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May 9, 2025

Honorable Chief Justice and  
Associate Justices of the  
Supreme Court of New Jersey  
P.O. Box 970  
Trenton, New Jersey 08625

Re: State v. Jamar Myers  
Docket No.  
App. Div. Docket No. A-2045-22

Honorable Justices:

Please accept this letter, on behalf of defendant-petitioner Jamar Myers, in support of his petition for certification. Mr. Myers urges – for all the reasons in his Appellate Division briefs and this petition – that the Appellate Division decision warrants a grant of certification. That decision improperly affirmed the denial of Mr. Myers’s motion to withdraw from his global plea agreement. State v. Myers, unpublished opinion, Docket Number A-2045-22 (App. Div. May 6, 2025) (Dpa 1-17).<sup>1</sup>

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<sup>1</sup> Dpa = Petitioner’s Petition for Certification appendix

**Question Presented and Reasons for Granting Certification**

This case presents a straightforward legal question that has not been decided by this Court and is critical to protecting the rights of defendants who plead guilty: does the conditional plea rule, R. 3:9-3(f), apply when a defendant pleads guilty to multiple indictments as part of a global plea agreement and successfully appeals from a pretrial ruling on one of the indictments?

The Appellate Division incorrectly answered that question in the negative. The Appellate Division’s decision precludes defendants who enter into global plea agreements from withdrawing from the plea when they successfully appeal from an adverse pretrial ruling, even though a successful appeal substantially changes the negotiating positions of the parties. The Appellate Division’s decision defies basic principles of contract law and renders the conditional plea rule meaningless for the many defendants who enter into global plea agreements. This Court should grant certification because the case presents “a question of general public importance which has not been but should be settled by [this] Court.” R. 2:12-4.

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Db = Petitioner’s Appellate Division brief

Da = Petitioner’s Appellate Division appendix

Drb = Petitioner’s Appellate Division reply brief

Dsb = Petitioner’s Appellate Division supplemental brief

Sb = State’s Appellate Division brief

### **Procedural History and Statement of Facts**

On November 29, 2016, Jamar Myers pleaded guilty to two indictments – one indictment related to a felony murder (“the Pharmacy case”), and one indictment related to an armed robbery (“the 7-Eleven case”). (1T; Da 54-60)<sup>2</sup>

On the day he pleaded guilty, Mr. Myers was ready to go to trial on the Pharmacy case. Before starting jury selection, the State went over its final plea offer. (1T 4-11 to 6-7, 8-11 to 23) The State explained that if Mr. Myers pleaded guilty to the felony murder charge in the Pharmacy case and the armed robbery charge in the 7-Eleven case, it would request a 30-year sentence with 30 years of parole ineligibility on the felony murder, concurrent to a 12-year NERA sentence on the armed robbery. (1T 5-5 to 6-2) The State would also ask Pennsylvania to run any convictions from a pending case concurrent to Mr. Myers’s New Jersey sentence. (Ibid.) The State told Mr. Myers that if he went to trial on the Pharmacy case and was acquitted, it would seek an extended term on the 7-Eleven case, which would subject Mr. Myers to life in prison. (1T 4-11 to 25, 5-24 to 6-7, 9-3 to 10) The State also threatened to seek consecutive sentences on all cases if Mr. Myers proceeded to trial (1T 5-24 to

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<sup>2</sup> Mr. Myers also pleaded guilty to three violations of probation. (2T 15-2 to 8; Da 54, 56)

6-7, 9-10 to 15), and the judge stated that he would in fact impose consecutive sentences. (1T 8-11 to 23)

Defense counsel summarized the situation for Mr. Myers and told him that even if he prevailed on the Pharmacy case, he would be in a worse position than the plea, because he would be facing multiple indictments “without the benefit of having any involvement of the State to try to make a global deal here today that we’re talking about.” (1T 9-3 to 18) The court then told Mr. Myers that “over the last few years I’ve been handling your cases I’ve made a number of decisions,” and “[o]bviously, even with a guilty plea, that doesn’t prevent you from filing an appeal and 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) Mr. Myers then conferred with counsel and decided to plead guilty. (1T 9-3 to 23, 12-9 to 28-16; Da 54-60)

