SJC-12704

COMMONWEALTH vs. ANGEL CAMACHO.

Suffolk. September 9, 2019. - December 10, 2019.

Present: Gants, C.J., Lenk, Gaziano, Lowy, Budd, Cypher, & Kafker, JJ.

Controlled Substances. Retroactivity of Judicial Holding. Practice, Criminal, Postconviction relief, Plea, Retroactivity of judicial holding, Conduct of government agents.

Indictments found and returned in the Superior Court Department on December 9, 2008.

A motion for postconviction relief, filed on March 16, 2018, was considered by Christine M. Roach, J.

The Supreme Judicial Court granted an application for direct appellate review.

Matthew Malm for the defendant.
Ian M. Leson, Assistant District Attorney, for the Commonwealth.

GAZIANO, J. In this appeal, we yet again confront questions arising out of the misconduct of chemist Annie Dookhan

at the William A. Hinton State Laboratory Institute (Hinton lab). Addressing the consequences of her malfeasance in Bridgeman I, we created the so-called "Bridgeman sentencing cap"; we held that when the Commonwealth sought to reprosecute a Dookhan defendant,[1] both the charges and the sentence could not exceed those agreed to at the defendant's first guilty plea. See Bridgeman v. District Attorney for the Suffolk Dist., 471 Mass. 465, 477 (2015) (Bridgeman I), S.C., 476 Mass. 298 (2017).

This case asks us to consider whether defendants who withdrew their guilty pleas after Dookhan's misconduct was discovered, but before our decision in Bridgeman I,[2] are entitled retroactively to the protection of the Bridgeman sentencing cap. We conclude that they are, but only if they actually were convicted of more serious charges or received a more severe sentence than at their first plea. Where, as here, a defendant negotiated his or her second plea agreement in the shadow of the

[1] As in Bridgeman v. District Attorney for the Suffolk Dist., 471 Mass. 465, 467 n.4 (2015) (Bridgeman I), "[w]e use the term 'Dookhan defendants' to refer generally to those individuals who were convicted of drug offenses and in whose cases Dookhan signed the certificate of drug analysis (drug certificate)."

[2] At the time the district attorneys submitted their brief in Bridgeman I, they represented that approximately 1,100 Dookhan cases had been resolved in the special sessions. While the district attorneys asserted that very few of these cases were retried, it is unclear what percentage of these cases ended in a second plea.

original charges, but ultimately was not convicted of more severe charges and did not receive a harsher punishment, the defendant is not entitled to withdraw the second guilty plea on the basis of the Bridgeman sentencing cap.

1. Background. In 2008, the Commonwealth indicted the defendant on charges of trafficking two hundred or more grams of cocaine, in violation of G. L. c. 94C, § 32E (b), and three related charges.[3] He pleaded guilty to the lesser included offense of trafficking between twenty-eight and one hundred grams of cocaine, and he received a sentence of from six to eight years in prison. In 2013, the defendant successfully moved to withdraw his guilty plea on the ground that the misconduct of Dookhan, the confirmatory chemist on his case, rendered his plea involuntary. See Commonwealth v. Scott, 467 Mass. 336, 347-358 (2014) (setting forth framework for Dookhan defendants to use to withdraw guilty pleas).

At the same hearing, the Commonwealth offered the defendant a new plea agreement. If he pleaded guilty to the lesser included offense of possession with intent to distribute, G. L.

[3] The defendant also was charged with trafficking cocaine within one hundred feet of a public park, in violation of G. L. c. 94C, § 32J; unlawfully distributing cocaine in violation of G. L. c. 94C, § 32A; and unlawfully distributing cocaine within one hundred feet of a public park, in violation of G. L. c. 94C, § 32J. As part of the first plea agreement, the Commonwealth filed nolle prosequis as to these other charges.

c. 94C, § 32A (a), the prosecutor would recommend a sentence of time served, essentially ending the case. According to the defendant's plea counsel, the Commonwealth represented that, should he pursue his request for a new trial, the Commonwealth would reinstate all the original charges and seek the maximum penalties. During the plea colloquy, the judge explained the severity of the sentence for a conviction of trafficking in 200 or more grams of cocaine:

> "I understand that having allowed a motion for a new trial, technically you are charged at this minute with trafficking in cocaine in an amount which could result in a twenty year prison sentence and would have to be . . . at least twelve years in state prison if you went to trial and were found guilty."

