

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**Docket No. 24-154**

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**STATE OF WEST VIRGINIA,**

**Respondent,**

**v.**

**LOGAN CAMP,**

**Petitioner.**

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**BRIEF OF RESPONDENT**

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## INTRODUCTION<sup>1</sup>

Petitioner's requested relief would offend this State's "settled policy of giving finality to criminal sentences" that are imposed after a defendant knowingly and voluntarily enters a plea pursuant to an agreement with the State and, more to the point, when the defendant receives a criminal sentence to which he would rather not submit. *State v. Olish*, 164 W. Va. 712, 716, 266 S.E.2d 134, 136 (1980).

In exchange for the dismissal of one criminal charge, Petitioner bargained with the State to plead no contest to a separate criminal charge. The State upheld its end of the bargain, dismissing the criminal charge as per the agreement. But Petitioner proved noncompliant with his part by refusing to accept his criminal sentence and, ultimately, failing to submit to the court's authority. When the county home incarceration administrator notified Petitioner that retention of firearms in the residence rendered him ineligible for home incarceration, Petitioner refused to comply with the condition and instead sought to set aside his plea entirely.

Attempting to excuse his noncompliance, Petitioner claims that the magistrate court judge promised he could keep his firearms while serving home incarceration. But there is absolutely no evidence to support that assertion. There is no evidence of anything more than a valid plea agreement and, subsequently, the entry of a knowing and voluntary plea followed by the magistrate court judge's acceptance of the very sentence that the State agreed to recommend.

Displeased with the sentence, Petitioner balked. Eschewing direct appeal, he collaterally (and improperly) attacked the validity of his plea through the filing of a miscellaneous motion with the circuit court. The circuit court, however, recognized that Petitioner did not bargain for a particular sentence, and his sound plea agreement required the State only to *recommend* home

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<sup>1</sup> The Office of the Attorney General extends its thanks to intern Abbagail Badley, rising 3L at Regent University School of Law, for her extensive research and writing on this brief.

incarceration. So even if Petitioner willingly rejects the home incarceration requirements, he is not entitled to a non-jail sentence. Accordingly, this Court should affirm the circuit court's denial of Petitioner's motion to withdraw his plea.

### **ASSIGNMENT OF ERROR**

Petitioner asserts a single assignment of error, posed as a question presented:

Did the lower court err[] 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?

Pet'r's Br. 1.

### **STATEMENT OF THE CASE**

On August 3, 2023, Petitioner entered an agreement with the State, whereby he consented to enter a plea of no contest to a charge of driving while his license was suspended or revoked, first offense (W. Va. Code § 17B-4-3), rather than the second offense with which he was charged. App. 3, 7. In exchange, the State agreed to dismiss his second charge (driving under the influence of alcohol, W. Va. Code § 17C-5-2) from the criminal complaint, and “recommend[ed] 45 days jail, to be allowed to be served on the Greenbrier Home Confinement Program; \$100.00 fine pay[a]ble along with court costs.” App. 2, 7. The signed plea agreement incorporated no other terms or conditions. App. 7. This was the agreement in its entirety. App. 7.

With his attorney present, Petitioner pled no contest to first-offense driving while his license was suspended or revoked, as contemplated by his plea agreement. App. 4. Petitioner acknowledged that he entered the plea “voluntarily and not as a threat of force, threats, *or promises apart from the promises in the plea agreement.*” App. 4 (emphasis added). Accepting the State's recommendation, the magistrate court judge noted that he would sentence Petitioner to forty-five days of jail confinement, but would allow Petitioner to serve this time through home incarceration.

App. 5. As noted above, there was no promise in the plea agreement that Petitioner could keep his firearms during home incarceration. Crucially, the magistrate court judge conditioned Petitioner's eligibility for home incarceration upon approval by the home incarceration administrator. App. 5.

Fulfilling its obligation under the agreement, the State moved to dismiss Petitioner's second criminal charge. App. 6. The magistrate court judge granted the State's motion. App. 6. The magistrate court judge entered a criminal judgment order on August 3, 2023, acknowledging that Petitioner pled no contest to first-offense driving while his license was suspended or revoked, and memorializing Petitioner's forty-five day sentence, which the court allowed Petitioner to serve through home incarceration. Resp't App. 2-3.

