

Slaughter argued that because his properly executed IAD paperwork was received by the State on November 6, 2013 and because he was not tried within 180 days, the indictment should have been dismissed with prejudice on May 6, 2014. Slaughter further contended that the July 28, 2014 Governor's Warrant would have had no force or effect because by the time it was signed by the appropriate authorities, the charges should have already been dismissed for failure to bring to trial within 180 days. (A33-35).

On July 30, 2015, the court held a hearing on the first motion to dismiss. During the hearing, the State advised the court that before the 180 days had expired, Georgia had informed the State of Delaware that Georgia would not honor the IAD because it was a capital murder case, and a Governor's Warrant would be needed to obtain custody of Slaughter. (A139, 148, 158, 166). The State informed the court that it did not know why GDOC took that position, as it did not appear to be legally correct. (A148).

within 180 days after the prisoner shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of imprisonment and the request for a final disposition to be made of the indictment, information or complaint; provided, that for good cause shown in open court, the prisoner or the prisoner's counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.").

At the end of the hearing, the court made an oral ruling denying the first motion to dismiss, finding that because Slaughter was brought to Delaware pursuant to a Governor's Warrant and not the IAD, the IAD did not apply. (A177). The court additionally found that Georgia had notified the State of Delaware prior to the expiration of the 180 days that a Governor's Warrant was needed to obtain custody of Slaughter, and that although the State received notice from Slaughter requesting disposition of the charges pursuant to the IAD, the Superior Court did not receive actual notice. (A174). Thus, the court concluded, Slaughter's IAD rights never vested. Slaughter's subsequent motion for reargument was denied. (DE64; A211-14).

Slaughter then filed a second motion to dismiss on August 24, 2016, alleging that under IAD § 2543⁸ and *United States v. Mauro*,⁹ the State was required to bring him to trial within 120 days and failed to do so. (A215-228). Slaughter argued that under the holding of *Mauro*, the State triggered the 120 day time limit of IAD § 2543 by

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

⁹ *United States v. Mauro*, 436 U.S. 340, 363-64 (1978) (holding that "whenever the receiving State initiates the disposition of charges underlying a detainer it has previously lodged against a state prisoner," the IAD requires commencement of trial within 120 days of the defendant's arrival in the receiving State).

lodging a detainer followed by a written request for temporary custody via the Governor's Warrant. (A219, 221-24). Both the State and defense counsel conceded that they had previously been unaware of *Mauro* and had not considered its impact on Slaughter's case. (A227, 245, 247, 269, 271-72, 276, 280, 307). As such, they had also failed to consider whether a detainer plus a Governor's Warrant implicated IAD § 2543. (*Id.*).

The State opposed the motion, arguing that even under *Mauro*, the 120 day time period did not begin to run until October 9, 2014, the day Slaughter was returned to Delaware. (A239). The office conference was held on November 18, 2014, before the 120 days expired, and both parties did not object to a trial date outside of the 120 day limit. (A87-88). Thus, the State argued, Slaughter had waived his IAD claim. (A240-41, 243). In response, Slaughter asserted that prior to the office conference, the State had specifically informed defense counsel that Slaughter was brought to Delaware via a Governor's Warrant, prompting counsel to believe the IAD was inapplicable to Slaughter's case. (A245-47).

The court held a hearing on the second motion to dismiss on October 14, 2016. (DE82). The parties essentially agreed that *United State v. Mauro* applied to Slaughter's case and therefore, the 120 day provision of § 2543 began to run the day

Slaughter arrived in Delaware.¹⁰ (A270, 296-97). The main issue of contention was whether Slaughter had waived the issue by agreeing to a trial date outside of the 120 day time period. The State also argued that the court could retroactively find that good cause existed to grant a continuance, had one been requested during the November 18, 2014 office conference; thus, the State alleged, any error would be harmless. (A312-13). Slaughter argued that despite the lack of bad faith, the State misled defense counsel as to whether this case was a Governor's Warrant or an IAD case, and it would not be fair to deem what was said at a routine office conference as a waiver of an IAD right. (A215-18).

On October 27, 2016, the State filed a letter with the court correcting misrepresentations it had made during the July 30, 2015 hearing on the first motion to dismiss. (A335-37). The State disclosed for the first time that it had actually been the State's Extradition Supervisor, Ronald Mullen, who had advised GDOC that the IAD did not apply to Slaughter's case and that a Governor's Warrant was needed to obtain custody. (*Id.*). The GDOC's April 4, 2014 letter had in fact only been a memorialization of the information that the GDOC had received from Mr. Mullen.

¹⁰ The State later changed its position on whether a Governor's Warrant constitutes a written request for purposes of the IAD and/or *Mauro*. (A219, 227, 268-69, 296-97; *c.f.* A353-56).

(*Id.*). As a result of this newly disclosed information, Slaughter renewed his first motion to dismiss, arguing that the State did not affirmatively accept Georgia's offer of temporary custody of Slaughter within the meaning of IAD § 2544(c),¹¹ and as a result, the indictment must be dismissed with prejudice pursuant to IAD § 2544. (A341). Thus, Slaughter asserted, it was insignificant that the court never received actual notice of Slaughter's IAD paperwork, because the State triggered automatic dismissal by refusing to accept custody. (*Id.*).

