

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STATE OF DELAWARE)	
)	
v.)	
)	
GEORGE W. ANDERSON	)	ID No. 1209011176
EDWARD ARMISTEAD	)	ID No. 1310009200
DOMINICK BAILEY	)	ID No. 1103021255
JAMAAR S. BANKS	)	ID No. 1211016583
JAMIE BARKLEY	)	ID No. 1204013602
MICHAEL R. BETHARD	)	ID No. 1304009788
HARRY W. BLENDT	)	ID No. 1203008725
HARRY W. BLENDT	)	ID No. 1307025699
JOHN E. BRADLEY	)	ID No. 1211008008
DONALD BRATCHER	)	ID No. 1002000575
CHRISTOPHER D. BREWER a/k/a)	
CHRISTOPHER JERNIGAN	)	ID No. 1205008276
WARREN BROOKS	)	ID No. 1110009338
DONALD BROWN	)	ID No. 1211009891
ANTOINE L. BURGESS	)	ID No. 1304022461
CARRIE A. BUTLER	)	ID No. 1204012409
SHON CALDWELL	)	ID No. 1306008038
LEMAR C. CAMPBELL	)	ID No. 1012001879
SHAUN CARPENTER	)	ID No. 0912005873
RICHARD S. CARTER	)	ID No. 1204018496
MICHAEL A. CHARLES	)	ID No. 1212007009
ROBERTO CHERRICKS	)	ID No. 1212012552
KYLE COHEN	)	ID No. 1211023034
MARK S. COLEMAN	)	ID No. 1304014873
MARVIS COLONA	)	ID No. 1311015254
BOSTON K. CONNOR	)	ID No. 1307018245
NICOLE J. COX	)	ID No. 1308001215
BRIAN CROSSMAN	)	ID No. 1010009425
BRADLEY A. DAVIS	)	ID No. 1202012547
BLAISE DEJESUS	)	ID No. 1205010386
MYKAL DEMPSTER	)	ID No. 1205019774A

MICHAEL D. DIX	)	ID No. 1306018495
LAMAR J. DOZIER	)	ID No. 1307000703
KURT S. DUPREE	)	ID No. 0912010393
ABBYDALE N. FINNEY a/k/a	)	ID No. 1211007648
ABBYDALE SEABROOKS)	
WESLEY J. FISHER	)	ID No. 1110018244
CHRISTOPHER T. FOOTE	)	ID No. 1210028521
CHARLES J. FRAZIER	)	ID No. 1103017392
JONATHAN FUENTES-ALMO	)	ID No. 1105013476
PATRICK R. FURBECK	)	ID No. 1305018534
SEANNE M. GODWIN	)	ID No. 1008014466
JEREMY GORDY	)	ID No. 1311003205
JERRI GREEN	)	ID No. 1304014924
IRVING HALL	)	ID No. 0909021763
KYIEM HALL	)	ID No. 0912005273
QUAHEEM HALL	)	ID No. 1310003660
LUKE A. HARRIS	)	ID No. 1001004518
TRAVIS O. HARRISON	)	ID No. 1106004624
JUSTIN HOLDERBAUM	)	ID No. 1204006263
RANDY HOLLENBAUGH	)	ID No. 1304023077
DONALD L. HORSEY	)	ID No. 1103014276
QUAYSHAUN JOHNSON	)	ID No. 1007025439
SAVANNAH JOHNSON	)	ID No. 1303011652
ANTOINE J. JONES	)	ID No. 0810005948
ALAN M. JORDAN	)	ID No. 1102017234
ASHTON D. JORDAN	)	ID No. 1303009650
ANDREA L. KING	)	ID No. 1111011434
ANDREA L. KING	)	ID No. 1111015209
DAVID KING	)	ID No. 0912001839
DESTINY G. LABERGE	)	ID No. 1208006617
KELLY LAWLOR	)	ID No. 1304023378
DASHERE LEWIS	)	ID No. 1103018539
DOMINICK LITTLE	)	ID No. 1305012566
CHARLES L. LIVINGSTON	)	ID No. 1109010352
CRYSTAL LYSINGER	)	ID No. 1212012158
EARL MANLOVE	)	ID No. 1303004575
MARK MARTIN	)	ID No. 1305024514

