No. 23-

IN THE

SUPREME COURT OF THE UNITED STATES

CALVIN CURRICA,

Petitioner,

v.

RICHARD MILLER,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Under this Court's long-standing holdings in *Brady* and *Boykin*, a criminal defendant does not voluntarily enter a plea unless he understands the consequences of that plea, including the maximum sentence he faces as a result of the plea. In this case, petitioner was told that the guidelines range for his plea was 30-51 years. He was also told that he could face 30 years imprisonment on each of the three charges he pleaded guilty to. But he was never told that the 30-51 year guidelines range did not limit his sentence. The state post-conviction review court denied relief because it found that the state court that took the plea "made it clear that the guidelines are . . . advisory only." App. 68a. That finding was demonstrably wrong. Despite recognizing that the court's finding was at least "debatable," the U.S. Court of Appeals for the Fourth Circuit nonetheless held that the court's decision was not "based on" that erroneous finding. The question presented is:

Whether the decision below should be summarily reversed because the Fourth Circuit substituted its judgment for an erroneous factual decision by the state post-conviction review court.

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INTRODUCTION

The habeas statute provides for relief if a petitioner can show that the state court adjudication of a claim resulted in a decision that was based on an unreasonable determination of the facts. 28 U.S.C. § 2254(d)(2). Petitioner Calvin Currica established such an error in the state post-conviction review court's factual findings. The Fourth Circuit, although recognizing that the state court's finding had no basis in the record, nonetheless denied habeas relief. That error warrants summary reversal.

Mr. Currica entered pleas of guilty on three charges with the understanding that he faced a sentencing guidelines range of 30-51 years imprisonment. He was told multiple times—by his lawyer in both a letter and a conversation, by a letter from prosecutors to his attorney, and by the trial court—that the pleas carried a 30-51 year guidelines range. Although he was also told that each count carried a possible thirty-year sentence, nobody ever explained to him that the sentencing guidelines were only advisory so his guilty pleas subjected him to 90 years of imprisonment. He learned that the guidelines were advisory only when the trial court imposed a sentence of 85 years imprisonment.

On state post-conviction review, Mr. Currica challenged the voluntariness of his plea because he was never told that the guidelines were advisory. In denying relief, the state post-conviction review court found (twice) that the trial judge at the plea hearing "made clear" that the guidelines were advisory. App. 68a, 70a. In fact, the transcript of the plea hearing demonstrates that the trial court said nothing at all about the guidelines being advisory. That demonstrates 28 U.S.C. § 2254(d)(2) error.

Faced with a state decision that was based on an unreasonable determination of the facts, the court below had no choice but to grant habeas relief. The Fourth Circuit instead concluded that the post-conviction review court's decision was not "based on" its erroneous finding. App. 9a. But the court below failed to recognize the many ways that the post-conviction review court's erroneous finding of fact fatally infected its entire decision. That particular finding of fact—that the trial judge had "made clear" that the guidelines were advisory—completely negated Mr. Currica's legal claim. He was entitled to habeas relief, and this Court should summarily reverse.

OPINIONS BELOW

The decision of the U.S. Court of Appeals for the Fourth Circuit (App. 1a–14a) is reported at 70 F.4th 718. The opinion of the district court (App. 15a–27a) and the oral ruling of the state post-conviction review court (App. 63a-72a) are unreported.

JURISDICTION

The Fourth Circuit, exercising jurisdiction under 28 U.S.C. § 1331, entered judgment on June 14, 2023. App. 1a. This Court granted petitioner's motion for a 60-day extension of time, making the petition due on Saturday, November 11, 2023. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

Section 2254 of Title 28 of the U.S. Code states, in relevant part:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
>
> **(1)** resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

> **(2)** resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d).

STATEMENT OF THE CASE

1.The state of Maryland indicted petitioner Calvin Currica in two separate cases in early 2008. The first indictment included charges of murder and robbery with a dangerous weapon, and the second included multiple counts of carjacking, armed robbery, and other offenses. App. 2a; 63a-64a. The state extended a plea offer to Mr. Currica. App. 2a-3a. In exchange for his guilty plea to one count of second-degree murder (a lesser charge) and two counts of carjacking, the state agreed to dismiss the remaining charges in both cases. App. 2a-3a. In a letter to Mr. Currica's defense counsel, the state explained its plea offer: "The maximum potential penalty for these offenses, when added consecutively, is 90 years. The guidelines for these offenses are thirty to fifty-one years." App. 2a.

