IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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STATE OF WEST VIRGINIA,

Plaintiff below, Respondent,

v.

Supreme Court No.: 22-672
Case No. 15-F-302
Circuit Court of Cabell County

RACHEL LOUISE ADKINS,

Defendant below, Petitioner.

PETITIONER'S BRIEF

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ASSIGNMENT OF ERROR

For seven years, Petitioner awaited trial on four misdemeanors and a felony that, with good time, she could discharge in five. She accepted a plea bargain to end the case because the judge had promised to sentence her to home confinement.

The court reneged and sentenced her to prison. Should Petitioner receive the benefit of her bargain, or may she withdraw her plea?

STATEMENT OF THE CASE

To resolve the oldest outstanding case on its docket,[1] the Cabell County Circuit Court entered plea negotiations, made a promise, and broke it[2]—despite the fact that over the case's duration, Petitioner made substantial strides to better herself, her family, and her community.[3] Rather than short-circuit her recovery, Petitioner asks that the Court hold the lower court to its deal or, in the alternative, allow her to withdraw her plea.

a. Petitioner caused a fatal car accident under the influence of drugs. Seven years passed without a trial in part due to acrimony between the lawyers.

The grand jury indicted Petitioner for five counts relating to a fatal car accident that occurred on November 10, 2014.[4] It heard evidence that Petitioner collided with another vehicle, killing the driver and injuring two passengers.[5] The accident also injured Petitioner's passenger, her ten-year-old daughter.[6]

Petitioner had no prior record and cooperated.[7] She told investigators she had taken methamphetamine the night before the accident and that morning took medications for high blood pressure and migraines.[8] On March 24, 2015, police formally arrested

[1] A.R. 243; A.R. 283.
[2] *See* A.R. 445–46; A.R. 448.; *see also* A.R. 320 (Excepting a few explicit reservations, the court found that "[b]asically, the facts are not in dispute on the motion to withdraw.").
[3] *See* A.R. 275–80.
[4] A.R. 331–32.
[5] A.R. 3–5; A.R. 6.
[6] *Id.*
[7] A.R. 59–60; A.R. 61–62. The PSI shows vehicle violations but no jailable offenses. A.R. 276.
[8] A.R. 10–12; *see also* A.R. 49–51; A.R. 60–61; *see also* A.R. 226; A.R. 312.

Petitioner.[9] After 63 days in jail,[10] the court placed her on home confinement pending trial.[11] She remained on home confinement for three and a half years, when the court removed the bond condition.[12] It took another three and a half years to dispose of her case.[13]

Numerous factors contributed to the seven-year delay between her arrest and disposition. The investigating trooper resigned,[14] Petitioner's rural home complicated communication and travel,[15] and the pandemic struck.[16] In addition, the court blamed personal antagonism between the assigned lawyers.[17]

But the delay contained a silver-lining: Petitioner's rehabilitation.[18] For several years, she struggled with addiction.[19] When Petitioner could not find a ride to court-ordered appointments, she would sometimes drive herself.[20] Other times, she missed appointments rather than drive on a suspended license.[21] But then Petitioner entered rehab.[22] She completed a 28-day program and enrolled in a long-term stay.[23] She quit drugs.[24] She got a job at Taco Bell and is now shift manager.[25] Petitioner homeschooled her daughter, who graduated in September 2022 and wants to be a marine biologist.[26] To this day she remains sober, is moving up in her company, and has an excellent relationship with her daughter.[27] She is rightly proud of her recovery: "I have worked too hard to give up."[28]

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[9] A.R. 478.
[10] A.R. 447.
[11] *See* A.R. 24.
[12] *See* A.R. 211; A.R. 279.
[13] *See* A.R. 268.
[14] *See* A.R. 206–07.
[15] *See* A.R. 162–63; A.R. 172.
[16] A.R. 283.
[17] *Id.*; A.R. 320–21.
[18] A.R. 452–53.
[19] *See, e.g.*, A.R. 212; A.R. 288–89.
[20] *See* A.R. 480–81.
[21] *See* A.R. 288.
[22] A.R. 222–23.
[23] A.R. 233–34.
[24] A.R. 258.
[25] A.R. 264.
[26] A.R. 305.
[27] *See* A.R. 304–05; A.R. 449–50.
[28] A.R. 453.

b. **Lawyers unrelated to the case approached the judge to resolve the stalemate. They reached an off-the-record agreement with the judge to sentence her to home confinement if she pleaded guilty.**

A sticking point in negotiations was that the State would not, on the record, offer a binding plea to home confinement.[29] Conversely, Petitioner's daughter begged her not to accept any deal that could result in prison.[30] Between this fundamental disagreement and the lawyers' personality conflict, the case stalled.