The plea agreement is contained in one form. (Da 54-60) On the form, Mr. Myers preserved his right to appeal a 404(b) decision in the Pharmacy case, and a suppression decision in the 7-Eleven case. (Da 54)

On appeal, this Court reversed the denial of Mr. Myers’s suppression motion, finding that the police lacked reasonable suspicion to stop the car that Mr. Myers was a passenger in and that all evidence found as a result of the

stop must be suppressed. State v. Nyema, 249 N.J. 509, 531-35 (2022).<sup>3</sup> The 7-Eleven case was then dismissed due to “insufficient evidence upon which to predicate successful prosecution” (Da 71), and Mr. Myers moved to withdraw from his global plea agreement pursuant to the conditional plea rule, R. 3:9-3(f). (Da 72-74; 3T 10-11 to 12-4, 14-9 to 15-20)

The conditional plea rule permits defendants to plead guilty while preserving the right to appeal from an adverse pretrial ruling, and grants defendants the right to withdraw from the plea if they prevail on appeal. Specifically, the rule states:

With the approval of the court and the consent of the prosecuting attorney, a defendant may enter a conditional plea of guilty reserving on the record the right to appeal from the adverse determination of any specified pretrial motion. If the defendant prevails on appeal, the defendant shall be afforded the opportunity to withdraw his or her plea. Nothing in this rule shall be construed as limiting the right of appeal provided for in R. 3:5-7(d).<sup>4</sup>

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<sup>3</sup> Mr. Myers’s petition for certification was granted as part of a motion for reconsideration after the Appellate Division reached opposite conclusions regarding the legality of the stop in Mr. Myers’s appeal and in his co-defendant’s appeal. Nyema, 249 N.J. at 522. Accordingly, Mr. Myers’s 404(b) argument was not before this Court.

<sup>4</sup> Rule 3:5-7(d) states that rulings on motions to suppress physical evidence are always subject to appellate review following a guilty plea. Thus, while it was not necessary for Mr. Myers to explicitly condition his plea on his right to appeal the suppression motion, he did so anyway. (Da 54)

[R. 3:9-3(f).]

The trial court denied Mr. Myers's motion to withdraw, concluding that Mr. Myers's plea was taken in a "legally appropriate" way, and that Mr. Myers failed to meet his burden under State v. Slater, 198 N.J. 145 (2009). (3T 41-7 to 52-9; Da 75) On appeal, Mr. Myers argued that his plea withdrawal motion was not governed by Slater but rather by the conditional plea rule. (Db 8-14) The Appellate Division affirmed the trial court's decision, concluding that Mr. Myers was not permitted to withdraw under the conditional plea rule or Slater. (Dpa 12-17) The Appellate Division agreed that Mr. Myers entered into "one global agreement," but found that "[t]here is nothing in the plea agreement that stated, or suggested, that defendant would have the right to withdraw his guilty plea regarding his felony murder conviction based on the reversal of a motion in the separate 7-Eleven case." (Dpa 14) In other words, the Appellate Division concluded that the conditional plea rule does not permit defendants to withdraw from their global plea agreements after successfully appealing from a pretrial ruling.

## Legal Argument

Contrary to the Appellate Division’s conclusion, basic principles of contract law demand that the conditional plea rule apply to global plea agreements. In other words, if a defendant pleads to multiple indictments, preserves his right to appeal a pretrial ruling on one indictment, and succeeds on appeal, the default rule must be that the defendant has the right to withdraw from the entire plea agreement.

Mr. Myers’s position reflects the “basic principles of contract law” that govern plea agreements. State v. Means, 191 N.J. 610, 622 (2007). When the State and the defendant enter into a plea agreement, they “reach a meeting of the minds,” and “consideration is present,” i.e., the defendant agrees to plead guilty to certain charges, and the State agrees to recommend a certain disposition. Ibid. The agreement is based on the information available to both parties at the time the defendant decides to plead guilty. When a defendant successfully appeals from a pretrial ruling, the defendant is in a different – and better – negotiating position. This is true whether the defendant pleaded guilty to one indictment or multiple indictments. See State v. Diloreto, 362 N.J. Super. 600, 616 & n.6 (App. Div. 2003) (acknowledging that the right to withdraw under the conditional plea rule applies “[i]f the defendant simultaneously pleads to multiple indictments and the pre-plea motion relates

to only one”). The conditional plea rule recognizes the change in negotiating positions by permitting the defendant to withdraw from the plea agreement. Id. at 616.