On January 3, 2017, the court denied both Slaughter's renewed first motion to dismiss and Slaughter's second motion to dismiss. In regard to the renewed first motion to dismiss, the court found that Slaughter's rights under IAD § 2544 never vested, because the court never received actual notice of his IAD paperwork. (A377). Thus, the State's alleged refusal to accept Georgia's offer of temporary custody did not warrant dismissal of the indictment. In regard to the second motion to dismiss, the court found that Slaughter had waived the speedy trial protections of IAD § 2543 by

¹¹ 11 *Del. C.* § 2544(c) ("If the appropriate authority shall refuse or fail to accept temporary custody of the person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in § 2542 or § 2543 of this title, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.").

agreeing to a trial date outside of the 120 day time period. (A387-89). The court also concluded that any error was harmless, because a continuance for good cause would likely have been requested and granted if the parties had been aware of *Mauro* at the time of the scheduling conference. (A391-92).

On January 18, 2017, Slaughter pleaded guilty to one count of Murder First Degree. (DE118). On February 3, 2017, Slaughter filed a *pro se* motion to withdraw the guilty plea. (DE119). Defense counsel determined that they could not support Slaughter's motion to withdraw guilty plea, and therefore, independent counsel was appointed to counsel Slaughter. (A436). After reviewing Slaughter's file, substitute counsel found no meritorious bases upon which to argue for withdrawal of the plea under the applicable legal standard and was permitted to withdraw as substitute counsel. (DE123). Thereafter, Slaughter argued *pro se* for the withdrawal of his guilty plea during oral argument held on his motion. After the conclusion, the court determined that Slaughter had failed to meet the requisite legal standard for withdrawal of a guilty plea and denied the motion. (DE126).

Thereafter, Slaughter was sentenced on August 4, 2017 to fifty years at Level V, suspended after twenty years. (A438-39). No direct appeal was filed.

ARGUMENT I. THE SUPERIOR COURT ERRED IN DENYING SLAUGHTER'S CLAIM THAT DEFENSE COUNSEL WAS CONSTITUTIONALLY INEFFECTIVE FOR INADVERTENTLY WAIVING SLAUGHTER'S IAD SPEEDY TRIAL RIGHT TO BE TRIED WITHIN 120 DAYS OF ARRIVAL IN DELAWARE, BUT FOR WHICH THE INDICTMENT WOULD HAVE BEEN DISMISSED WITH PREJUDICE PRIOR TO THE ENTRY OF SLAUGHTER'S GUILTY PLEA.

QUESTION PRESENTED

Did the Superior Court err in finding Slaughter's postconviction claim of ineffective assistance of defense counsel to be waived by pleading guilty and alternatively, to fail the *Strickland*¹² standard for ineffectiveness? This issue was preserved as it was raised in the Amended Motion and Reply Brief. (A464-483, 595-599).

SCOPE OF REVIEW

Questions of law are reviewed *de novo*.¹³ Claims alleging a constitutional violation are reviewed *de novo*.¹⁴ As Slaughter alleges he was deprived of his constitutional right to effective assistance of counsel, this claim is reviewed *de novo*.

MERITS OF THE ARGUMENT

The Superior Court erred in denying Slaughter's first postconviction claim—that

¹² *Strickland v. Washington*, 466 U.S. 668 (1984).

¹³ *Dawson v. State*, 673 A.2d 1186, 1190 (Del. 1996).

¹⁴ *Hall v. State*, 788 A.2d 118, 123 (Del. 2001).

defense counsel Collins was constitutionally ineffective for inadvertently waiving Slaughter's IAD right to be tried within 120 days of arrival in Delaware—as the court erroneously found that Slaughter's guilty plea waived the claim of ineffectiveness and erroneously found that alternatively, Slaughter's ineffectiveness claim failed the *Strickland* standard. (Denial at 13-14).

In regard to Slaughter's alleged waiver of his ineffective assistance of counsel claim via his valid guilty plea, the Superior Court concluded that *Alexander v. State* controls and therefore, Slaughter's valid guilty plea waived any postconviction claim of relief for errors that occurred prior to entry of the plea. (Denial at 13-14). However, the court is incorrect.

In *Alexander*, this Court concluded that “[b]ecause Alexander’s claims of improprieties under the Uniform Agreement on Detainers implicates alleged errors or defects occurring prior to the entry of his plea . . . the claim has been waived.”¹⁵ This Court likewise found that Alexander’s claim that his counsel was ineffective for failing to move to dismiss the indictment on the basis of the alleged violation of the UAD was similarly waived, as it implicated errors or defects occurring prior to entry of his plea.¹⁶

¹⁵ *Alexander v. State*, Del., No. 337, 2008, Steele, J., at 3 (Nov. 5, 2008) (Order) (Fastcase).

¹⁶ *Id.*

However, as Slaughter explained in his filings and during oral argument,¹⁷ under United States Supreme Court precedent, Slaughter's valid guilty plea did not waive his claim of legal error (postconviction claim two) or of ineffectiveness (postconviction claims one and three) relating to the IAD under the specific facts of the case. Slaughter acknowledged in his filings the holdings of *Alexander* and related cases—that typically, a voluntarily, intelligently and knowingly entered guilty plea constitutes a waiver of all alleged errors or defects that occurred prior to entry of the plea.¹⁸ However, the court overlooks that there are some exceptions to this general rule, which were identified with specificity by the United States Supreme Court in 2018 *Class v. United States*.¹⁹

In *Class*, the Supreme Court was asked to decide the specific question of whether “a guilty plea bar[s] a criminal defendant from later appealing his conviction on the ground that the statute of conviction violates the Constitution.”²⁰ In concluding

¹⁷ A464, 484-490, 499, 587-594, 614-17, 621, 638-640.