Other lawyers from the assigned lawyers' offices—an assistant prosecutor and public defender not otherwise connected to the case—approached the judge to resolve the impasse.[31] These other lawyers believed that if they cut out the assigned lawyers, they and the judge could reach an agreeable plea deal.[32] The court does not dispute the basic facts about this meeting.[33] On the record, the State has remained silent.[34] But in private correspondence the prosecutor has acknowledged what took place.[35]

The court agreed that if Petitioner pleaded guilty, he would not sentence her to prison.[36] That way she would receive an appropriate sentence, the court would clear a (very) old case from its docket, and the State would not have to go on the record as having agreed to it.[37] The court was reluctant to credit her any time already served on home confinement, but it would order a PSI so Petitioner could argue for it.[38] The parties recognized this as a binding plea, but one which would not be memorialized.[39] The court instructed the parties its offer was the only way for Petitioner to avoid prison.[40]

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[29] *See* A.R. 295; *see also* A.R. 280–82; A.R. 452–53; A.R. 466 ("[Y]our client[']s 2-10 year sentence on home confinement will not be the result of an agreement she made with the State.").
[30] A.R. 447–48.
[31] A.R. 241; A.R. 284–85; A.R. 307; A.R. 321–22; A.R. 445.
[32] A.R. 285.
[33] *See* A.R. 320.
[34] A.R. 302–03; *also compare* A.R. 466 (acknowledging in email that judge promised home confinement) *with* A.R. 467 (omitting that condition from correspondence on his office letterhead).
[35] A.R. 466.
[36] A.R. 445–46; *see also* A.R. 466. The court also agreed to one year parole after two successful years on home confinement. A.R. 434; A.R. 447.
[37] *See* A.R. 466; A.R. 285.
[38] A.R. 445–46.
[39] A.R. 448; *see also* A.R. 466.
[40] A.R. 434; A.R. 446; A.R. 449.

The record is unclear but it does not appear that Petitioner's assigned lawyer or prosecutor knew about the meeting in advance.[41] The assistant prosecutor said he would need to run the offer by his boss, and the assistant public defender told Petitioner's assigned counsel about the meeting and plea arrangement afterwards.[42] Assigned counsel disapproved of the agreement and advised his client against it.[43] However, the court and prosecutor assured them that home confinement was certain and binding.[44]

Petitioner accepted the plea in reliance on the court's promise.[45] On the record, it was a *Kennedy* plea to DUI causing death.[46] Her lawyer would request credit for her time on bond and the State would remain silent.[47] So that the State would not have to go on the record concerning the home confinement condition, Petitioner said that no one had made any other promises, she understood the court had no stake in her plea, and that the possible sentence was "two to ten."[48] No one mentioned prison as an option. The colloquy conformed to the requirements for a binding plea, as everyone intended at the time.[49] The court did not indicate whether Petitioner could withdraw the plea if she was dissatisfied with the sentence.[50] Consistent with the off-the-record nature of the binding plea, no one addressed the court's promise.[51]

The court accepted Petitioner's guilty plea.[52] It scheduled a sentencing hearing for April Fool's Day.[53]

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[41] A.R. 446.
[42] *Id.*
[43] *See* A.R. 293.
[44] A.R. 293–95; A.R. 466.
[45] A.R. 293–95.
[46] A.R. 254–55.
[47] *Id.*
[48] A.R. 258–59; A.R. 263.
[49] *See* A.R. 261–63; A.R. 448; W. Va. R. Crim. P. 11(e)(2); Syl. Pt. 2, *State v. Cabell*, 176 W. Va. 272, 342 S.E.2d 240 (1986) (to accept a non-binding plea, the court must either advise the defendant the plea will be irrevocable or, upon receiving a harsher than expected sentence, the defendant has the right to withdraw their plea).
[50] *See* A.R. 261–63.
[51] *See* A.R. 294.
[52] A.R. 263.
[53] A.R. 268.

c. **The court acknowledged the meeting. However, it decided that new information had vitiated the meeting of the minds and sentenced her to prison.**

