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Case Number 718,2014

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DESIREE A. ARICIDIACONO, et al.,	)	
Defendants-Below, Appellants,	)	
v.	)	No. 718, 2014
STATE OF DELAWARE,	)	
Plaintiff-Below, Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

STATE'S ANSWERING BRIEF

Elizabeth R. McFarlan
Chief of Appeals
ID #3759
Department of Justice
State Office Building
820 N. French Street
Wilmington, DE 19801
(302) 577-8500

DATE: June 23, 2015

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NATURE AND STAGE OF THE PROCEEDINGS

The forty-five appellants listed in this consolidated appeal, all entered guilty pleas in Sussex County Superior Court to one or more drug offenses. After an investigation by the Delaware State Police and the Department of Justice beginning in February 2014[1] revealed that some drug evidence sent to the Office of the Chief Medical Examiner ("OCME") for testing had been stolen or was missing, the Office of the Public Defender ("OPD") in May 2014 began filing motions for postconviction relief seeking to vacate the appellants' convictions for drug offenses. The motions alleged that the State had violated its obligations under *Brady v. Maryland*[2] by failing to disclose the problems and misconduct at OCME prior to conviction. Contrary to appellants' representation in their opening brief, the postconviction motions did not include a request to withdraw their guilty pleas.[3]

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[1] *See Ira Brown v. State*, 108 A.3d 1201, 1204 (Del. 2015).

[2] 373 U.S. 83 (1963).

[3] *See* Op. Br. at 1 ("the appellants filed post-conviction motions seeking to withdraw their guilty pleas"); *see, e.g., Petitioner's Motion for Post-Conviction Relief* (A13-31); *Petitioner's Motion for Post-Conviction Relief* (A43-57); *First Amended Motion for Post-Conviction Relief* (A74-124); *Petitioner's Motion for Post-Conviction Relief* (A140-157); *Petitioner's Motion for Post-Conviction Relief* (A173-186); *Petitioner's Motion for Post-Conviction Relief* (A199-213); *Petitioner's Motion for Post-Conviction Relief* (A232-245); *Petitioner's Motion for Post-Conviction Relief* (A269-283); *Petitioner's Motion for Post-Conviction Relief* (A298-316); *Petitioner's Motion for Post-Conviction Relief* (A334-347); *Motion for Post-Conviction Relief* (A361-386); *First Amended Motion for Post-Conviction Relief* (A400-450); *Petitioner's Motion for Post-Conviction Relief* (A464-481); *Petitioner's Motion for Post-Conviction Relief* (A503-516); *Petitioner's Motion for Post-Conviction Relief* (A526-540); *Petitioner's Motion for Post-Conviction Relief* (A569-582) *Petitioner's Motion for Post-Conviction Relief* (A596-610); *First*

On November 14, 2014, Sussex County Superior Court issued a Rule to Show Cause Order to the OPD to show cause why an attached list of cases (including those cases included in this appeal) should not be dismissed pursuant to Superior Court Criminal Rule 61.[4] On November 18, 2014, the OPD filed an additional identical pleading in these cases entitled *Supplement to Petitioner's Motion for Post-Conviction Relief*.[5] On December 2, 2014, Superior Court conducted a Rule to Show Cause hearing to address the cases listed in its order. By agreement of the parties, some of the listed cases were dismissed at the hearing.

Amended Motion for Post-Conviction Relief (A622-672); *Petitioner's Motion for Post-Conviction Relief* (A686-700); *Petitioner's Motion for Post-Conviction Relief* (A716-730); *Petitioner's Motion for Post-Conviction Relief* (A747-761); *First Amended Motion for Post-Conviction Relief* (A778-828); *Petitioner's Motion for Post-Conviction Relief* (A844-858); *First Amended Motion for Post-Conviction Relief* (A873-923); *Petitioner's Motion for Post-Conviction Relief* (A938-951); *Petitioner's Motion for Post-Conviction Relief* (A965-979); *Petitioner's Motion for Post-Conviction Relief* (A995-1009); *Petitioner's Motion for Post-Conviction Relief* (A1022-1036); *Petitioner's Motion for Post-Conviction Relief* (A1051-1065); *Petitioner's Motion for Post-Conviction Relief* (A1080-1098); *Petitioner's Motion for Post-Conviction Relief* (A1108-1126); *Petitioner's Motion for Post-Conviction Relief* (A1142-1155); *Petitioner's Motion for Post-Conviction Relief* (A1171-1189); *Petitioner's Motion for Post-Conviction Relief* (A1206-1219); *Petitioner's Motion for Post-Conviction Relief* (A1231-1246); *Petitioner's Motion for Post-Conviction Relief and Supplement to Petitioner's Motion for Post-Conviction Relief* (A1260-1279); *Petitioner's Motion for Post-Conviction Relief* (A1292-1310); *Petitioner's Motion for Post-Conviction Relief* (A1325-1338); *Petitioner's Motion for Post-Conviction Relief* (A1353-1366); *Petitioner's Motion for Post-Conviction Relief* (A1384-1398); *Petitioner's Motion for Post-Conviction Relief* (A1412-1426); *Petitioner's Motion for Post-Conviction Relief* (A1442-1455); *Petitioner's Motion for Post-Conviction Relief* (A1408-1482); *Petitioner's Motion for Post-Conviction Relief* (A1497-1510); *Petitioner's Motion for Post-Conviction Relief* (A1527-1541); *Petitioner's Motion for Post-Conviction Relief* (A1558-1571). In fact, the OPD originally filed hundreds of boilerplate motions without identifying the relevant drug convictions or whether the defendants had pleaded guilty, been convicted at trial or had completed their sentences.