¹⁸ See, e.g., *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2003) (citing *Downer v. State*, 543 A.2d 309, 312-13 (Del. 1988) (A voluntary guilty plea constitutes a waiver of any claims based on alleged errors or defects preceding the entry of the plea.)); *Benge v. State*, 945 A.2d 1099, 1201 (Del. 2008) (“Under Delaware law, a voluntary guilty plea constitutes a waiver of any alleged errors or defects occurring prior to the entry of the plea. . . .”).

¹⁹ 138 S.Ct. 798 (2018) (holding that a guilty plea does not bar a defendant from appealing his conviction on the basis that the Government did not have the power to criminally prosecute him).

²⁰ *Id.* at 801-02.

that it does not, the Court's analysis articulated quite clearly the rights that are and are not waived through a guilty plea and identified the issues that may still be challenged on appeal notwithstanding the entry of a valid guilty plea.²¹

In its analysis of the issue in *Class*, the Supreme Court summarized the development of its precedent on such issues, beginning with its holding in *Blackledge v. Perry*, a case in which a state criminal defendant challenged his conviction on the basis of an unconstitutional vindictive prosecution. In finding that this claim was not barred by the defendant's guilty plea, the Court held that "the nature of the underlying constitutional infirmity", vindictive prosecution in this case, "implicates 'the very power of the State' to prosecute the defendant", as "[t]he very initiation of the proceedings" against the defendant "operated to deprive him of due process of law."²²

The Court then moved on to its holding in *Menna v. New York*, in which a state criminal defendant challenged his conviction, after entering a guilty plea, on the basis of a violation of the Double Jeopardy Clause.²³ In finding that this claim was not waived by the defendant's guilty plea, the Court held that "a plea of guilty to a charge does not waive a claim that—judged on its face—the charge is one which the State may

²¹ *Id.* at 802-06.

²² *Id.* at 803 (quoting *Blackledge v. Perry*, 417 U.S. 21, 30-31 (1974)).

²³ *Id.* at 803 (citing *Menna v. New York*, 423 U.S. 61(1975)).

not constitutionally prosecute.”²⁴ More specifically, because the defendant’s claim alleged that “the State may not convict” him “no matter how validly his factual guilt is established”, the Court held that the guilty plea did not bar his claim.²⁵

The Supreme Court further noted that it has since upheld the aforementioned decisions in cases such as *United States v. Broce*, in which the Court held that a guilty plea does not bar a claim “where on the face of the record the court had no power to enter the conviction or impose the sentence.”²⁶ However, the Court also specified in *Broce* that the claim must be proven by relying on, and without contradicting, the existing record.²⁷

Unlike the claim at issue in *Broce*, the constitutional claim raised by Class did not contradict the indictment or his voluntary, intelligent and knowing admission that he committed the alleged conduct; therefore, his claim could be “resolved without any need to venture beyond th[e] record.”²⁸ Accordingly, the Supreme Court expressly held that the defendant’s guilty plea did not bar a direct appeal, because his claims, which challenged the Government’s power to criminalize the conduct to which the defendant

²⁴ *Class*, 138 S.Ct. at 804 (quoting *Menna*, 423 U.S. at 63 and n.2).

²⁵ *Id.*

²⁶ *Id.* at 804 (citing *United States v. Broce*, 488 U.S. 563, 569 (1989)).

²⁷ *Id.* at 804 (quoting *Broce*, 488 U.S. at 576).

²⁸ *Id.* at 805.

admitted, “call[ed] into question the Government’s power to ‘criminally prosecute’ him”.²⁹

In addition to clarifying which types of claims a guilty plea does *not* bar, the Supreme Court also clarified in *Class* the types of claims that a guilty plea *does* bar. As the Court explained, a valid guilty plea: 1) relinquishes the constitutional guarantees that accompany the right to a fair trial, such as the privilege against compulsory self-incrimination and the right to confront accusers; 2) the right to appeal the constitutionality of case-related government conduct that occurs before the plea is entered, such as an unconstitutionally selected grand jury or a Fourth Amendment search and seizure violation; and 3) relinquishes “any claim that would contradict the ‘admissions necessarily made upon entry of a voluntary plea of guilty.’”³⁰ None of Slaughter’s postconviction claims fall into these categories for which a guilty plea bars an appeal.

Slaughter does not challenge the constitutionality of case-related government conduct that occurred prior to the entry of the guilty plea; rather, just as in *Class*, Slaughter asserts that based solely upon the existing record, if his claim is successful,

²⁹ *Class*, 138 S.Ct. at 805 (quoting *Broce*, 488 U.S. at 575 (quoting *Menna*, 423 U.S. at 61-62)).

³⁰ *Id.*

it “would extinguish the government’s power to ‘constitutionally prosecute’” him.³¹ Likewise, just as in *Class*, Slaughter does not contradict the indictment or the terms of the plea agreement or his voluntary, intelligent and knowing admission that he committed the alleged conduct. Rather, Slaughter alleges, pursuant to *Class*, that even if the facts admitted during the plea are taken as true, they do not constitute a prosecutable offense, because the time for prosecuting them had already expired. Accordingly, pursuant to *Class*, Slaughter did not waive his postconviction claim when he entered the guilty plea.³²

While the Superior Court is correct that *Alexander* supports the general rule that a valid guilty plea waives all pre-guilty plea issues, even those of constitutional dimension, the Superior Court erred in overlooking that pursuant to United States Supreme Court precedent, an issue that disputes the very power of the State to constitutionally prosecute the admitted conduct is an exception to the general rule that a valid guilty plea waives all pre-guilty plea issues.³³ As explained in Slaughter’s

³¹ *Id.* at 806 (quoting *Broce*, 488 U.S. at 575 (quoting *Menna*, 423 U.S. at 62-63)).