True to his earlier statements, the magistrate court judge entered an order for home incarceration for forty-five days starting "when hooked up." App. 8. Still represented by counsel, Petitioner signed the home incarceration order, thus acknowledging its terms. App. 10, 12. There is no indication that any discussion about Petitioner's firearms occurred prior to the signing of this document. App. 3-7. Further, the order, completed on a form approved by this Court for magistrate court use since 2012, contained an express condition making "[h]ome incarceration contingent upon acceptance and approval" by the home incarceration administrator. App. 13.

The boilerplate phrases "[t]he defendant SHALL NOT have any type of firearm, ammunition, or any other dangerous and/or deadly" and "shall not possess any type of firearm or any other dangerous and deadly weapon(s) in the residence of home incarceration" are inexplicably stricken from Petitioner's home incarceration order. App. 10, 11. The magistrate court amended the home incarceration order on August 22, 2023, clarifying that Petitioner must abide by the rules set by the home incarceration administrator, including the prohibition of firearms in the approved residence. App. 13.

Petitioner proved unhappy (and eventually noncompliant) with the home incarceration administrator's rules. App. 14. Possession of firearms in the residence violated the rules of home confinement, as the administrator notified Petitioner. App. 14. Also, the administrator notified the prosecuting attorney and magistrate judge about Petitioner's refusal to remove his firearms. App. 14. Still, Petitioner refused to remove the firearms even after the office spoke with him "multiple times" about the issue. App. 14. The office tried to work with Petitioner and, "under the impression the issue had been resolved," scheduled a start date. App. 14. But on the start date, Petitioner simply did not appear. App. 14. Attempting to justify his noncompliance, Petitioner informed the office he believed the order contained "a lot of gray areas" and was "not [k]now what he agreed to." App. 14.

Only after Petitioner's forty-five-day jail sentence was pronounced and it became clear that the alternative sentence of home incarceration would require Petitioner to temporarily surrender his firearms did Petitioner file a motion to set aside his plea with the magistrate court. App. 17-18. Petitioner asked the magistrate court judge to set aside his plea on the ground that "[t]he agreement was that he would be able to maintain his right to firearms, ammunition and other items." App. 17 (The plea agreement, of course, contained no such provision. App. 7.). The magistrate court denied the motion in cursory fashion, noting its inability to entertain a request to withdraw a plea. App. 4, 18.

Petitioner did not directly appeal his magistrate court conviction, but instead instituted a miscellaneous proceeding and filed a motion asking the circuit court to set aside his plea. Resp't App. 1. It does not appear that, to date, Petitioner served any part of his sentence. The magistrate court issued a *capias* on September 1, 2023, but recalled it on September 29, 2023, for reasons not apparent in the court records. Resp't App. 4-5.

The circuit court conducted a hearing on Petitioner’s motion, and immediately cottoned to the conditionality of Petitioner’s plea agreement. App. 27. The prosecuting attorney assured the circuit court that “the [S]tate did not in this case, nor any other case that I’m aware of, get into the business of negotiating the terms and conditions of” home incarceration. App. 28. He emphasized the parties made no reference to Petitioner’s firearms during the plea negotiations. App. 28. It was also clear from this hearing that the magistrate court judge gave no consideration to Petitioner’s retention of firearms prior to sentencing. App. 29. In other words, the magistrate court did not inappropriately participate in the plea negotiations or induce Petitioner to enter a plea by offering any promise whatsoever. App. 29.

According to the prosecuting attorney, at “sentencing the defendant chose to eliminate one provision of the basic home confinement rules that are set forth on the form provided by the Supreme Court. . . .” App. 29. Petitioner’s counsel suggested that Petitioner learned of this term when entering his plea, but qualified that if the reasons for the home incarceration administrator to decline Petitioner were “known at the time he was plea[d]ing it, . . . he would’ve been able to withdraw the plea.” App. 30.

The circuit court entered an order denying Petitioner’s motion, finding that Petitioner “knowingly and voluntarily” entered the plea agreement while his approval for home incarceration remained undetermined. App. 40. As noted by the court in the motion hearing, “whether it be for [ ] firearms [ ] or any other reason, the sentencing of home incarceration is still contingent upon approval by home incarceration.” App. 33. And if it were the agreement that Petitioner could maintain his firearms then “that should be stated in the plea agreement.” App. 34.

