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November 24, 2025

Honorable Chief Justice and Associate Justices
Supreme Court of New Jersey
25 Market Street
Trenton, New Jersey 08625

Re: A-4-25 *State of New Jersey v. Jamar Myers* (090743)
Appellate Division Docket No.: A-002045-22
Indictment No.: 14-02-232

Honorable Chief Justice and Associate Justices:

Pursuant to *Rule 2:6-2(b)*, kindly accept this letter brief in lieu of a more formal submission on behalf of amicus curiae the American Civil Liberties Union of New Jersey (“ACLU-NJ”) in the above-captioned matter.

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PRELIMINARY STATEMENT

Mr. Myers was facing a choice, spelled out to him in detail by both the trial court and his lawyer: enter a global plea to two charges and be sentenced to concurrent terms or face the risk of lengthier consecutive sentences. He knew, however, that he had a viable appeal from the denial of his motion to suppress evidence obtained in connection with one of the crimes with which he was charged, but which the court had allowed to be applied to both of the crimes with which he had been charged. In that context, the trial court explained to him that he would be able to withdraw his “guilty plea” if he won his appeal.

Mr. Myers did win that appeal, and attempted to withdraw his global plea, but the trial court and the Appellate Division ruled that he could withdraw his plea only as to one of the charges. This result flies in the face of *Rule 3:5-7* which expressly allows the withdrawal of global pleas under the circumstances at bar, undermines this Court’s repeated recognition that tainted evidence not be used to convict and punish people, and exacerbates the already coercive impact of plea negotiations. For these reasons alone, the Appellate Division’s decision should be reversed and Mr. Myers should be allowed to withdraw his plea. (Point I).

But there is more. Mr. Myers had a right to expect that the trial court would inform him accurately as to the consequences of his plea, and to rely on such information. If the trial court meant that a plea to only a specific charge could be withdrawn if Mr. Myers succeeded on appeal, then the judge should have said so explicitly. Defendants should not be penalized if a judge fails to clarify a condition or if the prosecutor fails to object to a condition in a global plea agreement. A defendant's reasonable expectation is paramount to how he proceeds in his case and here, based on the record made to him by the judge, Mr. Myers had a reasonable expectation to withdraw his global plea after his motion to suppress evidence was granted on appeal. (Point II).

Amicus urges the Court to reverse the Appellate Division's ruling and hold that all pleas connected to the illegal evidence should be vacated.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

For the purposes of this brief, amicus accepts the statement of facts and procedural history contained in Defendant's Appellate Division Brief.

ARGUMENT

I. Mr. Myers should be permitted to withdraw his global plea based on the constitutional protections embedded in the New Jersey Court Rules.

A. Rule 3:5-7 mandates that Mr. Myers be permitted to withdraw his plea.

The New Jersey Court Rules carve out specific protections for a

defendant who brings a constitutional claim against unreasonable searches and seizures. Generally, when a defendant agrees to take a guilty plea it “constitutes a waiver of all issues which were or could have been addressed by the trial judge before the guilty plea.” *State v. Robinson*, 224 N.J. Super. 495, 498 (App. Div. 1988). The waiver even applies to claims of certain constitutional violations. *See State v. Knight*, 183 N.J. 449, 470 (2005) (“[A] defendant who pleads guilty is prohibited from raising, on appeal, the contention that the State violated his constitutional rights prior to the plea.” (quoting *State v. Crawley*, 149 N.J. 310, 316 (1997))); *State v. Davila*, 443 N.J. Super. 577, 585 (App. Div. 2016).

However, there are three exceptions to the general rule.

[F]irst, expressly provided by *Rule* 3:5–7(d), permits a defendant to challenge on appeal an unlawful search and seizure of evidence after entering a guilty plea. The second, expressly authorized by *Rule* 3:28(g), permits an appeal after a guilty plea from an order denying entry into the pre-trial intervention program. Lastly, pursuant to *Rule* 3:9–3(f), a defendant may appeal those adverse decisions specifically reserved by a conditional guilty plea entered in accordance with the *Rule*.

[*Davila*, 443 N.J. Super. at 586 (citations omitted).]

The basis for the first exception—allowing automatic appellate review for motions to suppress illegal evidence based on unlawful searches and seizures—stems from the Court’s recognition of the importance of the

exclusionary rule and a judicial policy of this state that a plea should not be based on unconstitutionally-obtained evidence, unless expressly waived.

