STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: December 9, 2021)

RICHARD SKALLY	:	
	:	
VS.	:	**C.A. No. PM-2018-1399**
	:	
STATE OF RHODE ISLAND	:	

DECISION

MONTALBANO, J. Before the Court is an application for postconviction relief filed by Richard Skally (Petitioner). *See* Second Amended Petition for Post Conviction Relief (Second Am. Pet.). Petitioner contends that his conviction and sentence should be vacated on the basis that he received ineffective assistance of counsel. *Id.* ¶ 16. Petitioner further contends that his presentation with a Notice of Habitual Offender was untimely. *Id.* ¶ 7. Petitioner also contends that the State presented an insufficient factual basis for the plea, specifically that there was no evidence to support the charge of burglary with respect to his intent to commit a felony. *Id.* ¶¶ 11, 12, 13, 14. Petitioner further contends that he entered a plea that was not voluntary, knowing, and intelligent. *See* Application for Post-Conviction Relief (original Pet.) ¶ 10. Finally, Petitioner contends that the State made a "Judicial Admission" during the September 2015 violation hearing precluding the State from proving the intent element of the burglary charge. (Second Am. Pet. ¶¶ 9, 10.) The Court has jurisdiction pursuant to G.L. 1956 §§ 10-9.1-1 and 10-9.1-2.

I

Facts and Travel

On June 20, 2014, Petitioner was arraigned in District Court on one count of burglary. He was presented as a violator of his probation in Case No. P1-1994-3571A on June 23, 2014. In that

case, he was sentenced to a thirty-year term, with fourteen years to serve, balance suspended with probation after being convicted of Count 1, entering a building with intent to commit sexual assault and Count 2, rape. The presentment was based upon a Pawtucket Police complaint for which the Petitioner was formally indicted on April 29, 2015 as Case No. P1-2015-1343A. In that case, Petitioner was charged with burglary (Count 1), breaking and entering a dwelling without the consent of the owner, while the resident was on premises (Count 2), and assault and battery (Count 3). Justice Procaccini presided over a violation hearing with witnesses on September 17 and 18, 2015 (Pet'r's Ex. A) and found Petitioner to be a violator of his probation. Petitioner was sentenced to serve ten years on that violation. Petitioner was arraigned on P1-2015-1343A on May 20, 2015 and pled not guilty. The first pretrial conference was held before Ms. Justice Rodgers on the morning of August 20, 2015. The State presented Petitioner with a Notice of Habitual Offender in open Court on the afternoon of August 20, 2015. (Pet'r's Ex. B.) Petitioner pled nolo contendere to the burglary charge (Count 1) on November 2, 2017. Counts 2 and 3 were dismissed pursuant to Rule 48(a) of the Superior Court Rules of Criminal Procedure and the Notice of Habitual Offender was withdrawn by the State. (Pet'r's Ex. D.) This Justice sentenced Petitioner to thirty-five years at the ACI, with twenty years to serve, the balance suspended with probation. *Id.* ¶ 5. The sentence imposed was to run concurrently with the sentence received by Petitioner after his violation hearing in P1-1994-3571A. *Id.*

This Court conducted an evidentiary hearing on Petitioner's Second Amended Petition on May 6 and May 11, 2021. Petitioner filed his Memorandum in Support of his Petition for Post-Conviction Relief on July 16, 2021, and the State filed its Post-Hearing Memorandum of Law on July 15, 2021.

II

Standard of Review

Postconviction relief is '"available to any person who has been convicted of a crime and who thereafter alleges either that the conviction violated the applicant's constitutional rights or that the existence of newly discovered material facts requires vacation of the conviction in the interests of justice."' *Higham v. State*, 45 A.3d 1180, 1183 (R.I. 2012) (quoting *DeCiantis v. State*, 24 A.3d 557, 569 (R.I. 2011)). This Court notes that the applicant for postconviction relief bears the burden of proving, by a preponderance of the evidence, that postconviction relief is warranted in his or her case. *Hazard v. State*, 64 A.3d 749, 756 (R.I. 2013).

