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Hillsborough Superior Court Northern District
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THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS. SUPERIOR COURT
DOCKET NO. 216-2020-CR-00820 NORTHERN DISTRICT

STATE OF NEW HAMPSHIRE

v.

ANTWAN STROUD

STATE'S OBJECTION TO DEFENDANT'S MOTION TO WITHDRAW PLEA

NOW COMES the State of New Hampshire, by and through the Hillsborough County Attorney's Office, and objects to the Defendant's Motion to Withdraw Plea, stating in support as follows:

1. On, or about, January 7, 2021, the Defendant pled guilty to one Misdemeanor count of Riot. The parties agreed that the State's sentencing recommendation would be capped at 12 months in the house of corrections, all but 30 days suspended for 2 years, and 2 years of probation. The State agreed to *nolle pross* the Reckless Conduct charge. The Court, the Honorable Judge William Delker, adopted the State's recommendation. On, or about, February 24, 2021, the Defendant filed a Motion to Withdraw his Plea.

2. Therein, he argues first that his trial counsel was ineffective for failing to investigate his co-defendant's plea negotiations and for failing to investigate the publically available charging documents and publically available sentences of others involved in the South Willow Street incident. Def.'s Mot. ¶ 19. He argues that due to this failure, his plea was not voluntary. Second, he argues that the State failed to disclose the same publically available charging documents and publically available sentences prior to the January 7, 2021 capped plea. Def.'s Mot. ¶ 32.

3. The State objects. Mr. Stroud was the only defendant sentenced so far (there are

still seven open cases arising from the South Willow Street incident) to actually commit a crime against a person.[1] Mr. Stroud urged a group to commit violence against a surrounded and lone police officer – calling on the group to pull the officer out of the car. In contrast, Mr. Toledo threw a firework in a parking lot. Mr. Stroud's and Mr. Toledo's conduct was so different, there was no reason for defense to present it at sentencing. If Mr. Stroud's attorney presented that information at sentencing the result would not have changed.

4. Mr. Toledo did not commit violence against anyone as the Defendant asserts. Mr. Toledo and Mr. Brisendine committed crimes against property – a parking lot and a dumpster. Contrary to the Defendant's assertion, Mr. Toledo did not threaten Officer Mark Aquino, only the Defendant did. See Def.'s Mot. ¶ 2 ("the group is alleged to have spit on the cruiser and threatened violence on the officer. In other words, the two are alleged to have engaged in the exact same conduct."). Mr. Toledo remained silent during the interaction, did not call for violence against the police officer, and did not publish a video of his actions to encourage others as Mr. Stroud did. This is clear on the video evidence.

5. The State provided the video evidence, which showed both Stroud's conduct and Toledo's conduct, to the Court for its determination on sentencing.[2] See State's Exhibit A (previously submitted for the January 7, 2021 sentencing hearing). The Court should review the previously submitted State's Exhibit A to see Mr. Toledo's conduct – at approximately 22:30 in the video - and see that it was non-violent, and less egregious than Mr. Stroud's.

6. Moreover, the same Judge that sentenced Mr. Stroud on January 7, 2021,

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[1] Dylan Smith, pled guilty on March 1, 2021 to a 2-4 year stand committed New Hampshire State Prison sentence as part of a global resolution with Merrimack County. See State's Exhibit B. This global plea was negotiated by undersigned counsel prior to Mr. Stroud's January 7, 2021 plea. See State's Exhibit C.

[2] The Defendant incorrectly asserts that the video presented at sentencing can be found on the Union Leader website. See Def.'s Mot. Exhibit B, fn. 2. The Union Leader posted only a portion of the video that was submitted.

sentenced Mr. Brisendine on December 11, 2020. See Def.'s Mot. Attachment Q. As such, the Court had full knowledge of that conduct and sentence.

7. The defendants in the district court cases, not prosecuted by undersigned counsel, were apparently arrested for failing to vacate, disobeying police orders, and being part of a group that threw bottles. The perpetrator who actually threw bottles at police, Dylan Smith, pled guilty on March 1, 2021 to a 2-4 stand committed New Hampshire State Prison sentence as part of a global resolution with Merrimack County. See State's Exhibit B. This global plea was negotiated by undersigned counsel prior to Mr. Stroud's January 7, 2021 plea. See State's Exhibit C ("01/05/2021 *P&S continued for global with Hills-No").*

8. The fact of the matter is that the District Court defendants did not commit as serious crimes as Mr. Stroud. There was no charging discrepancy. The charges were accurate to the conduct. Mr. Stroud was sentenced more severely for a more severe action. There was no sentencing disparity. The sentencing was appropriate.

9. Secondly, publically available charging documents and publically available sentences from cases that arose from the same event are not evidence subject to disclosure under Brady. Each charging document was filed publically with the Court. Each sentence was filed publically with the Court. The information was in the case summaries that were available before the Defendant's January 7, 2021 plea.