The defendant accepted the Commonwealth's offer; he pleaded guilty to the lesser included offense of possession with intent to distribute and received a sentence of from three and one-half years to three and one-half years and one day of incarceration, which was deemed served. In the course of the plea, he also signed a Dookhan-specific waiver that stated, in relevant part:

> "I am also waiving, after discussion with my lawyer, the right to file a motion to vacate this guilty plea based on information that may come to light in the future about the state laboratory. . . .
>
> "I understand that if I agree to plead guilty and if I do in fact plead guilty that I am agreeing to give up and waive my right to an appeal. I understand that I am giving up my right to appeal from my conviction."

Approximately seventeen months after the defendant pleaded guilty for a second time, we decided Bridgeman I. Invoking our superintendence powers pursuant to G. L. c. 211, § 3, we announced a rule limiting a Dookhan defendant's liability to no more than the charges and the sentence received under the defendant's initial plea. Bridgeman I, 471 Mass. at 477.

In 2018, the defendant sought to withdraw his second guilty plea.[4] He argued in the Superior Court that if Bridgeman I is applied retroactively, his plea is invalid because it was made under the threat of his original charges and not under the protection of the Bridgeman sentencing cap. The motion judge did not reach this argument. Instead, she relied on the defendant's waiver:

> "Motion denied. I see no reason why the waiver executed, in the midst of all parties addressing the lab issues and with full understanding that the [Supreme Judicial Court] would ultimately rule on appropriate remedies, is not enforceable and valid as to this [defendant]."

On appeal, the defendant asks us to apply the rule announced in Bridgeman I retroactively to his case. He also argues that collateral-review waivers should be void as against

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[4] In 2016, the defendant was convicted of possession of heroin with the intent to distribute in the United States District Court for the Middle District of Florida and sentenced to 188 months of imprisonment. In that case, his conviction pursuant to the 2013 guilty plea agreement increased his potential sentencing range under the Federal sentencing guidelines from 60-71 months to 188-235 months.

public policy or, alternatively, that they should be unenforceable in certain specified circumstances.

2. Discussion. a. Standard of review. "A motion to withdraw a guilty plea is treated as a motion for a new trial pursuant to Mass. R. Crim. P. 30 (b)," as appearing in 435 Mass. 1501 (2001) (citation omitted). Commonwealth v. Cotto, 471 Mass. 97, 105 (2015). "Under Mass. R. Crim. P. 30 (b), a judge may grant a motion for a new trial any time it appears that justice may not have been done. A motion for a new trial is thus committed to the sound discretion of the judge." Scott, 467 Mass. at 344. "We review the allowance or denial of a motion to withdraw a guilty plea to determine whether the judge abused that discretion or committed a significant error of law." Cotto, supra, citing Scott, supra. We may "affirm a ruling on grounds different from those relied on by the motion judge if the correct or preferred basis for affirmance is supported by the record and the findings." Commonwealth v. Va Meng Joe, 425 Mass. 99, 102 (1997).

b. The necessity of retroactivity to the defendant's claim. The defendant contends that the Bridgeman sentencing cap should apply retroactively to his case. If it does, he argues, his second plea was both unknowing and involuntary because he made it under threat of his original charges, which carried a maximum sentence of twenty-two and one-half years of

incarceration, and not under the protection of the Bridgeman sentencing cap, which would have limited his sentence to a term of from six to eight years of imprisonment. Nothing else in the record suggests that the defendant's second plea was involuntary or unknowing. Therefore, in order for the defendant to prevail, Bridgeman I would have to be applied retroactively to his case.

c. The Bridgeman sentencing cap. Our decision in Bridgeman I, 471 Mass. at 474, was issued in the midst of a then-unprecedented crisis. See id. (describing previous actions taken by this court to address Hinton lab scandal). Dookhan's misconduct tainted the evidence used by the government to convict tens of thousands of people of drug crimes. See Bridgeman v. District Attorney for the Suffolk Dist., 476 Mass. 298, 300 (2017) (Bridgeman II). In Scott, 467 Mass. at 352, we fashioned a framework under which Dookhan defendants potentially could withdraw their guilty pleas, aided by a conclusive presumption that there had been egregious government misconduct in their case. In Bridgeman I, 471 Mass. at 475, the petitioners made clear that they were hesitant to utilize this remedy because "[i]n the ordinary course, when a defendant withdraws his [or her guilty] plea after sentencing, he [or she] may receive a harsher sentence than was originally imposed" (quotation and citation omitted). In response to these

concerns, we fashioned the Bridgeman sentencing cap. We concluded that

> "in cases in which a defendant seeks to withdraw a guilty plea under Mass. R. Crim. P. 30 (b) as a result of the revelation of Dookhan's misconduct, and where the motion is allowed, the defendant cannot (1) be charged with a more serious offense than that of which he or she initially was convicted under the terms of a plea agreement; and (2) if convicted again, cannot be given a more severe sentence than that which originally was imposed. In essence, a defendant's sentence is capped at what it was under the plea agreement."

