



IN THE SUPREME COURT OF THE STATE OF DELAWARE

JASON SLAUGHTER,	:	
	:	
Defendant-Below,	:	No. 87, 2021
Appellant,	:	
	:	Court Below: Superior Court of the
v.	:	State of Delaware in and for New
	:	Castle County
STATE OF DELAWARE,	:	
Plaintiff-Below,	:	Case Below No. 1207010738
Appellee.	:	
	:	

APPELLANT’S REPLY BRIEF

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ARGUMENT I. THE STATE’S ANSWER IN RESPONSE TO SLAUGHTER’S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM USES AN ERRONEOUS STANDARD OF REVIEW, MISUNDERSTANDS THE ARGUMENTS PUT FORTH BY SLAUGHTER AND IS FACTUALLY AND LEGALLY INACCURATE.

A. The correct standard of review is *de novo*.

The State asserts in its Answering Brief (“Answer”) that the applicable standard of review for Mr. Slaughter’s (“Slaughter’s”) ineffective assistance of counsel claims is abuse of discretion.¹ However, as noted in Slaughter’s Opening Brief,² this Court reviews both questions of law³ and claims of a constitutional violation⁴ *de novo*.

Slaughter alleged in his Opening Brief that the Superior Court erred in denying his postconviction claim that he was deprived of the effective assistance of defense counsel pursuant to the Sixth Amendment to the United States Constitution and Article 1, § 7 of the Delaware Constitution and consequently deprived of due process of law pursuant to the Fourteenth Amendment to the United States Constitution and Article I, § 7 of the Delaware Constitution when defense counsel inadvertently waived Slaughter’s IAD speedy trial right to be tried within 120 days of arrival in Delaware,

¹ State’s July 27, 2021 Answering Brief at 4, 17 (hereinafter cited as “Answer at _”).

² Slaughter’s June 10, 2021 Opening Brief at 16 (hereinafter cited as “Opening at _”).

³ *Dawson v. State*, 673 A.2d 1186, 1190 (Del. 1996).

⁴ *Hall v. State*, 788 A.2d 118, 123 (Del. 2001).

but for which the indictment would have been dismissed with prejudice prior to the entry of Slaughter's guilty plea. As such, Slaughter alleges a claim of a constitutional violation that raise questions of law. Therefore, *de novo* is the appropriate standard of review.⁵

B. The State's Answer does not demonstrate that the Superior Court correctly found that Slaughter's ineffective assistance of counsel claim was waived by pleading guilty or that it is without merit.

The State contends that Slaughter waived all claims related to alleged violations of the IAD, including accompanying ineffective assistance of counsel claims, by pleading guilty. (Answer at 4). The State further contends that regardless of United States Supreme Court precedent, the Superior Court correctly denied Slaughter's claim based upon Delaware precedent. (Answer at 18). In particular, the State emphasizes the Superior Court's reliance on this Court's holding in *Alexander v. State*,⁶ as well as this Court's holdings in *Benner v. State*⁷ and *Brunhammer v. State*,⁸ to assert that the Superior Court correctly found Slaughter's claims to have been waived. (Answer at 18-19). The State further argues that Slaughter's reliance on United States Supreme

⁵ *Id.*; *Dawson*, 673 A.2d at 1190.

⁶ *Alexander v. State*, Del., No. 337, 2008, Steele, J. (Nov. 5, 2008) (Order) (Fastcase).

⁷ 2007 WL 4215005 (Del. Nov. 30, 2007).

⁸ 2017 WL 991081 (Del. Mar. 13, 2017).

Court precedent is misplaced. To the contrary, in his Opening Brief, Slaughter acknowledged both the Delaware and United States Supreme Court precedent and explained how the Superior Court’s reliance on *Alexander* in spite of the federal case law was erroneous.

