Plea Bargaining Institute

Supreme Court Retrospective Report (1970-2019)

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Report Background

This report from the Plea Bargaining Institute contains summaries of plea bargaining cases from the U.S. Supreme Court from 1970 until 2019. Each summary contains the case title, date of decision, the court from which review occurred, whether the decision was unanimous, the authoring Justice, the members of the majority, concurrence, and dissent, a brief overview of the case, a more detailed case summary, and a key quotation from the opinion. Before the individual summaries are listed below, the report begins with a brief examination of the historical rise of plea bargaining. This introduction also contains brief observations regarding the U.S. Supreme Court cases that follow in the summaries section. While the case summaries contained below are also available in the institute's online searchable database (www.pleabargaininginstitute.com), this report offers readers a hard copy version for reference and retention.

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Observations Regarding the U.S. Supreme Court Decisions Contained in the Report

It is not surprising that many people believe plea bargaining has a deep common law history, particularly given how dominant plea bargaining is in today's criminal justice system.[1] But the actual history of plea bargaining reveals that this form of adjudication is a relatively modern American invention that sprang from the need to create a more efficient criminal system in the face of the over-criminalization of the early 20th century. Prior to the 20th century, in fact, courts interpreting the common law were wholly averse to the concept of bargained justice. As will be discussed below, it was not until 1970 that the U.S. Supreme Court explicitly approved of plea bargaining in the *Brady v. United States* decision. This decision, therefore, is the first opinion in our U.S. Supreme Court summaries collection. While *Brady* represents a watershed moment in the development of plea bargaining law, a brief review of the historical origins and development of plea bargaining prior to 1970 is important in understanding how we arrived at the *Brady* decision.

History of the Courts and Plea Bargaining Before the 1970 *Brady* Decision

The common law's original opinion of bargaining for confessions or guilty pleas can be well summarized by the 1783 English case of *Rex v. Warickshall*. In *Warickshall*, 168 Eng. Rep 234, 235 (1783), the court examined a case in which the defendant had been offered a "promise of favor" in return for a confession. In response, the court wrote, "[A] confession forced from the mind by the flattery of hope, or by the torture of fear, comes in so questionable a shape … that no credit ought to be given to it." This language reflected not only the common law's original perspective on bargaining, but also the importance placed by the common law in jury trials.

Over the next decade, an ocean away, the United States made certain that the English common law's tradition of trials would survive the Revolution. In fact, to make this clear, the Founders included the right to trial in both the Constitution and the Bill of Rights. Of the trial's place in the American experiment, Thomas Jefferson wrote, "I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution." The combination of these sentiments from the American founders and the existing precedent from the British common law led inevitably to the adoption of language similar to *Warickshall* by the U.S. courts. In *Bram v. United States*, 168 U.S. 532, 584 (1897), for example, the U.S. Supreme Court considered the appropriateness of offering incentives to confess. The Court concluded that the "true test of admissibility is that the confession is made freely, voluntarily and without compulsion or inducement of any sort."

Despite the strong language in opposition to bargains contained in case law from the 18th and 19th centuries, examples of plea bargaining in the trenches of the American criminal justice system can be found as early as the late 1700s in sporadic geographic

[1] Portions of this discussion previously appeared at Lucian E. Dervan, *Fourteen Principles and a Path Forward for Plea Bargaining Reform*, CRIMINAL JUSTICE MAGAZINE, ABA Criminal Justice Section (Winter 2024) and Lucian E. Dervan, *Bargained Justice: Plea-Bargaining's Innocence Problem and the Brady Safety-Valve*, 2012 UTAH LAW REVIEW 1 (2012).

locations. For example, according to Professor George Fisher, forms of plea bargaining occurred in liquor law violations in Middlesex County, Massachusetts, during the late 1700s. Professor Dan Canon's research also identifies early examples of plea bargaining in Massachusetts and, eventually, New England in the mid-1800s.

Regardless of the use of early forms of plea bargaining in the trenches during this period, the courts continued to adhere to the British and American precedents and their critical view of offering incentives to plead guilty. In the late 1800s, for example, the California Supreme Court wrote, "When there is reason to believe that the plea has been entered through inadvertence … and mainly from the hope that the punishment to which the accused would otherwise be exposed may thereby be mitigated, the Court should be indulgent in permitting the plea to be withdrawn." *People v. McCrory*, 41 Cal. 458, 462 (1871). Around the same time, the Wisconsin Supreme Court wrote that plea bargaining is "hardly, if at all distinguishable in principle from a direct sale of justice." *Wright v. Rindskopf*, 43 Wis. 344, 353 (1877). Yet, despite these precedents, plea bargaining continued to gain a foothold in the American criminal justice system as it began its rise to dominance.

A defining moment in the rise of plea bargaining was the over-criminalization of the early 20th century, particularly once the Prohibition era arrived. During this period of American history, the number of prosecutions swelled and courts quickly became overwhelmed. As public officials searched for an answer to this growing crisis of resources, plea bargaining, and the efficiency it might offer, became a potential solution. In 1931, as the criminal justice system continued to strain under the weight of large dockets, President Herbert Hoover convened the Wickersham Commission to examine crime in America. The Commission's findings included a specific discussion of the plea bargaining already occurring in the trenches and the potential that utilization of this system of adjudication might provide an answer for the woes of the whole system.

> [F]ederal prosecutions under the Prohibition Act terminated in 1930 had become nearly eight times as many as the total of all pending federal prosecutions in 1914. In a number of urban districts the enforcement agencies maintain that the only practicable way of meeting this situation with the existing machinery of federal courts . . . is for the United States Attorneys to make bargains with defendants or their counsel whereby defendants plead guilty to minor offenses and escape with light penalties. … Lawyers everywhere deplore, as one of the most serious effects of prohibition, the change in the general attitude toward the federal courts. . . . [T]he huge volume of liquor prosecutions . . . has injured their dignity, impaired their efficiency, and endangered the wholesome respect for them which once obtained.

Nat'l Comm'n on Law Observance & Enf't, *Report on the Enforcement of the Prohibition Laws of the United States* 56 (1931). Although little data are available regarding the widespread growth of plea bargaining in the early 20th century, data on pleas of guilty are available. These data illustrate that between the early 20th century and 1925, the guilty plea rate in federal court rose from 50 percent to 90 percent. Much of this increase is likely

attributable to the growth of plea bargaining in the shadows, as observed by the Wickersham Commission.

While plea-bargaining quickly grew in prominence within the trenches of the criminal justice system during the nineteenth and twentieth centuries, the U.S. Supreme Court was much slower and more deliberate with its consideration of this new form of justice. The starting place for a historical analysis of the Supreme Court jurisprudence regarding plea-bargaining is within the law of confession. This is because up until the twentieth century, guilty pleas were simply considered a form of confession that occurred inside a courtroom. Professor Albert Alschuler addressed the link between the law of confession and guilty pleas in his 1979 work regarding the history of plea-bargaining. *See* Albert W. Alschuler, *Plea Bargaining and Its History*, 79 COLUM. L. REV. 1 (1979). He noted, "[W]hile the legal phenomenon that we call a guilty plea has existed for more than eight centuries, the term 'guilty plea' came into common use only about one century ago. During the previous 700 years, what we call a guilty plea was simply called a 'confession.'" *Id.* at 19.

Consistent with Professor Alschuler's observations, it was not until 1892 that the Supreme Court addressed the appropriateness of a guilty plea by a defendant in the matter of *Hallinger v. Davis*, 146 U.S. 314, 324 (1892). In *Hallinger*, the Supreme Court clarified that the high standard for the admissibility of confessions utilized in England, as seen in cases such as the *Warickshall* case discussed above, was equally applicable to a guilty plea in America. Hallinger was indicted by a grand jury in New Jersey for murder. Shortly thereafter, he entered a guilty plea to the charges. The lower court was so uncomfortable with the idea of a defendant waving their right to trial, however, that it held the plea in abeyance and required the defendant to consult with counsel. Following the consultation, Hallinger again requested to plead guilty. After hearing testimony regarding the basis for the defendant's plea, the court accepted the confession and sentenced Hallinger to death. In considering the case, the Supreme Court concluded that the defendant had "voluntarily" availed himself of the option to plead guilty and, while perhaps unwise, the decision did not violate any provisions of the Constitution. *Hallinger* was the first case in which the Supreme Court concluded that pleas of guilty must be "voluntary," a legal doctrine drawn directly from the English common law of confession.

Though the Supreme Court failed to define the term "voluntary" with any precision in *Hallinger*, it was not necessary. At the time, one needed only examine case law regarding the definition of the term "voluntary" in the context of confessions, because, as described above, guilty pleas were simply in-court confessions in the eyes of the law. One such case was the 1897 case of *Bram v. United States*, 168 U.S. 532 (1897), noted previously. Bram was accused of murdering a ship's captain and others. During his trial, the prosecution admitted a confession Bram made to police, though Bram protested that the confession had been extracted from him involuntarily. In ruling on the matter, the Supreme Court referred to the long history of case law establishing that one may not be compelled to testify against oneself.

> But a confession, in order to be admissible, must be free and voluntary: that is, must not be extracted by any sort of threats of violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence. . . . [F]or the

> law cannot measure the force of the influence used, or decide upon its effect upon the mind of the prisoner . . . .

According to the Court, the "true test of admissibility is that the confession is made freely, voluntarily and without compulsion or inducement of any sort." In the *Bram* case, the detective was found to have held out hope of leniency in return for Bram disclosing the identity of his accomplice. The Court concluded that Bram's statements, therefore, were involuntary, because they were induced by a promise of benefits.

By 1936, the Wickersham Commission's findings discussing the use of plea bargaining as a means of dealing with swelling criminal dockets were several years old. As such, it is not surprising that in this decade cases involving offers of leniency in return for pleas of guilty began making their way through the courts. In 1936, Jack Walker pleaded guilty to an indictment charging him with armed robbery of a national bank. *See Walker v. Johnston*, 312 U.S. 275 (1941). After being sentenced to twelve years in prison, Walker filed a writ of habeas corpus. In his writ, he alleged that he had been induced to plead guilty by promises of leniency and threats of harsher sanctions for a failure to cooperate. According to the Supreme Court:

> [The District Attorney] told him to plead guilty, warning him that he would be sentenced to twice as great a term if he did not so plead . . . . In view of the District Attorney's warning, and in fear of a heavy prison term, he told the District Attorney he would plead guilty.

While such an arrangement seems common by today's standards, the Supreme Court found the prosecutor's actions to be improper in 1941. The Court concluded that the prosecutor's threats had resulted in Walker involuntarily pleading guilty, a clear violation of the standard established in earlier precedent, such as *Bram*, regarding voluntariness, confession, and pleas of guilty. The Court remarked:

> [Walker] was deceived and coerced into pleading guilty when his real desire was to plead not guilty or at least to be advised by counsel as to his course. If he did not voluntarily waive his right to counsel, or if he was deceived or coerced by the prosecutor into entering a guilty plea, he was deprived of a constitutional right.

As a result, the Supreme Court remanded the case for a hearing regarding Walker's allegations.

In 1958, the issue of offers of leniency in return for pleas of guilty once again reached the Supreme Court. The case for consideration was that of Paul Shelton, who, despite consistently maintaining his innocence, pleaded guilty to one count of interstate transportation of stolen vehicles after being promised leniency. *See Shelton v. United States*, 242 F.2d 101 (5th Cir. 1957), *judgment set aside*, 246 F.2d 571 (5th Cir. 1957) (en banc), *rev'd per curiam on confession of error*, 356 U.S. 26 (1958). The prosecution had induced Shelton to confess his guilt by promising a sentence of no more than one year and dismissal of all other pending charges. The United States Court of Appeals for the Fifth Circuit concluded that Shelton's plea must be vacated because the prosecutor's promises of leniency likely meant the plea was not entered "voluntarily." The Fifth Circuit wrote:

> There is no doubt, indeed it is practically conceded, that the appellant pleaded guilty in reliance on the promise of the Assistant United States Attorney that he would receive a sentence of only one year. The court, before accepting the plea, did not ascertain that it was in truth and in fact a voluntary plea not induced by such promise. It necessarily follows that the judgment of conviction must be set aside and the plea of guilty vacated.

In the opinion of the judges on the Fifth Circuit in 1957: "Justice and liberty are not the subjects of bargaining and barter," language strikingly similar to that found in *Wright v. Rindskopf*, 43 Wis. 344, 353 (1877), eighty years earlier.

Interestingly, the panel decision from the Fifth Circuit was later overturned *en banc*, and the case proceeded to the Supreme Court. This case held the possibility of directly placing the issue of the constitutionality of plea bargaining at the Court's doorstep. However, the Court never had the opportunity to decide the issue, because the government filed an admission that the guilty plea may have been improperly obtained and the case was remanded to the District Court without further discussion. According to Professor Albert Alschuler, evidence indicates that the government likely confessed its error for fear that the Supreme Court would rule, consistent with the earlier precedents, that these types of promises of leniency or threats of further punishment violated the requirement that the plea be voluntary. According to Professor Alschuler:

> In 1958, the Solicitor General (or perhaps some other official in the Justice Department) may have assessed the probable votes of individual Supreme Court Justices, may have sensed a substantial likelihood that the Court would hold the practice of plea bargaining unlawful, and may have sought to foreclose this ruling through a confession of error on narrow and disingenuous grounds.

That plea bargaining lay on the brink of banishment in 1958 is a stark reminder of the novelness of the practice and a strong signal of just how contrary the practice was to earlier precedent.

In 1962, another case rose to the Supreme Court for review involving offers of leniency and threats of punishment to secure a guilty plea. In *Machibroda v. United States*, 368 U.S. 487 (1962), the United States Attorney offered the defendant that his sentence would be no more than twenty years in prison in return for pleading guilty. In the alternative, the prosecutor stated that if the defendant did not cooperate, "certain unsettled matters concerning two other robberies would be added to the petitioner's difficulties." The Supreme Court remanded the *Machibroda* case for further fact finding, but concluded that if the allegations were true, the petitioner was "clearly entitled to relief."

> There can be no doubt that, if the allegations contained in the petitioner's motion and affidavit are true, he is entitled to have his sentence vacated. A guilty plea, if induced by promises or threats which deprive it of the character of a voluntary act, is void. . . . Like a verdict of a jury [a plea of guilty] is conclusive. . . . Out of just consideration for persons accused of crime, courts are careful that a plea of guilty shall not be accepted unless made voluntarily after proper advice and with full understanding of the consequences.

While the Supreme Court in *Machibroda* did not take the opportunity to speak broadly regarding the appropriateness of incentives in return for pleading guilty, the Court was clear in its rebuke of the charge and sentence bargaining present in the case.

In 1968, the Supreme Court once again struck a blow to the concept of using sentencing leverage to induce pleas of guilty. In *United States v. Jackson*, 390 U.S. 570 (1968), the Court examined a federal statute that differentiated between the punishment available to those who pleaded guilty and those who put the government to its burden. The law, 18 U.S.C. section 1201(a), read as follows:

> Whoever knowingly transports in interstate . . . commerce, any person who had been unlawfully . . . kidnaped and held for ransom . . . or otherwise . . . shall be punished (1) by death if the kidnapped person has not been liberated unharmed, and if the verdict of the jury shall so recommend, or (2) by imprisonment for any term of years or for life, if the death penalty is not imposed.

As illustrated in the statute's text above, the death penalty was only available where a jury convicted the defendant and recommended capital punishment. Where the defendant pleaded guilty, however, the judge was limited to imposing a sentence of life in prison. In October 1966, a federal grand jury in Connecticut charged Charles Jackson and two others with a kidnapping that resulted in an injury to the victim. The District Court, however, struck the indictment because it found that the statute unconstitutionally made the "risk of death" the "price for asserting the right to jury trial."

On appeal to the Supreme Court, a majority of the Justices agreed that the statute imposed an "impermissible burden upon the exercise of a constitutional right."

> It is no answer . . . that federal trial judges may be relied upon to reject coerced pleas of guilty and involuntary waivers of jury trials. For the evil in the federal statute is not that it necessarily *coerces* guilty pleas and jury waivers but simply that it needlessly *encourages* them. A procedure need not be inherently coercive in order that it be held to impose an impermissible burden upon the assertion of a constitutional right. Thus the fact that the [statute] tends to discourage defendants from insisting upon their innocence and demanding trial by jury hardly implies that every defendant who enters a guilty plea to a charge under the [statute] does so involuntarily. The power to reject coerced guilty pleas and involuntary jury waivers might alleviate, but it cannot totally eliminate, the constitutional infirmity in the capital punishment provision of the [statute].

This is perhaps one of the most significant statements ever made by the Supreme Court about incentives to plead guilty and voluntariness. According to the Court, and consistent with earlier precedent, voluntary guilty pleas are permissible. In fact, the Court states that the power of the lower court's to accept a guilty plea is traditional and "necessary for the . . . practical . . . administration of the criminal law." The Court offers as an example of a voluntary plea the case where an individual pleads guilty to "spare themselves and their families the spectacle and expense of protracted courtroom proceedings." The Court states, however, that the threat of death only for

those who refuse to confess their guilt in the federal kidnapping statute is an example of a coercive incentive that makes the resulting guilty plea involuntary and invalid.

By 1968, the Supreme Court had established a consistent theme of striking down or remanding guilty pleas induced by threats of punishment or promises of leniency. The necessity of the plea bargaining machine, however, had never been greater. As the implementation of the procedural rights given to defendants during the Due Process Revolution slowed trial proceedings and criminal dockets continued to swell, prosecutors needed the efficiency plea bargaining offered to reduce the stress on the system. Finally, in 1970, the Supreme Court directly addressed the issue of plea-bargaining's constitutionality, but the result was stunning in that it was inconsistent with over a century of precedent and the courts' prior animosity towards bargained justice.

