No. 19-7638

United States Court of Appeals

FOR THE FOURTH CIRCUIT

CALVIN CURRICA,
Plaintiff-Appellant,

v.

WARDEN RICHARD MILLER,
Defendant-Appellee.

Appeal from the United States District Court for the District of Maryland

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BRIEF OF APPELLANT

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STATEMENT OF JURISDICTION

The district court had 28 U.S.C. § 1331 subject-matter jurisdiction over Calvin Currica's 28 U.S.C. § 2254 petition and entered a final judgment denying his petition on September 13, 2019. JA325. Mr. Currica filed a notice of appeal on October 24, 2019. JA337. Although that notice was not filed within the 30-day appeal period, it requested an extension of time. JA337. Construing Mr. Currica's notice as a timely request for an extension of the appeal period, this Court remanded the motion to the district court for further factual development on whether Mr. Currica had shown excusable neglect or good cause for an extension. JA341–342. The district court found good cause and granted his motion for an extension. JA343–344; *see also* Fed. R. App. P. 4(a)(5). This Court then granted a certificate of appealability and has jurisdiction pursuant to 28 U.S.C. §§ 1291 and 2253.

STATEMENT OF THE ISSUES

I. Whether Mr. Currica's plea was involuntary when no one told him that his plea exposed him to 90 years in prison despite the agreed-upon 30 to 51 year sentencing guidelines range that was negotiated and emphasized throughout the plea proceedings.

II. Whether Mr. Currica is entitled to federal habeas relief when: (A) the state PCR court found that Mr. Currica was told that his sentencing guidelines range was advisory despite the transcript's silence on that point; or (B) its decision directly contradicts clearly established law requiring that Mr. Currica be informed of the maximum sentence he faced.

STATEMENT OF THE CASE

This Court granted a certificate of appealability asking whether Mr. Currica's guilty plea "was involuntary because [he] did not understand that state sentencing guidelines were advisory and that he could be sentenced above the guidelines range upon which the parties agreed in the plea agreement."

STATE COURT PLEA AND SENTENCING

The state of Maryland indicted Mr. Currica in two separate cases in early 2008. The first indictment included charges of murder and robbery with a dangerous weapon, JA316, and the second included multiple counts of carjacking, armed robbery, and other offenses, JA71–73. The state extended a plea offer to Mr. Currica. JA314. In exchange for his guilty plea to one count of second-degree murder (a lesser charge) and two counts of carjacking, the state agreed to dismiss the remaining charges in both cases. JA314. In a letter to Rene Sandler, Mr. Currica's defense counsel, the state explained its plea offer: "The maximum potential penalty for these offenses, when added consecutively, is 90 years. The guidelines for these offenses are thirty to fifty-one years." JA314. Ms. Sandler explained the state's offer in her own letter to Mr.

Currica: "[Y]our sentencing guidelines for these offenses is 20–30 years on the murder and 10–21 years for the carjackings. Overall sentencing guidelines are 30–51." JA317. Upon receiving this information, Mr. Currica agreed to accept the state's plea offer. JA318, JA286–289.

The parties signed a plea agreement and appeared for a plea hearing before Judge Durke G. Thompson in the Circuit Court for Montgomery County. JA74. At the start of the hearing, Judge Thompson asked the parties for the "terms and conditions" of the plea. JA75. The state provided Judge Thompson with a plea memorandum signed by both counsel that outlined the terms of the plea. JA76, JA288–289. After Judge Thompson reviewed that memorandum, he identified the three counts Mr. Currica would plead guilty to and said: "[T]he guidelines are 30 to 51 years. And I presume, by implication, that means the Court is entitled to consider the usual factors, such as suspended time and terms and conditions of probation if it's appropriate." JA76. Both the state and Ms. Sandler confirmed that this was correct. JA76.