³² For further support of this position, see *Class*, 138 S.Ct. at 807, 814, dissenting, (explaining the exceptions to the rule that a guilty plea waives nearly all pre-plea conduct, including violations of the Speedy Trial Act, created by the majority opinion).

³³ *Class*, 138 S.Ct. At 803 (citing *Blackledge*, 417 U.S. at 30 (quoting *Tollett v. Henderson*, 411 U.S. 258, 266-67 (1973))) (“The Court noted that a guilty plea

filings, from February 7, 2015 onward, the State, through its own negligence in misunderstanding the application of the IAD to the facts of the case, no longer had the power to prosecute Slaughter, which renders his conviction and sentence unconstitutional.³⁴ (A471, 479, 481, 483, 497-98). As such, Slaughter's claim raises the issue of whether the State had the power to prosecute the admitted conduct at the time of the guilty plea. Thus, this falls within the scope of the exceptions to the general principle that a valid guilty plea waives all pre-plea issue as described in *Class*, *Blackledge*, *Menna*, and *Broce*. To the extent this Court has not yet had occasion to consider this issue in the context of the State's power to constitutionally prosecute, the issue is one of first impression.

In reaching an alternative conclusion justifying the denial of Slaughter's postconviction claim, the Superior Court also erroneously concluded that Slaughter's ineffective assistance of counsel claims "lack merit". (Denial at 16). The court

bars appeals of many claims, including some "“antecedent constitutional violations”” related to events (say, grand jury proceedings) that had ““occurred prior to the entry of the guilty plea.””).

³⁴ It should be noted that the language of *Class* makes clear that the holding of *Class*, the prior precedent of the United States Supreme Court, is not limited to cases in which the defendant alleges the *statute* of conviction is unconstitutional; an allegation that the State did not have the power to prosecute is sufficient. (*Class*, 138 S.Ct. at 802-06; *Blackledge*, 417 U.S. at 30-31; *Menna*, 423 U.S. at 61-63 and n.2; *Broce*, 488 U.S. at 569, 575-76).

acknowledged that defense counsel Collins believed he did not provide effective assistance of counsel in relation to the waiver of the 120 day IAD time limit; however, the court concluded that even if defense counsel had requested a trial date within the 120 day time limit, the court “could have determined on its own that starting the trial by March 18, 2015 could visit prejudice on Mr. Slaughter.” (Denial at 16). As such, the court concluded that even if defense counsel Collins was ineffective for unintentionally waiving Slaughter’s IAD speedy trial rights, Slaughter “cannot show prejudice” under *Strickland*. (Denial at 16). The court is incorrect.

As Slaughter explained in his filings, defense counsel Collins non-strategically, and in fact entirely inadvertently, waived Slaughter’s IAD speedy trial right, which resulted in the State’s continued unconstitutional prosecution of Slaughter, because but for defense counsel’s objectively unreasonable waiver of Slaughter’s IAD speedy trial right, the State would have lost its power to prosecute Slaughter on February 6, 2015. It is clear from the record that defense counsel agreed to a trial date outside of the 120 day time limit imposed by IAD § 2543 without knowing that such action would waive Slaughter’s IAD right. At the time of the November 18, 2014 scheduling conference, defense counsel was unaware of the existence of *United State v. Mauro* and its applicability to Slaughter’s case, as was the State and the court. (A245, 247, 269, 271-72, 276). Defense counsel was also unaware at that time that the State had lodged a

detainer against Slaughter, relying on the State's representation that this was a Governor's Warrant case and understanding it to mean that the IAD was inapplicable to the case.³⁵ Throughout the pre-plea proceedings, defense counsel repeatedly acknowledged that he did not intend to waive Slaughter's IAD claim and because he was ignorant of *Mauro*, he had erroneously believed that a Governor's Warrant did not implicate any timing issues. (*Id.*). There can be no genuine dispute over the objective unreasonableness of a defense attorney accidentally waiving his client's IAD speedy trial rights.³⁶

Moreover, defense counsel advised Slaughter in a March 9, 2017 letter that if he is convicted at trial and later files a motion for postconviction relief, "that motion should allege I was ineffective for agreeing to a trial date because I did not know about the *Mauro* case. Or alternatively, that I should have not only known about the *Mauro*

³⁵ Defense counsel did not review any extradition materials prior to agreeing to the April 2016 trial date, and the State did not provide defense counsel with Slaughter's IAD paperwork until four months later on March 18, 2015. (A167, 257).

