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IN THE SUPREME COURT OF THE STATE OF DELAWARE

TROY BOLDEN, Defendant-Below, Appellant v. STATE OF DELAWARE Plaintiff-Below, Appellee.	)))))))))))	No. 425, 2024

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

APPELLANT'S REPLY BRIEF

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DATED: May 15, 2025

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I. THE TRIAL COURT DENIED BOLDEN THE RIGHT TO COUNSEL DURING PLEA WITHDRAWAL PROCEEDINGS WHICH IS A CRITICAL STAGE IN THE CRIMINAL PROCEEDINGS.

The State appears to agree that a defendant generally has a right to conflict-free counsel to argue a motion to withdraw a plea agreement when the motion contains allegations of coercion and ineffective assistance of counsel. Rather, the State argues that Bolden was not entitled to substitute counsel in this case because he failed to "adequately set forth his allegations of ineffectiveness and coercion."[1] This position is not only wrong, it runs directly counter to that made by the prosecutor below.

The prosecutor went into detail in explaining to the trial court that *Reed v. State*[2] required substitute counsel be appointed for purposes of the motion to withdraw the plea agreement.[3] He explained that even though defense counsel in this case properly filed a motion to withdraw the plea, the principle embodied in *Reed* applied because the reason for filing the motion to withdraw as counsel was that a conflict resulted from Bolden's underlying claims. To support its position, the prosecutor cited to a case with similar circumstances in which a different judge appointed substitute counsel.[4] Accordingly, "the

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[1] State's Ans. Br. at p.16.
[2] 258 A.3d 807 (Del. 2021).
[3] A54-55.
[4] A54-55.

State is foreclosed by Supreme Court Rule 8" from making its current argument on appeal.[5]

In its new argument, the State erroneously claims that Bolden is seeking an expansion on the *Reed* requirement through his argument that the trial court must "appoint substitute counsel to assist with the motion to withdraw or to grant a motion to withdraw as counsel based only on a defendant's allegations of ineffectiveness and coercion in connection with a motion to withdraw a guilty plea."[6] The State conveniently ignores *White v. State*,[7] which held that "the defendant was entitled to the appointment of counsel at the plea withdrawal hearing because it occurred prior to sentencing at a critical stage of the criminal process." The State also ignores the collection of cases in *Reed* where "defendants who have moved to withdraw their guilty plea in Superior Court are routinely appointed new counsel for that purpose, especially when the defendant raises claims of coercion or ineffective assistance of counsel." [8]

Even if the holding in *Reed* is limited by the specificity of the allegations as the State erroneously claims, Bolden's claims were more than a

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[5] *Marine v. State*, 624 A.2d 1181, 1186 (Del. 1993) (finding State foreclosed from making argument on appeal that it failed to make below).
[6] State's Resp. at p. 3-14.
[7] 2000 WL 368313, at *1 (Del. Mar. 23, 2000).
[8] 258 A.3d at n.101 (Del. 2021).

mere "assertion" or "allegation" that his attorney was ineffective or coerced him into pleading. He made very specific factual allegations in his motion and at the hearing. His motion also sets out the reason he believed his factual allegations amounted to ineffective assistance of counsel. And, significantly, he cited to ABA Standard of Criminal Justice 4-3.8 as authority for his position.[9] He provided further detail the hearing.[10]

For this reason, the State's reliance on *United States v. Rivernider*[11] is misplaced. In *Rivernider*, the court acknowledged that a defendant has a right to conflict-free counsel where allegations of coercion are adequately set forth. The decision by that court to not appoint substitute counsel for the motion for withdrawal of the guilty plea was the fact that the defendant's motion contained "only two brief conclusory references to any possible coercion affecting his guilty plea."[12] *Rivernider* is not our case. As already explained, Bolden more than adequately set forth specific allegations of coercion and ineffective assistance of counsel.

The State is also wrong in relying on *Jones v. State*.[13] That case involved a defendant's motion for new counsel on the "eve of trial." Further,

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[9] A24.
[10] A30-32, 34, 41.
[11] 828 F.3d 91 (2d Cir. 2016).
[12] *Id.* at 106.
[13] 2000 WL 1504965 (Del. Aug. 30, 2000).

the defendant claimed that he met his attorney, on video camera, a week before the final case review and he complained about his attorney's lack of preparation and her apparent interest in having him accept a plea bargain instead of going to trial. The motion was made by the defendant seeking a new attorney, not, as in our case, made by counsel seeking withdrawal. The *Jones* motion, unlike ours, did not involve a conflict that needed to be resolved to determine whether the waiver of the defendant's rights had been affected by the actions of the defendant's attorney. Contrary to the trial court finding in this case, Bolden did not seek new counsel do to his "mere dissatisfaction with his counsel."

