

SUPREME COURT OF NEW JERSEY
DOCKET NO. 090743

STATE OF NEW JERSEY, : CRIMINAL ACTION
 :
 Plaintiff-Respondent, : On Certification Granted from a
 : Final Judgment of the Superior
 v. : Court of New Jersey, Appellate
 : Division, Affirming the Denial of
 JAMAR MYERS, : Defendant's Motion to Withdraw a
 : Guilty Plea.
 Defendant-Petitioner. :
 :
 : 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.

**SUPPLEMENTAL BRIEF ON BEHALF OF
DEFENDANT-PETITIONER**

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October 24, 2025

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PRELIMINARY STATEMENT

For over three years, Jamar Myers has been trying to withdraw from his global plea agreement. Repeatedly, he has been wrongfully denied this right.

In 2016, Myers pleaded guilty to two indictments as part of a global plea agreement. He preserved his right to appeal two pretrial rulings: a suppression ruling on a 7-11 robbery indictment, and a Rule 404(b) ruling on a pharmacy murder indictment. On appeal, this Court reversed the denial of Myers's suppression motion, resulting in the dismissal of the 7-11 robbery indictment. Myers moved to withdraw from his global plea under the conditional plea rule, which states that a defendant who prevails on appeal "shall be afforded the opportunity to withdraw his or her plea."

The trial court and Appellate Division denied Myers's motion, concluding that his successful appeal impacted the 7-11 robbery indictment only. This holding is contrary to the plain language of the conditional plea rule, as well as basic principles of contract law and fundamental fairness that govern plea agreements. A defendant who pleads guilty to multiple charges simultaneously has entered into one plea agreement. The defendant's decision to plead depends on the totality of the State's leverage against him at the time of the plea. A successful appeal reduces the State's leverage and thus changes the negotiating positions of the parties. The conditional plea rule

acknowledges this change by permitting the defendant to withdraw his plea and return to the bargaining table.

Here, there is no dispute that Myers entered into one, global plea agreement. This Court should clarify that the conditional plea rule applies to global plea agreements and permit Jamar Myers to withdraw from his global plea.

PROCEDURAL HISTORY AND STATEMENT OF FACTS¹

A. The Indictments

On November 29, 2016, Jamar Myers entered into a global plea agreement. (1T 9-3 to 23, 12-9 to 28-16; Da 54-60) The agreement centered around two indictments: (1) Mercer County Superseding Indictment 14-02-0232, and (2) Mercer County Indictment 11-08-833. (Da 54-60).² The details of these two indictments are as follows:

Indictment 14-02-0232 charged Jamar Myers with: murder, contrary to N.J.S.A. 2C:11-3a (Count One); murder as an accomplice, contrary to N.J.S.A. 2C:11-3a and 2C:2-6 (Count Two); felony murder, contrary to N.J.S.A. 2C:11-3a(3) (Count Three); first-degree robbery, contrary to N.J.S.A. 2C:15-1 (Count

¹ Due to the interrelated nature of the procedural history and statement of facts, the two sections have been combined for clarity to the reader.

² Dsa = Appendix to Defendant's supplemental brief
Dpa = Appendix to Defendant's petition for certification
Db = Defendant's appellate brief
Da = Appendix to Defendant's appellate brief
Drb = Defendant's reply brief
Dra = Appendix to Defendant's reply brief
Dsl = Defendant's supplemental post-argument letter
Sb = State's appellate brief
1T = 11/29/16 plea transcript
2T = 7/7/17 sentencing transcript
3T = 3/3/23 motion transcript
4T = 3/19/24 SOA transcript

Four); four counts of second-degree possession of a weapon for an unlawful purpose, contrary to N.J.S.A. 2C:39-4a (Counts Five, Six, Seven, and Twelve); two counts of second-degree unlawful possession of a weapon, contrary to N.J.S.A. 2C:39-5b (Counts Eight and Nine); fourth-degree tampering with evidence (Count Ten); and first-degree robbery, contrary to N.J.S.A. 2C:15-1 and 2C:5-1 (Count Eleven). (Da 1-13)³ These charges relate to two incidents that occurred on April 29, 2011: an attempted robbery of Vizzoni's Pharmacy in Hamilton, and a robbery and shooting at the Brunswick Avenue Pharmacy in Trenton. (Da 1-13); State v. Myers, A-0185-17, 2019 WL 1581430, at *1-3 (App. Div. Apr. 12, 2019).⁴

Mercer County Indictment 11-08-833 charged Myers with: first-degree robbery, contrary to N.J.S.A. 2C:15-1 (Count One); third-degree theft by unlawful taking, contrary to N.J.S.A. 2C:20-3a (Count Two); fourth-degree aggravated assault, contrary to N.J.S.A. 2C:12-1b(1) (Count Three); third-degree terroristic threats, contrary to N.J.S.A. 2C:12-3a (Count Four); second-degree possession of a weapon for an unlawful purpose, contrary to N.J.S.A. 2C:39-4a (Count Five); second-degree unlawful possession of a weapon,

³ Ajene Drew was charged as a co-defendant in this indictment. (Da 1-13)

⁴ For clarity, Indictment 14-02-0232 will be referred to as the "Pharmacy Case."