In his Opening Brief, Slaughter acknowledged the holding of *Alexander*, noting that this Court concluded that “[b]ecause Alexander’s claims of improprieties under the Uniform Agreement on Detainers implicates alleged errors or defects occurring prior to the entry of his plea. . . .”, as did Alexander’s claim that his counsel was ineffective for failing to move to dismiss the indictment on the basis of the alleged violation of the UAD, the claims were waived.⁹ (Opening at 17). Nevertheless, as noted in the Opening Brief, there are exceptions, as identified by the United States Supreme Court, to the general long-standing principle that a valid guilty plea constitutes a waiver of all alleged errors or defects that occurred prior to entry of the plea. (Opening at 18). In its Answering Brief, the State acknowledges this, and does not appear to dispute the applicability of United States Supreme Court precedent to state criminal cases or to Slaughter’s case specifically but rather argues that the cases themselves are distinguishable from, and therefore inapplicable to, Slaughter’s case. (Answer at 20-

⁹ *Alexander*, No. 337, 2008, at 3.

22).

However, the State's conclusion is a result of the State failing to properly apply the United States Supreme Court precedent of *Class v. United States*,¹⁰ *Blackledge v. Perry*,¹¹ *Menna v. New York*,¹² and *United States v. Broce*¹³ to the facts of this case. The State erroneously narrows the holdings of *Class*, *Blackledge*, *Menna*, and *Broce* to the specific facts of the individual cases, rather than the broader principle espoused by the United States Supreme Court.

The State points out that in *Class*, the defendant argued that the statute of conviction violated his Second Amendment and due process rights. (Answer at 21-22). As such, the State argues that *Class*, as well as the related cases of *Blackledge*, *Menna*, and *Broce*, is inapplicable to Slaughter's case, because *Class* does not specifically "address whether a defendant, by voluntarily pleading guilty, waives any speedy trial rights he may have under the IAD/UAD and any ineffective assistance of counsel claims concerning the IAD/UAD." (Answer at 22-23).

However, as explained in the Opening Brief, the Supreme Court in *Class* was asked to decide the specific question of whether "a guilty plea bar[s] a criminal

¹⁰ *Class v. United States*, 138 S.Ct. 798 (2018).

¹¹ *Blackledge v. Perry*, 417 U.S. 21 (1974).

¹² *Menna v. New York*, 423 U.S. 61(1975).

¹³ *United States v. Broce*, 488 U.S. 563 (1989).

defendant from later appealing his conviction on the ground that the statute of conviction violates the Constitution.”¹⁴ (Opening at 18). As Slaughter further explained, the key question posed in *Class*—whether, if successful, the claim would “would extinguish the government’s power to ‘constitutionally prosecute’” the defendant¹⁵—is wholly applicable to Slaughter’s case. As explained, akin to *Class*, Slaughter does not contradict the indictment or the terms of the plea agreement or his voluntary, intelligent and knowing admission that he committed the alleged conduct but rather alleges that even if the facts admitted during the plea are taken as true, they do not constitute a prosecutable offense, because the time for prosecuting them had already expired. It is this principle, that such a claim is *not* waived by entering a valid guilty plea, espoused by *Class*, *Blackledge*, *Menna*, and *Broce* that translates to the question posed by Slaughter. The fact that *Class* is not an IAD case or that Slaughter’s claim is not a Second Amendment claim is irrelevant, as this overriding principle—that claims implicating the power of the State to prosecute are not waived by a valid guilty plea—nevertheless applies.

As Slaughter explained in the Opening Brief, the United States Supreme Court

¹⁴ *Class*, 138 S.Ct. at 801-02.