NICK MARTINEZ	)	ID No. 1309011710
DWAYNE N. MATTHEWS	)	ID No. 1210000641
KEVIN MAYO	)	ID No. 1306012872
BRANDON A. MCCLAIN	)	ID No. 1111004748
DAVID H. MCCURLEY	)	ID No. 1004005351
ANTHONY J. MCNEIL	)	ID No. 1202010211
MICHAEL D. MESSICK	)	ID No. 1306000151
JEROME A. MILLER	)	ID No. 1211017948
RODNEY L. MILLER	)	ID No. 1208012411
JAMES T. MOORE	)	ID No. 1308001321
JAMES MOSES	)	ID No. 1303014531
JUSTIN R. OHL	)	ID No. 1308018748
ELLIOTT OWENS	)	ID No. 0905018717
TAQUEN OWENS	)	ID No. 1304013720
KYE PABON	)	ID No. 1306024965
JASON PAJULA	)	ID No. 1301017432
DEMARCE PARKS	)	ID No. 1309002130
COREY PATRICK	)	ID No. 1001021083
EDWARD J. POTTS	)	ID No. 1003022526
DEVRON POWELL	)	ID No. 1209014758
STEPHONE POWELL	)	ID No. 1205007336
CORY PRICE	)	ID No. 1304020013
DAVID A. RANSHAW	)	ID No. 1307023483
MICHAEL A. RATLEDGE	)	ID No. 1212013114
KEITH RODRIGUEZ	)	ID No. 1302021122
ELWOOD J. ROSS	)	ID No. 1012018727
CHARLES RUNKLE	)	ID No. 1206015047
EDWIN A. SANTIAGO	)	ID No. 1302015909
ILIANA M. SANTIAGO	)	ID No. 1205018158
ILIANA M. SANTIAGO	)	ID No. 1209017661
BRIAN M. SATTERFIELD	)	ID No. 1309017247
TYRONE N. SAYLES	)	ID No. 1205012091
ADAM SCOTT	)	ID No. 1111006658
ALPHONSO SIMMONS	)	ID No. 1303023438
SAMUEL SMITH	)	ID No. 1302018753
BRENDA STRATTON	)	ID No. 1211003582
RAKIM STRICKLAND	)	ID No. 1202012572

KINON D. TEAT	)	ID No. 0909012957
CHARLES TILGHMAN	)	ID No. 0912010611
KEVIN M. TINSON	)	ID No. 0911010977
TERRANCE M. TROTMON	)	ID No. 1207017483
ANTHONY TROWER	)	ID No. 1309013276
JAQUITA P. TURNAGE	)	ID No. 0911004091
TAQUION TURNER	)	ID No. 1109001897
TAQUION TURNER	)	ID No. 1310001534
BOBBY WARD	)	ID No. 1309018552
ANDREA WILHELM	)	ID No. 1308016595
ALLEN WILLIAMS	)	ID No. 1309013336
WARREN WILSON	)	ID No. 1302018219
ASHMERE WRIGHT	)	ID No. 1212013498
DEMETRIUS M. WRIGHT	)	ID No. 1312012266

ORDER

Today, the Court consolidates and resolves a number of similarly situated Postconviction Motions.¹ All of the cases denoted in the caption (“captioned cases” or “defendants”) were filed by the Public Defenders’s Office (“PD”) and involve drug convictions based on guilty pleas. It appears the defendants’ only contention is that the problems discovered in 2014 at the Office of the Chief Medical Examiner (“OCME”) require the drug convictions be vacated.

Specifically, the defendants essential argument is that he/she is entitled to relief because the State failed to provide *Brady*² material, in the form of impeachment evidence, prior to entry into the plea agreements. In the alternative, the defendants contend that, even if the State was not required to disclose general impeachment

¹ The Court notes that it requested– and considered – the parties’ position with respect to whether these group files should be held to a rule to show cause or summary dismissal under Criminal Procedure Rule 61(d)(4).

² *Brady v. Maryland*, 373 U.S. 83 (1963).

evidence prior to entry into the plea agreements, the State's failure to disclose evidence of government misconduct makes the pleas involuntary.

Upon consideration of the facts, arguments and legal authorities set forth in the captioned cases' individual Postconviction Motions, Supplements to Defendant's Motion for Postconviction Relief, Supplements in response to the December 3, 2014 decision in *State v. Absher, et. al.*,³ Supplements of Factual Record (*Dollard*), including an Amended Motion for Postconviction Relief on December 17, 2014 in selected cases, the State's Response in opposition thereto, Supplement to Factual Record and Reply to the State's March 3, 2015 Response, Superior Court Criminal Rule 61, and applicable law, it appears to the Court that:

1. On January 14, 2014, Tyrone Walker was on trial in this Court for drug dealing charges.⁴ During trial, an evidence envelope was presented to an officer to confirm that the substance in the envelope was the substance found on the Defendant at the time of arrest. When the officer opened the envelope, the relevant drugs were missing.⁵ This sparked an investigation into the practices of the OCME resulting in a finding of multiple cases of pilfering drugs by employees for their own personal use.⁶ Due to the revelation and subsequent investigation, "[t]he State has brought charges against persons in the chain of custody in many of the pending cases. The

³ 2014 WL 7010788, at *2 (Del. Super. Dec. 3, 2014).

