Rel: September 22, 2023

Alabama Court of Criminal Appeals

OCTOBER TERM, 2022-2023

CR-2022-0966

Ex parte State of Alabama and Clifton Marshall Ridgeway

PETITION FOR WRIT OF MANDAMUS

(In re: State of Alabama

v.

Clifton Marshall Ridgeway)

Blount Circuit Court
(CC-15-210)

CR-2022-0967

Ex parte State of Alabama

PETITION FOR WRIT OF MANDAMUS

(In re: State of Alabama

v.

Clifton Marshall Ridgeway)

Blount Circuit Court
(CC-15-210)

CR-2022-0968

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PETITION FOR WRIT OF MANDAMUS

(In re: State of Alabama

v.

Clifton Marshall Ridgeway)

Blount Circuit Court
(CC-15-210)

PER CURIAM.

The State of Alabama and Clifton Marshall Ridgeway have jointly filed two petitions for a writ of mandamus stemming from pending proceedings in which Ridgeway is scheduled to be prosecuted for capital murder (CR-2022-0966 and CR-2022-0968). See § 13A-5-40, Ala. Code

1975. The State has also singly filed a third such petition stemming from those proceedings (CR-2022-0967). We have consolidated the petitions for the purpose of issuing a single opinion.

Facts and Procedural History

In November 2019, Ridgeway was brought to trial on two charges of capital murder, which alleged that he and Justin MacNeill[1] had murdered Myron Brian Beavers during the course of a robbery and burglary. See § 13A-5-40(a)(2) and (4), Ala. Code 1975. Ridgeway was represented at that trial by attorneys Gregory Reid and Bill Barnett, and Judge William E. Hereford presided over the trial. The jury found Ridgeway guilty of both charges, but Judge Hereford subsequently granted Ridgeway's motion for a new trial, without stating his reason for doing so.

In December 2021, the State and Ridgeway entered into a plea agreement, which provided that Ridgeway would plead guilty to murder in exchange for the State's recommendation that he be sentenced to 35

[1]In 2018, MacNeill was convicted of two counts of capital murder and was sentenced to life imprisonment without the possibility of parole for his role in the murder of Beavers. This Court affirmed MacNeill's convictions and sentence on March 29, 2019. See MacNeill v. State, 292 So. 3d 1083 (Ala. Crim. App. 2019) (table).

years' imprisonment. In February 2022, Judge Hereford held a guilty-plea hearing, and, after he ensured that Ridgeway understood the rights he would waive by pleading guilty, the following colloquy occurred:

> "[THE COURT]: Now, do you understand what the State would have to prove to find you guilty?
>
> "[RIDGEWAY]: Most of it.
>
> "[THE COURT]: Okay. Can you tell me what you understand they've got to prove?
>
> "[RIDGEWAY]: Guilt beyond a reasonable doubt.
>
> "[THE COURT]: Yeah. That's right. Do you know the elements of that?
>
> "[RIDGEWAY]: Not really, sir.
>
> "[THE COURT]: Okay. Well, let me ask you a few things to begin with: Did you murder Mr. Beavers?
>
> "[RIDGEWAY]: No, sir.
>
> "[THE COURT]: Did you know that Mr., is it MacNeill –
>
> "[RIDGEWAY]: Yes, sir.
>
> "[THE COURT]: – was going to kill Mr. Beavers?
>
> "[RIDGEWAY]: No, sir.
>
> "[THE COURT]: How long had you known Mr. MacNeill?
>
> "[RIDGEWAY]: A night.

"[THE COURT]: Had you just met him?

"[RIDGEWAY]: Yes, sir, basically.

"[THE COURT]: Were you aware that Mr. Beavers and Mr. MacNeill had a relationship before you knew either one of them?

"[RIDGEWAY]: No, sir.

"[THE COURT]: You didn't, you didn't know they knew each other?

"[RIDGEWAY]: No, sir, not until MacNeill invited me over to –

"[THE COURT]: Not until the murder took place?

"[RIDGEWAY]: The night before.

"[THE COURT]: That's when you knew they knew each other?

"[RIDGEWAY]: Yes, sir.

"[THE COURT]: Were you aware of them having a problem between the two of them?

"[RIDGEWAY]: No, sir.

"[THE COURT]: Okay. And I understand that at the time, … y'all were apparently in the living room of Mr. Beavers's house?

"[RIDGEWAY]: Sir?

"[THE COURT]: The three of you were present?

"[RIDGEWAY]: At what time, sir?

"[THE COURT]: The morning of the murder.

"[RIDGEWAY]: Counting Mr. Beavers, MacNeill, and me, there was three.

"….

"[THE COURT]: The three of you?

"[RIDGEWAY]: At the time.

"[THE COURT]: At the time, and Mr. Beavers apparently left the room?

"[RIDGEWAY]: Ah.

"[THE COURT]: The three of you were in the living room, and he leaves the room and goes into, what a bedroom or something?

"[RIDGEWAY]: That was the night before. I didn't really see Mr. Beavers the morning of. I didn't see him that morning.

"[THE COURT]: Oh, you did not see him that morning?

"[RIDGEWAY]: No, sir.

"[THE COURT]: Okay. I didn't know. But you did see Mr. MacNeill that morning?

"[RIDGEWAY]: For a split second, yes, sir.

"[THE COURT]: And did you see Mr. MacNeill go into another room where Mr. Beavers was?

"[RIDGEWAY]: No, sir.

"[THE COURT]: You did not see that?

"[RIDGEWAY]: No, sir.

"[THE COURT]: Had you talked with … Mr. MacNeill about committing a crime of any kind?

"[RIDGEWAY]: No, sir.

"[THE COURT]: Ever?

"[RIDGEWAY]: No, sir.

"[THE COURT]: Did you ever have any knowledge of what Mr. [MacNeill] was about to do, which was to commit the murder?

"….

"[RIDGEWAY]: No, sir.

"[THE COURT]: So you're telling me that this happened, that you had no knowledge of it in advance?

"[RIDGEWAY]: Yes, sir, that's what I'm saying.

"[THE COURT]: All right. Okay. That's all I have and that's what I needed to have so –

"[THE STATE]: At this time, Judge, for purposes of factual basis to support his plea, the State has a proffer, but with the defendant's testimony that he was not involved in the crime, it would be difficult for the court to find a sufficient factual basis to accept his plea, so we would ask that the case be set for trial on the charge of capital murder.

> "[THE COURT]: Thank you, … because there's obviously a discrepancy here, and that's what we have trials for.
>
> "[THE STATE]: Right.
>
> "[THE COURT]: I will not accept your plea of guilt and your offer is declined."

(CR-2022-0968, Answer, Exhibit A, R. 16-21.) Judge Hereford then scheduled Ridgeway's trial for August 11, 2022.

In July 2022, the State and Ridgeway entered into a second plea agreement, which provided that Ridgeway would plead guilty to felony murder in exchange for the State's recommendation that he be sentenced to 30 years' imprisonment. However, when the parties presented that plea agreement to Judge Hereford, he rejected the agreement and refused to give Ridgeway a second opportunity to plead guilty. It is evident from the materials provided to this Court that Ridgeway subsequently filed a motion to enforce the second plea agreement, although that motion has not been included in the materials.