III

Analysis

Petitioner argues his plea should be vacated on constitutional grounds alleging that he received ineffective assistance of counsel from Attorney Philip Vicini. Petitioner further contends that the Notice of Habitual Offender was not timely served, that the factual basis for his plea of nolo contendere was insufficient, that he entered a plea that was not voluntary, knowing, and intelligent, and that during the violation hearing the State gave a closing argument during which it made a judicial admission, precluding it from proving the intent element of the burglary charge.

A

Notice of Habitual Offender

Petitioner contends that the Notice of Habitual Offender was not timely served. General Laws 1956 § 12-19-21(b) provides, in pertinent part:

> "Whenever it appears a person shall be deemed a 'habitual criminal,' the attorney general, within forty-five (45) days of the arraignment, but in no case later than the date of the pretrial conference, may file with the court a notice specifying that the

> defendant, upon conviction, is subject to the imposition of an additional sentence in accordance with this section; provided, that in no case shall the fact that the defendant is alleged to be a habitual offender be an issue upon the trial of the defendant, nor shall it be disclosed to the jury." Section 12-19-21(b).

Our Supreme Court has held that "'when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.'" *State v. Paiva*, 200 A.3d 665, 667 (R.I. 2019) (quoting *State v. Diamante*, 83 A.3d 546, 548 (R.I. 2014)). Rhode Island courts have consistently found that the statutory language set forth in § 12-19-21(b) is clear and unambiguous and that a Notice of Habitual Offender is timely if presented more than forty-five days after arraignment, as long as notice is provided on the date of the pretrial conference. *See, e.g.*, *State v. Hampton-Boyd*, 253 A.3d 418, 427-28 (R.I. 2021); *Ricci v. State*, 196 A.3d 292, 301 (R.I. 2018).

After careful review, this Court finds that the language in § 12-19-21(b) is clear and unambiguous. The statutory language contemplates that the Notice of Habitual Offender may be filed with the Court no later than the *date of* the pretrial conference. Petitioner contends that since a pretrial conference took place on the morning of August 20, 2015, and the Notice of Habitual Offender was filed with the Court on the afternoon of August 20, 2015, that the notice was not timely. The clear and unambiguous language of § 12-19-21(b) leads this Court to conclude that the Notice of Habitual Offender in this case, which was filed with the Court on the same date as the first pretrial conference, was timely filed. The Petitioner was thereby put on notice of the potential punishment he faced if found to be a Habitual Offender and consequently the notice satisfied the requirements of due process. *See Hampton-Boyd*, 253 A.3d at 427.

Moreover, Attorney Vicini was careful to take into consideration the Notice of Habitual Offender when he advised Petitioner of the potential consequences of going to trial as opposed to

pleading. While Attorney Vicini knew there could be a potential issue with regard to the Notice of Habitual Offender in Petitioner's case, he spoke with Petitioner at length about the notice and what it could mean for Petitioner. (Postconviction Hr'g Tr. 16:3-4, May 6, 2021.) Attorney Vicini's explanation of the potential consequences of the Notice of Habitual Offender if Petitioner was convicted after a trial fell within the wide range of reasonable professional assistance to which Petitioner was entitled.

B

Compliance with Rule 11

Petitioner contends that his plea of nolo contendere was not made knowingly and voluntarily because the factual basis for his plea to the burglary charge was not placed on the record by the State in violation of Rule 11 of the Superior Court Rules of Criminal Procedure. Rule 11 states, in pertinent part:

> "A defendant may plead not guilty, guilty or, with the consent of the court, nolo contendere. The court may refuse to accept a plea of guilty and shall not accept such plea or a plea of nolo contendere without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea. . . . The court shall not enter a judgment upon a plea of guilty or nolo contendere unless it is satisfied that there is a factual basis for the plea" Super. R. Crim. P. 11.

The Supreme Court has found that "Rule 11 implies a subjective standard for determining whether a factual basis exists" for a plea, and that the trial justice should view the record in its totality in order to make that determination. *State v. Feng*, 421 A.2d 1258, 1269 (R.I. 1980). The Supreme Court has previously found a "bare-boned" plea colloquy, where the defendant acknowledged the facts as true, to satisfy the factual basis requirement of Rule 11. *Desamours v. State*, 210 A.3d 1177, 1183 (R.I. 2019).