³⁶ See *Hill*, 528 U.S. at 116, 118 (finding that the defendant had waived his IAD rights by agreeing to a trial date outside of the time limit before the IAD time limit at expired); *People v. Jones*, 482 N.W.2d 207, 211, 192 Mich. App. 737, 745 (Mich. App., 1992) (noting that if the decision to delay trial was made independently by defense counsel, "the failure of trial counsel to consider the speedy trial defense presented by the IAD before setting a trial date may implicate Sixth Amendment guarantees and render the waiver of rights under the IAD invalid because of ineffective assistance of trial counsel.").

case but also checked to see if there was a detainer against you in addition to the governor's warrant." (A434). Additionally, substitute counsel, who was appointed to review Slaughter's file for any meritorious bases for withdrawal of the guilty plea, advised the court that ". . . it appears that, based upon defense counsel's own admission, there is a serious issue as to whether or not counsel was ineffective in preserving and litigating the IAD issue." (A436). Substitute counsel further noted that "[s]ince the Court would be conducting a hearing with regard to this motion [to withdraw guilty plea], all of the claims that could otherwise be made in a Rule 61 Motion for Post-Conviction Relief can certainly be litigated at this point as they relate to the issue of defense counsel's ineffective assistance and the decisions made by the defendant predicated upon that ineffective assistance." (A437).

Most notably, defense counsel Collins clearly admits ineffectiveness in his affidavit for unintentionally waiving Slaughter's IAD right and plainly states that he would have not have agreed to a trial date outside of the 120-day time period if he had known the IAD was applicable to Slaughter's case. (A575-577). Likewise, defense counsel asserts that he would have known that key fact if he had independently researched the issue rather than relying on the State's incorrect statement that this was not an IAD case. (A576-77).

In light of the aforementioned, it is clear that defense counsel's accidental waiver

of Slaughter's speedy trial IAD right was objectively unreasonable. The court, in denying Slaughter's claim of ineffectiveness, does not clearly reach a finding on the issue of whether counsel's action was objectively unreasonable but instead concludes that in any event, Slaughter cannot show prejudice because the court could have granted a continuance upon request of the State or continued the trial on its own outside of the 120 day window. (Denial at 16).

As Slaughter explained in his filings, had defense counsel refused to waive the 120 day time period, as defense counsel attests in his affidavit that he would have done if had he been aware of the applicability of the IAD, the State would presumably have requested a continuance and if the court had found good cause, the court could certainly have granted the continuance and set a trial date outside of the 120 day time period. Yet none of those actions occurred. The court simply asserts retroactively that the court could have and would have granted a continuance but fails to provide any case law supporting the assumption that this type of retroactive analysis is appropriate in assessing the merit of an IAD claim.

It should be noted that there is no authority in Delaware to support a conclusion that the constitutional violations were harmless on the basis of an after-the-fact finding that a good cause continuance of the deadline would have been granted by the court if one had been requested. In fact, such an approach was expressly rejected in *State v.*

Brown.³⁷ The court emphasized in *Brown* that at the time the State could have requested a good cause continuance, the applicable IAD time limit had already expired.³⁸ Similarly, for the aforementioned reasons, defense counsel's waiver of the 120 day time limit was made in violation of Slaughter's Sixth Amendment right to the assistance of effective counsel, and by the time the State realized that the IAD was in fact applicable to Slaughter's case, the 120 days would have long since expired, as would the time for requesting a good cause continuance.

Moreover, the court suggests that the case could not have been tried within 120 days; however, defense counsel avers in his affidavit that he would not have agreed to a trial date outside of the 120 day deadline, and the court fails to consider that counsel may have sought continuances of his other trials or would have asked the Office of Conflicts Counsel to appoint different counsel for Slaughter so that the case could be tried within 120 days or alternatively, that counsel may have determined that it was strategically in Slaughter's best interest for the case to proceed expeditiously.

³⁷ *State v. Brown*, Del. Super., ID No. 1108002188, Jurden, P.J., at 18 (April 10, 2017) (Fastcase)

³⁸ *Id.* ("Alternatively, the State argues that the Court should find, after-the-fact, that 'good cause' existed under the UAD to hold trial more than 120 days after Brown's return to Delaware. But the State is unable to cite to any case in which a Delaware court has retroactively determined that 'good cause' existed to grant a continuance sought after the expiration of the applicable UAD time limit.").

In light of the aforementioned, it is indisputable that defense counsel did not make a strategic decision to waive Slaughter's IAD speedy trial right. Rather, defense counsel's reliance on the State's representation that it was a Governor's Warrant case for which the IAD did not apply, failure to independently review the extradition file, and lack of knowledge of *Mauro* resulted in an unintentional waiver of Slaughter's speedy trial right. Such action is unquestionably objectively unreasonable, as conceded by defense counsel.

Significantly, because the State's actions in bringing Slaughter to Delaware triggered application of 11 *Del. C.* § 2543(c), the State was required to bring Slaughter to trial within 120 days of his arrival in Delaware, and when the State failed to meet this deadline, the IAD required that the indictment be dismissed with prejudice. The State's continued prosecution of Slaughter from that point forward violated Slaughter's constitutional right to due process. However, defense counsel's unwitting waiver of the 120 day deadline legitimized this otherwise unconstitutional prosecution. Thus, but for defense counsel's objectively unreasonable waiver of Slaughter's IAD speedy trial right, the indictment against Slaughter would have been dismissed and no guilty plea would have been entered by Slaughter.³⁹ In light of the aforementioned, the court's

³⁹ *Strickland*, 466 U.S. at 694 (holding that prejudice is established by showing "there is a reasonable probability that but for counsel's unprofessional

conclusion, based upon a retroactive analysis for which there is no supporting case law, that it could have continued the trial for good cause and therefore Slaughter was not prejudiced by defense counsel's action is erroneous.