Judge Thompson began Mr. Currica's examination by asking his age and education. JA78. Mr. Currica responded that he was 22 years old and had graduated from high school. JA78. Judge Thompson then

asked Mr. Currica a series of questions, including whether he had been given sufficient time to review the plea with counsel and whether, despite the medication he was taking, he could understand what Judge Thompson was saying. JA78–80. Judge Thompson next explained in detail that Mr. Currica would give up certain rights by pleading guilty, including his right to go to trial and have the government prove his guilt beyond a reasonable doubt. JA80–82. On multiple occasions, Judge Thompson asked if Mr. Currica understood, and Mr. Currica responded affirmatively each time. JA78–86.

Turning to the specific crimes underlying the plea, Judge Thompson told Mr. Currica the elements of the second-degree murder offense and the statutory maximum 30-year sentence for that offense. JA83. He said:

> [Y]ou are liable for a maximum penalty of thirty years in jail or less depending on what I determine, and you can be placed on probation for any suspended sentence that I might impose. In other words, I am entitled to impose a sentence that would include a component or a part of it that would be suspended. I'm not obligated to do that. You understand that?

JA83. Mr. Currica said, "Yes." JA83. Judge Thompson said that the carjacking offenses also had 30-year statutory maximums. JA83–84. He noted that he could "impose whatever sentence, including jail time and a

period of suspended jail time, if [he] wish[ed] to do so." JA83–84. Judge Thompson then asked whether Mr. Currica was entering his plea freely, voluntarily, and knowingly. JA85. Mr. Currica again responded, "Yes." JA85.

The state then presented evidence establishing the elements of second-degree murder and carjacking, after which Judge Thompson accepted Mr. Currica's guilty plea. JA86–92, JA93. Judge Thompson also ordered that a presentence investigation report ("PSI") be prepared before sentencing. JA95.

At Mr. Currica's sentencing hearing, Ms. Sandler emphasized his struggles with homelessness, mental illness, and other psychiatric conditions that led him to abuse drugs and alcohol and "do things he wouldn't otherwise do." JA107–108. She said that Mr. Currica began abusing substances in middle school, and by the time he was 17, he was using PCP every day. JA107–108. Mr. Currica had also shared with Ms. Sandler that he became "'somebody else'" when he used substances. JA108. She described Mr. Currica's "tremendous remorse" for his actions. JA105. She also pointed out his demonstrated capacity for rehabilitation, explaining that the medication and treatment he received

since his arrest had improved his psychiatric conditions. JA109–110. Ms. Sandler then turned to the fact that the recommended guidelines range in the PSI differed from the range of 30 to 51 years that was "calculated together with the State" and documented in the state's plea letter. JA111, JA314. She asked the court to sentence Mr. Currica within the previously agreed-upon 30 to 51 year range. JA111.

The state began its allocution by describing the violence of the offenses and Mr. Currica's role in them. It asserted that Mr. Currica's mental health and alcohol abuse could not explain his conduct. JA113–114. Countering Ms. Sandler's assertion that Mr. Currica was now remorseful, the state played "snippets" of a tape recording of Mr. Currica's post-arrest interrogation in which he denied guilt. JA115–133. The state then argued that the appropriate guidelines range for the offenses was 45 to 70 years as calculated in the PSI. JA137. When the state claimed that it would be inappropriate for the court to disregard the PSI's 45 to 70 year guidelines range and "go[] with what was thought to be the guidelines between counsel ahead of time," Judge Thompson noted that the "guidelines are descriptive in any event." JA137. The state also argued that Mr. Currica's "major role" in the offenses and their "excessive

violence" justified an upward departure from the PSI's 70-year maximum. JA138. Stressing that Mr. Currica was "not a person for rehabilitation and change," the state asked the court to impose a sentence longer than 70 years and concluded its argument by presenting testimony from four victims who described the impact of the crimes. JA113–114, JA138–140, JA141–147.

During rebuttal, Ms. Sandler again emphasized that Mr. Currica had accepted responsibility for his actions and encouraged the court not to "put him in a jail and throw away . . . the key" because he could be rehabilitated. JA151. Mr. Currica then addressed the court, apologizing to the victims for what he had done and expressing his remorse. JA152.

