APPENDIX

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7638

CALVIN F. CURRICA,

Plaintiff − Appellant,

v.

RICHARD MILLER,

Defendant – Appellee.

Appeal from the United States District Court for the District of Maryland, at Greenbelt. Paula Xinis, District Judge. (8:16−cv−03259−PX)

Argued: March 7, 2023 Decided: June 14, 2023

Before GREGORY, Chief Judge, and WYNN and DIAZ, Circuit Judges.

Affirmed by published opinion. Judge Diaz wrote the opinion, in which Chief Judge Gregory and Judge Wynn joined.

ARGUED: Ashley Stewart, GEORGETOWN UNIVERSITY LAW CENTER, Washington, D.C., for Appellant. Andrew John DiMiceli, OFFICE OF THE ATTORNEY GENERAL OF MARYLAND, Baltimore, Maryland, for Appellee. **ON BRIEF:** Erica Hashimoto, Director, Nathan R. Hogan, Student Counsel, Appellate Litigation Program, GEORGETOWN UNIVERSITY LAW CENTER, Washington, D.C., for Appellant. Brian E. Frosh, Attorney General, OFFICE OF THE ATTORNEY GENERAL OF MARYLAND, Baltimore, Maryland, for Appellee.

DIAZ, Circuit Judge:

Calvin Currica appeals the district court's denial of his habeas petition under 28 U.S.C. § 2254. He claims that his guilty plea wasn't voluntary because he didn't know that Maryland's sentencing guidelines were merely advisory. But a Maryland court denied his request for postconviction relief, finding that he understood the terms of his plea agreement, including his maximum sentencing exposure. Below, the district court held that the Maryland court's decision denying Currica postconviction relief was reasonable. We affirm.

I.

This appeal centers around Currica's understanding of his plea terms, so we lay out the relevant procedural history in detail.

A.

After he confessed to the police in 2008, the State of Maryland charged Currica with several crimes, including carjacking, kidnapping, armed robbery, first-degree assault, and first-degree murder.

The prosecutor offered to dismiss all the other charges if Currica pleaded guilty to two counts of carjacking and one count of second-degree murder. In the offer letter, the prosecutor noted, "The maximum potential penalty for these offenses, when added consecutively, is 90 years. The guidelines for these offenses are thirty to fifty-one years." J.A. 314.

Currica's attorney sent him a letter conveying the plea offer:

> After extensive discussions [and] negotiations with the Assistant State's Attorney prosecuting your case, and several discussions between you and I, the State has offered for you to enter a plea of guilty to Second Degree Murder, which carries a maximum penalty of Thirty (30) years and 2 Counts of Carjacking [for which] each carries a maximum penalty of Thirty (30) years incarceration. 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.

J.A. 317. The letter also explained the rights Currica would give up by pleading guilty, and further advised him:

> No person can make any promises (beyond the plea agreement) or inducements to you or coerce or threaten you to get you to plead guilty. You must fully understand the terms of the plea agreement and not be under the influence of any drugs, medication, alcohol, or mental condition at the time of the plea that would prevent you from understanding the proceedings.

J.A. 318.

1.

Currica took the deal. His two-page plea agreement stated that he would plead guilty to second-degree murder and two counts of carjacking, that the court would order a presentence investigation, and that the parties could allocute at sentencing. It didn't mention sentencing guidelines. The rest of the agreement laid out the facts of the crimes.

Counsel also jointly submitted a plea memorandum to request a hearing. That memorandum mentioned the guidelines, indicating they provided for "Thirty to Fifty-One Years." J.A. 288.

At the plea hearing, the state court referenced the plea memorandum, including that "the guidelines are 30 to 51 years." J.A. 76. Then the court questioned Currica under oath.

The court first made sure Currica understood that he wasn't "obligated to enter a plea of guilty in this or any case," that he had a right to a trial before a judge or a jury, that he could raise defenses at such a trial, and that a jury would have to agree unanimously that the state proved his guilt beyond a reasonable doubt. J.A. 77–81. The court also ensured that Currica had had adequate time to discuss the plea with his attorney and that he understood he'd be waiving a pretrial hearing and certain appellate rights.

The court turned next to the specific charges to which Currica agreed to plead guilty, explaining the elements and noting the maximum penalty of 30 years for each:

> Q All right. When you are charged with second degree murder, which is what the charge will be changed to, you are liable for a maximum penalty of 30 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'm 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?
>
> A Yes.

J.A. 83. And for the two carjacking charges:

> Q All right. So 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. You understand that?
>
> A Yes.

J.A. 84. Currica also confirmed that no one threatened or coerced him into pleading guilty, that no one told him the court would be more lenient if he pleaded guilty, and that he was entering the plea "freely and voluntarily." J.A. 85.

The prosecution then proffered what it would have attempted to prove at trial. The court accepted Currica's guilty plea, finding that it was "freely given, voluntarily given, and intelligently given." J.A. 93.

2.

After the plea hearing, the state submitted a presentence-investigation report. The report specified a different guidelines range than the plea-offer letter and the plea memorandum counsel filed with the court. Instead of the previously discussed range of 30 to 51 years, the report stated 45 to 70 years.

At the sentencing, Currica's counsel asked the court to "honor" the 30-to-51-year range, since it was "calculated together with the State." J.A. 111. But the state questioned whether the court could "disregard the honest guidelines" in favor of "what was thought to be the guidelines between counsel ahead of time." J.A. 137. The court responded that the "guidelines are descriptive in any event." *Id.*

After more argument from counsel, victim-impact statements, and an apologetic allocution from Currica, the court expressed its intention to keep Currica within "restraint of the authorities of this State for as long as I can reasonably incapacitate you." J.A. 154. The court sentenced Currica to 85 years: 30 for second-degree murder, 30 for one carjacking charge, and 25 for the other, consecutively. J.A. 155.

B.

Currica petitioned the Maryland courts for postconviction relief. In his pro se petition, he argued that the prosecution and the court breached his plea agreement by imposing a sentence above 30 to 51 years. The state opposed Currica's petition.

The state postconviction-relief ("PCR") court appointed a public defender and held a hearing. There, Currica testified that after he spoke with his trial attorney about the plea offer, he believed the court could impose a sentence "[a]nywhere from 30 to 51 years." J.A. 215. He said it "was not explained to [him] before [he] took the plea" that the guidelines were advisory and didn't constrain his sentence. J.A. 216. When the plea court told him it could sentence him to up to 30 years per charge and impose "whatever" sentence, Currica said he thought the court was just observing a formality or referring to probation or a suspended sentence. J.A. 217–19.

The PCR court denied relief, announcing its decision from the bench. The PCR court found that the plea agreement didn't bind the prosecutor or the court to a specific sentence. It also found that the plea court "correctly advised the defendant of . . . not only the elements of the offenses to which he was tendering his plea, but the maximum penalties allowed by law." J.A. 244.

While the PCR court acknowledged that "the [guidelines] range stated in the initial plea memo is different from the [guidelines] range appended to the sentencing matters," it was "clear to any reasonably objective person, that these are ranges only," and that "the court at no time bound itself." J.A. 246. Explaining further: "There is no . . . objective basis for any reasonable person to conclude that the [plea court] was capping a sentence [or] was binding itself to" the guidelines. J.A. 247–48. In fact, the PCR court found that the plea court "made it clear" the guidelines are "advisory only." J.A. 248.

Finally, the PCR court said it "listened carefully" and didn't "accredit the testimony that [Currica] gave me today with respect to his subjective views. I find that he knew . . .

damn well what he was pleading guilty to," and that he "received an immense benefit" from the plea agreement "because he dodged a possible sentence of . . . life plus plus[,] which means you don't get out." *Id.*

Currica appealed the PCR court's decision, but Maryland's Court of Special Appeals (now called the Appellate Court of Maryland) summarily denied leave. And Maryland's highest court denied certiorari.

C.

Currica, again pro se, filed a § 2254 petition in the U.S. District Court for the District of Maryland, raising similar arguments as in the state PCR proceedings. The parties filed briefs and supplemented the record with the plea agreement and orders from the Maryland courts. Then the district court issued its decision, finding a hearing to be unnecessary.

The district court first recounted the PCR court's findings, including that "at sentencing, Currica was told the guidelines were 'advisory only' and the sentencing court could exceed those guidelines, as it ultimately did." *Currica v. Miller*, No. 16-cv-3259, 2019 WL 4392540, at *4 (D. Md. Sept. 13, 2019). The district court agreed with the PCR court that the plea agreement didn't constrain the prosecution's recommendation or the trial court's sentence. *Id.* Finally, the court concluded that the PCR court's holding that Currica was advised of his maximum sentence exposure wasn't incorrect or unreasonable, so § 2254 relief wasn't available. *Id.* at *5. The court also denied Currica a certificate of appealability, but we granted one.

II.

We affirm. While the plea court (and Currica's plea counsel) may have muddied the waters, the substantial deference we owe state courts under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") forecloses relief.

Under AEDPA, once a state court adjudicates the merits of a request for postconviction relief, federal habeas relief isn't available unless the state-court proceedings:

> (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).

Currica argues that he's entitled to relief under both subsections of § 2254(d). We disagree.

A.

We begin with subsection (d)(2), by which Currica contends that the PCR court's decision was based on an unreasonable finding of fact— that the plea court "made it clear" that the guidelines were advisory. *See* Appellant's Br. at 23.[1]

[1] At oral argument, Currica's counsel also questioned the PCR court's adverse credibility finding, arguing that it wasn't supported by the record. But we decline to consider this new argument. *See Cities4Life, Inc. v. City of Charlotte*, 52 F.4th 576, 581 (4th Cir. 2022). And even if Currica had timely raised it, we're poorly situated to second-guess the PCR court's credibility determinations. *See Elmore v. Ozmint*, 661 F.3d 783,

AEDPA mandates that "a determination of a factual issue made by a State court shall be presumed to be correct," such that the petitioner bears "the burden of rebutting the presumption of correctness by clear and convincing evidence." 28 U.S.C. § 2254(e)(1). Even if a state court gets a fact wrong, its decision "will not be overturned . . . unless objectively unreasonable in light of the evidence presented in the state-court proceeding." *Miller-El v. Cockrell*, 537 U.S. 322, 340 (2003). In other words, it's not enough for a finding to be debatable or even wrong—it must be "unreasonable" to open the door to habeas relief. *See Wood v. Allen*, 558 U.S. 290, 303 (2010).

The plea court never said the guidelines were advisory, so the PCR court's finding (that the plea court "made it clear" the guidelines were advisory) might be debatable. But AEDPA demands more. The PCR court's finding isn't objectively unreasonable because the plea court correctly explained that it could sentence Currica to 30 years on each charge, which would exceed the guidelines range. *See Burt v. Titlow*, 571 U.S. 12, 18 (2013) ("[A] state-court factual determination is not unreasonable merely because the federal habeas court would have reached a different conclusion in the first instance." (quoting *Wood*, 558 U.S. at 301)).

In any event, AEDPA forecloses habeas relief unless the PCR court's decision was "based on" an erroneous finding, 28 U.S.C. § 2254(d)(2), and Currica doesn't make that showing. Say the PCR court never found that the plea court made the guidelines' advisory

850 (4th Cir. 2011) (noting that AEDPA requires us to be "especially deferential to the state PCR court's findings on witness credibility," which we won't overturn absent error that is "stark and clear" (cleaned up)).

nature "clear." We'd still be left with the PCR court's other findings, including that (1) the plea agreement didn't promise a guidelines sentence, (2) the plea court ensured Currica understood his maximum sentencing exposure, and (3) Currica's testimony about his subjective belief wasn't credible. Against this backdrop, Currica hasn't shown that the finding he challenges moved the needle. So subsection (d)(2) offers him no relief.

B.

Turning to Currica's subsection (d)(1) arguments, our first step "is to identify the 'clearly established Federal law, as determined by the Supreme Court of the United States' that governs the habeas petitioner's claims." *Marshall v. Rodgers*, 569 U.S. 58, 61 (2013). We look to "only the holdings, as opposed to the dicta," of the governing Supreme Court decisions. *Woods v. Donald*, 575 U.S. 312, 316 (2015) (per curiam) (cleaned up).

We then "train [our] attention on the particular reasons" the PCR court gave in denying relief. *Wilson v. Sellers*, 138 S. Ct. 1188, 1191–92 (2018) (cleaned up). Since Maryland's appellate courts summarily denied relief, we "'look through' the unexplained decision to the last related state-court decision that does provide a relevant rationale." *Id.* at 1192. This points us back to the PCR court's oral decision from the bench.

Currica faces a high hurdle in showing that the PCR court's decision was contrary to, or unreasonably applied, a Supreme Court holding. *See Woods*, 575 U.S. at 316 (noting that AEDPA's standard is "intentionally difficult to meet" (cleaned up)). He must show that the PCR court's decision was "so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Id.* (cleaned up).

The decision must be "'objectively unreasonable,' not merely wrong; even 'clear error' will not suffice." *White v. Woodall*, 572 U.S. 415, 419 (2014). Put bluntly, subsection (d)(1) corrects only the most "extreme malfunctions." *Woods*, 575 U.S. at 316.

As we explain, the PCR court's decision wasn't "contrary to," or an "unreasonable application of," Supreme Court precedent. 28 U.S.C. § 2254(d)(1).

1.

The PCR court's decision wasn't "contrary to" Supreme Court precedent because it didn't "arrive[] at a result different from" a Supreme Court case with "materially indistinguishable" facts. *Early v. Packer*, 537 U.S. 3, 8 (2002) (per curiam) (cleaned up).

To persuade us otherwise, Currica points to *Boykin v. Alabama*, 395 U.S. 238 (1969). *Boykin* involved a state-court guilty plea in which, "[s]o far as the record shows, the judge asked no questions of petitioner concerning his plea, and petitioner did not address the court." *Id.* at 239.

The Court held that "[i]t was error, plain on the face of the record, for the trial judge to accept petitioner's guilty plea without an affirmative showing that it was intelligent and voluntary." *Id.* at 242. A silent record can't support a guilty plea, which waives important constitutional rights. *Id.* at 243. Rather, a criminal court must exercise "the utmost solicitude . . . to make sure [the defendant] has a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought." *Id.* at 243–44.

The next year, *Brady v. United States* confirmed *Boykin*'s "requirement that the record must affirmatively disclose that a defendant who pleaded guilty entered his plea

understandingly and voluntarily." 397 U.S. 742, 747 n.4 (1970). *Brady* affirmed the denial of habeas relief for a federal prisoner who claimed his guilty plea wasn't voluntary because he feared he could receive the death penalty if he went to trial. *Id.* at 746–47. Brady also claimed his plea wasn't intelligent, because nine years after he entered it, the Court held that the death penalty wasn't available to a defendant who went to trial under the circumstances of his case. *Id.* at 756.

The Court noted that a pleading defendant must have "sufficient awareness of the relevant circumstances and likely consequences" of the plea. *Id.* at 748. But a plea can be intelligent and voluntary even "if the defendant did not correctly assess every relevant factor entering into his decision." *Id.* at 757. In fact, habeas relief isn't available for a defendant simply because he "discovers long after the plea has been accepted that his calculus misapprehended . . . the likely penalties attached to alternative courses of action." *Id.* And Brady's plea record showed that the district court ensured he understood his plea and that he entered it "voluntarily, without persuasion [or] coercion of any kind." *Id.* at 743 n.2. The Court held that this was sufficient. *Id.* at 755.

Currica argues that the PCR court's decision was contrary to *Boykin* and *Brady* because "[n]othing in the record affirms that Mr. Currica was told he could receive a sentence above 51 years." Appellant's Br. at 28. But *Boykin* and *Brady* didn't "confront the specific question presented by" Currica's petition—whether his plea was voluntary when no one told him the state sentencing guidelines weren't mandatory. *Woods*, 575 U.S. at 317 (cleaned up). And Currica's situation isn't "materially indistinguishable" from

Boykin's or *Brady*'s facts. *Early*, 537 U.S. at 8. So subsection (d)(1)'s "contrary to" prong can't help him.

2.

Nor was the PCR court's decision an "unreasonable application" of principles announced by the Supreme Court. When there's no on-point Supreme Court holding to clarify "the precise contours" of a right, "state courts enjoy broad discretion in their adjudication of a prisoner's claims." *Woods*, 575 U.S. at 318 (cleaned up). If "a fairminded jurist could conclude" that the state court's decision fits the contours of the Supreme Court's governing principles, subsection (d)(1) affords no relief. *Id.*

We acknowledge 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.

But here, the PCR court concluded that Currica couldn't reasonably believe that the guidelines were mandatory or that he was entitled to a sentence between 30 and 51 years. That's because the plea court correctly advised him that each of his charges carried a possible sentence of 30 years. So this isn't a case in which Currica was clueless about the endpoints of his sentencing exposure.[2] The plea court created a record about the

[2] The out-of-circuit cases Currica cites in support of his argument are distinguishable. *See, e.g.*, *Jamison v. Klem*, 544 F.3d 266, 276 (3d Cir. 2008) (defendant was never informed of a mandatory statutory minimum, even when he was correctly told the statutory maximum); *Hanson v. Phillips*, 442 F.3d 789, 800 (2d Cir. 2006) (sentencing court's "confusing mixture of questions and statements" created too messy a record to determine whether the petitioner was pleading voluntarily); *Hart v. Marion Corr. Inst.*, 927 F.2d 256, 256 (6th Cir. 1991) (plea court erroneously told defendant the maximum sentence

voluntariness of Currica's plea, as *Boykin* and *Brady* require. So the PCR court didn't apply *Boykin* or *Brady*'s principles incorrectly, much less unreasonably.

At bottom, Currica's petition relies on an unannounced rule that would require plea courts to probe the minds of defendants in search of myths to bust. *Boykin* and *Brady* don't go so far. And even if such a requirement were "the logical next step" after *Boykin* and *Brady*, "there are reasonable arguments on both sides," and that's "all [the state] needs to prevail in this AEDPA case." *White*, 572 U.S. at 427.

AFFIRMED

he could serve was 15 years when it was 75); *Lewellyn v. Wainwright*, 593 F.2d 15, 15 (5th Cir. 1979) (per curiam) (defendant wasn't informed of the maximum sentence).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CALVIN F. CURRICA, #354-168,	*	
Petitioner,	*	
v.	*	Civil Action No. 8:16-cv-03259-PX
WARDEN RICHARD MILLER, *et al.*,	*	
Respondents.	*	

***

MEMORANDUM OPINION

Pending before the Court is Calvin F. Currica's Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254. ECF No. 1. Currica, proceeding pro se, challenges the validity of his conviction and the sentence imposed after pleading guilty to second degree murder and carjacking in the Circuit Court for Montgomery County, Maryland. As directed by this Court, Respondents have supplemented their Answer and filed exhibits not initially submitted. ECF No. 15. Currica has also replied. ECF No. 18. The Court finds a hearing unnecessary. *See* Loc. R. 105.6; *see also* Rule 8(a), Rules Governing Section 2254 Cases in the United States District Courts; *Fisher v. Lee*, 215 F.3d 438, 455 (4th Cir. 2000) (petitioner not entitled to a hearing under 28 U.S.C. § 2254(e)(2)). For the following reasons, the Court dismisses Currica's petition and declines to issue a certificate of appealability.