contrary to N.J.S.A. 2C:39-5b (Count Six); fourth-degree possession of a defaced firearm, contrary to N.J.S.A. 2C:39-3d (Count Seven); third-degree theft by receiving stolen property, contrary to N.J.S.A. 2C:20-7a (Count Eight); and fourth-degree unlawful taking of a means of conveyance, contrary to N.J.S.A. 2C:20-10d (Count Ten). (Da 14-25)⁵ These charges relate to an armed robbery at a 7-Eleven in Hamilton that occurred on May 7, 2011. (Da 14-25); Myers, 2019 WL 1581430, at *1-3.⁶

B. The Pretrial Rulings

Myers moved to suppress evidence in the 7-Eleven Case, namely evidence found during the search of a car in which Myers was a passenger. Myers, 2019 WL 1581430, at *3. The car was pulled over following the 7-Eleven robbery, and a warrantless search of the car led to the recovery of clothing, money, and a gun allegedly linking the occupants to the robbery. State v. Nyema, 249 N.J. 509, 515-18 (2022). On October 4, 2013, the trial court granted the suppression motion in part, suppressing the gun but finding the clothing and money admissible. (Da 26)

⁵ Ajene Drew and Peter Nyema were charged as co-defendants in this indictment. (Da 14-25)

⁶ For clarity, Indictment 11-08-833 will be referred to as the “7-Eleven Case.”

In the Pharmacy Case, the State filed a Rule 404(b) motion⁷ seeking to admit the following evidence against Myers: the clothing and money deemed admissible in the 7-Eleven Case; surveillance footage from the 7-Eleven Case; surveillance footage from a Pennsylvania robbery that occurred approximately one hour before the 7-Eleven Case; and a letter allegedly sent by Myers in which he appeared to threaten someone. (Da 33-35, 52) On September 30, 2016, the trial court granted the 404(b) motion in part. While the court excluded the surveillance footage from the Pennsylvania robbery, the court deemed all the other evidence admissible. (Da 42-53)

In coming to this conclusion, the court analyzed the totality of the evidence against Myers. The trial court noted that there were four surveillance videos: one from each incident in the Pharmacy Case (Da 36-37); one from the Pennsylvania robbery (Da 34-35, 38); and one from the 7-11 robbery. (Da 35-36, 38-39) The court found that the suspect in the Pharmacy videos had similar characteristics: he was wearing a Champion sweatshirt, a mask, and dog-eared boots, and he appeared to be left-handed and walked with a unique bow-legged

⁷ 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.”

gait. (Da 38-39) The court also found that a suspect in the Pennsylvania and 7-11 robberies had similar characteristics: he was wearing a dark sweatshirt with the word “elite” across the back, a mask, Timberland boots, and he appeared to be left-handed. (Da 34-36, 38-39) The court found that the suspect could be seen walking with a unique bow-legged gait in the 7-11 video, but not the Pennsylvania video. (Da 34-35, 38-39)⁸

The court subjected the Pennsylvania and 7-11 surveillance footage to a Rule 404(b) analysis, applying the factors in State v. Cofield, 127 N.J. 328 (1992). (Da 42-53)⁹ The court found that the surveillance footage was relevant to prove Myers’s identity in the Pharmacy Case (Da 46); however, the court was not clearly convinced that the individual in the Pennsylvania and 7-11 footage was the same person in the Pharmacy footage without the “distinctive bow-legged gait.” (Da 47-48) Thus, the court found that the Pennsylvania footage failed the third prong of Cofield. (Da 48) The court went on to apply prong four of Cofield to the 7-11 footage, finding it highly probative in the

⁸ A detective testified that Myers suffered an injury to his right leg as a child and that he was left-handed. (Da 39)

⁹ Cofield set out a four-pronged test for the admissibility of evidence under Rule 404(b): “1. The evidence of the other crime must be admissible as relevant to a material issue; 2. It must be similar in kind and reasonably close in time to the offense charged; 3. The evidence of the other crime must be clear and convincing; and, 4. The probative value of the evidence must not be outweighed by its apparent prejudice.” 127 N.J. at 338.

Pharmacy Case because “the State’s identification evidence is limited to the credibility of cooperating witness Drew and the clothing and cash discovered in the suspect’s automobile during the motor vehicle stop of a car leaving the area of location of the Hamilton Township 7-Eleven.” (Da 50) In other words, if the jury found that the suspect in the 7-11 footage matched the suspect in the Pharmacy footage, the jury could find Myers guilty in the Pharmacy case because the cash and clothing found during the car stop connected Myers to the 7-11 incident. Thus, the cash and clothing were critical to the State’s proofs in the Pharmacy Case, particularly because co-defendant Drew’s testimony implicating Myers was “compromised.” (Da 29-30, 42, 44)¹⁰

C. The Global Plea

On November 29, 2016, the trial court held a pretrial hearing. (1T) The court noted that it had a few motions to address and then would proceed to trial on the Pharmacy Case. (1T 3-15 to 4-14) The court reiterated that once the trial began, it would not accept a negotiated plea. (1T 3-18 to 21)

The court summarized Myers’s sentencing exposure and asked the State for its final plea offer. (1T 4-18 to 5-4) The State explained that if Myers

¹⁰ Drew agreed to testify against Myers as part of his plea deal. (Da 29-30) The trial court noted that Drew had a history of changing his stories, as well as a criminal record, and that he allegedly wrote a letter to Myers confessing that he lied to the police about Myers’s involvement in the robberies. (Da 42)