⁴ *State v. Brinkley*, 2015 WL 867097, at *1 (Del. Super. Feb. 6, 2015).

⁵ *Id.*

⁶ *Id.*

Court ruled that there was evidence of pilfering or stealing of drugs by a person or persons for their own use.”⁷ However, as the Supreme Court of Delaware recently confirmed:

The situation at the OCME is, to be sure, disturbing and regrettable. But to date, the investigation has yielded no indication that the OCME scandal involved the planting of false evidence to wrongly convict criminal defendants. Rather, it has mostly consisted of instances where employees stole evidence that they knew to be illegal narcotics for resale and personal use. That is, that misconduct occurred because the drugs tested by the OCME were in fact illegal drugs desired by users.⁸

2. As an initial matter, the PD recently filed an amended motion for postconviction relief in *State of Delaware v. Nicole Cox*, ID No. 1308001215, which among other things, challenges the constitutionality of this Court’s June 4, 2014 amendment to Criminal Procedure Rule 61. The defendant contends, “[b]ecause the limitations established in the June amendment are not reasonably tailored to a legitimate purpose, they violate the due process clause of both the state and federal constitution and the open courts clause of the Delaware constitution.” The constitutional claim is without merit. The defendant provides no binding authority and falls demonstratively short of bridging the analytical gap between its contentions and any recognized constitutional violation. Moreover, the Delaware Supreme Court has found no constitutional issues with the amendment given the recent decisions in

⁷ *State v. West*, 2014 WL 7466714, at *1 (Del. Super. Dec. 16, 2014) (citing *State v. Irwin*, 2014 WL 6734821 (Del. Super. Nov. 17, 2014)).

⁸ *Brown v. State*, 108 A.3d 1201, 1202-03 (Del. 2015).

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*Brown v. State*⁹ and *Dickson v. State* .¹⁰

3. Additionally, in the above referenced motion, the defendant also suggests that the Court amended Rule 61 with the insidious purpose of denying defendants due process and a full and fair hearing on potential *Brady* claims. Implicit in the argument is the unsubstantiated allegation that the Court cares more about judicial economy than upholding its oath of office. In addition to being patently false, it is highly offensive. Rather than excoriate the motion of counsel, I can only assume, at best, that counsel is overzealous in its advocacy for the defendants. At worst, this motion does not further the clients' interests and lacks an appropriate level of professionalism and respect for the Court.

4. The motions state that the relevant drugs recovered or seized were sent to the OCME for testing. None of the test results were attached to the motions. A Supplement of Factual Record was submitted for some of the captioned cases indicating the OCME test results were received by the defendant prior to entering a guilty plea. However, there has been no claim, or evidence to suggest, that the admissions at the time of the guilty pleas were conditioned on an OCME report. Additionally, in many of the captioned cases, preliminary hearings were waived, and guilty pleas were entered prior to any testing by the OCME. In other cases, the defendant "is neither incarcerated nor on probation due to the age of the case.

⁹ 108 A. 3d 1201 (Del. 2015).

¹⁰ 2015 WL 783376, at *1 (Del. Feb. 23, 2015).

Therefore, there can be no Rule 61 relief as the matter is moot.”¹¹ Accordingly, those cases are summarily dismissed.

5. In all of the captioned cases, the defendants participated in a colloquy before this Court. The defendants were questioned carefully about the factual basis for his or her plea at which time the defendants freely acknowledge the illicit nature of the drugs as well as his or her guilt. The files reflect that there was a factual basis for each plea and that the defendants understood the pleas and their consequences, including the potential sentences. While accepting their pleas, the defendants knowingly, intelligently, and voluntarily waived their rights, including any complaints about the chain of custody of the drug evidence in their cases.