[4] *Rule to Show Cause Order*, Graves, J. (Nov. 14, 2014) (listing 73 cases). A1810-12.

[5] A1950-60 (acknowledging that these cases involved convictions by guilty pleas and amending the postconviction motion to allege that the guilty pleas were involuntary, while continuing to ask for the same relief of vacation of conviction).

The court reserved decision on the remainder and the next day, December 3, 2014, issued an order dismissing each of the postconviction motions in the guilty plea cases.[6] Appellants timely appealed and filed an opening brief. This is the State's answering brief.

[6] *State v. Absher*, 2014 WL 7010788 (Del. Super. Ct. Dec. 3, 2014).

SUMMARY OF THE ARGUMENT

I. Appellants' claims are denied. Appellants seek to have this Court find that the theft and mishandling of drug evidence at the OCME amounts to egregious government conduct that would require all drug convictions to be vacated even where defendants charged with those drug offenses entered guilty pleas, and regardless of the facts and circumstances surrounding their individual decisions to plead guilty. This Court, however, has found that defendants who seek to have their guilty pleas vacated must establish that their pleas were involuntary. Appellants did not establish to the trial court, nor do they establish on appeal, that the specific evidence in each of their cases was tainted or that they relied upon an invalid OCME report, but for which they would have insisted on going to trial. Appellants presented Superior Court with vague and conclusory claims that the OCME problems should result in the invalidation of all drug cases. Appellants provided an insufficient basis for the court to grant relief. Thus, Superior Court did not abuse its discretion by denying their motions for postconviction relief.

STATEMENT OF FACTS[7]

Appellants pleaded guilty to one or more drug offenses in Sussex Superior Court sometime between June 2009 and February 2014. In the majority of the cases on appeal, appellants had not received an OCME report prior to pleading guilty to one or more drug offenses. Because the OCME report (or lack thereof) could not have influenced their decisions to plead guilty, the facts surrounding their guilty pleas are not included here. The relevant information regarding their charges, pleas and sentences is included in summary form only, with supporting documents as available. *See* B1-9.

In ten cases, appellants had received an OCME report prior to pleading guilty. The relevant facts regarding those ten appellants' guilty pleas are noted below.

Michael R. Brewer, charged by information with charges of drug dealing in cocaine (tier 4), tier 5 possession of cocaine, child endangerment, and 3 counts of possession of drug paraphernalia ("PDP") (A225-27), pleaded guilty to a single count of drug dealing (tier 4) (A229), after Superior Court denied his motion to suppress the drug evidence. *See* A215; B69. Superior Court sentenced him to 15

[7] Although the affidavits of probable cause and plea agreements are included in appellants' appendix, their sentences and transcripts of the plea colloquies are not. Nor have the facts of any of the individual cases been included in the opening brief. Thus, the facts included herein are abbreviated, and the additional supporting documents included in the Appendix to the State's Answering Brief.

years at Level 5, suspended after 2 years for 6 months of home confinement followed by 18 months of probation. B70-73.

In August 2013, Michael H. Drummond pleaded guilty to drug dealing (heroin); the State dismissed 2 counts of possession of a firearm during the commission of a felony ("PFDCF"), 4 counts of possession of a firearm or ammunition ("PF/ABPP"), 1 count of drug dealing, and 4 counts of PDP. A483-85; A500-01. The OCME report had been completed a month prior to the entry of the plea. B12. Superior Court sentenced Drummond to 15 years at Level V, suspended after 1 year for 18 months of probation. B138-43.