On August 1, 2022 – 10 days before Ridgeway's trial was scheduled to begin – Reid filed a motion to withdraw from representing Ridgeway. In support of his motion, Reid claimed that he believed there was "a

strong likelihood of conviction" if Ridgeway were to proceed to trial and that, because Judge Hereford had "refused to accept either of the offered plea agreements," he was "now at a point where [it would be] ineffective [assistance] to continue to represent [Ridgeway] in this matter." (CR-2022-0966, Petition, Exhibit D.) That same day, Barnett also filed a motion to withdraw and, in support of his motion, "adopt[ed] the motion to withdraw filed by Reid." (Id., Exhibit E.) The State subsequently filed a "motion for substitution of defense counsel," in which it agreed that Judge Hereford should replace Reid and Barnett with new counsel. (Id., Exhibit F.) The State also filed a motion seeking Judge Hereford's recusal, claiming that he had "arbitrarily granted [Ridgeway] a new trial," had "arbitrar[ily] reject[ed] … the [second] plea agreement," and had "developed a pattern and practice of making arbitrary rulings." (CR-2022-0967, Petition, Exhibit B.) Thus, the State claimed that it had "grave concerns about whether [it] [would] receive a fair trial in this matter." (Id.)

On August 4, 2022, Judge Hereford held a hearing to rule on the various motions. At the beginning of the hearing, Judge Hereford asked if the parties had any additional arguments to make regarding defense

counsel's motions to withdraw and the State's motion for the substitution of defense counsel, and, hearing none, he denied those motions. Judge Hereford also denied Ridgeway's motion to enforce the second plea agreement because "the second proffer of a plea was not acceptable," although he did not explain why that agreement was unacceptable. (CR-2022-0968, Petition, Exhibit F, unnumbered p. 4.) Judge Hereford then turned to the State's motion for recusal, which the State supported with testimony from Pamela Casey, the District Attorney and lead prosecutor in Ridgeway's trial, and Reid.

Casey testified that she "[a]bsolutely" did not believe the State would receive a fair trial from Judge Hereford because he had "failed to state any reasons" for granting Ridgeway a new trial and had "failed to give [the parties] any reasons as to why he ha[d] rejected the plea agreement[s]." (CR-2022-0968, Petition, Exhibit F, unnumbered pp. 24-25.) Casey also testified that she was "concerned … as to how this case would be handled going further." (Id.) More specifically, Casey testified:

> "My concern is that [Judge Hereford] will grant a motion for acquittal because we have not – although I don't know what he is wanting from us because he hasn't told us. The court hasn't told us what he wants out of this. I feel like we are being held hostage – the case is being held hostage by Judge Hereford. [Reid and I] have negotiated in good faith.

> We have worked in good faith. The facts support good faith. It has already been sent to a jury before with the same evidence. And it is the State's concern that whatever we have done to offend this court, that he will hold that against the victims in this case and let the defendant go.
>
> "….
>
> "I just believe that the court has disregarded any and all acts by the State and the defense counsel to resolve this case when we all have worked in a good-faith effort to do this. The [victim's family is] on board. [Ridgeway] is on board. Defense counsel is on board. We have done everything we can to keep this family from going through this again and to prevent [Ridgeway] from being subject to a life-without-parole or a death sentence. We continue to be rejected without any type of explanation as to what, if anything, the court thinks we have done wrong or haven't done correctly."

(Id., unnumbered pp. 33-34.)

Reid likewise testified that he had not "been given any reason for the rejection of the [second] plea agreement" – a fact that, he believed, constituted a denial of Ridgeway's right to due process. (CR-2022-0968, Petition, Exhibit F, unnumbered p. 40.) Reid also testified that there was "a sufficient factual basis to support" the second plea agreement, that the agreement had not been "arrived at whimsically" or "flippantly," and that Ridgeway had been "involved in every stage of" the plea negotiations and had "accepted both plea agreements voluntarily and with full knowledge

and without any element of coercion whatsoever." (Id., unnumbered pp. 43-44.)

At the conclusion of the State's evidence, Judge Hereford denied the motion for recusal, at which point the following colloquy occurred:

> "THE COURT: Are y'all ready to take up the jury excuses?
>
> "CASEY: I have an oral motion.
>
> "THE COURT: Sure.
>
> "CASEY: I have an oral motion for the court to enumerate the reasons for denial of the plea agreement.
>
> "THE COURT: That is not a matter for me to disclose to you. There is no legal right to that. Your motion is denied.
>
> "….
>
> "CASEY: Is this court going to tell anybody – either the State or defense counsel – why it has rejected the plea agreement?
>
> "THE COURT: No, ma'am. It is my call. ….
>
> "….
>
> "REID: Judge, in an abundance of concern, I would like to ask the court one final time to consider accepting … the plea agreement … for a 30-year sentence to felony murder.
>
> "THE COURT: I understand, and if you guys want to continue to work on a settlement, but I have turned down both pleas again.

> "REID: I understand that, Judge, but the point we are at – I understand the court is urging us to continue, but we don't know how.
>
> "THE COURT: That's fine. At this time, I have turned down both pleas.
>
> "REID: I would offer it one last time and ask the court to consider it in the best interest of [Ridgeway].
>
> "THE COURT: I understand. I have made a ruling on that.
>
> "CASEY: And your ruling is?
>
> "THE COURT: I believe I have said it several times. I do not accept either plea agreement. That's not to say I'm upset about it or anything like that. That is just my take on it. If there is nothing further before the court, we are adjourned."

(CR-2022-0968, Petition, Exhibit F, unnumbered pp. 47-50.)

Three days before trial, the State and Ridgeway jointly filed two petitions for a writ of mandamus, and the State singly filed a third petition. The State also filed a motion to stay Ridgeway's trial, which this Court has already granted. In one joint petition (CR-2022-0966), the State and Ridgeway seek a writ of mandamus directing Judge Hereford to appoint new defense counsel to represent Ridgeway. In the State's petition (CR-2022-0967), the State seeks a writ of mandamus directing

Judge Hereford to recuse himself from the proceedings. In the other joint petition (CR-2022-0968), the State and Ridgeway seek a writ of mandamus directing Judge Hereford to accept the second plea agreement.

On January 15, 2023, Reid filed in the trial court a new motion to withdraw in which he noted that he had been appointed to serve as a circuit judge and therefore could not continue to represent Ridgeway. Judge Sherry C. Burns granted that motion and appointed Steven Goldstein to represent Ridgeway.[2] There is no indication in the materials provided to this Court that Barnett no longer represents Ridgeway.

Standard of Review

The standard of review with respect to a petition for a writ of mandamus is well settled.

> "'"The writ of mandamus is a drastic and extraordinary writ, to be 'issued only when there is: 1) a clear legal right in the petitioner to the order sought; 2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; 3) the lack of another adequate remedy; and 4) properly invoked jurisdiction of the court.'

[2] Judge Hereford stated in his response in CR-2022-0966 that "[i]t appears from the record a judge who was not assigned to this case granted Judge Reid's motion to withdraw on January 23, 2023, without the knowledge or participation of the respondent-judge." (Answer, p. 1.)

> Ex parte United Serv. Stations, Inc., 628 So. 2d 501, 503 (Ala. 1993); see also Ex parte Ziglar, 669 So. 2d 133, 134 (Ala. 1995)."'
>
> "Ex parte McWilliams, 812 So. 2d 318, 321 (Ala. 2001) (quoting Ex parte Carter, 807 So. 2d 534, 536 (Ala. 2001))."

Ex parte Butler, 295 So. 3d 1115, 1117-18 (Ala. Crim. App. 2019).

Discussion

1. CR-2022-0968

We begin by addressing case number CR-2022-0968 – the joint petition seeking a writ of mandamus directing Judge Hereford to accept the second plea agreement. A petition for a writ of mandamus is the proper method of challenging a trial court's rejection of a plea agreement. Cf. Ex parte Pfalzgraf, 741 So. 2d 1118 (Ala. Crim. App. 1999) (holding that a petition for a writ of mandamus was the proper method of challenging the trial court's refusal to order specific performance of a plea agreement after the State rescinded its offer). See also State v. Superior Court In & For County of Navajo, 183 Ariz. 327, 328, 903 P.2d 635, 636 (Ct. App. 1995) (agreeing to review the State and the defendant's "Joint Petition for Special Action," in which the petitioners argued that the trial court had improperly rejected their plea agreement, because there was "no adequate remedy by appeal").

