No. 19-7638

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

CALVIN F. CURRICA,

Petitioner-Appellant,

v.

RICHARD MILLER, WARDEN,

Respondent-Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND AT GREENBELT
(Hon. Paula Xinis, District Judge)

BRIEF OF RESPONDENT-APPELLEE

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 19-7638 Caption: Calvin F. Currica v. Richard Miller, Warden

Pursuant to FRAP 26.1 and Local Rule 26.1,

Richard Miller, Warden
(name of party/amicus)

who is Respondent-Appellee, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐YES ☑NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐YES ☑NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐YES ☑NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.

7. Is this a criminal case in which there was an organizational victim? ☐YES ☑NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/ Andrew J. DiMiceli Date: December 21, 2022

Counsel for: Richard Miller, Warden

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ISSUE PRESENTED FOR REVIEW

Did the district court properly defer to the state postconviction court's decision that Currica's plea was voluntary because he was sufficiently advised of, and in fact understood, the nature and consequences of his plea?[1]

SUMMARY OF THE ARGUMENT

Calvin F. Currica, Petitioner-Appellant, claims that his guilty plea was not voluntary because he was not sufficiently advised that his plea agreement with the State would not guarantee him a sentence within the state sentencing guidelines of 30 to 51 years, but rather, he could receive a total sentence within the statutory maximums of up to 90 years (and he in fact received an 85-year sentence). Currica has pointed to no place in the record where he was ever told that his sentence would be within the guidelines, nor does the term "guidelines" appear anywhere within the four corners of the written plea agreement that he signed. To the

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[1] Currica presents two issues for the Court's review, however, they are both interrelated parts of the same overarching question of whether Currica's plea was involuntary because he purportedly did not understand that the state sentencing guidelines were nonbinding. Respondent-Appellee has combined the issues into one question.

contrary, the written plea agreement stated only that the parties would be "free to allocute at the time of sentencing." (JA 286-87). And when Currica appeared before the state circuit court to plead guilty, the court informed him that "*each* of [the three] charges" to which he was pleading guilty "carrie[d] the possibility of being put in jail for up to 30 years," and the court could "impose *whatever sentence*" it deemed appropriate within the statutory maximums. (JA 84) (emphasis added). Thus, Currica was informed that his sentence was not capped by the sentencing guidelines, and to the extent that he may have assumed that he would receive a sentence within the guidelines, that assumption was not reasonable.

Nevertheless, Currica asks the Court to reverse the district court's denial of federal habeas relief on three grounds. First, he claims that he is entitled to federal habeas relief pursuant to 28 U.S.C. § 2254(d)(2) and (e)(1) because the state postconviction review ("PCR")[2] court's decision was premised on an unreasonable factual finding, namely, that the PCR court said that the plea court "made it clear" to Currica that the sentencing guidelines were "advisory only." (Appellant's Br. at 22-23).

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[2] Currica refers to the state postconviction court by the acronym "PCR." (Appellant's Br. at 9). For consistency, Respondent-Appellee will do the same.

Currica's claim fails because reasonable minds could disagree with his interpretation of the PCR court's ruling. The PCR court was not necessarily saying that the plea court used the exact words, "advisory only," or that it directly addressed the guidelines; rather, it was implying that the plea court's advisements "made it clear" that the guidelines were not binding. In any event, Currica has not established that the PCR court's findings, although perhaps inartfully articulated, resulted in an objectively unreasonable *decision*.

Next, Currica argues that he is entitled to federal habeas relief pursuant to 28 U.S.C. § 2254(d)(1) because the PCR court's decision was "contrary to" the decisions of the Supreme Court of the United States in *Boykin v. Alabama*, 395 U.S. 238 (1969), and *Brady v. United States*, 397 U.S. 742 (1970). Although the Supreme Court's discussions in those cases are certainly relevant, their holdings are not on point, they do not involve a set of facts materially indistinguishable from Currica's case, and Currica has not established that the PCR court applied a rule of law that was "diametrically different" from the legal principles applied in those cases. Currica is not entitled to habeas relief on this ground.

Lastly, Currica argues that he is entitled to federal habeas relief, again pursuant to 28 U.S.C. § 2254(d)(1), because the PCR court's decision was an "unreasonable application" of *Boykin* and *Brady*. His claim also fails on this prong because even if this Court might disagree with the PCR court's conclusion, Currica has not established that the state court's decision was objectively unreasonable. That is, Currica has not demonstrated error beyond all fairminded disagreement because reasonable minds could disagree about whether a layperson in Currica's position would understand from the record and plea colloquy the nature and consequences of his plea.

Currica's voluntariness claim also faces another significant hurdle. His claim hinges on his own postconviction testimony that he subjectively believed that the plea agreement required the sentencing court to impose a sentence within the guidelines. Yet, the PCR court expressly stated that it disbelieved Currica's testimony in that regard, finding that Currica in fact knew what he was pleading to, *i.e.*, he did not mistakenly believe that his plea would guarantee him a within-the-guidelines sentence. Federal habeas courts are obligated to defer to such credibility findings, and because Currica cannot overcome that deference, his claim fails.

The district court therefore correctly denied Currica's federal habeas claim, and this Court should affirm the judgment below.

STANDARDS OF REVIEW

This Court reviews "de novo the district court's order denying [a petitioner] habeas relief." *Bowman v. Stirling*, 45 F.4th 740, 752 (4th Cir. 2022). In doing so, the Court is "guided and restricted by the statutory language of 28 U.S.C. § 2254, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 [("AEDPA")], and a wealth of Supreme Court precedent interpreting and applying this statute." *Id.* (citation and quotation marks omitted).

The AEDPA statute prohibits a federal court from granting habeas relief unless the state-court decision under review suffers from one of three potential defects. Habeas relief may be granted only if the petitioner demonstrates that state-court decision: (1) is "contrary to" "clearly established federal law, as determined by the Supreme Court of the United States"; (2) involves "an unreasonable application of" that law; or (3) relies on an "unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d).

