STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: August 17, 2017)

ERIC NEUFVILLE	**:**	
VS.	**:**	**PM-17-3043 (P2/14-3169AG)**
STATE OF RHODE ISLAND	**:**	

DECISION

KRAUSE, J. In this postconviction-relief (PCR) application, Eric Neufville criticizes his trial attorney for what he claims was constitutionally substandard representation. Neufville entreats this Court to vacate his recent June 6, 2017 guilty pleas which led to convictions of two counts of first degree robbery, two counts of assault with a dangerous weapon, impersonating a Providence police officer with the intent to commit extortion and blackmail, and falsely impersonating a Rhode Island State Police Officer. For those convictions, Neufville agreed to accept an aggregate sentence of twenty-five years, eight years to serve, followed by seventeen years of suspended/probationary time. He also agreed that the sentence would be served consecutively to the sixteen-year term of incarceration previously ordered by Associate Justice Daniel A. Procaccini on September 2, 2014 following a violation hearing.

Neufville asserts that his most recent court-appointed trial attorney,[1] Matthew Dawson, gave him faulty advice in two areas. First, he contends that Mr. Dawson did not adequately warn

[1] The protracted length of this case is principally due to Neufville's uncommon inability to get along with his court-appointed attorneys. Prior to Mr. Dawson's appearance, Neufville had been represented by Stephen H. Crawford (whom Neufville has sued in a civil action), Jason Knight (who conducted the violation hearing before Judge Procaccini), William C. Dimitri, and Mark Smith (whom he also has sued). Neufville now targets Mr. Dawson in this PCR action, his

him before he pled guilty that the convictions could result in being deported to Liberia, his native country. Secondly, he remonstrates that Mr. Dawson induced him to enter into a plea agreement which Neufville did not know foreclosed his right to bring a motion under G.L. 1956 § 12-19-18 to terminate the sixteen years of imprisonment he is serving as a probation violator.

Neufville is wrong on both counts.

Standard of Review

Pursuant to G.L. 1956 § 10–9.1–1 et seq., '"post-conviction relief is available to a defendant convicted of a crime who contends that his original conviction or sentence violated rights that the state or federal constitutions secured to him."' Torres v. State, 19 A.3d 71, 77 (R.I. 2011) (quoting Otero v. State, 996 A.2d 667, 670 (R.I. 2010) and Ballard v. State, 983 A.2d 264, 266 (R.I. 2009)). An applicant for postconviction relief bears the burden of proving, by a preponderance of the evidence, that postconviction relief is warranted. Page v. State, 995 A.2d 934, 942 (R.I. 2010) (quoting Larngar v. Wall, 918 A.2d 850, 855 (R.I. 2007)); Mattatall v. State, 947 A.2d 896, 901 n.7 (R.I. 2008).

The benchmark for a claim of ineffective assistance of counsel is Strickland v. Washington, 466 U.S. 668 (1984), which has been adopted by our Supreme Court. Brown v. Moran, 534 A.2d 180, 182 (R.I. 1987); LaChappelle v. State, 686 A.2d 924, 926 (R.I. 1996). When invoking his constitutional right to effective assistance of counsel and reproaching an attorney for inadequate assistance, a petitioner has a "high bar" to surmount. Padilla v.

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second such PCR application criticizing trial counsel for purported ineffective assistance. See Neufville v. State, 13 A.3d 607 (R.I. 2011) (rejecting Neufville's 2004 claim of ineffectiveness of a veteran Assistant Public Defender). Indeed, Neufville's entire queue of attorneys in this case is comprised of well-credentialed practitioners. Dawson, too, was short-listed by Neufville, who testified that a few days before he finally decided to plead guilty, he considered jettisoning Dawson, relegating him to the role of stand-by counsel, and representing himself. PCR Tr. at 9.

Kentucky, 559 U.S. 356, 371 (2010). Whether a lawyer has failed to provide effective assistance is a factual question which petitioner bears the "heavy burden" of proving. Rice v. State, 38 A.3d 9, 17 (R.I. 2012).