Rule 14.3, Ala. R. Crim. P., governs plea agreements and provides, in pertinent part:

> "(a) Entering Into Plea Agreements. The prosecutor and the defendant or defendant's attorney may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the prosecutor either will move for dismissal of other charges or will recommend (or will not oppose) the imposition or suspension of a particular sentence, or will do both.
>
> "(b) Disclosure of Plea Agreement. If a plea agreement has been reached by the parties, the court shall require the disclosure of the agreement in open court prior to the time a plea is offered. Thereupon, the court may accept or reject the agreement or may defer its decision as to acceptance or rejection until receipt of a presentence report."

(Emphasis added.)

Thus, as this Court has explained, "Rule 14.3(b) specifically provides that a trial court has discretion to either accept or reject a plea agreement," and "'[a] criminal defendant [also] does not have an absolute right under the [United States] Constitution to have his guilty plea accepted by the court.'" Wiggins v. State, 193 So. 3d 765, 779 (Ala. Crim. App. 2014) (quoting North Carolina v. Alford, 400 U.S. 25, 38 n.11 (1970)). However, although a trial court has the discretion to reject a plea agreement or a guilty plea, that discretion is not unbridled, and a

trial court exceeds its discretion if it rejects the agreement or the plea "'"on an arbitrary basis."'" Id. at 780 (quoting People v. Jasper, 17 P.3d 807, 812 (Colo. 2001), quoting in turn United States v. Moore, 916 F.2d 1131, 1136 (6th Cir. 1990)). Therefore, when a trial court is presented with a plea agreement, the court must carefully review the terms of the agreement and may reject the agreement only if the court has a sound reason for doing so. Likewise, when a defendant attempts to enter a guilty plea, the trial court must carefully ensure that the requirements of Rule 14.4, Ala. R. Crim. P., have been satisfied and may reject the plea only if the court has a sound reason for doing so. See Wiggins, 193 So. 3d at 780 (noting that a trial court has the discretion to reject a plea agreement or a guilty plea but that the exercise of that discretion must be "'sound'" (quoting Jasper, 17 P.3d at 812)); Santobello v. New York, 404 U.S. 257, 262 (1971) ("A court may reject a plea in exercise of sound judicial discretion." (emphasis added)); and United States v. Delegal, 678 F.2d 47, 50 (7th Cir. 1982) ("[A] defendant is entitled to plead guilty unless the [trial] court can articulate a sound reason for rejecting the plea." (emphasis added)).

Here, the State and Ridgeway allege that Judge Hereford arbitrarily rejected the second plea agreement and that, as a result, they have a clear legal right to a writ of mandamus directing him to accept that agreement. In his answer to the petition, Judge Hereford denies that he arbitrarily rejected the second plea agreement, and he contends that the February 2022 guilty-plea hearing "is critical to an understanding of why [he] reject[ed] … both plea agreements." (CR-2022-0968, Answer, p. 2 (emphasis added).) Specifically, Judge Hereford contends that "Ridgeway's testimony denying participation in, or knowledge of, MacNeill's intention to kill or steal from the victim provided ample reason … to reject a guilty plea to either intentional murder[, i.e., the first plea agreement,] or felony murder[, i.e., the second plea agreement]." (Id., p. 6.)

A trial court does not arbitrarily reject a defendant's guilty plea if it does so because the defendant proclaims that he is innocent.[3] See

[3]That is not to say that a trial court is prohibited from accepting a guilty plea if the defendant proclaims that he is innocent. As this Court has previously explained: "[A] court may accept a guilty plea even if the defendant insists that he is innocent … 'if [the defendant] intelligently concludes that his interest so requires and the record strongly evidences guilt.'" Allison v. State, 495 So. 2d 739, 741 (Ala. Crim. App. 1986) (quoting Young v. State, 408 So. 2d 199, 201 (Ala. Crim. App. 1981)).

United States v. Maddox, 48 F.3d 555, 556 (D.C. Cir. 1995) ("[T]he trial judge was free … to reject Maddox's plea, because [he] appeared reticent and seemed to deny guilt."); and United States v. Buonocore, 416 F.3d 1124, 1131 (10th Cir. 2005) ("[T]he court is not required to accept a guilty plea from one who asserts he is innocent." (citation omitted)). Also, this Court is mindful that Judge Hereford has also presided over Ridgeway's capital-murder trial, so he is intimately familiar with the evidence against Ridgeway. Judge Hereford has rejected two plea agreements – the first of which involved a charge of intentional murder while the other involved a charge of felony murder. It would seem that Judge Hereford, given what he knows about the case, is not inclined to accept a plea agreement that involves a charge of murder. This Court is sympathetic to the perilous position in which Judge Hereford's rejection of the second

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However, the fact that a trial court may accept a guilty plea from a defendant who proclaims his innocence does not mean that the court must accept a guilty plea under such circumstances. See United States v. Gomez-Gomez, 822 F.2d 1008, 1011 (11th Cir. 1987) ("When a defendant attempts to couple a guilty plea with an assertion of facts that would negate his guilt, a judge may properly treat this assertion as a protestation of innocence. Though a judge may enter judgment upon a guilty plea offered under these circumstances, he is not required to do so.").

plea agreement has placed the petitioners. Nonetheless, we cannot conclude that Judge Hereford has acted beyond his discretion. An arbitrary decision is one "founded on prejudice or preference rather than on reason or fact." Black's Law Dictionary 125 (10th ed. 2014). Here, the petitioners have failed to establish that Judge Hereford has rendered an arbitrary decision.

This Court will issue a writ of mandamus "only to compel action when the matter is presented for decision before an officer, charged in that regard, and who refuses to hear and determine it; but it never issues to control judicial action or to direct a judicial officer how to act or what conclusion to reach." Ex parte Edwards, 20 Ala. App. 567, 568, 104 So. 53, 54 (1925). See also Ex parte Ford Motor Credit Co., 607 So. 2d 169, 170 (Ala. 1992) ("While the writ will issue to compel the exercise of discretion by a circuit judge, it will not issue to compel the exercise of discretion in a particular manner."). The petitioners have failed to establish or even allege that Judge Hereford has refused to perform an imperative duty. Judge Hereford has taken action on the petitioners' second plea agreement, and the petitioners have failed to establish that

Judge Hereford's action was arbitrary. Therefore, the petition filed in case number CR-2022-0968 is denied.

2. CR-2022-0966

In case number CR-2022-0966, the State and Ridgeway seek a writ of mandamus directing Judge Hereford to appoint new defense counsel to replace Reid and Barnett, who represented Ridgeway at the time this petition was filed. However, after these petitions were filed, Reid filed in the trial court a motion to withdraw because he had been appointed to serve as a circuit judge, and Judge Burns granted that motion and appointed new counsel to represent Ridgeway. It appears that Barnett currently remains counsel of record for Ridgeway, but Judge Hereford has explained in his answer to the petition that the reason he refused to appoint new defense counsel was because the case was scheduled for trial one week after that request was made, and he believed granting the request would have required a continuance. Now, however, Judge Hereford notes that his "concerns about continuing the case no longer apply since this Court's stay of the proceeding itself caused a continuance." (CR-2022-0966, Answer, p. 1.) Thus, Judge Hereford has indicated that he "has no objection to [Barnett's] motion to withdraw

being granted" and that, "[u]pon lifting of the stay, [he] will … relieve Barnett of his appointment of counsel." (Id., p. 2.)

