



IN THE SUPREME COURT OF THE STATE OF DELAWARE

MAURICIO HERNANDEZ MARTINEZ, :

Defendant Below, :
Appellant,

v. : Case No: 179, 2022

STATE OF DELAWARE :

Plaintiff Below,
Appellee.

**DEFENDANT APPELLANT'S REPLY BRIEF IN SUPPORT OF HIS
MOTION TO WITHDRAW GUILTY PLEAS AFTER REMAND TO
THE SUPERIOR COURT OF THE STATE OF DELAWARE**

LAW OFFICE OF GILL, WELSH
& CHAMBERLAIN, P.A.

/s/ Edward C. Gill
Edward C. Gill, Esquire
Attorney for Defendant
Below Appellant
P.O. Box 824
Georgetown, DE 19947
Bar I.D. 2112
(302) 854-5400

DATED: July 10, 2023

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B. THE STANDARD AND SCOPE OF REVIEW IS WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING THE DEFENDANT/APPELLANT'S MOTION TO WITHDRAW GUILTY PLEAS. <i>BROWN V. STATE</i> , 250 A.2d 503 (Del. 1969)	
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COUNSEL, THE DEFENDANT IS LEGALLY INNOCENT, THE DEFENDANT DID NOT HAVE ADEQUATE LEGAL COUNSEL, AND THERE WAS NO PREJUDICE TO THE STATE. SCARBOROUGH V. STATE, 938 A.2D 644 (Del. 2007).

ARGUMENT II

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A. QUESTION PRESENTED: DID THE TRIAL COURT ERR IN RELYING ON ALLEGATIONS IN ITS MEMORANDUM DECISION BY THE STATE WHICH WERE NOT SUPPORTED BY THE EVIDENTIARY RECORD? THIS ISSUE WAS PRESERVED BY DEFENDANT APPELLANT FILING HIS REPLY IN SUPPORT OF HIS MOTION TO WITHDRAW GUILTY PLEA IN THE SUPERIOR COURT ON APRIL 25, 2023, OBJECTING TO THE COURT CONSIDERING ALLEGATIONS BEING MADE BY THE STATE OF FACTS OUTSIDE THE EVIDENTIARY RECORD. (A37-A38)

B. THE STANDARD AND SCOPE OF REVIEW IS WHETHER THE TRIAL COURT ERRED AS A MATTER OF LAW IN RELYING ON ALLEGATIONS MADE BY THE STATE WHICH WERE NOT SUPPORTED BY THE EVIDENTIARY RECORD AT THE HEARING IN THIS CASE.

C. MERITS OF ARGUMENT: THE TRIAL COURT SHOULD NOT HAVE CONSIDERED ALLEGATIONS MADE BY THE STATE WHICH

WERE NOT SUPPORTED BY ANY WITNESSES OR EVIDENCE PRODUCED AT THE EVIDENTIARY HEARING IN THIS CASE.

ARGUMENT III

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A. QUESTION PRESENTED: DID THE TRIAL COURT ERR IN COMMENTING ON THE DEFENDANT APPELLANT'S EXERCISING HIS RIGHT TO REMAIN SILENT AT THE POST CONVICTION EVIDENTIARY HEARING AND DRAWING AN ADVERSE INFERENCE FROM THAT IN ITS DECISION? THIS ISSUE WAS NOT ABLE TO BE PRESENTED IN THE TRIAL COURT SINCE IT WAS ONLY APPARENT WHEN THE TRIAL COURT ISSUED ITS DECISION DENYING THE DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEAS.

B. THE STANDARD AND SCOPE OF REVIEW IS WHETHER THE TRIAL COURT ERRED AS A MATTER OF LAW IN DRAWING AN ADVERSE INFERENCE FROM THE DEFENDANT'S SILENCE AT THE EVIDENTIARY HEARING ON HIS MOTION TO WITHDRAW GUILTY PLEAS.