### **SUMMARY OF ARGUMENT**

Post-sentence challenges to pleas are highly disfavored. Petitioner’s request to set aside his plea should be viewed as suspect, because he raised no concerns about his plea until after the

magistrate court judge pronounced his sentence and he learned that there were terms with which he did not want to comply. And it is apparent that this is all this was: a request. Petitioner filed a miscellaneous proceeding to ask the circuit court to set aside his plea and did not follow the procedures established by statute and rule. It is likely he did so because, first, having entered his plea with the assistance of counsel, appeal was not available to him and, second, he failed to file his appeal in a timely manner.

In any case, Petitioner entered his plea knowingly and voluntarily without having bargained for binding restrictions on the terms of his sentence. His plea, thus, even if properly appealed, could only be set aside to avoid manifest injustice. The only “injustice” that should be avoided is the undoing of the agreement for which the State bargained. That is why the circuit court’s order must be affirmed.

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

Oral argument is unnecessary because the facts and legal arguments are adequately presented in the briefs and the record is fully developed. W. Va. R. App. P. 18(a)(3) & (4). Hence, this case is suitable for disposition by memorandum decision.

#### **STANDARD OF REVIEW**

This Court reviews a circuit court’s denial of a defendant’s request to withdraw his plea after sentencing “only to avoid manifest injustice.” Syl. pt. 2, *Olish*, 164 W. Va. 712, 266 S.E.2d 134. The “settled policy of giving finality to criminal sentences” voluntarily and knowingly entered requires “a higher post-sentence standard.” *Id.* at 716, 266 S.E.2d at 136.

## ARGUMENT

**I. It is apparent that Petitioner challenges his plea only because he is dissatisfied with the terms of his sentence. His request, therefore, requires extraordinary scrutiny.**

There is “a distinction between a situation where the defendant enters the guilty plea but before he is sentenced changes his mind and seeks to withdraw the plea, and that where the defendant does not seek to withdraw the guilty plea until after he hears the sentence.” *Olish*, 164 W. Va. at 715, 266 S.E.2d at 135-36. The reasons behind this distinction are applicable and apparent in this case.

“First, once sentence is imposed, the defendant is more likely to view the plea bargain as a tactical mistake and therefore wish to have it set aside.” *Id.* at 716, 266 S.E.2d at 136. Certainly, that is what has happened here. Petitioner simply does not like the terms of his sentence; he does not want to temporarily surrender his firearms. And the second reason—that “at the time the sentence is imposed, other portions of the plea bargain agreement will often be performed by the prosecutor, such as the dismissal of additional charges”—came to pass when the State dismissed Petitioner’s charge of second-offense driving under the influence. *Id.* “Finally, a higher post-sentence standard for withdrawal is required by the settled policy of giving finality to criminal sentences which result from a voluntary and properly counseled guilty plea.” *Id.* The finality of Petitioner’s voluntary and counseled plea cannot be compromised simply because Petitioner is unhappy with the terms of his sentence. Only “manifest injustice” should induce a court to set aside a plea “after [a defendant] hears his sentence.” *Id.* at 715, 266 S.E.2d at 136 It is evident, as further explained below, that there is no injustice in holding Petitioner’s feet to the fire to fulfill the bargain that he made.

**II. Petitioner likely instituted a miscellaneous proceeding in an effort to avoid the consequences of failing to follow the proper procedure prescribed by statute and rule: the filing of a direct appeal.**

The sanctity of the plea is evident, and no more so than in Rule 10(e) of the Rules of Criminal Procedure for Magistrate Courts, wherein this Court directs that a magistrate court judge “may neither entertain nor grant a motion to withdraw a plea of guilty or no contest.” This, then, is a privilege reserved for a higher court. Because the magistrate court judge had no authority to revisit the plea that it had properly accepted, Petitioner’s only possible recourse was to appeal his conviction to the circuit court *within twenty days* after the sentencing for his conviction. W. Va. R. Crim. P. for Mag. Cts. 20.1.