Id. at 477.

In creating the Bridgeman sentencing cap, we were animated by three principal concerns. First, as stated, there were plausible claims that defendants had been deterred from seeking postconviction relief by the threat of receiving harsher punishment after their initial pleas were withdrawn. See Bridgeman I, 471 Mass. at 473, 475 ("this court shall resolve [these matters] . . . so as to ensure that a fear of more punitive consequences, as expressed by the petitioners, does not render their right to seek postconviction relief a flawed option"). Second, we determined that, "in the wake of government misconduct that has cast a shadow over the entire criminal justice system, it is most appropriate that the benefit of our remedy inure to defendants" (citation omitted). Id. at 476. In other words, we were concerned that "defendants

wrongly would bear the burden of a systemic lapse that . . . is entirely attributable to the government." Id.

Third, in addition to these concerns for defendants' rights, we endeavored to ensure that our remedies "should be tailored to the injury suffered and should not unnecessarily infringe on competing interests." See Bridgeman I, 471 Mass. at 475, quoting Commonwealth v. Cronk, 396 Mass. 194, 199 (1985). In particular, we required "that the rights of defendants be balanced against the necessity for preserving society's interest in the administration of justice." Bridgeman I, supra, quoting Cronk, supra. For while "[i]t certainly is true that we cannot expect defendants to bear the burden of a systemic lapse, . . . we also cannot allow the misconduct of one person to dictate an abrupt retreat from the fundamentals of our criminal justice system." Bridgeman I, supra at 487, quoting Scott, 467 Mass. at 354 n.11.

The extraordinary circumstances of the Bridgeman litigation and the ongoing need to balance these important interests continue to guide our analysis as we consider whether and how to apply Bridgeman I's sentencing cap retroactively.

d. Applying Bridgeman I retroactively. When a new criminal rule is not constitutionally mandated but, rather, is derived from our broad superintendence power, its retroactive

application is a matter of our discretion.[5] See Commonwealth v. Hernandez, 481 Mass. 582, 602 (2019), quoting Commonwealth v. Dagley, 442 Mass. 713, 721 n.10 (2004), cert. denied, 544 U.S. 930 (2005) ("When announcing . . a new rule in the exercise of our superintendence power, there is no constitutional requirement that the new rule or new interpretation be applied retroactively, and we are therefore free to determine whether it should be applied only prospectively"). Generally, "[i]n prior cases announcing new rules or requirements in the exercise of our superintendence power, we have declined to give the new rule or requirement retroactive effect." Commonwealth v. Colon, 482 Mass. 162, 182 (2019), citing Dagley, supra at 720–721. See, e.g., Commonwealth v. Russell, 470 Mass. 464, 465 (2015) (prospectively applying new reasonable doubt instruction under superintendence power); Commonwealth v. King, 445 Mass. 217, 248 (2005), cert. denied, 546 U.S. 1216 (2006) (prospectively applying new first complaint doctrine under superintendence power).

[5] Even when a new rule is constitutionally mandated, retroactive application on collateral review is appropriate only under two very narrow exceptions. See Diatchenko v. District Attorney for the Suffolk Dist., 466 Mass. 655, 664 (2013), S.C., 471 Mass. 12 (2015), citing Teague v. Lane, 489 U.S. 288, 310 (1989) ("With two limited exceptions . . . , a 'new' constitutional rule of criminal law generally is not applicable on collateral review to those cases that became final before the new rule was announced").

While prospective application of new rules announced under our superintendence power may be the norm, we acknowledged in Bridgeman I, 471 Mass. at 475, that "a defendant who files a motion to withdraw a guilty plea as a consequence of Dookhan's misconduct is not doing so in the context of an ordinary criminal case." Likewise, the Bridgeman sentencing cap is not an ordinary rule announced under our superintendence powers but, rather, one distinctively tied to the extraordinary facts of its origin. The cap does not address the ongoing practice of criminal law, as do most new rules, but instead was designed to ameliorate the effects of a specific and widespread systemic lapse. Id. at 474. Therefore, it is appropriate for us to look to the underlying purposes of the rule announced in Bridgeman I to guide our discretion in determining whether and how that rule should apply retroactively.