In the instant case, Petitioner alleges his plea of nolo contendere was not made knowingly and voluntarily because a factual basis for the plea to the burglary charge was not placed on the record by the State. Rule 11 does not require the entire factual basis of a plea to be placed on the record for the plea to be valid. *See* Super. R. Crim. P. 11. Rather, it permits this Court to view the total record to determine whether it is satisfied that a factual basis exists for a defendant's plea. *Feng*, 421 A.2d at 1269.

At the outset of the plea colloquy, the clerk of the court indicated that the Petitioner was charged with Count 1, burglary. (Disposition Tr. 1:17-18, Nov. 2, 2017.) During the plea colloquy, this Court informed Petitioner that he was charged in Count 1 with burglary, and that the maximum penalty he could face was life imprisonment. The Petitioner acknowledged that he understood. *Id*. at 3:16-19. The specific facts presented by the prosecutor were as follows:

> "Had this matter gone to trial, Indictment P1-15-1343A, the State was prepared to prove beyond a reasonable doubt that on or about June 20th of the year 2013, this defendant, Richard Skally, did commit a burglary of the dwelling house of Kathleen Ann DaSilva, that was a burglary that amounted to a B&E with the intent to commit a felony therein at the 74 Lonsdale Avenue address in the city of Pawtucket." *Id*. at 5:20-6:2.

Viewing the entire record of the plea colloquy, this Court hereby determines that there was a sufficient factual basis for Petitioner's plea to the burglary charge in Count 1. The prosecutor's summary of the charges against the Petitioner constituted a straightforward statement of the facts underlying the offense charged in Count 1, and the Court was satisfied that Petitioner knowingly and intelligently made his plea to the burglary charge when he admitted those facts:

> "THE COURT: Mr. Skally, did you hear the facts that Ms. Lopes placed on the record on behalf of the State?
>
> "THE DEFENDANT: Yes, Your Honor.
>
> ". . .

> "THE COURT: Do you agree the State could prove these facts beyond a reasonable doubt?
>
> "THE DEFENDANT: Yes, Your Honor.
>
> "THE COURT: Are you guilty of these facts?
>
> "THE DEFENDANT: Yes, Your Honor." *Id*. at 6:3-12.

Petitioner understood the facts, stated he was guilty of the charged conduct, and agreed that the State could prove beyond a reasonable doubt that he committed a burglary. The straightforward summary of the charged conduct, coupled with Petitioner's admitting to those charges, is enough to satisfy this Court that a factual basis for the plea existed. *Feng*, 421 A.2d at 1270-71; *see also Tavarez v. State*, 826 A.2d 941, 943 (R.I. 2003).

Moreover, at the time of Petitioner's plea, he was aware of the facts previously elicited by the State at the September 2015 violation hearing. Attorney Vicini gave a copy of the transcript of the violation hearing to Petitioner. (Postconviction Hr'g Tr. 17:11-19, May 6, 2021.) It is clear to the Court that even though the State, in its recitation of the facts during the plea colloquy, did not expressly state that the Petitioner intended to commit a sexual offense, Petitioner was nevertheless fully aware of the nature of the burglary charge to which he admitted, and that he clearly understood the consequences of his plea. This Court is satisfied that Petitioner's plea was a voluntary, knowing, and intelligent plea, and that the requirements of Rule 11 and the Fourteenth Amendment were complied with in this case.

C

Judicial Admission

Petitioner asserts that the State made a judicial admission during the September 2015 violation hearing which was binding on the State and rendered the plea defective and void. Specifically, Petitioner argues that when the State gave its closing argument at said violation

hearing and suggested that the State had no idea why Petitioner was in the complaining witness' apartment, that the State had made a judicial admission precluding the State from proving the intent element of the burglary charge. *See* Violation Hr'g Tr. 105:20-23, Sept. 17, 2015. "A judicial admission is a deliberate, clear, unequivocal statement of a party about a concrete fact within that party's knowledge, which is considered conclusive and binding as to the party making it." *State v. Rice*, 986 A.2d 247, 249 (R.I. 2010) (internal quotation omitted). Furthermore, "[t]o be a judicial admission, a statement must be contrary to an essential fact or defense asserted by the person giving the testimony[.]" *29*A Am. Jur. 2d *Evidence* § 767 at 52 (2019). Conversely,

