STATE OF NEW JERSEY Plaintiff, v. SEAN HIGGINS Defendant.	: : : : : : : : :	SUPERIOR COURT OF NEW JERSEY LAW DIVISION - CRIMINAL PART SALEM COUNTY INDICTMENT NO.: 24-12-400-I **BRIEF IN SUPPORT OF MOTION TO COMPEL OTHER PLEA OFFERS**

Statement of Facts

On August 29, 2024, Mr. Higgins was driving a motor vehicle along County Route 551 (Pennsville Auburn Road), in the area of milepost 11.15, located in Oldmans Township, Salem County, New Jersey at approximately 8:20 p.m. According to reports, Mr. Higgins attempted to pass a motor vehicle and when he could not, and entered back into the lane of travel, he struck and killed two (2) bicyclists. Mr. Higgins was subsequently arrested and charged with two (2) counts of Reckless Death By Auto or Vessel (Vehicular Homicide).

On December 11, 2024, Mr. Higgins was matter was presented to a Grand Jury. [redacted] The Grand Jury returned a six-count indictment against Mr. Higgins for two counts of Reckless Vehicular Homicide (2C:11-5a), two counts of Aggravated Manslaughter (2C:11-4a(1)), one count of Tampering with Physical Evidence (2C:28-6(1)), and one count of Leaving the Scene of a Fatal Accident (2C:11-5.1).

On or about December 23, 2024, the State wrote to counsel for Mr. Higgins and extended the following plea offer:

"...the State would recommend a sentence of fifteen years in the New Jersey State Prison on each of the Aggravated Manslaughter charges to run concurrent to each other. Mr. Higgins would have to serve eighty-five percent of those sentences before being eligible for parole, pursuant to N.J.S.A. 2C:43-7.2. The State would also recommend a five year term of imprisonment for the plea to the charge of Leaving the Scene of a Fatal Accident. Pursuant to N.J.S.A 2C:11-5.1, that sentence would have to be served consecutive to the other terms of incarceration." (See attached Exhibit "A" as though same were set forth in full herein)

The State later clarified that same was sent in error and that the actual plea offer of essentially thirty five years state prison. This offer is greatly out of the range of other plea offers made in Salem County over the past few years and it seems that the State is improperly enhancing same due to the publicity surrounding the matter at bar. For example over the past few years the following similar cases have been resolved by a plea bargain with the State:

In November of 2021, under a plea agreement with the Salem County Prosecutor's Office, Superior Court Judge Linda Lawhun sentenced David M. Thomas to seven years in state prison on a second-degree vehicular homicide charge. He was sentenced to concurrent terms of four years each on three third-degree assault by auto charges and a one-year term for fourth-degree assault by auto. Mr. Thomas killed another motorist, while three of his passengers and the driver of the first vehicle struck were injured. An open alcohol container was found in Thomas' vehicle and he stated at the scene that "he had been consuming alcoholic beverages just prior to operating the vehicle," according to an affidavit of probable cause. Thomas' blood alcohol concentration was measured at 0.156%, nearly double the legal limit of 0.08%, and surveillance video from several locations on Hook Road showed Thomas' vehicle traveling "at an extremely high rate of speed" before the crash.

In December of 2024, under a plea agreement with the Salem County Prosecutor's Office, Superior Court Judge Michael Silvanio sentenced Deandra L Brown Palmer to seven years, with a requirement that he serve 85% of that time. Deandra L. Brown Palmer admitted drinking several shots of alcohol and smoking marijuana before getting behind the wheel. He was driving westbound on Shirley Road in Upper Pittsgrove when he passed a car in front of him and hit a bicyclist on the eastbound shoulder of the roadway. Brown Palmer's blood alcohol content was measured at 0.22%,Brown Palmer pleaded guilty in October of 2024 to a single second-degree count of death by auto in return for a seven-year prison sentence. He also pleaded guilty to a charge of driving while intoxicated. Brown Palmer, kept driving after striking the cyclist with his car, then made a U-turn and drove back through the crash scene, again without stopping. Witnesses called 911 and a police officer tried to stop the car, but Brown Palmer continued driving and made another U-turn, heading back on westbound Shirley Road, authorities said. The driver of a fire truck saw the pursuit and parked his truck across the roadway, prompting Brown Palmer to stop. Police then discovered he had a 3-year-old child in the backseat. During an interview with police, Brown Palmer admitted consuming five or six shots of vodka and whiskey and smoking an unknown amount of marijuana about 30 minutes before driving.