"The starting point for cases subject to § 2254(d)(1) is to identify the 'clearly established Federal law, as determined by the Supreme Court of the United States' that governs the habeas petitioner's claims." *Marshall v. Rodgers*, 569 U.S. 58, 61 (2013) (per curiam). "Clearly established Federal law, as determined by the Supreme Court of the United States" refers to "the holdings, as opposed to the dicta," of the Supreme Court's decisions at the time of the relevant state-court decision. *Williams v. Taylor*, 529 U.S. 362, 412 (2000). The federal habeas court must then "train its attention on the particular reasons—both legal and factual—why [the] state court[] rejected [the] state prisoner's federal claims, and . . . give appropriate deference to that decision." *Wilson v. Sellers*, 138 S. Ct. 1188, 1191-92 (2018) (citation omitted).

The deference that a federal habeas court must give to state-court decisions is "formidable." *Burt v. Titlow*, 571 U.S. 12, 19 (2013). A federal habeas court cannot reject a state court's legal reasoning unless it was "so lacking in justification that there was an error well understood and comprehended in existing [Supreme Court holdings] beyond any possibility for fairminded disagreement." *White v. Woodall*, 572 U.S. 415, 419-20 (2014). This type of mistake far exceeds routine reversible error

or even so-called "clear error," both of which are familiarly applied on a direct appeal. *Id.* After all, as the Supreme Court has now said in numerous separate opinions, federal habeas review "exists as 'a guard against extreme malfunctions in the state criminal justice systems, not a substitute for ordinary error correction through appeal.'" *Woods v. Donald*, 575 U.S. 312, 316 (2015).

Likewise, "[f]actual determinations by state courts are presumed correct absent clear and convincing evidence to the contrary, § 2254(e)(1), and a decision adjudicated on the merits in a state court and based on a factual determination will not be overturned on factual grounds unless objectively unreasonable in light of the evidence presented in the state-court proceeding, § 2254(d)(2)." *Miller-El v. Cockrell*, 537 U.S. 322, 340 (2003). If "reasonable minds reviewing the record might disagree about the finding in question," a federal habeas court may not conclude that the state-court decision was based on an unreasonable determination of the facts. *Wood v. Allen*, 558 U.S. 290, 301 (2010). That is, a "state-court factual determination is not unreasonable merely because the federal habeas court would have reached a different conclusion in the first instance." *Id.* When a state court "explain[s] its reasoning with some care,

it should be particularly difficult to establish clear and convincing evidence of [AEDPA factual] error." *Sharpe v. Bell*, 593 F.3d 372, 378 (4th Cir. 2010).

ARGUMENT

THE DISTRICT COURT PROPERLY DEFERRED TO THE STATE POSTCONVICTION COURT'S DECISION THAT CURRICA'S PLEA WAS VOLUNTARY BECAUSE HE WAS SUFFICIENTLY ADVISED OF, AND IN FACT UNDERSTOOD, THE NATURE AND CONSEQUENCES OF HIS PLEA.

A. The Maryland sentencing guidelines are advisory only unless a court expressly agrees to impose a sentence within the guidelines.

It has been well established for decades that, in the ordinary case, a Maryland court is not required to impose a sentence within the state sentencing guidelines. *See* Md. Code Ann., Crim. Proc. ("CP") § 6-211 (Westlaw thru 2022 reg. legis. sess.) (requiring the adoption of sentencing guidelines but providing that they are "voluntary" recommendations that "court[s] need not follow"); *Teasley v. State*, 298 Md. 364, 370 (1984) ("Nothing in the law requires that Guidelines sentences or principles be applied; they complement rather than replace the exercise of discretion by the trial judge."); *Lee v. State*, 69 Md. App. 302, 311 (1986) ("There is no requirement of law either that a sentencing judge follow the

sentencing guidelines or that the sentencing judge give his reasons for not doing so."); *Hill v. State*, 64 Md. App. 194, 199 (1985) ("Even a mistaken application of the Guidelines does not necessitate that the sentence be vacated and redetermined."). Simply put, "Maryland's sentencing guidelines are purely advisory." *Kang v. State*, 163 Md. App. 22, 45 (2005).

Only when a court agrees to be bound by a plea agreement that expressly promises the defendant a sentence within the guidelines do the guidelines constrain a court's sentencing discretion. *See, e.g.*, *Cuffley v. State*, 416 Md. 568 (2010) (interpreting a plea agreement that called for a "sentence within the guidelines"); *Baines v. State*, 416 Md. 604 (2010) (same).[3] In the ordinary criminal case that proceeds by way of a jury trial—or in the case of a nonbinding plea agreement, like the one Currica entered into here—the court is free to impose *any* sentence not prohibited by law.

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[3] Even in cases where the court expressly agrees to impose a within-the-guidelines sentence, it is arguably not the *guidelines* per se that constrain the court, but rather, it is the court's *agreement to be bound by a certain sentencing range* that caps the sentence, and in those cases, the range just happens to be (but does not have to be) defined by the guidelines by agreement.

It is also a well-established principle that defendants, even laypersons, are expected to know the law. *See Cheek v. United States*, 498 U.S. 192, 199 (1991) ("Based on the notion that the law is definite and knowable, the common law presumed that every person knew the law. This common-law rule has been applied by the Court in numerous cases construing criminal statutes."); *State v. Chaney*, 375 Md. 168, 181 (2003) ("Judges, lawyers and laymen alike are all presumed to know the law regardless of conscious knowledge or lack thereof[.]" (citation omitted)). Therefore, in the absence of an express agreement or advisement (erroneous or otherwise), a defendant should not, and a reasonable defendant would not, *assume* entitlement to a sentence within the guidelines when Maryland law clearly establishes that the guidelines are advisory only.

B. Currica was advised of the maximum sentences that he could receive on each count; he was advised that the court could impose "whatever sentence" it deemed appropriate; and he was never promised or misadvised that his total sentence would be within the guidelines.

Currica argues that his plea was involuntary because "it was not clear from the record that [he] could receive a maximum sentence of 90 rather than 51 years." (Appellant's Br. at 17). He contends that his guilty

plea would have been "constitutionally valid only if *someone*—the court, the state or defense counsel—told him the maximum sentence that could result from his guilty plea." (Appellant's Br. at 14). The fault in Currica's argument is that someone *did* advise him of the maximum sentence.