> "[w]here the testimony of the party . . . is in the nature of an estimate or opinion as to which he or she may honestly be mistaken, the party does not unequivocally concede that the fact is in accord with the opinion expressed and there is no injustice in permitting the court to consider the other evidence in the court, and determine from all the evidence what the actual facts are. The determination of whether a party's statement is sufficiently unequivocal to be considered a judicial admission is a question of law." *Id.*

This Court held a violation hearing on September 17 and 18, 2015 where it determined Petitioner had violated his probation. During this hearing, the attorney for the State made the following statement during his argument: "[o]bviously we don't know what was going through his head or what his intent was but it is reasonable to believe he was in that apartment without permission at 2:30 in the morning on June 20th." (Violation Hr'g Tr. 105:20-23, Sept. 17, 2015.)

Counsel for the State's statement during closing argument after the violation hearing was clearly not a deliberate, clear, unequivocal statement about a concrete fact within counsel's knowledge which could be binding upon the State in a subsequent trial on the burglary charge. *See Rice*, 986 A.2d at 249. Neither was counsel testifying by giving a closing argument. Counsel's statement was clearly not evidence. The Court finds as a matter of law that the State certainly did not unequivocally concede the issue of intent by its statement during closing argument after the

violation hearing, precluding the factfinder at a subsequent trial on the burglary charge from determining from all the evidence what the actual facts were with regard to the Petitioner's intent. The Court finds that counsel's statement during closing argument was not a judicial admission.[1]

At the violation hearing, Ms. Kathy Ann Dasilva testified that Petitioner was in her apartment at 2:30 in the morning on June 20, 2015. (Violation Hr'g Tr. 13:22-14:3; 16:11-16, Sept. 17, 2015.) The State cited Ms. DaSilva's testimony during its closing argument, suggesting that Petitioner violated the terms and conditions of his probation by failing to keep the peace and be of good behavior. For this statement to have constituted a judicial admission, it needed to be contrary to an essential fact asserted by the State. This statement was not contrary to an essential fact that the State had to establish at the violation hearing; therefore, it did not constitute a judicial admission.[2]

D

Ineffective Assistance of Counsel

When evaluating allegations of ineffective assistance of counsel, Rhode Island courts have adopted the two-pronged standard enunciated in *Strickland v. Washington*, 466 U.S. 668 (1984). *Perkins v. State*, 78 A.3d 764, 767 (R.I. 2013); s*ee Guerrero v. State*, 47 A.3d 289, 300 (R.I. 2012) (citing *Strickland*, 466 U.S. 668). "Applicants are required to demonstrate that: (1) counsel's performance was deficient in that it fell below an objective standard of reasonableness . . . and (2)

[1] The purpose of the violation hearing was "to determine whether the defendant has violated the terms and conditions of his or her probation[.]" Section 12-19-9(b).

[2] Furthermore, since counsel's statement during closing argument at the violation hearing was not a judicial admission, the State was not precluded from establishing the intent element of the burglary charge in the context of its presentation to the Court during Petitioner's plea colloquy. Petitioner's counsel, when asked at the postconviction hearing if he had researched the issue of judicial admission, said that he had considered the issue but concluded that counsel's statement did not rise to the level of a judicial admission by the prosecution in this case. (Postconviction Hr'g Tr. 22:10-23:5, May 6, 2021.)

that such deficient performance was so prejudicial to the defense and the errors were so serious as to amount to a deprivation of the applicant's right to a fair trial." *Tassone v. State*, 42 A.3d 1277, 1284-85 (R.I. 2012) (internal quotation marks and citations omitted). If an applicant for postconviction relief does not make both showings, "'it cannot be said that the conviction or . . . sentence resulted from a breakdown in the adversary process that renders the result unreliable."' *Simpson v. State*, 769 A.2d 1257, 1266 (R.I. 2001) (quoting *Strickland*, 466 U.S. at 687). Our Supreme Court has stated when ruling on an ineffective assistance of counsel claim, courts should consider counsel's performance in its entirety. *Hazard*, 64 A.3d at 756. Thus, "the benchmark issue is whether 'counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.'" *Bustamante v. Wall*, 866 A.2d 516, 522 (R.I. 2005) (quoting *Toole v. State*, 748 A.2d 806, 809 (R.I. 2000)).

