pass constitutional muster where an attorney blatantly misinform his client of the penalty provisions of an crime for which he is charged"). The petitioner assert that "If a defendant is materially misinformed of the penalty provisions of an crime for which he is charged and relies on that misinformation to be accurate, then he is deprived of his constitutional right to effective assistance of counsel. *Easton v. United States*, 535 A.2d 898 (D.C. 1988) ("holding that defendant's decision to plead was materially misinformed by counsel").

Moreover, the failure of an attorney to inform his client of the relevant law applicable to an criminal offense to which he is charged clearly satisfies the first prong of *Strickland* as such an omission cannot be said to fall within the "wide range of professionally competent assistance demanded by the sixth Amendment; *Strickland v. Washington*, *supra*, at 690, 104 S.Ct. 97 2066. The petitioner contends that he has also met the second prong of *Strickland* because there was a reasonable probability of an different outcome had he been adequately advised by trial counsel of his ineligibility for youth act sentencing, as an subsequent while-armed crime of violence offender, he would not have enter into his guilty plea and would had insisted on going to trial. "To overcome an procedural bar petitioner must show that he suffered "actual" and

"substantial prejudice from his failure to raise the ineffective assistance of counsel before now. Thus, when a collateral attack on a conviction is based on the claim of ineffective assistance of counsel, the petitioner must establish "that the underlying ineffective assistance of trial counsel is a substantial one, which is to say that the prisoner must demonstrate that the claim has merit. However, this court has held that "the question of cause for a procedural default does not turn on whether counsel erred or the kind of error counsel may have made," *Murray v. Carrier*, 477 U.S. 478, 488, 106 S.Ct. 2639, 91 L.Ed 2d 397 (1988).

"Ineffective assistance of counsel excuses a procedural default only where the ineffectiveness of counsel was cause of the procedural default. *Id.*" [I]f the procedural default is the result of ineffective assistance of counsel, the sixth Amendment itself requires that responsibility for the default be imputed to the state.,, see *Washington*, 834 A.2d at 904 n.10 (interpreting *Murray v. Carrier* as saying that "ineffectiveness itself is the very reason why such claims were not made on direct appeal."

In his 23-110 motion, petitioner demonstrated both cause and exceptional circumstances prevented him from raising his collateral attack ineffective assistance of counsel claim in a timely manner, because at that time he had no reason to believe counsel had misinformed him of the sentencing criteria of the Youth Rehabilitation Act, D.C. code 24-801. To a defendant unversed in the law the meaning of counsel's advice would hardly have been unambiguous. Thus, the unavailability of claims

resulting from trial counsel's actions are cause for delay where the counsel's own failure to effectively communicate with defendant led to the delay in filing. See *Strader*, supra, 611 F.2d at 65 ("though parole eligibility dates are collateral consequences of the entry of a guilty plea of which a defendant need not be informed if he does not inquire, when he is grossly misinformed about it by his lawyer, and relies upon that misinformation, he is deprived of his constitutional right to counsel"). Cf. *White v. United States*, 146 A.3d 101, 105-06 (D.C. 2016) ("the trial court and counsel's misleading statements regarding appellant's eligibility for parole led to the guilty plea appellant sought to withdraw once he was properly informed of his parole eligibility, see supra, page 5-6. The petitioner assert that he is entitled to relief pursuant to his sixth Amendment right to effective assistance of counsel, because representation is constitutionally deficient if counsel provides materially erroneous information to his client of his eligibility for alternative sentencing under the terms of the Youth Rehabilitation Act, D.C. Code 24-801 and he relies upon it. See *Gaston v. United States*, 535 A.2d 893, 898 (D.C. 1988) ("holding defendant's decision to plead involuntary where the decision to plead was materially misinformed by counsel").