Robinson, 224 N.J. Super. at 499-501 (“*R. 3:5* is the successor to *R.R. 3:2A-1 et seq.*, which was adopted by our Supreme Court in 1962 in response to *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961), applying the exclusionary rule embodied in the Fourth Amendment to the states.”).

Here, Mr. Myers took a global plea to the felony murder charge in the Pharmacy Case¹ and the armed robbery in the 7-Eleven Case (Dp 8-9).² Prior to the global plea, in the 7-Eleven case, the trial court granted the suppression motion in part, suppressing the gun but finding the clothing and money admissible. (Dp 5, Da 26). The trial court granted the State's motion under Rule of Evidence 404(b)³ to admit the clothing and money evidence from the

¹ Reference to the Pharmacy case and 7-Eleven case is in accord with the facts of the New Jersey Office of the Public Defender's brief to the Court on this case.

² Dp refers to Defendant's petition for certification.

Da refers to the Appendix to Defendant's Appellate Division brief.

1T refers to the transcript of the November 29, 2016, plea hearing.

³ Rule 404(b) governs the admission of evidence of other crimes or wrongs, stating that “evidence of other crimes, wrongs, or acts is not admissible to prove a person's disposition in order to show that on a particular occasion the person acted in conformity with such disposition” but that “[t]his evidence may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident when such matters are relevant to a material issue in dispute.” N.J.R.E. 404(b)(1); N.J.R.E. 404(b)(2).

7-Eleven case in the Pharmacy Case. On appeal this Court in *State v. Nyema*, 249 N.J. 509 (2022), held that the officers conducted a warrantless search, thus granting Mr. Myers' motion to suppress in its entirety.

At the time of the plea, the court was aware that Mr. Myers filed an appeal from the denial of the motion to suppress and, pursuant to the Rule 404(b) motion, was aware that the evidence sought to be suppressed was to be used in both the 7-Eleven Case and the Pharmacy Case. In that context, in the colloquy with Mr. Myers prior to his acceptance of the plea, the trial court advised him that he would have the right to withdraw his "guilty plea" if he succeeded on the appeal from the denial of the suppression motion. (1T 9:25 to 10:8). The trial court did not differentiate between the charges to which Mr. Myers was to plead.

The message conveyed by the trial court's explanation to Mr. Myers was consistent with *R. 3:5-7(d)*. Once, as here, Mr. Myers filed the appeal from the denial of the motion to suppress, the conditions of *Rule 3:5-7(d)* had been met, and victory on appeal would necessarily allow Mr. Myers to withdraw his plea to any charge to which he pleaded which was connected to the suppressed evidence. Unlike the conditional rule in *R. 3:9-3(f)*, *Rule 3:5-7(d)* does not require approval of the court, consent of the prosecuting attorney, or a preservation of the right to appeal. *Rule 3:5-7(d)* embodies the exclusionary

rule and automatically allows an appeal for denied motions to suppress violations of search and seizure protections.

B. Applying *Rule 3:5-7* so as to allow withdrawal of global pleas diminishes the unfair effect on plea negotiations based on unconstitutionally seized evidence.

A decision to enter a guilty plea is not a light one. Here, as in many cases, the plea-bargaining process is fragile. Behind the backdrop, regardless of guilt or innocence, defendants must choose between admitting guilt with a lesser sentence or choosing to exercise their Sixth Amendment right to trial and face an excessive sentence if convicted—also known as the trial penalty. As described by the Federal Sentencing Reporter, “[e]very day, in virtually every criminal court throughout the nation, people plead guilty solely as a consequence of a prosecutor's threat that they will receive an exponentially greater post-trial sentence compared to the pre-trial offer. . . . That differential is known as the trial penalty.” Norman L. Reimer & Martín Antonio Sabelli, *Editors’ Observations: The Tyranny of the Trial Penalty: The Consensus that Coercive Plea Practices Must End*, 31 Fed. Sent’g Rep. 215, 215 (2019).

In global pleas—which seek to resolve multiple cases at once—a defendant has fewer options, and more is at stake. A defendant may want to fight one case and plead guilty to another but is not given that opportunity. Global pleas create an all of nothing systemic coercion—if the defendant

wants any deal, they must plead guilty to all the charges or none at all. While imperfect, protections are in place to ensure that when a defendant waives fundamental constitutional rights, it is done voluntarily. However, when a plea negotiation is based on illegal evidence, it undermines the voluntariness of the plea-bargaining process and exacerbates the coercive aspects of the process.

