24-5271 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

CLAUDE LACOMBE,

Petitioner,

v.

WARDEN JAMES T. VAUGHN CORRECTIONAL CENTER; ATTORNEY GENERAL DELAWARE,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Respectfully submitted,
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QUESTION PRESENTED

1. Under *Puckett v. United States*, 556 U.S. 129 (2009) and *Brecht v. Abrahamson*, 507 U.S. 619 (1993), a petitioner seeking habeas relief from a sentence imposed as a result of a guilty plea establishes *Strickland* prejudice by showing that but for counsel's ineffectiveness the result of the proceeding, *i.e.*, the *sentence*, would have been different. But as established by *Santobello v. New York*, 404 U.S. 257 (1971), and suggested by *Puckett*, when the government's breach of a promise used to secure a guilty plea is incurable, a petitioner can show *Strickland* prejudice by showing that the result of the proceeding would have been different because the incurable breach entitled Petitioner to withdraw his guilty plea or proceed to sentencing before a different judge without any showing that the sentence would have been different.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Claude Lacombe respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

DECISION BELOW

The opinion of the Court of Appeals (App. A) is reported: *Lacombe v. Warden James T. Vaughn Correctional Center; Attorney General Delaware*, No. 21-1886, –F.4th–, 2024 WL 998028 (3d Cir. March 8, 2024).

JURISDICTION

The Third Circuit entered judgment on March 8, 2024, following a limited grant of a certificate of appealability challenging the denial of Lacombe's 28 U.S.C. § 2254 habeas corpus petition by the district court. This petition is being filed within 90 days after entry of the judgment below, so it is timely under Rule 13.1. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in relevant part:

> No person shall be…be deprived of life, liberty, or property without due process of law…

The Sixth Amendment to the United States Constitution provides in relevant part:

> In all criminal prosecutions, the accused shall enjoy the right…to have the Assistance of Counsel for his defense.

STATEMENT OF THE CASE

Petitioner Claude Lacombe, after having been charged in a five-count indictment by the State of Delaware with multiple offenses arising out of the botched December 26, 2011, robbery and murder of two young men who thought they were meeting with Petitioner's brother and another man to sell marijuana, pleaded guilty to felony murder and related charges. The guilty plea exposed him to a mandatory minimum sentence of 21 years and a maximum of life in prison. The Petitioner's decision to surrender the trial rights protected by the Fifth and Sixth Amendments to the United States Constitution was premised on a promise by the State to recommend a sentence of 22 years with terms of probation to follow his release. When the Petitioner appeared for sentencing, however, the State used their opportunity to address the sentencing judge to portray him as an unrepentant, violent "gangsta", who was at least equally responsible for the two homicides as the person who pulled the trigger. *Lacombe v. Warden James T. Vaughn Correctional Center; Attorney General Delaware*, No. 21-1886, –F.4th–, 2024 WL 998028 *4-5 (3d Cir. March 8, 2024).

The State further distanced itself from the core promise used to secure the Petitioner's guilty plea when it prefaced a perfunctory reference to the promised sentencing recommendation by arguing, "So don't be fooled when you consider what sentence to give [Lacombe] by the fact that he stayed in the car when this robbery and double homicide occurred. He didn't pull the trigger, but he may as well have, because he set the whole thing in play." *Id.* Defense counsel did not object and in later proceedings explained that the decision not to do so was not based upon a strategic choice.

The Petitioner maintained that the State breached the plea agreement and the counsel's failure to object to the breach was ineffective assistance of counsel because it was based on a mistaken understanding of the law governing plea agreements, *i.e.*, irrespective of purposeful advocacy urging the court to impose a longer sentence than that which the State promised to recommend, a reference by the State to the promised recommendation was sufficient. The Petitioner was sentenced to life in prison, and after exhausting his state court remedies without obtaining any relief, he filed a petition for a writ of habeas corpus in the United States District Court for the District of Delaware on October 26, 2017.

