

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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DOCKET NO. 24-154

STATE OF WEST VIRGINIA,  
Plaintiff Below, Respondent

v.

LOGAN CAMP  
Defendant Below, Petitioner

**PETITIONER'S BRIEF**

COUNSEL FOR PETITIONER, LOGAN CAMP

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## **ASSIGNMENT OF ERROR**

1. Did the lower court error when it refused to allow the petitioner to withdraw his plea of no contest in magistrate court, when he had agreed to enter a no contest plea on the promise by the Court, that he could serve his time on home incarceration and that he could keep his firearms; and the home incarceration authorities denied him home incarceration, because he had a firearm?

## **STATEMENT OF THE CASE**

Logan Camp, your petitioner herein, was originally charged in the magistrate court of Greenbrier County, W.Va. with the offense of driving revoked for a second offense.

Petitioner entered into a plea bargain agreement {R. P. 3} with the State of West Virginia represented by Rod Mohler, the assistance prosecuting attorney. The plea bargain agreement {P. 3} reads as follows: “the parties mutually agree and recommend that the defendant will plea to no contest to the reduced charge of driving revoked first, a lesser included defense of driving revoked for second offense of 17B-4-3(b); the remaining charges would be dismissed; the State recommends 45 days jail, to be allowed to be served on the Greenbrier County Home Confinement Program and \$100.00 fine payable along with court costs.”

In the course of taking the plea of the petitioner, in conformance with the Rules of Criminal Procedure for Magistrate Court, Rule 10(c), the magistrate was asked a question by the petitioner as to whether he would be permitted to retain his firearms while on home incarceration.

The magistrate specifically assured him that he could keep his firearms and marked and initialed on the plea form authorizing him to have his firearms. The magistrate also marked the same on the instructions to the home incarceration authorities. (See Exhibit A). {P. 3} When

the petitioner then applied to the home incarceration authorities, the home incarceration officer informed him that they could not accept him to home incarceration, because it allowed him to maintain his firearms.

The petitioner immediately contacted his counsel and protested that the no contest plea was entered with the understanding that he be permitted to serve his time on home incarceration and keep his firearms.

After some discussion, it was determined that the only relief for the petitioner would be to appeal to the Circuit Court and request that the petitioner be allowed to withdraw his plea, which he promptly did.

At a hearing held on October 31, 2023, {P. 39} the Court made the following finding: “the provisions in the Order prohibiting the possession of firearms, ammunition, and other deadly weapons are conspicuously struck out and initialed by the Magistrate.”

The Court having reviewed the argument of counsel, in substance, determines the ability to have a firearm should have been made a part of the plea agreement and that because it was not specifically a part of the plea agreement, the Court was then denying the Motion to Withdraw the Plea.

From this Order the petitioner appeals.

### **SUMMARY OF ARGUMENT**

Rule 10(c) of the Rules of Criminal procedure for Magistrate Court provides that the magistrate is to make sure that all pleas are “not a result of force or threats or promises apart from the plea agreement.”

In this case, the magistrate himself made the promise and recorded it onto his records that the petitioner herein was entering his plea of “no contest” {P. 3} upon the promise and assurance

by the Court that he would be able to maintain his firearms at his home. The Court should permit him to withdraw his plea, when the promise made by the Court could not be honored. The only relief available to petitioner is to permit him to withdraw his plea. The Circuit Court abused its discretion when denying his motion.

### **STATEMENT REGARDING ORAL ARGUMENT AND DECISION**

Your petitioner requests oral argument in conformance with Rule 19 as this is a case involving the application of settled law or that this case involves a narrow issue of law.

### **ARGUMENT**

West Virginia Rules of Criminal Procedure for Magistrate Court, Rule 10(c) reads as follows: “insuring that the plea is voluntary. The magistrate shall not accept a plea of guilty or no contest without first, by addressing the defendant personally and in open court, determining that the plea is voluntary and not a result of force or threats or of promises apart from a plea agreement.” (Underlining added for emphasis).

In the case before the Court, the promises made to the petitioner were not offered as a recommendation by the prosecuting attorney, they were, in fact, specifically promised by the magistrate himself when taking the plea. The magistrate does not and cannot not complain this process was brought to his attention, or not made part of the record, because the magistrate is the one who entered it into the record and made it part of the home incarceration order. (See Exhibit A.)

The magistrate’s rules of criminal procedure mirrors the trial court rules of criminal procedure. Rule 11(d) of the Rules of Criminal Procedure reads in similar language (d) “insuring the plea is voluntary, the court shall not accept the plea of guilty or nolo contender without first by addressing the defendant personally, in open court, confirming that the plea is voluntary and

not a result of force or threats or promises apart from the plea agreement.” (Underling added for emphasis).

There is little or no question that the petitioner herein chose to enter a plea of no contest in reliance on the promise that he could complete his sentence by being placed on home incarceration, and was promised he could keep his firearms.

The magistrate had to be aware that he was entering his plea under the promise of the Court. The Court signed it personally. The fact that the Court participated and made the same assurance should be treated with even greater concern, because the prosecuting attorneys can only make recommendations, but the Court’s promise and Order should have some validity and greater credibility. If the Court’s promise and Order have no weight, then who can be trusted?