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 the Pennsylvania robbery concurrent to Myers's New Jersey sentence. (Ibid.) The State told 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 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 Myers proceeded to trial (1T 5-24 to 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 Myers and told him that even if he prevailed on the felony murder trial, 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)

After conferring with defense counsel, Myers decided to accept the State's global plea offer. (1T 9-3 to 23, 12-9 to 28-16; Da 54-60) Pursuant to Rule 3:9-3(f), Myers entered into a conditional plea, preserving his right to

appeal the 404(b) decision in the Pharmacy Case and the suppression decision in the 7-Eleven Case. (Da 54, 56)¹¹ Immediately before Myers's conference with defense counsel in which he decided to plead guilty, the court explained to 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." (1T 9-25 to 10-8) The plea also gave Myers the right to withdraw if Pennsylvania did not run any potential sentence concurrent to his New Jersey sentence. (1T 15-12 to 24; 2T

¹¹ Rule 3:9-3(f) 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)."

Rule 3:5-7(d) states that rulings on motions to suppress physical evidence are subject to appellate review following a guilty plea. Thus, pleas following denials of physical suppression motions are always conditional. State v. Diloreto, 362 N.J. Super. 600, 615-16 (App. Div. 2003), aff'd, 180 N.J. 264 (2004). Accordingly, while it was not necessary for Myers to explicitly condition his plea on his right to appeal the suppression motion, he did so anyway. (Da 54)

4-23 to 5-20; Da 56, 58) Pennsylvania declined to prosecute any charges against Myers. (Da 61-62)¹²

On July 17, 2017, Myers was sentenced in accordance with the plea agreement to 30 years of imprisonment with 30 years of parole ineligibility on the Pharmacy case, concurrent to a 12-year NERA sentence on the 7-Eleven Case. (2T 16-13 to 24-22; Da 63-70)

D. The Successful Appeal

Myers appealed from his pretrial rulings, and on April 12, 2019, the Appellate Division affirmed in an unpublished opinion. Myers, 2019 WL 1581430, at *4-9. This Court subsequently granted certification on the suppression issue.¹³ On January 25, 2022, this Court reversed the denial of Myers's suppression motion, finding that the police lacked reasonable suspicion to stop the car that Myers was a passenger in and that all evidence found as a result of the stop must be suppressed. Nyema, 249 N.J. at 531-35.

¹² Myers also pleaded guilty to three violations of probation in exchange for a sentence of time served. (2T 15-2 to 8; Da 54, 56) The State agreed to dismiss the remaining counts in the Pharmacy and 7-Eleven cases, as well as a fourth-degree charge in another indictment. (2T 15-8 to 11; Da 56)

¹³ Myers's petition for certification was granted on a motion for reconsideration after the Appellate Division reached opposite conclusions regarding the legality of the stop in Myers's appeal and in his co-defendant's appeal. Nyema, 249 N.J. at 522. Accordingly, Myers's 404(b) argument was not before this Court.

On February 25, 2022, on motion of the prosecutor, the 7-Eleven Case was dismissed due to “insufficient evidence upon which to predicate successful prosecution.” (Da 71)

E. The Motion to Withdraw

On March 10, 2022, Myers submitted a pro se motion to withdraw from his global plea agreement. (Da 72-74) He submitted a certification in support of his motion, in which he stated that on November 29, 2016, he “accepted a global plea deal, on conditional terms.” (Da 73-74). He wrote:

Defendant only accepted the plea because he could not get a fair trial to prove his innocence . . . The global plea deal I was told and agreed to was not upheld. Defendant now withdraws his global plea because overwhelmingly prejudice 404-B evidence that was improperly admitted into defendant’s homicide trial has been suppressed[,] etc.

[(Da 74)]

On March 3, 2023, the trial court held a hearing on Myers’s motion to withdraw. (3T) Myers’s attorney identified “three independent reasons that the plea should be vacated.” (3T 10-11 to 12) As one reason, counsel pointed to “Mr. Myers’ understanding . . . of the plea” as a global, conditional plea. (3T 14-9 to 15-20) Counsel argued:

[T]his was a contingent plea. You know, the plea forms, the plea hearing, everything was done all at the same time, everything was entered together, they were premised on each other

[E]verything was resolved on the same day. They were co-existent and co-existing at the same time so that it is reasonable for Mr. Myers to believe that if I'm reserving my right to appeal a decision that I disagreed with as it relates to one of the cases knowing that that will impact my conviction, that that would be vacated on one, that because this is a contingent plea, because these happened on the same dates, because I preserved certain rights, because I went so far as to say that if PA was not going to be concurrent, that I could take back my plea, that of course it was reasonable for Mr. Myers to assume and believe that if something came back, then they all came back because everything was handled in that same manner together.

And, more importantly, not only was that his basis in his own understanding, but that was also based on advice and conversations that he had with his attorney at the time and so what was clearly what Mr. Myers understood the terms to be.