Currica was informed that, per his unambiguous, written plea agreement, he could receive a maximum sentence of 90 years. The sentencing guidelines were simply not a part of that agreement. Currica was never told that the guidelines would limit his sentence, and it was therefore unreasonable for Currica to assume that his sentence was capped by the guidelines at 51 years (if he did in fact believe that).[4]

The State initially described its plea offer in a letter to defense counsel dated June 24, 2008. (JA 314). The letter stated, in pertinent part:

> [Currica] is offered the opportunity to enter a plea of guilty to Murder in the Second Degree in indictment 109922, and pleas of guilty to two counts of Carjacking, (counts one and nine) in indictment 109946, to satisfy both indictments. . . . The maximum potential penalty for these offenses, when added consecutively, is 90 years. The guidelines for these offenses are thirty to fifty-one years.

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[4] As discussed in more detail below, the state postconviction court found that Currica's testimony about his subjective belief was not credible.

> . . . With respect to sentencing, the State reserves full rights to allocute. If the judge accepts these pleas, the State will enter a nolle prosequi to the remaining counts at sentencing.

(JA 314).

Defense counsel later sent a letter to Currica, dated July 17, 2008, informing him of the State's plea offer. (JA 316-18). Counsel explained that "*each*" of the three offenses to which he would plead guilty carried a "maximum penalty of Thirty (30) years." (JA 317) (emphasis added). Counsel also stated: "As we discussed, your sentencing guidelines for these offenses is 20-30 years on the murder and 10-21 years for the carjacking. Overall sentencing guidelines are 30-51." (JA 317). Counsel never said that his sentence would be limited by the guidelines. (JA 316-18).

The parties subsequently executed a written plea agreement, which Currica himself signed. (JA 286-87). The substance of the plea agreement amounted to four sentences in the first paragraph:

> The Defendant will enter a plea of guilty to Murder in the Second Degree. (The Defendant will also enter a plea of guilty to two counts of Carjacking in Criminal Number 109946). The court will order a Pre-Sentence Investigation. The parties are free to allocute at the time of sentencing.

(JA 286). The remainder of the two-page plea agreement set forth the facts of the crimes. (JA 286-87).

The word "guidelines" appears nowhere in the written plea agreement, and so it is clear that the guidelines were not part of the agreement and were not binding on the court. (JA 286-87). The only reference to sentencing in the written agreement was stated in the first paragraph: "The parties are free to allocute at the time of sentencing." (JA 286).

The parties then submitted a memorandum to the state circuit court, filed on August 11, 2008, which informed the court that they had reached a plea agreement and were requesting a hearing. (JA 288). The bottom of the memorandum indicated that the sentencing guidelines were 30 to 51 years. (JA 288). However, the memorandum was not directed to Currica, and it is not clear that he ever saw that memorandum before pleading guilty. Indeed, it appears that someone signed defense counsel's name on her behalf, which suggests that perhaps even defense counsel never saw that memorandum. (JA 288). Regardless, it did not indicate or imply that the court would be bound to impose a sentence within guidelines.

At the plea hearing, the court properly advised Currica of his charges and the nature of his plea agreement with the State:

> [THE COURT:] All right. When you are charged with second degree murder, which is what the charge will be changed to[5], *you are liable for a maximum penalty of 30 years in jail or less* <u>*depending on what I determine*</u>, and you can be placed on probation for any suspended sentence that I might impose. In other words, *I'm 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?
>
> [CURRICA:] Yes.
>
> * * *
>
> [THE COURT:] [T]hat's in Criminal [Case Number] 109922. In Criminal [Case Number] 109946, you're charged with two counts of carjacking. . . . And counsel, you're going to have to help me. The maximum for carjacking is?
>
> [DEFENSE COUNSEL]: 30.
>
> THE COURT: 30? . . . All right. So <u>*each*</u> *of these charges carries the possibility of being put in jail for up to 30 years*. *Once again,* <u>*I can impose whatever sentence*</u>, including jail time and a period of suspended jail time, if I wish to do so. You understand that?
>
> [CURRICA:] Yes.

(JA 83-84) (emphasis added).

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5 Currica initially was charged with common law murder, which included first-degree murder as defined by statute for penalty purposes, but that charge was "amended down" to second-degree murder in accordance with the plea agreement. (JA 243, 286, 326).

Thus, the court clearly and correctly advised Currica that, in accordance with the plea agreement and Maryland law, it could impose a 30-year sentence on "each" of the three charges to which Currica would plead guilty and, "depending on what [the court] determine[d]," it could impose "whatever sentence, including jail time." (JA 83-84). Currica repeatedly indicated that he understood. (JA 83-84).

Critically, the court made *no mention* of the guidelines during the formal plea colloquy, nor did it otherwise indicate that there were any limitations on its sentencing discretion other than the statutory maximums. The only mention of the guidelines throughout the entire plea hearing occurred at the very beginning of the hearing when the court read the August 11, 2008 plea memorandum it received from the parties. (JA 75-76). Contrary to Currica's suggestion (Appellant's Br. at 14-15), that singular mention of the guidelines was not an advisement directed to Currica (it was a statement made to counsel), and it was uttered before the formal plea colloquy with Currica began, approximately seven transcript pages before the part of the plea colloquy where the court discussed the nature of the charges and his potential sentences. (JA 75-83).

The objective evidence in the record regarding the terms of the plea agreement is unambiguous. Currica was never promised a sentence within the guidelines, and he points to no place in the record where it was even suggested to him that the guidelines would cap the sentence that the court could impose. Nevertheless, Currica, after pleading guilty and accepting his 85-year sentence without objection, claimed years later that he believed that the few references to the guidelines scattered throughout the record meant that the court was required to impose a sentence within the guidelines. Notably, Currica testified at the state PCR hearing and admitted that he was aware of the language of the written plea agreement, stating: "the written plea it said that the State was free to advocate [sic] and my understanding was within the 30 to 51 year range." (JA 217). "Free" means unrestricted, and Currica's baseless assumption about the import of the sentencing guidelines was not reasonable because the guidelines are never a guarantee of any particular sentence, Currica's plea agreement said nothing about guidelines, and the court properly advised Currica that he could be sentenced up to 30 years on each count. (JA 286).