These are only two of the matters undersigned counsel are aware of with regard to the same charges yet glaringly more egregious facts and circumstances[1]. The information requested is proper and in the interest of justice.

[1] Counsel is also aware of the December 2021 matter of Stephen M. Karwowski who killed a motorist wherein he had a B.A.C. of .122 and was traveling at a speed of approximately 113 mph before the crash and 70 mph at the moment of impact.

Legal Argument

The National Association of Criminal Defense Lawyers (NACDL) released *The Trial Penalty: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It*. ("The Trial Penalty") The Trial Penalty, released in 2018, found that over the last 50 years, defendants chose trial in less than three percent of state and federal criminal cases—compared to 30 years ago when 20 percent of those arrested chose trial. The remaining 97 percent of cases were resolved through plea deals.

When pleading under a plea agreement, a defendant gives up an enormous panoply of rights that sometimes are not fully appreciated. Of course, and most obviously, a defendant gives up the right to go to trial by pleading guilty, and all the protections and procedures inherent in that. Furthermore, defendants generally are required to waive virtually all appellate rights unless the plea was a conditional one. (Sometimes a plea agreement will be drafted in such a way that a defendant may appeal a sentence that is greater than an agreed-upon amount, in which case, it is a limited waiver. Defendants always may appeal a sentence that exceeds the statutory maximum penalty). This type of appellate waiver covers even errors in calculating the guidelines correctly, unless that is expressly reserved. Furthermore, appellants are generally required to waive their right to collaterally attack their plea or sentence on appeal, unless they assert ineffective assistance of counsel.

The cornerstone of the plea bargain system is the "mutuality of advantage" it affords to both defendant and the State. *Bordenkircher v. Hayes, supra*, 434 *U.S.* at 363, 98 *S. Ct.* at 668, 54 *L. Ed.* 2d at 611; *Brady v. United States*, 397 *U.S.* 742, 752, 90 *S. Ct.* 1463, 1471, 25 *L. Ed.* 2d 747, 758 (1970); *State v. Corbitt*, 74 *N.J.* 379, 394 (1977), aff'd 439 *U.S.* 212, 99 *S. Ct.* 492, 58 *L. Ed.* 2d 466 (1978). The system enables a defendant to reduce his penal exposure and avoid

the stress of trial while assuring the State that the wrongdoer will be punished and that scarce and vital judicial and prosecutorial resources will be conserved through a speedy resolution of the controversy. See *Brady v. United States, supra; cf. State v. Marzolf, supra*, 79 *N.J.* at 182-183.