In a letter to Mr. Currica, defense counsel explained the plea would be to three counts, each of which carried a maximum penalty of thirty years. She also told him: "[Y]our sentencing guidelines for these

offenses is 20–30 years on the murder and 10–21 years for the carjackings. Overall sentencing guidelines are 30–51." App. 2a-3a. Upon receiving this information, Mr. Currica agreed to accept the state's plea offer. App. 3a; 63a-64a.

2. At a change of plea hearing, the state trial court began by reading from a plea memorandum specifying the three charges and the sentencing guidelines range of "30 to 51 years." App. 3a; 76a-77a. The trial court first ensured that Mr. Currica understood the constitutional rights he would be waiving if he pleaded guilty. App. 81a-83a. The trial court then addressed the three charges to which Mr. Currica would be entering guilty pleas. App. 84a-86a. As to the second degree murder charge, the trial court told Mr. Currica:

> [Y]ou are liable for a maximum penalty of thirty years in jail or less depending on what I determine, and you can be placed on probation for any suspended sentence that I might impose. In other words, I am entitled to impose a sentence that would include a component or a part of it that would be suspended. I'm not obligated to do that. You understand that?

App 84a. Mr. Currica said that he did. Turning to the carjacking charges, the trial court said:

> Each of these charges carries the possibility of being put in jail for up to 30 years. Once again, I can impose whatever

> sentence, including jail time and a period of suspended jail time, if I wish to do so.

App. 85a. Mr. Currica then entered guilty pleas on the three charges. App. 86a-87a.

3.Prior to sentencing, a presentence-investigation report was submitted, which stated that Mr. Currica's guidelines range was 45 to 70 years. App. 5a. Defense counsel asked the court to sentence Mr. Currica within the 30 to 51-year guidelines range agreed upon by the parties. JA. 5a. The trial judge refused to do so and instead sentenced Mr. Currica to 85 years imprisonment: consecutive terms of 30 years for second-degree murder; 30 years for one carjacking; and 25 years for the other carjacking. JA. 5a.

4.Mr. Currica then filed a pro se petition for post-conviction relief in state court challenging the validity of his sentence and plea. App. 5a. Mr. Currica asserted that he understood that he would receive a sentence within the 30 to 51-year guidelines range and would not have pleaded guilty had he known he could be sentenced to a longer term. App 121a-126a. The state post-conviction review ("PCR") court conducted an evidentiary hearing, at which Mr. Currica was represented by a public defender. JA208–209. Mr. Currica testified at the hearing that the

maximum sentence he thought he could receive under the plea agreement was 51 years. App. 42a-44a.

At the close of the hearing, the PCR court delivered an oral ruling denying Mr. Currica's petition as it related to the voluntariness of his plea. App. 66a-70a. The court said: "[I]t is clear to me, and clear to any reasonably objective person that these are ranges only . . . [The judge taking the plea] made it clear that the guidelines are . . . advisory only." App. 68a. After making that finding, the PCR court concluded that Mr. Currica's testimony was not credible because he "knew . . . damn well what he was pleading guilty to," and he "received an immense benefit" from that guilty plea because he received only 85 years, rather than life. App. 70a. It thus denied Mr. Currica relief on all of his claims related to the validity of his plea and sentence. App. 70a.

5.Mr. Currica filed a pro se 28 U.S.C. § 2254 habeas corpus petition asserting, in relevant part, that he entered his plea unknowingly and involuntarily because he did not understand that he could receive a sentence above 51 years. App. 102a; 112a-113a. In asserting his involuntary plea claim, Mr. Currica explained that his plea was invalid

under the Due Process Clause because "he was blind to a much harsher sentence." App. 112a.