¹⁵ *Id.* at 806 (quoting *Broce*, 488 U.S. at 575 (quoting *Menna*, 423 U.S. at 62-63)).

held in *Blackledge* that the defendant’s challenge of his conviction, based upon a claim of an unconstitutional vindictive prosecution, was not waived by pleading guilty, because, “the nature of the underlying constitutional infirmity”, vindictive prosecution in this case, “implicates ‘the very power of the State’ to prosecute the defendant”, as “[t]he very initiation of the proceedings” against the defendant “operated to deprive him of due process of law.”¹⁶ Similarly, in *Menna*, the Supreme Court held that the defendant’s challenge of his conviction, based upon a claim of a violation of the Double Jeopardy Clause, was not waived by a valid guilty plea, because “no matter how validly his factual guilt is established”, “a plea of guilty to a charge does not waive a claim that—judged on its face—the charge is one which the State may not constitutionally prosecute.”¹⁷ Furthermore, in *Broce*, the Court expressly stated that a guilty plea does not bar a claim “where on the face of the record the court had no power to enter the conviction or impose the sentence”,¹⁸ so long as the claim is proven by relying on, and without contradicting, the existing record.¹⁹

Thus, it is clear that the United States Supreme Court has definitively held that a valid guilty plea does not waive a claim that challenges the ability of the State to

¹⁶ *Id.* at 803 (quoting *Blackledge*, 417 U.S. at 30-31).

¹⁷ *Id.* at 804 (quoting *Menna*, 423 U.S. at 63 and n.2).

¹⁸ *Id.* at 804 (citing *Broce*, 488 U.S. at 569).

¹⁹ *Class*, 138 S.Ct. at 804 (quoting *Broce*, 488 U.S. at 576).

prosecute for the offense, even if factual guilt has been established, regardless of the underlying basis for the challenge of the conviction. *Class* is not limited to Second Amendment claims just as clearly as *Blackledge* is not limited to vindictive prosecution claims or *Menna* to Double Jeopardy claims. As such, the State's reliance on the simple fact that *Class*, *Blackledge*, *Menna*, and *Broce* are not IAD claims, or that Slaughter does not challenge his conviction on the same bases as the defendants in *Class*, *Blackledge*, *Menna*, and *Broce* is undoubtedly misplaced.

The State's Answering Brief next turns to disputing whether Slaughter's claim amounts to one which challenges the power of the State to constitutionally prosecute him. (Answer at 23). The State argues that because the IAD is statutory and that this Court, among other courts, has held that the IAD does not convey constitutional rights to a defendant, then the holdings of *Class*, *Blackledge*, *Menna*, and *Broce* are inapplicable. (Answer at 24). The State also cites to a Third Circuit Court of Appeal case, *United States v. Palmer*,²⁰ in which the Third Circuit held that the IAD is a set of procedural, not constitutional rules, and a violation of which can therefore be waived through the entering of a valid guilty plea. (Answer at 24).

Slaughter does not dispute that the rights conveyed by the IAD are undoubtedly

²⁰ 574 F.2d 164 (3d Cir. 1978).

statutory, not constitutional. However, the State misunderstands Slaughter's argument. Slaughter's claim is not so simple as the one raised in *Palmer*, in which the State violated the defendant's IAD rights, which would have resulted in dismissal of the indictment, had the issue been raised prior to the defendant's guilty plea.

Notably, Slaughter does not claim that the State violated his IAD rights and but for his guilty plea, he would have been entitled to dismissal of the indictment with prejudice. Rather, Slaughter claims that but for the constitutional ineffectiveness of defense counsel, in accidentally waiving Slaughter's IAD rights, the State's actions would have violated the IAD, for which the remedy would have been dismissal of the indictment with prejudice. If the State maintained its power to prosecute Slaughter when it failed to bring him to trial within 120 days, this power was maintained directly as the result of the deprivation of a constitutional right—namely, Slaughter's federal and state constitutional right to the effective assistance of counsel.

As such, although the IAD is unquestionably statutory, not constitutional, in nature, based upon the unique facts and circumstances of this case, the question of whether the State had the power to prosecute Slaughter is inextricably intertwined with a constitutional right—the right to the effective assistance of counsel. The State's Answering Brief does not address what the remedy is for a violation of a defendant's constitutional right to the effective assistance of counsel that results in a continued

prosecution which would otherwise have been impermissible. Moreover, unlike in *Palmer*, if not for the violation of Slaughter’s constitutional right to the effective assistance of counsel, there would have been no guilty plea, as the issue was raised prior to the entry of Slaughter’s guilty plea but the requested relief—dismissal of the indictment with prejudice—was denied *because of* defense counsel’s unconstitutionally ineffective action in waiving the IAD 120 day deadline.