The *Brady* Decision in 1970

In 1959, Robert Brady was charged with kidnapping in violation of 18 U.S.C. § 1201(a), the same criminal statute that had been at issue in the *Jackson* case in 1968. As previously discussed, the statute allowed for the death penalty only when recommended by a jury. As a result, a defendant who pleaded guilty and avoided a jury trial could successfully avoid the death penalty in favor of the alternative maximum sentence of life in prison. The victim in the *Brady* case had not been liberated unharmed and, therefore, Brady was subject to the death penalty provision if recommended by a jury. At first, Brady pleaded not guilty and intended to proceed to trial. Brady later learned that his co-defendant had agreed to plead guilty and intended to testify against him at trial. As such, Brady changed his plea to guilty and was sentenced to fifty years in prison. Brady later sought relief from the Supreme Court, claiming that his plea was involuntary because the statute coerced him into avoiding a jury trial to ensure that he would not be sentenced to death. In examining Brady's claim, the lower court concluded, "no representations [were] made with respect to a reduced sentence or clemency." Thus, the lower court held the guilty plea voluntary.

In response to the earlier *Jackson* decision, the Court stated that while pleas of guilty must be voluntary, the *Jackson* decision did not hold that all pleas of guilty "encouraged by the fear of a possible death sentence are involuntary pleas…." The first question examined by the Court, therefore, was whether Brady's plea was involuntary. The Court concluded that just because the enhanced penalty led to Brady's decision, it does not follow that the plea was necessarily involuntary. The Court continued with a caveat regarding the appropriate level of incentives to plead guilty.

> Of course, the agents of the State may not produce a plea by actual or threatened physical harm or by mental coercion *overbearing the will of the defendant*. But nothing of the sort is claimed in this case; nor is there evidence that Brady was so gripped by fear of the death penalty or hope of leniency that he did not or could not, with the help of counsel, rationally weigh the advantages of going to trial against the advantages of pleading guilty.

According to the Court, where the defendant pleads guilty in return for the "certainty or probability of a lesser penalty [as contained in the statute] rather than face the wider range of possibilities extending from acquittal to conviction and a higher penalty authorized by law for the crime charged," the plea is voluntary and constitutionally sound. As applied to the case at hand, the Court

concluded that Brady's guilty plea to avoid a possible death penalty under the applicable statute was valid.

Based on its statements that a defendant may plead guilty in return for the promise or possibility of a reduced sentence, the Supreme Court appears to have adopted language crafted by Judge Tuttle of the United States Court of Appeals for the Fifth Circuit to describe the applicable test for "voluntariness" moving forward. *See Shelton v. United States*, 246 F.2d 571, 572 n.2 (5th Cir. 1957) (en banc), *rev'd per curiam on confession of error*, 356 U.S. 26 (1958). The Supreme Court quoted Judge Tuttle:

> [A] plea of guilty entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel, must stand unless induced by threats (or promises to discontinue improper harassment), misrepresentation (including unfulfilled or unfulfillable promises), or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor's business (e.g. bribes).

By the end of 1970, therefore, confession law and the law of guilty pleas had diverged significantly. Though the plea had to still be "voluntary," the term had shifted to mean merely that the plea could not be induced "by actual or threatened physical harm or by *mental coercion overbearing the will of the defendant*." A dramatic shift had occurred in the law, and, although there was still an upper limit beyond which inducements to plead guilty could not venture, that limit was much higher than it had been just a few short years before.

While the *Brady* decision is striking for its inconsistency with the earlier precedents dating back to English common law, there are several key elements that led to this result in 1970. First, the passage of time had created an opportunity for plea bargaining to survive review. For example, since the *Shelton* case had been removed from consideration in 1958, five new justices had taken the oath and would decide plea bargaining's fate. Further, by 1970, 90 percent of cases in the United States were resolved through pleas of guilty. While the exact number that involved plea bargaining is unclear, the Justices must have understood the potential impact on the criminal justice system had they ruled the practice entirely unconstitutional.

Second, the Court believed that there was a need for a more efficient method of adjudication given that the court systems continued to be overburdened, just as the courts had been when plea bargaining grew in the trenches in the 1920s. Even the American Bar Association was adopting this line of reasoning during this period. In 1968, for example, the American Bar Association Standards Relating to Pleas of Guilty 2 (1968) said:

> [A] high proportion of pleas of guilty and *nolo contendere* does benefit the system. Such pleas tend to limit the trial process to deciding real disputes and, consequently, to reduce the need for funds and personnel. If the number of judges, courtrooms, court personnel and counsel for prosecution and defense were to be increased substantially, the funds necessary for such increases might be diverted from elsewhere in the criminal justice process. Moreover, the limited use of the trial

> process for those cases in which the defendant has grounds for contesting the matter of guilty aids in preserving the meaningfulness of the presumption of innocence.

In fact, the need to address the overburdened court systems was particularly pressing in 1970 as a result of the Due Process Revolution of the 1960s and the increasing lengths of trials that resulted.

While the *Brady* decision signaled a shift away from wholesale rejection of bargained justice, it contained an important limitation regarding how far the Court would permit prosecutors to venture in attempting to induce defendants to plead guilty. In the concluding paragraphs of the decision, the Supreme Court discussed its vision for the utilization of plea-bargaining in the criminal system. Plea-bargaining was a tool for use in cases where the evidence was strong and where the defendant, unlikely to succeed at trial, might benefit from the opportunity to bargain for a reduced sentence. Plea-bargaining, however, was not to be used to overwhelm defendants into pleading guilty where their was "substantial doubt" regarding their guilt.

> For a defendant who sees slight possibility of acquittal, the advantages of pleading guilty and limiting the probable penalty are obvious—his exposure is reduced, the correctional processes can begin immediately, and the practical burdens of a trial are eliminated. For the State there are also advantages—the more promptly imposed punishment after an admission of guilt may more effectively attain the objectives of punishment; and with the avoidance of trial, scarce judicial and prosecutorial resources are *conserved for those cases in which there is a substantial issue of the defendant's guilt or in which there is substantial doubt that the State can sustain its burden of proof.*

According to the Court, if the government were to begin offering significant incentives to defendants whose guilt was in doubt in an effort to motivate them to plead guilty, defendants who might in fact be innocent, the Court would be forced to reconsider its approval of the plea-bargaining system.

> This is not to say that guilty plea convictions hold no hazards for the innocent or that the methods of taking guilty pleas presently employed in this country are necessarily valid in all respects. This mode of conviction is no more foolproof than full trials to the court or to the jury. Accordingly, we take great precautions against unsound results, and we should continue to do so, whether conviction is by plea or by trial. *We would have serious doubts about this case if the encouragement of guilty pleas by offers of leniency substantially increased the likelihood that defendants, advised by competent counsel, would falsely condemn themselves.*

While the Supreme Court was willing to permit a compromise in the interests of judicial economy in 1970, the Court was also clear that there was an upper limit to the incentives that could be offered. Incentives could not "overbear[] the will of the defendant."

Observations Regarding U.S. Supreme Court Decisions Since the 1970 *Brady* Decision

After *Brady*, limited attempts were made to regulate and proscribe the appropriate limits of plea bargaining. For example, Federal Rule of Criminal Procedure 11, which had existed since

1944 to create a mechanism for pleading guilty, was expanded to include specific provisions related to plea bargaining. The Advisory Committee notes from 1974, just four years after *Brady*, offer a glimpse into those amendments and contain language reminiscent of the Supreme Court's own aspirations.

> The [1974] amendments to rule 11 are designed to achieve two principal objectives:
>
> (1) Subdivision (c) prescribes the advice which the court must give to insure that the defendant who pleads guilty has made an informed plea.
>
> (2) Subdivision (e) provides a plea agreement procedure designed to give recognition to the propriety of plea discussions; to bring the existence of a plea agreement out into the open in court; and to provide methods for court acceptance or rejection of a plea agreement.

Overall, however, plea bargaining in the decades to follow continued to grow without significant oversight, regulation, or monitorship by the bar, the courts, or the legislatures.

With regard to the Supreme Court, readers will be able to closely examine the work of the Court from 1970 through 2019 in the summaries that follow. During the 1970s, the Court continued to find that pleas of guilty induced by offers of leniency, including "substantial benefits," were permissible. *See Corbitt v. New Jersey*, 439 U.S. 212 (1978). In the highly controversial opinion *Bordenkircher v. Hayes*, 434 U.S. 357 (1978), for example, the defendant was charged with forgery, which carried a 2 to 10 year sentence. The prosecution eventually offered the defendant a plea bargain for five years of imprisonment but threatened the defendant by stating that if he proceeded to trial, he would be charged as a habitual offender and sentenced to life in prison. Bordenkircher rejected the deal, was convicted of the more serious offense, and received the promised sentence of life in prison. In a manner similar to *Brady*, the *Bordenkircher* Court permitted the behavior to stand. Regarding the benefits of permitting such a deal to stand, the Court stated, "[A] rigid constitutional rule that would prohibit a prosecutor from acting forthrightly in his dealings with the defense could only invite unhealthy subterfuge that would drive the practice of plea bargaining back into the shadows from which it has so recently emerged."

During the 1970s, the Court also created precedents establishing some of the procedural outlines of the system, though in totality the work was relatively sparse given pleas of guilty were soon to account for upwards of 98 percent of convictions in the federal system and 95% of convictions in the state systems. As examples of the procedural work of the Court in the 1970s, the Court expanded the type of pleas available by permitting defendants to plead guilty while maintaining their innocence. *See North Carolina v. Alford*, 400 U.S. 25 (1970). The Court also created precedent establishing that incentives must be honored when they result in a defendant's decision to plead guilty, coerced pleas are open to collateral attack, and defendants must be afforded adequate notice of the charges before pleading guilty.

The 1980s saw continued caselaw developed around the contractual aspects of plea bargaining, such as enforcement of incentives used to induce defendants to plead guilty and the consequences for defendants who fail to abide by the agreement's provisions. From a procedural posture, there were also several cases during this period examining the relationship between plea bargaining and double jeopardy. The 1980s also saw examination of tactics developing in the

trenches of the criminal justice system. For example, in the 1982 case of *U.S. v. Goodwin*, 457 U.S. 368 (1982), the Court considered whether a prosecutor could add new charges after a defendant demanded a jury trial. *See also Alabama v. Smith*, 490 U.S. 794 (1989). The mid-1980s also witnessed the beginning of litigation around ineffective assistance of counsel in the plea process, something that would become a focal point of the Court's work in the 2000s. *See Hill v. Lockhart*, 474 U.S. 52 (1985).

As might be expected, the 1990s saw litigation related to the role of the Federal Sentencing Guidelines and plea bargaining. This era also contained several cases regarding waivers, both what standard applies to waivers and what might be waived. Overall, however, the 1990s was a period during which relatively few plea cases arrived at the Court.

In the early 2000s, the Supreme Court appears to have begun to examine plea bargaining with renewed interest and a more developed understanding of the role and dominance of plea bargaining in the American criminal justice system. In 2012, for example, the Court in *Missouri v. Frye*, 566 U.S. 134 (2012), finally acknowledged the important role of plea bargaining.

> Because ours "is for the most part a system of pleas, not a system of trials," it is insufficient simply to point to the guarantee of a fair trial as a backstop that inoculates any errors in the pretrial process. "To a large extent ... horse trading [between prosecutor and defense counsel] determines who goes to jail and for how long. That is what plea bargaining is. It is not some adjunct to the criminal justice system; it is the criminal justice system."

See also Lafler v. Cooper, 566 U.S. 156 (2012). During this period, the Court also began to create additional procedural protections related to the plea bargaining process, especially in the area of ineffective assistance of counsel. In *Frye*, for example, the Court determined that plea bargaining is a "critical stage" of a criminal prosecution and, therefore, the Sixth Amendment right to effective assistance of counsel applies. In a case from two years earlier, *Padilla v. Kentucky*, 559 U.S. 356 (2010), the Court ruled that the Sixth Amendment requires criminal defense attorneys to advise their clients when the clients' decision to plead guilty might result in deportation.

Later that decade, in a 2017 decision, the Court ruled that a defendant retained the right to challenge the constitutionality of their statute of conviction even after pleading guilty where they did not expressly waive that right. *Class v. United States*, 582 U.S. -- (2017). In the final opinion summarized in this report, *Garza v. Idaho*, 139 S. Ct. 738 (2019), the Court continued its work in the area of ineffective assistance of counsel. The Court in *Garza* stated, "Prejudice is presumed 'when counsel's constitutionally deficient performance deprives a defendant of an appeal that he otherwise would have taken.' We hold today that this final presumption applies even when the defendant has signed an appeal waiver." *See id.* (internal citations omitted).

While the above provides a brief review of some of the areas of focus for the Supreme Court during the 1970s through 2010s, readers should delve deeply into the summaries below to explore the work of the Court during this almost fifty-year span.

As we reflect on the history of plea bargaining from its early offshoots in various locations in the United States in the 18th and 19th centuries to its rise to dominance beginning in the period of over-criminalization at the turn of the 20th century, we must recognize that throughout much of that history plea bargaining operated in the shadows. Even after the Supreme Court brought bargained justice into the light in 1970, the Court's work in regulating the plea bargaining machine and enforcing the limitations established in *Brady* were sparse. As courts, including the Supreme Court, begin to recognize the dominant role of plea bargaining today and embark on a more exacting examination of plea bargaining, there is an important role for the Plea Bargaining Institute. By disseminating information about case law and academic research in searchable and accessible formats, the forthcoming work of the courts in the plea bargaining space will be better informed, better directed, and more effective. This report serves as a starting place for that work.

Professor Lucian E. Dervan
Founding Director
Plea Bargaining Institute

Summaries of U.S. Supreme Court Decisions Since 1970

The following summaries are also contained in a searchable format

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Brady v. United States, 397 U.S. 742 (1970)

Date of Decision: 5/4/1970

On Review From: 10th Circuit

Unanimous Decision: Yes

Authoring Justice: Byron R. White

Majority: Warren Burger, Hugo Black, William Douglas, John Harlan, Potter Stewart, Byron White, Thurgood Marshall

Concurring: William Brennan

Dissenting: N/A

Overview: First Supreme Court case to affirmatively embrace plea bargaining, but contains cautionary note re innocence.

Summary of Decision: Defendant, after learning his co-defendant would plead guilty and testify against him, pleaded guilty to kidnapping charges to avoid the death penalty. Defendant later argued his plea was coerced. The Court determined that pleas of guilty must be voluntary, knowing, and intelligent. While conceding that the government may not use actual or threatened physical harm or mental coercion to overbear the will of the defendant, the Court found that guilty

pleas that are voluntary, knowing, and intelligent are permitted. The Court noted that guilty pleas hold hazards for the innocent and stated that they would have "serious doubts" about plea bargaining if offers of leniency substantially increased the likelihood of false pleas by innocent defendants with competent counsel. But the Court concluded, without any empirical support, that such would not occur if courts satisfied themselves that pleas were voluntarily and intelligently made with adequate advice of counsel and that the defendant's admissions were accurate and reliable. The Court concluded that while Brady's plea may have been motivated by a desire to avoid the death penalty, the plea was voluntary, intelligent, and truthful.

Key Quote: "This is not to say that guilty plea convictions hold no hazards for the innocent or that the methods of taking guilty pleas presently employed in this country are necessarily valid in all respects. This mode of conviction is no more foolproof than full trials to the court or to the jury. Accordingly, we take great precautions against unsound results, and we should continue to do so, whether conviction is by plea or by trial. We would have serious doubts about this case if the encouragement of guilty pleas by offers of leniency substantially increased the likelihood that defendants, advised by competent counsel, would falsely condemn themselves." p.757-758

North Carolina v. Alford, 400 U.S. 25 (1970)

Date of Decision: 11/23/1970

On Review From: 4th Circuit

Unanimous Decision: No

Authoring Justice: Byron R. White

Majority: Warren Burger, Harry Blackmun, Potter Stewart, Byron White

Concurring: Hugo Black

Dissenting: William Brennan, William Douglas, Thurgood Marshall

Overview: Court permits a defendant to plead guilty, while still maintaining their innocence.

Summary of Decision: Defendant was charged with first degree murder and faced either life in prison or the death penalty. Faced with what the Court described as "strong evidence of guilt and no substantial evidentiary support for the claim of innocence," his attorney recommended that he plead guilty. Alford agreed to plead guilty to second-degree murder, which carried a maximum sentence of 30 years in prison. When pleading guilty, however, Alford stated that he was pleading guilty to avoid the death penalty and was not, in fact, guilty of the charges. After his statements, Alford was sentenced to 30 years in prison. Alford then sought post-conviction relief, claiming his plea was invalid and the result of coercion and fear. On appeal, the 4th Circuit found his plea involuntary. The Supreme Court determined the trial court had not erred in accepting the plea and stated that "An individual accused of crime may voluntarily, knowingly, and understandingly

consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime."

Key Quote: "An individual accused of crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime... Nor can we perceive any material difference between a plea that refuses to admit commission of the criminal act and a plea containing a protestation of innocence when, as in the instant case, a defendant intelligently concludes that his interests require entry of a guilty plea and the record before the judge contains strong evidence of actual guilt." p.37

McMann v. Richardson, 397 U.S. 759 (1970)

Date of Decision: 5/4/1970

On Review From: 2nd Circuit

Unanimous Decision: No

Authoring Justice: Byron White

Majority: Warren Burger, Hugo Black, John Marshall Harlan II, Potter Stewart, Byron White

Concurring: N/A

Dissenting: William Douglas, William Brennan, Thurgood Marshall

Overview: Defendant who alleges a coerced confession induced his guilty plea is not automatically entitled to collateral review.

Summary of Decision: This opinion consolidates the cases of three unrelated defendants who pleaded guilty after allegedly being coerced to confess to their respective offenses. Dash, Richardson, and Williams were all threatened and beaten. Dash alleged his trial judge threatened false charges, and Richardson and Williams alleged ineffective assistance of counsel. All petitioned for writs of habeas corpus, which the district courts denied. Although the Court of Appeals for the Second Circuit reversed in each case, the Supreme Court upheld the district courts' denial. The Court held that defendants who allege their coerced confessions induced their guilty pleas are not entitled to a hearing on petitions for habeas corpus without a greater showing. In its ruling, the Court made the unsupported assumption that a defendant who considers their confession involuntary and thus unusable against them would not plead guilty, but instead would contest their guilt at trial. The Court also surmised that defendants who believed their confessions were admissible at trial were more likely to plead guilty. The Court went on to state that a defendant cannot blame their plea on the confession, for each is a distinct act. A plea that is voluntary and intelligent may still be valid even if the defendant later decides his confession is coerced and inadmissible. The plea can only be collaterally attacked on grounds of coerced confession if the

defendant was incompetently advised by their attorney. The Court distinguishes the three defendants—who were convicted on their counseled admission in open court—from the accused whose conviction after trial rests upon a coerced confession. The defendants are not entitled to collateral review when otherwise-competent counsel has misjudged the state of their confession.