Currica insists that his guilty plea was involuntary because he was "never told that the agreed-upon 51-year guidelines maximum did not constrain the 90-year sentence that his plea exposed him to." (Appellant's Br. at 14). The faulty premise in this argument is that it was necessary to explain to him that he would not receive something to which he was never promised nor entitled in the first place, by statute or under the negotiated plea agreement. Stated differently, not getting a within-the-guidelines sentence was not a "consequence" of his guilty plea as Currica suggests (Appellant's Br. at 14); being sentencing to any term of years within the statutory maximums, as in the ordinary case, was the consequence of his plea. And Currica was properly advised in that regard, as he acknowledged by being familiar with the parties' ability to "allocute" (or "advocate," as Currica put it).

C. Currica has not established that the state court's rejection of his voluntariness claim was premised on unreasonable factfinding.

Currica argues that he is entitled to federal habeas relief pursuant to § 2254(d)(2) and (e)(1) because the PCR court's decision was premised on an unreasonable factual finding. (Appellant's Br. at 22). Specifically, he points to the PCR court's statement that the judge who presided over

Currica's plea hearing "made it clear" that the guidelines were "advisory only." (Appellant's Br. at 22-23).

Although the PCR court did use the phrase "advisory only" in its oral ruling, its relevant factual findings were much more extensive than that. The court stated, in part:

> [T]he parties appeared on [August 11, 2008,] before Judge Durke Thompson. The Court in that case made it clear. I find that this was not a binding plea agreement that had been tendered to the Court, this was not a plea agreement that had any cap, this was not a plea agreement that the Court had agreed in advance he would or wouldn't do anything in particular. Here I find the Court correctly advised the defendant of . . . not only the elements of the offenses to which he was tendering his plea, but the maximum penalties allowed by law and there is nothing I find in the transcript, which I have read in its entirety, . . . which would [lead] . . . a reasonable person in the defendant's position [to believe] that Judge Thompson had agreed to do anything other at sentencing th[a]n listen and decide the sentence and not impose a sentence that was not allowed by law. But the numbers of years was not agreed to and Judge Thompson agreed to nothing, except to give the defendant, I find[,] a legal sentence.
>
> . . . . The Court made it clear that he could or might impose a maximum that could possibly be suspended, he could possibly be placed on probation and was clear that quote "I'm not obligated to [do] any of that, do you understand[," and Currica] answered ["]yes." Judge Thompson went on to describe the elements of the offense continue on page 11 [of the plea hearing transcript.] I find that Judge Thompson made it clear to the defendant that . . . each crime of carjacking carries a maximum penalty of 30 years in jail page

> 11. Page 12 he said specifically so each of these charges carries the possibility of being put in jail for up to 30 years, [and] each of these charges refers to the two carjacking counts to which the plea was being tendered [sic]. Judge Thompson clearly said quote "Once again I [can] impose[] whatever sentence including jail time and a period of suspended jail time[,] if I wish to do so, do you understand that,[" and Currica responded, "]yes." . . .
>
> . . . . I find it is clear to me, and clear to any reasonably objective person, that these are ranges only, [and] the court at no time bound itself in anyway [sic] shape or form. I find to, one give a sentence within the guide lines or two, attach any particular significance to any particular guide line ranges [sic]. Judge Thompson was clear that the guide lines, I think his—that they were advisory only. . . .
>
> This case I have considered it and conclude that there was no violation of the plea agreement by either the State or by the judge[.] [T]he . . . documents in the case are clear. There is no basis in my judgment for, an objective basis for any reasonable person to conclude that the Court was capping a sentence [or] was binding itself to any sentence that would, would [be] within the guide lines, in fact the court made it clear the guide lines are guide lines [and] advisory only and I don't have to [do] that [sic].

(JA 243-48).

To be sure, the judge who conducted the plea colloquy did not expressly say to Currica that the sentencing guidelines were "advisory only," but the PCR court was not saying that the plea judge used those exact words. The PCR court was observing (correctly) that the plea court's *advisements* during the plea colloquy "*made it clear* the guide lines are

guide lines [and] advisory only." (JA 248) (emphasis added). In other words, it found that the plea court's advisements that Currica would be liable for 30 years on *each* offense "depending on what [the court] determine[d]" would make it clear to a reasonable person in Currica's position that his sentence *could* exceed the top of the guidelines at 51 years, *ergo* the guidelines must be advisory only.

Under AEDPA review, if "reasonable minds reviewing the record might disagree about the finding in question," the state-court decision was not based on an unreasonable determination of the facts. *Wood*, 558 U.S. at 301. Reasonable minds could disagree over the import of the PCR court's finding that the court "made it clear" that the guidelines were "advisory only."

Even if Currica has established that the state postconviction court made a misstatement of fact in its ruling, "it does not necessarily follow that the state court *adjudication* was based on an unreasonable determination of facts because subsection (d)(2) instructs federal courts to evaluate the reasonableness of the state court *decision* 'in light of the evidence presented in the State court proceeding.'" *Collier v. Norris*, 485 F.3d 415, 423 (8th Cir. 2007) (emphasis added) (quoting 28 U.S.C.

§ 2254(d)(2)). That is, where the "evidence in the state court record" is "sufficient to support" the postconviction court's "determination," federal habeas relief is not warranted even if the petitioner can point to an instance of erroneous factfinding. *Id.* at 423-24; *see also O'Quinn v. Spiller*, 806 F.3d 974, 978 (7th Cir. 2015) (holding that a "modest factual mistake" did not have "any meaningful effect on the state court's decision" and therefore "had no constitutional significance"); *Smith v. Aldridge*, 904 F.3d 874, 880 (10th Cir. 2018) ("[I]t is not sufficient to show the state court's decision merely *included* an unreasonable factual determination. Instead, by its terms § 2254(d)(2) only empowers federal courts to grant relief if the state court's decision was *based* on an unreasonable determination of the facts." (citation and quotation marks omitted)); *accord Ben-Yisrayl v. Buss*, 540 F.3d 542, 550 (7th Cir. 2008) ("Despite a conclusion that the [state] Court's finding was unreasonable, [the petitioner] must still establish that he is entitled to habeas relief.").