I. Background

On March 14, 2008, Currica was indicted in the Circuit Court for Montgomery County in Case No. 109922 for murder and robbery with a dangerous weapon. On March 20, 2008, Currica was separately indicted in Case No. 109946 for multiple counts of carjacking, kidnapping, robbery, and first degree assault, as well as conspiracy to commit and attempt to commit those crimes. ECF No. 12-1 at 2. On August 11, 2008, Currica, who was then

represented by counsel, entered a guilty plea in both cases pursuant to a written plea agreement. *Id.* at 11; ECF No. 15-1 at 2. Currica pleaded guilty to one count of second degree murder in Case No. 109922, amended down from a first degree murder charge, and two counts of carjacking in Case No. 109946. ECF No. 12-1 at 11; ECF No. 15-1 at 2. Counsel for Currica and the State sent a joint plea memorandum to the Circuit Court for Montgomery County, which included a line stating: "Guidelines: Thirty to Fifty-One Years." ECF No. 15-2 at 1.

At the plea hearing, the court acknowledged that the pertinent guidelines, as noted in the memorandum, were "30 to 51 years." ECF No. 12-2 at 3 (Plea Hearing Transcript). The court expressly advised Currica, however, that "[w]hen you are charged with second degree murder, which is what the charge will be changed to, you are liable for a maximum penalty of 30 years in jail or less depending on what I determine, and you can be placed on probation for any suspended sentence I might impose." *Id.* at 10. As to the carjacking charges, the court similarly explained to Currica that "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." *Id.* at 11. Currica confirmed that he understood the court's advisement. *Id.* at 10–11. Currica also confirmed that was entering his guilty plea "freely and voluntarily." *Id.* at 12.

On November 18, 2008, Currica appeared for sentencing. *See* ECF No. 12-3 (Sentencing Hearing Transcript). Currica's attorney urged the court to impose a sentence within the guidelines, which "were calculated together with the State." *Id.* at 12. The Assistant State's Attorney, however, recommended a sentence above the guidelines. ECF No. 12-3 at 38–40. Ultimately, the court sentenced Currica to 30 years' confinement for the second degree murder count, followed by 30 years for one carjacking offense (Count 1), and 25 years for second

carjacking (Count 9), all to run consecutively for a total of 85 years' imprisonment.[1] *Id.* at 56. As grounds, the court noted Currica's use of gratuitous violence and that he committed the crimes in quick succession over a short period of time. *Id.* at 55–56.

After sentencing, Currica mounted a series of challenges to his prison term. On November 21, 2008, Currica filed an Application for Sentence Review by a three-judge panel, which was denied on September 2, 2009, and a Motion for Reconsideration of Sentence which was denied on May 7, 2013. ECF No. 12-1 at 13–15. On June 19, 2012, Currica filed a Motion to Correct an Illegal Sentence, which was denied on July 16, 2012. ECF No. 12-1 at 14.

On June 2, 2014, Currica filed a pro se Petition for Post-Conviction Relief, which he amended on September 22, 2014, to assert the following claims:

(1) the State and Circuit Court breached the plea agreement by recommending, and imposing, a sentence higher than the 51 years noted in the guidelines range; and

(2) trial counsel provided ineffective assistance by failing to file an Application for Leave to Appeal his Convictions.

ECF No. 12-4 at 1–3; ECF No. 12-5. After a hearing on the petition, the Circuit Court granted in part and denied in part Currica's claims. ECF No. 12-7 at 43–45. The court rejected Currica's contention that a breach of the agreement occurred, but granted his ineffective assistance of counsel claim on the grounds that his defense counsel failed to appeal his original conviction and sentence, as Currica had demanded. *Id.* As relief, Currica was given thirty days to file a belated Application for Leave to Appeal. *Id.* at 45.

Consistent with the Circuit Court's order, Currica filed an Application for Leave to

[1] The Court corrects an earlier error in stating that Currica was sentenced to 80 years. ECF No. 13 at 2.

Appeal, which the Maryland Court of Special Appeals summarily denied on August 12, 2015. ECF No. 15-4 at 2. Currica also filed an Application for Leave to Appeal the Denial of Post-Conviction Relief as to his breach of plea agreement claim, which the Court of Special Appeals also summarily denied on August 12, 2015. ECF No. 15-3 at 2. Currica's final effort to obtain relief in state court, a petition for writ of certiorari, was also summarily denied by the Court of Appeals of Maryland on October 28, 2015. ECF No. 12-1 at 19.

On September 26, 2016, Currica filed his habeas petition before this Court, challenging the validity of his guilty plea and imposition of the prison term which, in his view, exceeded the terms of his plea agreement. ECF No. 1 at 8–14. Respondents urge this Court to deny the Petition, arguing the state court properly determined that the plea agreement was not breached and that Currica's plea was otherwise constitutionally sound. ECF Nos. 15, 17.

II. Standard of Review

This Court may grant a petition for a writ of habeas corpus only to address violations of the Constitution or laws of the United States. 28 U.S.C. § 2254(a). In this regard,

> a federal court reviewing a habeas petition that has already been adjudicated on the merits in state court [must] give considerable deference to the state court decision. A federal court may not grant habeas relief unless the state court arrived at 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 "a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding."

Nicolas v. Att'y Gen. of Md., 820 F.3d 124, 129 (4th Cir. 2016) (quoting 28 U.S.C. § 2254(d)). In reviewing the Petition, the Court "must presume that the state court's factual findings are correct unless the petitioner rebuts those facts by clear and convincing evidence," and "cannot disturb the state court's ruling simply because it is incorrect; it must also be unreasonable." *Id.*

For a state court's decision to be contrary to established federal law, the state court must

have arrived at a conclusion contrary to the United States Supreme Court on a question of law, or must have confronted facts that are "materially indistinguishable from a relevant Supreme Court" case but nevertheless arrived at the opposite result. *Williams v. Taylor*, 529 U.S. 362, 405 (2000); *see Lovitt v. True*, 403 F.3d 171, 178 (4th Cir. 2005); *Barnes v. Joyner*, 751 F.3d 229, 238 (4th Cir. 2014). As to an unreasonable determination, a federal court "may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied established federal law erroneously or incorrectly." *Lovitt*, 403 F.3d at 178 (quoting *Williams*, 529 U.S. at 411). Rather, a state prisoner must show that the state court's ruling was "so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Barnes*, 751 F.3d at 238 (quoting *White v. Woodall*, 572 U.S. 415, 419–20 (2014)).

At base, for a § 2254 claim to be cognizable, the petitioner must assert a violation of federal statutory law or of the United States Constitution. *See Wilson v. Corcoran*, 562 U.S. 1, 1 (2010); *Larry v. Branker*, 552 F.3d 356, 368 (4th Cir. 2009) ("[I]t is not the province of a federal habeas court to reexamine state-court determinations on state-law questions. In conducting habeas review, a federal court is limited to deciding whether a conviction violated the Constitution, laws, or treaties of the United States.") (quoting *Estelle v. McGuire*, 502 U.S. 62, 67–68 (1991)). "The role of a federal habeas court is to guard against extreme malfunctions in the state criminal justice systems, not to apply *de novo* review of factual findings and to substitute its own opinions for the determinations made on the scene by the trial judge." *Davis v. Ayala*, 135 S. Ct. 2187, 2202 (2015) (internal marks and citations omitted).

When a state appellate court summarily affirms a reasoned lower-court decision, or refuses a petition for review, then "a federal habeas court is to 'look through' the unexplained

affirmance to examine the 'last reasoned decision' on the claim, assuming that the summary appellate decision rests on the same ground." *Grueninger v. Dir., Va. Dep't of Corr.*, 813 F.3d 517, 526 (4th Cir. 2016) (citation omitted); *see also Nicolas*, 820 F.3d at 129 ("We 'look through' the Court of Appeals of Maryland's summary denial of Nicolas's petition for certiorari and evaluate the last reasoned state court decisions rejecting the" claim.) Accordingly, as the Maryland appellate courts summarily denied Currica's appeals in this case, the Court looks to the reasoned decision of the Circuit Court.

III. Discussion

a. Plea Agreement Claims

Currica raises three grounds for relief concerning his plea agreement. ECF No. 1 at 8–14. Although Respondents contend the three claims "can essentially be distilled" into the single question of "whether the circuit court breached the plea agreement" (ECF No. 12 at 18), the Court considers each claim in turn.

First, Currica asserts that both the sentencing court and the State breached the plea agreement which, in his view, included a binding sentencing range of 30 to 51 years' imprisonment. Currica contends the breach occurred when the State sought, and the judge imposed, a sentence over 51 years. In support of this claim, Currica points to the joint plea memorandum that Currica's counsel and the State's attorney sent to the court in anticipation of the plea hearing, which read in total:

Comments:

1. In Criminal Number 109922, the Defendant will enter a plea of guilty to an amended count of Murder in the Second Degree.

2. In Criminal Number 109946, the Defendant will enter a plea of guilty to the following:

a. Count One – Carjacking; and
b. Count Nine – Carjacking.

Guidelines: Thirty to Fifty-One Years.

ECF No. 15-2 at 1.

Respondents argue that nothing in this memorandum or in the written plea agreement stated that Currica's plea bound the court to impose a guideline sentence. ECF No. 15 at 5. Additionally, Respondents underscore that the written plea agreement, which Currica signed, is silent as to the sentencing guidelines and rather states:

> The Defendant will enter a plea of guilty to Murder in the Second Degree. (The Defendant will also enter a plea of guilty to two counts of Carjacking in Criminal Number 109946.) The Court will order a Pre-Sentence Investigation. The parties are free to allocute at the time of sentencing.

ECF No. 15-1 at 2. Thus, Respondents contend, the only fair reading of the plea agreement is that the parties had reached *no* agreement as to sentencing.

On post-conviction review, the Circuit Court agreed with Respondents and rejected Currica's contentions that any violation of the plea agreement occurred. ECF No. 12-7 at 43. The Circuit Court further construed the memorandum to the sentencing court as conveying no more than estimated guidelines. *Id.* at 39–40. Thus, the Circuit Court concluded that it would be "clear to any reasonably objective person, that these are ranges only, the court at no time bound itself in any way shape or form." *Id*. at 42.

Consistent with the plain language of the agreement, the memorandum and the sentencing court's colloquy with Currica, the Circuit Court also noted the "immense benefit" that Currica had received by pleading guilty to an amended second degree murder charge rather than first degree murder which carries a maximum term of life imprisonment. *Id.* at 44. Finally, the Circuit Court determined that the plea colloquy would lead any reasonable person in Currica's

position to understand that the sentencing court was not bound by any particular range. *Id.* In short, the Circuit Court found that at sentencing, Currica was told the guidelines were "advisory only" and the sentencing court could exceed those guidelines, as it ultimately did. *Id.* at 42.

In urging this Court to part company with the Circuit Court, Currica contends that the determination was contrary to clearly established federal law set forth in *Santobello v. New York*, 404 U.S. 257 (1971). *Santobello* stands for the bedrock principle that that "when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." *Id.* at 262. Currica contends the reviewing court erred because his guilty plea was induced by the promise of a sentence no greater than 51 years.

To the contrary, however, and as the Circuit Court determined, nothing in the signed plea agreement prohibited the State's attorney from recommending a sentence exceeding the guidelines. Further, nothing in the plea colloquy or memorandum sent to the sentencing court suggests otherwise. Accordingly, Currica's claim of a promised fifty-one years simply does not exist.

Likewise, the Circuit Court's determination does not contravene *Santobello*. While "each party should receive the benefit of its bargain" pursuant to a plea agreement, the law does not require enforcement of promises that the State "did not actually make in the plea agreement, for neither party is obligated to provide more than is specified in the agreement itself." *United States v. Obey*, 790 F.3d 545, 547 (4th Cir. 2015) (internal citations and quotation marks omitted). The post-conviction court found that Currica did in fact receive the benefit of his bargain—avoiding a life sentence without the possibility of parole—and found no evidence that a binding agreement had been reached with respect to his sentence. Accordingly, the reviewing

judge's denial of post-conviction relief constitutes a reasonable application of the law. Currica is not entitled to relief on this claim.

Currica next contends that the sentencing court's failure to expressly advise him it was not bound by the sentencing guidelines rendered his plea "not knowing and voluntary." ECF No. 1 at 12. The Supreme Court has long maintained that the validity of a guilty plea turns on "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *Hill v. Lockhart*, 474 U.S. 52, 56 (1985) (citations omitted); *see also Boykin v. Alabama*, 395 U.S. 238, 242–43 (1969). However, the state court's determination was consistent with, rather than contrary to, this principle.

At the plea hearing, the judge specifically informed Currica that the murder charge made Currica "liable" for "a maximum penalty of 30 years in jail or less depending on what I determine." ECF No. 12-2 at 10. As to the other two charges, the sentencing court expressly told Currica that each "carries the possibility of being put in jail for up to 30 years." *Id.* at 11. Finally, the court told Currica, quite plainly that he "can impose whatever sentence" and never spoke of any limitation other than the statutory maximums. *Id.* Ultimately, on this record, the Circuit Court's conclusion that Currica had been properly advised as to the maximum potential penalties pursuant to his plea agreement is neither incorrect or unreasonable.

In this respect, "the representations of the defendant, his lawyer, and the prosecutor at [a plea hearing], as well as any findings made by the judge accepting the plea, constitute a formidable barrier in any subsequent collateral proceedings." *Blackledge v. Allison*, 431 U.S. 63, 73–74 (1977) (". Accordingly, the post-conviction court's denial of relief on this ground was reasonable. Currica's claim that his plea deal was not knowing and voluntary necessarily fails.

Finally, Currica maintains the sentencing court erred by not allowing him an opportunity

to withdraw his plea "once the court rejected the agreement." ECF No. 1 at 13–14. The fundamental flaw in this claim is that the sentencing court never rejected the plea agreement. Thus, Currica's assertion that he was somehow denied an opportunity to withdraw falls flat, particularly where he never actually moved for such a withdrawal. *Cf. Miller v. State*, 272 Md. 249, 255 (1974) ("[W]here a guilty plea has been induced by the prosecutor's agreement to make no recommendation as to sentencing, and the prosecutor violates that agreement, the defendant may at his option have the guilty plea vacated.") (citing *Santobello*, 404 U.S. at 263). Accordingly, Currica is not entitled to relief on this ground.

b. Writ of Certiorari Claim

As his fourth ground for relief, Currica attempts to argue that the Court of Appeals erred in denying his petition for certiorari. ECF No. 1 at 15. This claim, however, is not premised on an application of federal law and is thus not cognizable under § 2254. *See Wilson v. Corcoran*, 562 U.S. 1, 1 (2010) ("Federal courts may not issue writs of habeas corpus to state prisoners whose confinement does not violate federal law."). The Court must deny this claim as well.

IV. Certificate of Appealability

Rule 11(a) of the Rules Governing Section 2254 Cases provides that "the district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." To obtain a certificate of appealability, a habeas petitioner must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see also Buck v. Davis*, 137 S. Ct. 759, 773 (2017); *Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000). When a district court rejects constitutional claims on the merits, a petitioner satisfies this standard by demonstrating that "jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve

encouragement to proceed further." *Buck*, 137 S. Ct. at 773 (citation omitted).

Currica has not made the requisite showing. Therefore, the Court declines to issue a certificate of appealability. Currica may still request that the United States Court of Appeals for the Fourth Circuit issue such a certificate. *See Lyons v. Lee*, 316 F.3d 528, 532 (4th Cir. 2003).

V. Conclusion

For the foregoing reasons, Currica's Petition is denied. A separate Order follows.

9/13/2019
Date

/S/
Paula Xinis
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CALVIN F. CURRICA, #354-168,	*	
Petitioner,	*	
v.	*	Civil Action No. 8:16-cv-03259-PX
WARDEN RICHARD MILLER, *et al.*,	*	
Respondents.	*	

***

ORDER

For the reasons stated in the foregoing Memorandum Opinion, it is this 13th day of September 2019, by the United States District Court for the District of Maryland, ORDERED that:

1. The petition for writ of habeas corpus IS DENIED and DISMISSED;
2. A certificate of appealability SHALL NOT ISSUE;
3. The Clerk SHALL PROVIDE a copy of the foregoing Memorandum Opinion and this Order to Petitioner and to counsel for Respondents; and
4. The Clerk SHALL CLOSE this case.

9/13/2019
Date

/S/
Paula Xinis
United States District Judge

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

STATE OF MARYLAND	
v.	Criminal No. 109922 109946
CALVIN F. CURRICA,	
Defendant.	

HEARING

Rockville, Maryland — November 24, 2014

DEPOSITION SERVICES, INC.
12321 Middlebrook Road, Suite 210
Germantown, Maryland 20874
(301) 881-3344

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

STATE OF MARYLAND	:	
v.	:	Criminal No. 109922 109946
CALVIN F. CURRICA,	:	
Defendant.	:	

Rockville, Maryland

November 24, 2014

WHEREUPON, the proceedings in the above-entitled matter commenced

BEFORE: THE HONORABLE RONALD R. RUBIN, JUDGE

APPEARANCES:

FOR THE STATE:

ANN N. BOSSE, Esq.
State's Attorney's Office
50 Maryland Ave, 5th Floor
Rockville, Maryland 20850

FOR THE DEFENDANT:

JENNIFER CAFFREY, Esq.
Office of the Public Defender
300 West Preston Street, Suite 213
Baltimore, Maryland 21201

I N D E X

P R O C E E D I N G S

THE COURT: Have a seat, please. Sorry you had to wait.

THE CLERK: Criminal 109946 and 109922.

THE COURT: Do you need these notes?

MS. BOSSE: Good morning Your Honor, Ann Bosse on behalf the State.

MS. CAFFREY: Jennifer Caffrey with the office of the Public Defender, Collateral Review Division, representing Mr. Currica, who should be here momentarily. Your Honor if I may have just a moment to speak with my client.

THE COURT: Sure. Counsel are we ready to go?

MS. CAFFREY: We are indeed.

THE COURT: Okay.

MS. CAFFREY: Your Honor if I may begin preliminarily?

THE COURT: Of course.

MS. CAFFREY: This case comes to you as a result of a guilty plea where Mr. Currica pleaded guilty on August 11, 2008 before Judge Thompson. In the case ending in 922 he pleaded guilty to second degree murder. In the case ending 946 he pleaded guilty to two counts of carjacking. On November 18, 2008, Mr. Currica was sentenced by Judge Thompson. For the second degree murder he received a 30-year sentence and was awarded 270 days credit for time served. For the carjacking,

for one of the carjackings he received a 30-year consecutive sentence, for the other carjacking he received a 25 year consecutive sentence, for a total sentence of 85 years. On November 21, 2008, Mr. Currica filed a motion for modification of sentence and an application for review of sentence by a three judge panel. The modification request was denied by Judge Thompson and the three judge panel declined to reduce Mr. Currica's sentence.