Among the preserved and exhausted claims included in the petition were assertions that the State had breached the plea agreement with its deliberate advocacy designed to undermine the promised sentencing recommendation which was used to convince the Petitioner to plead guilty. The district court concluded that the Petitionerhad not carried his burden of establishing that the Delaware state courts had unreasonably determined that the prosecutor's arguments breached the plea agreement. *Lacombe v. Warden James T. Vaughn Correctional Center; Attorney General Delaware*, No. 21-1886, --F.4th--, 2024 WL 998028 *7-9 (3d Cir. March 8, 2024). The district court further Court concluded that because "the Delaware Supreme Court reasonably . . . applied clearly established federal law in holding that the State did not breach the plea agreement . . . , there was nothing more for trial counsel to seek in terms of specific performance" and counsel's conduct "did not fall below an objective standard of reasonableness". According to the district court, because the sentencing court "was not obligated to follow

the State's sentencing recommendation and had discretion to sentence [Lacombe] to life in prison," the Delaware Supreme Court "reasonably applied *Strickland* in holding that [Lacombe] was not prejudiced by trial counsel's failure to seek specific performance of the plea agreement." *Id.* at *9-10.

The Petitioner appealed and the United States Court of Appeals for the Third Circuit granted a certificate of appealability to address the plea breach and ineffective assistance of counsel claims. Although the Third Circuit expressed significant doubt concerning the reasonableness of the state and district court findings concerning whether the plea agreement was breached, it ultimately determined that it did not have to decide that question because the Petitioner had not demonstrated that he was prejudiced by the breach as required by *Puckett v. United States*, 556 U.S. 129 (2009), *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993), and *Strickland v. New York*, 440 U.S. 257 (1971). *Lacombe,* No. 21-1886, 2024 WL 998028 at *1, 12. 16, 19. The Court framed the question of "prejudice" as identical for both the plea breach and ineffective assistance of counsel claims; the Court concluded that under *Puckett* and *Brecht*, because the Petitioner could not establish that his sentence would have been different but for the breach, he was not entitled to relief. *Id. at* *15-16, 18-19. In this context, the Court explained that because the decision in *Santobello v. New York*, 440 U.S. 257 (1971) was now understood not to have implicated a structural error when a breach occurs – regardless of how serious the breach – the decision in *Puckett* supported the conclusion that proof of prejudice was required. *Lacombe,* No. 21-1886, 2024 WL 998028 at *15. The Petitioner does not challenge that conclusion and framing as it relates to the breach of the plea question but

maintains that the identical framing of the question for purposes of *Strickland* is mistaken. While *Puckett* dealt with the breach question and identified policy reasons to support its decision, including an opportunity to correct the breach and differences among the types and seriousness of the breaches, it did not address how the question of counsel constitutionally deficient representation would be assessed in the case of an incurable breach, much less the question of what the focus of the prejudice inquiry would be in that circumstance.

This Petition follows.

REASONS FOR GRANTING THE PETITION

This Court should grant the petition because the Third Circuit's decision is at odds with the decision in *Santobello v. New York*, 404 U.S. 257 (1971) and exposes a gap in the interplay between *Santobello, Puckett v. United States*, 556 U.S. 129 (2009), *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993), and *Strickland v. Washington*, 466 U.S. 668 (1984) — that occurs when the prosecution commits an uncurable breach of a central tenet of the plea agreement and defense counsel's failure to object undermined the proper functioning of the adversarial process to such an extent that petitioner was deprived of his Sixth Amendment right to effective assistance of counsel. This gap was suggested in *Puckett. See* 556 U.S. at 140 ("if the breach is established but cannot be cured...")

I. The Interplay of Controlling Supreme Court Decisions Establishes that an Assessment of *Strickland* Prejudice Here Should Be Measured by the Remedy that

Would have been Available had Counsel Provided Effective Assistance – *i.e.*, Withdrawal of the Guilty Plea or Sentencing Before a Different Judge – and the Lower Court Thus Applied the Wrong Standard to Petitioner's Ineffective Assistance of Counsel Claim When It Required Petitioner to Demonstrate That But For Counsel's Ineffectiveness, Petitioner's Sentence Would Have Been Different.