In December 2012, Bryan W. Evans pleaded guilty to drug dealing (cocaine) and possession of a deadly weapon by a person prohibited ("PDWBPP"), resolving 2 criminal cases. A524-25; B144-45. The OCME report had issued in May 2012. B146-48. The State dismissed additional charges of receiving a stolen firearm, 2 counts of drug dealing, tampering with evidence, and PDP. A518; B144. Superior Court accepted the plea and sentenced Evans for drug dealing to 25 years at Level V, suspended after 3 years for 6 months of home confinement followed by 18 months of probation, and 5 years in prison for the weapons offense. B149-52.

In August 2011, Benjamin L. Greene pleaded guilty to possession with intent to deliver ("PWITD") cocaine, maintaining a vehicle, resisting arrest and 2 violations of probation ("VOP"). B235-50. The State dismissed the remaining 5

counts of the indictment and an additional VOP. A713-14. The OCME report was issued shortly before the plea. B232. Superior Court sentenced Greene as an habitual offender to 3 years at Level V for PWITD; to 3 years at Level V, suspended for 1 year and successful completion of residential treatment, then 18 months of aftercare for the maintaining a vehicle offense; and to 2 years at Level V suspended for 18 months of concurrent probation. B251-55. For his VOPs, Greene received 5 years in prison, suspended for 18 months concurrent probation and he was discharged as unimproved from the other. B228-31. Thus, Greene received only 3 years of unsuspended prison time for 3 felony convictions and 3 VOPs.

In June 2013, Marquis A. Hembree pleaded guilty to drug dealing + AF (heroin, tier 2) and first degree reckless endangering, resolving 2 pending cases. A772-73; B292-97. The OCME report had been completed in May 2013. B277. Pursuant to the plea agreement, the State dismissed the remaining charges in 2 cases, including PFDCF, PFBPP, aggravated menacing, possession + AF (tier 3), possession of marijuana and PDP. A762; B275-76. Superior Court sentenced Hembree for the drug dealing to 15 years at Level V suspended after 2 years followed by 18 months of probation, deferred for Boot Camp and aftercare. B292-97. For the reckless endangerment offense, the court sentenced him to 5 years suspended for 18 months of concurrent probation. B293. After the Boot Camp

Diversion program was closed, the court modified Hembree's sentence to the lesser included offense of drug dealing (heroin, tier 2) (no AF) to 15 years suspended for 8 months of home confinement followed by 18 months of probation. Thus, having been charged with weapons and drug dealing, Hembree received a plea to Boot Camp Diversion.

In February 2014, Eric L. Howell pleaded guilty at Fast Track to a single count of drug dealing + AF (heroin, tier 2) and admitted to a VOP for his 2009 PWITD cocaine conviction. A841. Howell also acknowledged that he was an habitual offender under 11 *Del.* § 4214(a). A841-42. Pursuant to the plea agreement, the State dismissed possession of heroin +AF (tier 3), 2 counts of drug dealing (heroin, tier 2), second degree conspiracy, and PDP. A829. The OCME testing was completed in December 2013, prior to the entry of his guilty plea. B305-06. Superior Court sentenced Howell as an habitual offender to 12 years in prison for drug dealing followed by 18 months probation for the VOP. Howell was facing a possible life sentence. A842; B302-04; B307-10.

In September 2013, James C. McNeill pleaded guilty at case review to possession of cocaine (tier 1) + AF and possession of Xanax + AF. A1048; B387-96. The State agreed to dismiss the other charges in the indictment and, for the purposes of this plea agreement only, not to seek to have McNeill declared an habitual offender pursuant to 11 *Del. C.* § 4214(b). A1048. The OCME report

was issued in July 2013, prior to the plea and sentencing. B386. Superior Court sentenced McNeill to a total of 6 years at Level 5 suspended after 5 years and Key or Greentree Program for 18 months of probation. B397-400. McNeill avoided a mandatory life sentence by accepting the State's plea offer.

In January 2012, Shaquill D. Norwood pleaded guilty to 2 counts of delivery of cocaine and the lesser-included offense of attempted burglary third degree, resolving 2 criminal cases. A1105. And in exchange, the State entered a *nolle prosequi* on all the remaining charges, including attempted first degree robbery, felony theft, aggravated menacing, possession of a deadly weapon during the commission of a felony, a third count of delivery of cocaine, and reckless endangerment second degree. A1105. The OCME testing had been completed in October 2011. B412-14. Superior Court sentenced Norwood to a total of 23 years at Level 5 suspended for 1 year of residential treatment, followed after successful completion by 18 months of probation and aftercare; 10 years Level 5 suspended for 18 months Level 3. B415-19.

In April 2012, Eltoria L. Thompson pleaded guilty to drug dealing (cocaine, tier 4), in exchange for which the State dismissed other charges, including possession of cocaine (tier 3) + AF, aggravated possession (cocaine, tier 5), and PDP. A1322. The OCME report was issued in March 2012. B477-79. Superior Court sentenced Thompson to 15 years in prison, suspended after 2 years

(minimum mandatory) for 6 months of home confinement followed by 18 months of probation. The sentence was deferred for Boot Camp. B480-85. The sentence was later modified and Thompson received credit for the time spent in Boot Camp. B486-90.