THE COURT: Okay.

MS. CAFFREY: On June 19, 2012, Mr. Currica filed a motion to correct illegal sentence which was denied by the Court and on June 2, of this year, Mr. Currica filed a pro se petition for post-conviction relief. Which is what triggered this hearing today.

THE COURT: Okay.

MS. CAFFREY: He also filed an amended petition a pro se supplemental petition on September 22nd, 2014.

THE COURT: Okay.

MS. CAFFREY: Your Honor the allegations we're proceeding on today are the allegations from Mr. Currica pro se petition, which I have sort of condensed into the following three issues. First is with the plea was breached by the Court, the plea agreement was breached by the Court. The second is that, the plea agreement was breached by the State and finally the trial counsel was ineffective for failing to

file an application for leave to appeal.

THE COURT: Okay.

MS. CAFFREY: Thank you Your Honor.

THE COURT: Thank you. Ms. Bosse.

MS. BOSSE: The State waives opening.

THE COURT: All right. Do you want to call witnesses?

MS. CAFFREY: I do, Your Honor.

THE COURT: Please.

MS. CAFFREY: Your Honor at this time I call Mr. Currica.

THE COURT: Sir please come over and take the stand.

MS. CAFFREY: You're going to go and (unintelligible) you can take it with you if you like.

MR. CURRICA: Okay.

THE COURT: Yes, please raise your right hand and take the oath sir. Thank you, face the clerk sir.

CALVIN F. CURRICA

Called as a witness on behalf of the defense, having been first dully sworn, was examined and testified as follows:

THE COURT: Thank you sir. Please have a seat.

MS. CAFFREY: Good morning, Mr. Currica.

MR. CURRICA: Good morning.

DIRECT EXAMINATION

BY MS. CAFFREY:

Q I'm just going to ask you to keep your voice up because I'm a little bit hard of hearing and I have to be able to hear all your answers today. Okay?

A All right.

Q Okay, thank you. Today just for the record can you give your full name and spell your last name?

A Calvin Fitzgerald Currica, last name C-U-R-R-I-C-A.

Q Thank you, very much. Now where are you currently residing?

A Roxbury Correctional Institution, 18701 Roxbury Road, Hagerstown, Maryland 21746.

Q Thank you, and are you there for the case that I mentioned in my opening statement?

A Yes.

Q Okay. Now Mr. Currica I'm going to ask you a couple of questions. The purpose of these questions isn't for me to be nosey. It's so that I know the State knows and most importantly that Judge Rubin knows that you understand what you're doing today. Is that okay?

A Yes.

Q All right, sir. How old are you today?

A 28 years old.

Q You're 28 and how far did you get in school?

A Graduated high school.

Q Okay. So you can read write and understand the

English language?

A Yes.

Q Okay, but have you had any formal legal training?

A No.

Q Okay. Today are you under the influence of any drugs, alcohol, or prescription medications that are clouding your thinking.

A No.

Q Are you currently being seen by a psychiatrist or psychologist that would recommend you not proceed with a court hearing?

A No.

Q Okay. And you -- you filed a post-conviction petition in this case, is that correct?

A Yes.

Q And you and I met we discussed the issues in your case, is that correct?

A Yes.

Q I told you that you had certain rights under the post-conviction statute is that right?

A Yes.

Q I told you have right to have one hearing and that's what we're here today to do, you understand that?

A Yes.

Q I also told you that this is your last opportunity to

raise any issues. So if you don't raise them today, you can't raise them in the future. Do you understand that?

A Yes.

Q And you understand that I outlined all of your issues for Judge Rubin and those are the only issues you're proceeding on today, is that correct?

A Yes.

Q Finally, you understand that if you're successful today, generally the remedy is that you would get a new trial and you could get more time because you don't get the benefit of your plea. Do you understand that?

A Yes.

Q And you understand that because you're arguing a breached plea, you could also request specific enforcement of that plea. That's a remedy you could request. Is that right?

A Yes.

Q Okay. My understanding is that that is what you are requesting. Is that correct?

A Yes.

Q Okay. Do you have any questions for me or for Judge at this time?

A No.

Q Okay. Your Honor I would submit Mr. Currica has been qualified.

THE COURT: Ms. Bosse?

MS. BOSSE: No questions.

THE COURT: All right. Please continue. I agree. I so find. Thank you.

MS. CAFFREY: Thank you.

Q Mr. Currica let me take you back when you were first charged with this offense. Do you remember that?

A Yes.

Q Were you incarcerated or were you able to make bail?

A I was incarcerated.

Q Okay, where were you incarcerated?

A At Clarksburg Detention -- county jail.

Q Okay. At some point did you have an attorney?

A Yes.

Q And who was that attorney?

A Rene Sandler.

Q And was that through the office of the public defender?

A Yes.

Q Okay. Now you have alleged that your plea agreement was breached. Is that right?

A Yes.

Q So before we go into that, I want bring you back to before you went to the plea hearing. Okay?

A Yes.

Q Before you went to the plea hearing did you meet with

your attorney?

A Yes.

Q Did you guys -- what did you guys discuss?

A We discussed that first of all, my attorney had told me that the State came up with a plea agreement for me and that I had to plead guilty to admit all charges that was being charged against me in order to set the plea. And the guidelines in the case were 30 to 51 years for all three of the charges combined together. So, I signed the document stating that and I agreed to it.

Q Okay. And so after you spoke to your attorney and based on the conversation you had with your attorney, what did you believe the Court could impose, what sentence did you believe the Court could impose if you pleaded guilty?

A Anywhere from 30 to 51 years.

Q Okay. Now, you have alleged that the State breached its plea agreement. Why do you, why do believe the State has breached it's plea?

A They breached it because, they are the ones who came up with the sentencing guidelines for the plea, and two months later, after I excepted the plea already, which was set at sentencing two months after I took the plea of sentencing, the State's attorney specifically, the same one who came up with the plea, asked the Court, he said Your Honor are we allowed to disregard the honest guidelines? And the judge

never said anything. And then the State's attorney went on to say well I guess we can because they're descriptive in any event. And it was breached because this was not explained to me before I took the plea.

Q Did you believe that the State was going to recommend a sentence within the guidelines?

A Yes.

Q Okay. And the guidelines where they the same at sentencing as you indicated they -- you had been presented prior to your plea?

A No, they was not the same.

Q Okay in what way were they different?

A They were different -- I noticed it when my lawyer had objected because after the peer (unintelligible) report had came back, they higher. They were 45 to 70 years. And, my lawyer had explained to the judge that they different from the original plea letter that the State's attorney came up with.

Q Did you get any explanation as to why those -- the two sets of guidelines were so different?

A They based of the pre-sentence investigation -- I don't have a prior record so I don't understand why it was any higher but the parole, state parole and commission but I guess raised them higher. For some reason I don't know. But she, she had made mention that there were, it was different and it was outside what we had agreed to and it appears

(unintelligible) was never part of the plea agreement.

Q Okay. Now you've also alleged that the Court breached the plea agreement. In what way did you believe the Court breached the plea?

A Well he breached it by, by going with what the State had recommended. Now the plea, the written plea it said that the State was free to advocate and my understanding was within the 30 to 51 year range. Now during the plea proceedings, the Court, the Judge never explained that he does not have to go by these guidelines, that he can go over them, and sentence me outside those guidelines. He never gave me the opportunity, which is according to Maryland Rule 4-243c, he supposed to explain that to me. Let me know he's not bound by the guidelines. He can go over, and if I want to persist in the plea I can receive a much harsher sentence. This wasn't explained to me. Now, the only thing that was explained, which by the Maryland Rules he supposed to do, was he explained the maximum penalty for each charge, which is 30 years. But, he was not saying this what I can be sentenced to, he just said he can impose whatever sentence. But, he was explaining whatever sentence meaning, suspend -- including jail time or a suspended portion of a sentence. But he --

Q Now let me stop you there, you say that you understood that there could be a suspended portion. Is that correct?

A Yes. He was saying that, but he doesn't have to. And he said that first of all he said he explained the second degree murder charge. He explained the nature and the element and how much time it carries. Now the guidelines for the second degree murder was 20 to 30 years. So he explained that I could give you up to 30 years or less depending on what I determine. Then he went on and stated that each of these charges carries a possibility put in jail for 30 years, and he says I can impose whatever sentence and that was it. And he --

Q And what did you interpret that to mean? I can impose whatever sentence.

A Meaning -- he was referring to the -- he said once again, so he was referring back to when he said jail time or suspended sentence, but he said he is not obligated to do so. So, that's what he was referring back to when he meant whatever sentence.

Q Just to be clear, what was the maximum sentence you believed under this plea agreement, you could get?

A 51 years.

Q Okay. Did you think you could get more time if it was suspended?

A No. Well, if it was, see that wasn't explained neither but to my understanding, if he was suspending it. Let's say he would have given 90 years but suspend all and put me back within the guidelines or suspend a part at what at most

would be 51 years. It wasn't explained to me. But the based off the record it was, the plea was 30 and no higher than 51 years. And that was for all three charges together.

Q Okay. Now you have also alleged here that your attorney was ineffective for failing to file an application for leave to appeal. So after your sentence was imposed, did you speak to your trial attorney?

A Yes.

Q Where did that conversation occur?

A At the county jail.

Q Okay. And when you talked to your trial attorney, did you ask that person to file motions for you?

A She -- I told her to -- because I was a layman of the law, I told her can you -- cause at sentencing the judge explained that you have 30 days to appeal. Now, keep in mind within the county jail, once your sentence you leave within a week and I went to DOC and I was at DOC for two weeks.

Q So let me stop you there. And you said that you met with your trial attorney at the local detention center, is that right?

A Right, before --

Q So you met with her within a week of your sentencing?

A Right.

Q And during that conversation, did she talk to you about your appeal?

A Yes, she -- I asked her can she file it for me because I didn't know how to do one. And she said she would. She said she would file it for me, and this was also done. I have a copy of the written letter that I wrote to her concerning it. And she replied back that she would file it for me. But I never heard from her ever since.

Q Okay. And to your knowledge, no application for leave to appeal was filed in your case?

A It was never filed.

Q Okay. Is there anything else about your allegations that you feel that Judge Rubin should know?

A Yes. As far as -- well back to the plea phase, if the plea was explained, the Maryland Rules states that before the plea is accepted it must be -- the terms and conditions of the plea must be clearly agreed upon. Now as to the sentence, it was -- all was mentioned on the record was 30 to 51 years. He mentioned those guidelines. No other sentence at the plea proceedings was mentioned outside of 30 to 51 years. So that what my understanding was. And he had, when he explained, he said do you understand that you could be put in, there is a possibility -- each charge carries 30 years in jail. And I said yes but that is just the maximum sentence allowable by law. But that is not the sentence that was called for in the plea. And according the Maryland Rules, judges are supposed to let you know, regardless of what the plea is, the maximum

penalty provided by law. And that's what he did. And also at sentencing once the prosecutor asked the Court are we allowed to go over the guidelines. The Judge never referred back to the plea proceedings of when he mentioned the maximum sentences provided by law to me, which he was supposed to. He never referred back to that. He just said that guidelines are descriptive in any event. Which is false because you have to -- before I take the plea the Maryland Rule 4-243 lets you know all terms must be explained before the defendant pleads guilty. And --

Q Okay. So if I -- make sure I'm getting what you're saying. So, you acknowledge that the Court told 30 years was possible for each sentence. Is that right?

A Well not possible as a sentence, I can receive --

Q Was the maximum?

A Just the maximum for each of these charges. He's letting me know the nature and elements of the charges.

Q Okay. And the reason you think -- okay explain to me why you didn't think that applied to you?

A But what -- it applied as far as, he was -- it didn't apply to a sentence that I could receive as in prison, as far as what my plea called for. But he was just going by what the Maryland Rule require all justice to do, that you have to know what you're pleading to, each element. But, however, my plea wasn't for me to be sentenced to three consecutive sentences.

The guidelines were for all of them combined together. So I was supposed to get one sentence. 40 years or 51 years, but he sentenced me three consecutive sentences and made it into one big number. And obviously the State's attorney when he requested the judge, he asked are we allowed to go over. My question was, why would the State's attorney who came up with the plea agreement for me, have to ask the Court are we allowed to go over. This was never brought up when the plea was brought to me. There was no discussions of going over any higher. And for the State to ask this two months later, he wasn't even sure of that fact. You see what I'm saying?

Q Okay. Your Honor I have no further questions. This time I would ask the Court to just take judicial notice of the file and I believe I have provided a copy of the transcript to the Court and the State. I have asked that they would be moved in as a joint exhibit.

THE COURT: All right this was August 11, 2008 hearing before Judge Thompson.

MS. CAFFREY: That's correct. And I believe there should also be one for November 18, 2008.

THE COURT: All right they'll both be received.

MS. CAFFREY: Thank you.

THE COURT: Ms. Bosse any questions?

MS. BOSSE: Yes. Thank you Your Honor.

THE COURT: Are those the ones gave me?

MS. CAFFREY: Yes.

THE COURT: Do you have other copies?

MS. CAFFREY: I can make other copies.

THE COURT: I was about to write on them.

MS. CAFFREY: Go ahead.

THE COURT: You sure. We will make sure the record contains everything.

MS. CAFFREY: Thank you Your Honor.

THE COURT: Go ahead please.

CROSS-EXAMINATION

BY MS. BOSSE:

Q Okay. Mr. Currica, Ms. Sandler came to see you, you said a week, within the week?

A Yes.

Q Exactly what did she say? What exactly did you ask her to file?

A I asked her can she file -- I didn't even know what it was. I just asked her can you file an appeal for me, on my behalf. Because she had objected to the sentence that was given to me at sentencing. As far as the breach plea agreement part. Ms. Sandler had objected so that was reason to believe that me being a layman of the law I wasn't to equipped with the law but that was reason to believe that there was an error in my case. And I asked can you file an appeal for me and she said she would. However, once she had left and we departed, I

never heard from her and she never had explained to me that she was no longer representing me as far as counsel. So I never had a counsel. She terminated the process, as far as her being attorney for me. So, I was without an attorney. I never heard anything about --

Q Well how did you find out that were without an attorney?

A Through studying once I got to Cumberland. Through studying the law on my own at the library. And I had wrote to her and she had sent me a letter asking -- I wanted to know she's not my attorney, she said no, some other guy was my attorney. Somebody I had never even met. She said she was no longer handling my case.

Q Oh, so you had a letter from her that told you that?

A Yes.

Q Where is that letter today?

A It should be in my -- over there. And this was about probably a year after the fact that I had been sentenced already.

Q May I see the letter please?

MS. CAFFREY: Your Honor may I approach the witness so he can identify it?

THE COURT: Of course, please. Yes.

MR. CURRICA: It might take me awhile to find it. I got to dig through --

Q Okay, well let me ask you a few more questions while you're looking at those. If you can multi-task here. If that's okay? So, you met with her within a week?

A Right.

Q And did you talk about filing anything else other than a appeal?

A No.

Q So she didn't talk to you about filing a motion for reconsideration of sentence?

A Those were -- she filed that cause it's in my court dockets. She had filed that for me. I found that out after through requesting my court dockets from the clerk of the court.

Q So she didn't talk to you about that. She didn't say oh, I'm going to file a motion for reconsideration?

A No. Not to my knowledge.

Q Okay, she didn't ask you if you wanted one filed and she just went ahead and filed it?

A Right. It was held in secure until I requested a hearing.

Q I thought you didn't know about it?

A This is what I found out later on. This is what I found out later on.

Q And what about an application for three judge panel review?

A That was also -- she also filed that for me. She filed that for me --

Q She didn't tell you about it?

A No.

MS. BOSSE: Your Honor may I see the file?

THE COURT: Sure, do you mind?

MS. BOSSE: Your file. Not her file.

THE COURT: I don't mind. There's a bunch of jackets. Ms. Bosse here is another jacket, please. Okay.

Q So you're saying that all she talked to you about was an appeal?

A Yes. Yes she mentioned, she mentioned, she mentioned -- I talked to her about appeal and to the best of my knowledge we didn't have a major discussion on a sentence review panel or a three -- the Judge had made mention of these things, at sentencing, at the end of my sentencing he made mention of a three judge panel. Sentence my application, the judge mentioned that initial record. Now, what me and my attorney discussed was the appeal. That's what we had discussed.

Q So you didn't say to her well what's this motion for reconsideration of sentence. The Judge said you know you have 90 days with which to file it --

A The Judge explained all that.

Q Yes. And said you know, I can't increase it but I can reduce it. And you didn't ask her to file that even though

you were upset about the sentence you had received?

A No, see I wasn't too aware of sentencing law. I'm a layman of the law. Had I been fully aware of the law, I would have known that.

Q So, and you didn't talk about the three judge panel, the fact that the three judge panel could increase your sentence or decrease your sentence?

A Not not --

Q Even though you were concerned about your sentence. That was your complaint?

A Was about the appeal. Cause I had 30 days. I had, see the quickest thing I could attack although about the sentence was the appeal. So that was the major thing for me. I didn't even understand how to go about that, so I just told her can she file it being as though she was representing me.

Q So, but you didn't care, you didn't -- you weren't worried about asking her to file for a reconsideration of sentence when the Judge had told you he could reduce your sentence. You didn't --

A No. It's not --

Q You weren't concerned about that?

A I was more concerned about the appeals not that I wasn't -- of course I was concerned about the sentence that was given. That is why I talked to my attorney about an appeal. But you can't file everything at one time.

Q No. But you knew that you had 30 days to file an appeal.

A Right. Which I didn't know how too.

Q And 30 days to file an application for a three judge panel. The Judge had told you that. Correct?

A She told me this. Right and -- but I don't know how to go -- see you have to understand being as though, once you get sentenced in Montgomery County, within a week you're being transferred and you going DOC. I was in DOC for two weeks. So that's three weeks, I didn't get up -- I was without, I didn't have a law library to go to. Once I get that up, I was in the new MCTC in Hagerstown before I went to Cumberland and by the time I got up there, there was -- I was on (unintelligible) there was no way I could get to the library within 30 days had been up but the time I got to DOC. Let's put it like that. So there was no time for me to do no write or type anything. So I explained to my attorney can you file an appeal for me. That's why I told her to do it.

Q And this -- and you're saying that this Ms. Sandler said yes I would. She didn't say to you Mr. Currica, I'm your attorney for trial, you now have to go back to the public defender's office and get them to file an application for leave to appeal?

A No she did not tell me that. She did not tell me that.

Q Did she ever tell you that?

A No she did not. She never told me that. No. Not in writing, not in writing she --

Q What -- so she didn't say that when she said I'm no longer your attorney?

A She never told me this when we talked, that she --

Q Well you're looking for the letter right where she told you that she wasn't your attorney anymore.

A I'm speaking as far as when she was my, after I was sentenced, the one time I saw her. That's when, she never told me that then. I found this out about a year and half later on. I said that about three times already.