The district court entered a final judgment denying Mr. Currica's petition on September 13, 2019. App. 26a. Concerning his involuntary plea claim, the district court concluded that the PCR court's decision was "consistent" with *Boykin v. Alabama*, 395 U.S. 238 (1969), because Judge Thompson told Mr. Currica the maximum sentence was 30 years for each of his charges and that "he '[could] impose whatever sentence.'" App. 23a. The district court denied a certificate of appealability. App. 25a.

6. Mr. Currica, again proceeding pro se, appealed. The Fourth Circuit granted a certificate of appealability on whether Mr. Currica's plea "was involuntary because [he] did not understand that state sentencing guidelines were advisory and that he could be sentenced above the guidelines range upon which the parties agreed in the plea agreement" and appointed undersigned counsel to represent Mr. Currica. App. 7a. Counsel argued that the PCR court's decision was based on an unreasonable finding of fact—that the court in the plea proceeding "made it clear that the guidelines are . . . advisory only." App. 68a. Counsel also argued that the PCR court's decision unreasonably applied this Court's

decisions when it concluded that Mr. Anderson was adequately advised of the consequences of his guilty plea. After full briefing and oral argument, the Fourth Circuit denied relief. App. 1a-14a.

As to the factual error by the PCR court, the Fourth Circuit recognized that "[t]he plea court never said the guidelines were advisory, so the PCR court's finding (that the plea court "made it clear" that the guidelines were advisory) might be debatable." App. 9a. But it said that this finding was not unreasonable because "the plea court correctly explained that it could sentence Currica to 30 years on each charge." App. at 9a. It also held that Mr. Currica did not show that the "PCR court's decision was 'based upon' an erroneous finding" because the court's other findings supported its ruling. App. at 10a.

Turning to Mr. Currica's argument that the PCR unreasonably applied this Court's precedent, the Fourth Circuit also denied relief. App. 13a-14a. The court recognized that "the advisory or mandatory nature of sentencing guidelines could affect a defendant's maximum sentencing exposure. And this distinction could influence whether a defendant's plea is intelligent and voluntary." App. 13a. But it held that the habeas

standard precluded a conclusion that the PCR court's ruling was an unreasonable application of the law. App 13a-14a.

REASONS FOR GRANTING THE WRIT

The decision below merits summary reversal because the Fourth Circuit substituted its own findings for those of the state PCR court. The state PCR court made a blatant error of fact in denying relief in this case. That error infected the PCR court's entire ruling. But rather than moving to the next step of the AEDPA analysis and analyzing the legal issue de novo with a proper understanding of the facts, the Fourth Circuit instead imagined what the PCR court might have done in the absence of that factual error and deferred to that hypothetical decision. That constitutes error. *See*, *e.g.*, *Panetti v. Quarterman*, 551 U.S. 930, 953-54 (2007).

That is particularly so because, as the Fourth Circuit recognized, the legal issue raised in this case—whether the distinction between advisory and mandatory sentencing guidelines "could influence whether a defendant's plea is intelligent and voluntary"—is a close one and might be a "'logical next step' after *Boykin* and *Brady*." App. 13a-14a (quoting *White v. Woodall*, 572 U.S. 415, 427 (2014)). Because the erroneous

factual determination contributed to the state PCR court's denial of relief, the decision below cries out for summary reversal to protect the vital role that state habeas courts play in ensuring that the proceedings in their court are constitutional.

1. The state PCR court made a clear factual error. It found that the judge at the plea hearing "made it clear that the guidelines are . . . advisory only." App. 68a; *see also* App. 70a. That finding is completely unsupported either by the transcript or by anything else in the record. Indeed, the statement the trial court made at the plea hearing suggested only that the court could suspend any time it imposed, rather than that it could go *above* the guideline range:

> And the guidelines are 30 to 51 years. And I presume, by implication, that means the Court is entitled to consider the usual factors, such as suspended time and terms and conditions of probation if it's appropriate.

App. 76a-77a. Nothing in that statement "made clear" that the guidelines were advisory.

Nor does the record indicate that Mr. Currica was ever told by his lawyer that the guidelines were advisory. App. 3a. In a letter the Mr. Currica's lawyer wrote to him, she said that each of the counts "carries a

maximum penalty of Thirty (30) years." App. 3a. But the letter continued:

> As we discussed, your sentencing guidelines for these offenses is 20-30 years on the murder and 10-21 years for the carjackings. Overall sentencing guidelines are 30-51.