[{3T 14-14 to 15-20}]

As another reason, counsel stated that the suppressed evidence in the 7-11 Case weakened the State's evidence in the Pharmacy Case and thus changed the negotiating positions of the parties. (3T 10-15 to 12-4) Counsel argued:

[I]f certain items were actually suppressed correctly at the trial level below, who knows what impact that would have had on whether 404(b) evidence, whether the robbery would even have sustained in and of itself, whether the -- in my opinion, whether the proofs of the homicide would have even been as strong as the State had back then or thought that they had, that it could have drastically changed the posture of the homicide case which clearly could have led to either some other

negotiated plea or having some other impact on whether or not the State could even move forward with that case.

So I think that there is a realistic sense of I didn't believe that I was going to have a fair trial. And if properly suppressed at the trial level, would there have been a different outcome? Would there have been a different offer, you know, because of these 404(b) implications as it relates to the homicide case?

[(3T 11-12 to 12-4)]

While defense counsel also discussed the threats Myers was receiving at the time he pleaded guilty and made brief reference to Slater¹⁴ factor one (3T 12-5 to 14-7, 15-21 to 16-4), the bulk of counsel's argument focused on the global, conditional nature of Myers's plea. The trial court denied Myers's motion to withdraw, concluding that Myers's plea was taken in a "legally appropriate" way, and that Myers failed to meet his burden under Slater. (3T 41-7 to 52-9; Da 75)

Myers filed a timely notice of appeal. (Da 76-80) Following the denial of Myers's motion to transfer his case from the SOA calendar to the plenary calendar (Da 81-82), Myers's appeal was argued on the March 19, 2024 SOA calendar. (4T) At the SOA, Myers argued that the trial court erred in relying on Slater and that he is entitled to withdraw from his global plea agreement

¹⁴ State v. Slater, 198 N.J. 145 (2009). Slater governs motions to withdraw from plea agreements based on claims of actual innocence under New Jersey Court Rules 3:9-3(e) and 3:21-1. Id. at 156-58.

pursuant to the conditional plea rule. (4T 2-22 to 4-10) The Appellate Division affirmed the decision below, again citing Slater. (Da 83) Myers moved for reconsideration pursuant to Rule 2:11-6. The Appellate Division granted Myers's motion and transferred his case to the plenary calendar for briefing. (Da 84)

On the plenary calendar, Myers reiterated that Slater is wholly inapplicable to his motion and that he is entitled to withdraw under the conditional plea rule. (Db 8-14)¹⁵ On May 6, 2025, the Appellate Division issued an unpublished decision affirming the denial of Myers's motion to withdraw. (Dpa 1-17) The Appellate Division concluded that Myers is not entitled to withdraw from his global plea under the conditional plea rule, reasoning that the indictments and motions were listed separately on the plea form. (Dpa 12-14) The Appellate Division also denied Myers's motion under Slater. (Dpa 14-17)

Myers petitioned for certification, and on September 9, 2025, this Court granted certification. (Dsa 1) This brief follows.

¹⁵ This case was argued before the Appellate Division, and following argument, Myers submitted a supplemental letter in response to the Court's request for the trial court briefing. (Dsl)

LEGAL ARGUMENT

POINT I

THE LOWER COURTS ERRED IN HOLDING THAT JAMAR MYERS IS NOT ENTITLED TO WITHDRAW FROM HIS GLOBAL PLEA AGREEMENT PURSUANT TO THE CONDITIONAL PLEA RULE. (3T 26-21 to 52-10; Da 75; Dpa 12-14)

This case is about the application of the conditional plea rule to global plea agreements. The question presented is whether a defendant has the right to withdraw from a global plea agreement under the conditional plea rule when the defendant pleads guilty to multiple indictments and successfully appeals from a pretrial ruling on one of the indictments. The lower courts erroneously answered that question in the negative, contrary to the plain language of the conditional plea rule, basic principles of contract law that govern plea agreements, and fundamental fairness. This Court should reverse and permit Myers to withdraw from his global plea agreement.

Rule 3:9-3(f) – the conditional plea rule – permits defendants to plead guilty while preserving the right to appeal from an adverse pretrial ruling. 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. . . .

In most cases, the application of the rule is straightforward: the defendant prevails on appeal, and as a result the defendant has the option to withdraw from his plea agreement. See, e.g., State v. Desir, 461 N.J. Super 185, 187, 194 (App. Div. 2019), aff'd as mod., 245 N.J. 179 (2021) (as a result of his successful appeal of a preserved motion to compel discovery, “the defendant may elect either to withdraw his plea and proceed to trial . . . or to accept his earlier conviction and sentence”) (quoting State v. Cummings, 184 N.J. 84, 100 (2005)).

The question here is what happens when a defendant pleads guilty to multiple indictments as part of a global plea and successfully appeals from a pre-plea motion that relates to one indictment. Does a defendant who subsequently moves to withdraw undo his plea on all the indictments, or does his motion to withdraw undo his plea only on the indictment that is directly tied to the pre-plea motion? The answer to that question turns on the meaning of the word “plea” in the conditional plea rule. In other words, if the word “plea” encompasses a global plea agreement, then the entire agreement must come undone.

Our courts “apply ordinary principles of statutory construction to interpret the court rules.” In re Protest of Contract for Retail Pharmacy Design, 257 N.J. 425, 436 (2024) (internal quotation marks and citation omitted). Our courts “begin with the plain language of the rule, and ascribe to the words of the rule their ordinary meaning and significance and read them in context with related provisions so as to give sense to the court rules as a whole.” Ibid. (alterations and citation omitted). Only if there is ambiguity in the plain language of the rule is it appropriate to look to “extrinsic evidence” for guidance. DiProspero v. Penn, 183 N.J. 477, 492-93 (2005).