1

First Prong

The first prong of the *Strickland* analysis requires the applicant to "demonstrate that 'counsel's performance was deficient, to the point that the errors were so serious that trial counsel did not function at the level guaranteed by the Sixth Amendment.'" *Guerrero*, 47 A.3d at 300 (quoting *Brennan v. Vose*, 764 A.2d 168, 171 (R.I. 2001)). To do so, Petitioner must show that "counsel's advice was not within the range of competence demanded of attorneys in criminal cases." *Neufville v. State*, 13 A.3d 607, 610 (R.I. 2011). Our Supreme Court "requires that scrutiny of counsel's performance be highly deferential, and 'every effort [must] be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time.'" *Tassone*, 42 A.3d at 1285 (alteration in original) (quoting *Lynch v. State*, 13 A.3d 603, 606 (R.I. 2011)).

Counsel's performance, therefore, "must be assessed in view of the totality of the circumstances and in light of 'a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.'" *Hazard v. State*, 968 A.2d 866, 892 (R.I. 2009) (quoting *Heath v. Vose*, 747 A.2d 457, 478 (R.I. 2000)). With regard to the first prong, this Court must consider whether Mr. Vicini's advice to Petitioner regarding a potential plea to the burglary charge was within the range of competence demanded of attorneys in criminal cases. *See Neufville*, 13 A.3d at 610. The Court's scrutiny of Mr. Vicini's performance must be highly deferential, and it must make every effort to eliminate the distorting effects of hindsight, reconstruct the circumstances of Mr. Vicini's challenged conduct, and evaluate same from his perspective at the time. *See Lynch*, 13 A.3d at 606.

Petitioner argues that his counsel's performance was deficient because he failed to put forth pretrial motions on Petitioner's behalf, which would have placed Petitioner in a more knowledgeable and more advantageous position in deciding whether to negotiate a plea or to go forward with a trial.

At the postconviction relief hearing, Attorney Vicini, who has been a public defender for thirteen years and is an extremely capable advocate for his clients, described his thought process in weighing the tactical decisions he made. At the hearing, counsel described his reasoning in advising Petitioner with regard to a potential plea:

> "A: Mr. Skally – and I may have used this term – was in a difficult position. He was charged with burglary which the State was trying to use significant 404(b) evidence against him with regards to motive or intent and you had a [complaining] witness who was familiar with him and seen him working in the house, didn't initially call the police but rather I believe called her brother-in-law, who was the gentleman who hired Mr. Skally. So while there may have been an identity issue, it seems that at least the complaining witness was fairly certain about who she thought she saw, and I had these discussions with Mr. Skally.

> "I think more important was the possible sentences that could result if he was found guilty and what he was found guilty of. For burglary, the maximum sentence is life. With a habitual offender, that adds up to an additional 25 years on parole. So if we lost the habitual offender motion, he had that exposure. If we won the two motions, the 404(b) motions as well as the habitual motion, he had exposure to breaking and entering if he was found guilty, assuming they were able to meet the burden with regard to the burglary. The lesser, breaking and entering, carries a maximum sentence of ten years.
>
> "In my estimation, and I had a frank discussion with Mr. Skally about this, if that 404(b) evidence of those two prior cases, they would be used at sentencing, and I believe the judge was likely to sentence him to ten years consecutively." (Postconviction Hr'g Tr. 24:18-25:21, May 6, 2021.)