App. 3a.

Because there was no basis in the record to support the PCR court's finding, the Fourth Circuit erred in concluding that the petition did not warrant habeas relief under 28 U.S.C. § 2254(d)(2).

2. Contrary to the conclusion of the court below, the PCR court's legal conclusion was necessarily based on that factual error. App. 9a. After all, the legal issue Mr. Currica raised was whether his plea was involuntary if he was not told that the sentencing guidelines were only advisory. App. 2a. The PCR court's ruling on that issue necessarily relied on its finding that the plea court *had* told Mr. Currica that the guidelines were advisory. Indeed, the PCR court thought this point sufficiently significant to its ruling that it mentioned it twice in the two pages of the transcript in which it ruled on this issue. App. 68a; 70a.

None of the other reasons the Fourth Circuit gave provide any assurance that the PCR court would have come to the same conclusion

had it known that the plea court said nothing about the advisory nature of the guidelines. App. 10a. To be sure, the "plea agreement didn't promise a guidelines sentence." App. 10a. But Mr. Currica's argument is that he was not told that they were advisory. Nor was the PCR court's conclusion that Mr. Currica was not credible a sufficient independent basis for the PCR court's legal decision. The PCR court's finding on credibility immediately followed its finding that "the court made it clear the guidelines are . . . advisory only." App. 70a ("So based on the evidence of record, . . . I've listened carefully to the defendant's testimony and do not accredit the testimony that he gave me today with respect to his subjective views.").[1]

3. Because the PCR court based its denial of relief on a clear factual error, the Fourth Circuit committed egregious error in failing to consider *de novo* whether Mr. Currica voluntarily entered his guilty plea under the Due Process Clause. *See*, *e.g.*, *Wiggins v. Smith*, 539 U.S. 510, 534

[1] This point is separate from challenging the PCR court's credibility finding. *See* App. 8a-9a n.1. Instead, the point is that the PCR court's legal conclusion was based on its error in concluding that the trial court made clear that the guidelines were advisory because that finding infected all of its reasoning. *See Wiggins v. Smith*, 539 U.S. 510, 528 (2003) (holding that a state court's decision was unreasonable under § 2254(d) because its conclusion rested "on a clear factual error").

(2003) (reviewing the state court's analysis of the second prong of *Strickland* inquiry without deference because it was dependent on an antecedent unreasonable application of law); *Panetti v. Quarterman*, 551 U.S. 930, 953-54 (2007).

Relief was particularly warranted because, as the Fourth Circuit acknowledged, this habeas petition raised a close legal question. App. 13a. Over 50 years ago, this Court established that the Due Process Clause requires the record to show that a defendant was told his maximum sentence exposure. *Brady v. United States*, 397 U.S. 742, 748 n.6 (1970) (emphasizing *Boykin*'s focus on ensuring that the defendant has a "full understanding of . . . the possible consequences of his plea"); *Boykin v. Alabama*, 395 U.S. 238, 242-43 (1969). The law requires the court to act with "the utmost solicitude" in ensuring that a defendant has "a full understanding of what the plea connotes and of its consequences." *See Boykin*, 395 U.S. at 244. Indeed, relying on *Boykin* and *Brady*, many courts have held that the Due Process Clause requires that the defendant be told his maximum sentencing exposure before entering a voluntary guilty plea. *See*, *e.g.*, *Jamison v. Klem*, 544 F.3d 266 (3d Cir. 2008); *Hanson v. Phillips*, 442 F.3d 789, 800 (2d Cir. 2006).

The court below acknowledged that "the advisory or mandatory nature of sentencing guidelines could affect a defendant's maximum sentencing exposure. And this distinction could influence whether a defendant's plea is intelligent and voluntary." App. 13a. It concluded only that the state PCR court did not unreasonably apply *Boykin* and *Brady*. App. 14a. In other words, the state PCR court in fact *could* have granted relief had it properly understood that the court never "made clear" that the guidelines were advisory. But the court below decided to simply defer to a decision that rested on a fundamental misunderstanding of the facts.

CONCLUSION

This Court should summarily reverse the erroneous decision below.

Respectfully submitted,

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