At sentencing, Petitioner's counsel argued for at least some credit for the time she already spent on home confinement.[54] True to the in-chambers agreement, neither party mentioned prison versus home confinement. In addition, a family member from the decedent's family spoke against leniency.[55] Petitioner spoke to apologize to the family.[56]

The court referred to the plea meeting and said he had been so fixated on clearing the case from his docket that he lost sight of the case's gravity.[57] Between Petitioner's plea and disposition, he lost sleep over the appropriate sentence.[58] After reviewing the PSI, he believed he had made a mistake.[59] It disclosed details about Petitioner's pre-rehab behavior that he did not know when he made his promise.[60] He began to think of his unwritten promise in contract terms—whether there was a true meeting of the minds and whether he received consideration for his promise.[61] "Whatever I told [the lawyers] that I might do was not really a valid contract."[62] He then sentenced Petitioner to prison.[63]

Defense counsel objected.[64] "But the only reason she entered the plea is she was assured at that time that she - -"[65] The court cut off counsel before he could finish his sentence in open court with the decedent's family present.[66] "That's why I talked about the offer and acceptance and the consideration, the meeting of the minds. I strongly looked to see was I actually bound by what I told you all, and I came up with the opinion that I am not - - that I'm not."[67]

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[54] A.R. 275–80.
[55] A.R. 280–82.
[56] A.R. 275.
[57] A.R. 285.
[58] A.R. 284.
[59] *See* A.R. 286.
[60] A.R. 289; A.R. 290–91.
[61] A.R. 285–86.
[62] A.R. 291.
[63] A.R. 292.
[64] A.R. 293.
[65] A.R. 294.
[66] *Id.*
[67] *Id.*

Petitioner moved to withdraw her plea, but the court told her to write a motion.[68] Defense counsel asked how he could advise clients if judges could promise one thing and do another.[69] The court had no answer.[70]

Petitioner filed a motion to reconsider seeking specific performance and later a motion to withdraw the plea.[71] The court denied both motions but advised Petitioner to take the case to the Supreme Court of Appeals of West Virginia[72] and permitted Petitioner to remain on post-conviction bond.[73]

SUMMARY OF ARGUMENT

This is a tragic case, and the circuit court's ambivalence about sentencing is understandable. Unintentional or not, someone died. Yet after the passage of seven years, it may be cliché—but at least not exaggeration—to say Petitioner is a changed person. Reasonable, well-meaning people can disagree over how the court should have sentenced her.

But reasonable people cannot disagree about whether courts should follow through on promises once the parties rely upon them. The intervening lawyers understood the judge had made a promise. Petitioner's counsel and the prosecutor understood what that promise was. And Petitioner accepted the plea only because the judge had promised home confinement. Even the judge—in explaining that *new* information had changed his mind—acknowledged that he had previously agreed to something different.

When courts accept pleas, defendants cannot withdraw simply because they get cold feet. Neither can judges.[74]

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[68] A.R. 295.
[69] A.R. 296–97.
[70] A.R. 297.
[71] A.R. 302; A.R. 319.
[72] A.R. 296; A.R. 311; A.R. 325.
[73] *See* A.R. 325; *see also* W. Va. § 62-1C-1; Syl. Pt. 4, *State v. Steele*, 173 W. Va. 248, 314 S.E.2d 412 (1984) (primary criteria for post-conviction bond is that the issuing court foresees "a likelihood that the defendant will prevail upon appeal.").
[74] Syl. Pts. 5, *State ex rel. Brewer v. Starcher*, 195 W. Va. 185, 465 S.E.2d 185 (1995).

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Too much of this case has already occurred behind closed doors. Petitioner requests a Rule 19 oral argument and a signed opinion. Basic fairness and well-established law make clear the court below erred. The only real question is remedy.

ARGUMENT

On the merits, this is a simple case. The State offered Petitioner a plea deal where, despite its on-the-record silence, it understood the court was bound to grant home confinement.[75] Petitioner accepted this deal, but she did not receive the benefit of her bargain.[76] The only true question is remedy: whether the equities favor specific performance or only that Petitioner may withdraw her plea and start her case—already over seven years old—all over again.[77]

Here, specific performance is appropriate. When the judge—tasked with accepting or rejecting the plea—also has a hand in the agreement's formation, then negotiations cease to be negotiations. The judge's offer becomes the floor and ceiling for what either party can offer or accept. Forcing the parties back to the table is both futile and highly prejudicial to Petitioner, who should not be faulted for taking the court at its word.