Key Quote: "Nothing in this train of events suggests that the defendant's plea, as distinguished from his confession, is an involuntary act. His later petition for collateral relief asserting that a coerced confession induced his plea is at most a claim that the admissibility of his confession was mistakenly assessed and that since he was erroneously advised, either under the then applicable law or under the law later announced, his plea was an unintelligent and voidable act. The Constitution, however, does not render pleas of guilty so vulnerable." p.769

Parker v. North Carolina, 397 U.S. 790 (1970)

Date of Decision: 5/4/1970

On Review From: Court of Appeals of North Carolina

Unanimous Decision: No

Authoring Justice: Byron White

Majority: Warren Burger, Hugo Black, John Marshall Harlan II, Potter Stewart, Byron White

Concurring: Hugo Black

Dissenting: William Douglas, William Brennan, Thurgood Marshall

Overview: Guilty plea not invalid because induced by desire to limit possible maximum penalty available from jury.

Summary of Decision: Fifteen-year-old African-American defendant was arrested after entering the yard where a burglary and rape had been committed. Defendant almost immediately confessed to the crimes. Faced with the death penalty if a jury found him guilty, defendant pleaded guilty and received a mandatory sentence of life imprisonment. After sentencing, defendant filed a petition under the North Carolina Post-Conviction Hearing Act claiming that his guilty plea was the product of a coerced confession and that the indictment was invalid because members of his race had been systematically excluded from the grand jury. The Court affirmed his conviction. Regarding defendant's argument that his plea was invalid because it was induced by a fear of the jury's potential sentence, the Court referred to the Brady decision and stated, "[A]n otherwise valid plea is not involuntary because induced by the defendant's desire to limit the possible maximum penalty to less than that authorized if there is a jury trial." Regarding the defendant's argument that his confession was coerced and impermissibly influenced his decision to plead guilty, the Court held that it did not believe that any coercion related to the confession had the effect of making the plea of guilty over a month later involuntary. Finally, regarding the defendant's argument that

defendant's counsel was wrong to believe the confession was admissible, which impacted the defendant's assessment of whether to accept the plea or proceed to trial, the Court stated that any such error was not sufficient to render the plea unintelligent. Rather, the Court believed the advise the defendant received, which influenced his decision-making, was "well within the range of competence required of attorneys."

Key Quote: "[A]n otherwise valid plea is not involuntary because induced by the defendant's desire to limit the possible maximum penalty to less than that authorized if there is a jury trial. . . . Nor can we accept the claim that the plea was infirm because it was the product of a coerced confession." p.794-95

Santobello v. New York, 404 U.S. 257 (1971)

Date of Decision: 12/20/1971

On Review From: Appellate Division of the Supreme Court of New York, First Judicial Department

Unanimous Decision: No

Authoring Justice: Warren Burger

Majority: Warren Burger, William Douglas, Byron White, Harry Blackmun

Concurring: William Douglas

Dissenting: Thurgood Marshall, William Brennan, Potter Stewart

Overview: When a defendant enters a plea based on the promise of a prosecutor, the promise must be honored.

Summary of Decision: Defendant was charged with two gambling offenses and originally pled not guilty. After the prosecutor agreed defendant could plead guilty to a lesser included offense and agreed to make no sentencing recommendations, the defendant entered a plea of guilty. Between the court accepting his plea and his sentencing hearing, defendant hired new counsel and asked to withdraw his plea on the basis that the most crucial evidence against him was obtained pursuant to an illegal search. The court denied this motion. Defendant's sentencing hearing was before a new judge, as the judge who had originally accepted his plea had retired. Additionally, a new prosecutor had replaced the original prosecutor that had agreed to the terms of the plea. The new prosecutor recommended the maximum sentence. Defense counsel objected on the ground that the State had previously promised not to make a sentencing recommendation. The new prosecutor argued there was nothing in the record to reflect that promise had been made. The court accepted the State's sentencing recommendation and the appellate court affirmed. The Supreme Court held that this was error, resulting from an "unfortunate lapse in orderly prosecutorial procedures, in part, no doubt, because of the enormous increase in the workload of the often

understaffed prosecutor's offices." However, the Court held that when it can be said that a defendant relied, even if only in part, on a promise made by the prosecutor in accepting a plea deal, that promise must be honored in order to uphold the interests of justice. The Court remanded the case to the state court to decide the appropriate relief, whether that be to allow the defendant to withdraw his plea or that he is entitled to specific performance of the original promise and must be resentenced without a recommendation by the prosecutor.

Key Quote: "This phase of the process of criminal justice, and 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. Those circumstances will vary, but a constant factor is that when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." p.262

Dukes v. Warden, Connecticut State Prison, 406 U.S. 250 (1972)

Date of Decision: 5/15/1972

On Review From: Connecticut Supreme Court

Unanimous Decision: No

Authoring Justice: William Brennan

Majority: Warren Burger, William Brennan, Potter Stewart, Byron White, Harry Blackmun, Lewis Powell, William Rehnquist

Concurring: Potter Stewart

Dissenting: William Douglas, Thurgood Marshall

Overview: Defendants may not withdraw guilty pleas due to conflict of interest absent evidence that the conflict affected the plea.

Summary of Decision: Defendant was charged with various narcotics violations and larceny. After a brief hospital stay due to a suicide attempt, he entered a plea of guilty on advice of counsel. Prior to sentencing, Defendant asked the court to withdraw his plea and stand trial, and informed the court he had retained new counsel. The Court denied this request and sentenced him consistent with the plea's agreed-upon recommendation of the State's attorney. Defendant appealed to the Connecticut Supreme Court, challenging the voluntariness of his plea on the grounds that he had just left the hospital and was not fully conscious of the details of his plea. The Connecticut Supreme Court affirmed his conviction and the U.S. District Court for the District of Connecticut denied his application for habeas corpus relief. Defendant brought a state habeas corpus action in the Superior Court of Hartford County asserting, for the first time, that his attorney had a conflict of interest because he was also representing two of Defendant's co-defendants in an unrelated case and had argued, in that unrelated case, that Defendant was the reason for his co-defendants' plight. The

Superior Court denied relief, and the Supreme Court of Connecticut affirmed. The Supreme Court of the United States gave extreme deference to the record of proceedings below and affirmed the decisions of the Connecticut court, concluding that the record showed Defendant had never expressed dissatisfaction with his counsel, although he was fully aware of his dual representation; Defendant's counsel's dual representation did not result in ineffective assistance or ineffective negotiations of his plea; and there was no evidence that Defendant's counsel gave misleading advice in order to further goals in the unrelated case.

Key Quote: "There is nothing in the record before us which would indicate that the alleged conflict resulted in ineffective assistance of counsel and did in fact render the plea in question involuntary and unintelligent. [Petitioner] does not claim, and it is nowhere indicated in the finding, nor could it be inferred from the finding, that [Attorneys] induced [petitioner] to plead guilty in furtherance of a plan to obtain more favorable consideration from the court for other clients. . . . Neither does the finding in any way disclose, nor is it claimed, that [petitioner] received misleading advice from [Attorneys] which led him to plead guilty. The court did not err in concluding that [petitioner's] plea was not rendered involuntary and unintelligent by the alleged conflict of interest." p.256-257

Fontaine v. United States, 411 U.S. 213 (1973)

Date of Decision: 4/2/1973

On Review From: 6th Circuit

Unanimous Decision: No

Authoring Justice: Per Curium

Majority: Warren Burger, William Douglas, William Brennan, Potter Stewart, Thurgood Marshall, Harry Blackmun, Lewis Powell, William Rhenquist

Concurring: N/A

Dissenting: Byron White

Overview: Coerced pleas are open to collateral attack and 28 U.S.C. § 2255 requires a hearing unless record conclusively shows prisoner is not entitled to relief.

Summary of Decision: Defendant was charged with robbery of a federally insured bank. After arraignment, he waived his right to counsel and a grand jury indictment. Before accepting his plea of guilty, Defendant appeared before the judge for a Fed. R. Crim. P. 11 hearing, where the judge addressed him personally to ensure his voluntariness and knowledge of the plea. The judge accepted the plea and sentenced him to 20 years in prison. Two years later, Defendant filed a collateral attack of his conviction under 28 U.S.C. § 2255, alleging that his plea was induced by fear, coercion, and mental illness. As evidence, he attached hospital records from the month following the plea, proving physical abuse, illness, heroin addiction, and other severe mental

illnesses. The District Court considered his motion but denied it without an evidentiary hearing, reasoning that all requirements of Fed. R. Crim. P. 11 had been met, so a collateral attack was per se unavailable to Defendant. The Court of Appeals for the Sixth Circuit affirmed. The Supreme Court held that, in this case, an evidentiary hearing was required because the Defendant's evidence established facts that could warrant relief under § 2255. The Court held that an evidentiary hearing for motions filed under § 2255 is required unless the record and filings "conclusively show" that under no circumstances can the petitioner establish facts that could warrant relief. The Court vacated the judgment of the Court of Appeals and remanded so that the court could hold a hearing on Defendant's petition.

Key Quote: "It is elementary that a coerced plea is open to collateral attack. It is equally clear that § 2255 calls for a hearing on such allegations unless 'the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief . . . .'" p.215

Tollett v. Henderson, 411 U.S. 258 (1973)

Date of Decision: 4/17/1973

On Review From: 6th Circuit

Unanimous Decision: No

Authoring Justice: William Rehnquist

Majority: Warren Burger, Potter Stewart, Byron White, Harry Blackmun, Lewis Powell, William Rehnquist

Concurring: N/A

Dissenting: William Douglas, William Brennan, Thurgood Marshall

Overview: Defendant not automatically entitled to collateral relief on proof of unconstitutionally-selected jury.

Summary of Decision: Black defendant indicted for first-degree murder pleaded guilty to receive a prison sentence of ninety-nine years. Defendant sought habeas corpus review in both state and federal courts, claiming that his confession to the police had been coerced, he was denied effective assistance of counsel, and he was deprived of his constitutional rights because Black jurors were systematically excluded from grand jury service. The Court denied defendant’s claims, as a defendant is not automatically entitled to collateral relief. A defendant cannot raise independent claims in a federal habeas corpus proceeding. Defendant waived his race claim by raising it years after—instead of before—he pleaded to the indictment. Defendant cannot attack a deprivation of constitutional rights that occurred before he pleaded guilty, but he may attack the voluntary and intelligent nature of his plea by showing that the advice he received from counsel was inadequate.

To obtain relief, defendant must demonstrate that the advice was not "within the range of competence demanded of attorneys in criminal cases."

Key Quote: "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." p.267

Blackledge v. Perry, 417 U.S. 21 (1974)

Date of Decision: 5/20/1974

On Review From: 4th Circuit

Unanimous Decision: No

Authoring Justice: Potter Stewart

Majority: Potter Stewart, Warren Burger, William Douglas, William Brennan, Byron White, Thurgood Marshall, Harry Blackmun

Concurring:

Dissenting: William Rehnquist, Lewis Powell

Overview: A guilty plea does not preclude a defendant from filing a writ of habeas corpus with a federal court when the Defendant is challenging the State's decision to bring felony charges against him as violative of his Due Process Rights.

Summary of Decision: Defendant was charged with the misdemeanor of assault with a deadly weapon after engaging in an altercation with a fellow prison inmate. The Defendant was convicted of this misdemeanor following a trial. The Defendant appealed his conviction under a state law that gave him the right to a trial de novo. After the Defendant filed his notice of appeal, the state obtained a grand jury indictment, charging the Defendant with felony assault with a deadly weapon. These charges arose from the same prison altercation that caused the Defendant to be convicted of the misdemeanor that he was appealing. The Defendant pled guilty to the felony charge. The Defendant filed a writ of habeas corpus in federal district court, arguing that the felony charge constituted double jeopardy and also deprived him of his due process rights. The Supreme Court held that it was constitutionally impermissible for the State to respond to the Defendant's appeal by bringing a more serious felony charge against him before he could have his trial de novo. Thus, the Defendant's due process rights were violated. Because the State impermissibly required the Defendant to answer for a felony charge, his guilty plea did not preclude him from attacking his conviction with a federal writ of habeas corpus.

Key Quote: "A person convicted of an offense is entitled to pursue his statutory right to a trial de novo, without apprehension that the State will retaliate by substituting a more serious charge for the original one, thus subjecting him to a significantly increased potential period of incarceration. " p.28

Lefkowitz v. Newsome, 420 U.S. 283 (1975)

Date of Decision: 2/19/1975

On Review From: 2nd Circuit

Unanimous Decision: No

Authoring Justice: Potter Stewart

Majority: William Douglas, William Brennan, Potter Stewart, Thurgood Marshall, Harry Blackmun

Concurring: N/A

Dissenting: Warren Burger, Byron White, Lewis Powell, William Rehnquist

Overview: Defendant may pursue constitutional claims by habeas corpus after pleading guilty if state law allows.

Summary of Decision: Defendant was arrested for loitering in a New York City Housing Authority apartment building. A search of defendant produced heroin and drug paraphernalia. A state judge convicted defendant for loitering and denied his motion to suppress the fruits of the search. Defendant pleaded guilty to a charge of attempted possession of dangerous drugs and pursued unsuccessful appeals in state courts. Defendant then filed a petition for writ of habeas corpus, and—because the loitering statute was found unconstitutional—the federal court granted it. The Supreme Court found the petition valid because a defendant may use federal habeas corpus review to present other constitutional claims when the state clearly provides appellate review for those same issues after a defendant pleads guilty. Though defendants in most states must plead not guilty, go to trial, and preserve the opportunity for state appellate review there, other states such as New York allow defendants to plead guilty, bypass trial, and litigate constitutional claims that arose during pretrial proceedings. The plea is merely a procedure, not a "break in the chain of events" that have preceded it. Defendant satisfied all the requirements for invoking federal habeas corpus jurisdiction and is thus entitled to review of his motion to suppress.

Key Quote: "Denying [defendant] the right to file a federal habeas corpus petition raising his claim of an unconstitutional seizure would not only deprive him of a federal forum despite the fact that he has satisfied all the requirements for invoking federal habeas corpus jurisdiction, it would also frustrate the State's policy in providing post-guilty plea appellate review of pretrial motions to suppress." p.292

Menna v. New York, 423 U.S. 61 (1975)

Date of Decision: 11/17/1975

On Review From: New York Court of Appeals

Unanimous Decision: No

Authoring Justice: Per Curium

Majority: Potter Stewart, Byron White, Thurgood Marshall, Harry Blackmun, Lewis Powell

Concurring: William Brennan

Dissenting: Warren Burger, William Rehnquist

Overview: Defendant did not waive double jeopardy claim by pleading guilty.

Summary of Decision: A defendant granted immunity refused to answer questions before a grand jury investigating a murder conspiracy. After he refused to obey a court order mandating his return to testify before the same grand jury, defendant was held in contempt of court. Defendant served a thirty-day term in jail. He was then indicted for his refusal to answer questions before the grand jury. Though he pleaded guilty, defendant appealed his sentence, claiming that the Double Jeopardy Clause precluded his being haled into court. The Court agreed. Defendant had not waived his double jeopardy claim by pleading guilty. The Court must set aside the conviction because the State forced defendant into court even though it was precluded by the United States Constitution. The Court remanded the case for a determination of the double jeopardy claim on the merits.

Key Quote: "Where the State is precluded by the United States Constitution from haling a defendant into court on a charge, federal law requires that a conviction on that charge be set aside even if the conviction was entered pursuant to a counseled plea of guilty." p.62

Henderson v. Morgan, 426 U.S. 637 (1976)

Date of Decision: 6/17/1976

On Review From: 2nd Circuit

Unanimous Decision: No

Authoring Justice: John Paul Stevens

Majority: William Brennan, Potter Stewart, Byron White, Thurgood Marshall, Harry Blackmun, Lewis Powell, John Paul Stevens

Concurring: Byron White, Potter Stewart, Harry Blackmun, Lewis Powell

Dissenting: Warren Burger, William Rehnquist

Overview: A plea is involuntary and violative of a Defendant's Due Process rights when the Defendant is not given adequate notice of the charges to which he is pleading guilty.

Summary of Decision: Defendant was indicted on a charge of first-degree murder. Defendant had spent several years in a state school for those with intellectual disabilities. After being released from the state school, the Defendant killed his employer following an argument between the two. The Defendant's counsel attempted to negotiate a plea deal for manslaughter, but the prosecution would only agree to reduce the charge to second-degree murder. The Defendant subsequently pled guilty to the second-degree murder charge. After sentencing, the Defendant appealed. He argued that his plea was involuntary because he was not advised that an intent to cause death was an element of second-degree murder and had he known that, he would not have pled guilty. The Court held that the defendant's plea was involuntary because he did not receive adequate notice of the offense he pled guilty to. The Court rooted its decision in the fact that at the plea colloquy, there was no discussion of the elements of the charged offense, no indication that the Defendant had been advised on the nature of the charged offense, and that there was no reference to the requirement of intent to cause the death of the victim. Further, there was nothing in the record that could serve as a substitute for a voluntary admission from the Defendant. The Defendant's counsel did not stipulate that the Defendant had the requisite intent, they did not explain to the Defendant that his plea would be an admission of that fact and the Defendant made no statement implying that he had the intent to commit second-degree murder.

Key Quote: "[A] plea cannot support a judgment of guilt unless it was voluntary in a constitutional sense. And clearly the plea could not be voluntary in the sense that it constituted an intelligent admission that he committed the offense unless the defendant received 'real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process.'" p.644-645

Hutto v. Ross, 429 U.S. 28 (1976)

Date of Decision: 11/1/1976

On Review From: 8th Circuit

Unanimous Decision: No

Authoring Justice: Per Curium

Majority: Warren Burger, William Brennan, Byron White, Thurgood Marshall, Harry Blackmun, Lewis Powell, William Rehnquist, John Paul Stevens

Concurring: N/A

Dissenting: Potter Stewart

Overview: Confession made after agreed-upon plea bargain that did not require one is not per se inadmissible.

