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December 29, 2025

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**LETTER-BRIEF ON BEHALF OF DEFENDANT-PETITIONER IN
RESPONSE TO THE ATTORNEY GENERAL’S AMICUS CURIAE BRIEF**

SUPREME COURT OF NEW JERSEY
DOCKET NO. 090743

STATE OF NEW JERSEY,	:	<u>CRIMINAL ACTION</u>
Plaintiff-Respondent,	:	On Certification Granted from a
v.	:	Final Judgment of the Superior
JAMAR MYERS,	:	Court of New Jersey, Appellate
Defendant-Petitioner.	:	Division, Affirming the Denial of
	:	Defendant’s Motion to Withdraw a
	:	Guilty Plea.
	:	Ind. No. 14-02-232
	:	Sat Below:
	:	Hon. Robert J. Gilson, P.J.A.D.
	:	Hon. Lisa A. Firko, J.A.D.
	:	Hon. Avis Bishop-Thompson, J.A.D.

Your Honors:

This letter is submitted in lieu of a formal brief pursuant to R. 2:6-2(b).

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PROCEDURAL HISTORY AND STATEMENT OF FACTS

Defendant-petitioner Jamar Myers respectfully refers the Court to the Procedural History and Statement of Facts set forth in his supplemental brief previously submitted in this matter.

LEGAL ARGUMENT

Jamar Myers writes to dispute the Attorney General's claims that he is not entitled to withdraw from his global plea agreement.

POINT I

DEFENDANT WAS NOT REQUIRED TO EXPRESSLY BARGAIN FOR THE INDIVISIBILITY OF HIS CONDITIONAL, GLOBAL PLEA AGREEMENT.

In Point I, the Attorney General argues that Myers was required to explicitly add a provision to his global plea agreement stating that he would be entitled to withdraw his plea to both cases if he successfully appealed a pretrial ruling in one case. (AGb 17-23)¹ For the reasons stated in Myers's supplemental brief, this provision was the default (Dsb 16-35); if either party did not want a successful appeal from a pretrial ruling to permit withdrawal from the plea, that is the term that needed to be explicitly added to the plea agreement.

In support of its position, the Attorney General points to the plea agreement's express provision that Myers would be entitled to withdraw from his plea if Pennsylvania did not run its sentence on a pending charge

¹ AGb = The Attorney General's amicus brief
Dsb = Defendant-petitioner's supplemental brief

concurrent to his New Jersey sentence. (AGb 21-22) The Attorney General's reliance on this provision is unconvincing. Myers's right to withdraw from his global plea if he succeeded on appeal from a pre-plea motion was baked into his plea agreement pursuant to the conditional plea rule. There is no court rule, however, that permits withdrawal if another State does not run a pending sentence concurrent to the defendant's New Jersey's sentence. Thus, that provision needed to be expressly added to Myers's plea.

In sum, contrary to the Attorney General's claims, the terms of Myers's global plea agreement permit withdrawal in response to his successful appeal.

POINT II

**DEFENDANT’S RELIANCE ON THE
CONDITIONAL PLEA RULE IS PROPER, AND
HE IS ENTITLED TO WITHDRAW FROM HIS
GLOBAL PLEA AGREEMENT.**

In Point II, the Attorney General incorrectly argues that Myers’s reliance on the conditional plea rule is misplaced and that he is not entitled to withdraw from his global plea agreement pursuant to the plain language of the conditional plea rule, principles of fairness, and precedent. (AGb 23-41)

A. Defendant’s Reliance On The Conditional Plea Rule Is Proper.

First, the Attorney General argues that Myers’s reliance on the conditional plea rule – Rule 3:9-3(f) – is misplaced because his successful appeal from his suppression motion was governed by Rule 3:5-7(d). (AGb 23-24) The Attorney General’s position ignores that these rules have been and must be read together. Rule 3:5-7(d) states that rulings on motions to suppress physical evidence are automatically subject to appellate review following a guilty plea. Rule 3:9-3(f), on the other hand, gives defendants an opportunity to appeal from other pre-trial rulings, with the consent of the prosecuting attorney, and explicitly states the remedy for a successful appeal from a conditional plea: “If the defendant prevails on appeal, the defendant shall be afforded the opportunity to withdraw his or her plea.” In other words, while pleas following denials of physical suppression motions are automatically

conditional, Rule 3:9-3(f) gives defendants the opportunity to enter conditional pleas involving other pre-plea motions.