Since Slaughter arrived in Delaware on October 9, 2014, the State was required to bring the matter to trial by February 6, 2015. The burden of compliance with the requirements of the IAD rests with the State.⁴⁰ The record is clear that the State did not bring the matter to trial within 120 days nor did the State seek a good cause continuance to toll the 120 day deadline prior to the expiration of the deadline. Thus, in the absence of a valid waiver of the 120 time limitation, the IAD required that the matter be dismissed with prejudice.⁴¹ Accordingly, but for defense counsel's objectively unreasonable waiver of Slaughter's IAD speedy trial right, the State would have lost its power to prosecute Slaughter after February 6, 2015, and the State's continued prosecution from that point forward would have violated Slaughter's constitutional right to due process of law under the Fourteenth Amendment of the

errors, the result of the proceeding would have been different" with "reasonable probability" being defined as "a probability sufficient to undermine confidence in the outcome").

⁴⁰ *Pittman v. State*, 301 A.2d 509, 514 (Del. 1973) ("The burden of compliance with the procedural requirements of the IAD rests upon the party states and their agents"), superseded on other grounds by statute, 11 *Del. C.* § 2542(g).

⁴¹ 11 *Del. C.* § 2544(c).

United States Constitution and Article 1, § 7 of the Delaware Constitution.⁴² As such, the Superior Court's finding that Slaughter was not prejudiced by any potential error made by defense counsel is clearly erroneous, as is the court's finding that Slaughter waived his ineffectiveness claim by pleading guilty, because it overlooks and/or fails to distinguish Supreme Court precedent.

Because the waiver of Slaughter's IAD speedy trial right was made in violation of Slaughter's right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution and Article I, § 7 of the Delaware Constitution,⁴³ the State's continued prosecution of Slaughter beyond February 6, 2015, the expiration of the 120 day time period, deprived Slaughter of due process of law under the Fourteenth

⁴² See *Blackledge*, 417 U.S. at 30-31 (holding that the defendant's claim was not barred by his guilty plea, because "the nature of the underlying constitutional infirmity", vindictive prosecution, "implicates 'the very power of the State' to prosecute the defendant", as "[t]he very initiation of the proceedings" against the defendant "operated to deprive him of due process of law"); see also *Menna*, 423 U.S. at 63 and n.2 (holding that "a plea of guilty to a charge does not waive a claim that—judged on its face—the charge is one which the State may not constitutionally prosecute . . . no matter how validly his factual guilt is established"); *Moore v. Hall*, 62 A.3d 1203, 1208 (Del. 2013); *Hammond v. State*, 569 A.2d 81, 87 (Del. 1989) (recognizing "fundamental fairness, as an element of due process" under Article I, § 7 of the Delaware Constitution).

⁴³ Del. Const. art. I, § 7 (providing that a criminal defendant has "a right to be heard by himself or herself and his or her counsel"); *Potter v. State*, 547 A.2d 595, 600 (Del. 1988) (holding that a defendant in a criminal case is guaranteed the right to legal representation under Delaware state law).

Amendment to the United States Constitution and Article I, § 7 of the Delaware Constitution.⁴⁴ As defense counsel's constitutionally ineffective actions prevented the dismissal of the indictment prior to the entry of the guilty plea and resulted in a violation of Slaughter's federal and state right to due process of law, the only possible remedy for the constitutional violation is the withdrawal of the guilty plea and dismissal of the indictment with prejudice.

⁴⁴ *Blackledge*, 417 U.S. at 30-31; *Moore*, 62 A.3d at 1208.

ARGUMENT II. THE SUPERIOR COURT ERRED IN DENYING SLAUGHTER'S CLAIM THAT IF THE COURT FINDS DEFENSE COUNSEL ACTED REASONABLY IN RELYING ON THE STATE'S REPRESENTATIONS WITHOUT INDEPENDENTLY CONFIRMING THEIR ACCURACY, THEN DEFENSE COUNSEL'S WAIVER OF THE 120-DAY IAD TIME LIMIT WAS INVOLUNTARY AND THEREFORE INVALID, RESULTING IN AN UNCONSTITUTIONAL PROSECUTION OF SLAUGHTER.

QUESTION PRESENTED

Did the Superior Court err in finding Slaughter's postconviction claim that defense counsel's waiver of Slaughter's IAD speedy trial right was involuntary and therefore invalid, resulting in an unconstitutional prosecution, to be procedurally defaulted and alternatively, waived via a valid guilty plea? This issue was preserved as it was raised in the Amended Motion and Reply Brief. (A484-498, 587-594).

SCOPE OF REVIEW

Questions of law are reviewed *de novo*.⁴⁵ Claims alleging a constitutional violation are reviewed *de novo*.⁴⁶ As Slaughter alleges he was deprived of his constitutional right to effective assistance of counsel, this claim is reviewed *de novo*.

MERITS OF THE ARGUMENT

The Superior Court erred in finding that Slaughter's second postconviction claim—that if the court found defense counsel Collins' reliance on the State's

⁴⁵ *Dawson*, 673 A.2d at 1190.

⁴⁶ *Hall*, 788 A.2d at 123.

representations that this was a Governor's Warrant case and not an IAD case to be objectively reasonable, then counsel's waiver of the 120 day time period was involuntary and therefore invalid—to be procedurally barred and alternatively, waived via the entry of a valid guilty plea. (Denial at 12). However, for the reasons explained in Claim I⁴⁷ and below, the court is incorrect.