In May 2013, Joshua A. Ward pleaded guilty to drug dealing (methamphetamine) and conspiracy third degree (as a lesser included offense). A1381; B499-508. In exchange, the State dismissed charges of possession of methamphetamine without a prescription + AF, 3 counts of endangering the welfare of a child, and 6 counts of PDP. A1367. The OCME testing was completed in April 2013. B498. Superior Court sentenced Ward to a total of 9 years at Level 5, suspended after successful completion of the Key Program for 1 year of residential treatment followed by 18 months of probation and aftercare. B509-14.

I. THE SUPERIOR COURT PROPERLY DENIED APPELLANTS' MOTIONS FOR POSTCONVICTION RELIEF AFTER FINDING THEIR GUILTY PLEAS TO HAVE BEEN VOLUNTARY.

Question Presented

Whether Superior Court abused its discretion in denying appellants' claims of involuntary pleas presented in their amended motions for postconviction relief.

Standard and Scope of Review

The Superior Court's denial of postconviction relief is reviewed for abuse of discretion.[8] Nevertheless, this Court reviews the record to determine whether competent evidence supports the Superior Court's findings of fact and whether its conclusions of law are not erroneous.[9] This Court reviews the Superior Court's decision whether to grant or deny a request for an evidentiary hearing for an abuse of discretion.[10]

[8] *Zebroski v. State*, 822 A.2d 1038, 1043 (Del. 2003).

[9] *Id.*; *Outten v. State*, 720 A.2d 547, 551 (Del. 1998); *Dawson v. State*, 673 A.2d 1186, 1196 (Del. 1996).

[10] *See Rodriguez v. State*, 109 A.3d 1075, 1081 (Del. 2015) (applying an abuse of discretion standard); *Getz v. State*, 2013 WL 5656208, at *1 (Del. Oct. 15, 2013) ("Rule 61 does not mandate the scheduling of an evidentiary hearing in every case, but, rather, leaves it to the Superior Court to determine whether an evidentiary hearing is needed."); *Weedon v. State*, 750 A.2d 521, 527 (Del. 2000) (citing Del. Super. Ct. Crim. R. 61(h)(1)).

Merits[11]

In their motions and amended motions for postconviction relief, appellants presented the following claims: (1) during the time the appellants' cases were pending, "the State failed to disclose to [appellants] that there was ongoing governmental misconduct in the State's crime laboratory," thereby violating appellants' rights to impeachment evidence under *Brady v. Maryland*;[12] and (2) the appellants' guilty pleas "must be deemed involuntary due to the State's failure to disclose evidence of government misconduct."[13] Superior Court dismissed the motions after consideration of appellants' pleadings and a Rule to Show Cause hearing.[14]

Superior Court specifically found that "the pilfering or stealing of some of the drugs that passed through the [OCME] by an unknown individual is not the type of evidence that falls into the egregious conduct noted in the cases argued by

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[11] Although included on the Notice of Appeal in this consolidated case, no specific briefing or any facts pertaining to the following case numbers have been included in the opening brief or accompanying appendix. Therefore, any claims based on those case numbers have been waived on appeal: 1302011795 (Justin Battaglino), 1208005369 (Michael Drummond), 1202008240 (Christine Fox), 1002000292 (Nicole Fulmer), 1310009560 (William Hutson); 1301021440 (James Sheppard). *See Murphy v. State*, 632 A.2d 1150, 1151-53 (Del. 1993). To the extent the Court disagrees, the State's arguments apply to all those cases as well.

[12] *See, e.g.,* A14; A44; A74; A141; A174; A200; A233; A270; A299; A335; A361; A400; A465; A504; A527; A570; A597; A622; A687; A717; A748; A778; A845; A873; A939; A966; A996; A1023; A1052; A1081; A1109; A1043; A1172; A1207; A1232; A1261; A1293; A1326; A1354; A1385; A1413; A1443; A1469; A1498; A1528; A1559.

[13] A1954.