These two Court rules appear to provide substance to the thought that no plea should be entered into that was not “knowingly” made. Pleas should not be accepted if it is clear from the record that the person who is pleading was misled or promised something to get the plea that, in fact, was not true.

In this particular case, it was the magistrate himself who made the promise and, in fact, attempted to carry it out.

In Cleckley’s “Handbook of West Virginia Criminal Procedure,” Vol. 1 Sect. 13-119 states: “on timely application, the Court will vacate a plea of guilty shown to have been unfairly obtained or given through ignorance, fear or inadvertence.” Citing Kercheval v. United States, 279 U.S. 220, 47 S.Ct. 582, 71 L.Ed. 1009 (1927). Moreover, leave to withdraw a plea of guilty is determined without consideration of the guilt or innocence of the defendant, Nagelberg v. United States, 377 U.S. 266, 84 S.Ct. 1252, 12 L. Ed. 2d 290 (1964).” Cleckley goes on to state “But in State ex rel. Burton v. Whyte, 256 S.E. 2d 424 (W.Va. 1979), the court stated that “a

guilty plea based on competent advice of counsel represents a serious admission of factual guilt, and where an adequate record is made to show it was voluntarily and intelligently entered, it will not be set aside.”

In the case at hand, it can hardly be disputed that this case involved a defendant who with a no contest plea was not acknowledging guilt, but was entering a no contest plea under the specific promise, affirmed by the court itself, that he would be permitted to maintain his firearms in his home. The Court cannot make a finding that he intelligently entered any type of plea when the magistrate himself is making promises and reducing them to writing in the form of an Order to be signed by him and the petitioner affirming that these were the conditions of his home incarceration.

There is always a question of what competent counsel would have done under these circumstances. This is an action of the court. This is not a recommendation by the prosecuting attorney or defense counsel. It is, in fact, an Order of the magistrate court. It can be argued the State waived the right to protest. The counsel cannot be blamed for assuming that inasmuch as the magistrate ordered that he be able to have home incarceration, and struck out the condition of the surrender of his firearms, counsel would have done something differently. The State did not make any objection to the modification of the terms and conditions of his home incarceration. It is only when the home incarceration officers said they could not accept him for home incarceration that petitioner was notified there was a problem.

Counsel is unaware of any rule by this Court or an act of legislature whereby the home incarceration officers can override the direct terms and conditions as ordered by a Court. If such a ruling exists, then it should surely be the basis for saying that the person who entered the plea should, at least, be permitted to be returned to the status quo ante.

## CONCLUSION

There is clear evidence in this case that the petitioner entered a no contest plea on the representation by the magistrate court that petitioner would be permitted to retain his firearms while on home incarceration. When the promise by the court was not honored, it is self-evident the plea was not knowingly and intelligently made. This matter should be remanded back to the Magistrate Court of Greenbrier County, West Virginia. The plea of no contest should be vacated, the sentence voided and that the State and petitioner herein should be restored to their positions that existed prior to the acceptance of the no contest plea.

LOGAN CAMP  
By Counsel

s/sPaul S. Detch  
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**CERTIFICATE OF SERVICE**

The undersigned, Paul S. Detch, counsel of record for the petitioner does hereby certify that on the 9 day of June, 2024, that a true copy of the foregoing PETITIONER'S BRIEF via the Supreme Court of Appeals of West Virginia E-filing system to the below named individuals.

Mark L. Garren, Esquire  
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304-645-1993

State of West Virginia

Case No. 23 M13M-00140

Logan J. Camp  
Defendant (Full Name)

XXX-XX-1932

08 / 20 / 1987

Social Security Number

Date of Birth

1285 Wards Draft Road  
Address

I645817

Driver's License / Identification

White Sulphur Springs WV 24986  
City, State & Zip Code

340-992-2768

Phone Number(s)



ORDER: HOME INCARCERATION

W.Va. Code §§ 62-11B-1, et seq; W. Va. Code § 62-11C-4(c)

On the 3 day of August 2023, the defendant appeared in person and with counsel, Paul Detch. The State of West Virginia appeared by waived by APA. The parties were present for a hearing to determine whether the defendant should be allowed to serve his or her sentence on electronic home incarceration.

The defendant was convicted of the offense of Driving revoked for DUI on the 3 day of August 2023. After reviewing the relevant facts and circumstances, the Court finds that the defendant is eligible to serve his or her sentence on home incarceration. The Court hereby ORDERS that the defendant shall be placed on electronic home incarceration for the following period: when hooked up. month(s) or 45 days, beginning on the day of August 2023.

in GREENBRIER County, at the following residence:

1285 Wards Draft Road, White Sulphur Springs, WV.

This residence is owned, co-owned, leased, co-leased, rented, or co-rented by N/A

It is hereby ORDERED that the defendant shall maintain telephone service, as approved by the home confinement office, at his or her residence. The defendant's current telephone number is 340 992 2768. Additionally, the defendant may be contacted at the following telephone number:

TERMS AND CONDITIONS

The defendant understands and agrees that while on electronic home incarceration, he or she shall abide by the following terms and conditions:

- 1. The defendant SHALL report to the Home Incarceration Office of GREENBRIER County, at 304-647-1389 no later than the 4 day of August 2023 at 12:00 [ ] a.m. [X] p.m. FAILURE TO COMPLY SHALL CONSTITUTE A VIOLATION AND SUBJECT THE DEFENDANT TO IMMEDIATE ARREST;

Date

08-03-2023 3:31 pm

Defendant

[Signature]

2. The defendant **SHALL** be confined to the defendant's above-listed residence at all times except when the defendant is
  - (a) working at or traveling to or from approved employment;
  - (b) unemployed and seeking employment as approved;
  - (c) undergoing medical treatment, psychiatric treatment, mental health treatment, counseling, or other treatment programs as approved;
  - (d) attending an educational institution or a program as approved;
  - (e) attending a regularly scheduled religious service at a place of worship, as approved; or
  - (f) engaging in other approved activities.
3. The defendant **SHALL** abide by a schedule prepared and set by the home incarceration officer or sheriff designating the times when the defendant may be absent from the approved residence of home incarceration and/or the locations the defendant is permitted to visit during the scheduled absence. Any alteration to the schedule shall be approved in advance by the home incarceration officer or sheriff.
4. The defendant **SHALL** obtain approval from the home incarceration officer or sheriff before changing his or her residence of home incarceration.
5. The defendant **SHALL** maintain the following in the approved residence of home incarceration:
  - (a) a working telephone as approved by the home confinement office;
  - (b) an electronic monitoring device both in the residence and on his or her person; and
  - (c) electric service.
6. The defendant **SHALL** notify the home incarceration officer immediately if he or she is arrested, contacted by any law enforcement officer in an official capacity, or becomes party to any civil or criminal action including, but not limited to, any criminal investigation, traffic stops, service of process of any civil or criminal documents, such as any domestic violence case or any family court case involving divorce or child support.
7. The defendant **SHALL** permit the home incarceration officer, or any law enforcement officer designated by the home incarceration officer, to visit and enter his or her residence of home incarceration at any time, announced or unannounced, to ensure compliance with the Court's order.
8. The defendant **SHALL** be responsible for providing his or her own food, housing, clothing, medical care, and other treatment expenses while on home incarceration.
9. The defendant **SHALL** submit to random drug and alcohol tests at the discretion of the home incarceration officer, or as ordered by the Court, at his or her own expense.
10. The defendant **SHALL** notify the home incarceration officer of any medication prescribed for him or her by a licensed physician within twenty-four (24) hours of the time of prescription, and provide a copy of the prescription to the home incarceration officer.

Date

08-03-2023 3:31 pm

Defendant



It is further ORDERED that by authorizing the defendant to use the premises for the purposes of home incarceration, the owner(s), co-owner(s), lessor(s), co-lessor(s), tenant(s), or co-tenant(s)

- 1. shall permit the home incarceration officer to enter his or her residence to ensure compliance with this Court's Order;

~~KWJ shall not possess any type of firearm or any other dangerous and deadly weapon(s) in the residence of home incarceration;~~

- 3. shall not possess in the residence, or in the presence of the defendant, any type of alcoholic or intoxicating beverage(s), or any drug(s) or controlled substance(s), unless lawfully prescribed by a licensed physician, and
- 4. shall, upon receipt of this Order, immediately notify the Court and the home incarceration officer if he or she is not willing to authorize the defendant to use his or her premises for the purpose of the defendant's home incarceration under the terms and conditions set out above.

**PAYMENT**

1. (Complete if supervision will be performed by the sentencing county.) Pursuant to West Virginia Code § 62-11B-7 and based upon a determination of the defendant's ability to pay, the Court hereby ORDERS the defendant to pay a Home Incarceration Fee of \$ \_\_\_\_\_ per TBD to the **GREENBRIER** County Sheriff's Department for the cost of supervision.

2. It is further ORDERED that, pursuant to West Virginia Code § 62-11C-4 and a determination of the defendant's ability to pay, the defendant shall pay the amount of \$ \_\_\_\_\_ per day (not to exceed \$2.50 per day) to the **GREENBRIER** County Magistrate Court Clerk for the West Virginia Community Corrections Fund

3. It is further ORDERED that \_\_\_\_\_

**COURTESY SUPERVISION**

(This section should be completed by the magistrate if supervision is to be performed in a county other than the sentencing county.)

Based upon information that the defendant will be residing in \_\_\_\_\_ County, West Virginia, and upon approval by that county, it is the **FINDING** of this Court that supervision of the defendant during his or her period of home incarceration shall be performed by the home incarceration office of the \_\_\_\_\_ County Sheriff's Department.

Based upon a determination of the defendant's ability to pay, it is ORDERED that the defendant shall pay to the Sheriff's Office of \_\_\_\_\_ County, a home incarceration fee according to the fee schedule established by the supervising circuit judge of \_\_\_\_\_ County.

Date 08-03-2023 3:33 pm

[Signature]  
Defendant