I. The court made a promise as part of the plea agreement. Absent actual fraud, it must uphold its end of the bargain.

When a defendant pleads guilty, they waive fundamental rights and thus Due Process requires that they do so knowingly and voluntarily.[78] "When a plea rests in any significant degree on a promise or agreement ... so that it can be said to be part of the inducement or consideration, such promise must be fulfilled."[79]

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[75] A.R. 466.
[76] *But see Santobello v. New York*, 404 U.S. 257, 262 (1971); *see also* U.S. Const. Amend. XIV; W. Va. Const. Art. III § 10.
[77] *See Santobello*, 404 U.S. at 263; *Brewer*, 195 W. Va. 185 at Syl. Pt. 8.
[78] *Santobello*, 404 U.S. at 261.
[79] *Santobello*, 404 U.S. at 261–62; *see also Brewer*, 195 W. Va. at 194–95 (treating judge's promise no different than a prosecutor's).

In addition, "the adjudicative element inherent in accepting a plea of guilty[] must be attended by safeguards to insure the defendant what is reasonably due in the circumstances."[80] West Virginia ensures this through West Virginia Criminal Procedure Rule 11.[81] In particular, it provides that courts must either accept or deny binding pleas and enforce their terms.[82] "A circuit court has no authority to vacate or modify, *sua sponte*, a validly accepted [binding guilty plea] because of subsequent events that do not impugn the validity of the original plea agreement."[83] Finally, "The court shall not participate in [plea bargain] discussions."

There is no real dispute of fact:[84] the court indicated it would sentence Petitioner to home confinement,[85] Petitioner and the State relied on that promise in reaching a deal,[86] but then at sentencing the court explained that new information in the PSI vitiated the meeting of the minds.[87] Whether the court's ruling constituted a breach of the agreement is a legal question that this Court reviews de novo.[88] And on these facts, the court erred.

The deal was peculiar, but nonetheless the State, Petitioner, and the court agreed to home confinement.[89] The State did not oppose this resolution but would not say so on the record.[90] Instead, it agreed to officially remain mum knowing that if it offered the deal and Petitioner accepted, the court would not order a prison sentence.[91] Off the record the State said "Judge Ferguson indicated he would allow your client to serve a 2-10 year sentence on home confinement if she enters this plea."[92]

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[80] *Id.*
[81] *See* WV R RCRP Rule 11.
[82] *See* W. Va. R. Crim. P. 11(e)(2).
[83] *Brewer*, 195 W. Va. 185 at Syl. Pt. 5.
[84] *See* A.R. 320.
[85] *See* A.R. 466.
[86] *See id.*
[87] A.R. 289; A.R. 290–91.
[88] *Brewer*, 195 W. Va. 185 at Syl. Pt. 1.
[89] *See* A.R. 466.
[90] *Compare* A.R. 466 *with* A.R. 467.
[91] A.R. 466.
[92] *Id.*

This was also Petitioner's understanding of the plea.[93] The entire sticking point in negotiations was that after seven years in limbo, Petitioner would not accept a deal that might expose her to prison—especially with her daughter begging her not to risk it.[94] She entered the plea only because her lawyer assured her that the prosecutor and judge promised she would receive home confinement.[95]

That Petitioner was so quick to object and move to withdraw her plea also shows that she understood the deal to be binding.[96] "Your honor, we were told by the court - - the only reason she entered the plea against my advice is - - several times I said, Judge told us this is what he's going to do."[97] "[T]he only reason she entered the plea is she was assured at that time that she - -[.]"[98] The court then interrupted, preventing defense counsel from finishing his thought in open court in view of the victim's family.[99] But the import was clear. The judge had made a promise, and Petitioner expected him to honor it.

And the court's own statements acknowledge it had previously agreed to home confinement.[100] It explained that *subsequent events*—learning more about Petitioner's pre-rehab behavior from the PSI—affected the court's judgment of the case.[101] The judge felt that if he had this knowledge prior to accepting the plea, he would not have entered the agreement.[102] In his opinion, this vitiated the meeting of the minds, freed him from his promise, but not Petitioner from hers.[103] The very fact that he had a change of heart means he had previously come to a different conclusion.