Q Okay, okay. I know and you're looking for letter --

A And I'm looking for the letter right now.

Q You just told me she didn't tell you.

THE COURT: Okay everybody just take a step back. Please.

MR. CURRICA: No that's not what I said. No. No. You're confusing me. No that's not what I said. What I said was when I met her, the only time I met her after sentencing, right? When I explained about the appeal, she never told me she was not representing me then and there.

Q I understand that.

A About a year and a half later, the appeal time is done now. I cannot file an appeal now. It's done. You see

what I'm saying. So now this time she is letting me it doesn't matter because now my appeal is so over the due date.

Q So she did tell you but after the 30 the days expired? A long time after.

A Way after. And that's what I had said.

Q But you also knew that the recon had to be filed within in 90 days. Correct? The motion for reconsideration of sentence. But you didn't talk to her about that?

A The motion -- she back I found out that was done through court dockets like I said. From the clerk and I seen it on there. This is how I knew the appeal was not filed. Because everything else was filed on the court, accordance with the court dockets, but the --

Q How did you get access court dockets? When did that happen?

A I wrote the clerk, I can't remember exactly when I did. But I wrote the clerk of the court and the clerk of the court (unintelligible) has send me a copy for my court dockets.

Q Okay, but that was well after 30 days, 90 days -- okay.

A All this was after, once I got settled into my prison time.

Q So as far as you knew though, at day 30 she hadn't filed anything?

A I didn't know at that time. I couldn't.

Q Okay, no I just -- I understand. And at day 90 you didn't that she had filed anything?

A No I didn't get nothing in the mail. Until I started researching.

Q And you and she, I just want to make clear, you talked about an appeal and did she talk to you about what limited rights you had on that appeal?

A No. All she --

Q You can only challenge the voluntariness of the guilty plea or her performance?

A No. All she said was I'm going to file for you. It was quick. She was like I'm going to file it for you. It was only about, we only met for about 10 minutes. And she gave me a bunch of paperwork. My pre-sentence investigation, transcripts, so forth like that. That was the whole purpose of the meeting. So, and I had explained this to her.

Q All right. No further questions.

THE COURT: Thank you. Any re-direct?

MS. CAFFREY: Your Honor, nothing further.

THE COURT: Thank you very much sir, you may step down. Do you have any additional witnesses, documents or evidence?

MS. CAFFREY: I have none Your Honor. At this time petition arrests.

THE COURT: Petition arrests. Does the State have

any witnesses, documents or evidence?

MS. BOSSE: No.

THE COURT: Okay.

MS. BOSSE: I hoped to have Ms. Sandler, but she is not here.

THE COURT: All right.

MS. BOSSE: The State rests.

THE COURT: Thank you.

MR. CURRICA: May I say something?

MS. CAFFREY: Oh, well why don't you come --

MR. CURRICA: (Unintelligible).

THE COURT: Why don't you -- if you want to rejoin your counsel sir, please.

MS. CAFFREY: Your Honor if I may have Court's indulgence for one moment before I begin my closing.

THE COURT: Of course.

CLOSING ARGUMENT BY JENNIFER CAFFREY, ESQ.

ON BEHALF OF THE DFENDANT

Thank you Your Honor. Your Honor if it please this court, the primary allegation that Mr. Currica is pursuing today is this idea of a breached plea.

THE COURT: This wasn't a binding plea. So there was no, there was no cap, there was no, it was just a straight plea. It wasn't conditional, it wasn't binding. It was just I plead guilty.

MS. CAFFREY: Well Mr. Currica's position is that he understood that it was a binding plea. And he understood that based on the letter that was sent from the prosecutor to his attorney, the letter that his attorney sent to him and based on the fact that at the pre-hearing he was told that his guidelines would be 31 to 50.

THE COURT: The plea letter that I looked at, maybe I'm wrong. I don't have it. It didn't -- it simply said he would plead guilty to -- give me one second. An amended charge and one indictment I'll dig it out, I did look at it a minute ago.

MS. BOSSE: It's the -- I think you're looking for the plea memorandum. One of them is at 65.

THE COURT: 65, thank you. I was, I wanted to make sure that it said what I thought it said. Let me just check. Go ahead.

MS. CAFFREY: Okay.

THE COURT: Go ahead, I'll find it in a minute, I don't want to interrupt your presentation.

MS. CAFFREY: Thank you Your Honor. It is Mr. Currica's position that the State breached the plea agreement when at sentencing, rather than recommending a sentence within in the guidelines that had been originally been calculated at 30 to 51 years, that they breached in asking the Court to exceed the guidelines and to exceed the guidelines at that

point that had been recommended to the Court of 40 to 70 years the increased guidelines. It is Mr. Currica's position additionally that the Court breached the plea agreement in exceeding the original guidelines range which was 30 to 51 and the Court breached it by imposing a sentence of 85 years. Your Honor I think the record speaks for itself and I'm going to submit based on that and ask based on Mr. Currica's preference that you allow him to be re-sentenced and to specifically enforce the plea agreement that he understood it to be. As for the issue of ineffective assistance of counsel, obviously we are dealing with the Strickland analysis. You have heard testimony today from Mr. Currica that he asked his attorney to file what he called the appeal because of course he doesn't necessarily --

THE COURT: Applicate, I assume you're -- I understood it to mean an application for leave to appeal because the other devices were done. The three judge panel was done and the motion for reconsideration I believe was a filed also.

MS. CAFFREY: It was indeed, Your Honor.

THE COURT: So those two were done.

MS. CAFFREY: Correct.

THE COURT: The only thing left I guess would be the application for leave to appeal.

MS. CAFFREY: And it is Mr. Currica's testimony today

that he asked his attorney to file that, and then she failed to do so.

THE COURT: How do you get over the prejudice prong of Strickland and the application for leave to appeal on this record?

MS. CAFFREY: I think, I think in terms of prejudice we have to look at prejudice more in the Flandsburg (sp. phonetic) realm as opposed to --

THE COURT: Why?

MS. CAFFREY: proving, because --

THE COURT: Flandsburg overruled Strickland.

MS. CAFFREY: No no no.

THE COURT: Every time the Court of Appeals has tried to do that it gets -- they come back.

MS. CAFFEY: All Flandsburg did was say that when a defendant asks his attorney to file a motion --

THE COURT: Sure.

MS. CAFFREY: -- and the attorney fails to do so within the time frame, that the prejudice is in the defendant not being able to have his motion considered. It's not that the defendant has to prove that his motion would have been granted. A defendant --

THE COURT: Was Flandsburg an application for leave to appeal?

MS. CAFFREY: It was not Your Honor. It was a motion

for modification of sentence case. Another case on point, I think, would be the Garrison case which was an appeal case in which the Court, and forgive me I don't recall whether it was the Court of Special Appeals or the Court of Appeals.

THE COURT: Who cares?

MS. CAFFREY: But the Court basically said that a defendant who is denied his right to appeal does not have to prove that appeal would have been successful. He need only show that he was denied the ability to have his appeal considered.

THE COURT: And the remedy here would be an application for he could file an application for leave to appeal.

MS. CAFFREY: For the belated application for leave to appeal issues. I believe that is the appropriate remedy, Your Honor.

THE COURT: Okay, I see.

MS. CAFFREY: After that, as I said earlier the remedy that Mr. Currica is seeking today is the ability to --

THE COURT: So you are saying that under Strickland for a failure to file an application for leave to appeal there doesn't have be any showing of any reasonable likelihood of success on the matter.

MS. CAFFREY: I don't think so. Not the, not for post-trial motions. I think that the gloss that has been put

on that by both Flandsburg and the Matthews cases --

THE COURT: Probably right.

MS. CAFFREY: Thank you, Your Honor.

THE COURT: Thank you. Ms. Bosse?

MS. BOSSE: Yes, Your Honor. I'm going to start with the second issue first. Garrison was a case that was decided by the Court of Appeals and involved an appeal from district court to circuit court where there is an automatic right of appeal. So, it's -- and there they did say that because he had a statutory right to an automatic appeal, he didn't --

THE COURT: You get a trial (unintelligible), you get a new trial on the Circuit Court. If it -- was it from -- it was convicted --

MS. BOSSE: It was from -- it may have been a probation file --

THE COURT: Okay.

MS. BOSSE: Yes, well he got, yes, no he got a new appeal. But I mean he got -- he didn't have to show anything.

THE COURT: Okay.

MS. BOSSE: And I've really always taken the position too that --

THE COURT: So all appellate courts have decided they don't need Strickland anymore? (Unintelligible).

MS. BOSSE: Well no, I -- it's my understanding based on there have been other cases where the Court has said, for

appeal purposes, you know, if you have asked your attorney to do it and he doesn't do it then you get that. You know, you don't have to come in and show prejudice. Under Roe v Flores-Ortega if there is a failure to consult then we look at it a little bit differently.

THE COURT: Okay.

MS. BOSSE: Once, I think that the Supreme Court, indicated that defendants are entitled to file, are entitled to the application for leave to appeal. In a guilty plea context, and that they are entitled to counsel in that context. I think that probably the better part of valor would say if he asks or if she says I'm going to do it. I question whether that's the conversation they had. I know that's what he said --

THE COURT: Sure.

MS. BOSSE: -- but I think it is awfully convenient that the two things that really did effect sentencing, that could have affected the sentencing which seems to be his main concern here, they didn't talk about. He didn't -- she didn't -- he didn't say file them for me and she didn't say I'm going to file them for you. The one think that is missing is that she said Oh, I'll file an application for leave to appeal which is a much more complicated document than a motion for reconsideration of sentence and much more to it than what she filed here for the three judge panel review. And that's the one that's missing. But, I agree, if he is entitled to relief

on that ground, he should have 30 days from the date of the Court's order to file an application for leave to appeal. He has to go to the public defender's office and request them to do it. And I suspect that's what Ms. Sandler told him in that letter, years later but he wasn't able to produce that.

THE COURT: Okay.

CLOSING ARGUMENT BY ANNE BOSSE, ESQ.

ON BEHALF OF THE STATE

Your Honor in Case No. 109922C at Docket Entry -- I just had it -- 39 is the memorandum to the court with regard to the guilty plea. In that case and then it's at Docket No. 65 for Case No. 109946C and that memorandum as you will see talks, there are comments one, he'll be entering a plea of guilty to amended count of murder in the second degree, two he will enter a plea of guilty to Count 1 Carjacking and Count 9 Carjacking. And then it just says guidelines 30 to 51 years. You're right there was no binding plea agreement in this case and there is nothing in the words that were said by Judge Thompson --

MR. CURRICA: (Unintelligible).

MS. BOSSE: -- to suggest otherwise, he said I can give you up to 30 years. I can give you what I want for the murder and for the carjacking. So he was -- his exposure was explained to him on the record. There was never -- nobody ever said that the Court was bound by guidelines and so I would ask the Court to deny relief on the first claim or the claims of

breach of agreement and I guess you could really deny -- I read these as sort of a Baines Cuffley situation where the Court has said well if you exceeded, if you have exceeded what's been agreed to then it's an illegal sentence.

THE COURT: All right.

MS. BOSSE: So, I'm not sure I really made a waiver argument but a breach of a plea should have been raised in the application for leave to appeal. As it turns out he raised it in the motion to correct illegal sentence directed to the Court and the Court denied those motions. I mean this claim has already been litigated once in a different context. I don't know that --

MR. CURRICA: (Unintelligible).

MS. BOSSE: -- goes to the extent that it can be said to have been finally litigated because there was no appeal. Although the lack of an appeal from the motion to correct an illegal sentence could be viewed as a waiver. But in any event, the claim has no merit and should be rejected. And the second claim, I'm asking the Court to reject that one too. I'm asking the Court to find that it's just incredible that Ms. Sandler would say she would file the one thing that she didn't file and when they didn't even have a discussion about the other two. But in any event, if the Court is inclined to grant it, give him 30 days from your order, and make it very clear to him that he is entitled to counsel and he should go to the

public defender's office to receive that.

THE COURT: Thank you. Any rebuttal argument?

MS. CAFFREY: None Your Honor.

THE COURT: Thank you. We can take a recess and consider this matter. Thank you.

THE CLERK: All rise.

(Recess)

JUDGE'S RULING

Thank you. Madame Court this is my ruling. I have two cases before me today. Criminal No. 109922 and 109946 that have been consolidated for the purposes of this post-conviction hearing. The following are findings. In -- I find that in 109922 on March 14, 2008, the Grand Jury returned an indictment against the defendant, containing two counts; Count 1 was murder, originally, common law, and Count 2 was robbery with a dangerous weapon in violation of 3-403 of the Criminal Law Article. I believe, unless somebody would be pleased to correct me that the penalty for murder at common law is life in prison. I believe that has been the law for a long time.

In the other Case 109946, I find that an indictment was returned by the Grand Jury on March 20, 2008, Count 1 alleged that the defendant committed the crime of carjacking in violation of section 3-405(c) of the Criminal Law Article. Count 2 was alleged that he conspired with one Harrison Bryant to commit carjacking. Count 3 of that indictment charged the

defendant with kidnapping, Count 4 charged him conspiracy to commit kidnapping, Count 5 charged him with robbery with a dangerous weapon, Count 6 charged him with conspiracy to commit robbery with a dangerous weapon. Count 7 of that same indictment a charge the defendant with assault in the first degree. Can I have the Criminal Law Article? Count 8 of that indictment in 0109946 charged the defendant with conspiracy to commit first degree assault. Count 9 charged the defendant with a separate event of carjacking against one Dane Bulloch, B-U-L-L-O-C-H on February 17, 2008. Thank you.

Continuing, Count 10 of that indictment charged the defendant with conspiring to commit the additional act of carjacking. Count 11 charged the defendant with kidnapping, Count 12 charged the defendant with the conspiracy to commit kidnapping, Count 13 charged him with robbery with a dangerous weapon, Count 14 charged him with conspiracy to commit robbery with a dangerous weapon. Count 15 of that indictment 0109946 I find charged him with attempted carjacking, Count 16 conspiracy to commit carjacking, Count 17 with intent to kidnapping and Count 18 with a conspiracy to commit kidnapping. Count 19 charged him with attempt to commit robbery with a dangerous weapon, Count 20 charged him with conspiracy to commit robbery with a dangerous weapon, Count 21 charged him with an assault in the first degree upon a different alleged victim, one Crystal Viney, V-I-N-E-Y, and Count 22 charged the defendant

with conspiracy to commit assault in the first degree, on or about February 19, 2008.

Those where the charges that the defendant I find was facing at the time he decided to enter a plea in this case. I find that on August 11, 2008 the State of Maryland and the defendant attender to the court of the fact that they had reached a plea agreement. Court was advised the following that in lieu of all the aforesaid charges that in criminal number 109922 the indictment would be amended down from common law murder which carries life imprisonment --

MR. CURRICA: It wasn't proven.

THE COURT: -- up to life imprisonment, to murder in the second degree. And then in criminal number 109946 which was the indictment which had the collection or basket of charges the defendant will plead guilty to two counts only; Count 1 carjacking and Count 9 carjacking. In the plea agreement it is correct that the estimated guidelines were 30 to 51 years, although it doesn't provide any additional information in that regard. On August 11, 2008 also both counsel asked for and the court entered a consent order setting the plea proceeding to be August 11, 2008 at 1:30 pm. I find that the parties appeared on that date before Judge Durke Thompson. The Court in that case made it clear. I find that this was not a binding plea agreement that had been tendered to the Court, this was not a plea agreement that had any cap, this

was not a plea agreement that the Court had agreed in advance he would or wouldn't do anything in particular. Here I find the Court correctly advised the defendant of the, not only the elements of the offenses to which he was tendering his plea, but the maximum penalties allowed by law and there is nothing I find in the transcript, which I have read in its entirety, which would give, which would leave a reasonable person to believe, a reasonable person in the defendant's position, that Judge Thompson had agreed to do anything other at sentencing then listen and decide the sentence and not impose a sentence that was not allowed by law. But the numbers of years was not agreed to and Judge Thompson agreed to nothing, except to give the defendant, I find a legal sentence.

Of additional note, the court made it clear on page 6 that the defendant had reviewed the indictments, the charging documents in the case. Page 7, the Court was satisfied that the defendant had sufficient time to consider not only indictments but also the entry of a guilty plea that he had had adequate time to discuss all of these matters with his lawyer, I find, that he acknowledged to Judge Thompson that he was satisfied with counsel's representation in this case. The Court on page 11 specifically advised the defendant that the indictment in the murder case had been amended down, I find to murder in the second degree, which as a standalone crime has a maximum statutory penalty of 30 years not life. The Court made

it clear that he could or might impose a maximum that could possibly be suspended, he could possibly be placed on probation and was clear that quote "I'm not obligated to any of that, do you understand answered yes." Judge Thompson went on to describe the elements of the offense continue on page 11 I find that Judge Thompson made it clear to the defendant that the each crime of carjacking carries a maximum penalty of 30 years in jail page 11. Page 12 he said specifically so each of these charges carries the possibility of being put in jail for up to 30 years, the each of these charges refers to the two carjacking counts to which the plea was being tendered. Judge Thompson clearly said quote "Once again I imposed whatever sentence including jail time and a period of suspended jail time if I wish to do so, do you understand that, answer yes." Judge Thompson went on to give additional advisements that are required by law.

There were no objections to the State's elocution. The Court went on to request a pre-sentence investigation as is appropriate in this case, and deferred sentencing to November 18. One of the parties appeared before Judge Thompson November 18, 2008. I have reviewed the transcript of the sentencing proceeding. I find counsel for the defendant allocuted on his behalf. In this case, counsel for the State allocuted but then played for Judge Thompson, I find apparently a tape of the interrogation proceedings. So that, apparently Judge Thompson

could get a flavor of the defendant's views and positions about the things which brought him before the court. That took some time. The State did ask for a sentence I find exceeding the guide lines and it is true that the guide lines range stated in the initial plea memo is different from the guide lines range appended to the sentencing matters. But I find it is clear to me, and clear to any reasonably objective person, that these are ranges only, the court at no time bound itself in anyway shape or form. I find to, one give a sentence within the guide lines or two, attach any particular significance to any particular guide line ranges. Judge Thompson was clear that the guide lines, I think his -- that they were advisory only. Some judges give them more weight than other judges which they are entitled to do under the circumstances. Thereafter the sentence, the sentences that we bring us here today were imposed on page 56. Judge Thompson advised the defendant as follows, line 14, you have 30 days to file an application for leave to appeal, you also have 30 days to request a three judge panel. He was specifically the panel may diminish, may keep the sentence the same, or increase the sentence. Judge Thompson also advised the defendant, line 19 that you have 90 days to file or to request a reconsideration. Judge Thompson also specifically advised that the defendant that under the then extant parole guide lines he could not be considered for parole until he had served 50 percent of his sentence. I find

that Docket Entry 50 No. 109922, there is a signed notice, signed by the defendant, that paragraph two, he had 30 days to file an application for a leave to appeal, so Judge Thompson told him he had 30 days to file an application for leave to appeal and he acknowledged in writing he had 30 days to file an application for leave to appeal. I find thereafter that counsel, (unintelligible) counsel for the defendant in fact filed an application for sentence review by a three judge panel which was considered by Judges Harrington, Mason and Judge Delius and that motion was denied, that application was denied. There was a request for reconsideration timely filed, which was denied. There was a motion with the trial court to correct an illegal sentence, that motion was denied. The three claims before me today, first it is alleged that the plea agreement was breached by the State. It is alleged that the plea agreement was breached by the judge and the third claim is that his trial counsel was ineffective under Strickland and its prodigy, for not honoring his request which he says he made to file an application for leave to appeal with the Court of special appeals.