Here, the fact that the plea judge did not say the words, "advisory only," does not invalidate the reasonableness of the PCR court's substantive *decision* that the plea court "correctly advised" Currica, and that Currica's professed belief that the guidelines would cap his potential

sentence was unreasonable. The *substance* of the PCR court's finding was correct. The PCR court's adjudication of Currica's claim was not unreasonable under § 2254(d)(2), even if its rationale (given orally from the bench) was articulated inartfully.

For that reason, Currica's reliance on this Court's decision in *Williams v. Stirling*, 914 F.3d 302 (4th Cir. 2019), is misplaced. There, the Court reviewed a federal habeas claim that Williams's defense attorneys were ineffective because they failed to investigate the possibility of presenting mitigating evidence in a capital sentencing hearing that the defendant suffered from Fetal Alcohol Syndrome ("FAS"). Williams's attorneys testified at the state postconviction hearing and admitted that "despite numerous indicators of FAS, they did not *consider* whether to pursue that evidence." *Id.* at 314 (emphasis added). As this Court explained, "because there was no recognition of a potential FAS diagnosis by trial counsel, there was no further exploration of FAS as a potential mitigating factor." *Id.*

The postconviction court in *Williams* nevertheless held that trial counsel were not ineffective because they "*made a strategic decision* not to present to the jury evidence of brain damage or a diagnosis of Fetal

Alcohol Syndrome." *Id.* at 310 (emphasis added in *Williams*). This Court concluded that the state postconviction court not only unreasonably applied the *Strickland*[6] standard, but its "determination of the facts was also objectively unreasonable." *Id.* at 316. The Court reasoned that "because there was no further exploration [of an FAS defense], there was *necessarily* no opportunity for counsel to make a strategic decision about whether or not to further develop the FAS evidence or present it in mitigation." *Id.* at 314 (emphasis added in *Williams*). That is, "it was impossible for trial counsel to have made a strategic choice because there was no investigation into FAS." *Id.* at 316-17.

Williams is distinguishable for two reasons. First, the cases are factually dissimilar. *Williams* involved a question of whether trial counsel sufficiently investigated a mitigating defense such that their failure to present that defense could be deemed "strategic." This case, on the other hand, involves the significantly different question of whether the PCR court's conclusion that Currica was sufficiently advised by the plea court was unreasonable simply because, in Currica's view, it found

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6 *Strickland v. Washington*, 466 U.S. 668 (1984).

incorrectly that the plea court used the words "advisory only" when advising Currica.

Williams is also distinguishable because the record in that case—specifically, the testimony of Williams's defense team—flatly contradicted the postconviction court's finding that trial counsel made a strategic choice not to present FAS evidence. That factual finding was not just a poor articulation of what was otherwise a substantively correct assessment of the situation; rather, it was a demonstrably incorrect finding that directly led to an objectively unreasonable application of the *Strickland* standard. That is, the state court's *decision* that Williams did not receive ineffective assistance of counsel was objectively unreasonable because it found that counsel made a strategic decision to not present evidence even though it was "impossible" for counsel to have made such a strategic choice. Here, by contrast, the state postconviction court's decision was ultimately correct, and the gist of its factual finding was accurate, because it was true that the plea court sufficiently conveyed to Currica that the guidelines were "advisory only" even though the plea court did not actually use the precise words "advisory only."

Currica is not entitled to federal habeas relief pursuant to § 2254(d)(2) and (e)(1) because the PCR court's factual findings were not objectively unreasonable nor did its factual findings result in an objectively unreasonable decision.

D. Currica has not established that the state court's rejection of his voluntariness claim was contrary to, or an unreasonable application of, clearly established federal law as interpreted by the Supreme Court.

Currica also argues that the PCR court's decision was objectively unreasonable "because it contradicts and unreasonably applies long-standing Supreme Court precedent." (Appellant's Br. at 25). He asserts that his case is "'squarely governed'" by *Boykin v. Alabama*, 395 U.S. 238 (1969), and *Brady v. United States*, 397 U.S. 742 (1970), and the PCR court misapplied that precedent. (Appellant's Br. at 26) (quoting *Williams v. Taylor*, 529 U.S. 362, 390 (2000)).

Respondent-Appellee agrees that the constitutional adequacy of a guilty plea is governed by the Supreme Court's decision in *Boykin*, and *Brady* generally reiterated those basic principles (although, as discussed in more detail below, the Supreme Court's holding in *Brady* does not advance Currica's argument). However, the PCR court's ruling in this

case was neither "contrary to" those decisions—as the Supreme Court has defined and applied that phrase—nor was the PCR court's conclusion that Currica was sufficiently advised of the nature of his plea an unreasonable application of that precedent.

1. *The PCR court's decision was not "contrary to" Supreme Court precedent.*

A state-court decision may be "contrary to" a clearly established holding of the Supreme Court in either of two ways. First, the decision might apply a rule of law different than the rule set down in a governing Supreme Court precedent. *Williams*, 529 U.S. at 405-06. Second, the decision might involve a set of facts materially indistinguishable from a decision of the Supreme Court and yet arrive at an opposite result. *Id.*

The Supreme Court explained in *Williams* that the word "contrary" means "diametrically different" and "suggests that the state court's decision must be substantially different from the relevant precedent of [the Supreme] Court." *Id.* at 405 (quotation marks omitted). It advised that a "run-of-the-mill state-court decision applying the correct legal rule from [Supreme Court] cases to the facts of a prisoner's case would not fit comfortably within § 2254(d)(1)'s 'contrary to' clause." *Id.* at 406.

A federal habeas court considering AEDPA's "contrary to" clause must not "frame[] the issue at too high a level of generality." *Woods v. Donald*, 575 U.S. 312, 318 (2015) (per curiam). Stated differently, "if the circumstances of a case are only 'similar to' [Supreme Court] precedents, then the state court's decision is not 'contrary to' the holdings in those cases." *Id.* at 317.