In short, Reid is no longer counsel of record for Ridgeway, and Judge Hereford has agreed to grant Barnett's motion to withdraw. Thus, with respect to Reid, the petitioners have obtained the relief they seek, and, with respect to Barnett, they will obtain that relief once this Court lifts the stay. Accordingly, the petition filed in case number CR-2022-0966 has been rendered moot and is therefore denied. See William Goldman Theatres v. Kirkpatrick, 154 F.2d 66 (3d Cir. 1946) (holding that a petition for a writ of mandamus had been rendered moot when the judge agreed in his answer to the petition to amend his ruling).

3. CR-2022-0967

In case number CR-2022-0967, the State seeks a writ of mandamus directing Judge Hereford to recuse himself from the proceedings. A petition for a writ of mandamus is the proper method of challenging a trial court's denial of a motion to recuse. Ex parte Smith, 282 So. 3d 831, 839 (Ala. 2019).

> "Canon 3.C.(1)(a), Alabama Canons of Judicial Ethics, provides that a judge 'should disqualify himself in a proceeding in which ... his impartiality might reasonably be questioned, including ... instances where ... [h]e has a personal

> bias or prejudice concerning a party.' The standard for recusal is an objective one, Woodward v. State, 276 So. 3d 713, 730 (Ala. Crim. App. 2018), and '[t]he necessity for recusal is evaluated by the "totality of the facts" and circumstances in each case.' Ex parte George, 962 So. 2d 789, 791 (Ala. 2006) (quoting Ex parte City of Dothan Pers. Bd., 831 So. 2d 1, 2 (Ala. 2002)). In other words, '"[t]he question is not whether the judge was impartial in fact, but whether another person, knowing all of the circumstances, might reasonably question the judge's impartiality – whether there is an appearance of impropriety."' Carruth v. State, 927 So. 2d 866, 873 (Ala. Crim. App. 2005) (quoting Ex parte Duncan, 638 So. 2d 1332, 1334 (Ala. 1994)). However, '[a]ll judges are presumed to be impartial and unbiased,' and '[t]he burden is on the party seeking recusal to prove otherwise.' Luong v. State, 199 So. 3d 173, 205 (Ala. Crim. App. 2015)."

Keaton v. State, [Ms. CR-14-1570, Dec. 17, 2021] ___ So. 3d ___, ___ (Ala. Crim. App. 2021).

The essence of the State's argument for recusal is that Judge Hereford had "no legal basis" for some of his rulings – namely, his granting of a new trial, his denial of defense counsel's motions to withdraw and the State's motion to substitute defense counsel, and his refusal to accept the plea agreements. (CR-2022-0967, Petition, p. 31.) According to the State, the fact that Judge Hereford "[could not] or simply [would] not cite a legal or factual basis" for those rulings "creates an appearance of bias that is difficult for the affected parties … to overcome."

(Id.) We disagree that there is any evidence of bias against the State that would require Judge Hereford's recusal.

First, we note that "'judicial rulings alone almost never constitute a valid basis for a bias or partiality motion,'" Ex parte Monsanto Co., 862 So. 2d 595, 606 (Ala. 2003) (quoting Liteky v. United States, 510 U.S. 540, 555 (1994)), and they certainly do not in the unusual situation where both parties are disappointed with the ruling because such a ruling cannot be interpreted as evidence of bias against or partiality towards either party. See Pickman Brokerage v. Bevona, No. 93 Civ. 6677, Feb. 8, 1994 (S.D.N.Y. 1994) (not reported in Federal Supplement) ("[B]ecause these rulings appear from the record to have been applied evenly as to both parties to the arbitration, they cannot be held to evidence 'bias' toward one disputant or the other."). Here, two of the rulings the State cites – the refusal to appoint new defense counsel and the rejection of the plea agreements – were rulings that both parties would have liked to see go the other way and, in fact, were likely more disagreeable to Ridgeway, who has not moved for Judge Hereford's recusal. Thus, those rulings hardly create an appearance of bias against the State, and the fact that

Judge Hereford did not state his reasons for those rulings does nothing to change this conclusion.

The other ruling the State cites – the granting of Ridgeway's motion for a new trial – was of course adverse only to the State, but "'[a]dverse rulings during the course of the proceedings are not by themselves sufficient to establish bias and prejudice.'" Ex parte Adams, 910 So. 2d 827, 829 (Ala. Crim. App. 2005) (quoting Hartman v. Board of Trustees of the Univ. of Alabama, 436 So. 2d 837, 841 (Ala. 1983)). Indeed, it is not the granting of the new trial that the State contends requires Judge Hereford's recusal, only his failure to state his reason for granting the new trial. However, the State cites no authority that required Judge Hereford to state his reason for granting Ridgeway a new trial, much less any authority providing that Judge Hereford's failure to do so creates an appearance of bias against the State. See Ex parte Williamson, 329 So. 3d 664, 672 (Ala. Civ. App. 2020) (holding that the judge's failure to state his reason for granting the defendant's motion to dismiss "cannot be considered a factual showing that would make a reasonable person question the impartiality of the trial-court judge").

It is clear that the State is frustrated with Judge Hereford's refusal to state his reasons for various rulings. However, frustration with a judge – even "[u]nderstandable frustration" – does "not form a basis for granting a recusal," In re Yanks, 79 B.R. 83, 84 (S.D. Fla. 1987), and the State has not pointed to any fact that even remotely gives rise to an appearance that Judge Hereford is biased against it. Thus, the State has not come close to carrying the heavy burden of demonstrating that it has a clear legal right to Judge Hereford's recusal. Therefore, the petition filed in case number CR-2022-0967 is denied.

Conclusion

The State and Ridgeway have failed to demonstrate that they have a clear legal right to relief in the petition filed in case number CR-2022-0968. Thus, we deny that petition. The petition filed in case number CR-2022-0966 has been rendered moot by subsequent occurrences, and, thus, that petition is denied. The State has not demonstrated that it has a clear legal right to relief in the petition filed in case number CR-2022-0967, and, thus, that petition is denied. Because we have disposed of these petitions, the stay of the trial-court proceedings is hereby lifted.

CR-2022-0966 – PETITION DENIED.

Windom, P.J., and Kellum, McCool, Cole, and, Minor, JJ., concur.

CR-2022-0967 – PETITION DENIED.

Windom, P.J., and Kellum, McCool, Cole, and, Minor, JJ., concur.

CR-2022-0968 – PETITION DENIED.

Windom, P.J., and Kellum and Cole, JJ., concur; Minor, J., concurs specially, with opinion; McCool, J., dissents, with opinion.

MINOR, Judge, concurring specially in case no. CR-2022-0968.

I concur in the Court's decisions to deny these petitions. I write separately to explain why I concur in case no. CR-2022-0968, the joint petition filed by the State and Clifton Marshall Ridgeway seeking a writ of mandamus directing Judge William E. Hereford to accept the second plea agreement.

In case no. CR-2022-0968, I share the concerns Judge McCool expresses in his dissenting opinion about a trial court not having to state its reason for rejecting a plea agreement. Rule 14.3(c)(2), Ala. R. Crim. P., provides what a court must do when it rejects a plea agreement:

> "(i) So inform the parties;
>
> "(ii) Advise the defendant and the prosecutor personally in open court that the court is not bound by the plea agreement;
>
> "(iii) Advise the defendant that if the defendant pleads guilty, the disposition of the case may be either more or less favorable to the defendant than that contemplated by the plea agreement;
>
> "(iv) Afford the defendant the opportunity to withdraw the defendant's offer to plead guilty;
>
> "(v) Afford the prosecutor the opportunity to change his recommendations; and

> "(vi) Afford the parties the opportunity to submit further plea agreements."

Rule 14.3(c)(2) does not prohibit a court from stating its reasons for rejecting a plea agreement. In fact, in my experience most trial courts provide a reason when refusing to accept a plea agreement—and rightly so. The wisdom of that practice, which typically promotes judicial economy and the resolution of cases, is evident.