Summary of Decision: Defendant charged with embezzlement entered plea negotiations with the State. Defendant agreed to plead guilty in exchange for mitigated sentence. Though the agreement did not require a confession, defendant ignored his counsel's advice and confessed to the crime while under oath and after having been read his Miranda rights. Defendant later withdrew from the plea bargain, retained new counsel, and demanded jury trial. The state trial court found his confession was voluntary, and the Arkansas Supreme Court affirmed. Defendant filed a petition for writ of habeas corpus to the District Court for the Western District of Arkansas that challenged the state's finding of voluntariness. The United States Supreme Court determined the confession was voluntary and upheld the conviction. Defense counsel had made it clear that defendant did not have to confess for the terms of the plea bargain to be enforced. The confession was not involuntary because it was not the result of any "direct or implied promises" or coercion by the prosecutor.

Key Quote: "[C]ounsel made it clear to respondent that he could enforce the terms of the plea bargain whether or not he confessed. The confession thus does not appear to have been the result of 'any direct or implied promises' or any coercion on the part of the prosecution, and was not involuntary." p.30

Blackledge v. Allison, 431 U.S. 63 (1977)

Date of Decision: 5/2/1977

On Review From: 4th Circuit

Unanimous Decision: Yes

Authoring Justice: Potter Stewart

Majority: William Brennan, Potter Stewart, Byron White, Thurgood Marshall, Harry Blackmun, John Paul Stevens, Lewis Powell

Concurring: Lewis Powell, Warren Burger

Dissenting: N/A

Overview: An unkept promise that induces a guilty plea is grounds for relief, as such a plea cannot be voluntary.

Summary of Decision: A state grand jury indicted the Defendant for breaking and entering, attempted safe robbery, and possession of burglary tools. The defendant accepted a plea deal, pleading guilty to a single count of attempted safe robbery. Pursuant to state procedures, the presiding judge read the Defendant several questions to verify the voluntariness of the Defendant's

plea. The Defendant was then sentenced to 17-21 years in prison. The Defendant appealed, arguing that his guilty plea was invalid because it was involuntary. The Defendant asserted that his attorney assured him that if he pled guilty he would receive the minimum prison sentence of 10 years for his attempted safe robbery charge. The Supreme Court remanded the case, holding that the Defendant was "entitled to a careful consideration and plenary processing of his claim including full opportunity for presentation of the relevant fact." If allegations that the Defendant made were deemed true, the Defendant had grounds for relief because, under Santobello, the Court held that "an unkept bargain which [] induced a guilty plea is grounds for relief."

Key Quote: "Whatever might be the situation in an ideal

world, the fact is that the guilty plea and the often

concomitant plea bargain are important components of this country's criminal justice system. Properly

administered, they can benefit all concerned." (71)

Bordenkircher v. Hayes, 434 U.S. 357 (1978)

Date of Decision: 1/18/1978

On Review From: 6th Circuit

Unanimous Decision: No

Authoring Justice: Potter Stewart

Majority: Warren Burger, William Rehnquist, Potter Stewart, John Paul Stevens, Byron White

Concurring:

Dissenting: Harry Blackmun, William Brennan, Thurgood Marshall, Lewis Powell

Overview: Court permits defendant to receive life in prison, rather than five years, because of a refusal to plead guilty.

Summary of Decision: Defendant was indicted for uttering a forged instrument in the amount of $88.30, punishable by a term of 2 to 10 years in prison. During plea negotiations, the prosecution offered Hayes a recommended sentence of 5 years. If he did not plead guilty to "save the court the inconvenience and necessity of a trial," the prosecution threatened to reindict Hayes under a habitual criminal law that carried a mandatory sentence of life. Hayes decided to proceed to trial, he was convicted, and he received the mandatory term of life imprisonment. He challenged the conviction and the 6th Circuit found the conviction invalid because the case represented a "vindictive exercise of a prosecutor's discretion." The Supreme Court conceded that to "punish a person because he has done what the law allows him to do is a due process violation of the most

basic sort." But the Court went on to find that this course of conduct by the prosecution did not violate the Due Process Clause of the 14th Amendment. Rather, the Court noted that while presenting a defendant with the risks of a more significant punishment might discourage the assertion of the trial right, this type of decision-making was "inevitable" in a system that encourages pleas.

Key Quote: "There is no doubt that the breadth of discretion that our country's legal system vests in prosecuting attorneys carries with it the potential for both individual and institutional abuse. And broad though that discretion may be, there are undoubtedly constitutional limits upon its exercise. We hold only that the course of conduct engaged in by the prosecutor in this case, which no more than openly presented the defendant with the unpleasant alternatives of forgoing trial or facing charges on which he was plainly subject to prosecution, did not violate the Due Process Clause of the Fourteenth Amendment." p. 365

Corbitt v. New Jersey, 439 U.S. 212 (1978)

Date of Decision: 12/11/1978

On Review From: New Jersey Supreme Court

Unanimous Decision: No

Authoring Justice: Byron White

Majority: Warren Burger, Byron White, Harry Blackmun, Lewis Powell, William Rehnquist

Concurring: Potter Stewart

Dissenting: William Brennan, Thurgood Marshall, John Paul Stevens

Overview: States may obtain guilty pleas by offering substantial benefits in exchange for the plea.

Summary of Decision: Under New Jersey law, guilty pleas to murder charges were forbidden. Juries were required to decide whether the defendant was guilty and, if so, whether the offense was first or second degree murder. First degree murder carried a mandatory sentence of life imprisonment, and second degree murder carried a sentence of thirty years. Pleas of non vult or nolo contendere, however, were allowed in New Jersey. Defendants who pled non vult were sentenced to life imprisonment or thirty years, subject to the sentencing judge's discretion and without the need for a findings of first versus second degree murder. Defendant pleaded not guilty to murder and was subsequently found guilty of first degree murder by a jury. Defendant challenged his conviction, arguing that the New Jersey law was an unconstitutional burden on his right to a jury trial. The Supreme Court rejected this argument, stating that not every burden on the exercise of a constitutional right, and not every pressure to waive that right, is invalid. The Court stated there is no per se rule against encouraging guilty pleas and that states may obtain

guilty pleas by offering substantial benefits to defendants in return for the plea. The court also noted the states' interest in encouraging the entry of guilty pleas and in facilitating plea bargaining.

Key Quote: "The cases in this Court since Jackson have clearly established that not every burden on the exercise of a constitutional right, and not every pressure or encouragement to waive such a right, is invalid. Specifically, there is no per se rule against encouraging guilty pleas. We have squarely held that a State may encourage a guilty plea by offering substantial benefits in return for the plea." p.218-19

United States v. Timmreck, 441 U.S. 780 (1979)

Date of Decision: 5/21/1979

On Review From: 6th Circuit

Unanimous Decision: Yes

Authoring Justice: John Paul Stevens

Majority: John Paul Stevens, Warren Burger, William Brennan, Potter Stewart, Byron White, Thurgood Marshall, Harry Blackmun, Lewis Powell, William Rehnquist

Concurring: N/A

Dissenting: N/A

Overview: Not all convictions based on guilty pleas are subject to collateral attack.

Summary of Decision: Defendant pleaded guilty to conspiracy to distribute controlled substances. Though he explained the maximum applicable sentence, the district judge violated Fed. R. Crim. P. 11 by failing to describe defendant’s mandatory special parole term. Defendant neither objected nor directly appealed at the time of conviction. Two years after, defendant made a collateral attack pursuant to 28 U.S.C. § 2255 to vacate the sentence. The Court determined that the district judge’s violation of Rule 11, without more, could not justify a collateral attack. The defendant had not suffered prejudice because the sentence he received was within the maximum range the judge described when he pleaded guilty. The Court cited Hill v. United States, where it rejected a similar challenge to a violation of Rule 32(a). A district court’s failure to ask a defendant if he “has anything to say” amounts to a mere technical violation that may be raised on direct appeal. However, there was no miscarriage of justice or other exceptional circumstances that would warrant the exercise of habeas corpus.

Key Quote: "Such a violation is neither constitutional nor jurisdictional . . . [n]or can any claim reasonably be made that the error here resulted in a 'complete miscarriage of justice' or in a proceeding 'inconsistent with the rudimentary demands of fair procedure.'" p.783-84

United States v. Goodwin, 457 U.S. 368 (1982)

Date of Decision: 6/18/1982

On Review From: 4th Circuit

Unanimous Decision: No

Authoring Justice: John Paul Stevens

Majority: Warren Burger, Byron White, Lewis Powell, William Rehnquist, John Paul Stevens, Sandra Day O'Connor

Concurring: Harry Blackmun

Dissenting: William Brennan, Thurgood Marshall

Overview: Adding new charges after defendant demands jury trial does not create presumption of vindictiveness.

Summary of Decision: Defendant charged with several misdemeanors refused a plea during negotiations with the prosecutor and requested jury trial in federal court. The Assistant United States Attorney to whom the case was transferred charged defendant with a felony and misdemeanor for which the jury convicted him. Defendant moved to set aside the verdict on grounds of prosecutorial vindictiveness for his exercising his right to jury trial. The Court upheld the conviction. Though it recognized that due process requires a defendant to be free from fear of actual or potential prosecutorial retaliation, the Court has only found it necessary to presume improper vindictive motive in cases where a reasonable likelihood thereof exists. Usually, this presumption arises upon retrial of an overturned conviction, which the prosecutor can rebut only with objective information from the record justifying harsher sentences. The presumption does not apply to pretrial negotiations during which a prosecutor threatens new charges for defendants that refuse to plea guilty to the original ones. The prosecutor has especially broad discretion before trial when he is assembling information to aid his case. The distinction between jury and bench trials does not increase the likelihood of vindictiveness.

Key Quote: "At this [pre-trial] stage of the proceedings, the prosecutor's assessment of the proper extent of prosecution may not have crystallized. In contrast, once a trial begins . . . it is much more likely that the State has discovered and assessed all of the information against the accused[.] . . . Thus, a change in the charging decision made after an initial trial is completed is much more likely to be improperly motivated than is a pretrial decision." p.381

Haring v. Prosise, 462 U.S. 306 (1983)

Date of Decision: 6/13/1983

On Review From: 4th Circuit

Unanimous Decision: Yes

Authoring Justice: Thurgood Marshall

Majority: Warren Burger, William Brennan, Byron White, Thurgood Marshall, Harry Blackmun, Lewis Powell, William Rehnquist, John Paul Stevens, Sandra Day O'Connor

Concurring: N/A

Dissenting: N/A

Overview: A state court conviction after a guilty plea does not prevent the defendant from bringing a later § 1983 action.

Summary of Decision: Defendant pleaded guilty to manufacturing a controlled substance. Subsequent to this, Defendant filed a claim for damages under 42 U.S.C. § 1983 against the police, alleging that his Fourth Amendment rights were violated by the police during their search of his apartment. The district court granted summary judgment for the officer, finding that Defendant's guilty plea barred his claim. The court reasoned that Defendant's failure to assert his claim in state court constituted a waiver of that right, precluding its assertion in a later federal action. The district court also held that Defendant's guilty plea constituted an implied admission that the search of his apartment was legal. The circuit court reversed and remanded. The Supreme Court affirmed, finding that collateral estoppel did not apply to the present case under Virginia law. The Court based this on three findings. First, the legality of the search was not actually litigated in the case. Second, the criminal proceedings did not actually decide against Defendant on any issue on which he must prevail to establish his claim. Finally, none of the issues in the § 1983 action could have been necessarily determined in the criminal proceeding. The Court similarly found that a special rule preventing these suits was not appropriate. The Court therefore affirmed the appeals court.

Key Quote: "We conclude that respondent's conviction in state court does not preclude him from now seeking to recover damages under 42 U.S.C. § 1983 for an alleged Fourth Amendment violation that was never considered in the state proceedings." p.323

Marshall v. Lonberger, 459 U.S. 422 (1983)

Date of Decision: 2/22/1983

On Review From: 6th Circuit

Unanimous Decision: No

Authoring Justice: William Rehnquist

Majority: William Rehnquist, Warren Burger, Byron White, Lewis Powell, Sandra Day O'Connor

Concurring: N/A

Dissenting: William Brennan, Thurgood Marshall, Harry Blackmun, John Paul Stevens

Overview: Admission of prior convictions into evidence did not deprive defendant of constitutional right.

Summary of Decision: Defendant was indicted by an Ohio grand jury for two counts of aggravated murder to which he pleaded not guilty. The State sought to prove a "specification" of prior conviction that would raise defendant's applicable punishment to death. The State offered defendant's conviction statement and corresponding record from an Illinois circuit court where he pleaded guilty to four charges, including aggravated battery. Before admitting this evidence, the Ohio trial court conducted a hearing confirming that defendant's guilty pleas to the Illinois charges were knowing and voluntary. Defendant was sentenced to death. After the Ohio Court of Appeals affirmed, defendant sought a writ of habeas corpus. The Court upheld his conviction, determining that every effort was taken to protect defendant's constitutional rights. To waive one's rights, one's guilty plea must be knowing, intelligent, and voluntary. The federal habeas courts were bound to the factual conclusions of the Illinois court records. Defendant's Illinois convictions demonstrated his experience with the criminal justice system. Defendant did not have such an incomplete understanding of the Illinois charges that his guilty pleas were invalid as entered. Because one with defendant's intelligence and experience would have easily understood that the Ohio trial judge was inquiring as to how he would plead, defendant was not misled.

Key Quote: "We greatly doubt that Congress, when it used the language 'fairly supported by the record' considered 'as a whole' intended to authorize broader federal review of state-court credibility determinations than are authorized in appeals within the federal system itself." p.434-35

Mabry v. Johnson, 467 U.S. 504 (1984)

Date of Decision: 6/11/1984

On Review From: 8th Circuit

Unanimous Decision: Yes

Authoring Justice: John Paul Stevens

Majority: Warren Burger, William Brennan, Byron White, Thurgood Marshall, Harry Blackmun, Lewis Powell, William Rehnquist, John Paul Stevens, Sandra Day O'Connor

Concurring: N/A

Dissenting: N/A

Overview: Mere acceptance of proposed plea bargain does not create constitutional right to its enforcement.

Summary of Decision: Defendant was tried and convicted for murder, burglary, and assault. The murder conviction was later reversed by the state Supreme Court. While serving concurrent sentences for the burglary and assault charges, defendant was then offered a plea to the murder charge. The plea offer was a recommended sentence of 21 years to run concurrent to the current sentences in return for pleading guilty. A few days later, the defendant's attorney called to accept the offer, but was informed that "a mistake had been made" and the offer was withdrawn. Instead, the prosecution offered a 21 year sentence to run consecutive to the current sentences. Defendant elected to stand trial, but ultimately accepted the State's second offer. Defendant later petitioned for a writ of habeas corpus to vacate his plea. The Supreme Court upheld his conviction. A plea may be challenged as a violation of one's procedural due process rights if its "consensual character" is questionable such that a defendant was not fairly apprised of its consequences. A defendant is entitled to relief when the prosecution bases the agreement on false premises and subsequently breaches its promise. Defendant could not successfully collaterally attack his guilty plea here as the State did not deceive defendant. Informed by the advice of competent counsel and a full awareness of the consequences, the plea was voluntary, knowing, and intelligent.

Key Quote: "A plea bargain standing alone is without constitutional significance; in itself it is a mere executory agreement which, until embodied in the judgment of a court, does not deprive an accused of liberty or any other constitutionally protected interest." p.507

Ohio v. Johnson, 467 U.S. 493 (1984)

Date of Decision: 6/11/1984

On Review From: Ohio Supreme Court

Unanimous Decision: No

Authoring Justice: William Rehnquist

Majority: William Rehnquist, Warren Burger, Byron White, Harry Blackmun, Lewis Powell, Sandra Day O'Connor

Concurring: William Brennan (in part)

Dissenting: William Brennan (in part). John Paul Stevens, Thurgood Marshall

Overview: When defendant pleads guilty to other lesser included offenses, prosecution of remaining more serious charges does not implicate double jeopardy.

Summary of Decision: An Ohio grand jury indicted defendant for murder, aggravated robbery, and their respective lesser-included offenses—involuntary manslaughter and grand theft.

Defendant pleaded guilty to the lesser offenses and moved to dismiss the more serious charges, arguing that further prosecution was barred by the Double Jeopardy Clause of the Fifth and Fourteenth Amendments. The Supreme Court of Ohio upheld the trial court's grant of his motion, but the Supreme Court of the United States reversed. Though the Double Jeopardy Clause protects defendants against multiple punishments for the same offense and against second prosecutions for the same offense after acquittal or conviction, it does not prohibit the State from prosecuting defendants for the other offenses charged within a single prosecution. By dismissing the more serious charges, the trial court halted judicial proceedings and entirely prevented the rendering of a verdict of guilt or innocence. A defendant's pleading guilty to lesser-included offenses does not create an "implied acquittal" of the greater offenses still pending.

Key Quote: "[Defendant's] argument is apparently based on the assumption that trial proceedings, like amoebae, are capable of being infinitely subdivided, so that a determination of guilt and punishment on one count of a multicount indictment immediately raises a double jeopardy bar to continued prosecution on any remaining counts that are greater or lesser included offenses of the charge just concluded. We have never held that, and decline to hold it now." p.501

Hill v. Lockhart, 474 U.S. 52 (1985)

Date of Decision: 11/18/1985

On Review From: 8th Circuit

Unanimous Decision: Yes

Authoring Justice: William Rehnquist

Majority: Warren Burger, William Brennan, Thurgood Marshall, Harry Blackmun, Lewis Powell, William Rehnquist, Sandra Day O'Connor

Concurring: Byron White, John Paul Stevens

Dissenting: N/A

Overview: To prove prejudice, defendant must show reasonable probability that, but for counsel's errors, he would not have pleaded guilty.

Summary of Decision: Defendant pleaded guilty to charges of first-degree murder and theft of property pursuant to a plea agreement. Defendant later filed a federal habeas corpus petition, alleging that his guilty plea was involuntary because he had ineffective assistance of counsel. The Defendant argued that his counsel had given him incorrect information regarding his parole eligibility date. His counsel had told him that if he pleaded guilty he would be eligible for parole after serving one-third of his sentence. However, because the Defendant was a second offender under state law, he was required to serve half of his sentence before he would be eligible for parole. The District Court denied the Defendant's habeas relief without a hearing. The Court of Appeals

of the Eighth Circuit affirmed. The Supreme Court granted certiorari. The Supreme Court held that the two-part Strickland test applies to challenges of guilty pleas based on ineffective assistance of counsel. To satisfy Strickland the Defendant must show that his counsel's performance was deficient and that the Defendant was prejudiced by such performance. The Court further explained that to meet the prejudice requirement, the Defendant must show that there was a "reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." The Court concluded that the Defendant had failed to meet the prejudice requirement under Strickland because he did not allege in his habeas petition that, if he had been correctly informed on his parole eligibility date, he would have not pleaded guilty and insisted on going to trial. Thus, the Court of Appeals judgment was affirmed.