The Supreme Court also has indicated that the state court need not expressly identify the controlling Supreme Court precedent so long as a "fair import" of the court's decision is that the court applied the correct legal principles. *Early v. Packer*, 537 U.S. 3, 9 (2002); *see also Bell v. Cone*, 543 U.S. 447, 455 (2005) ("Federal courts are not free to presume that a state court did not comply with constitutional dictates on the basis of nothing more than a lack of citation"); *Campos v. Portuondo*, 320 F.3d 185, 187 (2d Cir. 2003) (holding that a state court's decision was not contrary to Supreme Court precedent where it "implicitly identified and applied" the correct legal standard); *Burton v. Davis*, 816 F.3d 1132, 1169 (9th Cir. 2016) ("[T]he state court's lack of a formulary statement that it was applying the *Fritz* factors does not render the determination of facts

improper if the fair import of the state court's decision is that it did consider the relevant factors.").

Turning to the Supreme Court precedent cited by Currica, in *Boykin*, Boykin pleaded guilty to committing several robberies. 395 U.S. at 239. "So far as the record shows, the judge asked no questions of [Boykin] concerning his plea, and [Boykin] did not address the court." *Id.* The Supreme Court explained that pleading guilty involves the waiver of several federal constitutional rights, and "[p]resuming waiver [of constitutional rights] from a silent record is impermissible." *Id.* at 242-43 (citation and quotation marks omitted). It stated that "the same standard must be applied to determining whether a guilty plea is voluntarily made." *Id.* at 242. Therefore, for a guilty plea to be constitutionally adequate, "the record [must] disclose that the defendant voluntarily and understandingly entered his plea[] of guilty." *Id.* at 244 (citation and quotation marks omitted). It explained that a court taking a plea should "canvas[] the matter with the accused to make sure he has a full understanding of what the plea connotes and of its consequence." *Id.* The Supreme Court reversed Boykin's convictions because the record

was devoid of *any* indication that he understood the nature and consequences of his guilty pleas. *Id.* at 244.

In *Brady v. United States*, Brady was charged with kidnapping and, under the federal statute then in effect, he "faced a maximum penalty of death." 397 U.S. at 743. He pleaded guilty, and "[h]is plea was accepted after the trial judge twice questioned him as to the voluntariness of his plea." *Id.* (footnote omitted). Brady later complained that his plea was involuntary because he was "coerce[d]" by the possibility of receiving the death penalty and "pressure[d]" by trial counsel. *Id.* at 744.

Brady argued to the Supreme Court that its decision in *United States v. Jackson*, 390 U.S. 570 (1968), "require[d] the invalidation of every plea of guilty entered under [the federal kidnapping statute], at least when the fear of death is shown to have been a factor in the plea." *Brady*, 397 U.S. 746. The Court disagreed, concluding that *Jackson* "ruled neither that all pleas of guilty encouraged by the fear of a possible death sentence are involuntary pleas nor that such encouraged pleas are invalid wheth-involuntary or not." *Id.* at 747. It noted that "[w]aivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant

circumstances and likely consequences," but "[o]n neither score was Brady's plea of guilty invalid." *Id.* at 748 (footnote omitted).[7]

The Court explained that Brady's plea was not "involuntary" simply because he wished to avoid the possibility of incurring the death penalty. *Id.* at 750, 755. It also noted that the "record before [it]" revealed that Brady's plea was "intelligently made." *Id.* at 756. That is, Brady was "advised by competent counsel, he was made aware of the nature of the charge against him," and he "was aware of precisely what he was doing when he [pleaded guilty]." *Id.* The Court therefore held that Brady's plea "plea was voluntarily and intelligently made." *Id.* at 758.

In sum, *Boykin* involved a situation where there was *no record* of the defendant being advised *at all* about the nature of his plea, and *Brady* involved the question of whether the looming threat of capital punishment renders a defendant's plea inherently involuntary. Neither case is directly on point to the issue presented here. Currica is making the materially different argument that his plea was involuntary because

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[7] In a footnote, the Court noted that the "importance of assuring that a defendant does not plead guilty except with a full understanding of the charges against him and the possible consequences of his plea was at the heart of [its] recent decisions in *McCarthy v. United States*, [394 U.S. 459 (1969)], and *Boykin*[.]" *Brady*, 397 U.S. at 748 n.6.

he was not, in his opinion, sufficiently informed that he was not guaranteed a sentence within the guidelines. Moreover, aside from the fact that *Boykin* and *Brady* involved the voluntariness of guilty pleas, the facts of those cases are distinguishable from this case. The PCR court's rejection of Currica's challenge to the voluntariness of his guilty plea was not "contrary to" the holdings in *Boykin* and *Brady* because, although they generally establish controlling legal principles, this case is only "similar to" those Supreme Court precedents. *Woods*, 575 U.S. at 317 (quotation marks omitted).

Even if *Boykin* and *Brady* were sufficiently on point to the "specific question presented by this case," *id.* (citation and quoting marks omitted), Currica has not established that the PCR court applied a legal rule that was "diametrically different" from the legal principles applied in those cases. *Boykin* establishes that "the record [must] disclose that the defendant voluntarily and understandingly entered his plea[] of guilty," 395 U.S. at 244 (citation and quotation marks omitted), and, at most, *Brady* simply reiterates that basic legal standard. Yet, Currica's understanding of his plea (among other things) was what the PCR court assessed.

The record establishes that the plea court engaged in a lengthy colloquy with Currica to ensure that he was pleading guilty knowingly, intelligently, and voluntarily. The PCR court concluded that the plea colloquy was adequate to inform Currica of the nature of his plea and its consequences:

> I find the Court correctly advised the defendant of . . . not only the elements of the offenses to which he was tendering his plea, but the maximum penalties allowed by law and there is nothing I find in the transcript, which I have read in its entirety, . . . which would [lead] . . . a reasonable person in the defendant's position [to believe] that Judge Thompson had agreed to do anything other at sentencing th[a]n listen and decide the sentence and not impose a sentence that was not allowed by law.

(JA 244).

That Currica disagrees with the PCR court's decision regarding the *adequacy* of the advisements in the plea colloquy does not mean that the PCR court denied Currica's claim by applying a legal standard that was "contrary to" Supreme Court precedent. The court applied the correct legal standard; Currica simply disputes the *reasonableness* of the court's application of that standard to the facts of his case. The PCR court's decision was not "contrary to" clearly established Supreme Court precedent.