The plain language of the conditional plea rule dictates that the word “plea” encompasses global plea agreements. When a defendant resolves multiple charges against him simultaneously (as is the case with global plea agreements), he enters into one, indivisible plea agreement. The Washington Supreme Court has set forth a straightforward test for when a plea agreement is indivisible: “[W]hen 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, absent objective evidence of a contrary intent in the agreement.” State v. Turley, 69 P.3d 338, 342 (Wash. 2003). This is true whether the defendant pleads guilty to multiple charges in the same indictment, or multiple charges across different indictments. See In re

Bradley, 205 P.3d 123, 127-28 (Wash. 2009) (holding that a plea agreement involving multiple charges was indivisible even though the crimes were committed three months apart and charged in separate informations because “the pleas were negotiated as part of a package deal”). Put simply, when the State and a defendant resolve multiple charges at the same time, the parties have created one plea. Thus, under the plain language of the conditional plea rule, a defendant’s motion to withdraw his “plea” after a successful appeal voids the entire plea, which may include charges unrelated to the pre-plea motion.¹⁶

¹⁶ While the plain language is clear, if this Court wishes to look to extrinsic evidence, the conditional plea rule “was adopted in 1980 to avoid the need for unnecessary, long or costly trials in order to preserve for appeal those issues where the prosecutor consents to such preservation, with the approval of the court.” State v. Brown, 352 N.J. Super. 338, 359 (App. Div. 2002) (Stern, P.J.A.D., concurring) (citing “Judicial Conference Report, Task Force on Postindictment Delay”); see also Pressler and Verniero, Current N.J. Court Rules, comment 7 on R. 3:9-3 (2025) (“The purpose of this [rule] is self-evident, namely to provide a technique for avoiding trial where the defendant’s willingness to plead guilty is dependent solely upon the disposition and opportunity for appellate review of separable issues determinable on a pretrial basis.”).

This efficiency rationale does not shed much light on the application of the conditional plea rule to global plea agreements; however, it is worth noting that the defendant promotes efficiency by giving up his trial rights. If the defendant prevails on appeal, the rule should be construed to protect the defendant’s constitutional right to go to trial. See U.S. v. Ringling, 988 F.2d 504, 506 (4th Cir. 1993) (“[T]he analysis of [a] plea agreement must be conducted at a more stringent level than in a commercial contract because the

This conclusion that the conditional plea rule applies to global plea agreements is not only warranted under the plain language of the rule – it aligns with contractual principles and fundamental fairness. Plea agreements are governed by “basic principles of contract law.” State v. Means, 191 N.J. 610, 622 (2007); see also U.S. v. Barnes, 83 F.3d 934, 938 (7th Cir. 1996) (“Plea agreements are governed by ordinary contract principles.”); U.S. v. Floyd, 1 F.3d 867, 870 (9th Cir. 1993) (“A plea agreement is contractual in nature and is subject to contract law standards.”). A valid contract is based on a “meeting of the minds.” Kernahan v. Home Warranty Adm’r of Fla., Inc., 236 N.J. 301, 319 (2019). When the State and the defendant enter into a plea agreement, they “reach a meeting of the minds,” which is based on all terms of the plea. Means, 191 N.J. at 622.

A successful appeal from a pretrial ruling changes the terms of the plea. Take, for example, a defendant who pleads guilty based on an erroneously decided suppression ruling. At the time of the plea, a key term of the plea is that the State may use the unsuppressed evidence at trial. A successful appeal voids that term. When the terms of the plea change, the parties cannot be bound by the plea, because “in the absence of the original plea agreement’s

rights involved are generally fundamental and constitutionally based.”)
(citation omitted).

terms, there may be no meeting of the minds between the State and defendant.” State v. Hess, 207 N.J. 123, 129-30, 160 (2011) (holding that because a term of the plea agreement preventing defense counsel from arguing for a lesser sentence was void, the State had the option to vacate the plea).

Our courts have repeatedly permitted withdrawal from plea agreements when a material term of the plea changes on appeal. See, e.g., State v. Bell, 250 N.J. 519, 522-23, 541-45 (2022) (holding that the parties must be permitted to negotiate a new plea deal when the defendant pleaded guilty to two five-year consecutive sentences and one of the sentences was vacated on appeal); State v. Warren, 115 N.J. 433, 434, 450 (1989) (holding that because it was improper for the plea agreement to include a term allowing the prosecutor to withdraw if the court imposed a more lenient sentence than the plea offer, the plea must be vacated); State v. Cambrelen, 473 N.J. Super. 70, 73-74, 86-87 (App. Div. 2022) (holding that because a term of the plea agreement was invalid, the parties should be permitted to “renegotiate [the] plea without the offending . . . provision or proceed to trial”). Thus, basic principles of contract law demand that a successful appeal from a pre-plea motion permits the defendant to withdraw from the entire plea, as the plea is no longer based on a meeting of the minds.