But Rule 14.3(c)(2) does not require a court to state its reasons for rejecting a plea agreement, and I question whether this Court has the authority to impose such a requirement in all cases when the Alabama Rules of Criminal Procedure do not.[4] See Art. VI, § 150, Ala. Const. 2022 ("The supreme court shall make and promulgate rules governing the administration of all courts and rules governing practice and procedure in all courts …."); Marshall v. State, 884 So. 2d 900, 904 n.5 (Ala. 2003) ("The Court of Criminal Appeals may not … amend the rules of procedure.").

[4]Other procedural rules expressly require findings of fact. See, e.g., Rule 32.9(d), Ala. R. Crim. P. ("The court shall make specific findings of fact relating to each material issue of fact presented."); Rule 25, Ala. R. Juv. P. (requiring certain findings).

In 2020, when the District Attorney for the 41st Judicial Circuit sought a writ of mandamus from this Court directing Judge Hereford to vacate his February 2020 order granting Ridgeway's motion for a new trial, I concurred specially and urged the Alabama Supreme Court or the Alabama Legislature to require a trial court to state its reasons for granting a motion for a new trial. State v. Ridgeway, 309 So. 3d 1280, 1282-83 (Ala. Crim. App. 2020) (Minor, J., concurring specially). See Rule 24.1(c), Ala. R. Crim. P. ("The court may grant a new trial: (1) For the reason that the verdict is contrary to law or to the weight of the evidence; or (2) If for any other reason the defendant has not received a fair and impartial trial."). Such a requirement would "promote the interest of judicial economy and enable meaningful review of a trial court's action." 309 So. 3d at 1283. (Minor, J., concurring specially). For those same reasons, I think the Alabama Legislature or the Alabama Supreme Court should consider requiring a trial court to state in writing or on the record its reason or reasons for rejecting a plea agreement.

I also write separately to note that I do not agree with the conclusion reached by Judge McCool that Judge Hereford "arbitrarily rejected the second plea agreement because, by his own admission, he

based his decision solely on the fact that Ridgeway had claimed innocence during the guilty-plea hearing" when Judge Hereford rejected the first plea agreement. ___ So. 3d at ___ (McCool, J., dissenting in case no. CR-2022-0968). I see no such admission in Judge Hereford's response to this Court.

In their joint petition to this Court in case no. CR-2022-0968, the State and Ridgeway assert that Judge Hereford gave them no reason for rejecting the second plea agreement. In his answer to the petition, Judge Hereford provides this Court with a transcript of the hearing at which he rejected the first plea agreement. Judge Hereford asserts that, by not including that transcript with its petition, the petitioners did not comply with Rule 21(a)(1)(F), Ala. R. App. P., which requires the petitioners to include "all parts of the record that are essential to understanding the matters set forth in the petition." Judge Hereford further asserts that the transcript of that hearing provides essential context for his rejection of the plea agreements, showing that his rejection of the agreements was not arbitrary. In my view, Judge Hereford's procedural argument in his answer—and the context he provides, which the petitioners omitted—is not the equivalent of an "admission" that "he based his decision solely on

the fact that Ridgeway had claimed innocence during the guilty-plea hearing that occurred months earlier."

Judge Hereford correctly notes that a trial court may refuse to accept a guilty plea if the court is not satisfied that there is a factual basis for the plea. Judge Hereford asserts that Ridgeway has not offered testimony different from his testimony at the first hearing in which he denied his involvement in the alleged crime. The materials before us do not refute Judge Hereford's assertion. No doubt the colloquy Judge Hereford conducted with Ridgeway weighed heavily in his determination that no factual basis existed for a guilty plea to intentional or felony murder—Judge Hereford states that the colloquy itself provided "ample reason" to reject the plea agreements. (Answer, p. 6.) But this is not the same as stating it was the only reason, and, as the main opinion points out, Judge Hereford is intimately familiar with the State's evidence against Ridgeway because he presided over Ridgeway's capital-murder trial. Plus, this Court did not direct Judge Hereford to provide his reason or reasons for rejecting Ridgeway's second attempt to plead guilty. Rather, this Court gave him the chance to respond to the allegations in

the petition filed against him. Judge Hereford did not have to include all his reasoning, and I do not read his response as attempting to do so.

Judge McCool's conclusion that Judge Hereford acted arbitrarily hinges on the premise that Judge Hereford admitted that he relied solely on Ridgeway's claiming innocence during the first guilty-plea hearing. Because I reject the premise, I must also reject the resulting conclusion.

I also find distinguishable United States v. Maddox, 48 F.3d 555 (D.C. Cir. 1995), and United States v. Shepherd, 102 F.3d 558 (D.C. Cir. 1996), upon which Judge McCool's special writing relies. In Maddox, after the trial court rejected the first agreement, defense counsel explained to the trial court that the defendant had been confused by the court's questions at the hearing. Maddox, 48 F.3d at 558. The materials before us in these petitions, however, show no such confusion by Ridgeway at the first hearing. In Shepherd, because of a judicially created requirement in that circuit, the trial court stated four reasons for rejecting the plea agreement. The appellate court in Shepherd rejected each of those reasons. 102 F.3d at 561-64. Yet no such requirement exists for Judge Hereford to state his reason or reasons for rejecting the agreement.

Finally, I cannot agree with the relief the special writing would grant to the petitioners. Judge McCool distinguishes between accepting a plea agreement and accepting a guilty plea. ___ So. 3d at ___ n.4. From there, he states that this Court should "order Judge Hereford to accept the second plea agreement" and that the result of that relief "would be that the State and Ridgeway would be entitled to a guilty-plea hearing at which Ridgeway would be given the opportunity to plead guilty in accordance with the terms of that agreement." Of course, Judge McCool also recognizes that Judge Hereford would not have to accept Ridgeway's guilty plea.

Although there is a distinction between accepting a plea agreement and accepting a guilty plea, I do not read the petition before this Court as making that distinction. In my view, the petitioners are asking this Court to direct Judge Hereford to accept Ridgeway's guilty plea and to sentence him in accordance with the plea agreement. The relief Judge McCool offers in his special writing amounts to little more than a guilty-plea hearing. I do not believe that is the relief the petitioners seek.

In short, I do not believe the petitioners in case no. CR-2022-0968 have met the requirements for the "drastic and extraordinary writ" of mandamus, and I thus concur in the denial of the petition.

McCOOL, Judge, dissenting in case number CR-2022-0968.

"I wake up every day, right here, right in Punxsutawney, and it's always February 2nd, and there's nothing I can do about it." Thus laments Phil Connors, the cynical weatherman played by actor Bill Murray in the 1993 movie Groundhog Day, as he bemoans the fact that he is stuck in an endless time loop, living the same day over and over ad infinitum. I believe that, unfortunately, due to the arbitrary refusal of the trial court to accept a plea agreement reached by the State and Clifton Marshall Ridgeway in this case, and the majority's sanction of the trial court's improper action, the State and Ridgeway are likely consigned to a "Groundhog Day-esque" scenario that will leave them in limbo ad infinitum. Thus, although I concur in the majority's decision to deny the State and Ridgeway's joint petition for a writ of mandamus in case number CR-2022-0966 and to deny the State's petition for a writ of mandamus in case number CR-2022-0967, I dissent from the majority's decision to deny the State and Ridgeway's joint petition for a writ of mandamus in case number CR-2022-0968 because the petitioners have demonstrated that they have a clear legal right to the requested relief – namely, the acceptance of their second plea agreement.