Noting the violent nature of the offenses and stating his intention that Mr. Currica "not appear free of restraint of the authorities of this State for as long as [he could] reasonably incapacitate [him]," Judge Thompson imposed consecutive sentences of 30 years for the second-degree murder charge, 30 years for the first carjacking charge, and 25 years for the second carjacking charge for a total sentence of 85 years. JA152–155.

Ms. Sandler subsequently filed an application for review of Mr. Currica's sentence by a three-judge panel and a motion for modification of his sentence, both of which were denied. JA224–225, JA248, JA209. Mr. Currica later filed a pro se motion to correct an illegal sentence which was also denied. JA209.

STATE POST-CONVICTION REVIEW PROCEEDINGS

In 2014, Mr. Currica filed a pro se petition for post-conviction relief. JA159. His petition challenged the validity of his sentence and plea, alleging that the state and Judge Thompson had breached his plea agreement by failing to abide by the agreed-upon guidelines range. JA160–162. Mr. Currica asserted that he understood that he would receive a sentence within the 30 to 51 year guidelines range and would not have pleaded guilty had he known he could be sentenced to a longer term. JA160–165. He also claimed that his defense counsel had provided ineffective assistance by failing to file an application for leave to appeal his convictions when he had requested that she do so. JA161–162. The state post-conviction review ("PCR") court conducted an evidentiary hearing, at which Mr. Currica was represented by a public defender. JA208–209. Mr. Currica testified at the hearing that the maximum

sentence he thought he could receive under the plea agreement was 51 years. JA218–219. He also testified that he had asked defense counsel to file an application for leave to appeal. JA219–220.

At the close of the hearing, the PCR court delivered an oral ruling denying in part and granting in part Mr. Currica's petition. JA241–251. It first denied Mr. Currica's claims challenging his plea. JA247–248. The court concluded that there was no basis for a reasonable person to believe that Judge Thompson was required to sentence Mr. Currica within the guidelines range and that Judge Thompson "made it clear that the guidelines are . . . advisory only." JA246–248. On those bases, it denied Mr. Currica relief on all of his claims related to the validity of his plea and sentence. JA247–248.

On Mr. Currica's ineffective assistance claim, the court concluded that defense counsel should have filed an application for leave to appeal, and it granted Mr. Currica's request to file a belated application. JA248. Proceeding pro se, Mr. Currica filed that application for leave to appeal his conviction and sentence as well as an application for leave to appeal the PCR court's denial of post-conviction relief. JA255, JA262. Both were denied. JA267–268.

SECTION 2254 PROCEEDINGS

Mr. Currica filed a pro se habeas corpus petition under the Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA"), 28 U.S.C. § 2254, asserting three claims: (1) he entered his plea unknowingly and involuntarily because he did not understand that he could receive a sentence above 51 years; (2) the state and Judge Thompson breached the plea agreement; and (3) he should have been allowed to withdraw his plea when Judge Thompson disregarded the sentencing guidelines range of 30 to 51 years. JA5, JA12–21. In asserting his involuntary plea claim, Mr. Currica explained that his plea was invalid under the Due Process Clause because "he was blind to a much harsher sentence." JA16. The state's answer contended that because Mr. Currica's plea agreement was not breached, the PCR court's decision reasonably applied federal law. JA24, JA47–48.

The district court ordered the state to file a supplement to its answer addressing "whether the state adjudication [was] 'contrary to' clearly established federal law concerning acceptance of an intelligent, knowing and voluntary guilty plea." JA273. The state filed a supplement, restating that the plea agreement, memorandum, and

transcript indicated neither that Mr. Currica's sentence "was capped by a maximum sentence" nor that Judge Thompson was bound by a "sentencing cap." JA275, JA281–282. In response, Mr. Currica supplemented his petition with copies of the plea memorandum and letters from the state and defense counsel explaining that the plea carried a 30 to 51 year guidelines sentence. JA294, JA314–321.