A Strickland claim presents a two-part analysis. First, the petitioner must demonstrate that counsel's performance was deficient. That test requires a showing that counsel made errors that were so serious that the attorney was "not functioning as the counsel guaranteed the defendant by the Sixth Amendment." Strickland, 466 U.S. at 687; Powers v. State, 734 A.2d 508, 521 (R.I. 1999). The Sixth Amendment standard for effective assistance of counsel, however, is '"very forgiving,"' United States v. Theodore, 468 F.3d 52, 57 (1st Cir. 2006) (quoting Delgado v. Lewis, 223 F.3d 976, 981 (9th Cir. 2000)), and "a strong (albeit rebuttable) presumption exists that counsel's performance was competent." Gonder v. State, 935 A.2d 82, 86 (R.I. 2007); see Rodrigues v. State, 985 A.2d 311, 315 (R.I. 2009) ("The Court will reject an allegation of ineffective assistance of counsel unless a defendant can demonstrate that counsel's advice was not within the range of competence demanded of attorneys in criminal cases."). (Internal quotation marks omitted.)

Even if counsel's performance is found to be deficient, the petitioner must still clear a second hurdle in the Strickland analysis: He must demonstrate that his attorney's shortcomings "prejudiced" his defense. Strickland, 466 U.S. at 687. Thus, he must show that a reasonable probability exists that but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. at 687, 694; Crombe v. State, 607 A.2d 877, 878 (R.I. 1992). An applicant must overcome both Strickland steps in order to mount a successful ineffectiveness claim. Hazard v. State, 968 A.2d 886, 892 (R.I. 2009) ("[T]he applicant's failure to satisfy either prong will result in the denial of the claim of ineffective assistance of counsel.").

Where, as here, a petitioner has admitted his guilt, our Supreme Court has made it clear that "[t]he sole focus of an application for post-conviction relief filed by an applicant who has pled guilty is 'the nature of counsel's advice concerning the plea and the voluntariness of the plea. If the plea is validly entered, we do not consider any alleged prior constitutional infirmity.'" Hassett v. State, 899 A.2d 430, 434 (R.I. 2006) (quoting Miguel v. State, 774 A.2d 19, 22 (R.I. 2001) and State v. Dufresne, 436 A.2d 720, 722 (R.I. 1981)). "It is incumbent upon the applicant to demonstrate that he would have not entered a guilty plea and would have instead proceeded to trial were it not for the attorney's errors." Hassett, 899 A.2d at 434 (quoting Carpenter v. State, 796 A.2d 1071, 1074 (R.I. 2002)).

With regard to immigration, two cases principally bear on counsel's obligations: Padilla v. Kentucky, *supra*, and, most recently, Lee v. United States, ___ U.S. ___, 137 S. Ct. 1958 (2017). In Padilla, the Supreme Court held that when the immigration consequences of a guilty plea are clear, an attorney has a responsibility to advise a noncitizen defendant of those consequences; if, however, the effects of the plea are not clear or obvious, counsel must at least advise the defendant that his guilty plea may adversely impact immigration circumstances. In Lee, the Supreme Court agreed that regardless of the strength of the prosecution's case, and irrespective of the remotest chance of exoneration at trial, Lee was nonetheless entitled to opt for a trial and launch a "Hail Mary," rather than face certain deportation where his attorney failed to tell him that he would be deported. Lee, 137 S. Ct. at 1967.

Here, Neufville cannot even get on the field to attempt that oneiric pass. The game clock expired long ago.

Immigration Warnings

Neufville's ululation that he was not sufficiently apprised by counsel of the risk of deportation to Liberia when he pled guilty to charges in the instant indictment is entirely disingenuous. He has known for many years that he is in jeopardy of deportation. The late Associate Justice William A. Dimitri, Jr. forewarned him of that prospect on May 3, 2004:

> "THE COURT [DIMITRI, J.]: Mr. Neufville, I have to advise you that if you are a resident alien of the United States, by entering this plea, you could possibly be subjected to deportation, denial of naturalization, denial of re-entry into the United States; do you understand that?
>
> "THE DEFENDANT: Yes." (Plea Tr. at 7, May 3, 2004.)

In the fall of 2006, Presiding Justice Joseph F. Rodgers, Jr. also confirmed that Neufville was aware of the danger of deportation when he denied Neufville's first PCR application based, *inter alia*, on grounds comparable to Neufville's present immigration claims. (PM/05-2211, PCR Hearings of September 19, 2006 and October 26, 2006; Judgment entered on February 17, 2009):

> "THE COURT [Rodgers, P.J.]: But you knew. You knew if you were convicted, you were going to be deported, right?
>
> "THE DEFENDANT: Yes, Your Honor." (PCR Tr. at 38, Sept. 19, 2006.)