Key Quote: "We believe that requiring a showing of 'prejudice' from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel will serve the fundamental interest in the finality of guilty pleas we identified in United States v. Timmreck, 441 U.S. 780 (1979)." p.58

United States v. Benchimol, 471 U.S. 453 (1985)

Date of Decision: 5/13/1985

On Review From: 9th Circuit

Unanimous Decision: No

Authoring Justice: Per Curium

Majority: Warren Burger, Byron White, Blackmun, Lewis Powell, William Rehnquist, John Paul Stevens, Sandra Day O'Connor

Concurring: John Paul Stevens

Dissenting: William Brennan, Thurgood Marshall

Overview: Government need not enthusiastically recommend a sentence to which it agrees during plea negotiations.

Summary of Decision: Defendant pleaded guilty to one count of mail fraud pursuant to a plea bargain where the Government would recommend probation with restitution. The district court disregarded the Government's recommendation and sentenced defendant to six years of treatment and supervision under the Youth Corrections Act. Defendant was eventually arrested for a parole violation. Defendant filed a motion to withdraw his guilty plea or, alternatively, to vacate his original sentence and be resentenced to his time already served. The Court upheld the conviction because the Government was not bound to recommend or explain to the district court the reasons behind the sentence to which the parties agreed. Though the Government may agree to do so under Fed. R. Crim. P. 11(e), such agreement must be explicit. Terms of the agreement cannot be implied

as a matter of law. Here, the Court found no indication of the Government's agreement to convey enthusiasm for its recommendation and refused to read any implied-in-law terms into it. Consequently, the Court determined that the Government did not default on its plea agreement with defendant.

Key Quote: "[O]ur view of Rule 11(e) is that it speaks in terms of what the parties in fact agree to, and does not suggest that such implied-in-law terms as were read into this agreement by the Court of Appeals have any place under this Rule." p.455

Burger v. Kemp, 483 U.S. 776 (1987)

Date of Decision: 6/26/1987

On Review From: 11th Circuit

Unanimous Decision: No

Authoring Justice: John Paul Stevens

Majority: John Paul Stevens, William Renquist, Byron White, Sandra Day O'Connor, Antonin Scalia

Concurring: N/A

Dissenting: Harry Blackmun, William Brennan, Thurgood Marshall, Lewis Powell

Overview: Trial counsel's failure to obtain a plea deal is not ineffective assistance of counsel, even with a conflict of interest problem, when the evidence in the record suggests that the prosecutor is unwilling to negotiate.

Summary of Decision: Defendant and his co-defendant were convicted of murder and sentenced to death. Defendant appealed, arguing that he had ineffective assistance of counsel at both his murder and sentencing trial. The Defendant asserted that his murder trial counsel was ineffective because of a conflict of interest. The co-defendant's counsel was the Defendant counsel's partner. The Defendant believed that this conflict of interest resulted in his counsel's failure to negotiate a plea deal for a life sentence. The Court concluded, however, that the record lacked any evidence to support the notion that the prosecutor would have even been receptive to any type of plea deal, given the extensive evidence against the Defendant, including the Defendant's own confession. The evidence in the record instead showed that the Defendant's counsel had attempted many times to negotiate a plea deal with the prosecutor, but the prosecutor refused. The Court went on to reject the Defendant's other ineffective assistance of counsel arguments, holding that he had not established that his counsel's acts or omissions were outside the "the wide range of professionally competent assistance" or that his sentence was unreliable because of a "breakdown in the adversary process caused by the deficiencies in counsel's assistance."

Key Quote: "[T]he asserted actual conflict of interest, even if it had been established, did not harm his lawyer's advocacy. . . . The notion that the prosecutor would have been receptive to a plea bargain is completely unsupported in the record. . . . [Trial counsel] 'constantly attempted to plea bargain with the prosecutor,' but was rebuffed." p.785-786

Ricketts v. Adamson, 483 U.S. 1 (1987)

Date of Decision: 6/22/1987

On Review From: 9th Circuit

Unanimous Decision: No

Authoring Justice: Byron White

Majority: William Rehnquist, Byron White, Lewis Powell, Sandra Day O'Connor, Antonin Scalia

Concurring: N/A

Dissenting: William Brennan, Thurgood Marshall, John Paul Stevens, Harry Blackmun

Overview: Prosecuting defendant for original charges after he breaches plea agreement does not violate Double Jeopardy Clause.

Summary of Decision: State prosecutor and a defendant charged with first-degree murder reached a plea agreement where defendant would plead guilty to second-degree murder and testify against two other individuals allegedly involved in the same crime. The agreement expressly stated that it would be null and void and thus reinstate the original first-degree murder charge if defendant refused to testify or testified untruthfully. Believing his obligation under the agreement terminated when he was sentenced, defendant did not testify at the individuals' retrial. The prosecutor subsequently convicted defendant and sentenced him to death. Defendant sought habeas corpus review, claiming that the Double Jeopardy Clause barred his prosecution after being sentenced for a lesser-included offense. The Court upheld the conviction, agreeing with the State that defendant's breach of the plea arrangement removed the double jeopardy bar. Paragraphs five and fifteen of the agreement explicitly waived the defense. Defendant clearly appreciated and fully understood the consequences of the breach and, despite the fatal penalty, still made a conscious decision to do so.

Key Quote: "[The defendant] could submit to the State's request . . . or he could stand on his interpretation of the agreement, knowing that if he were wrong, his breach of the agreement would restore the parties to their original positions and he could be prosecuted for first-degree murder. [Defendant] chose the latter course, and the Double Jeopardy Clause does not relieve him from the consequences of that choice." p.11

Alabama v. Smith, 490 U.S. 794 (1989)

Date of Decision: 6/12/1989

On Review From: Supreme Court of Alabama

Unanimous Decision: No

Authoring Justice: William Rehnquist

Majority: William Rehnquist, William Brennan, Byron White, Harry Blackmun, John Paul Stevens, Sandra Day O'Connor, Antonin Scalia, Anthony Kennedy

Concurring: N/A

Dissenting: Thurgood Marshall

Overview: No presumption of vindictiveness arises when a sentence harsher than what was originally pleaded for is imposed after a subsequent trial.

Summary of Decision: Defendant was charged with burglary, rape, and sodomy. In exchange for pleading guilty to the charges of burglary and rape, the state dismissed the sodomy charge. The court sentenced defendant to thirty years. Defendant subsequently attacked his plea and was granted a new trial by jury on all three counts before the same judge. After being found guilty on all three charges, defendant was sentenced to life imprisonment. The Alabama Supreme Court reversed his sentence, finding a presumption of vindictiveness because his sentence on remand was harsher than a previous sentence on the same charges. The United States Supreme Court reversed, finding that there is no presumption of vindictiveness when the previous sentence is based on a plea bargain and the subsequent sentence is based on a trial. During a trial, the judge and prosecutor develop a better understanding of the defendant's moral character and the nature and extent of crimes charged. Factors that indicated leniency as consideration for the guilty plea may no longer be present. Such details inform the new sentence and dispel the presumption of vindictiveness.

Key Quote: "[W]hen a greater penalty is imposed after trial than was imposed after a prior guilty plea, the increase in sentence is not more likely than not attributable to the vindictiveness on the part of the sentencing judge." p.801

United States v. Broce, 488 U.S. 563 (1989)

Date of Decision: 1/23/1989

On Review From: 10th Circuit

Unanimous Decision: No

Authoring Justice: Anthony Kennedy

Majority: William Rehnquist, Byron White, John Paul Stevens, Sandra Day O'Connor, Antonin Scalia, Anthony Kennedy

Concurring: John Paul Stevens

Dissenting: William Brennan, Thurgood Marshall, Harry Blackmun

Overview: Defendants' guilty pleas and judgments of conviction waived their double jeopardy challenge.

Summary of Decision: Defendants pleaded guilty to two separate counts of conspiracy to rig bids. Defendants later appealed, asserting that only one conspiracy existed and raising the defense of double jeopardy to set aside the second sentence. The Court upheld both convictions. Defendants had a right to challenge the charges by going to trial. However, through their voluntary guilty pleas and subsequent convictions, defendants lost this right and foreclosed later collateral challenges by comprehending all the factual and legal elements necessary to sustain final and binding judgments against them. Though defendants argue that they cannot be held to have waived the defense because their attorney never informed them about potential double jeopardy issues, this omission may only sustain a claim for ineffective assistance of counsel. Here, waiver derives from admissions of guilt made upon entry of a voluntary plea. Defendants pleaded guilty to two charges of conspiracy based upon two separate agreements that embrace separate objectives at different times. No exceptions applied. Thus, defendants could not set aside their pleas.

Key Quote: "When the judgment of conviction upon a guilty plea has become final and the offender seeks to reopen the proceeding, the inquiry is ordinarily confined to whether the underlying plea was both counseled and voluntary. If the answer is in the affirmative then the conviction and the plea, as a general rule, foreclose the collateral attack." p.569

Braxton v. United States, 500 U.S. 344 (1991)

Date of Decision: 5/28/1991

On Review From: 4th Circuit

Unanimous Decision: Yes

Authoring Justice: Antonin Scalia

Majority: William Rehnquist, Byron White, Thurgood Marshall, Harry Blackmun, John Paul Stevens, Sandra Day O'Connor, Antonin Scalia, Anthony Kennedy, David Souter

Concurring: N/A

Dissenting: N/A

Overview: The Court declined to address whether § 1B1.2(a) of the Federal Sentencing Guidelines only applied to stipulations of fact that were connected to formal plea agreements and instead deferred to the Sentencing Commission to decide the matter.

Summary of Decision: Defendant shot at his own door after United States Marshals attempted to enter his home to arrest him. As a result, the Defendant was charged with (1) an attempt to kill a deputy United States Marshal, (2) assault on a deputy marshal, and (3) the use of a firearm during a crime of violence. The Defendant pled guilty to the assault and firearm charges but pled not guilty to the attempted murder charge. The Defendant did not have a plea agreement with the Government. The Defendant was sentenced under the Federal Sentencing Guidelines as if he had been convicted of the attempted murder charge. The court relied on § 1B1.2(a) of the Guidelines to justify its sentencing decision, which states that "in the case of a plea of guilty... containing a stipulation that specifically establishes a more serious offense than the offense of conviction, [the court shall apply the guideline] most applicable to the stipulated offense." The Defendant appealed, arguing that § 1B1.2(a) only applied if there was a stipulation produced as part of a formal plea agreement, while the Government argued that the language of the statute did not limit the application of § 1B1.2(a) to such stipulations. Instead, the Government argued that any plea that contained a stipulation was covered by § 1B1.2(a). The Supreme Court did not address these arguments, an issue in which the federal circuit courts were split. The Court based its decision to not address the arguments on the fact that the Sentencing Commission had announced plans to address the issue and eliminate the circuit split. In turning to the specific facts of the Defendant's case, the Court found that the Defendant did not stipulate a fact that specifically established that he attempted to murder any of the Marshals that entered his home. The Court reversed the rulings below.

Key Quote: "With respect to federal law apart from the Constitution, we are not the sole body that c[an] eliminate [] conflicts, at least as far as their continuation into the future is concerned. Obviously, Congress itself can eliminate a conflict concerning a statutory provision by making a clarifying amendment to the statute, and agencies can do the same with respect to regulations." p.347-348

Parke v. Raley, 506 U.S. 20 (1992)

Date of Decision: 12/1/1992

On Review From: 6th Circuit

Unanimous Decision: Yes

Authoring Justice: Sandra Day O'Connor

Majority: Sandra Day O'Connor, William Rehnquist, Byron White, John Paul Stevens, Antonin Scalia, Anthony Kennedy, David Souter, Clarence Thomas

Concurring: Harry Blackmun

Dissenting: N/A

Overview: A prior plea is not presumed involuntary when offered for purposes of sentence enhancement solely because of the absence of a transcript from the past hearing.

Summary of Decision: Defendant was charged with robbery and with being a persistent felony offender. If convicted, he faced a mandatory minimum sentence. To avert this possibility, Defendant attempted to suppress two prior felony convictions on the basis of their being no transcript of the hearings during which he pleaded guilty. He argued that without the transcripts there was no evidence to determine that his past pleas were voluntary and knowing. The trial court rejected his argument and Defendant was sentenced to 5 years for the robbery, enhanced to 10 years as a repeat felon. Defendant sought habeas corpus review. The KY statute provided that when the defendant challenges a prior conviction through a suppression motion, the state need only prove the fact of a prior felony conviction beyond a reasonable doubt. If the state proves this, it creates a presumption of regularity and the burden shifts to the defendant to rebut the presumption by proving his rights were violated or a procedural error occurred in the prior proceeding. The Court affirmed Defendant's conviction on multiple grounds. First, Defendant did not appeal his past convictions and there was a "presumption of regularity" that attached to those final judgments. In light of Defendant's prior experience in the criminal justice system, his prior admission that he understood the charges to which he was pleading, and his knowing waiver of a jury trial, the Court made an additional finding that Defendant's prior pleas were voluntary and knowing. The Court also held that it would "def[y] logic" to presume that a defendant was not advised of his rights in a prior plea hearing on the sole basis that a transcript is unavailable. Furthermore, the Court upheld the validity of the Kentucky statute, holding that when a collateral attack on a prior conviction is founded on constitutional claims, the presumption of regularity that final judgments create makes it entirely appropriate for the burden of proof to rest on the defendant.

Key Quote: "On collateral review, we think it defies logic to presume from the mere unavailability of a transcript (assuming no allegation that the unavailability is due to governmental misconduct) that the defendant was not advised of his rights. In this situation, [...] state court [is not prohibited] from presuming, at least initially, that a final judgment of conviction offered for purposes of sentence enhancement was validly obtained." p.30

Godinez v. Moran, 509 U.S. 389 (1993)

Date of Decision: 6/24/1993

On Review From: 9th Circuit

Unanimous Decision: No

Authoring Justice: Clarence Thomas

Majority: William Rehnquist, Byron White, Sandra Day O'Connor, David Souter, Clarence Thomas, Antonin Scalia, Anthony Kennedy

Concurring: Antonin Scalia, Anthony Kennedy

Dissenting: Harry Blackmun, John Paul Stevens

Overview: The competency to waive the right to trial and to counsel is the same as the competency to stand trial.

Summary of Decision: Defendant shot and killed four people. Defendant also tried, unsuccessfully, to commit suicide. Later, Defendant called police to his hospital bed and confessed to the four murders. Defendant pleaded not guilty to the murders and was evaluated by two psychiatrists who concluded he was competent to stand trial. Defendant later appeared in court and stated that he wished to discharge his counsel and change his pleas to guilty. Defendant specifically stated he wanted to discharge his counsel to prevent mitigating evidence from being introduced at his sentencing. The court accepted his guilty pleas. A three-judge panel sentenced him to death for the murders. Defendant later filed a petition for post-conviction relief in state court. The state court rejected his claims that he was not competent to represent himself, finding he had been found competent to stand trial. The Supreme Court of Nevada dismissed his appeal. Defendant then filed a habeas petition in federal court. The District Court dismissed his petition, but the Ninth Circuit reversed, holding that competency to waive constitutional rights is higher than the competency to stand trial. The Supreme Court reversed, finding that the competency to waive constitutional rights, such as the right to trial and to counsel, is the same as the competency to stand trial. Defendant's waiver of his rights was voluntary, knowing, and intelligent.

Key Quote: "[W]e can conceive of no basis for demanding a higher level of competence for those defendants who choose to plead guilty. If the Dusky standard is adequate for defendants who plead not guilty, it is necessarily adequate for those who plead guilty." p.399

Libretti v. United States, 516 U.S. 29 (1995)

Date of Decision: 11/7/1995

On Review From: 10th Circuit

Unanimous Decision: No

Authoring Justice: Sandra Day O'Connor

Majority: William Rehnquist, Sandra Day O'Connor, Antonin Scalia, Anthony Kennedy, David Souter, Clarence Thomas, Ruth Bader Ginsburg, Stephen Breyer

Concurring: David Souter

Dissenting: John Paul Stevens

Overview: Judges do not have to find a factual basis for forfeiture as part of a plea agreement.

Summary of Decision: Defendant was charged with engaging in a continuing criminal enterprise in violation of federal law. This included violations of various federal drug, firearms, and money laundering laws. Engaging in a continuing criminal enterprise subjects a defendant to forfeiture of property that was used to obtain or obtained through the enterprise. After the trial began and numerous witnesses testified, Defendant entered into a plea agreement with the government pleading guilty to the continuing criminal enterprise charge. Defendant later challenged the forfeiture of his property pursuant to the plea agreement arguing that the judge must make a factual determination for the forfeiture. The Court rejected this claim. The Court first found that Rule 11(f) only applies to plea agreements, not forfeitures. The Court then rejected Defendant's policy arguments in favor of requiring this finding. The Court rejected the arguments that subjecting forfeiture to Rule 11(f) is necessary to ensure the forfeiture agreement is voluntary and knowing, to prevent prosecutorial overreach, and to preserve third-party rights to the property. The Court therefore affirmed the Court of Appeals.

Key Quote: "Under the plain language of Rule 11(f), the District Court is not obliged to inquire into the factual basis for a stipulated forfeiture of assets embodied in a plea agreement. And because Libretti agreed to this forfeiture and waived his 'right to a jury trial,' he cannot now complain that he did not receive the special jury verdict on forfeitability for which Rule 31(e) provides." p.51-52

United States v. Mezzanatto, 513 U.S. 196 (1995)

Date of Decision: 1/18/1995

On Review From: 9th Circuit

Unanimous Decision: No

Authoring Justice: Clarence Thomas

Majority: Clarence Thomas, William Rehnquist, Antonin Scalia, Anthony Kennedy

Concurring: Ruth Bader Ginsburg, Sandra Day O'Connor, Stephen Breyer

Dissenting: David Souter, John Paul Stevens

Overview: Evidentiary protections that make statements during plea discussions inadmissible can be waived.