C. MERITS OF ARGUMENT: THE TRIAL COURT SHOULD NOT HAVE DRAWN AN ADVERSE INFERENCE FROM DEFENDANT'S FAILURE TO TESTIFY AT THE EVIDENTIARY HEARING IN THIS CASE.

A. QUESTION PRESENTED: DID THE TRIAL COURT ABANDON ITS ROLE AS A NEUTRAL AND DETACHED ARBITER AND BECOME AN ADVOCATE IN THE CASE BY ASKING LEADING QUESTIONS WHICH ONLY FAVORED THE STATE? THIS ISSUE WAS RAISED IN THE TRIAL COURT BY MR. MARTINEZ'S OBJECTION TO THE JUDGE INTERJECTING HIMSELF INTO THE PROCESS WHICH WAS OVERRULED BY THE TRIAL COURT. (A68)

B. THE STANDARD AND SCOPE OF REVIEW IS WHETHER THE TRIAL COURT ABUSED ITS DISCRETION BY BECOMING AN ADVOCATE FOR ONE PARTY.

C. MERITS OF ARGUMENT: THE TRIAL COURT ABANDONED ITS ROLE AS A NEUTRAL ARBITER BY ASKING LEADING QUESTIONS FAVORING ONE PARTY.

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ARGUMENT I

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The State acknowledges, as it must, the gross procedural defects in this case. Mr. Martinez was advised of the wrong range of sentence by his counsel and by the Court. He was given a wrong answer as to whether this plea would effect his right to own or possess a deadly weapon. The Indictment was defective in that it did not even include one of the major elements of the lead charge. Thus, the procedural defects certainly should not be taken separately but in concert they clearly present a major factor in favor of a fair and just reason to withdraw the plea.

The State does argue that the plea in this case was done voluntarily. It is difficult to understand how the State can make that argument when Mr. Martinez had not been advised of the proper range of penalties, the felony consequences, any defenses which he would have been able to raise and all the elements of the crime to which he was pleading. In fact, even as of the time of the State's Answering Brief the State has still not explained what motor vehicle offense it alleges was violated to have Mr. Martinez in violation of Count I.

The State also glosses over the facts which were introduced at the hearing which do show legal innocence. It does not address the fact that Mr. Martinez could not have anticipated that a vehicle would abruptly stop in the road in front of him and at the same time there would be a person in dark clothing walking on the other side in the roadway without a lamp.

The State also somehow claims that counsel in this case was effective in simply steering Mr. Martinez directly into the hands of the police, the prison system and ultimately immigration. It is difficult to read the facts of this case and understand how anyone can be making that type of argument.

Finally, the State argues that there is prejudice by the fact that if this Motion is granted the case will be able to be heard on the merits. It is respectfully submitted that this elevation of finality over justice should not be accepted by this Court.

ARGUMENT II

A. QUESTION PRESENTED: DID THE TRIAL COURT ERR IN RELYING ON ALLEGATIONS IN ITS MEMORANDUM DECISION BY THE STATE WHICH WERE NOT SUPPORTED BY THE EVIDENTIARY RECORD? THIS ISSUE WAS PRESERVED BY DEFENDANT APPELLANT FILING HIS REPLY IN SUPPORT OF HIS MOTION TO WITHDRAW GUILTY PLEA IN THE SUPERIOR COURT ON APRIL 25, 2023, OBJECTING TO THE COURT CONSIDERING ALLEGATIONS BEING MADE BY THE STATE OF FACTS OUTSIDE THE EVIDENTIARY RECORD. (A37-A38)

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The State here argues without any citation to the record that the Trial Court simply relying upon an assertion that was made by the Attorney

General's office, without any evidentiary basis whatsoever, satisfies a minimal indicium of reliability standard. The State asserts that these are more than mere allegations.