The remedy following a successful appeal from a physical suppression ruling or another preserved pre-plea ruling is the same: the opportunity to withdraw. R. 3:9-3(f) (“Nothing in this rule shall be construed as limiting the right of appeal provided for in R. 3:5-7(d).”). In State v. Diloreto, our Appellate Division stated this clearly, referring to Rules 3:5-7(d) and 3:9-3(f) as our “plea preservation rules,” and noting that they “give the defendant the right to withdraw a guilty plea when the right to appeal survives the plea and defendant succeeds on appeal.” 362 N.J. Super. 600, 615-16 (App. Div. 2003), aff’d, 180 N.J. 264 (2004). As with an appeal under Rule 3:9-3(f), “an appeal under R. 3:5-7(d) [] is premised on the right of a defendant to withdraw his plea if the motion to suppress was wrongly decided in whole or in part.” Ibid.; see also State v. Marcellus, 472 N.J. Super. 269, 277 (App. Div. 2022) (reversing the trial court’s denial of the defendant’s physical suppression motion and noting that “[d]efendant is entitled to withdraw his guilty plea”).

The Attorney General cannot possibly be arguing that defendants are entitled to withdraw when they successfully appeal an explicitly preserved ruling but not when they successfully appeal a physical suppression ruling, which is deemed so important it is automatically preserved. Myers’s reliance

on the conditional plea rule is proper because it explicitly lays out the remedy for a successful appeal from a conditional plea, and a plea following the denial of a physical suppression ruling is a conditional plea. Moreover, as the Attorney General acknowledges, Myers explicitly (and unnecessarily) conditioned his plea on his right to appeal the trial court's physical suppression ruling. (AGb 24; Da 54) Despite the Attorney General's attempt to muddle the issue before this Court, the question presented is clear: whether a defendant is entitled to withdraw from his global plea agreement when he successfully appeals from a preserved pre-plea ruling that relates to one of the cases in the global plea.

B. Defendant Is Entitled To Withdraw From His Global Plea Agreement.

Contrary to the Attorney General's claims, it is Myers's position – not the State's – that is supported by the plain language of the conditional plea rule, principles of fairness, and precedent.

The Attorney General first points to the plain language of the conditional plea rule, which says, “a defendant may enter a conditional plea of guilty,” and that a defendant who prevails on appeal “shall be afforded the opportunity to withdraw his or her plea.” (AGb 25) (quoting R. 3:9-3(f)). According to the Attorney General, the latter “plea” refers only to the guilty plea to which the pretrial motion pertains. (AGb 26) The Attorney General argues that if the rule

were referring to the global plea, it would have afforded the defendant the opportunity to withdraw from his or her “plea agreement.” (AGb 25-26) In support of its argument, the Attorney General points to other places where Rule 3:9-3 uses the term “plea agreement.” (AGb 26)

Again, the Attorney General’s argument is unconvincing. Rule 3:9-3 uses the term “plea,” “agreement,” and “plea agreement” interchangeably throughout its various subsections. See, e.g., R. 3:9-3(b) (“When the prosecutor and defense counsel reach an agreement concerning the offense or offenses to which a defendant will plead . . . such agreement and such indications shall be placed on the record in open court at the time the plea is entered.”) (emphases added); R. 3:9-3(c) (If the agreement is reached without such disclosure or if the court agrees conditionally to accept the plea agreement as set forth above, or if the plea is to be based on the court’s conditional indication about the sentence, all the terms of the plea . . . shall be placed on the record in open court at the time the plea is entered.”) (emphases added); R. 3:9-3(d) (“Whenever a plea agreement includes a provision that defendant will not appeal . . . the plea agreement may be annulled at the option of the prosecutor, in which event all charges shall be restored to the same status as immediately before the entry of the plea.”) (emphases added); R. 3:9-3(e) (“If at the time of sentencing the court determines that the interests of

justice would not be served by effectuating the agreement . . . the court may vacate the plea or the defendant shall be permitted to withdraw the plea.”).

The rule uses these terms interchangeably because they describe the same thing: the contract entered into between the State and the defendant. This contract may require the defendant to plead to one charge in one indictment, or several charges across several indictments, but it is still one contract. Thus, the plain language of the conditional plea rule, which gives the defendant the right to withdraw “his or her plea” after a successful appeal, gives the defendant the right to withdraw from the entire global plea.