[14] *State v. Absher*, 2014 WL 7010788 (Del. Super. Ct. Dec. 3, 2014). The court did not request responsive pleadings from the State, but asked the State to address the claims only at the hearing.

the defense."[15] In addition, the court found that although there were "systemic failures in protocol resulting in evidence (drugs) being stolen, [] this does not equate to a finding of unreliability and a wholesale suppression of evidence."[16] The court found this type of conduct did not affect evidence in the individual guilty pleas.[17] Consequently, Superior Court dismissed the relevant Rule 61 motions "for the reason that the defendant admitted at his or her guilty plea that the substance was what was alleged."[18] The court specifically found that the OCME "issues do not warrant a finding of actual or presumptive involuntariness of the guilty pleas."[19]

Appellants assert that Superior Court abused its discretion in dismissing their claims without an evidentiary hearing to explore the availability of discovery and the State's ability or inability to link misconduct at the OCME to the specific drug evidence in appellants' cases. Based upon an investigative report of preliminary findings and the evidentiary hearings in other drug cases, appellants also contend that Superior Court made a clearly erroneous finding that there was no egregious government misconduct. Finally, appellants argue that Superior Court was required to independently reach its own findings of facts underlying the

[15] *Absher*, 2014 WL 7010788, at *3.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

government misconduct rather than considering the findings of another Superior Court judge following evidentiary hearings on the OCME misconduct. Appellants are not entitled to relief.

Procedural bars

Prior to addressing the merits of a postconviction relief claim, a court must first apply the procedural requirements of Criminal Rule 61.[20] In this consolidated appeal, all but six of the postconviction motions were filed before Rule 61 was amended effective June 4, 2014.[21] All of the motions appear to be appellants' first postconviction motions. Several of the motions were filed after the one-year limitation period of the rule had expired.[22] None had raised this OCME claim before, and none had appealed from their convictions.

Under the older version of Criminal Rule 61, the bars to relief found in subdivision (i) (other than (i)(4) which is not applicable in any of these cases) could be avoided by asserting "a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment

[20] *Maxion v. State,* 686 A.2d 148, 150 (Del. 1996).

[21] The following appellants' motions were filed after the June 4, 2014 effective date: Brandon Barnes, Vincent Davis, Brandon Garrison, Marquis Henbree, and Jessica Hudson (filed June 20, 2014); Danyelle Cormier (filed Nov. 24, 2014).

[22] *See* Del. Super. Ct. Crim. R. 61(i)(1). *See, e.g.,* Brandon Barnes (A58, A61); Erik Singletary (A1220, A1221).

of conviction."[23] Under the current Rule 61, the bars can be avoided in relevant part by pleading "with particularity that new evidence exists that creates a strong inference that the movant is actually innocent in fact of the acts underlying the charges of which he was convicted."[24]

Here, Superior Court did not apply any of the procedural bars, presumably considering the claims under the prior Rule 61(i)(5) fundamental fairness exception, because appellants asserted a constitutional claim for relief unavailable to them before the problems at OCME had been discovered.[25] Appellants have not addressed the procedural bars. The State asserts that Superior Court should have considered and applied the procedural bars, regardless of input from the State. However, because the court below denied the claims without discussion and this Court has consolidated the cases for purposes of addressing issues other than the procedural bars, the State will not belabor the point. Having ultimately found no constitutional infirmities in the convictions, Superior Court did not abuse its discretion in denying relief.

Summary dismissal

Appellants argue that Superior Court abused its discretion by summarily

[23] Del. Super. Ct. Crim. R. 61(i)(5) (amended eff. June 4, 2014).

[24] Del. Super. Ct. Crim. R. 61((d)(2)(i) (the new standard under Rule 61(i)(5), effective June 4, 2014).

[25] Superior Court did not discuss the procedural bars or offer any explanation for its failure to apply any bars. As Superior Court did not request a response to the motions, the State did not argue the procedural bars.

dismissing their postconviction motions. Appellants contend that the court's hearing, at which the court reviewed each case file with counsel, was insufficient because the court failed to require the State to produce evidence of discovery provided in these cases. They are mistaken. "Postconviction relief is a collateral remedy which provides an avenue for upsetting judgments that have otherwise become final. It is not designed as a substitute for direct appeal. It is a matter of fundamental import that there be a definitive end to the litigable aspect of the criminal process."[26] Appellants have failed to understand the procedural posture of their cases. In postconviction, it is the movant's burden to present sufficient legal and factual basis for the collateral attack on the movant's criminal conviction.[27]

Appellants cannot shift the burden to the State or the court when their motions failed to contain any specific information about the individual cases. Appellants failed to comport with the minimal requirements of Rule 61. The court is not required to direct the State to respond to motions that do not even indicate the specific charges for which the movant was convicted, the procedural history, the fact that the movant had entered a guilty plea, and whether or not the movant was in custody on a conviction being challenged in the motion. As Superior Court noted, "[t]he present fungible motions do not even address whether or not a M.E.O.

[26] *Flamer v. State*, 585 A.2d 736, 745 (Del. 1990).