Myers’s position is also supported by common sense and fairness. A defendant pleads guilty based on his bargaining position at the time of the plea. See People v. Miller, 658 P.2d 1320, 1325-26 (Cal. 1983) (“The bargaining positions of the parties [is] determined . . . by the aggregate strength of all the incriminating evidence accumulated by the state.”). When a defendant successfully appeals from a pretrial ruling, the defendant is in a different – and better – bargaining position. See id. at 1326 (acknowledging that when a defendant wins on appeal from a pre-plea motion, it “alters the bargaining positions of the parties from that which existed prior to negotiation of the agreement”).

This is true even if the successful appeal impacts only some counts in the plea, as a defendant’s decision to plead guilty depends on the totality of the State’s leverage against him. See ibid. (“Appellant undoubtedly negotiated for what he believed was the best disposition that he could obtain given the trial court’s denial of his [pretrial] motion. This objective may well have led him to plead guilty to ‘untainted’ as well as ‘tainted’ counts.”). When a defendant wins on appeal, a portion of the State’s leverage is eliminated. The conditional plea rule recognizes this change in circumstances by permitting the defendant to reevaluate whether he would like to maintain his plea, renegotiate, or go to trial. See Turley, 69 P.3d at 342 (“When the defendant can show manifest

injustice as to one count or charge in an indivisible agreement, the defendant may move to withdraw the plea agreement or have specific performance of the agreement.”).

Myers’s case demonstrates why the conditional plea rule must apply to global plea agreements, as the record shows that Myers pleaded guilty due to the totality of the State’s leverage against him. On the day of his guilty plea, Myers was ready to go to trial on the Pharmacy Case. The court stated, “Theres a couple of motions that I need to address before the jury is brought over.” (1T 3-18 to 20) The court noted that it would not accept a guilty plea after starting trial, and the State emphasized Myers’s sentencing exposure due to the combination of indictments against him. (1T 3-20 to 9-23) The State told 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 Myers to life in prison. (1T 4-11 to 25, 5-24 to 6-7, 9-3 to 10) The State further threatened to seek consecutive sentences on all cases if Myers proceeded to trial (1T 5-24 to 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 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) In essence, Myers was told that he would be penalized for going to trial on the Pharmacy Case, even if he won an acquittal. But now, Myers cannot be penalized in the same way for going to trial on the Pharmacy Case. As a result of Myers's successful appeal, the 7-Eleven Case was dismissed due to insufficient evidence (Da 71), and the Pennsylvania case was never prosecuted. (Da 61-62) Naturally, Myers may feel differently about the risks of proceeding to trial on the Pharmacy Case. Put simply, Myers's case demonstrates how successfully appealing from part of a global plea agreement changes the negotiating positions of the parties.

Myers's case also presents a unique fact, which is that the suppressed evidence in the 7-Eleven Case actually weakens the State's proofs in the Pharmacy Case. When Myers pleaded guilty, evidence from the 7-Eleven Case (the clothing and money found in the car and the surveillance footage) was admissible in his Pharmacy Case under Rule 404(b). (Da 33, 42-53) Because this Court determined that the evidence found in the car was obtained in violation of Myers's constitutional rights, Nyema, 249 N.J. at 531-35, it can no longer be used against him in the Pharmacy Case. See State v. Johnson, 118 N.J. 639, 651 (1990) ("[E]vidence obtained in violation of a defendant's federal- or state-constitutional rights is generally excluded as proof against the

defendant.”) (citing cases). Thus, the State has lost a key piece of evidence tying Myers to the Pharmacy Case.¹⁷ While Myers would have been entitled to withdraw under the conditional plea rule regardless of the connection between the two cases, his appeal had a particularly strong impact on his negotiating position.

Case law from New Jersey and other states supports Myers’s position the conditional plea rule applies to global plea agreements. In New Jersey, our Appellate Division has actually recognized the application of the conditional plea rule to global plea agreements. In State v. Diloreto, the defendant pleaded guilty to murder and related counts. 362 N.J. Super. at 605. At his plea, the trial court told the defendant that he would be able to appeal his pre-trial motions to suppress physical evidence and statements. Id. at 613-14. On

¹⁷ 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) Without the suppressed evidence, however, the video footage from the 7-Eleven store does not help prove the defendant’s identity. The 7-Eleven footage shows a masked man with a bow-legged gait, but the Pharmacy footage shows that as well. Without the suppressed evidence linking Myers to the 7-Eleven robbery, the 7-Eleven footage does not add any proof that the masked man in the various surveillance videos is Myers. Accordingly, as the trial court correctly acknowledged, the evidence unlawfully recovered from the car was critical to the admissibility of the 7-Eleven footage and to proving Myers’s identity in the Pharmacy Case. (Da 47-50)

appeal, the State argued that the Appellate Division should not review the motion to suppress certain statements because the State's evidence was strong without those statements, and the defendant would still have pled guilty even if those statements were inadmissible. Id. at 615. The Appellate Division rejected the State's argument, reasoning that the defendant entered a conditional plea, which "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." Id. at 615-16.

The Appellate Division continued:

If he or she succeeds on the appeal, and there is other evidence to warrant prosecution, a defendant may choose not to withdraw a guilty plea if a favorable sentence recommendation was made as part of a negotiated disposition, or because charges dismissed incident to the negotiated plea would be resurrected upon withdrawal. However, our plea preservation rules give the defendant the right to withdraw a guilty plea when the right to appeal survives the plea and defendant succeeds on appeal.