Further, the State has it backwards by pointing to the trial court's "conclusion in its order denying trial counsel's motion to withdraw as counsel, stating that defense counsel's conduct did not fall below the objective standard of reasonableness, the Strickland standard."[14] This decision was reached after the judge conducted a hearing in which Bolden was denied conflict-free counsel. The conflict requiring substitution of counsel at the hearing resulted from the fact that then-current counsel's actions were the basis of the allegations to be resolved. In other words, the trial court's decision as to

[14] State's Resp. Br. at p.17.

whether the allegations about then-current counsel had merit required Bolden to have substitute counsel at the hearing addressing those allegations.

Just as the prosecutor below recognized, the conflict between defense counsel and defendant does not evaporate by defense counsel simply filing the motion to withdraw. Nor is the error cured by granting Bolden' motion to withdraw the plea. "A complete denial of counsel occurs when a criminal defendant must navigate a critical stage of the proceedings against him without the aid of an attorney dedicated to the protection of his client's rights under our adversarial system of justice."[15] Here, Bolden was not only denied the benefit of conflict free representation at the hearing, he did not have the benefit of conflict-free advice with respect to whether withdrawing the plea was in his best interest.

Thus, Bolden's convictions must be reversed.

[15] *Urquhart v. State*, 203 A.3d 719, 730 (Del. 2019).

II. THE TRIAL COURT DENIED BOLDEN THE RIGHT TO COUNSEL AT TRIAL WHEN IT REFUSED TO GRANT HIS ATTORNEY'S MOTION TO WITHDRAW FROM REPRESENTATION AND TO APPOINT CONFLICT FREE COUNSEL.

Despite its current claims, the State, prior to trial, expressed its concerns that the trial court's grant of Bolden's motion to withdraw his plea agreement was a finding that defense counsel was ineffective. Following the trial court's attempt to dissuade the prosecutor of that belief and following defense counsel's "update' on the nature of his relationship with Bolden, the prosecutor never expressed a change in opinion.[16] Accordingly, the State has waived this argument.[17]

The trial court's "finding" that defense counsel was not ineffective was based on its erroneous recollection that Bolden's argument was simply, "I didn't want to enter this plea, and I needed my attorney to make a motion." In fact, Bolden's motion and argument at the hearing were very clear and detailed with respect to his claims that his attorney was ineffective. Further, he cited ABA Standard of Criminal Justice 4-3.8 claiming that there was no effective trust built up between the attorney and client.[18]

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[16] A60-62.
[17] *Marine v. State*, 624 A.2d 1181, 1186 (Del. 1993) (finding State foreclosed from making argument on appeal that it failed to make below).
[18] A22, 24.

The State claims that one can divine from the face of the decision that the judge specifically examined all of the factors as required by *Scarborough v. State*.[19] The State acknowledges that one of those factors required to be "specifically examined" in the *Scarborough* analysis is "whether legal counsel was adequate."[20] But, it later asserts, inconsistently, that "when assessing voluntariness, courts do not look to the efficacy of counsel but to the plea colloquy." [21] This inconsistency undercuts its own erroneous argument that since the judge did not set forth his required evaluation of adequacy of counsel, Bolden must accept that the court conducted the requisite evaluation.

The State also asserts that a finding that the plea was involuntary can be presumed to be based on reasons other than the effectiveness of his counsel.[22] However, the court did not provide any explanation for why the plea was involuntary. The dialogue the State cites to as providing different bases for finding the plea involuntary actually revolves around Bolden's expression of confusion, fear and anger resulting from his attorney's conduct. Assuming, *arguendo*, the State is correct in its assertion that his claims of

[19] *Scarborough v. State*, 938 A.2d 644, 650 (Del. 2007).
[20] State's Resp. Br. at p.24.
[21] State's Resp. Br. at p. 26.
[22] State's Resp. Br. at pp. 26-27.

involuntariness went beyond his counsel's conduct, the trial court's lack of analysis is even more troublesome.

A reasonable interpretation of the court's order allowing the withdrawal of the guilty plea is that defense counsel provided ineffective assistance of counsel or coerced Bolden into entering the plea. In fact, that was the way the prosecutor interpreted the decision. A plea that is involuntary is not mutually exclusive of a plea resulting from ineffective assistance of counsel.[23] Thus, Bolden could reasonably have concluded that the trial court agreed with him as to the basis of his claims. Such an interpretation by Bolden would be even more reasonable given that he was not invited to the office conference in which the counsel's motion to withdraw was discussed in detail and in which the court misconstrued his motion.

Thus, Bolden's convictions must be reversed.

[23] *MacDonald v. State*, 778 A.2d 1064, 1074 (Del. 2001) ("claims of ineffective assistance of counsel…challenge the voluntary and intelligent nature of the plea agreement") (internal citation and quotation marks omitted).

CONCLUSION

For the reasons and upon the authorities cited herein, Bolden's convictions must be vacated.

Respectfully submitted,

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DATED: May 15, 2025