This case I have considered it and conclude that there was no violation of the plea agreement by either the State or by the judge, the document, the documents in the case are clear. There is no basis in my judgment for, an objective basis for any reasonable person to conclude that the Court was

capping a sentence was binding itself to any sentence that would, would sentence him within the guide lines, in fact the court made it clear the guide lines are guide lines advisory only and I don't have to that. So based on the evidence of record, and I respectfully, 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. I find that he knew, according to Judge Moreland (phonetic sp.) damn well what he was pleading guilty to, he received an immense benefit by, I find entry into this plea, because he dodged a possible sentence of what I call life plus plus which means you don't get out. A conviction in this case could have resulted easily in a life plus plus sentence, meaning life really means life.

Most sentences in Maryland, bear no relationship to what the judge says. But when the judge constructs a sentence which a trial court easily could have done here of life plus plus, that has some meaning. I will however, allow him to file belated application for leave to appeal i.e. the record. I am persuaded that this is a case where there would be no good reason, frankly not to file an application for leave to appeal. It is not that it would necessarily successful but all the other and appropriately so, bases where touched to which is a euphemism, I mean it's perfectly what lawyers should do, three judge panel, motion for reconsideration, motion to correct,

obviously a good lawyer will do that here. I conclude it was simply missed. So, I will give him time to do that. This transcript will be the opinion in the case, as soon as it is transcribed, I will sign an order incorporating it by reference and following with the Circuit Court and the 30 days will run from that date, I believe. Counsel.

MS. CAFFREY: Do you want me to prepare the order and submit it to counsel and then --

THE COURT: Would you do that? Would counsel get together --

MS. CAFFREY: Yes

THE COURT: -- on the order and --

MS. CAFFREY: 30 days from the date of the order is filed --

THE COURT: Right so --

MS. CAFFREY: -- to file his application for leave to appeal.

THE COURT: Sir, I want to let you know that you need -- I'm granting your request in part, so you need to contact, I don't know whether this particular counsel will or won't do it but, I'm advising you and if there is any questions now would be a good time. That you need to contact the office of the Public Defender and request -- and tell them that I've given you this opportunity to file a belated application for leave to appeal for Court of Special Appeals and ask them to

represent you. You need to do that so it sets the wheels in motion. They can assign counsel to your case, they can call up from the record all the pieces. This is, this is -- it's not a one page document, it's a serious lawyerly collection of papers it needs to be put together so they need time to do it. So I urge you to do that. I suspect that they will represent you, because I suspect given that you are incarcerated in the length of your sentence. But you have to reach out to them. Okay? Do you have questions about that?

MR. CURRICA: I understand.

THE COURT: Because this is never going to come around again and I don't want you to miss this opportunity.

MR. CURRICA: So, when would I be -- when would a transcript be transcribed?

THE COURT: I have no idea.

MR. CURRICA: The order date (unintelligible).

MS. CAFFREY: In the normal course it takes at least 20 days to get a transcript. But --

THE COURT: But in about 20 days, sir, so we could figure that given the holidays within 30 days or so the transcript will be prepared. I will sign the order and it's from that date that the clock starts running. But you have advance notice of that. So you don't have to burn any of your 30 days contacting the Public Defender. You can contact them now.

MS. BOSSE: And Your Honor for the record our office, the Collateral Review Division will maintain this case.

THE COURT: Thank you so --

MS. BOSSE: I'll be filing that for him.

THE COURT: You're covered, they will file.

MS. BOSSE: Okay.

THE COURT: Will you file an application for leave to appeal?

MS. BOSSE: I will file that for him.

THE COURT: Public Defender's office will file an application for leave to appeal. That's terrific, good luck to everybody. Thank you very much. Thank you for your time.

MS. BOSSE: Thank you, Your Honor. Okay.

THE CLERK: All rise.

MS. BOSSE: Now, you will have 30 days from the date that that order's filed to apply for application for leave to appeal from the guilty plea.

MR. CURRICA: Yes.

MS. BOSSE: You will also have 30 days from the date the (unintelligible) filed to file an application for (unintelligible).

(End of requested portion of proceeding.)

√ Digitally signed by Lori A. Harnage

DIGITALLY SIGNED CERTIFICATE

DEPOSITION SERVICES, INC. hereby certifies that the foregoing pages represent an accurate transcript of the duplicated electronic sound recording of the proceedings in the Circuit Court for Montgomery County in the matter of:

Criminal No. 109922 & 109946

STATE OF MARYLAND

v.

CALVIN CURRICA

By:

Lori A. Harnage
Transcriber

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

STATE OF MARYLAND	:	
v.	:	Criminal Nos. 109922 and 109946
CALVIN CURRICA,	:	
Defendant.	:	

Rockville, Maryland

August 11, 2008

WHEREUPON, the proceedings in the above-entitled matter commenced

BEFORE: THE HONORABLE DURKE G. THOMPSON, JUDGE

APPEARANCES:

FOR THE STATE:

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PROCEEDINGS

THE CLERK: All rise. The Circuit Court for Montgomery County is now in session. The Honorable Durke G. Thompson presiding.

THE COURT: Please be seated (unintelligible) this afternoon, ladies and gentlemen.

THE CLERK: Criminal Case No. 109946 and 109922, State versus Calvin Currica.

MS. BRIDGFORD: Cindy Bridgford on behalf of the State with Mr. John Maloney.

MS. SANDLER: Rene Sandler on behalf of Mr. Currica, who's present.

THE COURT: All right. It's my understanding that in lieu of motions this afternoon that we will proceed to a plea. And I'd be happy to receive the terms and conditions unless there is a plea memo, but I'm not aware there is one.

MS. BRIDGFORD: Your Honor, I had one walked through today and signed by Judge Harrington. This is the only copy I have, so --

THE COURT: We'll make a copy of it, so if you can --

MS. BRIDGFORD: Thank you very much.

THE COURT: -- pass it up to me. All right. Thank you.

All right. The Court understands from the

memorandum, which is indeed entered into by counsel, that in Criminal No. 109922, the defendant will enter a plea to an amended count of murder in the second degree.

And in Criminal No. 109946, the defendant will enter a plea to the following.

That is, Count 1, carjacking;

Count 9, carjacking.

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.

MS. SANDLER: That's correct.

THE COURT: Is that, is that --

MS. BRIDGFORD: That's correct.

THE COURT: Okay. All right. In that case, then we'll -- and my understanding is that we're not going to proceed to disposition. I think for obvious reasons that's probably not.

All right. Mr. Currica, is that how your name is pronounced, sir?

MR. CURRICA: Yes.

THE COURT: All right. If you'll stand, please, sir.

As I've indicated, your counsel and the State have said that you intend to enter a plea of guilty today.

MR. CURRICA: Yes.

THE COURT: And that plea of guilty would be in both cases that are pending against you.

The first thing I want to say to you is that you're not obligated to enter a plea of guilty in this or any case to these or any charges. You may stand trial on these charges and any other charges that are pending against you and assert whatever defenses that you may have, but you're not obligated to do that either. You can admit your guilt. And to the extent that it represents a disposition of less than all charges, and I assume by implication there would be a nol pros of any other charges that are pending, you may do so.

Is it your wish to enter the plea of guilty today?

MR. CURRICA: Yes.

THE COURT: All right. Now, Mr. Currica, I'm going to be asking you some questions. You probably have gone over these with your attorney, but if you have not, you may ask your attorney's assistance in answering any of these questions. And if you want me to repeat any of the questions, I'll be happy to do so.

These questions that I'll be asking you are to assure me that, number one, you know what you're doing, and number two, that the rights that you have in connection with any kind of proceeding and the, particularly the rights that you have in connection with these charges are known to you, so that, you know, later on we wouldn't want to have to say, "well, I didn't

understand what I was doing, because I didn't know what, what this meant I was doing."

With that, I'm going to ask that you be sworn before we proceed with the questioning.

THE CLERK: Please raise your right hand.

CALVIN CURRICA

the defendant, having been first duly sworn, was examined and testified as follows:

VOIR DIRE EXAMINATION

BY THE COURT:

Q All right, sir. How old are you?

A Twenty-two.

Q How far have you gone in school?

A I graduated.

Q All right. You graduated from high school?

A High school.

Q Okay. Now I presume that means you read and write without difficulty.

A (No audible response.)

Q Is that true?

A Yes.

Q All right. Have you seen the charging documents in these cases, the indictments?

A Yes.

Q Have you reviewed them?

A Yes.

Q Have you talked to Ms. Sandler about them?

A Yes.

Q And have you had sufficient time to consider not only the indictments but also the entry of a plea of guilty today?

A Uh-huh.

Q And you've had adequate time with Ms. Sandler to discuss that?

A Yes.

Q All right, sir. And are you reasonably satisfied with her representation thus far?

A Yes.

Q Okay. Have you ever been treated for any mental or emotional condition?

A Yes.

Q Can you tell me what that is? What you recall about that?

A ADHD.

Q ADHD. All right. That means that you had difficulty keeping attention at times, is that right?

A Right.

Q Okay. And you were kind of hyper a little bit?

A Uh-huh.

Q Are you taking any medication for that at the present time?

A Yes.

Q What do you take?

A I take Zonoff, and I can't remember the other name.

Q If I were to ask you, well, let me ask you, do either of these medications or your condition interfere with your ability to understand what I'm saying to you at the present time?

A No.

Q So you're following along with what I'm saying without difficulty.

A Right.

Q Okay. You're not under the influence of drugs or alcohol at the present time, are you?

A No.

Q Okay. Now, Mr. Currica, you are, by entering a plea of guilty, surrendering certain rights that you would otherwise have. Remember, I told you that you would be entitled to go to trial if you wanted to do so. If you were to go to trial, it would be a trial before a judge such as myself, or before a jury consisting of 12 persons picked at random from the residents of Montgomery County. And it's your choice as the defendant to pick which forum the trial would take. You understand that?

A Yes.

Q At the time of the trial, the State, if they're going

to prove you guilty, they must prove you guilty beyond a reasonable doubt. And, in the case of a jury, that means all 12 persons on that jury would have to agree you were guilty to that extent. You understand that?

A Yes.

Q All right. When you enter a plea of guilty, you are also going to give up the rights to what's called a pretrial hearing, which I was trying to remember whether or not we've had one in this case. I don't, I think that's what was scheduled this afternoon.

MS. SANDLER: We had motions today, and then we had motions in the other case later this week.

THE COURT: Right. Okay.

BY THE COURT:

Q These two motions hearings won't be held, because you're entering a plea of guilty. But at those motions hearings, what you would be entitled to do is to challenge whether or not the police acted lawfully and constitutionally in identifying you at any point in time, taking any statements from you at any point in time, or making any seizure of your person or your property at any point in time.

But that would be for a trial. But because there will be no trial, there will be no such pretrial hearing. You understand that?

A Yes.

Q All right. Now, when you enter a plea of guilty, you also give up certain appellate rights. An appeal normally can follow from a conviction in a criminal action. And that's an appeal generally to the Court of Special Appeals. And you have a right to do it.

When you enter a plea of guilty, it's a much more limited right. You may only appeal from a guilty, I mean, a plea of guilty if the appellate court permits it. And that plea of guilty, I'm sorry, that appeal may only raise the issues of whether or not this Court has jurisdiction to hear this matter, whether it is properly before this Court, whether or not this plea discussion or dialogue that we're having right now was correctly conducted by me, whether you've been adequately advised by your trial counsel up to this point, and finally, whether or not the sentence I will impose in this case is a lawful sentence. And that's the only things I may consider, or rather that an appellate court may consider. You understand that?

A Yes.

Q Okay. We're talking about an appeal, not me, but an appeal.

All right. Now by entering a plea of guilty to these charges, it can affect your right to remain in this country, in the United States, if you are not a United States citizen. Have you discussed this with Ms. Sandler?

A Yes.

Q All right. When you are charged with second degree murder, which is what the charge will be changed to, you are liable for a maximum penalty of 30 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'm 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?

A Yes.

Q All right. Now the crime of second degree murder is the intentional killing of another human being. And it does not require that you have premeditation, or that it occur in the case of a felony. That's not, that's murder in the first degree. We're talking about murder, the intentional killing of another human being. You understand that?

A Yes.

Q All right. In Criminal No., that's in Criminal 109922. In Criminal 109946, you're charged with two counts of carjacking.

THE COURT: And counsel, you're going to have to help me. The maximum for carjacking is?

MS. SANDLER: 30.

THE COURT: 30? I thought it was 25, but 30 years. All right.

BY THE COURT:

Q All right. So 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. You understand that?

A Yes.

Q All right. Now carjacking is the taking of another's automobile by force. You understand that?

A Yes.

Q All right. And that involves the presence, I think, of the victim in or about the vehicle when it is taken. So you understand those elements of that crime?

A Yes.

Q All right. And that's the two charges.

Now, if I place you on probation for any period of time, you will be required to report to a probation officer. You'd be required to stay employed or stay in school. You'd be required to obey all laws, not further violate any laws, not carry any weapons and not possess any weapons, including firearms, and to follow any special instructions that I may impose as a part of your probation.

If you do not do these things and you're brought back before me, and there's a hearing held, and it's determined that you violated these, these conditions of probation, you can be

returned to jail for the, up to the balance of the time that may have been suspended. You understand that?

A Yes.

Q Are you currently on parole or probation on any charges?

A No, sir.

Q All right. In connection with these charges, has anyone threatened you in any way or coerced you in any way to enter a plea of guilty?

A No.

Q Has anyone told you I will treat you more differently or differently, not more differently, than that which has been described here in court?

A No.

Q Has anyone told you I will treat you more leniently or go easier on you because you're entering a plea of guilty, other than what has been said here in this court?

A No.

Q All right. Now I've explained to you the elements of the charges. You know what took place. You've had the benefit of Ms. Sandler's counsel of law. Considering the facts as you know them, the elements of the crime, and the legal advice that you have received, are you entering this plea freely and voluntarily?

A Yes.

Q And for no other reason than as you understand the facts and the law that you are guilty of the charge in Criminal 109922, second degree murder, and guilty of the two charges in 109946, carjacking under Count 1 and carjacking under Count 9?

A Yes.

Q All right. You may be seated.

(Witness excused.)

THE COURT: I'm going to hear from the State as to what the State says it would have proven had this matter gone to trial.

MS. BRIDGFORD: Thank you, Your Honor. If the matter had proceeded to trial in Criminal No. 109946, the State would have presented testimony that a Mr. Jorge Medrano (phonetic sp.) on February 11th of 2008, at about 6:47 in the evening, contacted the police to report a carjacking that had just occurred to him.

He was in the 12500 block of Crystal Rock Drive when police responded. He was bleeding from his right leg that appeared to have a stab wound.

He told police that he had arrived home that evening in his 2000 Acura Legend, his home is located at 18862 Bent Willow Circle in Germantown, Montgomery County, Maryland, that as he was exiting from his vehicle he was approached by two black males.

The first black male asked Mr. Medrano if he could

use his cell phone. Mr. Medrano told the black male, "No." And as he was doing that, the black male produced what Mr. Medrano would describe as a large serrated kitchen knife and threatened Mr. Medrano, forcing Mr. Medrano into the backseat of his own vehicle.

The second suspect got into the driver's seat of the vehicle, and the three drove to a 7-Eleven located on Watkins Mill Road, at which time suspect number one, who was in the backseat with Mr. Medrano, threatened him with the knife forcing Mr. Medrano to provide an ATM card and a PIN number, while the suspect number two, who had been driving that car, went into the 7-Eleven and attempted to withdraw money.

Suspect number two came back out, because the PIN was incorrect. Suspect number one stabbed Mr. Medrano in the right leg. Mr. Medrano gave another PIN number, and suspect number two was successful at withdrawing funds from the ATM inside the 7-Eleven, at which point, the suspects drove Mr. Medrano to the 12500 block of Crystal Rock Terrace in Germantown, Montgomery County, Maryland. They released him, but drove off in his Acura. It was later found on Gray Eagle Court very close by unoccupied.

Mr. Medrano suffered, as I said, a laceration to his right leg, which required stitches to repair.

On February 17th, at about 11:19 p.m., police were again contacted by a Mr. Dwayne Bullock. Mr. Bullock was using

his 9-1=-1, or excuse me, his cell phone to call 9-1-1. He said that he was at the dead end of Afternoon Drive in Germantown, Montgomery County, Maryland. Officers responded.

Mr. Bullock advised that he had driven his vehicle, a 1997 Saturn, to the 12600 of Eagle, Gray Eagle Court on February 17th of 2008. As he was exiting, he was also approached by two black males.

The first of the two immediately displayed a large serrated kitchen knife, forced Mr. Bullock into the backseat. The other person, the other black male got into the driver's seat. Mr. Bullock described how his front feet, and Mr. Bullock is a rather large man, his feet were kind of wedged between the two front seats, while the first suspect held a knife at him demanding his ATM card.

Mr. Bullock was taken to Chevy Chase Bank, which is located at 19781 Frederick Road, and money was withdrawn from that bank. Another attempt was made at withdrawing money at a second bank, but that was unsuccessful. Mr. Bullock was then released in the dead end of Afternoon Drive.

ATM cameras at the Chevy Chase Bank captured one of the two suspects using Mr. Bullock's ATM card. And a clothing description of that person was developed from those ATM images. There were also ATM images from the 7-Eleven. All of this was provided to the 5 DSAT (phonetic sp.) team and other police units of Montgomery County police. Both Mr. Bullock and Mr.

Medrano also provided descriptions of the two suspects.

Based upon this information, as well as field interviews that were conducted on the date when Mr. Medrano was carjacked, suspects were developed. And as I said, this information was given to 5 DSAT team. On February 20th of 2008, a Sergeant Massen (phonetic sp.) of the 5 DSAT team observed a person wearing the exact clothing that had been worn during the carjacking of Mr. Bullock.

This person was, there were two people. They also matched the physical description of the two suspects, as identified by Mr. Bullock and Mr. Medrano. Those two suspects were stopped. They were identified as the defendant, Mr. Calvin Currica and Mr. Harrison J. Bryant.

Both were arrested. They were advised of their rights. During the course of the interviews, both admitted to the carjackings. In addition, during a search incident to arrest of Harrison Bryant, the car key to the 1997 Saturn owned by Mr. Dwayne Bullock was recovered from Mr. Bryant.