Courts in other jurisdictions have recognized this prejudice, specifically as it relates to pleas based on illegal evidence. In California, Penal Code § 1538.5 (m), is similar in effect to *Rule 3:5-7*, the California Supreme Court held that “the entire judgment of conviction must be reversed when the erroneously admitted evidence was directly relevant to some, but not all, of the counts to which the accused pled guilty.” *People v. Miller*, 658 P.3d 1320, 1321, 1323-28 (Cal. 1983). The court in *Miller* further reasoned that “[b]ecause we cannot measure the prejudice suffered by defendant without engaging in impermissible speculation, he is entitled to be restored to the position he would have enjoyed had the court properly ruled on the motion in the first instance.” *Id.* at 1325.

Similarly, in *People v. Grant*, 380 N.E.2d 257 (N.Y. 1978), the court held

[w]hen a conviction is based on a plea of guilty an appellate court will rarely, if ever, be able to determine whether an erroneous denial of a motion to suppress contributed to the defendant’s decision, unless at the time of the plea he states or reveals his reason for pleading guilty. This is especially true when the

defendant has unsuccessfully sought to suppress a confession. Accordingly, the order of the Appellate Division should be reversed, the plea vacated and the motion to suppress granted.

[380 N.E.2d at 265 (citations omitted).]

Federal courts have recognized the potential for prejudice as well. In *United States v. Benard*, the 10th Circuit held

we cannot conclude beyond a reasonable doubt that Defendant would still have agreed to waive his right to a jury trial as to either or both of the counts of conviction absent the district court's error. We therefore hold that the district court's suppression error requires remand of both counts of conviction under Rule 11(a)(2).

[680 F.3d 1206, 1214-15 (10th Cir. 2012) (citation omitted) (quoting *Miller*, 658 P.2d at 1326).]

Like the cases above, we cannot tell from the record in this matter precisely how the tainted evidence affected Mr. Myers' decision to plea. We do know that the decision to enter the global plea was a difficult one. We know that he was significantly considering the evidence against him and had specific concerns about the discovery that would be admitted. Prior to the issue being resolved, his lawyer stated, "he wants to see the videos. He wants to see them, not read the transcripts" (1T 7:14 to 16). We know that he indicated to the court that he needed some more time to consider whether to plead, prompting the judge to say, "so you're going to be given your day in court. There's a

couple of motions that I need to address before the jury is brought over but once, you know, I start proceeding then I'm not going to accept any negotiated plea." (1T 3:17 to 21). We know that the judge felt compelled to again stress to Mr. Myers that this was his absolute last chance to avoid an extraordinarily harsh sentence:

Mr. Myers, as I said, this is your last opportunity to accept the plea as indicated by Mr. Grillo. Once I start moving forward this morning then that plea is off the table. Even if you tell me during jury selection, Judge, I want to plead, I'm not going to let you. The rule is you have to plead open to all the charges in the indictment, including the murder charge. That, as I said, under case law from the New Jersey Supreme Court, if you're found guilty of whatever charges you're charged with then I have to run everything consecutive[ly].

[(1T 8:11 to 21).]

This was reaffirmed to Mr. Myers by his attorney:

if in fact he was to prevail here at the homicide trial the next case would put him in jeopardy of, in essence, getting something perhaps even worse than a 30 do 30 because of his status as a persistent offender. . . . [I]f he was to be convicted of the homicide charge certainly the Court can sentence him up to *75 years in jail*, which is essentially life.

[(1T 9:6 to 18) (emphasis added).]

Like many criminal defendants, Mr. Myers' back was against the wall.

As the Courts in *Miller*, *Grant*, and *Benard* explained, there is no way of knowing how much weight the illegal evidence played in his decision to plead

guilty. Here, the illegal evidence coupled with a global plea offer and a trial penalty underscore the worst of the coercive nature of the plea-bargaining process. Application of *Rule* 3:5-7 to situations where global plea negotiations concern charges connected to illegally suppressed evidence ameliorates the prejudice caused by the holding of negotiations under such circumstances in the first place.

II. The record also supports a global plea withdrawal based on Mr. Myers' reasonable expectation of the conditions to his plea, the court's failure to clearly inform Mr. Myers of the conditions of his plea and the State's failure to object.

Even were it not for the conclusive effect of *R.* 3:5-7, and this issue were analyzed as a conditional plea, Mr. Myers would be able to withdraw his global plea because his reasonable expectations as to the conditions of his plea were not met. Indeed, these expectations were created in response to the trial court's explanation as to the consequences of Mr. Myers' plea, and to the extent that the State is taking the position that when the trial court told Mr. Myers that he might have the right to withdraw his "guilty plea," the court meant only to the 7-Eleven Charge, then the trial court did not clearly inform Mr. Myers of the consequences of his plea. Moreover, the State's silence at the time constitutes acquiescence in the trial court's errors.