(Had Petitioner, who was represented by counsel when he entered his plea, pled guilty, Rule 20.1 certainly would have precluded him from appealing to the circuit court as a matter of right. The State acknowledges that the rule contains no such prohibition when a defendant enters a plea of no contest, *id.*, but the Court has suggested that an appeal from a no contest plea in magistrate court is only possible if a defendant is not challenging the conviction itself, *State v. Spade*, 225 W. Va. 649, 655, 695 S.E.2d 879, 885 (2010). *See also State v. Folsie*, 249 W. Va. 523, \_\_\_ n.16, 896 S.E.2d 689, 695 n.16 (2023) (seemingly equating petitioner’s no contest plea with a guilty plea, but noting that appeal from magistrate court is prohibited only “where the defendant was *represented* by counsel at the time the plea was entered.”))

Petitioner’s eligibility or ineligibility to appeal is irrelevant, however, because Petitioner did not even try. Rule 20.1 draws its authority from West Virginia Code § 50-5-13, which sets forth the twenty-day deadline, but also allows a convicted defendant to appeal upon a showing of good cause made no more than ninety days after his sentence. Petitioner, under the statute and rule,

could appeal his conviction-by-plea as a matter of right through August 23, 2023. Petitioner did not appeal his conviction by the prescribed deadline. He missed it.

Having failed to follow the prescribed procedure, Petitioner attempted to circumvent direct appeal through a procedure not described in the statute or rule: the filing of a miscellaneous proceeding. Petitioner cites no authority that allows him to escape the consequences by filing a miscellaneous proceeding; indeed, he cites no authority providing for the filing of a miscellaneous criminal proceeding at all. Consequently, a criminal defendant is bound by Rule 32(e) of the West Virginia Rules of Criminal Procedure, which *only* permits the setting aside of a plea on direct appeal or through relief in habeas corpus. *See State v. Doonan*, 220 W. Va. 8, 13, 640 S.E.2d 71, 76 (2006) (“[I]t is not exceptional for the Rules of Criminal Procedure for Magistrate Courts to look to guidance from the West Virginia Rules of Criminal Procedure for circuit courts.”) Petitioner did not follow this course, and his plea is not subject to review in the present procedural posture.

**III. Even if Petitioner had filed a procedurally appropriate appeal to the circuit court at the appropriate time, Petitioner’s plea agreement provided only that the State would *recommend* a sentence. There is no evidence that inappropriate promises were made to induce Petitioner to enter his plea. The State is, therefore, entitled to the benefit of its bargain.**

Pleas entered “voluntarily and intelligently” will not be set aside. Syl. pt. 3, *State ex rel. Burton v. Whyte*, 163 W. Va. 276, 256 S.E.2d 424 (1979). Further, “[a] defendant may knowingly and intelligently waive constitutional rights, . . . [and o]nce having done so he cannot be heard to complain thereafter.” *Call v. McKenzie*, 159 W. Va. 191, 195-96, 220 S.E.2d 665, 669 (1975). Upon entering a valid plea agreement, “an enforceable ‘right’ inures to both the State and the defendant not to have the terms of the plea agreement breached by either party.” Syl. pt. 4, *State*

*v. Myers*, 204 W. Va. 449, 513 S.E.2d 676 (1998). That is exactly what happened here, and the State has an enforceable right in this agreement.

Petitioner's plea agreement provided that the State would *recommend* that he serve forty-five days in home incarceration. This was the only assurance concerning the terms of Petitioner's sentence. Nothing in the agreement indicated a guarantee that this recommendation would be accepted by the magistrate court judge, let alone a guarantee that he could retain his firearms if he were granted the grace of home incarceration.

Petitioner argues here that he entered the no-contest plea "under the specific promise" that he could keep his firearms during home incarceration. Pet'r's Br. 4-5. The circuit court has already rejected this allegation. As the prosecuting attorney explained in the circuit court hearing, "the only agreement the [S]tate had with the defendant is that the sentence of incarceration would be *permitted to be served on home confinement.*" App. 28 (emphasis added). And this, as shown in the agreement itself, was only for the State's *recommendation* for this permissive sentence. The question of firearms first arose when the magistrate court completed the home incarceration order, which plainly made Petitioner's confinement contingent upon approval of the home incarceration administrator. App. 29. The possibility that Petitioner could be denied home incarceration (and, consequently, be required to serve his sentence in jail) was a "known risk" to Petitioner as his eligibility would be "determined by the home incarceration officer." App. 29.