[Id. at 616 (citing R. 3:5-7(d); R. 3:9-3(f)).]

In a subsequent footnote, the Appellate Division acknowledged that a successful appeal would also permit the defendant to withdraw from a global plea agreement:

If the defendant simultaneously pleads to multiple indictments and the pre-plea motion relates to only one, the same principle generally applies.

[Id. at 616 n.6.]¹⁸

While the Diloreto Court was discussing a hypothetical situation, the unpublished cases relied upon by the defendant and the State below demonstrate the application of the conditional plea rule to global plea agreements in practice. See State v. Adl, A-5530-16T3, 2019 WL 3714467, at *1, 6 (App. Div. Aug. 7, 2019) (“remand[ing] to afford defendant an opportunity to withdraw his guilty pleas to three offenses,” which spanned two different indictments resolved by global plea, after defendant successfully appealed the denial of a suppression motion that related to one indictment only) (Drb 6); State v. Dunns, A-0851-19T1, 2020 WL 1130327, at *1, 3 n.3, 6 (App. Div. Mar. 9, 2020) (holding that the State was not entitled to withdraw from a plea agreement after the defendant successfully appealed from a pretrial ruling in a prior plea agreement, but holding that the defendant’s motion to withdraw from the prior plea agreement would restore “all charges that had been resolved” in that agreement, including dismissed charges in an indictment unrelated to the successful appeal). (Sb 6-7)¹⁹ While this Court is obviously

¹⁸ The Diloreto Court went on to explain that if the pleas are not simultaneous, the defendant is not entitled to withdraw from both unless that term is made explicit in the plea. Ibid.

¹⁹ The State cited to this unpublished case to support its argument, but a careful reading of the case reveals that it supports the defendant’s argument. The defendant’s motion to withdraw following a successful appeal undid his plea

not bound by these Appellate Division decisions, they reveal that our appellate courts have been applying the correct and commonsense interpretation of conditional plea rule. And presumably, defense attorneys and prosecutors have been relying on these cases to inform their understanding of conditional, global plea agreements.

While there does not appear to be an out-of-state case that directly discusses the application of the conditional plea rule to global plea agreements, other states with conditional pleas recognize that when a defendant pleads guilty 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. The reasoning in these cases applies equally to situations in which a defendant pleads guilty to unrelated counts across separate indictments. In People v. Miller, for example, 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.” 658 P.3d at 1321, 1323-28. The Court reasoned that “[t]he disposition of the ‘unrelated’ counts was not independent from that of the ‘related’ charges,” as the parties

on all indictments that were part of the global plea, but the motion did not impact a subsequent plea.

“entered into one plea bargain agreement which resolved all twenty-two counts of the information,” and “the denial of the motion to suppress evidence may have influenced appellant’s decision to agree to the negotiated plea bargain.” Id. at 1325-26.

Similarly, in State v. Tannehill, the Oregon Supreme Court held that Oregon’s conditional plea rule permitted the defendant to withdraw his plea to two separate charges when he successfully appealed a motion to dismiss one of the charges. 141 P.3d 584, 584-87 (Or. 2006). The Court noted that “a single guilty plea may embody a series of interrelated concessions between the parties” and found that “when the legislature used the phrase ‘withdraw the plea’ in [Oregon’s conditional plea rule], it also intended to permit the defendant to withdraw the entire plea if the premise underlying one part of the plea . . . turns out not to be valid.” Id. at 586-87. While Miller and Tannehill dealt with unrelated charges in the same indictment, the holdings are based on the fact that all charges were resolved together and a successful appeal changed the negotiating positions of the parties. Thus, these cases support defendant’s argument that a defendant is entitled to withdraw from his global

plea agreement after a successful appeal, even if the appeal impacts only some of the charges.²⁰

While not directly about conditional pleas, states also recognize that when a defendant pleads guilty to multiple cases as part of a global plea agreement and is subsequently permitted to withdraw his plea on one case, he is also permitted to withdraw his plea on the other cases. In State v. Guity, the Hawaii Supreme Court considered whether the defendant should be allowed to withdraw from his global plea to two cases when it turned out that the charges in one case were legally impossible for him to have committed. 445 P.3d 138, 139-41 (Haw. 2019). The Court determined that the defendant was entitled to withdraw his plea to both cases. Id. at 143-44. The Court reasoned that “[t]he objective facts surrounding [the defendant’s] plea agreement adequately indicate that the agreement was meant to be a single agreement” – the pleas “were negotiated contemporaneously,” “[t]he final plea agreement . . . was contained in one document,” and the court accepted both pleas at the same

²⁰ There is a federal conditional plea rule, Fed. R. Crim. P. 11(a)(2), which states that a defendant who prevails on appeal from a preserved pretrial motion “may” withdraw the plea. Because New Jersey’s conditional plea rule says that a defendant who prevails on appeal “shall” be permitted to withdraw the plea, federal analysis is not applicable to New Jersey’s rule. See State v. A.M., 252 N.J. 432, 451-52 (2023) (noting that the word “may” “generally conveys that an action is permissive,” while the word “shall” is “generally mandatory”) (internal quotation marks and citations omitted).

hearing. Id. at 143. Since the pleas were part of a “single agreement,” the defendant’s entitlement to withdraw his plea to one case also entitled him to withdraw his plea to the other case. Id. at 144.