However, that is clearly not correct. The Trial Court simply took what were mere allegations by the State and adopted those allegations in its decision. It is respectfully submitted that this is clearly an abuse of discretion and any Court as a fact finder should be required to make its decisions based upon the evidentiary record as opposed to these mere allegations.

ARGUMENT III

A. QUESTION PRESENTED: DID THE TRIAL COURT ERR IN COMMENTING ON THE DEFENDANT APPELLANT'S EXERCISING HIS RIGHT TO REMAIN SILENT AT THE POST CONVICTION EVIDENTIARY HEARING AND DRAWING AN ADVERSE INFERENCE FROM THAT IN ITS DECISION? THIS ISSUE WAS NOT ABLE TO BE PRESENTED IN THE TRIAL COURT SINCE IT WAS ONLY APPARENT WHEN THE TRIAL COURT ISSUED ITS DECISION DENYING THE DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEAS.

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Once again the State attempts to justify and defend the indefensible. The Trial Court three times made comments on Mr. Martinez not testifying. They all were in the context of using Mr. Martinez's silence against him.

The State somehow seeks to construe these comments as invited due to a comment defense counsel made at the prior Hearing where the State successfully prevented any evidence from being submitted to the Court which necessitated additional appeal and remand. However, those comments had absolutely nothing to do with any factual findings in this case but simply is another indication of an attempt by the State to twist the record.

The State does not attempt to justify by any case law comments of a Trial Judge as the fact finder in making a determination against the defendant. Therefore, this is clearly another error which occurred in the process.

ARGUMENT IV

A. QUESTION PRESENTED: DID THE TRIAL COURT ABANDON ITS ROLE AS A NEUTRAL AND DETACHED ARBITER AND BECOME AN ADVOCATE IN THE CASE BY ASKING LEADING QUESTIONS WHICH ONLY FAVORED THE STATE? THIS ISSUE WAS RAISED IN THE TRIAL COURT BY MR. MARTINEZ'S OBJECTION TO THE JUDGE INTERJECTING HIMSELF INTO THE PROCESS WHICH WAS OVERRULED BY THE TRIAL COURT. (A68)

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The State argues that it was proper for the Trial Court as the fact finder to insert itself into the questioning process of the witness who testified. The State claims that defense has not shown how the Court's questions were biased in favor of the State.

A simple reading of the questions and answers as set forth in the Opening Brief indicates same. All of the questions were clearly intended to

buttress the State's arguments. Therefore, the Court's lack of impartiality was demonstrated in the questioning.

CONCLUSION

For the reasons set forth herein Defendant Appellant, Mauricio Hernandez Martinez, respectfully prays that the Court's decision denying his Motion to Withdraw Guilty Pleas be set aside and that this Court order the guilty pleas to be set aside and the matter be remanded for Trial. If this Court shall not grant that remedy then alternatively this Court should overturn the decision of the Trial Court denying the Motion to Withdraw the Guilty Pleas and remand the matter to Superior Court to be assigned to a new Trial Judge.

LAW OFFICE OF GILL, WELSH
& CHAMBERLAIN, P.A.

/s/ Edward C. Gill
Edward C. Gill, Esquire
Attorney for Defendant
Below Appellant
P.O. Box 824
Georgetown, DE 19947
Bar I.D. 2112
(302) 854-5400

DATED: July 10, 2023

AFFIDAVIT OF ELECTRONIC MAILING

BE IT REMEMBERED that on this 10th day of July, 2023, Ashley Whalen, Paralegal, for the Law Office of Gill, Welsh & Chamberlain, P.A., does state that she forwarded to Maria Teresa Knoll, Esquire, with the Attorney General's Office by Lexis Nexis file and Serve, Defendant Appellant's Reply Brief in Support of His Motion to Withdraw Guilty Pleas After Remand to the Superior Court of the State of Delaware

to: Maria Teresa Knoll, Esquire
Department of Justice
Carvel State Building
820 North French Street
Wilmington, DE 19801

/s/ Ashley Whalen

Paralegal