The district court entered a final judgment denying Mr. Currica's petition on September 13, 2019. JA325, JA332–333. Concerning his involuntary plea claim, the district court stated that the PCR court's decision was "consistent" with *Boykin v. Alabama*, 395 U.S. 238 (1969), because Judge Thompson told Mr. Currica the maximum sentence was 30 years for each of his charges and that "he '[could] impose whatever sentence.'" JA333. The district court also explained that because Judge Thompson "never spoke of any limitation other than the statutory maximums," the record showed that Mr. Currica was "properly advised" of his maximum sentence and thus the PCR court's decision was not incorrect or unreasonable under § 2254(d)(1). JA333.

Mr. Currica appealed the district court's final judgment on October 24, 2019, beyond the 30-day period prescribed by Rule 4. JA337; Fed. R.

App. P. 4(a)(1). Because he described his reasons for not timely filing the notice of appeal, this Court remanded for the district court to determine whether good cause existed for the late filing. JA341. The district court found good cause and granted Mr. Currica's motion to extend time for appeal. JA344.

This Court appointed undersigned counsel and granted a certificate of appealability on whether Mr. Currica's plea "was involuntary because [he] did not understand that state sentencing guidelines were advisory and that he could be sentenced above the guidelines range upon which the parties agreed in the plea agreement."

SUMMARY OF THE ARGUMENT

Mr. Currica entered his guilty plea only after he was assured of a sentencing guidelines range between 30 and 51 years. But he was never told that this agreed-upon guidelines range did nothing to limit his 90-year statutory maximum sentence. The failure to provide him with this crucial information violated his due process rights. It has long been established that the Due Process Clause of the Fourteenth Amendment requires that a defendant have a full understanding of the consequences of his guilty plea before entering that plea. Indeed, Mr. Currica's guilty plea is constitutionally valid only if *someone*—the court, the state or defense counsel—told him the maximum sentence that could result from his guilty plea. *See Boykin*, 395 U.S. at 242–44; *Brady v. United States*, 397 U.S. 742, 747 n.4 (1970).

Because Mr. Currica was never told that the agreed-upon 51-year guidelines maximum did not constrain the 90-year sentence that his plea exposed him to, his plea is involuntary. *Boykin* requires more than cursory references to the statutory maximum, especially when the record repeatedly emphasizes the guidelines maximum. Judge Thompson told Mr. Currica that the "terms and conditions" of his plea included the 30 to

51 year guidelines range but failed to mention that this 51-year maximum did not limit the 90-year statutory maximum penalty. JA75–76. Had Mr. Currica been told that he could receive 90 years, rather than 51 years, he would not have pleaded guilty.

Mr. Currica is entitled to habeas relief for that due process violation. The PCR court's finding that Judge Thompson "made it clear" that the guidelines were advisory is objectively unreasonable under AEDPA because Judge Thompson said nothing about the advisory nature of the guidelines. Nor does anything else in the record support the PCR court's finding. Judge Thompson's references to the *statutory* maximums did not inform Mr. Currica that the *guidelines* maximum did not limit his sentence. Judge Thompson said that he could impose "whatever sentence" for the carjacking charge and "less" than the statutory maximum for the second-degree murder charge "depending on what he determine[d]." This does not tell Mr. Currica anything about the length of his sentence. In context, these statements meant only that Judge Thompson could impose jail time, suspended jail time, or probation. Because Mr. Currica has established both a constitutional violation and a clear factual error, this Court should grant habeas relief.

Even if this Court accords AEDPA deference to the PCR court's conclusion denying relief, its ruling contradicts *Boykin* and *Brady*. The record does not affirmatively disclose that Mr. Currica was told in comprehensible terms the maximum sentence he faced when he pleaded guilty. In fact, although Judge Thompson, the state, and defense counsel reiterated that Mr. Currica's sentencing guidelines range was 30 to 51 years, no one mentioned that this guidelines range did not limit his maximum sentence. The record in this case is murky where *Boykin* requires clarity. Because Mr. Currica was never informed that he could receive 90 years imprisonment regardless of any guideline calculation, his plea was involuntary, and he should be granted habeas relief.

ARGUMENT

Mr. Currica received an 85-year prison sentence after accepting a plea deal with an agreed-upon sentencing guidelines range of 30 to 51 years. That plea was involuntary under *Boykin* and *Brady*, and the district court erred in denying habeas relief. This Court reviews *de novo* the district court's denial of Mr. Currica's § 2254(d) petition. *See Lawlor v. Zook*, 909 F.3d 614, 626 (4th Cir. 2018).