Summary of Decision: Defendant entered plea negotiations, voluntarily waived provisions of Fed. R. Evid. 410 and Fed. R. Crim. P. 11(e)(6), and agreed to the condition that any statements he made during the meeting with the prosecutor could be used to impeach his potentially contradictory testimony at trial. After negotiations crumbled, defendant testified, the prosecutor

cross-examined him about his prior inconsistent statements, and the jury convicted. The Court upheld the conviction, noting that a party may waive any provision of a statute as long as Congress does not preclude waiver and such waiver is knowing and voluntary. Courts liberally enforce agreements to waive evidentiary rules, even when the parties subsequently object. The Court rejected each of the defendant's three arguments. The plea-statement evidentiary Rules expressly consider a degree of party control that supports waiver, as the admission of plea statements for impeachment purposes enhances the trial's truth-seeking function. While waiver may discourage some defendants from negotiating, many prosecutors are unwilling to proceed without it, causing the plea-bargaining process to falter altogether. Though defendants may face a dilemma between accepting waiver and forgoing plea discussions, the situation is no different from other difficult choices they must make when considering a risk of punishment.

Key Quote: "Because the plea-statement Rules were enacted against a background presumption that legal rights generally, and evidentiary provisions specifically, are subject to waiver by voluntary agreement of the parties, we will not interpret Congress' silence as an implicit rejection of waivability." p.203-204

United States v. Hyde, 520 U.S. 670 (1997)

Date of Decision: 5/27/1997

On Review From: 9th Circuit

Unanimous Decision: Yes

Authoring Justice: William Rehnquist

Majority: William Rehnquist, John Paul Stevens, Sandra Day O'Connor, Antonin Scalia, Anthony Kennedy, David Souter, Clarence Thomas, Ruth Bader Ginsburg, Stephen Breyer

Concurring: N/A

Dissenting: N/A

Overview: Defendant's right to withdraw a guilty plea is not absolute.

Summary of Decision: Defendant pleaded guilty to four counts of fraud-related crimes in exchange for the government's agreement to dismiss four other counts. The district court accepted defendant's guilty plea, but deferred its decision on whether it would accept the plea agreement. Defendant moved to withdraw his guilty plea, alleging duress from the government. The district court denied the motion because defendant had not provided a "fair and just reason" in compliance with Fed. R. Crim. P. 32(e). Though the Ninth Circuit reversed by holding that a defendant's right to withdraw his plea is absolute, the Court disagreed. An absolute right would contradict the text of Fed. R. Crim. P. 11 and strip it of its meaning. The Court emphasized that guilty pleas and plea agreements need not be treated identically; they can be considered both separately and at different

times. The Court compared the bargaining process to a contract under which defendant can rescind his performance—withdraw his guilty plea without complying with the "fair and just reason" standard—only if the court has already rejected the plea agreement. The Court rejected defendant's proposed distinction between "fully accepted" and "conditionally accepted" pleas, given the great care with which pleas are made and considered.

Key Quote: "'Were withdrawal automatic in every case where the defendant decided to alter his tactics and present his theory of the case to the jury, the guilty plea would become a mere gesture, a temporary and meaningless formality reversible at the defendant's whim. In fact, however, a guilty plea is no such trifle, but a "grave and solemn act," which is "accepted only with care and discernment."'" p.677

Bousley v. United States, 523 U.S. 614 (1998)

Date of Decision: 5/18/1998

On Review From: 8th Circuit

Unanimous Decision: No

Authoring Justice: William Rehnquist

Majority: William Rehnquist, Sandra Day O'Connor, Anthony Kennedy, David Souter, Ruth Bader Ginsburg, Stephen Breyer

Concurring: John Paul Stevens (in part)

Dissenting: Antonin Scalia, Clarence Thomas; John Paul Stevens (in part)

Overview: A defendant who has pleaded guilty to using a firearm in violation of 18 U.S.C. § 924(c)(1) is entitled to a hearing on whether they actually "used" the firearm.

Summary of Decision: Defendant was charged with and pleaded guilty to using a firearm in violation of § 924. However, five years later, the Supreme Court held that the "use" prong of the statute required "active employment"—a higher showing than the definition of the term under which defendant was charged. Defendant challenged his guilty plea as involuntary because he was misinformed about the essential elements of his crime. Criminal defendants must receive real notice of the true nature of the crime for their plea to be intelligent. However, there are still strong procedural protections for when a plea may be attacked on collateral review. Defendant may challenge his plea by showing actual innocence. This means he must show that he did not "use" a firearm as defined in Bailey v. United States. This case made Bailey retroactive. If he can make this showing, he will then be able to have his claim of an unintelligent plea considered on the merits. Note, Bailey has subsequently been overturned by statute.

Key Quote: "Accordingly, petitioner need demonstrate no more than that he did not 'use' a firearm as that term is defined in Bailey. If, on remand, petitioner can make this showing, he will then be entitled to have his defaulted claim of an unintelligent plea considered on its merits." p.624

Mitchell v. United States, 526 U.S. 314 (1999)

Date of Decision: 4/5/1999

On Review From: 3rd Circuit

Unanimous Decision: No

Authoring Justice: Anthony Kennedy

Majority: Anthony Kennedy, John Paul Stevens, David Souter, Ruth Bader Ginsburg, Stephen Breyer

Concurring: N/A

Dissenting: Antonin Scalia, William Rehnquist, Sandra Day O'Connor, Clarence Thomas

Overview: Defendant that pleads guilty does not waive right against self-incrimination at sentencing hearing.

Summary of Decision: Without any plea agreement, defendant pleaded guilty to conspiring to distribute five or more kilograms of cocaine and three counts of distributing cocaine within 1,000 feet of a school or playground. Defendant reserved the right to contest the quantity of drugs attributed to her, which would be determined at her sentencing hearing. The district court explained that, in entering a guilty plea, defendant waived her right against self-incrimination under the Fifth Amendment. The Court disagreed, holding that a guilty plea does not waive the privilege in the sentencing phase and that the sentencing court may not draw adverse inferences from a defendant's silence. The Fifth Amendment prevents a defendant from being "compelled in any criminal case to be a witness against himself," and sentencing proceedings are clearly part of "any criminal case." Waiving a right to trial and its attendant privileges does not constitute a waiver of the privileges that exist "beyond the confines" of trial. The privilege terminates when the sentence has been given and the conviction becomes final. Though the guilty plea and statements or admissions during plea colloquy are later admissible against a defendant, such evidence is not necessarily a waiver of her Fifth Amendment privileges.

Key Quote: "The purpose of a plea colloquy is to protect the defendant from an unintelligent or involuntary plea. The Government would turn this constitutional shield into a prosecutorial sword by having the defendant relinquish all rights against compelled self-incrimination upon entry of a guilty plea, including the right to remain silent at sentencing." p.322

INS v. St. Cyr, 533 U.S. 289 (2001)

Date of Decision: 6/25/2001

On Review From: 2nd Circuit

Unanimous Decision: No

Authoring Justice: John Paul Stevens

Majority: John Paul Stevens, Anthony Kennedy, David Souter, Ruth Bader Ginsburg, Stephen Breyer

Concurring: N/A

Dissenting: Sandra Day O'Connor, Antonin Scalia, William Rehnquist, Clarence Thomas

Overview: When Congress is silent, principles of fairness, common sense, and functional judgment determine whether retroactive application of a statute, especially in the plea agreement context, would be impermissible.

Summary of Decision: Defendant, a United States permit resident from Haiti, pled guilty in state court to a charge of selling a controlled substance in violation of state law. The Defendant's conviction made him deportable. At the time of the Defendant's conviction, under the applicable federal law, he was eligible to receive a waiver for deportation at the Attorney General's discretion. However, once the Defendant's removal proceedings commenced, the Antiterrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) had gone into effect, which took away the Attorney General's discretion to grant a waiver for deportation. The Defendant filed a habeas corpus petition, arguing that the discretionary relief from the abrogated statutes should still apply to him because he pled guilty to a deportable crime before the AEDPA and IIRIRA were enacted. The Supreme Court agreed with the Defendant, holding that the discretionary relief remained available to aliens whose convictions were obtained through plea agreements and who had been eligible for relief under the law in effect at the time of their conduct and plea.

Key Quote: "Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted. For that reason, the 'principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal human appeal.'" p.316

United States v. Ruiz, 536 U.S. 622 (2002)

Date of Decision: 6/24/2002

On Review From: 9th Circuit

Unanimous Decision: Yes

Authoring Justice: Stephen Breyer

Majority: William Rehnquist, John Paul Stevens, Sandra Day O'Connor, Antonin Scalia, Anthony Kennedy, David Souter, Ruth Bader Ginsburg, Stephen Breyer

Concurring: Clarence Thomas

Dissenting: N/A

Overview: Prosecutors are not required to disclose impeachment information before entering binding plea agreements.

Summary of Decision: Federal prosecutors withdrew their "fast-track" bargaining offer after defendant refused to waive her right to receive impeachment information relating to any witnesses. Defendant pleaded guilty to unlawful drug possession absent an agreement and subsequently appealed. The Ninth Circuit vacated the sentencing determination of the lower court, holding that the Constitution required impeachment information to be available to defendants before trial so that their understanding of the consequences of their guilty pleas would be more comprehensive. The Court held that such a disclosure was not required because prosecutors need not reveal all useful information related to their potential case. Impeachment relates more to the fairness of trial than to the voluntariness of a defendant's plea. Impeachment information is not critical to every defendant's decision, as what is "critical" depends upon the individual defendant, their knowledge of the prosecution's case, and all the surrounding circumstances. The Court could not identify any case law supporting the Ninth Circuit's holding. An obligation to provide impeachment information prior to entry of a guilty plea would interfere with the government's interest in securing pleas that are factually justified, desired by the defendant, and capable of promoting an efficient administration of justice.

Key Quote: "[The Constitution] does not require complete knowledge of the relevant circumstances, but permits a court to accept a guilty plea, with its accompanying waiver of various constitutional rights, despite various forms of misapprehension under which a defendant might labor. . . . [T]he need for this [impeachment] information is more closely related to the fairness of a trial than to the voluntariness of the plea; . . . the added burden imposed upon the Government by requiring its provision well in advance of trial (often before trial preparation begins) can be serious, thereby significantly interfering with the administration of the plea bargaining process." p.630-633

Blakely v. Washington, 542 U.S. 296 (2004)

Date of Decision: 6/24/2004

On Review From: Washington Supreme Court

Unanimous Decision: No

Authoring Justice: Antonin Scalia

Majority: John Paul Stevens, Antonin Scalia, David Souter, Ruth Bader Ginsburg, Clarence Thomas

Concurring:

Dissenting: William Rehnquist, Sandra Day O'Connor, Anthony Kennedy, Stephen Breyer

Overview: A defendant is entitled to a sentence that is based on facts that were either found by a jury to be proven beyond a reasonable doubt or admitted by the defendant himself.

Summary of Decision: Defendant was charged with first-degree kidnapping for abducting his wife. The Defendant reached a plea agreement with the State and ultimately pled guilty to second-degree kidnapping involving domestic violence and use of a firearm. Under the second-degree kidnapping charge the defendant's maximum sentence exposure was 53 months. The judge sentenced the Defendant to 90 months in prison. The judge asserted that such a sentence was justified because the Defendant acted with "deliberate cruelty" in his actions and that this finding was a statutorily enumerated ground for a sentencing departure. The judge made his determination after hearing the victim's recount of the kidnapping. The Defendant appealed, arguing that his sentencing deprived him of his federal constitutional right to have a jury determine all facts legally essential to his sentence. The Supreme Court agreed, holding that the rule expressed in Apprendi v. New Jersey, 530 U.S. 466, 490 (2000) governed. Apprendi held that "other than the fact of a prior conviction, any fact that increases the penalty of a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." The Court also concluded that a Defendant may stipulate facts that expose him to a sentencing increase, which sometimes occurs in the plea bargaining context. However, the facts that the judge relied on here to sentence the Defendant above the maximum were neither admitted by the Defendant nor found by a jury. Thus, the Defendant's Sixth Amendment rights were violated.

Key Quote: "The Framers would not have thought it too much to demand that, before depriving a man of three more years of his liberty, the State should suffer the modest inconvenience of submitting its accusation to "the unanimous suffrage of twelve of his equals and neighbours," 4 Blackstone, Commentaries, supra at 343, rather than a lone employee of the State." p.314-317.

Iowa v. Tovar, 541 U.S. 77 (2004)

Date of Decision: 3/8/2004

On Review From: Iowa Supreme Court

Unanimous Decision: Yes

Authoring Justice: Ruth Bader Ginsburg

Majority: Ruth Bader Ginsburg, William Rehnquist, John Paul Stevens, Sandra Day O'Connor, Antonin Scalia, Anthony Kennedy, David Souter, Clarence Thomas, Stephen Breyer

Concurring: N/A

Dissenting: N/A

Overview: The Sixth Amendment does not require specific admonitions to pro se defendants to ensure their plea is voluntary.

Summary of Decision: Defendant pled guilty to operating a motor vehicle under the influence (OWI) without counsel in 1996. First time OWI is considered a serious misdemeanor. In 1998, defendant was convicted of a second OWI, this time pleading guilty with counsel. A second time OWI is considered an aggravated misdemeanor. In 2000, defendant was charged with a third OWI and driving while a license barred. Third-offense OWI, and any OWI offenses thereafter, rank as class "D" felonies. Defendant, with assistance of counsel, pled not guilty to both charges. Counsel for defendant filed a Motion for Adjudication of Law Points, arguing that defendant's 1996 conviction could not advance the 2000 charge to a third offense OWI because defendant's waiver of counsel in 1996 was not fully knowing, intelligent, and voluntary because he was never made aware by the court of the dangers and disadvantages of self-representation. The court denied the motion and defendant was convicted at a non-jury trial. The Iowa Court of Appeals affirmed, but the Supreme Court of Iowa reversed, holding that defendant's first plea was invalid and that a defendant who chooses to plead guilty without counsel must be warned by the court of two things to comply with the Sixth Amendment: (1) that waiving the assistance of counsel in deciding whether to plead guilty runs the risk that a viable defense will be overlooked; and (2) that by waiving his right to an attorney he will lose the opportunity to obtain an independent opinion on whether, under the facts and applicable law, it is wise to plead guilty. The Supreme Court reversed, holding that the Sixth Amendment does not require those specific admonitions to a pro se defendant. The Court said that the information a defendant must have to waive counsel intelligently is dependent on a case by case analysis, involving specific facts and law applicable to the case at hand. Applying these warnings as mandatory under the Sixth Amendment may confuse a defendant more than help him. In addition, it is the defendant's burden to prove that he did not competently and intelligently waive his right to the assistance of counsel, which the defendant in this case did not assert or prove.

Key Quote: "The warnings the Iowa Supreme Court declared mandatory might be misconstrued as a veiled suggestion that a meritorious defense exists or that the defendant could plead to a lesser charge, when neither prospect is a realistic one. If a defendant delays his plea in the vain hope that counsel could uncover a tenable basis for contesting or reducing the criminal charge, the prompt disposition of the case will be impeded, and the resources of either the State (if the defendant is indigent) or the defendant himself (if he is financially ineligible for appointed counsel) will be wasted." p.93

United States v. Dominguez Benitez, 542 U.S. 74 (2004)

Date of Decision: 6/14/2004

On Review From: 9th Circuit

Unanimous Decision: Yes

Authoring Justice: David Souter

Majority: William Rehnquist, Stevens, Sandra Day O'Connor, Anthony Kennedy, David Souter, Thomas, Ruth Bader Ginsburg, Stephen Breyer

Concurring: Antonin Scalia

Dissenting: N/A

Overview: Plain error requires defendant to show he would not have entered the plea absent the error.

Summary of Decision: In exchange for the government's dismissal of a simple possession charge, defendant pleaded guilty to conspiracy to possess controlled substances. Though such notice is required under Fed. R. Crim. P. 11(c)(3), the judge failed to tell defendant during the hearing that he could not withdraw his plea if the court did not accept the government's sentencing recommendations. After sentencing, defendant appealed to withdraw his guilty plea. Variances from the requirements of 11(c) are typically harmless error. However, because defendant failed to preserve the error by timely objection, the Court held that the plain-error standard applied. Defendant accordingly has the burden of proving that the judge's omission prejudiced his rights—not the proceedings themselves—in its "substantial and injurious effect . . . in determining the . . . verdict." The Court required a showing that, but for the error, defendant would not have entered the plea, and the result of the proceeding would have been different. Courts must look to the entire record to determine what the defendant understood.

Key Quote: "We think that burden [of establishing defendant's entitlement to relief] should not be too easy for defendants in Dominguez's position. First, the standard should . . . encourage timely objections and reduce wasteful reversals[.] . . . [I]t should respect the particular importance of the finality of guilty pleas[.] . . . [T]hese reasons are complemented by the fact, worth repeating, that the violation claimed was of Rule 11, not of due process." p.82-83

Bradshaw v. Stumpf, 545 U.S. 175 (2005)

Date of Decision: 6/13/2005

On Review From: 6th Circuit

Unanimous Decision: Yes

Authoring Justice: Sandra Day O'Connor

Majority: Sandra Day O'Connor, William Rehnquist, John Paul Stevens, Anthony Kennedy, Stephen Breyer

Concurring: David Souter, Ruth Bader Ginsburg; Clarence Thomas, Antonin Scalia

Dissenting: N/A

Overview: In determining whether a plea is being entered into voluntarily, intelligently and knowingly, a court may usually rely on counsel's representation that the defendant is aware of the elements of the crime charged against him.

Summary of Decision: Defendant was indicted on several charges arising out of a robbery and murder, including an aggravated murder charge that made the Defendant eligible for the death penalty. The Defendant accepted a plea deal that still made him eligible for the death penalty and the Defendant was sentenced to death. The United States Court of Appeals for the Sixth Circuit determined that the Defendant's guilty plea was invalid because it had not been entered into knowingly and intelligently. More specifically, the Court of Appeals believed that the Defendant had pleaded guilty to aggravated murder without "understanding that specific intent to cause death was a necessary element of the charge under Ohio Law." The Supreme Court, however, concluded that the Court of Appeals findings were without support. The Court agreed the guilty plea standard is not met when a defendant pleads guilty to a crime without having been informed of the crime's elements. In this case, however, the Court found that the Defendant had been properly informed by his attorney prior to pleading guilty. The Court pointed to the record, where the Defendant's attorneys represented that the Defendant was aware of the elements of his aggravated murder charge, which the Defendant confirmed to be accurate. The Court then held that when a defendant is represented by competent counsel, the court may usually rely on that counsel's assurance that the defendant has been properly informed of the nature of the elements of the charge to which he is pleading guilty.