The Petitioner surrendered his right to remain silent, to be tried by a jury of his peers at which trial he would be presumed innocent, to require the government to prove his guilt beyond a reasonable doubt, to confront the witnesses produced by the state, and to testify or call witnesses to testify in his defense. He elected to do so because he relied on the State's promise to recommend a sentence of 22 years, one year more than the mandatory minimum the sentencing court was required to impose. One right he did not surrender was the right to ensure that the State honored its promise through the protection afforded by effective assistance of counsel. As it turned out he was not only denied the benefit of his bargain when the State committed an incurable breach of the plea agreement by doing everything but advocate explicitly for a life sentence, but the one protection he retained failed to provide competent representation, a circumstance which to this point has precluded him from obtaining the minimal due process that *Santobello v. New York*, 404 U.S. 257 (1971) requires – a sentencing hearing untainted by an incurable breach.

In a case decided by the Third Circuit the same day as the Petitioner's, the court had occasion to consider the types and seriousness of plea agreement breaches and,

relying on *Puckett*, noted that some types of broken promises, including those of the character at issue here, provide a basis for different forms of relief. *United States v. Cruz*, No. 23-1192, --F.4th--, 2024 WL 997591 *9 (3d Cir. March 8, 2024). In this context the court noted that the incurable breach in *Santobello,* albeit objected to, required an opportunity for the defendant to either be resentenced before a different judge or withdrawal of the guilty plea notwithstanding the absence of prejudice. *Id.*, at 11-12. The Petitioner respectfully submits, that the decisions in *Santobello* and *Puckett* established that for purposes of an incurable breach that undermines the promise that was used to induce the defendant to surrender his Constitutionally protected trial rights, the question is not whether defense counsel's failure to object to the breach influenced the sentence imposed, but rather whether the ineffective assistance deprived the defendant of the opportunity to avail himself of the *Santobello* remedies. That is, the question of prejudice for the *Strickland/Santobello* question in a case where the breach concerns the central promise used to procure the guilty plea is whether counsel's failure to object deprived the Petitioner of the opportunity to choose whether to be sentenced by a judge untainted by the breach or withdraw his guilty plea; the question is not whether the ultimate sentence would have been different.

While the distinction between the issues is subtle, the distinction is substantial and supported by the policy concerns identified in *Santobello*, 404 U.S. at 262–63, and suggested by *Puckett*, 556 U.S. at 140 ("*[S]ome* breaches may be curable upon timely objection...."). The enormity of the rights a defendant surrenders when he relies on the integrity and good faith of the promise the state used to convince him to plead guilty,

together with the disparity in bargaining power, necessitate a precise examination of what the Petitioner lost when counsel failed to object to the government's breach of the plea agreement. The Petitioner respectfully submits that he lost the right to be judged in a court proceeding not tainted by an egregious, material breach of the promise that that state used to convince him to surrender his Fifth and Sixth Amendment rights.

The distinction suggested does not provide an end run around the *Puckett* and *Brecht* prejudice framing. As noted in *Puckett*, most breaches are technical, minor, or inadvertent and can be easily remedied without implicating the *Santobello* remedies or undermining the integrity of the process. *Puckett v. United States*, 556 U.S. at 140. Moreover, the mere fact that defense counsel elected to not object in a particular case would not have the effect of transforming the defendant's challenge into only a question whether there was an incurable breach of the agreement. Instead, the defendant would be required to establish that the decision by counsel was not for strategic or other reasons which do not deprive the defendant of his right to the effective assistance of counsel.

The Third Circuit determined that it did not need to reach the question of breach or ineffective assistance because there was a failure to establish that the *sentence* would have been different. *Lacombe*, No. 21-1886, 2024 WL 998028 *15-16, 18-19. Mr. Lacombe restfully submits that this was the wrong question and that his case should be remanded for consideration of those issues with an understanding that in this context, the question of prejudice was not the sentence imposed would have been different, but whether the breach was incurable and whether he was deprived of the opportunity to

either be sentenced at a proceeding where he received the benefit of the central promise made by the State or to withdraw his guilty plea as required by *Santobello*.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,
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