The State’s Answering Brief next turns to disputing whether defense counsel’s actions were even ineffective, arguing that Slaughter was aware of defense counsel’s error in waiving the 120 day time limit, and that defense counsel believed himself to be ineffective as a result, and yet still pleaded guilty. (Answer at 25-27). The State further argues that defense counsel’s action in waiving Slaughter’s 120 day speedy trial right was not ineffective at all, because the trial court did not believe defense counsel’s handling of the IAD issue to be deficient. (Answer at 35-37).

Although the State acknowledges that defense counsel’s waiver of Slaughter’s IAD speedy trial right was accidental and wholly unintentional, a fact admitted by defense counsel, the State offers no explanation as to how the accidental waiver of a client’s right by an attorney cannot be anything but objectively unreasonable.²¹

²¹ See *People v. Jones*, 482 N.W.2d 207, 211, 192 Mich. App. 737, 745 (Mich. App., 1992) (noting that if the decision to delay trial was made

(Answer at 36-37). Instead, the State focuses on arguing that defense counsel’s waiver of the 120 day deadline cannot be defective, because Slaughter’s IAD rights never vested. (Answer at 38). The State contends that “Slaughter overlooks that he was not entitled to the UAD’s protections and remedies” and that the Superior Court had found on multiple occasions that Slaughter’s IAD rights never vested, because he failed to comply with the notice requirements of 11 *Del. C.* 2542(g). (Answer at 38). The State is incorrect. In fact, the State appears to be confusing the separate and distinct 180 day deadline and 120 day deadline provisions of the IAD.

As the procedural history in this case makes clear, the Superior Court found, correctly so, that although Slaughter took all the necessary steps to request disposition under the IAD and invoke the 180 day time period, the Georgia Department of Corrections made a mistake in the delivery of his paperwork, and the Superior Court never received actual notice of Slaughter’s request for disposition of the charges. (Opening at 9-11, 14). Without actual notice, Slaughter’s rights under IAD § 2544 never vested, i.e. his right to be tried within 180 days of arrival in Delaware. The Superior Court never reached such a conclusion as to the 120 day time provision, IAD

independently by defense counsel, “the failure of trial counsel to consider the speedy trial defense presented by the IAD before setting a trial date may implicate Sixth Amendment guarantees and render the waiver of rights under the IAD invalid because of ineffective assistance of trial counsel.”).

§ 2543, and in fact it would be impossible for the court to do so, as 11 *Del. C.* § 2543 does not require action on the part of Slaughter for his rights to vest. Instead it is the actions of the State that trigger the provisions of IAD § 2543.

Next the State argues for the first time on appeal that *Mauro* is actually “inapplicable” to Slaughter’s case, contending that Slaughter was brought to Delaware pursuant to a Governor’s Warrant which “does not act as a written request contemplated by *Mauro* and the UAD.” (Answer at 38). The State posits that if the IAD and *Mauro* were inapplicable to Slaughter’s case, then it follows that defense counsel was not ineffective for failing to understand the IAD and *Mauro* implications of the case before agreeing to a trial date outside of the 120 day time period. The State is wrong.