Key Quote: "While the court taking a defendant's plea is responsible for ensuring a record adequate for any review that may be later sought, the United States Supreme Court has never held that the judge must himself explain the elements of each charge to the defendant on the record. Rather, the constitutional prerequisites of a valid plea may be satisfied where the record accurately reflects that the nature of the charge and the elements of the crime were explained to the defendant by his own, competent counsel." p.183

Bradshaw v. Stumpf, 545 U.S. 175 (2005)

Date of Decision: 6/13/2005

On Review From: 6th Circuit

Unanimous Decision: Yes

Authoring Justice: Sandra Day O'Connor

Majority: William Rehnquist, John Paul Stevens, Sandra Day O'Connor, Anthony Kennedy, Stephen Breyer

Concurring: David Souter, Ruth Bader Ginsburg; Clarence Thomas, Antonin Scalia

Dissenting: N/A

Overview: A defendant's plea is considered knowing if the nature of the charge and the essential elements are explained by their competent counsel.

Summary of Decision: After a robbery during which Defendant shot one victim in the head and potentially murdered another, Defendant was charged with aggravated murder, attempted aggravated murder, aggravated robbery, and two counts of grand theft. The indictment also listed four "specifications" that would make Defendant eligible for the death penalty. Defendant pleaded guilty to aggravated murder and aggravated attempted murder. The State agreed to drop the other charges. However, Defendant also pleaded guilty to one of the specifications, making him eligible for the death penalty. Defendant was sentenced to death. Defendant at all times maintained that he did not murder the second victim. Later, at one of his co-conspirator's trial, the State introduced evidence that the co-conspirator was the actual shooter. When the defendant used this to challenge his guilty plea, the State introduced evidence to cast doubt on the evidence. Defendant eventually filed a federal habeas corpus petition. The Sixth Circuit found that his guilty plea was not entered knowingly and intelligently, reasoning that it could not be if Defendant maintained that he was innocent. The court also found that Defendant's Due Process rights were violated when the State convicted both Defendant and his co-conspirator using inconsistent theories. The Supreme Court reversed on both grounds, finding that all that is required to satisfy constitutional requirements is that the Defendant's competent counsel explain the nature of the charge and the elements of the crime. Further, it was not a violation of Defendant's Due Process rights when the State used inconsistent theories to convict both defendants, reasoning that state law also allows co-conspirators to be sentenced to death, so the exact identity of the shooter was immaterial. The Court did, however, remand to consider whether this conduct affected Defendant's sentencing.

Key Quote: "Rather, the constitutional prerequisites of a valid plea may be satisfied where the record accurately reflects that the nature of the charge and the elements of the crime were explained to the defendant by his own, competent counsel." p.183

Halbert v. Michigan, 545 U.S. 605 (2005)

Date of Decision: 6/23/2005

On Review From: Michigan Supreme Court

Unanimous Decision: No

Authoring Justice: Ruth Bader Ginsburg

Majority: Ruth Bader Ginsburg, John Paul Stevens, Sandra Day O'Connor, Anthony Kennedy, Stephen Breyer, David Souter

Concurring: N/A

Dissenting: Clarence Thomas, Antonin Scalia, William Rehnquist

Overview: States must appoint counsel to represent indigent defendants in a proceeding which resembles first tier appellate review.

Summary of Decision: In 1994, Michigan voters passed a constitutional amendment making defendants who have pleaded guilty or nolo contendere receive leave of court to appeal their conviction. After this, state judges began denying appellate-appointed counsel to indigent defendants convicted by plea. The Defendant in this case was convicted by plea, having pleaded nolo contendere and sought appointed counsel to assist him in applying for leave to appeal. The state trial court and the Michigan Court of Appeals denied his request. The Michigan Supreme Court denied review. The Court vacated the decision of the Michigan Court of Appeals, holding that counsel must be appointed for indigent defendants to assist in applying for appeal. The Court based this decision on the Due Process and Equal Protection Clauses. The Court also cited prior case law, which holds that in first appeals, as of right, states must appoint counsel to represent indigent defendants. The Court noted, however, that states are not required to appoint counsel for indigent defendants in discretionary appeals. The court looked to whether the process entailed an adjudication on the merits and whether the process of applying for leave to appeal resembled traditional first-tier review. The Court subsequently held that Michigan must appoint counsel for defendants seeking leave to appeal.

Key Quote: "Accordingly, we hold that the Due Process and Equal Protection Clauses require the appointment of counsel for defendants, convicted on their pleas, who seek access to first-tier review in the Michigan Court of Appeals." p.610

Shepard v. United States, 544 U.S. 13 (2005)

Date of Decision: 3/7/2005

On Review From: 1st Circuit

Unanimous Decision: No

Authoring Justice: David Souter

Majority: David Souter, John Paul Stevens, Antonin Scalia, Ruth Bader Ginsburg, Clarence Thomas

Concurring: Clarence Thomas

Dissenting: Sandra Day O'Connor, Anthony Kennedy, Stephen Breyer

Overview: Courts cannot use police report or complaint application to determine prior plea convictions satisfied ACCA.

Summary of Decision: Defendant pleaded guilty to unlawful possession of a firearm. The government sought to increase his sentence from between thirty and thirty-seven months to the fifteen-year mandatory minimum under the Armed Career Criminal Act ("ACCA") because defendant had four prior convictions entered upon guilty pleas. The government asked the district court to consider police reports to determine whether defendant's earlier pleas necessarily admitted and supported conviction for generic burglary, but the court refused. With circuits splitting on the issue, the Court determined that sentencing courts are not permitted to use police reports or complaint applications in reaching their decision. Courts must adhere to the requirement that any sentence under the ACCA depends upon a showing that prior convictions "necessarily" involved facts equating to generic burglary. Consistent with the Court's holding in Taylor v. United States, courts are limited to examining the statutory definition of the prior offenses, charging documents, jury instructions, written plea agreements, transcripts of plea colloquy, convictions, explicit factual findings by the trial judge to which the defendant agreed, and comparable judicial records. In its search for more competent evidence and a new national standard for applying the ACCA, the government's proposition impermissibly extends Taylor.

Key Quote: "The rule of reading statutes to avoid serious risks of unconstitutionality . . . therefore counsels us to limit the scope of judicial factfinding on the disputed generic character of a prior plea, just as Taylor constrained judicial findings about the generic implication of a jury's verdict." p.25–26

United States v. Booker, 543 U.S. 220 (2005)

Date of Decision: 1/12/2005

On Review From: 7th Circuit

Unanimous Decision: No

Authoring Justice: (1) John Paul Stevens (2) Stephen Breyer

Majority: (1) John Paul Stevens, Antonin Scalia, David Souter, Ruth Bader Ginsburg, Clarence Thomas. (2) Stephen Breyer, William Rehnquist, Sandra Day O'Connor, Anthony Kennedy, Ruth Bader Ginsburg.

Concurring: N/A

Dissenting: (1) William Rehnquist, Sandra Day O'Connor, Anthony Kennedy, Stephen Breyer. (2) John Paul Stevens, Antonin Scalia, David Souter, Clarence Thomas.

Overview: Making federal sentencing guidelines advisory to address 6th Amendment violations.

Summary of Decision: In two separate cases, defendants were charged with drug possession and distribution charges. Under the Federal Sentencing Guidelines, which were mandatory at the time, the first defendant's sentence was increased by 8 years based on a finding in a post-conviction hearing of the trial judge that the defendant possessed more cocaine that the jury found. Instead of a maximum 21 year sentence, the judge sentenced defendant to 30 years in prison. This sentence was overturned on appeal to the 7th Circuit, as they held that the statutory maximum is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant. The 7th Circuit remanded, giving the district court the choice between resentencing the defendant consistent with the findings of the jury, or holding a sentencing hearing before a new jury. The State appealed. The second defendant would have been sentenced to a maximum of 5-6 years based on the jury's findings. However, the trial judge found additional facts that would have increased his sentence to 15-16 years based on the Sentencing Guidelines, but the judge refused to apply the Sentencing Guidelines' enhancement provisions. The State appealed. The Court relied on their previous holding in Apprendi v. New Jersey, in stating that, "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." The Court held that when a judge makes additional findings that contribute to the increase of a sentence under the mandatory Sentencing Guidelines system, the defendant's 6th Amendment rights are violated. To rectify this issue, the Court held that the provisions of the Sentencing Guidelines that made them mandatory were unconstitutional and the Guidelines therafter became advisory.

Key Quote: "We do not doubt that Congress, when it wrote the Sentencing Act, intended to create a form of mandatory Guidelines system. But, we repeat, given today's constitutional holding, that is not a choice that remains open. Hence we have examined the statute in depth to determine Congress' likely intent in light of today's holding. And we have concluded that today's holding is fundamentally inconsistent with the judge-based sentencing system that Congress enacted into law. In our view, it is more consistent with Congress' likely intent in enacting the Sentencing Reform Act to preserve important elements of that system while severing and excising two provisions [...]" p.265

Puckett v. United States, 556 U.S. 129 (2009)

Date of Decision: 3/25/2009

On Review From: 5th Circuit

Unanimous Decision: No

Authoring Justice: Antonin Scalia

Majority: John Roberts, Antonin Scalia, Anthony Kennedy, Clarence Thomas, Ruth Bader Ginsburg, Stephen Breyer, Samuel Alito

Concurring: N/A

Dissenting: John Paul Stevens, David Souter

Overview: A forfeited claim that Government breached a plea agreement is subject to plain-error review.

Summary of Decision: Defendant agreed to cooperate with the government and pleaded guilty to armed bank robbery and use of a firearm during a crime of violence. In exchange, the government agreed to apply a three-level reduction and place defendant's sentence at the lowest end of the applicable level under the federal Sentencing Guidelines. While awaiting sentencing, defendant aided a fellow inmate in a scheme to defraud the Postal Service. The government consequently reneged. Defendant never objected that the government was violating its obligations under the plea agreement. Despite forfeiting the claim, he raised the issue on appeal. The Court held that the plain-error standard of review from Fed. R. Crim. P. 52(b) applies to forfeited claims and reiterated its four prongs of analysis. A defendant must show that (1) a clear and obvious legal error exists; (2) such error has not been affirmatively waived; (3) such error affected his substantial rights; and (4) such error seriously affected the fairness, integrity, or public reputation of judicial proceedings. The Court not only emphasized that defendant failed to preserve the issue by objection, but also rejected defendant's arguments that the government's breach of the agreement retroactively made his guilty plea unknowing and involuntary.

Key Quote: "Application of plain-error review in the present context is consistent with our cases[.] . . . While we recognize that the Government's breach of a plea agreement is a serious matter, "the seriousness of the error claimed does not remove consideration of it from the ambit of the Federal Rules of Criminal Procedure." p.143

Padilla v. Kentucky, 582 U.S. 356 (2010)

Date of Decision: 3/31/2010

On Review From: Kentucky Supreme Court

Unanimous Decision: No

Authoring Justice: John Paul Stevens

Majority: Stephen Breyer, Ruth Bader Ginsburg, Anthony Kennedy, Sonia Sotomayor, John Paul Stevens,

Concurring: Samuel Alito, John Roberts

Dissenting: Antonin Scalia, Clarence Thomas

Overview: Court holds counsel must inform their client whether their plea carries a risk of deportation.

Summary of Decision: Defendant, a lawful permanent resident of the U.S. for more than 40 years, claimed that his counsel failed to advise him of the immigration consequences of his plead of guilty to narcotics charges. According to Padilla, his counsel informed him that he "did not have to worry about immigration status since he had been in the country so long." In fact, his guilty plea made deportation "virtually mandatory." Padilla argued that he would have proceeded to trial had he not received this incorrect information from counsel. The Supreme Court noted that before deciding to plead guilty, a defendant is entitled to effective assistance of counsel. The Court went on to hold that counsel must inform their client whether their plea carries a risk of deportation.

Key Quote: "It is our responsibility under the Constitution to ensure that no criminal defendant—whether a citizen or not—is left to the 'mercies of incompetent counsel.' To satisfy this responsibility, we now hold that counsel must inform her client whether his plea carries a risk of deportation. Our longstanding Sixth Amendment precedents, the seriousness of deportation as a consequence of a criminal plea, and the concomitant impact of deportation on families living lawfully in this country demand no less." p. 374

Freeman v. United States, 564 U.S. 522 (2011)

Date of Decision: 6/23/2011

On Review From: 6th Circuit

Unanimous Decision: No

Authoring Justice: Anthony Kennedy

Majority: Anthony Kennedy, Ruth Bader Ginsburg, Stephen Breyer, Elena Kagan

Concurring: Sonia Sotomayor

Dissenting: John Roberts, Antonin Scalia, Clarence Thomas, Samuel Alito

Overview: Defendants may be eligible for sentence reductions if the Guidelines are amended, regardless of a plea agreement.

Summary of Decision: Defendant entered into a plea agreement, under which he would plead guilty to all charges. The Government agreed, in exchange, that a sentence of 106 months would be the appropriate sentence. This was the minimum suggested by the Guidelines range of 46-57 months, along with a consecutive mandatory minimum for possessing a firearm in furtherance of a drug-trafficking crime. The District Court accepted the plea agreement and, considering the advisory guidelines, imposed the 106-month sentence. Three years later, the Sentencing Commission issued a retroactive amendment to the guidelines that reduced Defendant's sentencing range to 37-46 months. Defendant moved for a sentence reduction. The District Court denied the motion, and the Sixth Circuit affirmed. In a plurality opinion, the Court reversed. The Court stated that, even when a plea agreement is involved, the District Court judge is still obligated to give due consideration to the applicable sentencing guidelines range. When sentences are imposed in light of the guidelines, judges may consider a motion to reduce a sentence, even when a plea agreement was involved. Here, the transcript makes in clear that District Court based its sentencing decision on the Guidelines range. Therefore, Defendant is eligible for relief.

Key Quote: "Even when a defendant enters into an 11(c)(1)(C) agreement, the judge's decision to accept the plea and impose the recommended sentence is likely to be based on the Guidelines; and when it is, the defendant should be eligible to seek § 3582(c)(2) relief. This straightforward analysis would avoid making arbitrary distinctions between similar defendants based on the terms of their plea agreements. And it would also reduce unwarranted disparities in federal sentencing, consistent with the purposes of the Sentencing Reform Act." p.534

Premo v. Moore, 562 U.S. 115 (2011)

Date of Decision: 1/19/2011

On Review From: 9th Circuit

Unanimous Decision: Yes

Authoring Justice: Anthony Kennedy

Majority: John Roberts, Antonin Scalia, Anthony Kennedy, Clarence Thomas, Ruth Bader Ginsburg, Stephen Breyer, Samuel Alito, Sonia Sotomayor

Concurring: Ruth Bader Ginsburg

Dissenting: N/A

Overview: A lawyer does not provide ineffective assistance by failing to suppress a confession prior to accepting a plea deal if suppression would not have affected the outcome.

Summary of Decision: Defendant pled no contest to felony murder on advice of counsel in exchange for the minimum sentence, 25 years. After the state court denied his postconviction relief, Defendant renewed his claim, filing a petition for habeas corpus in federal court. Defendant

argued that his attorney's failure to file a motion to suppress for his confession to police constituted ineffective assistance of counsel because the confession was obtained unconstitutionally. The District Court denied his petition, stating the suppression would not have made a difference. The Ninth Circuit reversed, holding that the state court decision denying the postconviction relief was an unreasonable application of the Strickland rule regarding ineffective assistance of counsel. The Supreme Court reversed the Ninth Circuit, holding that the state court's finding that any "motion to suppress would have been fruitless" was not an unreasonable application of clearly established law under Strickland. The Court restated the Strickland rule, holding that to establish ineffective assistance of counsel, "a defendant must show both deficient performance by counsel and prejudice." Here, counsel for defendant stated that suppression would serve little purpose in light of another confession by defendant and the fact that both his brother and accomplice's girlfriend could testify. The Court held that the state court was not unreasonable to accept this explanation. The Court held that when reviewing a habeas claim based on choices made by counsel at the plea bargaining stage, strict adherence to the Strickland standard is essential for two reasons: (1) the potential for distortion and imbalance in a hindsight perspective is high, and the record at the pretrial stage is scarce compared to post-trial; (2) ineffective assistance claims that lack the necessary basis can bring instability to the plea bargaining process. The possibility that a plea can be undone after a court second-guesses counsel's decisions can lead prosecutors to be less likely to engage in plea bargaining as a whole. Because the state court was not unreasonable in its application of the law, Defendant was not entitled to post-conviction relief.

Key Quote: "Acknowledging guilt and accepting responsibility by an early plea respond to certain basic premises in the law and its function. Those principles are eroded if a guilty plea is too easily set aside based on facts and circumstances not apparent to a competent attorney when actions and advice leading to the plea took place. Plea bargains are the result of complex negotiations suffused with uncertainty, and defense attorneys must make careful strategic choices in balancing opportunities and risks." p.124

Lafler v. Cooper, 566 U.S. 156 (2012)

Date of Decision: 3/21/2012

On Review From: 6th Circuit

Unanimous Decision: No

Authoring Justice: Anthony Kennedy

Majority: Anthony Kennedy, Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor, Elena Kagan

Concurring: N/A

Dissenting: John Roberts, Antonin Scalia, Clarence Thomas, Samuel Alito

Overview: Defendants have a right to effective assistance of counsel that extends to the decision to reject a plea offer.