Mr. Bryant also advised the police where that vehicle could be located. And it was located blocks from where the two individuals were arrested.

All these events occurred in Montgomery County, Maryland.

Your Honor, if the matter in Criminal No. 109922 had

proceeded to trial, the State would have presented testimony that police received a call for what was initially reported as an unconscious person at an apartment building at 13515 Georgia Avenue in Silver Spring, Montgomery County, Maryland. The person was described as being in the floor of the basement of the building outside of an apartment and a laundry room.

First responders responded, as well as a maintenance person from the apartment complex. They found this person deceased. This person was later identified as a Gerald Lekio (phonetic sp.).

Mr. Lekio's body was transported to the Medical Examiner's Office in Baltimore and an autopsy was performed. His death was ruled a homicide, and the manner of death was sharp force injuries. There were approximately 14 stab and cutting wounds to Mr. Lekio's body.

Police received an anonymous tip that a person by the name of Calvin Currica had been involved in Mr. Lekio's murder. This investigation was going on at the same time as the investigations of the carjackings of Mr. Bullock, excuse me, Mr. Medrano. The information was shared with the 5 DSAT team. At the time when the 5 DSAT team arrested Mr. Harrison Bryant and Mr. Calvin Currica, they were also advised of their rights with regard to this homicide investigation and interviewed by members of the Montgomery County Police Department.

Mr. Currica advised that on the date of the homicide,

again, which was February 15th of 2008, it was his birthday. He had been spending the day with Mr. Harrison Bryant and also a Mr. Randall Francis. They had been throughout the Silver Spring area of Montgomery County. They had eventually wound up that evening in the area of Hewitt Avenue and Georgia Avenue.

They had gone into a Citgo station, which is about next door to the apartment complex. Once they left the Citgo station, the decedent, Mr. Gerald Lekio, had approached for the purpose of purchasing controlled dangerous substances. Neither of, none of the three had drugs to sell Mr. Lekio, but it was represented that they did.

They went into the laundry room of the address 13515 Georgia Avenue, at which point Mr. Calvin Currica and Harrison Bryant began beating Gerald Lekio. Quite a struggle ensued. During the course of that struggle, Calvin Currica produced a knife and stabbed Mr. Lekio the 14 times, as previously mentioned.

The three individuals, Harrison Bryant, Calvin Currica, and Randall Francis then fled the building leaving Mr. Lekio, who eventually made his way to the basement floor right outside the laundry room. Then when Mr. Bryant and Mr. Currica were arrested -- excuse me. While this was going on, while the beating and stabbing was going on, Randall Francis was at the doorway to the laundry room preventing anyone from coming into the laundry room while these events were transpiring and

preventing anyone from getting out.

Mr. Francis also indicated when he was arrested and questioned by police that this was for the purpose of robbing Mr. Lekio of the money that he had to purchase drugs.

When all three individuals were arrested, their clothing was taken by the police. There were also DNA buccal swabs taken from the three individuals. That evidence was examined by the crime lab here with Montgomery County police. And on Mr. Currica's shoes was DNA profile, a mixture DNA profile that would be consistent with both Mr. Currica and the decedent, Gerald Lekio.

On the jacket worn by Harrison Bryant, there was a DNA mixture profile consistent with Harrison Bryant and the decedent.

And on Mr. Francis's shoes, there was a DNA profile of the decedent, Gerald Lekio.

All these events occurred in Montgomery County, Maryland.

MS. SANDLER: The only correction --

THE COURT: Surely.

MS. SANDLER: -- I just want to be clear is we agree that that's what the State would have proven.

THE COURT: That's all that --

MS. SANDLER: First of all, there's no additions or corrections with regard to the carjacking proffer.

With regard to the murder, the allegations that the State has just stated or the facts that she just stated with regard to Harrison Bryant and his fighting and beating of Mr. Lekio, we understand came from the statement of Mr. Francis. That's the only addition that I -- not the defendant's statement when he was interrogated.

THE COURT: Okay. I appreciate that.

MS. SANDLER: No other additions or corrections.

THE COURT: All right. Mr. Currica, please stand then, sir.

Mr. Currica, the Court has heard your plea today that the Court finds is freely given, voluntarily given, and intelligently given.

I've also heard the facts that the State said they would have tended and attempted to prove in connection with this matter. They support the plea that you have entered.

And accordingly, the Court will find you guilty in Criminal No. 109922 of second degree murder, and in Criminal No. 109946, Count 1, carjacking, Count 9, carjacking.

I'll ask the State at this juncture to amend the indictment in Criminal No. 109946.

MS. BRIDGFORD: I think it's 109922.

THE COURT: No, it's the other one. You're right. It is the other one.

MS. BRIDGFORD: Your Honor, (unintelligible) behind

you? Would you mind if I looked at it? I just want to make sure I've got the correct statute --

THE COURT: What number?

MS. BRIDGFORD: -- section. The first volume. Thank you very much.

THE COURT: All right. Ms. Sandler, are you requesting a presentence investigation?

MS. SANDLER: This is what I would say, and then I would defer to the Court. I --

THE COURT: How about yes or no?

MS. SANDLER: Well, let me say why no. There's no, he has no criminal record. And I intend to call an expert at sentencing, which I think would cover way more than a presentence investigation would even be able to show the Court. So with that understanding, I would say no.

THE COURT: Well, you know, it's not just a question of record, but it's also a question of things like mental health, physical health, and things of that nature.

MS. SANDLER: Well, that will be covered --

THE COURT: And you're going to cover that?

MS. SANDLER: Absolutely.

THE COURT: Okay.

MS. SANDLER: And I'll say also that this particular expert that I intend to use, I mean, he's very, very thorough. I'm going to have him testify. And the report will be

obviously supplied --

THE COURT: By training, a social worker or psychologist?

MS. SANDLER: Neuropsychologist.

THE COURT: Neuropsychologist.

MS. SANDLER: And in doing the evaluation covers all his mental health history.

THE COURT: Okay.

MS. SANDLER: And I'll provide everything to the State.

THE COURT: All right.

MR. MALONEY: We would be asking for the presentence investigation. It's not only for our purposes to have a court authorized one and sanctioned unbiased one, but also because they like it up at the Department of Corrections when they get there.

THE COURT: Well, I agree with that.

MR. MALONEY: Yes.

THE COURT: All right. The rules require that if either party requests a presentence investigation one will be ordered. When was our trial date in this case?

MS. SANDLER: The trial date was September. We had a --

THE COURT: Okay.

MS. SANDLER: -- September 8th trial date, and then

we had the second, the carjacking trial date was on the 14th of October.

THE COURT: Well, what about disposition on the 14th of October?

MS. SANDLER: I can tell the Court there is no way I can have the evaluation and everything done. I'm in the process of gathering records, and I've had some trouble.

THE COURT: Too soon?

MS. SANDLER: Too soon, yes.

THE COURT: Okay.

MS. SANDLER: I was actually going to ask the Court --

THE COURT: I was thinking that that was plenty of time, but if you need more time --

MS. SANDLER: No. Just with the different doctors that I've considered, I mean, none of them could see him --

THE COURT: Okay. Do you have a suggestion then?

MS. SANDLER: I was going to ask the Court for November, if the State was available, like the week of the 10th.

THE COURT: Okay. Let me take a look. Thank you. I tell you what, show it to Ms. Sandler for her satisfaction.

MS. SANDLER: And then I'd ask the Court for at least an hour. I mean, the doctor should be 45 minutes or so.

MR. MALONEY: What type of doctor?

MS. SANDLER: A neuropsychologist. I'll send you the CV and everything.

THE COURT: Nine o'clock, November 18th?

MS. SANDLER: That's fine.

THE COURT: Okay with the State? Okay.

MS. SANDLER: That's fine.

THE COURT: Andrea, would you make a copy, two copies of this?

Does the State require additional time at sentencing?

MR. MALONEY: Yes. This is the first we've heard about their expert, so we may --

THE COURT: No.

MR. MALONEY: -- want to hire around. We'll have to wait a see. So maybe we'd better to make a little bit longer than that.

THE COURT: Okay.

MS. BRIDGFORD: She mentioned it to me.

MR. MALONEY: Oh, I'm sorry, first I have heard of it.

THE COURT: I will, I'll extend it out to two hours. My anticipation is that we'll have the morning, but --

MS. SANDLER: Well, since --

THE COURT: Well, what I wanted to do, Andrea, I wanted to put one memo in each of the two jackets --

THE CLERK: Oh.

THE COURT: -- so one more. I'm sorry. All right.

I presume that, is Mr. Currica being held without bond at the present time?

MS. SANDLER: Yes.

THE COURT: All right. The Court will continue to hold him without bond pending the resolution of that.

Mr. Currica, you'll be contacted in connection with the presentence investigation. Ms. Sandler will guide you further in connection with dealing with that and how you should respond to it appropriately. And she will be also, as I understand it, be preparing the necessary information for me when you return in, on the 18th of November. All right?

All right. With that, unless there's something further, we'll adjourn.

MS. SANDLER: Thank you, Your Honor.

MS. BRIDGFORD: Thank you, Your Honor.

MR. MALONEY: Thank you, Your Honor.

THE COURT: All right.

(The proceedings were concluded.)

am

√ Digitally signed by Audrey Murphy

DIGITALLY SIGNED CERTIFICATE

DEPOSITION SERVICES, INC. hereby certifies that the foregoing pages represent an accurate transcript of the duplicated electronic sound recording of the proceedings in the Circuit Court for Montgomery County in the matter of:

Criminal Nos. 109922 and 109946

STATE OF MARYLAND

v.

CALVIN CURRICA

By:

Audrey Murphy

Audrey Murphy
Transcriber

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C § 2254

CALVIN F. CURRICA
D.O.B 2-15-86
ID# 354-168
18701 Roxbury Road
Hagerstown MD 21746

V.

civil action No. PX-16-3259

WARDEN- RICHARD MILLER

PETITION FOR WRIT OF HABEAS CORPUS

1. Name and location of the Court which entered the judgment/conviction being challenged.
Montgomery County Circuit Court located at 50 Maryland ave. Rockville MD, 20850

2. Date of judgment or sentencing.
November 18th, 2008

3. Length of sentence.
85 Years

4. Nature of offense/charge dispositions

#001 Carjacking Guilty
#002 Con-Carjacking
#003 Kidnapping
#004 Con-Kidnapping
#005 ARmed robbery
#006 Con-ARmed robbery
#007 Assault-first degree
#008 Conspiracy/assault-first degree
#009 Carjacking Guilty
#010 Con-carjacking
#011 Kidnapping
#012 Con-Kidnapping
#013 Armed robbery
#014 Con-Armed robbery
#015 Att-Carjacking
#016 Con-Carjacking
#017 Att-Kidnapping
#018 Con-Kidnapping
#019 Att-Robbery w/dangerous weapon
#020 Con-ARmed robbery
#021 Assault-First degree
#022 Conspiracy/Assault-First degree

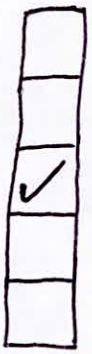
Charges/Charge dispositions

#001 Murder/second degree Guilty
#002 Armed robbery

2.)

5. What was Your Plea?

a.) Not Guilty
b.) Not Guilty on Agreed Statement of Facts
c.) Guilty
d.) Nolo Contendere
e.) Alford Plea



b. Did you appeal or seek leave to appeal to the maryland Court of special appeals? NO

7. Did You file a petition for writ of certiorari to the Maryland Court of appeals? NO

8. Did You file a petition for writ of certiorari to the United States Supreme Court? NO

9. Have you filed any Post-Conviction Petitions challenging this judgment/sentence? Yes
Provide the following information for each Post-Conviction Petition:

A.) Post-Conviction petition was filed at Montgomery County Circuit Court located at 50 Maryland ave. Rockville MD, 20850.

B.) Post-conviction petition was filed on June 2nd, 2014.

C.) What grounds did you raise?

1. Breach of plea agreement, supporting facts of a not knowing and intelligent plea, and ambiguity/unclear statements from judge involving sentencing terms.

2. Ineffective assistance of Counsel for failure to file an timely application for leave to appeal when client requested attorney to do so.

D.) What was the result?
Petitioners Post-Conviction Petition was granted in part and denied in part.

E.) What was the date of the decision?
November 24th, 2014, Judge ruled on the bench.

F.) Did you file an application for leave to appeal to the Court of special appeals? Yes

G.) What was the result?
Petitioners application for leave to appeal was denied by the Court of Special appeals.

H.) What was the date of the decision by the Court of Special appeals?
August 12th, 2015

4.)

I.) If the Court of special appeals granted Your application for leave to appeal but affirmed a decision denying post-conviction relief, did You file a petition for Writ of certiorari to the Court of appeals?
Yes

J.) What was the result?
The Court of appeals denied petitioners writ of Certiorari.

K.) What was the date of the decision by the Court of appeals?
October 19th, 2015

10. Have You filed any other actions in any state or federal Court challenging the judgement which is the subject of this petition? Yes

Petitioner provides an explanation of what was filed, where, when, and what the result was.

a.) on november 21st, 2008, petitioner filed a motion for modification of sentence. This motion was ultimately denied on May 7th, 2013, The motion was filed at Montgomery County circuit Court.

b.) On November 21st, 2008, Petitioner filed an application for review of Sentence by a three Judge Panal, Petitioner Sentence was affirmed without a hearing on September 2nd, 2009.

C.) On June 19th, 2012, Petitioner filed a motion to correct an illegal Sentence. The Court denied Motion without an hearing on July 16th, 2012. All motions and petitions were filed in the Circuit Court for Montgomery County.

11. Do You Currently have pending in any State or federal Court any motion, Petition, or appeal Concerning the Judgment being Challenged in this Petition? NO

12. Petitioners Conviction became final November 18th, 2008, receiving a Sentence of 85 years. Petitioner had one year from the date of his Conviction to file a 2254 Habeas Corpus Petition, which was never filed. Petitioner instead Chose through Counsel to file a application for leave to appeal. Filing an appeal stays the one year deadline of a Habeas Corpus Petition, Counsel never filed the appeal, leaving Petitioner to raise this issue on a Post-Conviction Petition.

b.)

From the time Petitioner application for leave to appeal was to be filed to his Post-Conviction process, years had passed by beyond his one year mark to file a habeas Corpus Petition. Filing a Post-Conviction stays the one year mark from a final Conviction.

Petitioner Post-Conviction was denied in part and granted in part on November 24th, 2014. The issue that was granted was for the failure of Counsel to file the application for leave to appeal when Petitioner requested Counsel to do so, Post-Conviction judge granted Petitioner a belated application for leave to appeal which Petitioner filed in 2015 with the Court of Special appeals. The application for leave to appeal was denied august 12th, 2015. Petitioner then filed for a writ of Certiorari on September 9th, 2015. The writ of Certiorari was denied october 19th, 2015.

The date of the denial of Petitioner writ of Certiorari, october 19th, 2015, was when Conviction became final. The one year limitation Period did not apply to Petitioner Conviction back on November 18th, 2008, because of appeals, motions, and Post-Conviction Procedures. The one year time Period for Purposes of filing a federal habeas Corpus Petition begins upon a final Conviction which began on October 19th, 2015.

A. GROUND ONE: BREACH OF PLEA AGREEMENT

The sentencing terms in petitioners plea agreement was for a sentencing range of (30-51) years. Two months later petitioner received an 85 year sentence at his sentencing hearing. According to petitioners reasonable understanding of his sentencing terms in his plea-agreement, was for him to receive a sentence rangeging from (30-51) years. Petitioner plea-agreement was breached according to his understanding. The court nor the state never explained to petitioner during guilty plea proceedings, that the Court was not bound by the agreement. Without this knowledge petitioner relied upon the sentencing terms/guidelines in his guilty plea. The Court by law was required on record to annouce all terms, conditions, and consequences of plea bargains,

The Court never explained during guilty plea hearing, that the guidelines in the case at bar was discretionary. Had petitioner been advised that his guidelines were discretionary, Petitioner would have went to trial, because serving an 85 year sentence is not a benefit of a guilty plea. The Court stated on record that all (3) charges carries the possibility of being put in jail for (30) years, which would be 90 years for (3) charges, The Court then stated: I can impose whatever sentence.

When the Court stated: (all (3) charges carries the possibility of being put in jail for (30) years), Petitioner and Counsel understood the Courts statement to mean, that the maximum penalty by law for the (3) charges he faces carries, (30) years for each charge. The law requires all Courts to mention the maximum penalty by law on the record for a criminal defendant, although he or she may have pleaded guilty to lesser time.

The Court also stated on the record: (I can impose whatever sentence). The statement by the Court was unclear and ambiguous, because the court did not explain what kind of sentence, or punishment he was to impose. At the time of the statement, the Court never mentioned anything about disregarding guidelines or going above them. Petitioner and Counsel believed that petitioner would receive a sentence in between (30-51) years, because nothing else was said. A sentence can be different punishments besides a prision sentence. A sentence can be parole, Probation, jail time, Community service, house arrest, Camp, and e.t.c. Any statement by the Court should be said with a clear understanding for both parties, this is the essence of the meeting of the minds.

The Court did not fully explain himself to petitioner when he stated: I can impose whatever sentence, which is why the statement was unclear and ambiguous. The only sentence that was clear and unambiguous was sentencing guidelines set forth in plea-agreement, and it was clearly stated on record for (30-51) years. As a result of the Courts mistakes, petitioner serves an unlawfull prision term.

GROUND ONE: SUPPORTING FACTS

During Petitioners 2008, plea and sentencing hearings, the record reveals a sentence of incarceration, that was for (30-51) years. see Tr. No.1, P.3 lines 13-23 and Tr. No.2, P.4, lines 1-14 and 19-25, for record of plea hearing.

Defense attorney during sentencing hearing advised the Court of the negotiated plea involving sentencing guidelines that the state came up with, See Tr. No.1, P.12 lines 14-18, Tr. No.2, P.13, lines 3-8 and 13-20. The state breached petitioners plea according to his understanding based on the record, when the state told the Court to disregard petitioners sentencing guidelines, see Tr. NO. 3, P.38, lines 10-19 and Tr. No.4, P.40, lines 6-15. The Court Complied with the states request, which resulted in petitioners guidelines to be rejected, an petitioner received a (85) year sentence.

See Tr. No.5, P.51, line 25 and Tr. No.6 P. 52, lines 1-14, where defense attorney objected to the request from the State to disregard Sentencing guidelines for Petitioner. Defense attorney and Petitioner relied upon Sentencing guidelines, and the State and Court breached it, by going beyond and above them. This is an error of the Court and State. The Court never gave petitioner a chance to withdraw Plea once it rejected it. These inactions prejudiced Petitioner of a fair Plea bargain, one which he and defense attorney relied upon.