The Rhode Island Supreme Court reminded Neufville again in February of 2011, when it affirmed Judge Rodgers' denial of his PCR application. Neufville, 13 A.3d 607. There, the Court noted, among other significant factors, that in 2004 Neufville knowingly signed a plea form which set forth in bold, uppercase print, distinct from all of the other listed rights which he relinquished:

> **"I UNDERSTAND THAT IF I AM A RESIDENT ALIEN, A SENTENCE IMPOSED AS A RESULT OF MY PLEA MAY RESULT IN**

DEPORTATION PROCEEDINGS OVER WHICH THIS COURT HAS NO CONTROL." Id. at 613.

The plea form which Neufville executed in the instant case also contained immigration advisements which, in accordance with § 12-12-22 and Machado v. State, 839 A.2d 509, 513 (R.I. 2003), were even more expansive than the 2004 form. They, too, were printed in bold capital letters, and, like the one Neufville executed in 2004, the immigrations warnings were more prominent than all of the other surrendered rights set forth in the form. They provided:

> **"I UNDERSTAND THAT IF I AM A RESIDENT ALIEN, A SENTENCE IMPOSED AS A RESULT OF MY PLEA MAY RESULT IN DEPORTATION, EXCLUSION OF ADMISSION TO THE UNITED STATES, AND/OR DENIAL OF NATURALIZATION PURSUANT TO THE LAWS OF THE UNITED STATES, AND THAT THIS COURT WILL HAVE NO CONTROL OVER THOSE PROCEEDINGS."**

In 2004, despite his claim that his lawyer had not advised him of the consequences of his convictions, Neufville conceded that he knew he would probably be deported, and he further admitted that the trial justice had warned him of the possible consequences of his pleas. Neufville, 13 A.3d at 613. The Supreme Court also took into account that Neufville's attorney testified that he and Neufville had discussed the fact that the convictions "may very well impact" his immigration status and that Neufville "was well aware of the potential for deportation." Id.

So too, Mr. Dawson similarly emphasized throughout his testimony that he had made it quite clear to Neufville that because of his several earlier felony convictions he was *already* deportable, irrespective of whether he pled to charges in the present indictment, and that Neufville "agreed with me." PCR Tr. at 73, 100. Dawson also testified that he had cautioned Neufville, "At some point you might have to go back. You're deportable," and "if you leave, you can't come back and the Court has nothing to do with that. You obviously are never going to become a naturalized citizen." PCR Tr. at 78, 100.

Dawson additionally testified:

> "When I talked to Mr. Neufville, I already knew he was not a citizen. I already knew that he was already deportable. So I looked at the warnings, and then when I do the plea form, when I do a - any plea, every plea, I take my finger and I go through all of the rights, all of them, and I alert the client as to what questions are going to come out. And I got to the immigration portion and I said, 'You already know the immigration warnings, but he's [the judge is] going to ask you about them. You can get deported, but it's kind of moot to you.' And I did say, 'Moot to you because you're already deportable.'
>
> "And at that point I – I read – I recall reading this to him. But then we did discuss the notion that at some point you're going to have to deal with this deportation issue…And then I said to him, 'I'm your lawyer. I've got to tell you, I'm aware that folks have been deported, it doesn't happen often, ***but folks do get deported to Liberia, and some day this might happen to you.*** Nothing we can do about it now, but you are deportable.'" PCR Tr. at 74-75 (emphasis added).

Despite those admonitions, Mr. Dawson said that Neufville "didn't seem too concerned," and "was not in the slightest way confused about his immigration" or the "ramifications of immigration that this plea would bring for him." (PCR Tr. at 78, 101, 113.)

Quite apart from Mr. Dawson's several admonitions, this Court distinctly warned Neufville of the *certainty* of his deportation, which, under oath, he readily acknowledged:

> "THE COURT: I am obliged to advise you, Mr. Neufville, that if you are not a United States citizen, ***charges such as these will surely get you deported*** from the

United States, you will be excluded from it, you'd be denied reentry to it, and you'd be denied a request to become a U.S. citizen.