The Attorney General goes on to say Myers’s position “exalts substance over form,” as it would “yield inconsistent outcomes based on ministerial factors such as how the parties memorialize the agreement or the timing of the plea hearings.” (AGb 27) This is false. The question of whether the defendant is entitled to withdraw his plea to multiple cases simply depends on whether the State and the defendant entered into one, indivisible contract.

As the Washington Supreme Court has held, “when a defendant pleads guilty to multiple counts or charges at the same time, in the same proceedings, and in the same document, the plea agreement will be treated as indivisible.” State v. Turley, 69 P.3d 338, 342 (Wash. 2003). But that Court later acknowledged that those factors do not have to be present for a plea agreement

to be indivisible; rather, courts must “look[] to objective manifestations of intent in determining whether a plea agreement was meant to be indivisible.” In re Bradley, 205 P.3d 123, 127 & n.1 (Wash. 2009). Thus, that Court has found a plea agreement to be indivisible even though it spans multiple documents, when the record shows the pleas were part of a “package deal.” Id. at 127-128; see also In re Personal Restraint of Shale, 158 P.3d 588, 590 (2007) (finding plea agreement was indivisible where the pleas were described in different documents but referenced in one another, and the crimes were committed on the same day).

Contrary to the Attorney General’s claims, defendant’s position does not exalt substance over form – it just requires courts to look to the totality of the circumstances to see if the cases were resolved as part of one global deal. Here, there is no question that Myers entered a global and indivisible plea agreement, as he pleaded to multiple charges at the same time, in the same proceeding, and in the same document. Turley, 69 P.3d at 342.

Next, the Attorney General argues that defendant’s position would undermine the efficiency of the plea-bargaining process by deterring prosecutors from entering into global plea agreements. (AGb 28-29) The Attorney General’s argument suffers from two major flaws. First, the Attorney General fails to recognize that the State’s position would undermine the

efficiency of the plea-bargaining process by deterring defendants from entering global plea agreements. For example, a defendant may agree to plead to several cases, even though he feels he has legitimate defenses to those cases, because the State is offering to run the sentences on those cases concurrent to a controlling sentence. If the defendant is precluded from litigating those cases after a successful appeal from a pretrial ruling on the controlling sentence, the defendant will be far less likely to plead to those cases.

Second, the Attorney General ignores how the defendant's position is fair to both defendants and the State. Take Myers's case, for example. While he succeeded in appealing a pretrial ruling from his non-controlling 12-year sentence, if he had instead succeeded in appealing a pretrial ruling from his controlling 30-year sentence, the State might have wanted the opportunity to litigate the 7-11 Case, rather than be bound by its lenient 12-year deal.² Defendant's position simply brings both parties back to the bargaining table when a successful appeal from a pre-plea motion changes their negotiating positions.

The Attorney General offers yet another unconvincing argument, which is that Myers's position will unfairly force the State to go to trial years late.

² The State was seeking a life sentence on the 7-11 Case absent the existence of the plea agreement. (1T 4-11 to 25, 5-24 to 6-7, 9-3 to 10)

This is a consequence contemplated by the conditional plea rule. See State v. Brown, 352 N.J. Super. 338, 359 n.3 (App. Div. 2002) (Stern, P.J.A.D., concurring) (“The Rule requires prosecutorial consent so that the prosecutor, as part of the negotiated disposition, can evaluate the risks of reversal after the evidence may become stale or unavailable.”). A defendant cannot be punished for the time it takes to successfully appeal. Myers, for example, did not have the evidence against him properly suppressed until over five years after his plea agreement. State v. Nyema, 249 N.J. 509, 516, 520 (2022).

The Attorney General posits that the State would not have consented to the plea agreement if it knew that a successful appeal of Myers’s suppression motion would permit Myers to withdraw from his entire plea. (AGb 32) But the State should have known this based on the plain language of the conditional plea rule and the record in this case. (1T 9-25 to 10-8) (trial court telling Myers that, “over the last few years I’ve been handling your cases I’ve made a number of decisions,” and that “[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”).