[27] Del. Super. Ct. Crim. R. 61(a)(1).

report was provided to the defense."[28] The court's decision to allow the OPD to address the motions at a Rule to Show Cause hearing allowed movants' counsel to present information that should have been included in the original motions for postconviction relief. The court thus furnished movants with more process than Rule 61 provides.[29] Appellants' assertion that the court "allowed the State to shirk its duty" is without basis in law or fact.[30] Superior Court did not abuse its discretion by declining to conduct evidentiary hearings.

Appellants did not provide any bases for Superior Court to have found their guilty pleas involuntary.

As an initial matter, in the vast majority of the cases consolidated in this appeal, the defendant entered a guilty plea without having any report from the OCME regarding the drug evidence.[31] Many cases had no test performed.[32] In almost half cases, the OCME report was not completed until after the entry of the guilty plea.[33] Thus, in only ten cases would any information about the OCME have possibly been a factor in the defendant's decision whether to plead guilty. Appellants provided nothing in their pleadings below, or on appeal, alleging that

[28] *Absher*, 2014 WL 7010788, at *3.

[29] *See* Del. Super. Ct. Crim. R. 61(b)(2) & (d)(5).

[30] Op. Br. at 16.

[31] *See* B1-8.

[32] *Id.*

[33] *Id.*

the defendant's decision to plead guilty in any of those eleven cases was based on the OCME report.

As Superior Court noted at the Rule to Show Cause hearing:

> ...they are basically identical motions. I did not see anything in there where a medical examiner's report was attached. I did not see any affidavit of actual innocence. I did not see on the ones that were off probation, any argument of collateral consequences.
>
> So I said, to me these look like they are ripe for summary dismissal, and that's why I put it on the calendar to basically see what is going on.

A1817. At the hearing, counsel did not dispute that the defendants made admissions regarding the drug offenses to police or in their plea colloquies, nor did counsel disagree with the court's assessment that the defendants did not rely upon the medical examiner's reports. A1873-74. Instead, counsel argued that because of the government misconduct at OCME, and the State's failure to disclose that conduct prior to the entry of the guilty pleas, all their drug charges should be dismissed. This argument does not account for any other charges in the cases, some non-drug related, many of which were dismissed by the State only because of the negotiated pleas.

This Court has consistently found that defendants, including those raising claims regarding the OCME, are "bound by the statements [they] made to the

Superior Court before [their] plea[s] w[ere] accepted."[34] These cases are no different. Here, the defendants made admissions and informed the court that they had committed the offenses to which they were pleading guilty. None of the defendants claim actual innocence. Superior Court did not abuse its discretion by summarily dismissing the cases after holding a hearing at which each case file was reviewed, counsel was provided an opportunity to offer argument on each individual case, and the court heard legal argument.

Superior Court properly rejected appellants' claims that their pleas were involuntary pursuant to Brady v. United States.[35]

Appellants complain that Superior Court failed to consider their due process claim pursuant to *Brady v. United States*. By failing to provide the court with any evidence that the misconduct at OCME directly impacted any defendant's decision to plead guilty, appellants failed to demonstrate a basis upon which the court could grant relief. By arguing that the court should have found the OCME misconduct to be "egregious" (Op. Br. at 27), appellants are arguing that Delaware courts should apply the test announced in *Ferrara v. United States*[36] for setting aside a guilty plea as involuntary due to government misconduct. In *Ferrara*, the court found

[34] *Ira Brown v. State*, 108 A.3d 1201, 1206 (Del. 2015) (citing *Somerville v. State,* 703 A.2d 629, 632 (Del. 1997)). *Accord McMillan v. State*, 2015 WL 3444673, at *2 (Del. May 27, 2015); *Patrick Brown v. State*, 2015 WL 3372271, at *2 (Del. May 22, 2015); *Carrero v. State*, 2015 WL 3367940, at *2 (Del. May 21, 2015); *Steck v. State*, 2015 WL 2357161 (Del. May 15, 2015).

[35] 373 U.S. 83 (1963).

[36] 456 F.3d 278, 290 (1st Cir. 2006).

that in order to have a guilty plea set aside as involuntary, a defendant "must show that some egregiously impermissible conduct (say, threats, blatant misrepresentations, or untoward blandishments by government agents) antedated the entry of his plea" **and** "that the misconduct influenced his decision to plead guilty, or, put another way, that it was material to that choice."[37] Here, movants' motions and supplemental pleadings did not provide any evidence to support the inference that the misconduct at the OCME (or the lack of knowledge about that misconduct) induced the appellants' guilty pleas.[38]

For example, after her July 2012 arrest, Desiree Aricidiacono in August 2012 resolved two pending criminal cases by pleading guilty at a Fast Track hearing to two misdemeanor charges (resisting arrest and possession of heroin). A1; A11; B24-37. In exchange, the State entered a *nolle prosequi* on a felony resisting arrest and misdemeanor charges for possession of drug paraphernalia (3 counts) and possession of non-controlled prescriptions (2 counts). Superior Court sentenced Aricidiacono to a total of 1 year, 6 months at Level V, all suspended for Level IV substance abuse treatment, and Level III aftercare. B38-43. Aricidiacono waived her preliminary hearing, did not receive a report from the OCME before pleading, and received a suspended sentence such that she was