This case involves two plea agreements that the State and Ridgeway reached in an attempt to dispose of a pending capital-murder charge alleging that Ridgeway was involved in the murder of Myron Brian Beavers. Those plea agreements arose after Ridgeway was convicted of the capital murder in 2019 and was then granted a new trial by Judge William E. Hereford. The first plea agreement, which the parties reached in December 2021, provided that Ridgeway would plead guilty to murder in exchange for the State's recommendation that he be sentenced to 35 years' imprisonment. However, at the guilty-plea hearing that occurred in February 2022, Judge Hereford refused to accept Ridgeway's guilty plea because Ridgeway claimed that he had not been involved in Beavers's murder. The second plea agreement, which the parties reached in July 2022, provided that Ridgeway would plead guilty to felony murder in exchange for the State's recommendation that he be sentenced to 30 years' imprisonment. However, Judge Hereford refused to accept that plea agreement and did not afford Ridgeway a second opportunity to plead guilty. The issue before this Court is whether the State and Ridgeway have a clear legal right to a writ of mandamus directing Judge Hereford to accept the second plea

agreement. The majority holds that they do not; I would hold that they do.

The majority correctly notes that a trial court has the discretion to reject a plea agreement or a guilty plea but that the court exceeds the bounds of its discretion if it rejects the agreement or the plea on an arbitrary basis. Wiggins v. State, 193 So. 3d 765 (Ala. Crim. App. 2014). In other words, a trial court does not have the authority to reject a plea agreement or a guilty plea unless it has a sound reason for doing so, and, if it does not, then the parties are entitled to have the agreement or the plea accepted by the trial court and may obtain mandamus relief to that effect. See United States v. Delegal, 678 F.2d 47, 50 (7th Cir. 1982) ("[A] defendant is entitled to plead guilty unless the [trial] court can articulate a sound reason for rejecting the plea." (emphasis added)); and Ex parte Rawls, 953 So. 2d 374, 377 (Ala. 2006) ("'A writ of mandamus is an extraordinary remedy that is available when a trial court has exceeded its discretion.'" (quoting Ex parte Antonucci, 917 So. 2d 825, 830 (Ala. 2005))).

In this case, Judge Hereford has explained that the reason he rejected the second plea agreement is because, at the February 2022

guilty-plea hearing, Ridgeway claimed that he had not been involved in Beavers's murder.[5] I have no argument with the majority's conclusion that a trial court may reject a guilty plea, i.e., that its rejection is not arbitrary, if the defendant claims that he is innocent when he proffers the plea. Thus, I have no trouble concluding that Judge Hereford acted within the bounds of his discretion when he rejected Ridgeway's guilty plea at the February 2022 guilty-plea hearing. But the specific question in this case is whether Ridgeway's claim of innocence provided Judge Hereford with a sound reason for rejecting the second plea agreement, which the parties presented to him approximately five months later in July 2022. The majority does not expressly address this specific question but effectively holds that a defendant's claim of innocence at a guilty-plea

[5]Judge Minor suggests in his special concurrence that Judge Hereford was not required to include all his reasoning for rejecting the second plea agreement and that perhaps he did not. But I find it highly unlikely that Judge Hereford, when directed to respond to the allegation that he arbitrarily rejected that agreement, would have chosen not to disclose all the reasons for his decision. Thus, it is clear to me that Judge Hereford had only one reason for rejecting the second plea agreement. The majority and I can disagree (and clearly do) about whether that reason was arbitrary, but the suggestion that there could be other unstated reasons for Judge Hereford's rejection is, in my humble opinion, not convincing.

hearing provides the trial court with a sound reason for rejecting not only the guilty plea proffered at that time but also any subsequent plea agreement that the parties might reach. This is where the majority and I must part ways.[6]

In United States v. Maddox, 48 F.3d 555 (D.C. Cir. 1995), the United States Court of Appeals for the District of Columbia addressed circumstances similar to those of this case. In Maddox, Danny Maddox was charged with various drug-related crimes and subsequently entered into a plea agreement with the State. However, at the guilty-plea hearing, the trial court refused to accept Maddox's guilty plea because he "appeared to deny factual guilt" when questioned by the court. Maddox, 48 F.3d at 556. A few days later, defense counsel sent the trial court a letter explaining that "Maddox's behavior during the [guilty-plea hearing] resulted from confusion about the [court's] questions, not from

[6]I note here that the rejection of a plea agreement and the rejection of a guilty plea are not the same thing. A trial court may reject a plea agreement, i.e., may reject the terms of the agreement, and still allow the defendant to enter a guilty plea should the defendant desire to do so. See Rule 14.3(c)(2)(iii), Ala. R. Crim. P. Likewise, a trial court may accept the terms of a plea agreement but ultimately reject the defendant's guilty plea if the court finds that the plea is not voluntary or that there is not a factual basis for the plea. See Rule 14.4, Ala. R. Crim. P.

any desire to withdraw from his plea agreement," and counsel requested that the court "grant [Maddox] a second opportunity to enter a guilty plea." Id. at 558. The trial court refused to afford Maddox another opportunity to plead guilty, however, because the court was "not convinced that any guilty plea entered [at that point], in view of the circumstances and the events [at the earlier guilty-plea hearing], would be voluntary." Id.

On appeal, the Court of Appeals for the District of Columbia held that the trial court had "reasonably exercised [its] discretion in rejecting Maddox's initial guilty plea," but the Court "[could not] reach the same conclusion with respect to the … subsequent rejection of Maddox's renewed plea." Maddox, 48 F.3d at 559. Rather, the Court explained:

> "In these circumstances, the [trial court] was obligated to 'provide a reasoned exercise of discretion' before rejecting Maddox's plea again. [United States v.] Ammidown, 497 F.2d [615,] 622 [(D.C. Cir. 1973)]. Instead, the [trial court] summarily rejected the plea 'in view of the circumstances and the events [at the earlier guilty-plea hearing].' In short, based solely on Maddox's reticence and denial of factual guilt during the first plea colloquy, the [trial court] precluded him from entering any subsequent plea, no matter how knowing and voluntary. As even the Government acknowledged at oral argument, the [trial court's] summary rejection of Maddox's renewed plea was arbitrary."

Maddox, 48 F.3d at 559-60 (internal citation to record omitted).

The Court of Appeals for the District of Columbia reached the same conclusion the next year in United States v. Shepherd, 102 F.3d 558 (D.C. Cir. 1996), albeit under different circumstances. In that case, defense counsel informed the trial court at the end of the first day of trial that the defendant had reached an agreement with the government whereby she would plead guilty to the indictment and would testify against her codefendants in exchange for a favorable sentencing recommendation. Defense counsel explained to the trial court that the defendant had actually agreed to plead guilty several months earlier but, "intimidated by her codefendants, had changed her mind several times." Id. at 561. The trial court refused to allow the defendant to plead guilty, though, because the defendant "had 'gone back and forth' on whether to plead," and she was subsequently convicted following a trial. Id. at 563. However, after noting that a defendant's "initial reticence or denial of factual guilt does not preclude the subsequent entry of a guilty plea," the Court of Appeals reversed the defendant's conviction and ordered the trial court to allow the defendant to enter a guilty plea. Id.

In this case, it seems clear that, although he claimed innocence at the February 2022 guilty-plea hearing, Ridgeway was willing to admit

his involvement in Beavers's murder when the parties presented the second plea agreement to Judge Hereford approximately five months later. First, the State and Ridgeway contend in their petition that Ridgeway "has attempted to take responsibility for his role in the murder of Beavers … by pleading guilty to felony murder" (CR-2022-0968, Petition, p. 19 (emphasis added)), which suggests that Ridgeway was willing to admit his involvement in the murder at that time, and Judge Hereford has not denied that contention in his answer, so I accept it as true. Ex parte Benford, 935 So. 2d 421, 426 (Ala. 2006). Furthermore, if Ridgeway was not willing to admit his involvement in the murder, then it would have been absurd for the parties to present Judge Hereford with the second plea agreement in the first place, because they would have certainly realized, based on what occurred at the February 2022 guilty-plea hearing, that any attempt to plead guilty without such an admission would be futile. Thus, there appears to be no question that Ridgeway was prepared to admit his involvement in Beavers's murder if he had been afforded the opportunity to plead guilty to felony murder, yet Judge Hereford refused to afford Ridgeway that opportunity solely because Ridgeway had claimed innocence at an earlier guilty-plea hearing.