The conditional plea rule also aligns with the well-established notion that a defendant who pleads guilty based on misinformation should be permitted to withdraw from his plea agreement. See State v. Taylor, 80 N.J. 353, 365 (1979). When a defendant pleads guilty based on an erroneously decided pretrial ruling, he is essentially pleading guilty based on “misinformation,” as his plea is based on an inaccurate understanding of the State’s leverage against him. Thus, it would be “manifestly unjust to hold the defendant to his plea” after a successful appeal from a pretrial ruling. State v. Kovack, 91 N.J. 476, 482 (1982) (citation omitted).

Mr. Myers’s case clearly demonstrates why the conditional plea rule must apply to global plea agreements. First, the record shows that Mr. Myers pleaded guilty due to the totality of the State’s leverage against him. On the day of his guilty plea, Mr. Myers was ready to go to trial on the Pharmacy case, but he pleaded guilty after the State emphasized the amount of prison time that he was facing due to a combination of the indictments against him. (1T 4-11 to 25, 5-24 to 6-7, 8-11 to 23, 9-3 to 15) (State’s representation that if Mr. Myers went to trial on the Pharmacy case, it would seek consecutive

sentences on all indictments, and that if Mr. Myers was acquitted on the Pharmacy case, it would seek an extended term on the 7-Eleven case). One can understand why Mr. Myers might have chosen to plead guilty out of fear of the worst-case scenario. See Means, 191 N.J. at 618 (acknowledging that plea bargaining “enables a defendant to reduce his penal exposure”) (citation omitted). But now, the worst-case scenario has changed. The 7-Eleven Case was dismissed due to Mr. Myers’s successful appeal (Da 71), and the Pennsylvania case was never prosecuted. (Da 61-62) Thus, the risks of proceeding to trial on the Pharmacy case are not the same.

Second, the actual evidence against Mr. Myers in the Pharmacy case is weaker due to his successful appeal. When Mr. Myers pleaded guilty, the evidence that this Court suppressed in Nyema was admitted into the Pharmacy case under Rule 404(b) as evidence of identity. (Da 33, 42-53) As the trial court acknowledged, the evidence unlawfully recovered from the car was critical to the State’s proofs in the Pharmacy case. (Da 50) (trial court reasoning that “the State’s identification evidence is limited to the credibility of [the] cooperating witness . . . and the [now suppressed] clothing and cash

discovered in the suspect’s automobile”). Without the suppressed evidence, the Pharmacy case is not as strong.<sup>5</sup>

Put simply, the parties’ negotiating positions have changed, and Mr. Myers may feel differently about going to trial. It is for this reason that the conditional plea rule permits defendants in Mr. Myers’s position to withdraw from their global plea agreements.

In Mr. Myers’s pro se certification in support of his motion to withdraw, he clearly articulates his understanding of the conditional nature of his global plea agreement. (Da 72-74) He writes that on November 29, 2016, he “accepted a global plea deal, on conditional terms.” (Da 73) (emphases added). He writes, “Defendant only accepted the plea because he could not get a fair trial to prove his innocence . . . . Defendant now withdraws his global plea because overwhelmingly prejudic[ial] 404-B evidence that was improperly admitted into defendant’s homicide trial has been suppressed, etc.” (Da 73-74)

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<sup>5</sup> The Appellate Division “reject[ed] defendant’s argument that the suppression of the evidence seized in the 7-Eleven case would have undermined the strong evidence in the Pharmacy case,” as “[t]he State could still have used the video footage from the 7-Eleven store to help prove defendant’s identity.” (Dpa 16) But the admissibility of the 7-Eleven video footage under 404(b) depended on the now-suppressed evidence. (Da 47-50) (trial court analyzing admissibility of 7-Eleven video footage under State v. Cofield, 127 N.J. 328 (1992), and finding it probative of Mr. Myers’s identity in the Pharmacy case because of the unconstitutional car stop and now-suppressed evidence). Without the suppressed evidence, the trial court’s 404(b) analysis could have – and should have – come out differently.