I. MR. CURRICA'S PLEA WAS INVOLUNTARY BECAUSE HE WAS NEVER TOLD THAT HIS SENTENCING GUIDELINES RANGE DID NOT LIMIT HIS SENTENCE.

Mr. Currica entered a guilty plea only after Judge Thompson, the state, and defense counsel repeatedly told him—at least five times—that his sentencing guidelines range was 30 to 51 years.[1] That range induced his plea. But as Mr. Currica discovered only when the judge imposed his 85-year sentence, that 30 to 51 year range did not limit his sentence in any way. Because it was not clear from the record that Mr. Currica could receive a maximum sentence of 90 rather than 51 years, his plea was

[1] The 30 to 51 year guidelines range is included in the plea memorandum, the plea colloquy transcript, and plea letters from the state and defense counsel. *See* JA288, JA74, JA314–318. In addition, defense counsel's letter refers to a conversation she had with Mr. Currica in which they discussed that guidelines range. JA317.

involuntary under the Due Process Clause of the Fourteenth Amendment.

Mr. Currica's plea was involuntary because Judge Thompson failed to ensure that Mr. Currica was "made aware of all the direct . . . consequences of his plea."[2] *Meyer v. Branker*, 506 F.3d 358, 367–68 (4th Cir. 2007) (internal citations omitted); *see also Brady*, 397 U.S. at 748 n.6 ("The importance of *assuring* that a defendant does not plead guilty except with a full understanding of . . . the possible consequences of his plea was at the heart of . . . *Boykin*") (emphasis added). Mr. Currica's sentencing exposure was a "direct" consequence of his plea because it had "a definite, immediate, and largely automatic effect on the range of [his] punishment." *See Meyer*, 506 F.3d at 368. To ensure that Mr. Currica understood what he faced as a result of his plea, the law required the court to act with "the utmost solicitude" in explaining the range of his punishment. *See Boykin*, 395 U.S. at 244. As such, Judge Thompson was

[2] While some courts use the terms "involuntary" and "unknowing" pleas interchangeably, this Court has specified that claims challenging whether the petitioner understood the direct consequences of his plea are analyzed for voluntariness. *See Appleby v. Warden, N. Reg'l Jail & Corr. Facility*, 595 F.3d 532, 537 (finding that a guilty plea is "voluntary" when entered by one fully aware of the direct consequences of the plea).

"best advised to conduct an on the record examination of [Mr. Currica]," which included ensuring that Mr. Currica understood the "permissible range of sentences." *Id.* at 244 n.7.

Judge Thompson did not do so, and that renders Mr. Currica's plea involuntary. *See, e.g.*, *Hart v. Marion Corr. Inst.*, 927 F.2d 256, 259 (6th Cir. 1991); *Jamison v. Klem*, 544 F.3d 266, 275–76 (3d Cir. 2008). Nothing in the record of Mr. Currica's case—including the plea memorandum, plea colloquy, and plea letters[3] from the state and defense counsel—demonstrates that he was adequately informed that he faced 90 years at sentencing. *See* JA288, JA74, JA314–318. At the time of his plea, Mr. Currica was a young Black man with a high school education and a history of psychiatric conditions and substance abuse. He had never been charged with—let alone entered a guilty plea to—a felony. But he was never told either that the negotiated 51-year maximum did

[3] Ms. Sandler drew Judge Thompson's attention to the government's plea letter at sentencing. JA111. And Mr. Currica's PCR counsel also brought them to the state PCR court's attention in arguing that his plea was flawed. JA233 (explaining that Mr. Currica's understanding of the maximum sentence was "based on the letter that was sent from the prosecutor to his attorney, the letter that his attorney sent to him and based on the fact that at the pre-hearing he was told that his guidelines would be" 30 to 51 years).

not limit his sentence or that it could later change. A reasonable person in Mr. Currica's position would have understood that his maximum sentencing exposure was the guidelines maximum of 51 years.