"Mr. Dawson, I don't know to what extent those matters apply to your client, but I take it you've had a full and frank discussion with him about those consequences?

"MR. DAWSON: We have, Your Honor.

"THE COURT: ***Any question about that, Mr. Neufville?***

"THE DEFENDANT: ***No, Your Honor.***" PCR Tr. at 4 (emphasis added.).

In view of all the foregoing, one may rightly distrust Neufville's vacuous claim that prior to his June 6, 2017 guilty pleas he was unfamiliar with the prospect of being deported to his home country. Most assuredly, his professed ignorance is not born of any inability to understand or comprehend the immigration warnings. They are straightforward and not complex, and Mr. Dawson and this Court's admonishments were precise, certain and not at all ambiguous. Certainly, Neufville is not cognitively challenged.[2] Simply put, for years after his first unsuccessful PCR immigration foray in 2004, he has been apathetic to the risk of deportation. Indeed, at the PCR hearing, Neufville casually admitted that, to date, he still has no idea what his immigration status is, and he has not even bothered to inquire about it during the past ten years. PCR Tr. at 51-52.

Neufville chose, and quite deliberately so, simply to ignore counsel's caveats and this Court's certain forewarning that he was in grave jeopardy of deportation. Instead, he chose to rely on what his co-defendant brother, Nyanati "Jermaine" Neufville, had been told by his

[2] Neufville obtained a college-level computer-aid design engineer certification. PCR Tr. at 60-61; Plea Tr. at 3. He speaks perfect English, and his *pro se* memoranda, although utterly unwise, are decently composed.

attorney a year earlier when Jermaine pled guilty to some of the charges, that Jermaine could probably avoid deportation. When asked by present PCR counsel, Chad Bank, if he understood this Court's message that "conviction of the charges 'will surely get you deported,'" Eric Neufville unconcernedly explained:

> "THE DEFENDANT: I didn't really pay attention to – I paid attention to what the Judge said, but ***I didn't take any heed as far as the consequences go, that I could be deported,*** because my lawyer had already assured me, and with what I read from my brother's transcripts, that Liberia wasn't taking anybody back so, therefore, I just thought it was a standard format of what the Judge reads.
>
> "THE COURT: Let me understand something. What I said didn't matter to you because you had an understanding of your brother's situation a year before, and what Dawson had told you on the day of the plea, is that what you're telling me?
>
> "THE PETITIONER: Yes, Your Honor." PCR Tr. 56-7.

Neufville's cavalier dismissal of this Court's unmistakable immigration alert, relegating it to inconsequential rote script, coupled with his imprudent and ill-advised reliance on stale advice his brother had received a year earlier, are, by themselves, sufficient grounds upon which to reject his spurious disparagement of Mr. Dawson's efforts. More than that, this Court firmly and completely rejects, as entirely unworthy of belief, Neufville's self-serving imprecations that prior to June 6, 2017 Mr. Dawson never spoke with him about immigration circumstances, as well as his bogus claim that on the day of the plea, Mr. Dawson assured him that he would not be deported to Liberia. This Court readily finds, from its vantage point as a front row observer, that Mr. Dawson unequivocally, from the first day he met Neufville and during meetings thereafter,

clearly warned him more than once that he was at serious risk of being deported to Liberia and that one day he would have to confront that problem. PCR Tr. at 74-75.[3]

Neufville has known since May of 2004 that he is in jeopardy of deportation. In his first PCR case, which also included a similarly jejune claim that he had been ignorant of the risk of deportation, the Supreme Court said: "Given the multiple layers of advice Neufville received, plus his acknowledgement that he knew he could be deported, we are satisfied that his trial attorney provided him adequate counsel about the possibility of immigration consequences." Neufville, 13 A.3d at 614. This Court echoes that sentiment and finds, unreservedly, that Neufville's retooled complaint that Mr. Dawson gave him inadequate advice about his immigration circumstances is entirely meritless.