In contrast to the evidence proffered by the State in the circuit court hearing (and the ultimate findings of the circuit court), Petitioner now argues that he expressed an interest in retaining his firearms and ammunition "[i]n the course of . . . the plea." Pet'r's Br. 1. But Petitioner's assertions stand unsupported by the record and it is he who "must bear the burden of

proving that his plea was involuntary.” *State ex rel. Clancy v. Coiner*, 154 W. Va. 857, 869-70, 179 S.E.2d 726, 733 (1971).

Petitioner did not include a transcript of the magistrate court proceedings in the appendix record, and it is likely that one does not exist. But here, the record reflects all relevant terms of the plea agreement. None of these terms include a condition allowing Petitioner to keep his firearms. Petitioner contends “[t]here is little or no question” that he “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.” Pet’r’s Br. 4. Yet Petitioner entered his plea agreement *before* the court’s home incarceration order, which makes it impossible for him to enter his plea agreement in reliance upon something the court allegedly promised *after* he entered the agreement. The circuit court’s findings on this could not have been more clear. The court wrote, “[T]he plea was knowingly and voluntarily entered while approval for home incarceration was still undetermined, and therefore, subsequent denial of home incarceration does not affect the validity of the plea.” App. 40.

This is a significantly different situation than the one presented in the Court’s recent opinion *State v. Adkins*, 249 W. Va. 688, 901 S.E.2d 52 (2024), where the record yielded incontrovertible evidence that the parties engaged the assistance of the circuit court judge to “resolve the impasse” in the parties’ plea negotiations. *Id.* at \_\_\_\_, 901 S.E.2d at 54. The circuit judge rose to the challenge and, according to electronic mail sent by the prosecuting attorney “indicated he would allow [the defendant] to serve a 2-10 year sentence on home confinement if she enter[ed] th[e] plea.” *Id.* at \_\_\_\_, 901 S.E.2d at 55. That is not the situation now before the Court, as Petitioner implicitly acknowledges by the absence of any comparison to *Adkins* in his petition for appeal. In stark comparison, there is no evidence that the magistrate court judge had

any discussions with Petitioner to induce the plea or that he discussed any potential sentence before actually pronouncing the sentence.

And here is a critical point: Petitioner knew the terms of his home confinement needed ultimate approval by the home incarceration administrator. Under the Home Incarceration Act, home incarceration “may be imposed at the discretion of the circuit court or magistrate court as an alternative means of incarceration for any offense.” W. Va. Code § 62-11B-11 (1993); *see also State v. Koltz*, No. 21-0529, 2022 WL 3935860, at \*2 (W. Va. Supreme Court, Aug. 31, 2022) (memorandum decision) (“‘Probation is a matter of grace and not a matter of right.’ Likewise, a circuit court retains discretion in ordering home confinement[.]” (citation omitted)). In its discretion, the magistrate judge graciously made “[h]ome [i]ncarceration contingent upon acceptance and approval of [the] HI Administrator.” App. 10. Meaning, the magistrate court judge gave the home incarceration administrator discretion over the conditions of Petitioner’s home incarceration. Without any indication of fraudulent inducement, Petitioner signed the order knowing it included this condition.

Consequently, the record contradicts Petitioner’s assertions that the court misled him by promising he could keep his firearms. Pet’r’s Br. 4-5; *see State v. Holstein*, 235 W. Va. 56, 67, 770 S.E.2d 556, 567 (2015) (finding the record “flatly contradict[ed]” the petitioner’s contention that his plea was not intelligently and voluntarily made). Instead, the record indicates the court neither finalized nor guaranteed the terms of his home incarceration. Because the court gave the home incarceration administrator discretion, the office’s denial of firearms does not override the court’s orders. In short, there is no manifest injustice in Petitioner now serving his sentence in jail, should he continue to thwart the home incarceration administrator’s rules, since his plea agreement

*permitted* him to serve his time through home incarceration only if approved, and he was not approved.

### CONCLUSION

This Court should affirm the lower court's denial of Petitioner's motion to set aside his plea.

Respectfully submitted,

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LOGAN CAMP,

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**CERTIFICATE OF SERVICE**

I, Michele Duncan Bishop, do hereby certify that the foregoing **Brief of Respondent** is being served on counsel of record by File & Serve Xpress this 5th day of August, 2024.

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