As has been made clear throughout the litigation of the IAD issues in this case, it is the action of lodging a detainer, followed by a written request for temporary custody via the Governor’s Warrant, that triggered *Mauro* and therefore the 120 day time limit of IAD § 2543.²² (Opening at 11-12 (citing A219, 221-24)). In fact, during

²² *United States v. Mauro*, 436 U.S. 340, 363-64 (1978) (holding that “whenever the receiving State initiates the disposition of charges underlying a detainer it has previously lodged against a state prisoner,” the IAD requires commencement of trial within 120 days of the defendant's arrival in the receiving State).

the October 14, 2016 hearing on the second motion to dismiss, the State agreed that *United States v. Mauro* applied to Slaughter's case and therefore, the 120 day provision of § 2543 began to run the day Slaughter arrived in Delaware. (A270, 296-97). The State later changed its position on whether a Governor's Warrant constitutes a written request for custody for the purposes of the IAD and/or *Mauro*. (A219, 227, 268-69, 296-97; *c.f.* A353-56). However, the issue was never fully briefed and debated, nor did the Superior Court ever reach a finding on the issue, as the main, and ultimately dispositive, point of contention was whether defense counsel had waived the 120 day time period by agreeing to a trial date outside of the 120 day time period.

Again, during postconviction proceedings, the State did not dispute that *Mauro* was applicable to Slaughter's case or that lodging a detainer plus a Governor's Warrant constitutes a written request for custody for purposes of triggering the provisions of 11 *Del. C.* § 2543(c) and the applicability of *Mauro*. Rather, the State focused on arguing that the 120 day time period was waived when defense counsel agreed to a trial date outside of the time period and that even if such action did not constitute a waiver, the trial court could have, and likely would have, granted a good cause continuance. In addition to the fact that the State is clearly confusing the 180 day and 120 day time provisions of the IAD and which actions are required to trigger those two separate provisions, the State cannot now argue for the first time on appeal that *Mauro* is

inapplicable to Slaughter's case or that his rights under 11 *Del. C.* § 2543(c) never vested.

The State also argues that Slaughter cannot show he was prejudiced by defense counsel's failure to comprehend the IAD and *Mauro* implications when agreeing to a trial date outside of the 120 day time period, because the trial court would have been well within its discretion to grant a good cause continuance. (Answer at 39-40). However, as Slaughter explained in the Opening Brief, there is no authority in Delaware to support a conclusion that the constitutional violations were harmless on the basis of an after-the-fact finding that a good cause continuance of the deadline would have been granted by the court if one had been requested. (Opening at 27-28). In fact, such an approach was expressly rejected in *State v. Brown*.²³

The State further posits that for "Trial Counsel and Slaughter to now allege retroactively that they would have been prepared to move forward with trial is wholly inconsistent with the assertions made at the time of schedule. . . ." (Answer at 41). Neither defense counsel nor Slaughter have alleged such a thing. Rather, what defense counsel stated was that he would not have agreed to a trial date outside of the 120 day time period if he had known that doing so would have waived Slaughter's IAD speedy

²³ *State v. Brown*, Del. Super., ID No. 1108002188, Jurden, P.J., at 18 (April 10, 2017) (Fastcase).

trial right. As Slaughter pointed out in his Opening Brief and postconviction Superior Court briefing, defense counsel could have, and, based upon his assertions in similarly situated cases occurring at the same time,²⁴ would have, sought continuances of his other trials or would have asked the Office of Conflicts Counsel to appoint different counsel for Slaughter so that the case could be tried within 120 days. (Opening at 28; A598). Moreover, as Slaughter noted in the Opening Brief, while the 120 day time period put the defense under a time crunch, it did the same to the prosecution, and defense counsel may very well have determined that it was strategically in Slaughter's best interest for the case to proceed expeditiously rather than request a continuance. Of course under such a circumstance, the State could have then sought a good cause continuance, but the fact remains that the State did not and there is no controlling Delaware or federal case law to support a retroactive finding that a good cause continuance would have been requested and would have been granted.