Motion to Terminate Sentence - G.L. 1956 § 12-19-18

Among the several counts which the state dismissed on June 6, 2017, in exchange for Neufville's guilty pleas to other offenses, were charges of first degree robbery, felony assault, and firearms offenses allegedly committed during a home invasion at Sophia Street in Providence (the "Sophia Street charges"). Although the state dismissed them as part of the plea bargain in this case, the Sophia Street charges were the basis of Neufville's earlier probation violation hearing before Judge Procaccini in August of 2014. After adjudging him a violator, he ordered Neufville on September 2, 2014 to serve the remaining sixteen years of the suspended

[3] Notably, Mr. Dawson specifically recalled discussing immigration issues "at some length" with Neufville during their initial meeting because Neufville's earlier PCR immigration case was the subject of conversation during an educational forum which Dawson himself had led when the Padilla decision was issued. PCR Tr. at 72-73.

sentence which had been imposed by Judge Dimitri in May of 2004. Neufville has appealed the results of that probation violation hearing to the Rhode Island Supreme Court.[4]

Apart from his instant PCR application in which he laments his immigration circumstances, Neufville has separately filed a *pro se* motion seeking to terminate that sixteen-year jail term under G.L. 1956 § 12-19-18(b). Although that motion is distinct from his PCR application, this Court will nonetheless address it because Neufville also blames Mr. Dawson for his inability to invoke that statute. The portion of the statute upon which Neufville relies upon (none of the other subparts is in any way applicable) is subsection (b)(5), which provides as follows:

> "(b)Whenever any person, after an evidentiary hearing, has been sentenced to imprisonment for violation of a suspended sentence or probationary period by reason of the alleged commission of a felony or misdemeanor said sentence of imprisonment shall, on a motion made to the court on behalf on the person so sentenced, be quashed, and imprisonment shall be terminated when any of the following occur on the charge which was specifically alleged to have constituted the violation:
>
> ***
>
> "(5) The charge fails to proceed in District or Superior Court under ***circumstances where the state is indicating a lack of probable cause, or circumstances where the state or its agents believe there is doubt about the culpability of the accused."*** (Emphasis added.)

[4] Neufville's sixteen-year violation period principally stems from his May 3, 2004 pleas before Judge Dimitri to four felonies he committed in February of 2003 (P2/03-3234AG: assault with intent to commit robbery, two felony assaults, and unlawfully carrying a firearm). In that case, Neufville agreed to accept an aggregate sentence of twenty years, three and one-half years to serve and sixteen and one-half years suspended with probation. He subsequently violated that probation, and, on August 25, 2011, Associate Justice Kristin E. Rodgers removed six months of that suspended term, leaving intact the sixteen suspended years which Judge Procaccini ultimately ordered Neufville to serve in September of 2014.

Judge Procaccini also adjudged Neufville a violator in P2/03-3184A (convictions for breaking and entering and two felony assaults with devices similar to firearms in July of 2003). He did not, however, remove any suspended time in that case; instead, he continued Neufville on the same probationary terms and conditions previously imposed by Judge Dimitri.

Neufville says that because the state dismissed the Sophia Street charges when he pled guilty, he should be entitled to bring a motion under subsection (b)(5) of the statute to terminate his sixteen-year violation incarceration. He asserts that he didn't realize that he forfeited that right and that Mr. Dawson ill-served him by not alerting him to its surrender at the time of the plea.

The record, however, is replete with references by both prosecutors that under no circumstances was the state indicating either a lack of probable cause underlying those allegations or in any way expressing any doubt about Neufville's culpability for them. Furthermore, the plea agreement expressly obligated Neufville to relinquish any right to bring such a motion, and it is manifestly clear from the June 6, 2017 proceedings that Neufville knew full well and, in fact, expressed his clear understanding that he was ceding any right to bring a motion under that statute.

The plea form which Neufville signed recites that "defendant agrees not to seek to vacate sentence, pursuant to RIGL 12-19-18, in P1-2003-3243AG based on this plea." Moreover, the Super. R. Crim. P. 48(a) dismissal form additionally provides: "The dismissal of the above counts is in consideration of the defendant's plea to the remaining counts in P1-2014-3169AG and that probable cause was present, as evidenced in part, by the indictment handed down by the Providence County Grand Jury. In addition, the State was ready to procede (sic) to trial on 6/6/17 on the dismissed counts and has no doubt that the defendant was criminally culpable for the crimes contained in those counts."

The plea colloquy includes the following significant commentary:

"THE COURT: There's also a comment relative to General Law 12-19-18. Mr. Dawson, if you would articulate that for the records, and its purpose and import, please.