Critically, Myers would not have pleaded guilty if he knew that a successful appeal of his suppression motion would permit withdrawal from the

7-11 Case only. (Da 73-74) (Myers certifying that he “accepted a global plea deal, on conditional terms,” and that he “only accepted the plea because he could not get a fair trial to prove his innocence . . . because overwhelmingly prejudice 404-B evidence that was improperly admitted into defendant’s homicide trial has been suppressed[,] etc.”). Myers’s understanding of his conditional, global plea agreement was correct. The prosecutor could have added a term that a successful appeal would permit withdrawal from only part of the agreement, but absent that term, Myers is entitled to withdraw from the agreement in its entirety.

Finally, the Attorney General in Point II incorrectly alleges that its position is supported by precedent. (AGb 34-40) None of the cases relied on by the Attorney General are about conditional plea agreements, so they certainly cannot be deemed precedential. It appears that neither party can find a case precisely on point. The only New Jersey case that discusses the issue directly is State v. Diloreto, where the Appellate Division acknowledged in a footnote that Myers’s position is correct. 362 N.J. Super. at 616 n.6 (noting that a defendant would be permitted to withdraw his plea to all indictments in a global plea if he “simultaneously plead[ed] to multiple indictments and the pre-plea motion relate[d] to only one”).

The Attorney General argues that the remainder of the footnote supports its position (AGb 38-40), but in fact it supports Myers's position. The remainder of the footnote states: "If, however, the defendant pleads guilty after a plea in which an issue is preserved, the subsequent plea is not subject to withdrawal upon reversal of the first conviction unless it is expressly so provided as part of the plea." Diloreto, 362 N.J. Super. at 616 n.6 (citing R. 3:9-3(f)). The Appellate Division is contrasting a situation like Myers's plea, where a defendant simultaneously pleads to multiple indictments, with a situation where the defendant enters two separate pleas. In the former situation, there is one contract, and the conditional plea rule requires withdrawal from all pleas in the contract after a successful appeal. In the latter situation, there are two contracts, and they do not stand or fall together unless that term is explicitly added to the agreement.

The most analogous cases are the ones cited in Myers's supplemental brief, which recognize that when a defendant enters a conditional plea to multiple counts in the same indictment and successfully appeals from a pre-plea motion, the defendant's motion to withdraw undoes the plea on all counts, including those unrelated to the pre-plea motion. (Dsb 28-29) The rationale in those cases applies equally to cases like this where the defendant enters a conditional plea to multiple counts across different indictments.

While cases about whether vacating a portion of a plea on appeal undoes the entire plea come out both ways, compare (Dsb 21, 30-32), with (AGb 34-36), the question in this case is limited to the impact of a successful appeal on a conditional, global plea agreement. In a conditional plea, the entire plea is conditioned upon the defendant's right to withdraw if the preserved pre-plea motion was wrongly decided. The plain language of the conditional plea rule, case law, and common sense all support Myers's position.

POINT III

THE SLATER ANALYSIS IS INAPPLICABLE TO THIS CASE, AND THE ATTORNEY GENERAL MISREPRESENTS THE RELATIONSHIP BETWEEN THE TWO CASES IN DEFENDANT'S PLEA.

Contrary to the Attorney General's claim and as Myers has repeatedly argued, the four-factor Slater³ test is inapplicable to his motion to withdraw. (Dsb 33-34) Myers writes not to dwell on the inapplicability of Slater but to respond to several misrepresentations in Point III of the Attorney General's brief. (AGb 42-49)

The Attorney General first argues that Myers is not entitled to withdraw his plea to the Pharmacy Case because he did not file a motion to suppress in that case, but rather a Rule 404(b) decision that was affirmed on appeal. (AGb 42-43). This argument is easily disposed of: because Myers has a right to withdraw his plea to both cases pursuant to the conditional plea rule, it is irrelevant that he filed a different motion in the Pharmacy Case.

In addition, while Myers maintains that he is entitled to withdraw regardless of the relationship between the two motions, the suppression motion and Rule 404(b) motion were intertwined, as the now-suppressed evidence was going to be introduced as Rule 404(b) evidence in the Pharmacy Case. (Dsb

³ State v. Slater, 198 N.J. 145 (2009).

24-25) Thus, his successful appeal actually weakens the State's proofs in the Pharmacy Case. (Ibid.)