A. Mr. Myers has a right to have his reasonable expectations as to the conditions of his plea met.

“Generally, a guilty plea constitutes a waiver of all issues which were or could have been addressed by the trial judge before the guilty plea.” *Davila*, 443 N.J. Super. at 585 (quoting *Robinson*, 224 N.J. Super. at 498); *see, e.g., State v. Truglia*, 97 N.J. 513, 522-24 (1984). As a part of plea negotiations, this Court developed the conditional plea agreement rule, outlined in *Rule 3:9-3(f)*, whereby defendants may place conditions on their plea agreement to preserve the appealability of pre-trial motions, such as a motion to suppress physical evidence. *R. 3:9-3(f)*.

In accord with this rule, defendants may preserve their right to appeal an adverse determination of any pre-trial motion with the consent of the prosecuting attorney and approval of the court. *Id.* The preservation must be on the record. *Id.* Critically, *R. 3:9-3(f)* states that the defendant “shall be afforded the opportunity to withdraw [their] plea,” if they prevail on their appeal of the preserved pre-trial motion. *Id.*

“Generally, a defendant seeking to vacate a plea must show that he or she was misinformed of the terms of the agreement or that his or her reasonable expectations were violated.” *State v. McNeal*, 237 N.J. 494, 499 (2019) (quoting *State v. Bellamy*, 178 N.J. 127, 134-35 (2003)); *see State v. Howard*, 110 N.J. 113, 125 (1988) (permitting defendant to withdraw his guilty

plea due to his showing that the trial court failed to advise of potential confinement in a specialized treatment center and its distinct parole eligibility, with dismissed charges to be reinstated, contravening the defendant's carefully calculated expectations of his imprisonment term); *Bellamy*, 178 N.J. at 140 (holding that the plea was invalid where court failed to warn defendant that his conviction could lead to indefinite, potentially lifelong, civil commitment under the Sexually Violent Predator Act).

It follows necessarily that, in order to exercise their rights under *R. 3:9-3(f)*, defendants have the right to have been accurately informed regarding crucial elements of their plea agreement in the first place. *See McNeal*, 237 N.J. at 499; *Bellamy*, 178 N.J. at 134; *Howard*, 110 N.J. at 122; *State v. Kovack*, 91 N.J. 476, 482 (1982). The trial court's duty to ensure that defendants understand the consequences of their plea specifically extends to "consequences that are 'direct,' or 'penal.'" *Bellamy*, 178 N.J. at 134 (quoting *Howard*, 110 N.J. at 122); *see State v. Kiett*, 121 N.J. 483, 488 (1990).

A "penal" consequence is one with a "punitive" impact. *See Bellamy*, 178 N.J. at 137 (citing *Doe v. Poritz*, 142 N.J. 1, 46 (1995)). And a punitive impact is "one that effects retribution or accomplishes deterrence—renders the law or the specific provision of the law that is attacked, punishment" *Doe v. Poritz*, 142 N.J. at 46 (challenged on other grounds). There can be no dispute

that information as to whether Mr. Myers' right to withdraw his plea extends to only one charge or to all charges covered by the global plea has both "penal" and "punitive" consequences.

B. Mr. Myers' expectations that he could withdraw his global plea if successful on his appeal on the motion to suppress was reasonably based on the trial court's instructions to him as to the consequences of his plea.

Mr. Myers fulfills the requirements to have his plea withdrawal fulfilled because, absent clear explanation by the trial court to the contrary, he reasonably expected that he could withdraw his guilty plea if he succeeded on appeal. Like the defendant in *State v. Howard*, Mr. Myers made his decision to accept guilt based on what he was told in court about his consequences during the plea hearing. 110 N.J. at 122.

Here, the court first communicated the conditions of the global plea. (1T 8:16 to 18) (explaining that, for the defendant to accept global plea terms of the state, Mr. Myers had to "plead open to all the charges in the indictment, including the murder charge"). Then the court asserted that if the Defendant was successful on appeal, he could withdraw his "guilty plea": It specifically phrased the consequences of future success on the suppression issue as including the right to withdraw his "guilty plea," without any differentiation among the charges, explaining that, "if an appellate court judge finds that I committed an error, that I was wrong in my 404(b) decisions *or anything else*,

your guilty plea could be reversed.” (1T 9:25 to 10:8) (emphasis added). This was the only time that the trial court addressed the consequences of Mr. Myers’ appeal on the motion to suppress decision on his right to withdraw his plea. Never did the trial court distinguish between and among the charges that comprised the global plea.