Since a defendant who pleads guilty or *non vult* waives his constitutional rights to avoid self-incrimination, to confront his accusers and to secure a jury trial, *McCarthy v. United States*, 394 *U.S.* 459, 466, 89 *S. Ct.* 1166, 1171, 22 *L. Ed.* 2d 418, 425 (1969), our court rules are designed to assure, and the cases have uniformly held, that a guilty or *non vult* plea may not be entered unless the court first satisfies itself that there is a factual basis for the plea and that the plea is made voluntarily and intelligently with an "understanding of the nature of the charge and the consequences of the plea." *R.* 3:9-2; *Henderson v. Morgan*, 426 *U.S.* 637, 644-645, 96 *S. Ct.* 2253, 2257-2258, 49 *L. Ed.* 2d 108, 114 (1976); *Santobello v. New York, supra*, 404 *U.S.* at 261-262, 92 *S. Ct.* at 498-499, 30 *L. Ed.* 2d at 432-433; *North Carolina v. Alford*, 400 *U.S.* 25, 31, 91 *S. Ct.* 160, 164, 27 *L. Ed.* 2d 162, 168 (1970); *Brady v. United States, supra*, 397 *U.S.* at 747, 90 *S. Ct.* at 1468, 25 *L. Ed.* 2d at 756; *State v. Herman, supra; State v. Deutsch, supra; State v. Rhein*, 117 *N.J. Super.* 112, 117-118 (App. Div. 1971); *State v. Smith*, 109 *N.J. Super.* 9, 11-12 (App. Div.), certif. den. 56 *N.J.* 473 (1970); *State v. Leckis*, 79 *N.J. Super.* 479, 484-485 (App. Div. 1963); see *State v. Brown, supra; cf. State v. Nichols, supra.*

It is clear that before accepting a guilty plea, the trial court must be satisfied that (1)there is a factual basis for the plea, (2) the plea is made voluntarily, and (3) defendant understands the nature of the charge and the consequences of the plea. *State ex rel. T.M.*, 166 N.J. 319, 325, 765 A.2d 735 (2001); *State v. Barboza*, 115 N.J. 415, 420-21, 558 A.2d 1303 (1989); *State v. Howard*, 110 N.J. 113, 122, 539 A.2d 1203 (1988). Those requirements are codified under our rules. *R.* 3:9-2. However, a trial court's duty to ensure that a defendant understands the

consequences of a plea generally extends only to those "consequences that are 'direct,' or 'penal,' and not to those that are 'collateral.'" *Howard, supra*, 110 N.J. at 122, 539 A.2d 1203 (citing *State v. Heitzman*, 209 N.J. Super. 617, 622, 508 A.2d 1161 (App.Div.1986), *aff'd o.b.,* 107 N.J. 603, 527 A.2d 439 (1987)).

The practice of plea bargaining has become institutionalized in our criminal justice system. *State v. Thomas*, 61 N.J. 314, 321, 294 A.2d 57 (1972); *R.* 3:9-3. "Notions of fairness apply to each side in the plea bargaining process." *State v. Warren*, 115 *N.J.* 433, 443, 558 A.2d 1312 (1989). A defendant has the right not to be "misinformed" about a material element of a plea agreement, *State v. Nichols*, 71 N.J. 358, 361, 365 A.2d 467 (1976), and to have his or her "reasonable expectations" fulfilled. *Howard*, *supra*, 110 N.J. at 122, 539 A.2d 1203 (citing *State v. Marzolf,* 79 N.J. 167, 183, 398 A.2d 849 (1979), *State v. Bellamy,* 178 N.J. 127, 134, 835 A.2d 1231, 1235 (2003).

All people are accused of crimes are supposed to treated equally before the law. Lady justice is blind because she only hears the evidence, arguments and law - she does not consider the identity (race, gender, wealth, family, power, popularity) of the individuals before her. However, in the matter at bar it seems that the State is treating Mr. Higgins differently than other Defendants similarly charged and situated due to the "high profile" nature of the case at bar and the celebrity status of the victims herein. There can be no other explanation for why the death of a teacher by a defendant with a 0.22% BAC who also had a child in the vehicle with him resulted in a prison sentence of seven years as opposed to Mr. Higgins who presumably had a BAC of .087.

If Mr. Higgins was a professional athlete or famous actor it is presumed that the State would not give him any preferential treatment. By way of the converse, his ability to effectively plea bargain should not be limited nor hampered by the fact that the victims' status garners such publicity so as to influence the State's position.

Conclusion

For the reasons as set forth herein, the Court should enter an Order compelling the State to turn over the Plea Offers in all other Salem County Reckless Vehicular Homicide and Aggravated Manslaughter Cases from January 2021 through the present.

Respectfully Submitted,
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