Because Mr. Currica was not given adequate information about the effect his plea would have on his sentence, he did not voluntarily enter his plea. *See Hart*, 927 F.2d at 259; *Jamison*, 544 F.3d at 275–76 (holding that the petitioner's plea was involuntary when, despite being told the correct maximum sentence, he was not told his mandatory minimum sentence). In *Hart*, the petitioner's plea was not voluntary because although the state court accurately told the petitioner that it could "impose maximum sentences . . . of 60 to 150 years," it also erroneously said that the "maximum sentence that could be served" was 15 years. 927 F.2d at 258. That information misleadingly suggested that the defendant would not serve more than 15 years regardless of the length of the sentence imposed. Judge Thompson's statement that the "terms and conditions" of Mr. Currica's plea included the 30-51 year guidelines range, although technically accurate, provided a similarly misleading

assurance that the agreed-upon 51-year term represented Mr. Currica's maximum exposure.[4] JA76.

And although the record includes references to a statutory maximum 90-year sentence, Mr. Currica's right to due process required more. The record must "affirmatively disclose[] . . . the defendant's *understanding* of the significance of his plea and of its *voluntariness*." *Hanson v. Phillips*, 442 F.3d 789, 799 (2d Cir. 2006) (emphasis in original). Cursory references to the information required by *Boykin* and *Brady* are "not sufficient" to ensure a voluntary plea. *Id.* Mr. Currica's plea memorandum included only the sentencing guidelines range (not the statutory maximum), and his signed plea agreement was entirely silent about a maximum sentence. JA288, JA312–313. This ambiguity demonstrates an involuntary plea.

II. MR. CURRICA IS ENTITLED TO HABEAS RELIEF FOR HIS INVOLUNTARY PLEA.

This Court should review Mr. Currica's legal claim without AEDPA deference because the PCR court's decision rested on an unreasonable

[4] The district court's conclusion that Judge Thompson "never spoke of any limitation other than the statutory maximums" was erroneous because Judge Thompson specifically mentioned the 30 to 51 year range at the plea. *Compare* JA76 *with* JA333.

determination of the facts under § 2254(d)(2). Even if this Court reviews the claim under § 2254(d)(1)'s deferential standard, the PCR court's decision was objectively unreasonable because it contradicted and misapplied *Boykin* and *Brady*. Accordingly, this Court should grant Mr. Currica habeas relief.

A. This Court should grant habeas relief because the PCR court's decision was based on an unreasonable factual finding.

Under § 2254(d)(2) and (e)(1), this Court reviews whether the PCR court's factual findings rest on an objectively unreasonable factual finding, "bearing in mind" that those determinations "are presumed correct absent clear and convincing evidence to the contrary." *Elmore v. Ozmint*, 661 F.3d 783, 850 (4th Cir. 2011) (internal citation omitted). The PCR court's conclusion that Mr. Currica's plea was voluntary relied on a factual determination that Judge Thompson had "made it clear that the guidelines are . . . advisory only." JA248. But the transcript demonstrates that Judge Thompson never said anything about the guidelines being advisory. Because this was an objectively unreasonable factual finding, Mr. Currica is entitled to habeas relief.

The PCR court's finding that Judge Thompson "made it clear" that the guidelines were advisory is unsupported by the transcript. At the plea colloquy, Judge Thompson's sole mention of the guidelines was his confirmation that "the guidelines are 30 to 51 years." JA76. The dearth of *any* evidence that Judge Thompson said the guidelines were advisory belies the PCR court's factual finding and renders it error under both § 2254(d)(2) and (e)(1). *See Wiggins v. Smith*, 539 U.S. 510, 528 (2003) (holding that a state court's finding was clearly erroneous because it was unsupported by the record); *Williams v. Stirling*, 914 F.3d 302, 316–17 (4th Cir. 2019).