Reasons For Granting The writ

The petitioner respectfully request that this Honorable court grant his motion for writ of certiorari because the District of Columbia

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court of Appeals has decided an important federal question of law in a way that conflicts with relevant decisions of this court. The appellate court's adjudication of the merits raised for relief in petitioner's 23-110 motion for the withdrawal of his guilty plea were made contrary to, and involved unreasonable application of clearly established federal law as determined by this court. *Howes v. Fields*, 565 U.S. 499, 505, 132 S.Ct. 1181, 182 L.Ed. 2d 17, 25 (2012). As such, the appellate court's holdings were objectively unreasonable and not merely wrong. *Locker v. Andrade*, 538 U.S. 63, 75-76, 123 S.Ct. 1166, 155 L.Ed. 2d 144 (2003); because the appellate court's ruling rested on an Rule 11 violation claim of error well understood and comprehended in existing law beyond any possibility for fairminded disagreement. *Harrington v. Richter*, 562 U.S. 86, 103, 131 S.Ct. 770, 779, 178 L.Ed. 2d 624 (2011). "[I]n *McCarthy v. United States*, 39 S.Ct. 1166 (1969); this court exercising its supervisory power determined that the sanction for non-compliance with the requirement of Rule 11 would be thereafter to set aside the plea and to offer the defendant the opportunity to plead anew.

The petitioner asserts that the appellate court's summary affirmation of his sentence and judgment of conviction 23-110 motion grounds raised for relief represent exceptional circumstances that warrant the exercise of this court's discretionary review, because his guilty plea was upheld by improper conclusions of law that are not found in the record, and with reasons which contravene the policies meant to guide the appellate court's discretion. Upon appellate review for abuse of discretion in the summary denial of an defendant's post-conviction 23-110 motion grounds raised for relief in the trial court, discretion must be determined by whether the decision maker failed to consider a relevant factor, whether he or she relied upon an improper factor, and whether the reasoning given reasonably support the conclusion. *Johnson v. United States*, 398

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A.2d 354 (1978), "[I]f the court find that the trial court failed to undertake a required factual inquiry or it ignored an apparent deficiency in the record reversal is appropriate. Pollock v. Brown, 395 A.2d 50 (1978); see also Mose v. Mose, 391 A.2d 762-770-72 (1978); Farrell v. United States, 391 A.2d 775 (1978). In his post-conviction 23-110 motion grounds raised for relief, the deficiency in the record center ground petitioner's argument that the trial court provided him with manifest incorrect information of his eligibility for youth act sentencing, not that he should have been sentence under the act. The error is painfully clear and obvious based on the existing record of petitioner's guilty plea proceedings. In the summary affirmance of an defendant's sentence and judgment of conviction 23-110 habeas corpus grounds raised for relief, the appellate court is required to examine the motion together with all the files, records, transcripts and other correspondence relating to the judgment under attack, and evaluate the facts of a defendant's claim of error, then state the relevant law by applying the law to the facts upon which a claim of error was premised. The petitioner assert that he is entitled to relief because in Battle v. United States, mem, op & J. at 3 (D.C. MAY 3, 2019); the appellate court held in 17-co-919 that it do not consider his Rule 11 claim for the first time on appeal; and dismissed his Rule 11 claim in no. 18-co-891 for which the appellate court consolidated on its own motion and the petitioner's grounds raised for relief was properly before the court. The petitioner contends that the summary affirmance of an defendant's sentence and judgment of conviction 23-110 motion grounds raised for relief ruled as procedurally barred, is an abuse of discretion where the court previously entertained a defendant's claim of error, but failed to hear and decide the case or ultimately dismissed the petition shall not be considered as an second or

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successive motion for similar relief on behalf of the same prisoner ("where the defendant's grounds raised for relief were never denied on the merits and affirmed by the court"). The failure or outright refusal of an appellate court to exercise its judgment or application of factual finding to a rule of law constitute as an abuse of discretion whether the cause is ignorance of the right to exercise choice or mere intransigence, because it assumes to be existence of a rule that admits of but one answers to questions of law that it presents. As neutral arbiters of legal disputes in the trial court an appellate court is properly charged with protecting the rights of all who come before it, and any deprivation of rights secured by the constitution or laws of the United States transforms the court from 'neutral arbiters of disputes into advocates of a particular party. Thus, when a defendant who files a post-conviction 23-110 motion for the withdrawal of his guilty plea makes sufficiently credible allegations that his guilty plea was involuntary, and states with particularity of a Rule 11 violation for which upon appellate review can be found in the record of the proceedings is entitled to a hearing as to the truth of his claim, *Waley v. Johnston*, 316 U.S. 101, 62 S.Ct. 964, 86 L.Ed. 1302 (1942); see also *Machibroda v. United States*, 368 U.S. 487, 82 S.Ct. 510, 7 L.Ed. 2d 473 (1962).

CONCLUSION

The petitioner respectfully request that this court grant his petition for writ of certiorari.

Respectfully Submitted by
Bernard Battle
pro se

Date: July 14, 2022