The Attorney General incorrectly argues that “the suppression of evidence in the 7-Eleven case would not compel its exclusion from the pharmacy case.” (AGb 43-45) The Attorney General relies on State v. Herrera, where this Court considered whether drugs seized during an unlawful stop would have to be suppressed not only in a prosecution for drug charges but also in a prosecution for attempted murder and related offenses, when the defendants attacked an officer after the unlawful stop. 211 N.J. 308, 313, 329-37 (2012). This Court cited several cases declining to apply the exclusionary rule to the prosecution of an attack on an officer after a constitutional violation and adopted that position, id. at 331-37, reasoning that “suppression would not in any way discourage official misconduct in this regard,” as “it is illogical to suggest that police officers need to be deterred from provoking violent attacks against themselves.” Id. at 337.

Herrera dealt with the distinct question of using suppressed evidence in prosecuting an attack on a police officer. It did not address the more general question of whether evidence suppressed in one case can be used as Rule 404(b) evidence in another case. This Court should follow the 10th Circuit's reasoning in State v. Hill, which held that excluded evidence cannot be offered

under the federal Rule 404(b), “where there is some nexus between the initial search and seizure and the subsequent charged offense.” 60 F.3d 672, 677 (10th Cir. 1995).⁴

The Hill Court considered whether a police officer could testify that the defendant had possessed cocaine during two prior unlawful arrests to show his knowledge or intent with respect to the cocaine possession charge he was on trial for. Id. at 675-76. The Court answered that question in the negative, reasoning that such a holding is “consistent not only with the Supreme Court’s general philosophy that the exclusionary rule ensures that individuals not be ‘convicted on unconstitutional evidence,’ but also with its more specific emphasis on the rule’s deterrence rationale,” as “[b]y testifying to the prior possessions at trial, the police who conducted the prior alleged unlawful searches and seizures actively participated in using that evidence under Fed. R. Evid. 404(b) to obtain a conviction.” Id. at 677 (quoting Mapp v. Ohio, 367 U.S. 643, 657 (1961)); see also id. at 679 (reiterating that applying the exclusionary rule to 404(b) evidence disincentivizes Fourth Amendment violations because “[a]t the time a search and seizure occurs, the officers often will not know precisely how the subsequent government prosecutors will

⁴ Federal Rule 404(b) mirrors New Jersey Rule 404(b). Compare Fed. R. Evid. 404(b)(1),(2), with N.J.R.E. 404(b)(1),(2).

decide to use the evidence nor will they know precisely what criminal charges ultimately will be brought”).

This case is like Hill, not Herrera, in that suppressing the unconstitutionally seized items in the Pharmacy Case is necessary to achieve the deterrent purpose of the exclusionary rule. At the time of the unlawful stop, no arrests had been made in the Pharmacy robbery and shooting, which occurred just eight days before the 7-11 robbery, with both robberies occurring in the general Trenton area. Thus, as in Hill, there is “some nexus” between the unlawful stop and the subsequent charged offense. 60 F.3d at 677, 679-80. Permitting the State to use the unlawfully obtained evidence in the Pharmacy Case would reward unlawful behavior and violate the Supreme Court’s guarantee that “evidence obtained in violation of the Fourth Amendment cannot be used in a criminal proceeding against the victim of the illegal search and seizure.” Id. at 677 (citing Mapp, 367 U.S. at 656; Weeks v. United States, 232 U.S. 383, 398 (1914)).

Finally, the Attorney General argues that even if the suppressed evidence could not be used in the Pharmacy Case, it would not impact the 404(b) ruling, as the principal 404(b) evidence sought to be admitted was the 7-11 surveillance video, not the unconstitutionally seized evidence. (AGb 47-48) This argument ignores the fact that the 7-11 surveillance footage was

admissible under 404(b) as evidence of identity only because of the unlawfully seized evidence. (Dsb 24-25 & n.17)

Simply put, while Myers is entitled to withdraw from his global plea agreement regardless of the connection between the two cases, the connection illustrates how a successful appeal changes the negotiating positions of the parties. The conditional plea rule recognizes this change by permitting withdrawal from the entire global plea agreement.

CONCLUSION

The Attorney General's position belies the commonsense interpretation of conditional pleas. For the reasons set forth here and in Myers's supplemental brief, this Court should reverse the decision below and permit Myers to withdraw from his global plea agreement.

Respectfully submitted,

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Dated: December 29, 2025