Relying on *Wiggins*, this Court has found error when a PCR court determined that trial counsel strategically chose not to present mitigating evidence even though the record was silent about whether trial counsel investigated that mitigating evidence. *Williams v. Stirling*, 914 F.3d at 316–17. Like the records in *Wiggins* and *Williams v. Stirling* that lacked evidence to support the state court's finding, the transcript in this case is similarly silent. Judge Thompson said nothing about the non-compulsory nature of the guidelines, so the PCR court's finding that

he "made it clear" is likewise objectively unreasonable under § 2254(d)(2) and (e)(1). *See also Taylor v. Grounds*, 721 F.3d 809, 822 (7th Cir. 2013).

Nor does anything else in the plea colloquy transcript support the PCR court's finding. With respect to the second-degree murder charge, Judge Thompson told Mr. Currica:

> [Y]ou are liable for a maximum penalty of thirty years in jail or less depending on what I determine, and you can be placed on probation for any suspended sentence that I might impose. In other words, I am entitled to impose a sentence that would include a component or a part of it that would be suspended. I'm not obligated to do that. You understand that?

JA83. With respect to the carjacking charges, Judge Thompson said that "each of these charges carries the possibility of being put in jail for up to 30 years. Once again, I can impose whatever sentence, including jail time and a period of suspended jail time, if I wish to do so." JA84. But neither statement "made it clear" that the guidelines were advisory. Instead, the references to probation, jail time, and suspended jail time suggest that, in context, Judge Thompson told Mr. Currica that he could suspend or probate Mr. Currica's sentence. Further, nothing described how *long* Mr. Currica's prison term could be. Judge Thompson's mention of the statutory maximum terms never told Mr. Currica that the only limit on his sentence was the *statutory* maximum, not the *guidelines* maximum.

So his mention of the statutory maximums cannot have made clear that the guidelines were advisory.

Because Mr. Currica has demonstrated that the PCR court committed § 2254(d)(2) and (e)(1) error, he is entitled to habeas relief without AEDPA deference. *See* § 2254(d). This Court does not afford AEDPA deference where, as here, a state court's unreasonable factual finding undermines its own conclusions. *See Austin v. Plumley*, 565 F. App'x 175, 184–85 (4th Cir. 2014) (quoting *Panetti v. Quarterman*, 551 U.S. 930, 953 (2007)). Accordingly, Mr. Currica is entitled to habeas relief because his plea was involuntary and the PCR court unreasonably erred under § 2254(d)(2) and (e)(1).

B. The PCR court's decision contradicts clearly established law requiring that Mr. Currica be made fully aware of his sentencing exposure at his plea.

The PCR court's decision is objectively unreasonable in concluding that Mr. Currica entered a voluntary plea because it contradicts and unreasonably applies long-standing Supreme Court precedent.[5] Over 50

[5] The Supreme Court and this Court have acknowledged the "overlapping meanings of the phrases 'contrary to' and 'unreasonable application of,'" and Mr. Currica thus asserts both to the extent each is applicable. *See Williams v. Taylor*, 529 U.S. 362, 385 (2000) (citation omitted).

years ago, *Brady* and *Boykin* established that the Due Process Clause requires the record to show that a defendant was told his maximum sentence exposure. *Brady*, 397 U.S. at 748 n.6 (emphasizing *Boykin*'s focus on ensuring that the defendant has a "full understanding" of the possible consequences of his plea); *Boykin*, 395 U.S. at 242–43; *Appleby*, 595 F.3d at 542 (Traxler, C.J., dissenting) (noting that "[c]learly established federal law requires that defendants be informed of the maximum penalty to which their guilty plea exposes them").

Because Mr. Currica was not told his maximum sentencing exposure, the PCR court's conclusion that Mr. Currica voluntarily entered his guilty plea is objectively unreasonable under *Boykin* and *Brady*, and Mr. Currica is entitled to habeas relief. *See* supra 22–24; *Jamison*, 544 F.3d at 276–77; *Dalton v. Battaglia*, 402 F.3d 729, 733–34 (7th Cir. 2005); *see also Hanson*, 442 F.3d at 799; *Wade v. Wainwright*, 420 F.2d 898, 900 (5th Cir. 1969). Thus, for purposes of § 2254(d)(1), the merits of Mr. Currica's claim are "squarely governed" by the Court's holdings in *Boykin* and *Brady*. *Williams v. Taylor*, 529 U.S. at 390.