During Petitioners august 11th, 2008, Plea hearing, the Court or the State never advised Petitioner that his guidelines were discretionary and that the Court can go above them at the Sentencing hearing. Neither did the Court give Petitioner a chance to withdraw guilty Plea in the event that the Court will not abide by the guidelines, These are the facts Supporting Petitioners Claim and issue of a breach of Plea. Petitioners rights were not protected by the 14th amendment, because Petitioner did not receive a fair Plea bargain. As a whole Petitioners Constitutional rights were violated. Petitioner should have received the benefit of his Plea bargain, as Pleas are likend to Contracts which Cannot be broken.

11.)

GROUND TWO: PLEA NOT KNOWING AND VOLUNTARILY ENTERED

Petitioner Plea agreement was not knowing and voluntarily entered based on the Courts failure to advise him that the Court was not bound by the Sentencing guidelines of the plea-agreement. Without this knowledge to petitioner, he relied upon the terms of his agreement. Petitioner accepted guilty Plea upon reliance of a Sentencing range of (30-51) years.

Courts by law are to award criminal defendants a fair Plea bargain, and trial as required by the due process Clause. Without a fair Court proceeding, a criminal defendant may not be aware of certain procedures and consequences governing his circumstances. Petitioner did not realize upon acceptance of his Plea, that he would be facing alot more prision time during his Sentencing hearing in the future. Petitioners Plea was invalid because he was blind to a much harsher sentence, that he received at his sentencing hearing.

GROUND TWO: SUPPORTING FACTS

Facts Supporting ground two are located in the august 11th, 2008, Plea hearing transcripts. See tr. No.1, P.3 lines 13-23, and tr. No.2, P.4, lines 1-14 and 19-25, where the Court did not warn petitioner that it was

not bound by the Sentencing reccomendation. Had the Court advised petitioner of such advise, petitioner would have Sought a new avenue such as trial, or a jury trial, instead of pleading guilty. The Court prejudiced petitioner by not allowing him his right to trial, by permitting him to withdraw his plea, in the event the Court was not bound by the agreement.

GROUND THREE: THE COURT ERRED BY NOT ALLOWING PETITIONER TO WITHDRAW PLEA ONCE IT HAD REJECTED THE AGREEMENT

By law Courts are to allow criminal defendants a oppurtunity to withdraw a guilty plea once the Court rejected the agreement; when the state told the Court to disregard Sentencing guidelines, the Court agreed, without allowing petitioner a oppurtunity to withdraw his plea. Defense attorney then objected to the state response to the Court, when the State told the Court to disregard petitioner sentencing guidelines, Defense attorney reminded the Court of petitioners original guideline range of (30-51) years, once the Court heard the objection, the court was suppose to Sentence petitioner according to his guidelines range, and if not, allow petitioner to withdraw his plea in the event that the Court will not accept the guidelines range. The Court erred by not allowing petitioner to withdraw his plea.

Had Petitioner been afforded his right to withdraw his plea, Petitioner could have plead anew with a different judge, or went in front of a Jury trial. By pleading anew with a different judge chances are his plea could have served him lesser prision time. By going in front of a jury trial, the jury and Court would have had to find Petitioner guilty beyond a reasonable doubt. Petitioner lost these rights due to the Courts failure to allow him to withdraw his plea, Petitioners Constitutional rights were violated, and Petitioner was deprived of a fair plea bargain.

GROUND THREE: SUPPORTING FACTS

See sentencing hearing transcripts dated november 18th, 2008, where the Court did not allow Petitioner to withdraw his plea. See tr. No.1, P.12, lines 14-18,- TT. No.2, P. 13, lines 3-8 and 13-20,- Tr. No.3, P. 38, lines 10-19; and Tr. No.4, P.40, lines 6-15. When the Court rejected the Sentencing reccomendations, no where on record did the Court allow Petitioner to withdraw his plea, once the Court was not bound by it. The Court on record was obligated, once it was not bound by the agreement, to allow Petitioner to withdraw his plea. By this inaction the Court erred.

GROUND FOUR: THE COURT OF APPEALS ERRED BY SAYING THERE HAS BEEN NO SHOWING THAT REVIEW by CERTIORARI IS DESIRABLE AND IN THE PUBLIC INTEREST

The Court of appeals of Maryland was the last state proceeding for petitioner, and the Court denied him, saying there has been no showing that review by Certiorari is desirable and in the Public interest, which is an error of the Court. All issues that petitioner raised in previous motions and petitions, were all showing a desirable review for the public interest. Whenever a Plea-agreement was not met, or a Plea-agreement was not knowing and voluntarily entered as long as a Criminal defendant can prove it by the record, than it is enough showing for the Public interest of justice.

The Court should have decided the case and awarded the proper remedy for petitioner. Interest of justice means - the proper view of what is fair and right in a matter in which the decision maker has been granted discretion. The Court of appeals did not properly view petitioners case. Had the Court used it's discretion wisely they would have seen that petitioner Constitutional rights were Violated. The Court erred by not granting petitioners certiorari.

One cannot trust in a judicial system that does not use its discretion wisely, for it leaves uncertainty for criminal defendants whose lives are at stake. Cases like petitioners should be a concern to the judicial system, because of the uncertainty and unfairness of the lower courts. Petitioner plea-agreement was rejected without a opportunity to withdraw plea, and petitioner plea was not knowing and voluntarily entered because he did not know, or was told that his guidelines were discretionary, and that the court can go beyond them at sentencing. As such his plea-agreement was breached by the state at sentencing, because the state told the court to disregard the guidelines that petitioner relied on. According to petitioner reasonable understanding based on the record his plea was breached. Petitioner has shown a desirable cause for the public interest of justice.

13. If any of the issues that you are raising in this petition have not been presented to a state court, explain which issues are being raised for the first time and why.

16.)

Grounds (2) and (3) headings/titles have been raised for the first time in this petition. In previous Motions and petitions, Petitioner argued the facts and evidence supporting the headings/titles of grounds (2) and (3). Petitioner already argued grounds (2) and (3) as evidence of the Courts breach of his plea-agreement, without the headings/titles of grounds (2) and (3). Petitioner raised all issues in this petition under one issue, (breach of plea-agreement), in previous state petitions and motions. Petitioner seperated one issue into three issues, for purposes of the Court to review in sections.

Ground (4) has never been previously raised. This new ground is raised for the first time, as a result from the Court of appeals denying a writ of Certiorari.

14. Do you have any other sentences to be served after you complete the Sentence/Commitment that is being challenged in this petition?
NO

17.)

WHEREFORE, Petitioner prays that the Court grant him all relief to which he may be entitled in this action.

A. ORDERED that the Court reduce Petitioner Sentence from (85) years, to Plea-agreement term, (30) to (51) years, and it is further

B. ORDERED that the Court grant Petitioner a new trial for ground (2) and (3), set forth in this Petition, and it is further

C. ORDERED that the Petitioner receive a hearing in Court regarding the stipulations set forth in the Petition, and it is further

D. ORDERED that Petitioner be awarded Such other and further relief as the nature of his Cause may require.

I DECLARE UNDER THE PENALTIES OF PERJURY THAT THE INFORMATION ABOVE IS TRUE AND CORRECT.

Signed this thursday of September 22nd, 2016.

Calvin Currica
18701 Roxbury Road
Hagerstown, MD 21746

CERTIFICATE OF SERVICE

I HEREBY, Certify that on this thursday of September 22nd, 2016, a copy of this Habeas Corpus petition under 28 U.S.C. § 2254, was mailed, Postage Prepaid, to the United States district Court at 101 West Lombard Street - Baltimore, Maryland 21201.

Calvin Currica

CALVIN F. CURRICA,	*	IN THE
Petitioner,	*	CIRCUIT COURT
V.	*	FOR
STATE OF MARYLAND,	*	MONTGOMERY COUNTY
Respondent.	*	Case No.(s) 109922 & 109946

* * * ************************* * * *

PETITION FOR POST CONVICTION RELIEF

Petitioner, Calvin F. Currica #354-168, pro se, pursuant to Maryland's Uniform Post Conviction Procedure Act, Md. Ann. Code, Crim. Proc. Art. § 7-101 et seq., and Maryland Rule 4-401 et seq., and petitions this court to grant the requested post conviction relief in this case. In support thereof Petitioner states the following:

1. That Petitioner is a layman of the law, indigent, and cannot afford the filing fees and court costs associated with the filing of this proceeding. Accordingly, Petitioner requests leave of this court to proceed in forma pauperis.
2. That Petitioner is a prisoner who is currently incarcerated at the Western Correctional Institution, 13800 McMullen Hwy., SW, Cumberland, Maryland 21502, under identification number 354-168.

I. CASE HISTORY

On August 11, 2008, Petitioner pled guilty to one count of second degree murder and two counts of carjacking. The guidelines in the plea called for a sentencing range of 30 to 51 years of incarceration.

On November 18, 2008, Petitioner received an 85 year sentence to be served in prison. He received a 30 years sentence for 2nd degree murder, 30 year sentence for carjacking, and a separate 25 years sentence for a separate carjacking. All three counts were ran consecutively, resulting in an 85 year sentence. After sentencing, Petitioner's counsel filed: a) An Application for Sentence Review Panel, filed 11/21/08; and, b) A Motion for Reconsideration, filed 11/21/08.

* II. ALLEGATIONS OF ERROR *

A. Breached Plea Agreement.

Petitioner alleges that his guilty plea was breached by the state as well as by the trial court. From the conclusion of the plea arraignment Petitioner's understanding of minimum-maximum sentence, based off of oral and written plea agreement, was that he would receive a sentence of 30 to 51 years in prison. At the conclusion of the plea arraignment there was no other sentence mentioned, neither did the judge inform Petitioner that the court was not bound by the plea agreement.

Petitioner's sentence was well above the guidelines established by the agreement. Consequently, Petitioner's understanding of his sentence, based solely on the record of the proceeding itself, is neither misplaced or ambiguous. Petitioner's plea was therefore breached by both the state's attorney and the judge, making the sentence illegal. The prosecutor and defense counsel calculated sentencing guidelines together as part of the plea agreement for Petitioner. At the sentencing phase the prosecutor breached that agreement by then asking the judge to

disregard sentencing guidelines already agreed to, and the court considered and then disregarded those agreed to guidelines. Petitioner's constitutional rights were deprived due to the unfair plea bargain that was not met, causing the sentence he received to be illegal.

B. INEFFECTIVE ASSISTANCE OF COUNSEL

At the conclusion of sentence, Petitioner was advised by the court to file an application for leave to appeal the conviction. Petitioner requested defense attorney to file the application due to the fact that Petitioner was entitled to file one, he didn't know how to file one, and he was/is a layman of the law. Defense counsel responded to Petitioner that she would in fact file the application on Petitioner's behalf. After Petitioner's oral and written request for his defense counsel to file the application for leave to appeal, and after defense agreed to do so, the application was still not filed. This inaction rendered counsel's performance ineffective; ie. it was both deficient and the deficiency prejudiced Petitioner.

Defense counsel was also ineffective for not informing Petitioner that new counsel needed to be sought and that she would no longer be representing Petitioner in any way after the sentencing. Petitioner did not knowingly and / nor intelligently waive any allegations of error in an application for leave to appeal his conviction and sentence for post conviction purposes.

III. Statement of Facts

Based upon facts from Petitioner's August 11, 2008 plea proceedings, the record reveals an agreed sentence of incarceration that called for 30 to 51 years. See: Exhibit No.1, p.3, lines 13-23, and Exhibit No.2, p.4, lines 1-14 & 19-25.

Petitioner's plea agreement was violated due to a breach of oral and written plea agreement conducted by the trial court and prsecutor. Defense counsel advised the court of the negotiated plea that was agreed to. See: Exh. No.1, p.12, lines 14-18, Exh. No.2, p.13, lines 3-8 & 13-20. (See also: Exh. No.3, p.38, lines 10-19 and Exh. No.4, p.40, lines 6-15, where Prosecutor asks the court to disregard the agreed upon guidelines). The trial court complied with the prosecutor's request, which resulted in Petitioner's agreed upon sentencing guidelines being rejected and him being being given an 85 year sentence. (See: Exh. No.5, p.51, line 25, Exh. No.6, p.52, lines 1-14, where defense counsel objected/contested the request). This took place on November 18, 2008.

IV. Argument

A. Breached Plea Agreement

Petitioner asserts that his plea agreement was breached by the court and state, resulting in an illegal sentence. The record of the proceedings show that Petitioner did not agree to an 85 year sentence, rendering that sentence illegal. Petitioner agreed to the original 30 to 51 year sentence guideline and relied upon that agreement as the basis of his plea.

At the closing of the plea hearing, the prosecutor ordered a

pre-sentence investigation report ("PSI") because defense counsel never ordered one since Petitioner had no criminal background and it was the first adult criminal charges ever brought against him. However, a PSI was never a part of Petitioner's actual plea bargain. See Baines v. State, 416 Md. 604, 7 A.2d 578 (2010):

> "The defendant agrees as part of the plea agreement to request a full and complete record check or P.S.I. (Pre Sentence Investigation) by Parole and Probation after accepting the plea and prior to sentencing. If the information provided by Parole and Probation would yield an offender score greater than that set forth above, then the state is free to request at the of sentencing any period of incarceration, which is within the confines of the sentencing guidelines. Any and all offender scores are to be determined pursuant to the instructions set forth in the Maryland sentencing guidelines manual. The state is free to file for and request mandatory sentencing if the information yielded by Parole and Probation reveals that the defendant is a candidate for mandatory sentencing. This offer expires and will be treated as having been automatically rejected if not accepted by the defendant on or before the first motions' date. This plea offer is automatically rejected if the defendant litigates motions."

The prosecutor erred at Petitioner's sentencing by asking the court to go beyond the guidelines and to give Petitioner a much harsher sentence than the one he bargained in good faith for. The prosecutor felt led to breach the agreement for reasons set forth in the P.S.I. report. However, the P.S.I. report was never a part of the plea agreement or negotiations. Petitioner and his defense counsel never had any discussions with the state over a P.S.I. report and certainly did not agree on any aspect of one. This is why, and the record reflects, defense counsel contested the prosecutor's request for breaching the original plea. The trial

court and prosecutor denied Petitioner of a fair process.

In the instant case, Petitioner relies upon two cases identical to Petitioner's argument. See Cuffley v. State, 416 Md. 604, 7 A.2d 578 (2010); Baines, supra. Both cases state that test for determining what the defendant reasonably understood at the time of the plea is an objective one. It depends not on what the defendant actually understood the agreement to mean, but rather, on what a reasonable lay person in the defendant's position and unaware of the niceties of sentencing law would have understood the agreement to mean, based on the record developed at the plea proceeding. Consequently, the defendant's actual knowledge, gleaned from sources outside the plea agreement (in other words extrinsic evidence), is irrelevant to the determination." id. at 579, Md. Lexis 690 at 22.

Therefore, if examination of the terms of the plea agreement itself, by reference to what was presented on the record at the plea proceeding before the defendant pleads guilty, reveals what the defendant reasonably understood to be the terms of the agreement, then that determination governs the agreement. If the agreement is breached, either by the prosecutor or the court, then the defendant is entitled to the benefit of the bargain, which, at the defendant's option, is either specific enforcement of the agreement or withdrawal of the plea. id. at 583, Md. Lexis 690 at 19.

In the instant case, the record reveals the terms of the plea agreement was for a sentence of 30 to 51 years of incarceration.

Nothing in the record reveals that the defendant was given knowledge of a sentence any higher than 51 years. Petitioner's understanding of the terms of the plea was neither misplaced or ambiguous. The record clearly shows that Petitioner was never informed of any offer other than the one indicated in the record and he was never informed that any contrary result was possible. Petitioner, therefore, requests that the sentence and plea be vacated and that he be sentenced to the terms agreed upon within the 30 to 51 year range.

Petitioner's plea bargain is in violation of Federal Rules of Criminal Procedures, Rule 11, 18 U.S.C. This Rule requires a district court to address a defendant in open court and determine if he understands a number of facts before accepting a plea of guilty, including: 1. the nature of the charges; 2. the mandatory minimum and maximum possible penalty provided by law, including any supervised release term, and; 3. the fact the Court must consider any applicable sentencing guidelines but may depart from them under some circumstacnes. Fed. R. Crim. Proc. Rule 11(c)(1).

In the instant case, #3 of the Fed. R. Crim. Proc. 11(c)(1) was violated by trial court during Petitioner's plea proceedings. Trial court never explained to Petitioner that he may depart from sentencing guidelines and that he does not have to abide by such guidelines. Had Petitioner been fully advised of such rules he would have withdrawn his plea bargain before accepting the plea deal. Without being so advised Petitioner relied upon the sole information provided to him, that he would be sentenced within the

30 to 51 year range.

Petitioner's plea is also in violation of Md. Rule 4-242 and 4-243. The principal purpose of 4-243 is to eliminate the possibility that the defendant may not fully comprehend the nature of the agreement before pleading guilty. Anything less would offend notions of due process. See Santobello, 404 U.S. at 261-62. Petitioner's plea is in violation of the Md. Rules because the court did not attempt to make sure Petitioner was aware of mandatory procedures of a plea bargain such as whether the guidelines were binding on the court.

Md. Rule 4-243 reads:

> (A) Conditions for Agreement. (1) The defendant may enter into an agreement with the State's Attorney for a plea of guilty or nolo contendere on any proper condition, including one or more of the following: ...
> (6) that the parties will submit a plea agreement proposing a particular sentence, disposition, or other judicial action to a judge for consideration pursuant to section (c) of this rule.
>
> (C) Agreements of Sentence, Disposition, or Other Judicial Action. -- (1) Presentation to the Court.--If a plea agreement has been reached pursuant to subsection (a) (6) of this Rule for a plea of guilty or nolo contendere which contemplates a particular sentence, disposition, or other judicial action, the defense counsel and the State's Attorney shall advise the judge of the terms of the agreement when the defendant pleads. The judge may then accept or reject the plea and, if accepted, may approve the agreement or defer decision as to its approval or rejection [redacted] until after such pre-sentence proceedings and investigation as the judge directs.
> (2) Not Binding on the Court.-- The agreement of the State's Attorney relating to a particular sentence, disposition, or other judicial action is not binding on the court unless the judge to whom the agreement is presented approves it.
> (3) Approval of Plea Agreement.-- If the plea agreement is approved, the judge shall embody in the judgement the agreed sentence, disposition, or other judicial action encompassed in the agreement or, with

> the consent of the parties, a disposition more favorable to the defendant than that provided for in the agreement. ...
>
> **(D) Record of Proceedings.** -- All proceedings pursuant to this Rule, including the defendant's pleading, advice by the court, and inquiry into the voluntariness of the plea or a plea agreement shall be on the record. If the parties stipulate to the court that disclosure of the plea agreement or any of its terms would cause a substantial risk to any person of physical harm, intimidation, bribery, economic reprisal, or unnecessary annoyance or embarrassment, the court may order that the record be sealed subject to terms it deems appropriate.

