

SUPERIOR COURT
of the
STATE OF DELAWARE

Jeffrey J Clark
Resident Judge

Kent County Courthouse
38 The Green
Dover, DE 19901
Telephone (302)735-2111

September 24, 2025

Mr. Dennis Kelleher, DAG
Department of Justice
102 West Water Street
Dover, DE 19904

Mr. Edward C. Gill, Esquire
Law Office of Gill, Welsh, and
Chamberla
16 N. Bedford Street
P.O. Box 824
Georgetown, DE 19947

RE: State v. Richard Bergholz, C.A. No. 2107013754

Counsel:

The Court has reviewed the Commissioner's Report and Recommendation (the "Report"), Mr. Bergholz' three objections to the Report, and the record as it pertains to Mr. Bergholz' objections. The Court requires further evidentiary context before evaluating the *Lafler v. Cooper*¹ issue raised in Mr. Bergholz' third objection. In large part, this context is necessary because Trial Counsel's affidavit does not squarely address Mr. Bergholz' contention that Trial Counsel advised Mr. Bergholz that his exposure was limited to a third offense driving under the influence conviction after a trial.

¹ 566 U.S. 156 (2012).

As a result, the Court will hold an evidentiary hearing as soon as practical to address the issues surrounding Mr. Bergholz' third objection. To avoid undue delay that would naturally accompany remanding the matter to the Commissioner for a hearing, and because the Court is charged with reviewing her decision on this objection *de novo* under Superior Court Criminal Rule 62(a)(5)(iv), the undersigned will conduct the hearing. There, the parties should be prepared to address the precise content of Trial Counsel's advice to Mr. Bergholz about the risks he faced by proceeding to trial when compared to resolving the plea as a third offense. The parties may present any other evidence pertinent to the third objection as well which could certainly include, but not be limited to, the effect of any allegedly deficient advice on Mr. Berholz' decision making.

IT IS SO ORDERED.

Very truly yours,

/s/Jeffrey J Clark
Resident Judge

cc: Trial Counsel