I find the reasoning of Maddox and Shepherd persuasive, and I would hold that Judge Hereford's rejection of the second plea agreement was arbitrary because, by his own admission, he based his decision solely on the fact that Ridgeway had claimed innocence during the guilty-plea hearing that occurred months earlier. In other words, Ridgeway's prior claim of innocence is not a sound reason for rejecting any and all subsequent plea agreements the parties may reach or any subsequent guilty plea Ridgeway attempts to enter. As the Shepherd Court explained: "[A] defendant's initial reticence or denial of factual guilt does not preclude the subsequent entry of a guilty plea." 102 F.3d at 563. And, as the Maddox Court explained, to conclude otherwise would effectively prohibit Ridgeway from ever entering a guilty plea in this case, and a blanket prohibition of any future plea agreement or opportunity for him to plead guilty, based on his prior claim of innocence, is arbitrary.[7] See

[7]I realize that Judge Hereford told the parties they are free to "continue to work on a settlement" (CR-2022-0968, Petition, Exhibit F, unnumbered p. 50), which suggests that he is not refusing to entertain plea agreements or prohibiting Ridgeway from pleading guilty. However, if Judge Hereford believes that Ridgeway's prior claim of innocence provided a basis for rejecting the second plea agreement, which is the only explanation he has given for rejecting the agreement, then the only logical conclusion I can draw is that he will reject any other plea agreement the parties reach for that same reason.

State v. Jackson, No. 2022-L-053, March 13, 2023 (Ohio Ct. App. 2023) (unpublished decision) (holding that it was arbitrary for the trial court to tell the defendant that, if he withdrew his guilty plea, which would serve to reinstate his not-guilty plea, then the court would "never take a plea from him on this case again").

I am incredibly concerned by Judge Hereford's arbitrary rejection of the second plea agreement and by the majority's refusal to order him to accept it. Judge Hereford has already granted Ridgeway a new trial once, for reasons unknown to everyone but him. See State v. Ridgeway, 309 So. 3d 1280 (Ala. Crim. App. 2020). Now, Judge Hereford has refused to allow Ridgeway to plead guilty based on Ridgeway's claim of innocence at a guilty-plea hearing that occurred months earlier, thus forcing the parties into a second trial, now that the majority has denied these mandamus petitions. However, because the State has no idea why Judge Hereford granted Ridgeway a new trial, it is quite possible that whatever defects Judge Hereford found in the first trial will be repeated in the second trial, which would likely result in the granting of another motion for a new trial. And, because Judge Hereford believes that Ridgeway's prior claim of innocence authorizes the rejection of any future plea

agreement or guilty plea (a belief confirmed by the majority), the endless loop in which the parties potentially find themselves becomes obvious. In other words, like Phil Connors, the State and Ridgeway might well find themselves waking up "every day, right here, right in [Blount County], and it's always [the same situation]" – i.e., Ridgeway facing trial for and being convicted of capital murder, Judge Hereford then ordering a new trial for undisclosed reasons and then refusing to accept any plea agreement or guilty plea for unstated reasons, and Ridgeway again facing trial for capital murder, over and over again ad nauseam – "and there's nothing [the parties] can do about it." Frankly, given the manner in which Judge Hereford has handled these proceedings, I see no end in sight until Ridgeway is either acquitted at trial – an outcome his own counsel concedes is highly unlikely given the evidence against him (CR-2022-0968, Petition, Exhibit E) – or the State just throws its hands up in frustration and dismisses the case.

It is evident that the parties in this case worked in good faith to reach an agreement that would prevent the incredible time, stress, and expense of a second capital-murder trial and would shield Beavers's parents (who, by the way, are also in favor of a guilty plea) from the

trauma of reliving their son's murder in yet another trial.[8] However, Judge Hereford arbitrarily rejected the second plea agreement and refused to afford Ridgeway a second opportunity to plead guilty, thereby subjecting the parties and Beavers's parents (not to mention the taxpayers) to further proceedings in a case that should have been resolved long ago. Thus, because Judge Hereford arbitrarily rejected the second plea agreement, I would grant the State and Ridgeway's petition in case number CR-2022-0968 and would issue a writ of mandamus directing Judge Hereford to accept that agreement and to hold a hearing at which he must give Ridgeway an opportunity to plead guilty in accordance with the terms of the agreement.[9] Of course, that would not

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[8]Beavers's father testified at an August 2022 hearing that the lack of finality in this case has "drug [he and his wife] through months and months of agony," that "the doctor has told [him] that depression put [his] wife into dementia," and that a guilty plea would "be a closure" to his son's death. (CR-2022-0968, Petition, Exhibit F, unnumbered pp. 22-23.)

[9]The relief the State and Ridgeway have requested is for this Court to order Judge Hereford to accept the second plea agreement, and that is the relief I would grant. The result of that relief, then, would be that the State and Ridgeway would be entitled to a guilty-plea hearing at which Ridgeway would be given the opportunity to plead guilty in accordance with the terms of that agreement. See Rule 14.3(c)(1) (providing that, once a plea agreement is accepted, a trial court must hold a hearing in compliance with Rule 14.4).

mean that Judge Hereford would be required to accept Ridgeway's guilty plea because he might again find that there is a sound reason for rejecting the plea. But I would make clear that Judge Hereford could not rely solely on Ridgeway's prior claim of innocence to reject Ridgeway's guilty plea or any future plea agreements the parties might reach.

I also feel compelled to address what I find to be another troubling aspect of the proceedings below – namely, Judge Hereford's refusal to provide the parties with his reason for rejecting the second plea agreement, despite being asked to state his reason multiple times. Instead, it was not until this Court directed Judge Hereford to file an answer to these mandamus petitions that he finally revealed his reason for rejecting that agreement. This Court has not previously considered whether a trial court is required to provide the parties with its reason for rejecting a plea agreement or a guilty plea, and the majority does not have to address that issue in this case because Judge Hereford has now provided his reason for rejecting the second plea agreement. However, it is my opinion that a trial court has a duty to provide the parties with its reason for rejecting a plea agreement or a guilty plea <u>at the time of rejection</u>, and I would encourage trial courts to do so going forward.

Section 12-3-11, Ala. Code 1975, provides this Court with "general superintendence and control over lower courts concerning matters that fall within our appellate jurisdiction." Ex parte Sandifer, 925 So. 2d 290, 295 n.6 (Ala. Crim. App. 2005). Thus, when a trial court rejects a plea agreement or a guilty plea, that decision is subject to review by this Court because, as the majority has already explained, that decision cannot be arbitrary. However, if the trial court refuses to provide a reason for rejecting the plea agreement or the guilty plea, it effectively acts to deprive this Court of its supervisory power, for it would be impossible for this Court to ever say that the trial court's reason was unsound when the reason was not articulated. In other words, any "review" of the trial court's decision would be entirely illusory, and the lack of any meaningful review would mean that a trial court could in fact arbitrarily reject a plea agreement or a guilty plea, i.e., could reject it without a sound reason, simply by refusing to make that reason known. See United States v. Rea-Beltran, 457 F.3d 695, 701 (7th Cir. 2006); and United States v. Mancinas-Flores, 588 F.3d 677, 683 (9th Cir. 2009) (both noting that there can be no "meaningful" appellate review of a trial court's rejection of a plea agreement or a guilty plea if the court does not provide its reason

for rejection). Indeed, in this case the only reason this Court is able to meaningfully review Judge Hereford's rejection of the second plea agreement is because he provided his reason in his answer to the mandamus petition. However, Judge Hereford was not required to file that answer, see Rule 21(b), Ala. R. App. P., and, had he chosen not to do so, would have effectively cut off any meaningful review of his decision.