For all of the aforementioned reasons, the State's Answering Brief does not

²⁴ In a motion for re-argument in *State v. Harris* (ID No. 1108002195), involving the same defense attorney and an almost identical set of facts, defense counsel asserted that had he been aware of the IAD's applicability to the case, he would have "sought continuances of his other trials or would have asked the Office of Conflicts Counsel to appoint different counsel for Mr. Harris" rather than waive Mr. Harris' speedy trial rights. (A526). There is no reason to suspect defense counsel would not have done the same in Slaughter's case.

establish that Slaughter waived his ineffective assistance of counsel claim by pleading guilty, that his IAD rights never vested, or that defense counsel's waiver of the 120 day time period was not deficient or without prejudice. As such, the Superior Court erred in denying this claim, and the State's contentions otherwise are unpersuasive.

ARGUMENT II. THE STATE’S ANSWER IN RESPONSE TO SLAUGHTER’S POSTCONVICTION CLAIM THAT DEFENSE COUNSEL’S WAIVER OF THE IAD TIME PERIOD WAS INVOLUNTARY USES AN ERRONEOUS STANDARD OF REVIEW, MISUNDERSTANDS THE ARGUMENT PUT FORTH BY SLAUGHTER AND IS FACTUALLY AND LEGALLY INACCURATE.

A. The correct standard of review is *de novo*.

The State incorrectly asserts that the correct standard of review is abuse of discretion. (Answer at 4, 17). However, as noted in Slaughter’s Opening Brief, this Court reviews both questions of law²⁵ and claims of a constitutional violation²⁶ *de novo*. (Opening at 33).

Slaughter alleged in his Opening Brief that the Superior Court erred in denying his postconviction claim that if the court found defense counsel’s reliance on the State’s representations that this was a Governor’s Warrant case and not an IAD case to be objectively reasonable and counsel’s actions therefore not constitutionally ineffective, then counsel’s waiver of the 120 day time period was involuntary and therefore invalid, in violation of Slaughter’s due process rights under the Fourteenth Amendment to the United States Constitution and Article I, § 7 of the Delaware Constitution. (Opening at 33-34). As such, Slaughter alleges a claim of a constitutional violation that raise

²⁵ *Dawson*, 673 A.2d at 1190.

²⁶ *Hall*, 788 A.2d at 123.

questions of law. Therefore, *de novo* is the appropriate standard of review.²⁷

B. The State’s Answer does not demonstrate that the Superior Court correctly found that Slaughter’s IAD claim was procedurally barred under Rule 61 or without merit.

The State contends that Slaughter’s freestanding IAD claims are procedurally barred under Rule 61. (Answer at 4). Although the State acknowledges that the Superior Court “incorrectly applied Rule 61(i)(3)’s bar”, the State urges this Court to nevertheless “affirm the court’s alternative holding on grounds . . . [of] Rule 61(i)(4)”. (Answer at 30). However, the State is incorrect that Rule 61(i)(4) bars consideration of Slaughter’s claim.

The State contends that “Slaughter’s freestanding UAD claims, including the issue of whether Def. Counsel #1’s waiver was voluntary, has already been effectively adjudicated by the Superior Court when it decided Slaughter’s motions to dismiss. . . .”. (Answer at 31). Slaughter did not address the potential implication of Rule 61(i)(4) in the Opening Brief because it was not a basis for the Superior Court’s denial of Slaughter’s claim. However, now that the State has raised Rule 61(i)(4) in its Answering Brief as a potential basis for this Court to find Slaughter’s claim procedurally barred, Slaughter will address it in turn.

In postconviction briefing in the Superior Court, Slaughter explained that the

²⁷ *Id*; *Dawson*, 673 A.2d at 1190.

court's denial of Slaughter's two pre-guilty plea motions to dismiss the indictment based upon the State's violation of the IAD do not constitute a former adjudication, as the court was never asked to consider the validity of the guilty plea in terms of whether the State still had the power to prosecute Slaughter at the time the plea was entered pursuant to United States Supreme Court precedent or whether defense counsel's waiver was voluntarily made in light of the significant misrepresentations made by the State to defense counsel, which induced defense counsel into erroneously believing that the IAD was not implicated in Slaughter's case. Accordingly, Slaughter's postconviction claim has never been adjudicated by the Superior Court or this Court and therefore cannot be procedurally barred pursuant to Rule 61(i)(4). (A484, 587).