Similarly, in State v. Turley, the Washington Supreme Court considered whether the defendant should be allowed to withdraw from a plea agreement to one count of escape and one count of conspiracy to manufacture drugs, when it was determined on appeal that the State failed to inform him of a sentencing consequence of the drug offense. 69 P.3d at 339-40. The Court held that the defendant was entitled to withdraw his plea to both charges, as they were part of an indivisible agreement. Id. at 341-42. The Court held that that “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,” and that “[w]hen the defendant can show manifest injustice as to one count or charge in an indivisible agreement, the defendant may move to withdraw the plea agreement or have specific performance of the agreement.” Id. at 342; see also In Re Bradley, 205 P.3d at 125, 127-28 (holding that when the defendant was misinformed about a direct consequence of his simple possession plea, he was entitled to withdraw from his simple possession plea and his possession with intent to distribute plea, even though the offenses were charged in two separate informations, because the plea to

both cases was a “package deal”); Whitaker v. State, 881 So.2d 80, 81-82 (Fl. Dist. Ct. App. 2004) (holding that the defendant was entitled to withdraw his plea to two separate informations when he was permitted to withdraw from his plea on one of the informations due to newly discovered evidence, as the cases were adjudicated “as a package”). These cases likewise support Myers’s position that the right to withdraw under the conditional plea rule applies to all indictments in a global plea.²¹

The Appellate Division reasoned that while Myers did enter a global plea agreement, he is not permitted to withdraw from both indictments because “the felony murder and armed robbery charges were listed separately and distinctly and clearly identified the separate indictments underlying those charges,” and “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) But this was the only

²¹ Myers’s position is not just fair to defendants – it is fair to the State. One can imagine a situation in which the State offers a lenient deal on several indictments because the defendant is pleading guilty to a serious charge. If the defendant prevails in appealing a motion on the serious charge and moves to withdraw, it would be unfair to bind the State to its lenient deal on the other indictments. See Miller, 658 P.2d at 1227-28 (reasoning that “a disposition reversing the entire judgment and returning the parties to the status quo is fair to the prosecution, as well as the accused,” as a disposition reversing only some counts “would deprive the prosecution of the benefit of its bargain, while keeping the state bound to the dismissals won by the accused”).

logical way for the plea agreement to list the charges and motions. The Appellate Division seems to believe 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 the conditional plea rule requires that term to be the default and does not require that it be specifically referenced. If either party 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, they can, but that is a term that must be explicitly added to the plea.

The Appellate Division also held that Myers is not entitled to withdraw from his plea agreement under Slater. (Dpa 14-17) As Myers has repeatedly argued, Slater is inapplicable to his motion to withdraw under the conditional plea rule. (4T; Db 8-14; Drb 1-2) Slater governs motions to withdraw from plea agreements based on claims of actual innocence under New Jersey Court Rules 3:9-3(e) and 3:21-1. See Slater, 198 N.J. at 156-58 (articulating four factors courts must consider in evaluating these motions to withdraw). But not all motions to withdraw are governed by Slater. See (Drb 1-2) (enumerating circumstances in which Slater is inapplicable to a defendant's motion to withdraw his guilty plea). A motion to withdraw under the conditional plea rule is one such motion. As the Appellate Division noted in Diloreto, a motion

to withdraw in the conditional plea context is entirely distinct from a traditional motion to withdraw, as “our plea preservation rules 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. at 615-16 (emphasis added). In other words, while a defendant who moves to withdraw based on a change of heart subjects himself to Slater’s discretionary four-factor test, a defendant who moves to withdraw under the conditional plea rule is simply exercising his right.

In sum, Myers’s position that the conditional plea rule applies to global plea agreements is correct under the plain language of the rule, and it is the only reading of the rule that aligns with basic principles of contract law and fundamental fairness. There is no dispute that Jamar Myers entered into a global plea agreement. He pleaded guilty to the felony murder charge in the Pharmacy Case and the robbery charge in the 7-11 Case “at the same time, in the same proceedings, and in the same documents.” Turley, 69 P.3d at 342; (1T 9-3 to 23, 12-9 to 28-16; Da 54-60). During plea negotiations, defense counsel referred to the State’s offer as a “global deal” (1T 9-12 to 14), and the Appellate Division even agreed that Myers “did enter pleas in one global agreement.” (Dpa 13) Thus, this Court should correct the lower courts’

misinterpretation of the conditional plea rule and permit Myers to withdraw from his global plea agreement.

Finally, it is worth noting that the trial court itself correctly advised Myers about the consequences of his conditional plea at the plea hearing. Immediately before Myers's conference with defense counsel in which he decided to plead guilty, the court explained to 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." (1T 9-25 to 10-8) (emphasis added). It is no surprise, then, that Myers believed his entire plea agreement would come undone as the result of a successful appeal. In moving to withdraw, Myers correctly wrote that he entered a "global deal," on "conditional terms." (Da 74) Myers certified that he would not have accepted the plea deal had the evidence from the car stop been properly suppressed. (Ibid.) This Court should respect Myers's accurate understanding of his global plea agreement.

CONCLUSION

For the foregoing reasons, this Court should reverse the decision below, hold that the conditional plea rule applies to global plea agreements, and allow Jamar Myers to withdraw from his global plea agreement.

Respectfully submitted,

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Dated: October 24, 2025