Summary of Decision: Defendant was charged with assault with intent to murder, possession of a firearm by a felon, possession of a firearm in the commission of a felony, misdemeanor possession of marijuana, and for being a habitual offender. In exchange for a guilty plea, the state offered to dismiss some charges and recommend a sentence of 51-85 months. Defendant admitted guilt and expressed to the court that he would like to accept the plea. Defendant later rejected the offer on two occasions on advice of his attorney. On the first day of trial, the state offered a much less favorable plea bargain, which defendant again rejected on advice of his counsel. After trial, Defendant was convicted on all original counts and sentenced to a mandatory minimum of 185-360 months in prison. Defendant argued on appeal that his attorney's advice to reject the pleas amounted to ineffective assistance of counsel. Under Strickland v. Washington, a defendant claiming ineffective assistance of counsel must prove the attorney provided deficient performance and that defendant suffered prejudice as a result. The Court applied this test to the situation at hand, where ineffective assistance results in rejection of a plea offer and defendant receives a more severe sentence. The Court held that in these circumstances, in order to satisfy the prejudice prong of Strickland, defendant must show that, but for the ineffective assistance of counsel, the defendant would have accepted the plea, the court would have accepted its terms, and either the conviction or sentence would have been less severe than the one imposed. The Court held that the proper relief in these circumstances is for the State to reoffer the original plea agreement and leave the sentencing discretion to the trial court.

Key Quote: "Even if the trial itself is free from constitutional flaw, the defendant who goes to trial instead of taking a more favorable plea may be prejudiced from either a conviction on more serious counts or the imposition of a more severe sentence." p.166

Missouri v. Frye, 566 U.S. 134 (2012)

Date of Decision: 3/21/2012

On Review From: Missouri Court of Appeals

Unanimous Decision: No

Authoring Justice: Anthony Kennedy

Majority: Anthony Kennedy, Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor, Elena Kagan

Concurring: N/A

Dissenting: John Roberts, Antonin Scalia, Clarence Thomas, Samuel Alito

Overview: Defense counsel has a duty to communicate plea offers from the State to the Defendant,.

Summary of Decision: Defendant was charged with driving with a revoked license, for the third time. The State offered him two separate plea deals, one offering 10 days jail time and one offering a 90 day sentence, of which his attorney did not inform him. The offers expired. Defendant pled guilty at his preliminary hearing without an underlying plea agreement, and was sentenced to three years in prison. Defendant appealed on the grounds that his attorney's failure to inform him of the plea offers constituted ineffective assistance. The Court held that defense counsel had a duty to communicate offers from the State to the Defendant, and not doing so constituted ineffective assistance. However, the Court held that the lower court erred in not requiring Defendant to show both a reasonable probability that he would have accepted the lapsed plea and a reasonable probability that the State would have honored the plea and the trial court would have accepted it under Strickland. Because Defendant did not show the latter, the Court vacated the lower court judgment and remanded to the Missouri Court of Appeals to determine if there was proof that the State would have honored the plea and the trial court would have accepted it.

Key Quote: "The reality is that plea bargains have become so central to the administration of the criminal justice system that defense counsel have responsibilities in the plea bargain process, responsibilities that must be met to render the adequate assistance of counsel that the Sixth Amendment requires in the criminal process at critical stages. Because ours 'is for the most part a system of pleas, not a system of trials,' Lafler, post, at 11, it is insufficient simply to point to the guarantee of a fair trial as a backstop that inoculates any errors in the pretrial process. 'To a large extent . . . horse trading [between prosecutor and defense counsel] determines who goes to jail and for how long. That is what plea bargaining is. It is not some adjunct to the criminal justice system; it is the criminal justice system.'" p.143-144

"In a case, such as this, where a defendant pleads guilty to less favorable terms and claims that ineffective assistance of counsel caused him to miss out on a more favorable earlier plea offer, Strickland's inquiry into whether 'the result of the proceeding would have been different,' requires looking not at whether the defendant would have proceeded to trial absent ineffective assistance but whether he would have accepted the offer to plead pursuant to the terms earlier proposed." p.148

Burt v. Titlow, 571 U.S. 12 (2013)

Date of Decision: 11/5/2013

On Review From: 6th Circuit

Unanimous Decision: Yes

Authoring Justice: Samuel Alito

Majority: Samuel Alito, John Roberts, Antonin Scalia, Anthony Kennedy, Clarence Thomas, Stephen Breyer, Sonia Sotomayor, Elena Kagan

Concurring: Sonia Sotomayor, Ruth Bader Ginsburg

Dissenting: N/A

Overview: Federal courts reviewing state court decisions in habeas proceedings must use a "doubly deferential" standard of review and give both the state court and the defense counsel the benefit of the doubt.

Summary of Decision: Defendant reached an agreement with the State to plead guilty to manslaughter in exchange for testifying against his codefendant. The state court approved his plea deal. Three days before his codefendant's trial was to begin, Defendant retained new counsel and sought a lower sentence in exchange for his testimony. The State refused, and Defendant withdrew his plea, acknowledging the consequences of this action. This reinstated his original first-degree murder charge. Defendant went to trial and was found guilty of second-degree murder, receiving a sentence of 20 to 40 years. On direct appeal, Defendant argued that his counsel had not adequately prepared for trial and was, therefore, ineffective. The Michigan Court of Appeals disagreed and found that Defendant's counsel had acted reasonably. Defendant then filed a federal habeas petition. Applying the Antiterrorism and Effective Death Penalty Act's deferential standard of review, the federal district court found the state court's decision reasonable and denied relief. The Sixth Circuit reversed, finding Defendant's counsel had been ineffective. The Supreme Court reversed, stating that federal courts reviewing state court decisions on ineffective assistance of counsel claims must use a "doubly deferential" standard of review that gives both the state court and the defense attorney the benefit of the doubt.

Key Quote: "When a state prisoner asks a federal court to set aside a sentence due to ineffective assistance of counsel during plea bargaining, our cases require that the federal court use a ‘"doubly deferential"' standard of review that gives both the state court and the defense attorney the benefit of the doubt." p.15

United States v. Davila, 569 U.S. 597 (2013)

Date of Decision: 6/13/2013

On Review From: 11th Circuit

Unanimous Decision: Yes

Authoring Justice: Ruth Bader Ginsburg

Majority: John Roberts, Anthony Kennedy, Ruth Bader Ginsburg, Stephen Breyer, Samuel Alito, Sonia Sotomayor, Kagan

Concurring: Antonin Scalia,

Clarence Thomas

Dissenting: N/A

Overview: Magistrate judge's improper participation in plea discussion does not warrant automatic vacatur.

Summary of Decision: Defendant pleaded guilty to conspiracy to defraud the United States in exchange for the dismissal of thirty-three other counts. Both parties agreed that the magistrate judge clearly violated Fed. R. Crim. P. 11(c)(1) by participating improperly in the plea negotiations and encouraging defendant that pleading guilty was his best option. Interpreting Fed. R. Crim. P. 11(h)'s mandate that any variance from the plea-colloquy rules must be considered harmless error if it does not affect the defendant's substantial rights, the Court held that automatic vacatur was not appropriate here or generally. Errors or omissions in Rule 11 instructions are procedural and must be assessed according to the harmless-error standard. A reviewing court must evaluate the error in light of the full record at the trial level. Defendant showed no prejudice. Defendant stated under oath that he was fully advised of his rights and had not been pressured or threatened to enter the plea. He instead argued that his plea was a strategic attempt to show the court how "vindictive" the prosecutor was. Defendant never even mentioned the magistrate's comments at trial. Consequently, defendant did not satisfy his burden of showing that, but for the misconduct, he would not have pled guilty.

Key Quote: "[N]either Rule 11 itself, nor the Advisory Committee's commentary on the Rule[,] singles out any instruction as more basic than others. And Rule 11(h), specifically designed to stop automatic vacaturs, calls for across-the-board application of the harmless-error prescription (or, absent prompt objection, the plain-error rule)." p.610

Kernan v. Cuero, 583 U.S. 1 (2017)

Date of Decision: 11/6/2017

On Review From: 9th Circuit

Unanimous Decision: Yes

Authoring Justice: Per Curium

Majority: John Roberts, Anthony Kennedy, Clarence Thomas, Ruth Bader Ginsburg, Stephen Breyer, Samuel Alito, Sonia Sotomayor, Elena Kagan, Neil Gorsuch

Concurring: N/A

Dissenting: N/A

Overview: Supreme Court precedent does not entitle a defendant to specific performance of an original plea agreement when the state amends their complaint with permission of the trial court.

Summary of Decision: Defendant pled guilty to two felonies: (1) causing bodily injury while driving under the influence of a drug, and (2) unlawful possession of a firearm. Under that guilty plea, defendant could have been sentenced to a maximum of 14 years and 4 months in prison, a $10,000 fine, and 4 years probation. However, in his form entering the guilty plea, defendant admitted he had previously served time for residential burglary and assault with a deadly weapon. These two prior offenses qualified as predicate offenses under California's "three strike" law. Upon discovery of this information, the State asked the Court for permission to amend the criminal complaint. The trial court granted the motion and simultaneously allowed Defendant to withdraw his plea to eliminate any prejudice against him. California amended the complaint, charging Defendant with one felony (causing bodily injury while driving under the influence of a drug) and alleging two prior strikes. Defendant entered a new guilty plea and was sentenced to a stipulated term of 25 years to life in prison. Defendant filed a petition for federal habeas relief after exhausting state remedies, alleging breach of the plea agreement by the State's amendment. The District Court for the Southern District of California affirmed, but the Ninth Circuit Court of Appeals reversed. The Ninth Circuit held that Defendant was entitled to specific performance of his original plea agreement and the trial court "acted contrary to clearly established Supreme Court law" in refusing to enforce the terms of the original agreement. The Supreme Court reversed, holding that there was no holding of the Court that required specific performance of an original plea agreement as a remedy for broken prosecutorial promise. Because no Supreme Court decision entitled Defendant to the relief he sought, the decision of the state court could not be held to be contrary to "clearly established Supreme Court law".

Key Quote: "Where, as here, none of our prior decisions clearly entitles Cuero to the relief he seeks, the 'state court's decision could not be "contrary to" any holding from this Court.' Finally, as we have repeatedly pointed out, 'circuit precedent does not constitute "clearly established Federal law, as determined by the Supreme Court."' Nor, of course, do state-court decisions, treatises, or law review articles. For all these reasons, we conclude that the Ninth Circuit erred when it held that 'federal law' as interpreted by this Court 'clearly' establishes that specific performance is constitutionally required here." p.8-9

Lee v. United States, 582 US 357 (2017)

Date of Decision: 6/23/2017

On Review From: 6th Circuit

Unanimous Decision: No

Authoring Justice: John Roberts

Majority: John Roberts, Anthony Kennedy, Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor, Elena Kagan

Concurring: N/A

Dissenting: Clarence Thomas, Samuel Alito

Overview: Ineffective counsel can still prejudice defendant even if loss at trial is highly likely.

Summary of Decision: Defendant was indicted for one count of possessing ecstasy with intent to distribute. As a South Korean immigrant, defendant feared conviction would affect his status as a lawful permanent resident. Defendant's counsel repeatedly explained that the Government would not deport him if he pleaded guilty, and defendant complied. However, since possession with intent to distribute is an aggravated felony under the Immigration and Nationality Act, conviction subjected defendant to mandatory deportation. Defendant moved to vacate the conviction because of ineffective assistance of counsel. The Court granted the motion because both elements discussed in Strickland v. Washington were satisfied. Counsel fell below an objective standard of reasonableness and caused such prejudice to defendant that—but for the error—he would not have pleaded guilty. The inquiry is fact-specific and requires an assessment of the consequences of a conviction after trial and by plea. Even the smallest chance of success at trial may be attractive enough for a defendant to alter his decision and reject an offer to plea. For immigrant clients like defendant, preserving the right to remain in the United States may be more important than any potential jail sentence. Because trial offered less of a chance of deportation, defendant's rejection of the plea would not have been irrational.

Key Quote: "But for his attorney's incompetence, Lee would have known that accepting the plea agreement would certainly lead to deportation. Going to trial? Almost certainly. If deportation were the "determinative issue" for an individual in plea discussions, as it was for Lee; if that individual had strong connections to this country and no other, as did Lee; and if the consequences of taking a chance at trial were not markedly harsher than pleading, as in this case, that "almost" could make all the difference." p.371

Class v. United States, 583 U.S. _ (2018)

Date of Decision: 2/21/2018

On Review From: D.C. Circuit

Unanimous Decision: No

Authoring Justice: Steven Breyer

Majority: Steven Breyer, Ruth Bader Ginsburg, John Roberts, Sonia Sotomayor, Elena Kagan, Neil Gorsuch

Concurring:

Dissenting: Samuel Alito, Anthony Kennedy, Clarence Thomas

Overview: Defendant does not inherently waive right to appeal constitutional claims by entering unconditional plea.

Summary of Decision: Defendant was charged with carrying a firearm on the Grounds or in any Capital Building. After indictment, Class waived his right to counsel and represented himself. Class then failed to appear at his trial and was arrested. Facing additional charges for failing to appear that carried up to 5 years in prison, Class plead guilty in return for a recommended sentence on the original charges of 0-6 months. The plea agreement did not explicitly waive Class's right to appeal based on the constitutionality of the statute of conviction. When Class lodged such an appeal, however, the government argued it had been waived. The D.C. Circuit agreed, finding that "unconditional guilty pleas that are knowing and intelligent... waive the pleading defendant['s] claims of error on appeal, even constitutional claims." The Supreme Court, however, concluded that a guilty plea by itself does not bar a federal criminal defendant from challenging the constitutionality of the statute of conviction on direct appeal, and therefore "Class did not relinquish his right to appeal the District Court's constitutional determinations simply by pleading guilty."

Key Quote: "In sum, the claims at issue here do not fall within any of the categories of claims that Class' plea agreement forbids him to raise on direct appeal. They challenge the Government's power to criminalize Class' (admitted) conduct. They thereby call into question the Government's power to 'constitutionally prosecute' him. A guilty plea does not bar a direct appeal in these circumstances."

Hughes v. United States, 138 S. Ct. 1765 (2018)

Date of Decision: 6/4/2018

On Review From: 11th Circuit

Unanimous Decision: No

Authoring Justice: Anthony Kennedy

Majority: Anthony Kennedy, Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor, Elena Kagan, Neil Gorsuch

Concurring: Sonia Sotomayor

Dissenting: John Roberts, Clarence Thomas, Samuel Alito

Overview: Defendant may be eligible for sentence reduction if there is a later, retroactive amendment to the relevant Sentencing Guidelines.

Summary of Decision: Defendant entered into a binding C plea agreement where he agreed to plead guilty to two of his original four drug and gun charges. In exchange, the government dismissed the other two charges and refrained from filing an information, which would have given the District Court formal notification of the Defendant's prior drug felonies. After accepting the agreement, the District Court sentenced the Defendant to 180 months in prison, in accordance with the government's recommendation. Two months after the Defendant was sentenced the Sentencing Commission adopted amendment 782 to the United States Sentencing Guidelines. The retroactive amendment reduced the base level by two levels for most drug offenses. In response, the Defendant filed a § 3582(c) motion for a sentence reduction under the Sentencing Reform Act of 1984. § 3582(c) authorizes a district court to reduce a defendant's sentence when the defendant had been sentenced to a term of imprisonment based on a range that was later lowered by the Commission. However, the District Court denied the Defendant's motion, stating that he was ineligible for relief because his sentence was based on his plea agreement which did not expressly rely on the Guidelines range. The Court of Appeals of the Eleventh Circuit affirmed. The question for the Supreme Court was whether a defendant who entered into a plea agreement was generally eligible for a sentence reduction if a later retroactive amendment to the relevant Sentencing Guidelines range occurred. The Supreme Court answered that question in the affirmative, holding that "a sentence imposed pursuant to a plea agreement is no exception to the general rule that a defendant's Guidelines range is both the starting point and a basis for his ultimate sentence." Only when the Guideline's range is not a "relevant part of the analytic framework the judge used to determine the sentence" is the defendant's sentence not based on the Guidelines and therefore § 3582(c) can offer no relief. The Supreme Court concluded that in this case the record showed the Guidelines sentencing range, which was later amended, was a basis for the sentence the District Court imposed. Therefore, the Defendant was eligible for a sentencing reduction.

Key Quote: "[R]elief under §3582(c)(2) should be available to permit the district court to reconsider a prior sentence to the extent the prisoner's Guidelines range was a relevant part of the framework the judge used to accept the agreement or determine the sentence. If the district court concludes that it would have imposed the same sentence even if the defendant had been subject to the lower range, then the court retains discretion to deny relief." p.1778

Garza v. Idaho, 139 S. Ct. 738 (2019)

Date of Decision: 2/27/2019

On Review From: Idaho Supreme Court

Unanimous Decision: No

Authoring Justice: Sonia Sotomayor

Majority: Sonia Sotomayor, John Roberts, Ruth Bader Ginsburg, Stephen Breyer, Elena Kagan, Brett Kavanaugh

Concurring: N/A

Dissenting: Clarence Thomas, Neil Gorsuch, Samuel Alito

Overview: Even in cases where defendants sign an appellate waiver, prejudice is presumed if their counsel fails to file a notice of appeal.

Summary of Decision: Defendant signed two plea agreements, one of which was an Alford plea and both of which included waivers of his right to appeal. After sentencing, Defendant informed his counsel he wished to appeal his conviction. His counsel did not do so, instead telling him of his waiver. The period where Defendant's appeal could be preserved ended with no notice of appeal filed. Defendant brought an ineffective assistance of counsel claim. The state courts dismissed his claim, finding that Defendant could not satisfy the prejudice prong of Strickland v. Washington. The Supreme Court held that the presumption of prejudice found in Roe v. Flores-Ortega was applicable even when a Defendant has signed an appellate waiver. The Court held that, where, as here, counsel failed to file an appeal that the Defendant otherwise would have filed, prejudice is presumed even where a Defendant has signed a waiver of their right to appeal. The Court first reasoned that Defendants who have signed a waiver do not waive every appeal available, such that signing the waiver itself was improper. Second, the Court reasoned that deciding to file a notice of appeal is a simple process that remains with the Defendant, not the Defendant's counsel. Therefore, prejudice is presumed even when a defendant has signed an appellate waiver, when counsel fails to file a notice of appeal that the defendant would have otherwise filed.

Key Quote: "[P]rejudice is presumed 'when counsel's constitutionally deficient performance deprives a defendant of an appeal that he otherwise would have taken.' Flores-Ortega, 528 U.S. 470, 484 (2000). We hold today that this final presumption applies even when the defendant has signed an appeal waiver." p.744