"MR. DAWSON: Your Honor, my client and I both understand that as a result of the plea in this case, and subsequent dismissals of a large number of the counts, my client will not pursue any motion to vacate that previous sentence under 12-19-18. However, the Court and the prosecution are aware my client has an appeal currently impending in that matter and he intends to pursue that appeal, and that doesn't come as a surprise to anybody, he just cannot go forward based on that statute. And we understand that the counts are being dismissed in an effort to reach this agreed-upon disposition, and there's been no finding that they lack probable cause or anything of this nature.

"THE COURT: ***Do you understand and agree to all of the matters that have been discussed thus far, Mr. Neufville?***

"THE DEFENDANT: Yes, Your Honor." (Plea Tr. at 2-3.)

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"MS. REVENS: Your Honor, first with the permission of the court, the state is moving to dismiss the following counts pursuant to Rule 48(a): Counts, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 17, 18, 20, 21, and 23. The dismissal of those counts is in consideration of the defendant's plea to the remaining counts, and that probable cause was and is present, as evidenced in part by the indictment handed down by the Providence County Grand Jury.

"In addition, the state was ready to proceed to trial today on these counts that are being dismissed, and has no doubt that the defendant was criminally culpable for the crimes contained in those counts.

"As stated, we do believe that there is probable cause and that dismissing these counts is part of a global disposition and just to bring finality to this matter." (Plea Tr. at 4-5.)

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"MR. BAUM: Judge, I'm just formally handing in the 48(a), again, echoing the fact that the state is fully aware of Mr. Neufville's appeal of Judge Procaccini's decision in the violation hearing. That the state is again reemphasizing what's in the 48(a), believes that there is probable cause underlying those counts with respect to Sophia Street, but in the interest of this case and a global disposition, the State agreed to dismiss those counts. So I just want to make that very, very clear.

"THE DEFENDANT: ***That will be for the statute of 12-19-18, right?***

"MR. BAUM: Correct." (Plea Tr. at 12) (emphasis added).

Thus, the plea colloquy and the plea documents are laden with explicit admonitions that Neufville was waiving any right to make a § 12-19-18 motion, and there is extensive record reference by the state's attorneys, as well as by Mr. Dawson, which unquestionably disabused Neufville of any notion he might have harbored that the Sophia Street charges, and, for that matter, *any* of the dismissed counts, lacked probable cause, or that the prosecutors doubted Neufville's guilt as to any of them. Indeed, Neufville plainly demonstrated his full appreciation that he was disowning any such statutory advances when, as emphasized above, he addressed the

prosecutor and showcased his understanding by remarking: "That will be for the statute of 12-19-18, right?" and was met with the prosecutor's clear response, "Correct."

Also of significance is Mr. Dawson's steadfast and credible testimony that he told Neufville on more than one occasion that he had to discard any thought of making such a motion, or else the state would not dismiss the Sophia Street charges:

> "We discussed that in great detail, both at the prison and in the courtroom here, [] and eventually he agreed not to bring such an action…I very clearly indicated that the State was not going to dismiss the Sophia Street counts unless he agreed not to try to vacate the violation [under § 12-19-18]. I'm very confident that he understood that…without question…And, I said, 'That's a deal-breaker.' That's what I said, 'It's a deal-breaker. They're not going to dismiss those counts unless you agree not to bring an action under rule 12-19-18.'" (PCR Tr. at 88-91, 116).

This Court rejects any suggestion that Neufville was somehow misinformed by his attorney and in some manner did not comprehend or knowingly agree that his right to make a § 12-19-18 motion to terminate his violation sentence was foreclosed when he pled guilty to the offenses in this indictment. It is a markedly specious claim, entirely devoid of substance or credibility.

* * *

For all of the foregoing reasons, Eric Neufville's application for postconviction relief is denied, along with his ancillary § 12-19-18 motion to terminate his violation sentence. Judgment shall enter in favor of the State of Rhode Island.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

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COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**August 17, 2017**
JUSTICE/MAGISTRATE:	**Krause, J.**
ATTORNEYS:	
For Plaintiff:	**Chad F. Bank, Esq.**
For Defendant:	**James R. Baum, Esq.** **Katelyn M. Revens, Esq.**