6. Recently, the Supreme Court of Delaware addressed the fallout from the OCME in the context of a similar *Brady* claim. The Court held:

We agree with the State that evidence of the OCME investigation did not affect the validity of Brown’s guilty plea and that Brown is not entitled to a new trial. In *United States v. Ruiz*, the United States Supreme Court held that the “Constitution, in respect to a defendant’s awareness of relevant circumstances, does not require complete knowledge of the relevant circumstances, but permits a court to accept a guilty plea, with its accompanying waiver of various constitutional rights, despite various forms of misapprehension under which a defendant might labor.” Therefore, the “Constitution does not require the [State] to disclose material impeachment evidence prior to entering a plea agreement with a criminal defendant,” because a defendant who pleads guilty decides to forgo “not only a fair trial, but also other

¹¹ *State v. Absher*, 2014 WL 7010788, at *1 (Del. Super. Dec. 3, 2014) (citing *Ruiz v. State*, 956 A.2d 643 (Del. 2008)).

accompanying constitutional guarantees” and “impeachment information is special in relation to the fairness of a trial, not in respect to whether a plea is voluntary.”¹²

The Court went on to explain:

In this case, Brown admitted that he was guilty of possessing and dealing heroin. The plea colloquy reflects that Brown knowingly, voluntarily, and intelligently pled guilty. By pleading guilty, Brown gave up his right to trial and his right to learn of any impeachment evidence. Brown is bound by the statements he made to the Superior Court before his plea was accepted, and *Ruiz* prevents him from reopening his case to make claims that do not address his guilt, and involve impeachment evidence that would only be relevant at trial.¹³

7. Following the holding of *Brown*, “[w]hen a defendant like [those in the captioned cases] has admitted in his [or her] plea colloquy that he [or she] possessed [drugs]..., the OCME investigation provides no logical or just basis to upset his [or her] conviction.”¹⁴ Accordingly, the State’s failure – even where the pleas took place after the discovery of the OCME scandal – to provide *Brady* material, in the form of impeachment evidence has no bearing on the validity of the captioned cases’ guilty pleas.

8. In *Brown*, the Court limited its holding in a footnote with the following

¹² *Brown*, 108 A. 3d at 1205-06 (citing *United States v. Ruiz*, 536 U.S. 622, 623 (2002)).

¹³ *Id.* at 1206 (internal citations omitted).

¹⁴ *Id.* at 1202. (The PD’s recent Supplement to Factual Record and Reply to the State’s March 3, 2015 Response attempts to distinguish the *Brown* ruling from the captioned cases. The Court is not persuaded.)

explanation:

As in *Ruiz*, the impeachment evidence that came to light after Brown pled guilty and was sentenced did not go to his actual innocence or affect the voluntariness of his plea... [O]ur decision is limited to the case before it and fact patterns like it, and that if materially different situations emerge, they must be dealt with on their precise facts. For example, where a defendant entered a reluctant, but fully informed, no contest or guilty plea to lesser charges with no prison sentence to avoid the risk of a lengthy prison sentence on more serious charges, while proclaiming his factual innocence and expressing incredulity that the substance he claimed was legal had tested to be illegal narcotics, a later revelation that evidence planting had occurred in the relevant police department and that the defendant had been one of the victims of that misconduct, that situation could raise distinct considerations from those in this case, where the defendant freely admitted that he possessed illegal drugs.¹⁵

Here, the captioned cases present no such factual scenario. In all of the cases, there are no claims of actual innocence. The mere existence of the ongoing scandal at the OCME does not *ipso facto* create a colorable claim that there was a miscarriage of justice nor does it create a strong inference that the defendants are actually innocent. Finally, without specific facts like those referenced in the *Brown* footnote, the situation at the OCME does not warrant a finding of actual or presumptive involuntariness of the guilty pleas. The defendants have the burden to show clear and convincing evidence to contradict each of the admissions made to the Court.¹⁶ The

¹⁵ *Id.* At 1206 n. 30.

¹⁶ *Sommerville v. State*, 703 A.2d 629, 632 (Del. 1997).

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defendants have failed to do so and are therefore bound by their knowing, voluntary, and intelligent representations to the Court. Accordingly, the Court will not vacate the defendants' guilty pleas and therefore the captioned cases' Rule 61 motions are summarily **DISMISSED**.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.

Hon. William L. Witham, Jr.
Resident Judge

Dated: April 20, 2015

WLW/dmh

oc: Prothonotary
cc: Hon. T. Henley Graves
Hon. William C. Carpenter, Jr.
Kathleen M. Jennings, Esquire
Stephen R. Welch, Jr., Esquire
J. Brendan O'Neill, Esquire
Nicole M. Walker, Esquire
William T. Deely, Esquire