In addition, plea agreements and their attendant guilty pleas "serve a valuable role in the criminal justice system" for both the State and defendants. Ex parte Yarber, 437 So. 2d 1330, 1335 (Ala. 1983). For the State, guilty pleas "alleviat[e] some of the burdens placed on prosecutors and the courts by reducing the number of cases to be tried and appealed." Whitson v. State, 854 So. 2d 619, 624 (Ala. Crim. App. 2003). For defendants, guilty pleas avoid the "risky and unpredictable" prospect of a trial, Ex parte Yarber, 437 So. 2d at 1336 (citation omitted), and provide them with some certainty regarding their liability and a means of limiting the consequences of their crimes. Missouri v. Frye, 566 U.S. 134, 144 (2012). See also United States v. Morgan, 386 F.3d 376, 380 (2d Cir. 2004) ("[P]lea agreements can have extremely valuable benefits to both sides – most notably, the defendant gains reasonable

certainty as to the extent of his liability and punishment, and the Government achieves a conviction without the expense and effort of proving the charges at trial beyond a reasonable doubt." (citation omitted)).

But these valuable considerations are frustrated, if not completely foiled, when a trial court rejects a plea agreement or a guilty plea and refuses to state its reason. In that situation, the parties can continue to work towards a negotiated resolution of the case that the trial court finds acceptable, but, without any guidance from the court, there is no way for them to know whether they have addressed whatever issue or issues the court had with their previous attempts to settle the case. Thus, the result is a plea-bargaining process that is at best inefficient and at worst a complete waste of time. If, on the other hand, the trial court provides the parties with its reason for rejecting the plea agreement or the guilty plea, they can then go back to the drawing board and attempt to reach an agreement that both they and the court find satisfactory. In that situation, the plea-bargaining process works smoothly and efficiently, even if it ultimately does not conclude with a guilty plea.

I also note that, for these same reasons, numerous courts across the country, both federal and state, have required trial courts to articulate their reasons for rejecting plea agreements and guilty pleas. See United States v. Robertson, 45 F.3d 1423, 1438 (10th Cir. 1995) ("A district court's discretion to reject plea agreements is not without limit and varies depending on the content of such a bargain. Accordingly, we hold that in order to [e]nsure district courts exercise sound judicial discretion ..., courts must set forth, on the record, ... the court's justification for rejecting [a plea agreement]. Requiring district courts to articulate the reasons for rejecting a plea agreement ... is the surest, indeed the only way to facilitate appellate review of rejected plea bargains." (internal citations omitted)); Mancinas-Flores, 588 F.3d at 688 ("If the court rejects the plea, it must clearly state its reasons so that we can determine ... whether the court abused its discretion."); United States v. Hernandez-Rivas, 513 F.3d 753, 759 (7th Cir. 2008) ("[A] court cannot arbitrarily reject a plea, and must articulate on the record a 'sound reason' for the rejection."); United States v. Cota-Luna, 891 F.3d 639, 647 (6th Cir. 2018) (holding that the trial court's explanation for its rejection of a plea agreement was "more than 'appropriate' – it was required"); State v.

Montiel, 122 P.3d 571, 578 (Utah 2005) (noting that "the majority of jurisdictions require that judges make their reasoning for rejecting a proposed plea agreement a matter of record," that "'requiring district courts to articulate a sound reason for rejecting a plea is the surest way to foster the sound exercise of judicial discretion,'" and that doing so "'facilitate[s] appellate review when the defendant contends that the district court abused its discretion in rejecting a plea'" (quoting, respectively, United States v. Moore, 916 F.2d 1131, 1136 (6th Cir. 1990), and United States v. Kraus, 137 F.3d 447, 453 (7th Cir. 1998))); Frankson v. State, 518 P.3d 743, 757 (Alaska Ct. App. 2022) ("[B]oth parties argue that when a trial court rejects a sentencing agreement, it should put its reasons for doing so on the record. The majority of jurisdictions have adopted such a requirement, and we likewise adopt it here."); People v. Mora-Duran, 45 Cal. App. 5th 589, 596, 258 Cal. Rptr. 3d 893, 899 (2020) (noting that a trial court "must not reject a plea bargain arbitrarily or capriciously or do so without giving any justification"); People v. Darlington, 105 P.3d 230, 232 (Colo. 2005) ("The trial court must … articulate the reasons for rejecting [a plea] agreement on the record."); Hoskins v. Maricle, 150 S.W.3d 1, 24 (Ky. 2005) ("[A trial court's]

discretion to accept or reject [a plea] agreement is limited only by the requirement that it independently review each bargain placed before it, and set forth in the record … the court's justification for rejecting it."); State v. Sears, 208 W. Va. 700, 705, 542 S.E.2d 863, 868 (2000) (holding that, if a trial court rejects a plea agreement, the court "'must set forth, on the record, … the court's justification for rejecting it'" (quoting Robertson, 45 F.3d at 1438)); and Sandy v. Fifth Jud. Dist. Court, 935 P.2d 1148, 1150 (Nev. 1997) ("If the judge rejects a plea bargain, he or she … must state reasons for the disapproval.").

I note Judge Minor's conclusion in his special concurrence that nothing in Rule 14.3, Ala. R. Crim. P., requires a trial court to state its reason for rejecting a plea agreement or a guilty plea. As I explained the first time these parties were before this Court: "I do not believe that this Court must wait on the Alabama Supreme Court or the Alabama Legislature to require the trial court to simply state its reasons for granting a motion for a new trial, which would allow this Court to fulfill its basic function of supervision and review." Ridgeway, 309 So. 3d at 1284 (McCool, J., dissenting). Likewise, I do not believe that this Court must wait on the Alabama Supreme Court or the Alabama Legislature to

require a trial court to state its reason for rejecting a plea agreement or a guilty plea because imposing this requirement is the only way this Court can fulfill its basic function of reviewing the trial court's decision. As I explained above, without knowing the trial court's reason for rejecting a plea agreement or a guilty plea, any "review" of the court's decision would be entirely illusory.

Furthermore, as Judge Minor points out, Rule 14.3(c)(2)(i) requires a trial court to "inform the parties" when it rejects a plea agreement. When read in conjunction with our established caselaw (cited above) requiring a nonarbitrary reason for rejecting a plea agreement, this provision of the rule arguably contains an implicit requirement that the trial court state its reasons for rejecting the agreement. The finding of such an implicit requirement would not be unprecedented. See Edgar v. State, 646 So. 2d 683, 688 (Ala. 1994) (noting an implicit provision in the Alabama Rules of Criminal Procedure); and T.L.R. v. State, 608 So. 2d 767, 768 (Ala. Crim. App. 1992) (finding an implicit provision in the Alabama Rules of Juvenile Procedure).

Thus, should this issue ever be squarely before this Court, I would hold that, when a trial court rejects a plea agreement or a guilty plea, the

court must state for the record its reason for the rejection. This requirement will ensure that the trial court's decision is subject to meaningful review by this Court and therefore will ensure that the plea agreement or the guilty plea was not rejected arbitrarily. In fact, requiring the trial court to articulate its reason for rejecting a plea agreement or a guilty plea might obviate the need for any appellate review at all, as it will provide the parties the guidance necessary to proceed with future plea negotiations that might result in an agreement the court finds acceptable. And, even though there is currently no Alabama law or rule that expressly imposes this requirement, I would encourage trial courts, in the interest of fairness and judicial economy, to take it upon themselves to be transparent in their rejection of plea agreements and guilty pleas.