In his filings, Slaughter explained that if the court found defense counsel's reliance on the State's misrepresentations to be objectively reasonable, then counsel's waiver could not be considered voluntary, as the record establishes that the waiver was induced by deceit, albeit unintentional, on the part of the State. A voluntary waiver "require[s] knowledge of or reason to know the basic fact that gives rise to the IAD right".⁴⁸ Due process further requires that for a waiver to be voluntary, it must be the "product of a free and deliberate choice[,] rather than intimidation, coercion[,] or deception".⁴⁹ It cannot reasonably be said that defense counsel had knowledge of the basic fact giving rise to Slaughter's right to be tried within 120 days of his arrival in Delaware—that the IAD was applicable to Slaughter's case.

The record shows that the State made the following representations to defense

⁴⁷ See *supra* pp. 17-23.

⁴⁸ *United States v. Lawson*, 736 F.2d 835, 839 (2d Cir. 1984).

⁴⁹ *Garvey v. State*, 873 A.2d 291, 296 (Del. 2005) (citing *Norcross v. State*, 816 A.2d 757, 762 (Del. 2003)).

counsel concerning the manner in which Slaughter was brought to Delaware and the applicability of the IAD to Slaughter's case, many of which later proved to be false:

1. This was not an IAD case, because Slaughter was returned to Delaware pursuant to a Governor's Warrant (A81, 85, 245-46, 250, 253, 255, 271);
2. The GDOC informed Delaware that it would not extradite Slaughter on an IAD request, because it was a capital murder case and the IAD therefore did not apply (A139-40);
3. The only reason Delaware pursued a Governor's Warrant was because Georgia relayed that it would not honor an IAD request (A141);
4. The State does not know why Georgia believes the IAD does not apply to capital murder cases, because that is legally incorrect (A140-41);
5. Ron Mullin, the Delaware Department of Justice's extradition supervisor, erroneously advised the GDOC that Slaughter could not request return under the IAD, and a Governor's Warrant was necessary to obtain custody of him (A335);
6. *Mauro* may apply to Slaughter's case (A219, 227, 261, 268-69, 296-97);
7. *Mauro* does not apply to Slaughter's case, because a Governor's Warrant is not a written request for temporary custody under the IAD (A353-56).

The aforementioned representations made by the State all misled defense counsel into believing the IAD was not implicated in Slaughter's case, and to the extent that Delaware chose to pursue a Governor's Warrant for the extradition of Slaughter, it was in response to the misunderstandings of law made by the Georgia Department of

Corrections. These representations were all false. However, because the State did not provide the IAD paperwork to defense counsel until March 18, 2015, four months after the scheduling conference at which defense counsel unintentionally waived Slaughter's speedy trial right, defense counsel relied on the representations made by the State and assumed their accuracy. (A167, 257). As defense counsel remarked to the court, ". . . I was in no position to acquiesce or not acquiesce [to a trial date outside the IAD time limit] because it had been represented to me that this was not an IAD case." (A285). In fact, defense counsel further stated, "I seriously doubt Ms. Woloshin and I would not have raised the IAD issue had we not been informed this was a governor's warrant case." (A245).

While clear that the State did not intend to deceive defense counsel, it is also clear that the lack of deceitful intent is immaterial, as the result was the same—defense counsel did not, and could not, freely acquiesce to the April 2016 trial date. Defense counsel's acquiescence to the April 5, 2016 trial date was made in specific reliance on critical misrepresentations made by the State. As such, defense counsel's alleged waiver of Slaughter's speedy trial IAD rights was procured by the State's extremely significant, despite unintentional, misrepresentations. The State's conduct has the consequence of rendering any waiver of a right made in reliance on this false information involuntary. In the absence of free acquiescence, defense counsel's waiver

is unequivocally an invalid waiver. While it is true that a defense attorney can waive an IAD right on behalf of his/her client, even if the waiver is not knowing or intelligent,⁵⁰ courts are in agreement that such a waiver, at a minimum, must be voluntary.⁵¹ Based on the unusual circumstances of this case, it is clear that defense counsel's waiver of Slaughter's IAD speedy trial right was not voluntarily made.

In denying Slaughter's claim, the Superior Court did not reach a finding on the above raised issues. Rather, the court simply concluded that Slaughter's claim was procedurally barred, both for failure to raise in a direct appeal and by entering a valid guilty plea. (Denial at 12, 14). The court erred on both counts. For the reasons explained in Claim I, pursuant to United States Supreme Court precedent, Slaughter's claim is not waived simply because he entered a valid guilty plea.⁵² For the reasons explained in Claim III,⁵³ defense counsel were constitutionally ineffective when they

⁵⁰ See, e.g. *Hill*, 528 U.S. at 114-15.

⁵¹ *Lawson*, 736 F.2d at 839; see also *People v. Turner*, 79 Cal. Rptr. 2d 740, 744, 67 Cal. App. 4th 1258, 1265 (Cal. App., 1998) (citing *Drescher v. Superior Court*, 218 Cal. App. 3d 1140, 1148 (Cal. App., 1990)) ("Voluntariness [of a statutory right] requires a showing of record that the defendant or his attorney freely acquiesced [in the waiver]."); *Conn v. State*, 831 N.E.2d 828 (Ind. 2005) (holding that the defendant's failure to object to a trial date outside of the IAD time limit was not a voluntary relinquishment of his IAD right, as it was prompted by the trial court's failure to give timely notice of the trial date to the defendant and defendant's counsel).

⁵² See *supra* pp. 17-23.