Supported by the record, Mr. Myers’ pro se certification motion to withdraw specifies his understanding of the conditional nature of his global plea agreement. Writing on November 29, 2016, Mr. Myers asserted that he “accepted a global plea deal, on conditional terms.” (Da 73). That condition of his global and conditional plea offer was met since Mr. Myers was successful in appealing the evidence from the 7-Eleven case, which has since been suppressed due to the police lacking reasonable suspicion. *State v. Myers*, No. A-0185-17 (App. Div. Apr. 12, 2019). Mr. Myers has an unequivocal right to have his reasonable expectations at the time of his plea fulfilled. *McNeal*, 237 N.J. at 499; *Bellamy*, 178 N.J. at 134; *Howard*, 110 N.J. at 122.

C. The State acquiesced in the trial court’s explanation to Mr. Myers that created his reasonable expectation of his right to withdraw his global plea.

Beyond Mr. Myers’ right to have his reasonable expectation fulfilled, the Court should conclude that the Defendant may withdraw his guilty plea because the prosecutor implicitly consented to the conditions suggested by the

trial court’s explanation. The State’s acquiescence during a sentencing colloquy may result in implicit consent of conditions preserved. *State v. Oliver*, 482 N.J. Super. 401, 416 (App. Div. 2025).

When entering into a plea agreement with the approval of the court, “[the] reservation of ‘the right to *appeal* from the adverse determination of any specified pretrial motion’ must be placed ‘on the record.’” *Davila*, 443 N.J. Super. at 586 (citing *R. 3:9-3(f)*) (emphasis added). This agreement must be “approved by the State and by the court.” *Id.* However, the Appellate Division has repeatedly held that the manner in which the State consents to validate a conditional plea agreement does not need to be express or explicit. *Oliver*, 482 N.J. Super. at 415-16 (holding prosecutor consented to a conditional appeal by failing to object when defense counsel explicitly stated on the record that the defendant was preserving the right to appeal the “legality of the actual statute,” and the court affirmed that the issue “can be appealed”); *State v. Scurry*, No. A-0377-18T1 (App. Div. Oct. 15, 2020) (slip op. at 9)⁴ (concluding that, although the plea form and colloquy did not preserve the right to appeal, the prosecutor’s failure to object to the judge’s explicit statements at sentencing, authorizing an appeal on the suppression and plea-withdrawal issue,

⁴ Pursuant to *R. 1:36-3*, amicus includes this unpublished opinion in its appendix. Counsel is aware of no cases with contrary holdings.

constituted consent and rendered strict adherence to the rule an injustice); *State v. Matos*, 273 N.J. Super. 6, 15 (App. Div. 1994) (finding that the prosecutor had implicitly consented to the appeal provision because they did not object when it was mentioned in court, and the judge formally recognized it as part of the plea agreement).

Here, the requirements of *Rule* 3:9-3(f) for preserving a condition were fulfilled in the same manner since during the plea hearing and in the presence of the prosecuting attorney, the judge communicated to Mr. Myers that “if an appellate court judge finds that I committed an error, that I was wrong in my 404(b) decisions *or anything else, your guilty plea could be reversed.*”(1T 10:5 to 8) (emphasis added). Critically, the prosecution did not object.

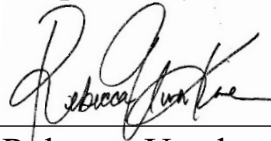
If the prosecuting attorney was certain that the Defendant could not withdraw his guilty plea, as they contend now, they should have objected to the judge’s assertion, but they did not. This is not insignificant. Our laws submit that defendants waive their right to appeal issues, including State’s constitutional violations against them, by accepting a guilty plea and not preserving conditions on the record. *See Crawley*, 149 N.J. at 316. As such, when the opposite is true and conditions are preserved on the record that are in the interest of the defendant, they must be carried out despite the State’s post hoc realizations.

In sum, a remedy short of allowing Mr. Myers to withdraw his guilty plea would be an injustice because he relied on the court's statement that he could withdraw his guilty plea if he were successful on his motion to suppress and the State did not object to that condition during the plea hearing.

CONCLUSION

For the foregoing reasons, this Court should reverse the decision below, and rule that Mr. Myers has the right to withdraw his global plea.

Respectfully submitted,



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