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[93] *See* A.R. 446; A.R. 447–48.
[94] *See id.*
[95] A.R. 448.
[96] A.R. 295.
[97] A.R. 293.
[98] A.R. 294.
[99] *See Id.*
[100] A.R. 289; A.R. 290–91; A.R. 295.
[101] *See* A.R. 289–91.
[102] *Id.*
[103] *Id.*

Given that the State, Petitioner, and court understood home confinement was a binding condition when the court accepted the plea, the court's prison sentence is a clear breach. Petitioner's case is materially congruent with *State ex rel. Brewer v. Starcher*.[104] There, the defendant entered a binding plea agreement, and the circuit court accepted the parties' terms.[105] However, when it crafted its order, the circuit court deviated from the plea.[106] The court explained that it learned new information after accepting the plea.[107]

This explanation—identical to that of the court below—carried zero weight with this Court.[108] Simply changing one's mind does not exempt anyone from the bargain after the court accepts the plea.[109] This is precisely why courts have the option to defer acceptance until reviewing the PSI.[110] If they do not exercise that prerogative and accept the plea, then they are bound by its terms absent intentional fraud.[111]

And here, the court did not allege fraud, nor could it. The new information in the PSI was not new at all—the Home Confinement Office had disclosed it in a letter to the court prior to the plea hearing.[112] The court did not recall reviewing that letter prior to the hearing and perhaps the judge lacked actual knowledge.[113] But the fact it was sent precludes any allegation the parties intentionally withheld its contents.

"Because a plea agreement requires a defendant to waive fundamental rights, we are compelled to hold prosecutors and courts to the most meticulous standards of both promise and performance."[114] The court's ambivalence as to an appropriate sentence is understandable. But changing its mind while holding Petitioner to her plea is not.

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[104] *State ex rel. Brewer v. Starcher*, 195 W. Va. 185, 465 S.E.2d 185 (1995).
[105] *See Brewer*, 195 W. Va. at 189–90.
[106] *See id.* at 190.
[107] *See id.* at 195.
[108] *See id.*
[109] *See id.* at 196.
[110] *Id.*
[111] *Id.*
[112] A.R. 447.
[113] A.R. 322.
[114] *Brewer*, 195 W. Va. at 192.

II. Specific performance is the appropriate remedy because the court violated a bright-line rule against participating in plea negotiations.

The record is unclear whether Petitioner's assigned lawyer knew in advance members from his and the prosecutor's office would approach the judge, though the fact he opposed their bargain and advised against it suggests he had not authorized the meeting and it was unknown in advance to his client.[115] Petitioner therefore does not separately assign as error the court's participation in plea negotiations.[116] But regardless of whether participation was invited, the policy against judicial involvement warrants specific performance as a remedy for the breached plea agreement.

Usually, specific performance is the only realistic remedy for a breached binding plea.[117] Setting aside the plea to remedy its breach may come at the prejudiced party's expense, and instead reward the breaching party.[118] This is especially true when the breaching party is the judge who initially accepted the plea but now wishes he had not.

"Judicial involvement with plea bargaining casts doubt over the entire process."[119] The parties may negotiate a plea agreement amenable to both sides.[120] But "the court shall not participate in any such discussions."[121] West Virginia Rule of Criminal Procedure 11 contains no exceptions.[122] The rule "erects an absolute bar to a trial judge's participation in plea bargaining ... [it] prohibits absolutely a trial court from all forms of judicial participation in or interference with the plea negotiation process."[123]

Here, the court's involvement crossed that bright-line. The parties reached an agreement only after the judge made promises as part of it.[124] This is not a situation, like in

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[115] *See* A.R. 293; *supra* at p. 4.
[116] *See State v. Welch*, 229 W. Va. 647, 652, 734 S.E.2d 194, 199 (2012) (disapproving of raising invited judicial participation); *but see Brewer*, 195 W. Va. at 196, n. 14.
[117] *See*, *e.g.*, *Brewer*, 195 W. Va. at 198; *see also id.* at n. 18.
[118] *See id.* at 198 (allowing withdrawal of plea as a remedy only if the defense fraudulently misrepresented the facts; otherwise ordering specific performance.).
[119] *Id.* 197.
[120] W. Va. R. Crim. P. 11(e).
[121] *Id.*
[122] *See id.*
[123] *State v. Sugg*, 193 W. Va. 388, 406, 456 S.E.2d 469, 487 (1995).
[124] *See* A.R. 466; A.R. 447–48.