Mr. Myers's certification highlights a notable fact in his case, i.e., that the evidence suppressed in the 7-Eleven case constituted the bulk of the 404(b) evidence in the Pharmacy case; and it makes clear his understanding that a successful appeal from any one of his preserved pretrial motions would permit him to withdraw from the agreement in its entirety. Mr. Myers's understanding of his plea is supported by the record, as the trial court judge told him, "[I]f 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) Mr. Myers's reasonable and correct understanding of his plea agreement must be honored. See Kovack, 91 N.J. at 482 ("It is fundamental that when a defendant pleads guilty pursuant to a plea agreement, the terms of the agreement must be fulfilled. . . . and a defendant's reasonable expectations generated by plea negotiations should be accorded deference.").

The Appellate Division held that Mr. Myers is not entitled to withdraw from his plea under the conditional plea rule because, "In listing the charges that defendant was pleading guilty to, the felony murder and armed robbery charges were listed separately and distinctly and clearly identified the separate indictments underlying those charges," and because "the right to appeal certain pretrial motions was listed separately and distinctly," i.e., "defendant reserved his right to appeal the N.J.R.E. 404(b) decision in the Pharmacy case" and

“separately reserved his right to appeal the suppression decision in the 7-Eleven case.” (Dpa 13-14)

This reasoning makes no sense. How did the Appellate Division want Mr. Myers’s charges and motions to be listed? Mr. Myers was pleading to charges in two separate indictments, and each of the preserved motions related to one indictment (though, in this case, the evidence underlying each motion happened to be related). There was simply no other way to list the charges and motions.

The only way to read the Appellate Division’s opinion is that defendants entering into conditional, global plea agreements must explicitly add a term that a successful appeal from a pre-plea motion permits withdrawal from the entire agreement. But for the reasons discussed in Mr. Myers’s Appellate Division briefs and this petition, the conditional plea rule requires that term to be the default. If the State wants to contract out of the default rule and specify that a successful appeal from a pre-plea motion permits withdrawal from only part of the plea, it can, but that burden rests on the State. To the extent there is ambiguity about the default rule, certification by this Court is required so that both parties know how to structure conditional, global plea agreements.

As a final note, the Appellate Division proceeded to conduct a Slater analysis even though Mr. Myers has reiterated on appeal that his motion to

withdraw is governed by the conditional plea rule, not Slater. (Dpa 14-17; Db 8-14; Drb 1-2; Dsb 2-7) This Court should also grant certification to reiterate that not all plea withdrawal motions are governed by Slater. (Drb 2) (listing various mechanisms to withdraw a plea that have nothing to do with Slater).

Over three years ago, this Court found that Mr. Myers's constitutional rights were violated, warranting suppression of items found during a motor vehicle stop. Pursuant to the conditional plea rule, this Court's decision permitted Mr. Myers to withdraw from his global plea agreement, as it was based in part on the wrongly decided suppression motion. Mr. Myers has been trying to exercise his right to withdraw since this Court's opinion was issued, and time and time again, the lower courts have prevented him from doing so.

Without this Court's intervention, defendants across the state will enter into conditional, global pleas with the understanding that they will be able to withdraw if they are successful on appeal, only to be told that their understanding of the conditional plea rule was incorrect. These pleas cannot be deemed knowing or voluntary. This Court's intervention is necessary to clarify the applicability of the conditional plea rule to global plea agreements and to afford Mr. Myers the right he is entitled to – the right to withdraw from his plea agreement.

Respectfully submitted,

JENNIFER N. SELLITTI  
Public Defender  
Attorney for Defendant-Petitioner

BY:   
ALISON GIFFORD  
Assistant Deputy Public Defender  
Attorney ID: 310912019

**CERTIFICATION**

I certify that this petition is being filed in good faith, presents a substantial question, and is not filed for the purpose of delay.

Dated: May 9, 2025

  
ALISON GIFFORD

**INDEX TO APPENDIX**

State v. Myers, unpublished opinion, Docket Number A-2045-22 (App. Div. May 6, 2025)..... Dpa 1-17