⁵³ See *infra* pp. 42.

provided Slaughter with the incorrect legal advice that he could not appeal the IAD issues because they were waived when he pleaded guilty. As explained in Claim I, pursuant to *Class*, Slaughter's guilty plea did not waive his right to appeal the IAD issue; therefore, defense counsel provided Slaughter with incorrect legal advice, which prompted Slaughter to not file an appeal.

Because it is clearly objectively unreasonable to provide erroneous legal advice,⁵⁴ and because Slaughter was prejudiced by this erroneous advice in that he failed to appeal a meritorious issue of great significance, Slaughter received ineffective assistance of counsel in respect to the failure to file a direct appeal.⁵⁵ As the courts have held, ineffective assistance of counsel constitutes cause for the procedural default that is required to overcome the procedural bar of Rule 61(i)(3).⁵⁶

⁵⁴ See, e.g. *Lafler v. Cooper*, 132 S.Ct. 1376, 1383-84 (2012) (noting that the parties all conceded that defense counsel provided deficient performance under the Sixth Amendment when he informed the defendant of an incorrect legal rule).

⁵⁵ *Strickland*, 466 U.S. at 687-88, 694.

⁵⁶ Del. Super. Ct. R. 61(i)(3) ("Any ground for relief that was not asserted in the proceedings leading to the judgment of conviction, as required by the rules of this court, is thereafter barred, *unless the movant shows (A) [c]ause for relief from the procedural default and (B) [p]rejudice from violation of the movant's rights.*") (emphasis added); *Murray v. Carrier*, 477 U.S. 478, 488 (1986), superseded on other grounds by statute ("If the procedural default is the result of ineffective assistance of counsel, the Sixth Amendment itself requires that responsibility for the default be imputed to the State, which may not "[conduct] trials at which persons who face incarceration must defend themselves without adequate legal assistance"[;] [i]neffective assistance of counsel, then, is cause for a procedural default."); *Smith v. Horn*, 120 F.3d 400, 408-09 (3d Cir. 1997); see also *Younger v. State*, 580 A.2d

Additionally, Slaughter is able to demonstrate prejudice from violation of his rights,⁵⁷ as the prejudice is readily apparent in that the United States Supreme Court has found this issue to be of such importance that it is one of the very few exceptions to the general rule that a valid guilty plea waives all pre-guilty plea issues, even those of constitutional dimension.⁵⁸ As such, dismissing Slaughter's claim as procedurally defaulted, denies Slaughter the opportunity to be heard on an issue of such importance that even a valid guilty plea does not waive it, as a direct result of receiving incorrect legal advice in violation of his federal and state constitutional right to receive the effective assistance of counsel. Moreover, at the very least, a meritorious issue would have been presented to this Court, as opposed to no appeal at all.

Accordingly, Slaughter has demonstrated cause for the procedural default and prejudice from violation of movant's rights sufficient to meet the requirements of Rule 61(i)(3) for exception to the procedural bar, and the Superior Court erred in concluding otherwise.

552, 556 (Del. 1990) ("Attorney error short of ineffective assistance of counsel does not constitute 'cause' for a procedural default even when that default occurs on appeal rather than at trial.").

⁵⁷ Del. Super. Ct. R. 61(i)(3).

⁵⁸ *Class*, 138 S.Ct. at 803 (citing *Blackledge*, 417 U.S. at 30 (quoting *Tollett*, 411 U.S. at 266-67)) ("The Court noted that a guilty plea bars appeals of many claims, including some "antecedent constitutional violations" related to events (say, grand jury proceedings) that had "occurred prior to the entry of the guilty plea."").

Because the State was required, and failed to, bring Slaughter to trial by February 6, 2015 under the plain language of the statute, and because defense counsel's waiver of the time period was invalid, the State no longer had the power to prosecute Slaughter for the alleged conduct at the time the guilty plea was entered, and the indictment should have been dismissed with prejudice long before the plea colloquy. The very continuation of proceedings against Slaughter from February 7, 2015 forward violated Slaughter's right to due process of law under the Fourteenth Amendment to the United States Constitution and Article 1, § 7 of the Delaware Constitution. As such, the only remedy now available is the withdrawal of the guilty plea and dismissal of the indictment with prejudice.

ARGUMENT III. THE SUPERIOR COURT ERRED IN DENYING SLAUGHTER'S CLAIM THAT DEFENSE COUNSEL WERE CONSTITUTIONALLY INEFFECTIVE FOR FAILING TO FILE A DIRECT APPEAL CHALLENGING THE SUPERIOR COURT'S DENIAL OF THE SECOND MOTION TO DISMISS.

QUESTION PRESENTED

Did the Superior Court err in finding Slaughter's postconviction claim that defense counsel were ineffective for failing to appeal the IAD issue fail the *Strickland* standard? This issue was preserved as it was raised in the Amended Motion and Reply Brief. (A499-502, 599-600).

SCOPE OF REVIEW

Questions of law are reviewed *de novo*.⁵⁹ Claims alleging a constitutional violation are reviewed *de novo*.⁶⁰ As Slaughter alleges he was deprived of his constitutional right to effective assistance of counsel, this claim is reviewed *de novo*.

MERITS OF THE ARGUMENT

The Superior Court erred in finding that Slaughter's postconviction claim that defense counsel were ineffective for failing to appeal the denial of the second motion to dismiss fails the *Strickland* standard. The court concluded that Slaughter's claim was without merit for two reasons, the first being that "Mr. Slaughter was informed that

⁵⁹ *Dawson*, 673 A.2d at 1190.

⁶⁰ *Hall*, 788 A.2d at 123.