2. *The PCR court's decision was not an unreasonable application of Supreme Court precedent.*

Currica also has not established that the PCR court's decision was an objectively unreasonable application of *Boykin* and *Brady*. To recap, Currica must demonstrate that the state court's decision was "so lacking in justification that there was an error well understood and comprehended in existing [Supreme Court holdings] beyond any possibility for fairminded disagreement." *White*, 572 U.S. at 419-20. Again, this type of mistake far exceeds routine reversible error or even so-called "clear error." *Id.* Therefore, unless a petitioner can show that the state court committed objectively unreasonable error, a "federal habeas court may not issue the writ" even if the federal court "concludes in its independent judgment that the relevant state-court decision applied clearly established federal law *erroneously* or *incorrectly*." *Williams*, 529 U.S. at 411 (emphasis added); *accord Price v. Vincent*, 538 U.S. 634, 641 (2003) (same).

Simply put, reasonable minds could disagree about whether a reasonable layperson in Currica's position would understand from the plea colloquy that his potential sentence was not capped at 51 years and could be as high as 90 years, *i.e.*, the sum of the maximum penalties for

the three offenses to which he was pleading guilty. Currica has not met his burden of establishing that the PCR court's decision was objectively unreasonable.

Currica, however, argues that the Third Circuit's decision in *Jamison v. Klem*, 544 F.3d 266 (3d Cir. 2008), supports his argument that his guilty plea was not voluntary and that the PCR court unreasonably applied *Boykin* in ruling otherwise. (Appellant's Br. at 27). That case is distinguishable.

The Third Circuit explained that Jamison was convicted and sentenced in the Pennsylvania state courts that, unlike the federal courts, use an "indeterminate sentencing scheme." *Jamison*, 544 F.3d at 275. "Pursuant to that scheme, when a sentencing court imposes a sentence of imprisonment, it must impose both a minimum term of imprisonment and a maximum term." *Id.* In essence, Pennsylvania courts are tasked with setting parole eligibility by imposing sentences in two parts, the minimum and the maximum, both of which are variable. *Id.*[8]

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[8] In Maryland, parole eligibility is fixed by statute. *See generally* Md. Code Ann., Corr. Servs. § 7-301.

The Pennsylvania sentencing scheme has two additional complications that are important to understanding the problem in *Jamison*. First, Pennsylvania law provides that the "minimum period of incarceration must not exceed one half the maximum." *Id.* Second, although Pennsylvania courts have discretion to set the minimum period of incarceration (subject to the one-half rule), state statutes require mandatory minimum sentences under some circumstances, such as when a defendant has certain prior convictions, as was the case in *Jamison*. *Id.* at 276. Because of the one-half rule, if a defendant is subject to a mandatory minimum, the court is also compelled to impose a proportionally higher maximum.

"Although Jamison was informed of the 20-year maximum sentence that his plea subjected him to, nothing [in the] record establishe[d] that anything he was told by the prosecutor or the court . . . provided Jamison with sufficient information about the mandatory minimum sentence his plea exposed him to." *Id.* at 276. The prosecutor did state that the Commonwealth would be "filing mandatory," but it was never explained

to Jamison what the mandatory would be. *Id.*[9] The court concluded that the prosecutor's statement "was far too opaque a reference to inform Jamison that he may have to serve at least five years in prison if he pled guilty." *Id.*

Worse still, the Third Circuit found that Jamison was given "incorrect and misleading information" about his potential sentence. *Id.* The prosecutor advised that "the Commonwealth would recommend a sentence of '4-8 years w/mand.'" *Id.* The Third Circuit explained that, "[g]iven the indeterminate sentencing scheme requiring a maximum that is at least twice the minimum," it was "just as likely that [the prosecutor's] vague reference refer[red] to a minimum of four years and a maximum of eight; a term of incarceration that the sentencing court was not even authorized to impose under Pennsylvania law given Jamison's prior controlled substance conviction." *Id.*

The critical difference between *Jamison* and Currica's case is that the record in *Jamison* was worse than ambiguous: Jamison was provided

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[9] The Third Circuit also noted that the prosecutor's "filing mandatory" statement "was not made to Jamison, it was not part of the on-the-record colloquy, and Jamison was never afforded an opportunity to respond to it before pleading guilty." *Id.*

"incorrect and misleading information" that rendered his plea involuntary. *Id.* Here, by contrast, Currica was provided *accurate* advisements of the nature and consequences of his plea. Currica simply took it upon himself to read into the plea agreement a limitation on his potential sentence that was not in the written agreement nor was part of any advisement that Currica received.

Moreover, a reasonable defendant in Jamison's shoes would not have fully understood the nature and consequences of his plea because a critical aspect of it—his minimum sentence, which the court was obligated to set—was at best never defined or at worst affirmatively misstated. The same cannot be said in Currica's case. The plea court fully and correctly advised Currica about the maximum sentences that he could receive (30 years on "each" offense) and that the court could impose "whatever sentence" it deemed appropriate. It is well-established that the state sentencing guidelines are never binding on a sentencing court unless the court agrees to be bound by them. A reasonable defendant in Currica's shoes would not have assumed that he was guaranteed a sentence within the guidelines in the absence of an express promise.

Even if this Court might disagree and would be inclined reverse a defendant's conviction if this exact scenario were presented to it on direct appeal, clear error is not sufficient to award relief in a federal habeas case. Currica must establish that the PCR court's decision was objectively unreasonable beyond all fairminded disagreement, and it can hardly be said that no reasonable jurist could find that Currica was sufficiently advised. Currica has not established that the PCR court's decision was contrary to, or an unreasonable application of, *Boykin* and *Brady*.

E. Currica's voluntariness claim fails under deferential § 2254 review for the additional reason that the state postconviction court rejected Currica's testimony as not credible.

Currica's claim that his guilty plea was involuntary faces another significant hurdle. His claim hinges on his own postconviction testimony that he subjectively believed that the plea agreement required the sentencing court to impose a sentence within the guidelines. Indeed, if Currica in fact believed that his potential sentence could be as high as 90 years—*i.e.*, that the court was not bound by the guidelines—then his voluntariness claim would fail.