The record of the plea hearing shows that the court failed to comply with all of the requirements of Md. Rule 4-243. The Rule expressly states that the terms of the plea agreement are to be made plain on the record, in the presence of the defendant, for the court to hear and accept or reject. The terms, moreover, must be made "express" and clearly agreed upon before the guilty plea is accepted. See: Solorzano v. State, 397 Md. 661, 672, 919 A.2d 652, 658 (2007) (quoting Tweedy v. State, 380 Md. 475, 487, 845 A.2d 1215, 1222 (2004). As the natural consequence of requiring strict compliance with the Rule, any question that later arises concerning the meaning of the sentencing term of a binding plea agreement must be resolved by resorting solely to the record established at a Rule 4-243 plea proceeding. The record of that proceeding must be examined to ascertain precisely what was presented to the court, in the defendant's presence and before the court accepts the agreement, to determine what the defendant reasonably understood to be the sentence the parties negotiated

and the court agreed to impose. See: Md. Rule 4-242(b)(1) and 4-242(c)(1)&(2).

It is well established that the Maryland Rules of Procedure have "force of law, subject only to power of legislature to provide otherwise." Hauver v. Dorsey, 228 Md. 499, 180 A.2d 475 (1962); State v. Diggs, 24 Md. App. 681, 332 A.2d 283 (1975).

To interpret rules of procedure appellate courts "use the same canons and principles of construction used to interpret statutes." State ex rel. Lennon v. Strazzella, 331 Md. 270, 274, 627 A.2d 1055, 1057 (1993). "We thus look to the plain meaning of the language employed in these rules and construe that language without forced interpretation designed to limit or extend its scope." Hoile v. State, 404 Md. 591, 608, 948 A.2d 30, 40 (2007)

In Moss v. Director, 279 Md. 561, 564-65, 369 A.2d 1011, 1013 (1977), the Court of Appeals stated that "it is now a familiar principle of statutory construction in this State that the use of the word 'shall' is presumed mandatory unless its context would indicate otherwise." There is nothing in the context of Rule 4-242 and 4-243, or the rationale giving rise to there enactment, that suggests they are directory.

Petitioner therefore contends that the actions of the prosecutor and judge in this case violate the text and premise of Rule 4-242 & 4-243, and that Petitioner is entitled to an invalidation of the sentence (plea agreement) and imposition of the original offer.

B. INEFFECTIVE ASSISTANCE OF COUNSEL

The defense counsel's performance was ineffective for not filing a timely application for leave to appeal following Petitioner's request to do so. Once Petitioner received his sentence, the judge informed him of his rights for appellate review as well as the time and manner of doing so.

Petitioner, being a layman, made a request to his attorney to file the application for leave to appeal on his behalf. This request was made verbally at the time of sentencing, as well as by mail after the sentencing. Petitioner was assured that she would in fact file the application. She then visited Petitioner at the jail and assured him again that she would file the application for leave to appeal on his behalf. Petitioner relied upon this assurance to have his appeal of the sentencing filed. At no time did defense counsel inform Petitioner that she would not, in fact, be handling any further aspect of his case and that he needed to secure new counsel to have any appeal or collateral attack filed on his behalf. Had defense counsel simply informed Petitioner of this he could have at least attempted to secure new appointed counsel to have the appeal filed in the required time. Because this was not done, Petitioner lost his right to file the application for leave to appeal and prejudiced his appellate rights.

The Supreme Court set out the standard for review of collateral attacks based on claims of ineffective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052,

80 L.Ed.2d 674 (1984). Strickland set out two requisite components to establish a claim for relief. A petitioner must show that (1) counsel's performance was defective in that it fell below an objective standard of reasonableness; and (2) petitioner was prejudiced by the deficient performance and there is a reasonable probability that the outcome would have been different if not for the deficiency. id. at 692-94. A petitioner must satisfy both prongs or his claim fails. id. at 697.

Defense counsel's performance fell below an objective standard of reasonableness when she misled Petitioner to believe that she would file his appeal in the time and manner required by law and Md. Rule 8-204. It was solely because of counsel's assurances to Petitioner and then failing to actually do what was promised that Petitioner lost his right to file the appeal (application).

Defense counsel never informed Petitioner that she was not filing the application for leave to appeal, or that if Petitioner sought to file it on his own behalf that he could so without cost, as well as the availability of the transcripts of the proceeding being appealed also being available without cost. At no time did defense counsel inform Petitioner that he had a right to have counsel appointed to him in the event she would not be representing him any further, or that Petitioner could obtain these things without cost even if Petitioner desired to proceed without counsel. See Turner v. State of North Carolina, 412 F.2d 486 (4th Cir.1969), 1969 U.S. App. Lexis 11925 (1969).

In this case defense counsel never informed Petitioner of his

right, as an indigent defendant, to a free sentencing transcript, the right to appellate counsel, or the steps to be taken without counsel in order to obtain appellate review. Counsel's obligation to Petitioner did not end upon his sentencing. At this point in the process, when time is the most important factor in obtaining appellate review, no one is more equipped to insure the successful filing of an indigent defendant's appeal then the counsel who represented him at trial. See: Turner, supra; and Williams v. Coiner, 392 F.2d 210 (4th Cir.1968).

In U.S. v. Poindexter, 492 F.3d 263 (4th Cir.2007), the Fourth Circuit joined all other circuits which have addressed this issue when it held "that an attorney renders constitutionally ineffective assistance of counsel if he fails to follow his client's unequivocal instruction to file a timely notice of appeal even though the defendant may have waived his right to challenge his conviction and sentence in the plea agreement." id. at 265. The 4th Circuit explicitly held that an attorney has an obligation to comply with a client's unequivocal instruction to appeal "even if doing so would be contrary to the plea agreement and harmful to the client's interests." id. at 273. The court further held that an attorney may also have a duty to consult (regarding whether to appeal) under Flores-Ortega even following a waiver. id. at 267-68, and 273; quoting Roe v. Flores-Ortega, 528 U.S. 470, 478-80 (2000) (instructing when attorney has a duty to consult regarding appeal, noting, however, that whether there was a plea agreement and whether appeal rights have been waived are "relevant factors"

to be considered in making this determination). See also Douglas v. California, 372 U.S. 353, 83 S.Ct. 814, 9 L.Ed.2d 811 (1963).

Where counsel, as in the instant case, treats their representation as being terminated without having imparted that information to the defendant, then the defendant's right to counsel has been effectively denied. Petitioner's right to counsel was denied when counsel failed to inform him that she was no longer participating in his case and that she would **not** be filing the appeal that he requested and which she agreed to do. Petitioner's appeal rights were terminated and his right to protect the "vital interest at stake" [his freedom] was prejudiced solely due to counsel's ineffectiveness. Petitioner never had the opportunity to raise the issues relating to the illegality of his sentence based on the violation of the Maryland Rules governing plea agreements, and he has therefore established a colorable claim of ineffective assistance of counsel.

V. Conclusion

For the above reasons, and consistent with the cited authorities and precedent, Petitioner requests that this court vacate his illegal sentence and re-sentence Petitioner to the terms of his original plea agreement.

VI. Statement Of All Previous Proceedings

1. On May 7, 2012, Petitioner filed a Motion To Correct An Illegal Sentence. On July 11, 2012, the motion was denied.

2. On April 3, 2013, Petitioner filed a Motion For Reduction/Modification Of Sentence. On April 30, 2013, the motion

was denied.

3. On May 23, 2013, Petitioner filed a Motion To Reconsider Order Denying Defendant's Motion For Modification. On June 24, 2013, the motion to reconsider was denied.

VII. NON-WAIVER

The test for waiver under 7-106(b)(1) contemplates a knowing and intelligent waiver. Curtis v. State, 284 Md. 132 (1978). Thus with respects to those situations governed by the waiver standards of 7-106(b) where a petitioner establishes that he did not in fact intelligently and knowingly fail to raise an issue previously such issue cannot be deemed waived. Curtis, 284 Md. at 140. Allegations of ineffective assistance of counsel is a fundamental constitutional right subjected to this standard. McElroy v. State, 329 Md. 136 (1993). Therefore these issues are cognizable at this time and properly raised for the first time in this court.

Wherefore, the Petitioner prays that this Court:

A) . Grant him a hearing on this petition;

B). Appoint counsel to represent Petitioner at said hearing;

C). Allow Petitioner to freely amend this petition;

D). Grant the relief requested in the petition; and

E). Grant such other and further relief as the nature of his cause may require. A proposed "ORDER" is attached. (Attachment No.3)

Respectfully Submitted,

Calvin F. Currica 354-168

Calvin F. Currica# 354-168
13800 McMullen Hwy., S.W.
Cumberland, MD 21502

AFFIDAVIT

I HEREBY AFFIRM under the penalties of perjury that the contents of this petition are true and correct to the best of my knowledge, belief, and information.

5-22-14
DATE

Calvin F. Currica
CALVIN F. CURRICA
PETITIONER, PRO SE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of MAY, 2014, a copy of the foregoing Petition For Post-Conviction Relief was mailed, postage prepaid, to the State's Attorney's Office, 50 Maryland Avenue, Rockville, Maryland 20850, and the Collateral Review Division of the Public Defender's Office, 300 W. Preston Street, Suite 213, Baltimore, Maryland 21201.

Calvin F. Currica
Calvin F. Currica

Subscribed and sworn to before me, a Notary Public in and for the State of Maryland, this 22nd day of May 2014

Denne L. Crowe
Denne L. Crowe, Notary Public
My commission expires 3/31/17

PLEA HEARING PROCEEDINGS EXHIBITS

Exhibit No.1: August 11, 2008, p.3, lines 13 thru 23

Exhibit No.2: August 11, 2008, p.4, lines 1 thru 14 & 19 thru 25

Attachment No. 1

Exhibit No.1

AUGUST 11, 2008 PLEA HEARING PROCEEDINGS

PAGE 3, LINES 13 thru 23

P R O C E E D I N G S

THE CLERK: All rise. The Circuit Court for Montgomery County is now in session. The Honorable Durke G. Thompson presiding.

THE COURT: Please be seated (unintelligible) this afternoon, ladies and gentlemen.

THE CLERK: Criminal Case No. 109946 and 109922, State versus Calvin Currica.

MS. BRIDGFORD: Cindy Bridgford on behalf of the State with Mr. John Maloney.

MS. SANDLER: Rene Sandler on behalf of Mr. Currica, who's present.

THE COURT: All right. It's my understanding that in lieu of motions this afternoon that we will proceed to a plea. And I'd be happy to receive the terms and conditions unless there is a plea memo, but I'm not aware there is one.

MS. BRIDGFORD: Your Honor, I had one walked through today and signed by Judge Harrington. This is the only copy I have, so --

THE COURT: We'll make a copy of it, so if you can --

MS. BRIDGFORD: Thank you very much.

THE COURT: -- pass it up to me. All right. Thank you.

All right. The Court understands from the

Exhibit No.2

AUGUST 11, 2008 PLEA HEARING PROCEEDINGS

PAGE 4, LINES 1 thru 14 & 19 thru 25

memorandum, which is indeed entered into by counsel, that in Criminal No. 109922, the defendant will enter a plea to an amended count of murder in the second degree.

And in Criminal No. 109946, the defendant will enter a plea to the following.

That is, Count 1, carjacking;

Count 9, carjacking.

very important

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.

MS. SANDLER: That's correct.

THE COURT: Is that, is that --

MS. BRIDGFORD: That's correct.

THE COURT: Okay. All right. In that case, then we'll -- and my understanding is that we're not going to proceed to disposition. I think for obvious reasons that's probably not.

All right. Mr. Currica, is that how your name is pronounced, sir?

MR. CURRICA: Yes.

THE COURT: All right. If you'll stand, please, sir.

As I've indicated, your counsel and the State have said that you intend to enter a plea of guilty today.

MR. CURRICA: Yes.

SENTENCING HEARING PROCEEDINGS EXHIBITS

Exhibit No.1: November 18, 2008, p.12, lines 14 thru 18

Exhibit No.2: November 18, 2008, p.13, lines 3 thru 8 & 13 thru 20

Exhibit No.3: November 18, 2008, p.38, lines 10 thru 19

Exhibit No.4: p.40, lines 6 thru 15, November 18, 2008

Exhibit No.5: November 18, 2008, p.51, line 25

Exhibit No.6: November 18, 2008, p.52, lines 1 thru 14

Attachment No.2

NOVEMBER 18, 2008 SENTENCING HEARING PROCEEDINGS

PAGE 12, LINES 14 thru 18

EXHIBIT NO. 1

tell the Court as recently as just a couple of months ago the wait list was two to three years.

So even if the Court makes that recommendation, it actually lengthens his sentence in terms of the time. He wouldn't be getting out and certainly no leniency in the sentence that he would be serving.

But I ask that the Court, for the mental health reasons, his age, and the eventual release of him as an older person, much older person, I would ask that the Court consider that, so that he can learn some skills and come out, even if he's old, with some skills, some meaningful way to contribute to society for the rest of his life when he does eventually come out.

The guidelines in this case, Your Honor, as indicated in the PSI, differ from the June 24th plea letter. And I would ask that the Court honor that, those guidelines in the June 24th plea letter. Those guidelines were calculated together with the State. Very important

I would also ask that this Court focus on Mr. Currica as an individual before the Court, not the co-defendant. We don't know, I haven't listened to the CD's of why the judges did what they did in that, those cases. But Mr. Bryant's, Mr. Bryant's sentencing was fashioned to Mr. Bryant's history, Mr. Bryant's individual factors, and from my understanding, Mr. Bryant's lack of remorse. In fact, I understand he had quite

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PAGE 13 LINES 3 thru 8, and 13 thru 20

EXHIBIT NO. 2

an outburst in Court, which will be, is very different than what you'll see from Mr. Currica.

Very important

And I would ask that you fashion your sentence according to those factors that you are to, bound to, fashion sentence after, you know, rehabilitation, appropriate balance between the crimes, and the need to protect society. And we, again, understand that that is a very serious factor for the Court to consider in fashioning an appropriate sentence.

But we ask that you do it according to who Mr. Currica is, the background of Mr. Currica, and to again understand that we're not, we're not excusing anything. This is very serious. We recognize it. He's accepted responsibility. And I will tell the Court that there's hope, even if it's small, when someone expresses the degree of remorse that Mr. Currica has expressed.

And for those reasons, we would ask that this Court fashion a sentence within the guidelines. My client would like to address you at the appropriate time. I'm told that a member of his family may have come in. I'll confer with my client if you would let me just for one brief moment.

THE COURT: You may.

MS. SANDLER: It was mistaken.

THE COURT: All right.

MS. SANDLER: Thank you, Your Honor.

THE COURT: All right. Mr. Maloney.

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PAGE 38, LINES 10 thru 19

EXHIBIT NO. 3

Viney, who's also here in court, he goes and attacks her. This is a much smaller woman than this defendant, as you'll see when she speaks. But what does he do? He fights her. He's attacking her, even possibly swinging a knife at her. We don't know. She fought him off. There but for the grace of God is another murder from him. And again, this is not Mr. Bryant doing it, this is this defendant wielding the knife. He is the actor calling, swinging the knife, demanding the money, going for the carjacking.

very important

Counsel talked about guidelines. And I, in almost 20 years I've never seen this asking the Court to disregard the honest guidelines that they are going with what was thought to be the guidelines between counsel ahead of time. I don't know if the Court is empowered to do such a thing, disregard what the guidelines are.

THE COURT: Well --

MR. MALONEY: The Court's obviously empowered to --

THE COURT: -- guidelines are descriptive in any event.

MR. MALONEY: And that's what I said in my memo. They are just that, guidelines. The Court obviously could go above and below them. But the guidelines in this case call for a sentence of 45 to 70 years. They're supposed to be ranged for what is appropriate for a crime of this nature.

30 to 51

But then you look at the guidelines book and they

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EXHIBIT NO. 4

anymore in the sentencing, Your Honor.

Other reasons for deviating that the guidelines and judges have agreed on in the guidelines book, the vicious nature of it, recommendation from the State, recommendation from Parole and Probation. We have all of those in this case.

Counsel says, well, we don't know about what the co-defendant did, what happened at sentencing, he might have acted out. I don't think a judge gave him 70 years just because he acted out in court. I think they sentenced because of the crime. And I think the crime in these cases called for that kind of sentence. And if the lesser players I say get 70 degrees, it's appropriate, I think it's right for the lead actor, the most violent one, to get over that. And that's why we're asking for a sentence that's over the guidelines in this case.

This person has been defiant, as you see on the tape, from the get go. There is no evidence that this Court can honestly rely on to say, well, this is reason to go below the top of the guidelines in this case. He's a predator. And it's sad. He's on the short list, as I said, of the most violent criminals that we've had in recent memory in Montgomery County.

And there is no mistaking, you can see this pattern. It doesn't take a genius to say if it wasn't for the great work of Detectives Hague and Bakolski (phonetic sp.) and other detectives in Montgomery County, there would be a lot more

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EXHIBIT NO. 5

(unintelligible) I produced the jail psychiatric records and medication just to support what I had previously stated.

THE COURT: All right. Thank you.

MS. SANDLER: Thank you.

MR. MALONEY: Do you want me to take these back?

THE COURT: You may.

(Bench conference concluded.)

MS. SANDLER: (Unintelligible).

THE COURT: Sure, you may.

MS. SANDLER: Just a couple of very brief --

THE COURT: All right.

MS. SANDLER: -- remarks --

THE COURT: Sure.

MS. SANDLER: -- before my client address the Court. His mother did come in. However, she's declined to comment, but I'd ask that you just take notice that she is here.

THE COURT: I certainly do acknowledge that.

MS. SANDLER: Just two brief points. Acceptance of responsibility can be measured in a lot of ways. I mean, I'm not here to argue Mr. Currica's decision not to be forthcoming immediately upon his arrest. He will have to, again, reconcile those decisions for a very long time. But he did accept responsibility, and that's a first step. And he did express remorse, and that's a first step.

So under, I guess, the State's view and hearing from

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PAGE 52, LINES 1 thru 14

EXHIBIT NO. 6

everyone, again, no one is going to minimize the gravity of these events. They were horrible. But under everyone's view, we throw him, we put him in a jail and we throw away the key. And we can't do that. There is hope, again, even if it's small. Under the State's view and what the State's asking is for you simply to disregard the guidelines, which are there for a reason, add 20 years, and then they would be satisfied.

Your Honor, with regard, again, to the co-defendant, different history, different contacts. I believe he was even a fugitive from Colorado. A lot of different factors that contributed to his sentences. And I ask that you fashion this sentence, again, according to my client, his history, what you will hear from him, what you have heard from me, and fashion an appropriate sentence for this individual.

Thank you, Your Honor. He would like to address the Court at this time, if the Court would hear --

THE COURT: All right. If you'll stand, Mr. Currica.

MR. CURRICA: Your Honor, I'm just --

THE COURT: Just a moment, sir. I just want to advise you ahead of time that you have the opportunity, as your counsel has suggested here today and as I'm sure she's advised you in advance, that you have the opportunity to address the Court. It's not something that is required of you. And in fact, if you elect not to address me, I will not hold that again you in any way. But it is the opportunity that the law

PROPOSED "ORDER" GRANTING POST CONVICTION RELIEF

Attachment No. 3