The State also asserts that to the extent Slaughter raises a claim not formerly adjudicated, the claim is barred under Rule 61(i)(3) for failure to raise on appeal. (Answer at 32). However, as Slaughter explained in the Opening Brief, his failure to file a direct appeal was the result of ineffective assistance of counsel, in that defense counsel advised Slaughter an appeal could not be filed due to his guilty plea. (Opening at 37-39).

The State acknowledges that ineffective assistance of counsel can constitute "cause" under Rule 61(i)(3) for failure to raise a claim, but contends that Slaughter cannot show a successful ineffective assistance of counsel claim, because he waived

his right to appeal the issue by pleading guilty and because his IAD claims lack merit. (Answer at 32). As explained in relation to his first postconviction claim, pursuant to *Class*, Slaughter’s guilty plea did not waive his right to appeal the IAD issue; therefore, defense counsel provided Slaughter with incorrect legal advice, which prompted Slaughter to not file an appeal. Because it is clearly objectively unreasonable to provide erroneous legal advice,²⁸ and because Slaughter was prejudiced by this erroneous advice in that he failed to appeal a meritorious issue of great significance, Slaughter received ineffective assistance of counsel in respect to the failure to file a direct appeal.²⁹

The State additionally contends that Slaughter’s assertion that defense counsel’s waiver of the 120 day time period was involuntary is “unavailing”, arguing that *New York v. Hill*³⁰ demonstrates that an IAD waiver need only be done by affirmative conduct. (Answer at 28-29). The State misunderstands Slaughter’s claim.

Slaughter agrees, and in fact has never disputed, that controlling case law clearly demonstrates that agreeing to a trial date outside of the requisite time period established by the IAD, whether 180 or 120 days, is sufficient to constitute a waiver of the IAD

²⁸ See, e.g. *Lafler v. Cooper*, 132 S.Ct. 1376, 1383-84 (2012) (noting that the parties all conceded that defense counsel provided deficient performance under the Sixth Amendment when he informed the defendant of an incorrect legal rule).

²⁹ *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984).

³⁰ 528 U.S. 110 (2000).

time period. What Slaughter has contended in his filings, and the State misunderstands, is that while a waiver of the IAD time period need not be intelligent or knowing, it nevertheless must be voluntary. As explained in the Opening Brief, a voluntary waiver “require[s] knowledge of or reason to know the basic fact that gives rise to the IAD right”,³¹ and that due process further requires that for a waiver to be voluntary, it must be the “product of a free and deliberate choice[,] rather than intimidation, coercion[,] or deception”.³² (Opening at 34).

As explained in Slaughter’s filings, the State made numerous, significant misrepresentations to defense counsel that led him to believe that IAD did not apply to Slaughter’s case. (Opening at 35). While it is apparent the State did not intentionally try to deceive defense counsel, and that in fact the State’s misrepresentations appear to be the result of the State’s own confusion over the proper application of the IAD, particularly in relation to the intersection of the IAD with Governor’s Warrants, it is also nevertheless apparent that it was the State’s misrepresentations that induced defense counsel to acquiesce to the April 5, 2016 trial date. As defense counsel remarked to the court, “. . . I was in no position to acquiesce or not acquiesce [to a trial date outside the IAD time limit] because it had been represented to me that this

³¹ *United States v. Lawson*, 736 F.2d 835, 839 (2d Cir. 1984).

³² *Garvey v. State*, 873 A.2d 291, 296 (Del. 2005) (citing *Norcross v. State*, 816 A.2d 757, 762 (Del. 2003)).

was not an IAD case.” (A285). It cannot reasonably be said that defense counsel had knowledge of the basic fact giving rise to Slaughter’s right to be tried within 120 days of his arrival in Delaware—that the IAD was applicable to Slaughter’s case. As such, defense counsel did not, and could not, freely acquiesce to the April 2016 trial date, and defense counsel’s waiver of the 120 day time period cannot be deemed voluntary under the requirements of due process.