The first principal concern underlying the Bridgeman sentencing cap, that defendants would be deterred from withdrawing their guilty pleas for fear of harsher punishment, has no bearing on defendants who successfully moved to withdraw their guilty pleas prior to Bridgeman I. Evidently, they were not daunted from exercising their postconviction rights.

The second principal concern, that defendants should not be made unjustly to bear the burden of the systemic lapse, supports retroactive application. We discern no reason why defendants

who moved quickly to withdraw their guilty pleas should be left in a substantively worse position than those who withdrew their pleas after the announcement of Bridgeman I. Cf. Bridgeman II, 476 Mass. at 323 (hypothetically considering that if court dismissed all remaining cases with prejudice, defendants who had vacated pleas and had been reprosecuted prior to that holding "justly [could] contend" that they were entitled to later remedy). For all Dookhan defendants, "the Commonwealth must be held to the terms of its plea agreements." Bridgeman I, 471 Mass. at 477.

Our third concern, however, balancing the Commonwealth's competing interests in the administration of justice, tempers this retroactive application. As we have done throughout the course of the Dookhan litigation, we will continue to seek workable solutions that equitably balance the interests of all parties. See Bridgeman II, 476 Mass. at 318-326 (rejecting proposals by both parties in course of fashioning solution falling between their respective positions). While we will not allow defendants to be subject to harsher punishment, we similarly cannot expect prosecutors to have been clairvoyantly aware of a rule we had not yet announced as they negotiated new plea agreements with Dookhan defendants.

As we seek a balanced solution, we acknowledge that the defendant negotiated his second agreement under the threat of

his original charges, and that this would not have been permissible after our guidance in Bridgeman I. We recognize that, in a system where an overwhelming majority of convictions are secured via plea agreement, it is of utmost importance to ensure that the terrain on which those agreements are negotiated is fair. See Missouri v. Frye, 566 U.S. 134, 143 (2012) (applying ineffective assistance of counsel standard of Sixth Amendment to United States Constitution to plea negotiation process and noting that "[n]inety-seven percent of [F]ederal convictions and ninety-four percent of [S]tate convictions are the result of guilty pleas"). As we made clear in Bridgeman II, 476 Mass. at 320-321, we also are well cognizant of "the severe collateral consequences of drug convictions."

The fact remains, however, that the defendant's second plea agreement was negotiated under correct principles of law as they existed at the time of the plea, and with clear knowledge of Dookhan's misconduct. See Bridgeman I, 471 Mass. at 475 ("In the ordinary course, 'when a defendant withdraws his [or her guilty] plea after sentencing, he [or she] may receive a harsher sentence than was originally imposed'" [citation omitted]). Both sides were equally unaware of what we later would decide. And, most importantly, while the defendant negotiated both his first and his second guilty pleas under the same set of charges, ultimately he was not subjected to harsher punishment the second

time around -- precisely what later would be required by the then-undecided Bridgeman I. Indeed, the charge of which he was convicted was reduced from the original charge of trafficking to possession with intent to distribute, and his sentence was reduced to time served (approximately three and one-half years). Defendants so situated essentially received the protection of the Bridgeman sentence cap. See Bridgeman I, supra at 477. The interests of finality and judicial efficiency support the same conclusion. See Mains v. Commonwealth, 433 Mass. 30, 38 n.12 (2000), and cases cited.

Therefore, we conclude that the Bridgeman sentencing cap must be applied retroactively for defendants who, after having withdrawn a guilty plea on Dookhan grounds, pleaded guilty to more serious charges, were convicted of more serious charges at a trial, or received longer sentences than they had for their first pleas. "In essence, a defendant's sentence is capped at what it was under the plea agreement." Bridgeman I, 471 Mass. at 477. Where the Commonwealth negotiated a plea agreement in the shadow of the original charges, but did not actually subject a defendant to harsher charges or punishment, there is no violation of the principles underlying the Bridgeman sentencing

cap, and thus no need for a third plea or trial in order to apply Bridgeman retroactively.[6]

Order denying motion for postconviction relief affirmed.

[6] Because we conclude that the defendant is not entitled to the relief he seeks on collateral review, we need not decide whether the collateral-review waiver he signed should be found void as against public policy.