Currica's claim has a fatal evidentiary problem because the PCR court expressly stated that it disbelieved Currica's testimony. The PCR

judge stated: "I've listened carefully to [Currica's] testimony and do not accredit [sic] the testimony that he gave me today with respect to his subjective views. I find that he knew . . . damn well what he was pleading guilty to." (JA 248). Thus, the fundamental basis for Currica's claim—that he subjectively believed that he would receive a sentence within the guidelines—was expressly discredited by the PCR court.

In the absence of clear and convincing evidence disproving the PCR court's credibility determination—which is itself a factual finding—a federal habeas court must defer to such findings, even if it would have reached a different conclusion. *See Marshall v. Lonberger*, 459 U.S. 422, 434 (1983) ("28 U.S.C. § 2254(d) gives federal habeas courts no license to redetermine credibility of witnesses whose demeanor has been observed by the state trial court, but not by them."); *Merzbacher v. Shearin*, 706 F.3d 356, 367 (4th Cir. 2013) ("Credibility determinations are factual determinations. As such, a decision based on a credibility determination 'will not be overturned on factual grounds unless objectively unreasonable in light of the evidence presented in the state court proceeding.'" (quoting *Miller-El*, 537 U.S. at 340)).

Simply put, Currica cannot point the Court to any evidence that would definitively contradict the PCR court's credibility determination under the circumstances. On the other hand, the state-court record supports the PCR court's credibility determination.

To begin, Currica's own assurances during the plea colloquy that he had discussed the plea with his attorney, that he was satisfied with counsel's services, and that he personally understood the court's explanation of the plea agreement (JA 79, 83-84), create a "formidable barrier" to Currica obtaining federal habeas relief. *See United States v. Lemaster*, 403 F.3d 216, 221 (4th Cir. 2005) ("A defendant's solemn declarations in open court affirming a plea agreement carry a strong presumption of verity, because courts must be able to rely on the defendant's statements made under oath during a properly conducted . . . plea colloquy. Indeed, because they do carry such a presumption, they present a formidable barrier in any subsequent collateral proceedings." (cleaned up)).

Additionally, all of the objective evidence in the record describing the plea agreement makes clear that the sentencing court was not constrained by the guidelines, nor is there any evidence in the record that

Currica was advised that the guidelines were binding. Moreover, it cannot be overlooked that the court sentenced Currica to *34 years above the guidelines* that Currica supposedly believed capped his sentence, yet, Currica made no complaint at the sentencing hearing, he failed to file an application for leave to appeal his judgment of conviction,[10] and he failed to file any challenge to his guilty plea or sentence until approximately *three-and-a-half years later*, when he filed a motion to correct an illegal sentence on June 19, 2012. (JA 64, 240, 271).[11] Currica's silence and lengthy delay in challenging his guilty plea are not the actions of a person who genuinely believed that he was entitled to a sentence that was 34 years less than what he received.

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[10] To be sure, Currica did later accuse his attorney of failing to file an application for leave to appeal his guilty plea after he allegedly asked her to do so, and the PCR court granted Currica leave to file a belated appeal (JA 254). Yet, Currica waited nearly six years to raise that ineffective-assistance claim in his PCR proceeding.

[11] Currica's illegal-sentence motion was not included in the record or discussed in detail by the parties or the district court below, however, there are references to the motion in the portions of the state-court record that were submitted to the district court. In particular, the prosecutor noted at the PCR hearing that Currica argued that his plea agreement was breached in his June 19, 2012 illegal-sentence motion. (JA 240).

In sum, Currica's claim is, in large part, premised on a subjective belief that the PCR court expressly rejected as not credible. Because that credibility determination is entitled to a presumption of correctness that Currica has not, and cannot, overcome, his claim fails under deferential AEDPA review.

CONCLUSION

The judgment of the District Court should be affirmed.

STATEMENT REGARDING ORAL ARGUMENT

Respondent-Appellee requests oral argument.

Date: December 21, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(g) of the Federal Rules of Appellate Procedure, I certify that the "Brief of Respondent-Appellee" was prepared in Microsoft Word for Microsoft 365; is proportionally spaced; has a typeface of 14 points in Century Schoolbook; and contains 8,663 words, excluding the cover page and the parts of the brief exempted by Fed. R. App. P. 32(f), in accordance with the computer program's word count upon which the undersigned relies in making this certification.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 21, 2022, I electronically filed the foregoing "Brief of Respondent-Appellee" with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to:

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RULE 28(f) ADDENDUM

West's Annotated Code of Maryland
Criminal Procedure (Refs & Annos)
Title 6. Trial and Sentencing (Refs & Annos)
Subtitle 2. Sentencing (Refs & Annos)
Part I. State Commission on Criminal Sentencing Policy

MD Code, Criminal Procedure, § 6-211

§ 6-211. Voluntary sentencing guidelines

Currentness

Adoption as regulations by Commission

(a) Subject to subsection (b) of this section, the Commission shall adopt as regulations sentencing guidelines and any changes to those sentencing guidelines, subject to Title 10, Subtitle 1 of the State Government Article.

Sentencing guidelines voluntary

(b) Regulations adopted under subsection (a) of this section are voluntary sentencing guidelines that a court need not follow.

Effective date of changes to sentencing guidelines

(c) A change to the sentencing guidelines takes effect on the day that the regulation takes effect as provided under Title 10, Subtitle 1 of the State Government Article.

Credits
Added by Acts 2001, c. 10, § 2, eff. Oct. 1, 2001.

Formerly Art. 41, § 21-106.

Editors' Notes

LEGISLATIVE NOTES

Revisor's Note (Acts 2001, c. 10):

This section is new language derived without substantive change from former Art. 41, § 21-106(f).

In subsection (a) of this section, the former reference to "the requirements of" Title 10, Subtitle 1 of the State Government Article is deleted as unnecessary.

Notes of Decisions (1)

MD Code, Criminal Procedure, § 6-211, MD CRIM PROC § 6-211
Current through all legislation from the 2022 Regular Session of the General Assembly. Some statute sections may be more current, see credits for details.

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