[37] *Id.*

[38] *See Brady v. U.S.*, 397 U.S. at 755 (recognizing that a guilty plea must stand unless induced by threats, misrepresentation, or promises that are by their nature improper such as bribes).

released from custody to probation on or about the date of the plea and sentence. *See* B44. Aricidiacono entered into a plea agreement without making any attempt to ascertain the strength of the State's case. She received a very favorable plea. Any representation now (after twice violating the terms of her probation (*see* A2, 3)) that Aricidiacono would not have pleaded guilty, but proceeded to trial, is unbelievable.

In another example, Michael H. Drummond pleaded guilty in August 2013 to drug dealing (heroin); the State dismissed 2 counts of possession of a firearm during the commission of a felony, 4 counts of possession of a firearm or ammunition by a person prohibited, 1 count of drug dealing, and 4 counts of possession of drug paraphernalia. A500; B130-37. During his plea colloquy, Drummond affirmed in open court that he committed the charged offense of drug dealing. B130-37. The OCME report had been completed a month before Drummond entered the plea. B129. Superior Court sentenced Drummond to 15 years at Level V, suspended after 1 year for 18 months of probation. B138-43. Given the extremely favorable plea agreement whereby he avoided minimum mandatory time on weapons charges, Drummond cannot credibly argue that he would have not have pleaded guilty had he been more aware of the OCME problems.

Thus, even if the court had found the misconduct at the OCME was "egregious impermissible conduct,"[39] these appellants, like the others in this appeal, could not establish that had they known about that misconduct, they would not have pleaded guilty, but would have insisted on proceeding to trial. Moreover,

> The rule that a plea must be intelligently made to be valid does not require that a plea be vulnerable to later attack if the defendant did not correctly assess every relevant factor entering into his decision. A defendant is not entitled to withdraw his plea merely because he discovers long after the plea has been accepted that his calculus misapprehended the quality of the State's case....[40]

In postconviction proceedings, it is the movant's burden to present a prima facie basis for his or her claims, including basic facts ascertainable by a review of the docket or the court's file.[41] Appellants did not do that in these cases. Appellants universally failed to demonstrate that their decision to plead guilty to

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[39] In support of the argument that OCME misconduct was egregious, the appellants cite to what is purported to be a 2005 judicial decision from Washington State (*see* Op. Br. at 30 n.120), but the citation is actually to the defendant's motion to dismiss, not a decision of the court. Similarly, the quotes from and reliance upon *United States v. Smith* (Op. Br. at 31-32 nn. 123-25; 33-34 nn. 132-33), are also derived from the defendant's motion to dismiss rather than a court decision. Neither defendant prevailed. *See United States v. Smith*, __ F. Supp. 3d __, 2014 WL 7179472 (D. Mass. Dec. 15, 2014) (holding that evidence regarding chemist who had pled guilty to evidence tampering would not have changed the defendant's decision to plead guilty). *See also* B9-23 (Asotin Superior Court Docket sheet and WestlawNext result for Washington v. Wilson citation).

[40] *Brady v. U.S.*, 397 U.S. at 757.

[41] *See White v. State*, 404 A.2d 137, 139 (1979) (finding that where a claim for relief is unsupported by references to the trial record, there is no abuse of discretion in the court's summary dismissal of the motion); *see also State v. Robbins*, 1996 WL 769219, at *1 (Del. Super. Ct. Dec. 18, 1996) (finding conclusory claims for postconviction relief that "do not rise factually or legally to the threshold required by Super. Ct. Crim. R. 61" cannot "survive summary dismissal.").

the drug offense(s) was materially influenced by any conduct, whether egregious or not, by the State.[42] The appellants here received considerable benefits from their early pleas. In most cases, the court imposed little or no unsuspended jail time at the time of the plea.[43] Without a sufficient factual basis to support their grounds for relief, the court properly rejected appellants' claims.

Most recently, in *Bridgeman v. District Attorney for the Suffolk District et al.*,[44] the Massachusetts Supreme Court declined to provide a global remedy to cases affected by a chemist who admitted to falsifying reports of drug evidence.[45] The court maintained the requirement that each defendant demonstrate a nexus to the misconduct (i.e., produce a drug certificate signed by the chemist at issue) and, in addition, must particularize the chemist's misconduct to his decision to plead guilty.[46] "Under the second prong of the *Ferrara* analysis, the defendant must demonstrate a reasonable probability that he would not have pleaded guilty had he known of [the OCME] misconduct."[47] "At a minimum, the defendant must aver to this fact. Additionally, the defendant must 'convince the court that a decision to

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[42] *See Ferrara*, 456 F.3d at 290.