The PCR court's decision unreasonably applies *Boykin* and *Brady* because its denial of relief rests solely on statements from the plea

proceeding that did not provide the crucial information Mr. Currica needed in order to understand his sentencing exposure.[6] The PCR court concluded that Mr. Currica purportedly "knew . . . damn well what he was pleading guilty to" because Judge Thompson told Mr. Currica the maximum sentence for each offense and that he could impose "whatever sentence" he wished, including a suspended sentence. JA248, JA245–246. But a state court unreasonably applies *Boykin* and *Brady* where, as here, the plea proceedings are ultimately "too opaque" for the defendant to understand his maximum sentence. *Jamison*, 544 F.3d at 276.

In *Jamison*, the prosecutor's written assurance that the state would recommend "'4–8 years w/mand'" was "far too opaque" to satisfy *Boykin*'s requirement that the defendant understand the mandatory minimum sentence that would result from his plea. 544 F.3d at 276–79. The statements cited by the PCR court share the same infirmity. Neither of those statements informed Mr. Currica that the guidelines range did not limit his sentence in any way. Judge Thompson's reference to being able

[6] The PCR court's decision does not mention *Boykin* or *Brady* or provide a clear indication of its reasons for denying relief. But that lack of clarity does not preclude relief. *See Barbe v. McBride*, 521 F.3d 443, 453–54 (4th Cir. 2008) (reversing PCR court's decision under § 2254(d)(1) despite the PCR's court's minimal legal reasoning).

to impose "whatever sentence" appeared to relate only to his ability to suspend a portion of the term of imprisonment. *See supra* at 25. And his reference to the statutory maximums said nothing about whether the guidelines maximum or the statutory maximum ultimately limited his sentence. Thus, the PCR court's conclusion contradicted and unreasonably applied *Boykin*.

Nothing in the record affirms that Mr. Currica was told he could receive a sentence above 51 years. Despite general deference to a state court's construction of the record, a state court's decision contradicts or unreasonably applies *Boykin* when the federal habeas court finds no "reasonable assurance" of a voluntary plea in the plea colloquy. *Hanson*, 442 F.3d at 800. And *Boykin*'s voluntary plea standard requires evidence that Mr. Currica was informed that his guilty plea subjected him to more than 51 years. There is no such evidence here.

The PCR court's conclusion contradicts and unreasonably applies *Boykin* and *Brady* because the mere mention of the statutory maximums in the record did not inform Mr. Currica of his maximum sentencing exposure. *See Jamison*, 544 F.3d at 277 (3d Cir. 2008). Had Mr. Currica been told that his maximum potential sentence was 90 years rather than

51 years, he would not have entered a guilty plea. JA165. Because he waived his constitutional rights with the understanding that his plea subjected him to 30 to 51 years in prison, his plea was not voluntary, and this Court should grant him habeas relief.

CONCLUSION

For the foregoing reasons, this Court should grant Mr. Currica's petition for habeas corpus.

Respectfully Submitted,

/s/ Erica Hashimoto
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November 21, 2022

STATEMENT REGARDING ORAL ARGUMENT

Mr. Currica respectfully requests oral argument pursuant to Federal Rule of Appellate Procedure 34(a) and Fourth Circuit Local Rule 34(a). This case presents an important question regarding how federal habeas courts should review a record for affirmative evidence that a defendant's guilty plea comports with due process. Furthermore, this case presents the question as to the correct voluntariness standard for a state prisoner's guilty plea in light of misleading information concerning plea colloquies and agreements. The answers to these questions have significant implications for Mr. Currica and similarly situated or pro se individuals, and oral presentation would assist this Court.

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 5,520 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

Respectfully Submitted,

/s/ Erica Hashimoto

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CERTIFICATE OF SERVICE

I, Erica Hashimoto, certify that on November 21, 2022, a copy of Appellant's Brief and Joint Appendix was served on counsel for Appellee via the Court's ECF system.

Respectfully Submitted,

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