In light of the aforementioned, the State’s Answering Brief fails to establish that Slaughter’s postconviction claim is procedurally barred, under either Rule 61(i)(3) or Rule 61(i)(4), or that defense counsel’s waiver of Slaughter’s speedy trial was voluntary. As such, the Superior Court erred in denying this claim, and the State’s contentions otherwise are unpersuasive.

ARGUMENT III. THE STATE’S ANSWER IN RESPONSE TO SLAUGHTER’S POSTCONVICTION CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILURE TO FILE AN APPEAL USES AN ERRONEOUS STANDARD OF REVIEW AND IS FACTUALLY AND LEGALLY INACCURATE.

A. The correct standard of review is *de novo*.

The State incorrectly asserts that the correct standard of review is abuse of discretion. (Answer at 4, 17). However, as noted in Slaughter’s Opening Brief, this Court reviews both questions of law³³ and claims of a constitutional violation³⁴ *de novo*. (Opening at 41).

Slaughter alleged in his Opening Brief that the Superior Court erred in denying his postconviction claim of ineffective assistance of counsel for failure to file an appeal, in violation of Slaughter’s due process rights under the Sixth and Fourteenth Amendments to the United States Constitution and Article I, § 7 of the Delaware Constitution. (Opening at 41-2). As such, Slaughter alleges a claim of a constitutional violation that raise questions of law. Therefore, *de novo* is the appropriate standard of review.³⁵

³³ *Dawson*, 673 A.2d at 1190.

³⁴ *Hall*, 788 A.2d at 123.

³⁵ *Id*; *Dawson*, 673 A.2d at 1190.

B. The State’s Answer does not demonstrate that the Superior Court correctly found that Slaughter’s ineffective assistance of counsel claim for failing to appeal the denial of the second motion to dismiss was without merit.

The State contends that Slaughter’s ineffective assistance of counsel claims are without merit, asserting that Slaughter failed to demonstrate that defense counsel was constitutionally ineffective or that he suffered prejudice from any actions or non-actions by defense counsel. (Answer at 4). The basis for the State’s conclusion is that the State’s argument that “the *Class* line of cases do not assist Slaughter, as they are inapplicable to Slaughter’s situation”, and therefore, “under controlling Delaware precedent, trial counsel’s advice was correct.” (Answer at 43). However, for the reasons explained in relation to Claim I,³⁶ the State is incorrect that *Class*, *Blackledge*, *Menna*, and *Broce* are inapplicable to Slaughter’s case, as this United States Supreme Court precedent establishes that Slaughter’s IAD claims relating to whether the State still had the power to prosecute him at the time of the guilty plea were not waived when Slaughter entered his guilty plea. Moreover, for the reasons already outlined,³⁷ the State is incorrect that Slaughter’s claims are without merit and that an appeal would therefore have been fruitless.

In his Opening Brief, Slaughter posited that the Superior Court’s conclusions that

³⁶ See *supra* pp. 3-7.

³⁷ See *supra* pp. 3-13, 19-21.

postconviction claims I and II are procedurally barred for failure to raise on appeal are inconsistent with the Superior Court's finding that postconviction claim III, ineffectiveness for failure to file an appeal, is without merit after determining that an appeal could not have been filed because claims I and II were waived by entering into a guilty plea. (Opening at 42). The State contends that these findings are not inconsistent; however, the State does not offer any explanation or reasoning to support the consistency of the court's conclusions. (Answer at 43).

In light of the aforementioned, the State's Answering Brief fails to establish that the Superior Court properly denied Slaughter's postconviction claim of constitutional ineffective assistance of counsel for failure to appeal the denial of the second motion to dismiss.

CONCLUSION

WHEREFORE, based on the foregoing, Slaughter respectfully requests that this Court grant all appropriate relief, including withdrawal of the guilty plea and dismissal of the indictment with prejudice.

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