[43] *See* B1-8.

[44] __ N.E.3d __, 2015 WL 2359280 (Mass. May 18, 2015).

[45] *Id.* at *13.

[46] *Id.* (reaffirming holding in *Commonwealth v. Scott*, 5 N.E.3d 530 (Mass. 2014)).

[47] *Scott*, 5 N.E.3d at 354-55 (providing relevant considerations for determining whether defendant's decision to plead guilty would have been different but for knowledge of the misconduct).

reject the plea bargain would have been rational under the circumstances.'"[48]

Thus, although appellants primarily argue that Superior Court abused its discretion by failing to find that the entire process at OCME was egregious government misconduct requiring the court to vacate all drug convictions for an undetermined period of time, that finding would be only half of the equation and could not have provided appellants with relief. The OPD failed to link any of the misconduct to the cases here. And, significantly, the OPD provided no relevant facts for the trial court to determine whether rejection of the plea bargains in these cases would have been rational under the circumstances. Therefore, Superior Court did not abuse its discretion in summarily denying the postconviction motions seeking to vacate appellants' drug convictions.

Reliance on Judge Carpenter's findings

Appellants assert that Superior Court improperly relied upon Judge Carpenter's findings made after an evidentiary hearing regarding the mishandling of evidence at the OCME in *State v. Irwin*.[49] Appellants appear to assert that the court should have taken judicial notice of the evidence presented at the hearings in *Irwin*, but should not have relied upon the findings of the judge who conducted the

[48] *Id*. at 356 (citing to *Commonwealth v. Clarke*, 949 N.E.2d 892 (Mass. 2011) (quoting *Padilla v. Kentucky*, 559 U.S. 356, 372 (2010)).

[49] 2014 WL 6734821 (Del. Super. Ct. Nov. 17, 2014).

hearings and who was the finder of fact in the case.[50] Thus, appellants basically attempt to reargue Judge Carpenter's findings here. However, this Court has also taken judicial notice of the findings in *Irwin*.[51]

As a practical matter, without appellants having made any allegation that the specific drugs in any of the cases here suffered from any contact with the OCME, Superior Court did not abuse its discretion by relying on the findings of another Superior Court judge based on the evidence presented to that judge regarding the overall functioning (or malfunctioning) of the OCME's drug lab. Moreover, the appellants contend that here, if the court had independently reached its own findings of facts regarding the OCME misconduct, the court would have found the findings from *Irwin* were "clearly erroneous."[52] That is speculation. For example, appellants assert that because there were unsubstantiated allegations of dry labbing (falsification of results without actual testing), that the court should have found that dry labbing was occurring.[53] Appellants read too much into the State's charging and litigation decisions regarding the three OCME employees who faced criminal prosecution. The State's decision to drop or reduce charges cannot be the basis of a court's finding of fact regarding activity at the OCME. Superior Court

[50] *See* Op. Br. at 22-23.

[51] *See Ira Brown*, 108 A.3d at 1204.

[52] Op. Br. at 23.

[53] Op. Br. at 25-27.

reasonably relied on the judge's findings in *Irwin*, and appellants have not established any of those findings were clearly erroneous.

Summary

Appellants seek to have this Court find that the theft and mishandling of drug evidence at the OCME amounts to egregious government conduct that would require all drug convictions to be vacated even where defendants charged with those drug offenses entered guilty pleas, and regardless of the facts and circumstances surrounding their individual decisions to plead guilty. This Court, however, has found that defendants who seek to have their guilty pleas vacated must establish that their pleas were involuntary. Unless defendants can establish that the specific evidence in their case was tainted or that they relied upon an invalid OCME report, the Court properly has denied relief. Here, appellants presented Superior Court with a vague and conclusory claim that the OCME problems should result in the invalidation of all drug cases. Appellants provided an insufficient basis. Thus Superior Court properly denied relief. On appeal, appellants have not provided a legal basis for the Draconian result they seek. This Court, consistent with its holding in *Ira Brown v. State*, should affirm Superior Court's denial of relief based on its finding that the OCME issues "do not warrant a finding of actual or presumptive involuntariness of the guilty pleas."[54]

[54] *Absher*, 2014 WL 7010788, at *3.

CONCLUSION

For the foregoing reasons, the judgment of the Superior Court should be affirmed.

/s/Elizabeth R. McFarlan
Chief of Appeals
Department of Justice
State Office Building
820 N. French Street
Wilmington, DE 19801
(302) 577-8500
ID No. 3759

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