As the Court noted earlier in this Decision, the Notice of Habitual Offender was timely filed, so Mr. Vicini's concerns were well-founded and properly factored into the decision to accept a plea rather than proceed to trial. Further, Attorney Vicini did not expect there would be a plea, he was preparing to take the case to trial on Petitioner's behalf. *Id.* at 29:4-7. Prior to that trial, Mr. Vicini would have certainly filed motions *in limine* challenging the introduction of Rule 404(b) evidence, the timeliness of the Notice of Habitual Offender and the complaining witness' identification of Petitioner. However, he advised Petitioner about the potential benefits of a plea after Petitioner questioned him about it. Counsel discussed with Petitioner the different charges that he faced, which of them were lesser included offenses to burglary, and ultimately Petitioner decided to accept a plea. *Id*. at 27:11-18. Attorney Vicini testified that he follows a specific procedure when his clients consider a plea, which he followed in Petitioner's case:

> "Q: When you review a plea form with a client, do you have a certain procedure that you go through with regard to that?
>
> "A: Yes.
>
> "Q: And what was that?
>
> "A: Generally go through the rights first and make sure they know that they are changing their plea from that of not guilty to nolo

> contendere and just like that first paragraph says, and very often underlined, [a] plea of nolo contendere is, for all intents and purposes, the same as a guilty plea. Very often I would say the facts that the cops made to the State to put on the record, I tell the client, if you can't say yes to these facts then we're not going to do the rest of this plea and then go through. So I likely did at some point tell him factually what the State was likely to put on the record, but I did not know the exact facts they would put on the record." *Id*. at 29:13-30:5.

Mr. Vicini also weighed the effect that the admission of Rule 404(b) evidence would have had the Court admitted such evidence of Petitioner's prior bad acts despite their remoteness in time. He received the reports of Petitioner's prior convictions and explained to him that if they were permitted to be introduced into evidence at the trial it could be detrimental to his case because of the nature of those two particular cases. *Id*. at 38:21-39:18.

Mr. Vicini believed one case involved breaking and entering and assaulting a woman in bed, and the other case was an assault in a home upon a woman who was asleep on a couch. *Id.* at 39:13-18. Petitioner argues that Mr. Vicini should have filed a motion in *limine* to exclude Rule 404(b) evidence based on the remoteness in time of these two particular prior convictions. This Court finds that Attorney Vicini's discussions with Petitioner and representation during the plea negotiations was reasonable "in view of the totality of the circumstances[.]" *Hazard*, 968 A.2d at 892. Attorney Vicini was vigorously preparing for trial but ultimately Petitioner chose to plead. Petitioner's decision to plead was informed by Mr. Vicini's considered advice and experience, enabling him to weigh the potential consequences of going to trial as opposed to accepting a plea.

In '"look[ing] at the entire performance of counsel,"' the Court is satisfied that Petitioner received effective assistance of counsel. *Tassone*, 42 A.3d at 1286 (alteration in original) (quoting *Brown v. State*, 964 A.2d 516, 528 (R.I. 2009)). The Court cannot conclude that Attorney Vicini's performance '"was deficient in that it fell below an objective standard of reasonableness."' *Id*. at 1284 (quoting *Lynch*, 13 A.3d at 605-06); *see also Page v. State*, 995 A.2d 934, 945 (R.I. 2010).

This Court is satisfied that Attorney Vicini's performance during plea negotiations and representation during the hearings certainly fell within the wide range of reasonable professional assistance to which Petitioner was entitled. Accordingly, Petitioner has not satisfied the first prong of the *Strickland* test.

2

Second Prong

Because of Petitioner's failure to prove that Attorney Vicini's representation was constitutionally deficient, the Court need not—and will not—address the second prong of the *Strickland* standard. *Page*, 995 A.2d at 945 (declining to consider the second *Strickland* prong when "counsel's performance was reasonable and, as such, did not run afoul of even the first prong . . . under the *Strickland* test"). Nevertheless, this Court notes that Petitioner was in no way prejudiced by Attorney Vicini's representation of him. It is clear to this Court that Petitioner received effective assistance of counsel and a just result was produced. *Bustamante*, 866 A.2d at 522.

IV

Conclusion

In light of the foregoing, the Court concludes that Petitioner has not satisfied his burden of proving by a preponderance of the evidence that postconviction relief is warranted. Furthermore, this Court is satisfied that defense counsel provided competent and professional services in defense of the charges against Petitioner, as well as with regard to the Notice of Habitual Offender with which he was presented. Accordingly, the Second Amended Petition for Post Conviction Relief is denied and dismissed.

Counsel shall submit an appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

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CASE NO:	**PM-2018-1399**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**December 9, 2021**
JUSTICE/MAGISTRATE:	**Montalbano, J.**

ATTORNEYS:

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