State v. Welch,[125] where the parties merely sought the judge's opinion after reaching a deal.[126] The court decides whether to accept pleas,[127] and asking for an up or down vote in advance of a formal hearing may be expeditious.[128] But here, the bargain hinged on his promise.[129] there was no agreement until the judge entered negotiations and made it.

Petitioner's case is more like *State v. Sugg*,[130] where the Court found the defendant's allegations sufficient to show improper judicial participation.[131] Sugg alleged that off the record, the judge said he would give a certain sentence for a guilty plea, but made no promises if the defendant went to trial.[132] This is similar to what happened here: the court promised a certain sentence if Petitioner accepted the deal, and made clear that accepting the court's deal was the only way to avoid prison.[133] The court may not have meant this to be as coercive as the overt threat in *Sugg*, but the power imbalance made it inherent.[134]

And in *SER Brewer*, the case most like Petitioner's in terms of breach and judicial participation, this Court found that withdrawing the plea would be appropriate only if Petitioner had intentionally misled the circuit court into accepting the first plea agreement.[135] Absent actual fraud, specific performance was the sole just remedy.[136] After all, the agreement's only breach was that it wasn't performed in the first place.

And Petitioner's case illustrates precisely why this Court forbids, without exception, all judicial involvement in plea discussions.[137] First, the power dynamic inverts the plea process. Rule 11 gives parties a free hand to negotiate, but the court has a veto to ensure

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[125] *State v. Welch*, 229 W. Va. 647, 734 S.E.2d 194 (2012).
[126] *Welch*, 229 W.Va. at 649.
[127] *See Brewer*, 195 W. Va. 185 at Syl. Pt. 1; *see also Sugg*, 193 W. Va. 388 at 406.
[128] *See Welch*, 229 W. Va. at 652, n. 12.
[129] *See* A.R. 447–48.
[130] *See id.*
[131] *See Sugg*, 193 W. Va. at 407 (finding the record insufficient to address the issue on appeal).
[132] *Sugg*, 193 W. Va. at 406.
[133] A.R. 449.
[134] *See Sugg*, 193 W. Va. 406–07.
[135] *See Brewer*, 195 W. Va. at 199.
[136] *See id.*
[137] *See* W. Va. R. Crim. P. 11(e); *see also Sugg*, 193 W. Va. 406–07.

the agreement is in the public interest.[138] But if the judge who has final say also has a hand in crafting the deal, then the parties lose all autonomy. The power imbalance permits the court total freedom to craft the deal, and the parties have a take-it-or-leave-it offer.[139] Here the judge made clear he would entertain no other offers and accepting was Petitioner's only option for avoiding prison.[140]

And second, when the court negotiates a plea, they cease to be neutral arbiters and become interested parties. If the court below had not become an interested party, he would not have made a promise as part of a deal—the condition either would have been explicit in the on-the-record plea agreement, or not. And if he was not a party to the deal, he wouldn't have later questioned whether the consideration was sufficient—whether he got out of the deal what he expected.[141]

None of this was proper. The only way to make Petitioner whole is to give her the benefit of the bargain.

CONCLUSION

Since her arrest, Petitioner has done all that the system can ask of her. She has quit drugs. She raised her daughter and serves her community. She is effectively rehabilitated.

But the system has failed her. It took over seven years for her case to reach a final order. Personality conflicts between her lawyer and the prosecutor prevented good faith negotiations. The court entered negotiations with a take-it-or-leave-it offer. And even though she took it, the court denied her the benefit of her bargain.

Reasonable people can disagree over fair outcomes in a case like this. But once the court stakes out what it thinks is fair, the parties rely on it, and the court accepts a guilty plea, the court is be bound by its promises, too.

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[138] *See* W. Va. R. Crim. P. 11.
[139] *See Sugg*, 193 W. Va. 406–07.
[140] *See* A.R. 446; A.R. 449.
[141] *See* A.R. 285–86.

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CERTIFICATE OF SERVICE

I, Matthew Brummond, counsel for Petitioner, Rachel Adkins, do hereby certify that I have caused to be served upon the counsel of record in this matter a true and correct copy of the accompanying *"Petition and Appendix Record"* to the following:

Lara K. Bissitt
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