10. There is no manifest injustice here. Each defendant has been sentenced according to their conduct and nothing more. All of the information that the Defendant alleges was suppressed was in fact provided to the court and publically available.

I. The Court should not permit the Defendant to withdraw his plea.

11. "When a defendant moves to withdraw a prior guilty plea, he has the burden to

prove that his earlier plea was not made voluntarily and that withdrawal of the plea must be allowed to correct a manifest injustice." State v. Laforest, 140 N.H. 286, 289 (1995).[3]

12. "It is within the trial court's discretion to grant the withdrawal of a guilty plea, and the court is not required to believe the defendant's statements. Id. We will not set aside a trial court's findings unless the trial court committed an unsustainable exercise of discretion. Id.; see State v. Lambert, 147 N.H. 295, 296 (2001)." State v. Sharkey, 155 N.H. 638, 640 (2007).

a. The Defendant's plea was voluntary.

13. "(A) plea of guilty entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel, must stand unless induced by threats (or promises to discontinue improper harassment), misrepresentation (including unfulfilled or unfulfillable promises), or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor's business (e.g. bribes)… Under this standard, a plea of guilty is not invalid merely because entered to avoid the possibility of a death penalty." Brady v. U.S., 397 U.S. 742, 755 (1970).

14. Here, there were no threats, misrepresentations, or promises that would invalidate the Defendant's plea. The Defendant was aware of the evidence against him and in his favor. The publically available charging documents and publically available sentences of other cases are not evidence in the Defendant's favor as they do not negate his guilt.

15. During the plea, the Court went through the standard plea colloquy. The Defendant took an oath to tell the truth. The Court went over the rights that the Defendant was giving up. The Court inquired with Mr. Stroud's attorney as to whether he had gone over the evidence with Mr. Stroud. The Court reminded Mr. Stroud that he had the right to a trial and to

[3] The Defendant incorrectly cites State v. Horne for the standard to withdraw a plea and, in effect, ignores his burden to prove that the plea was not voluntary. Def.'s Mot. ¶ 14. In Horne, the defendant moved to withdraw his plea before sentencing. 140 N.H. 90, 92 (1995).

have the State prove the case against him. The Defendant said he understood.

16. The Court summarized the capped plea situation: "If you give up your rights today and plea guilty to this misdemeanor charge, then I'm going to hear some further argument about what the sentence should be. You have heard what the State is going to argue for which is essentially 30 days incarcerated with the balance of the 12 months suspended. Both sides are going to argue for probation and Attorney Shepard is going to argue on your behalf for a fully suspended sentence. Is that your understanding of the agreement here?" The Defendant replied "Yes your honor."

17. The Court continued: "At the end of that sentencing hearing, I am going to make a decision as to what the appropriate outcome should be and you wouldn't be able to back out at that point as long as I stayed within the bounds of the two arguments. You understand that as well?" The Defendant replied "Yes your honor."

18. The Court asked the Defendant whether he was satisfied with Attorney Shepard's representation. The Defendant replied "Yes your honor."

19. The Court asked the Defendant whether it was his choice to give up those rights and to plead guilty to the charge. The Defendant replied "Yes your honor."

20. The Defendant then pled guilty to the charge. The Court stated on the record that it found that the Defendant made a knowing, intelligent, and voluntary choice to give up his rights and pled guilty.

21. The Defendant was given the chance to speak before sentencing and declined.

22. At no point in the hearing did the Defendant profess his innocence. He did not allege he was threatened. He did not claim he was pleading guilty for any other reason other than he was in fact guilty.

23. The Defendant has not met his burden to prove that his plea was not voluntary.

b. Defendant's trial counsel was not ineffective to the point of "manifest injustice" for failing to present alleged charging and sentencing discrepancies at the January 7, 2021 sentencing hearing.

24. Mr. Stroud's conduct is on clear video. There is no doubt as to whether he committed the conduct he pled guilty to. The standard of "manifest injustice" is not met here.

25. Mr. Stroud incited violence against a surrounded and outnumbered police officer. Each defendant involved with the South Willow Street incident was sentenced appropriately for their conduct.

26. Undersigned counsel prosecuted four individuals who committed crimes during the South Willow Street riots.

27. The Defendant incited violence against Police Officer Mark Aquino while Aquino was surrounded by a group of approximately ten others at a red light. The Defendant spat on Officer Aquino's car and called on the group to pull Officer Aquino out of his car. The Defendant filmed this incident and posted it to his Facebook, in effect encouraging even more people to incite violence.

28. Kyle Toledo threw a firework in a parking lot. No one was harmed because of his actions. Mr. Toledo did not threaten anyone. Mr. Toledo was present in the background of Mr. Stroud's threats against Officer Aquino but was no more than a bystander. This is clear in the video evidence. Mr. Toledo then proactively engaged in Job Corps before his plea and showed an effort to rehabilitate himself. Accordingly, the State agreed to a suspended jail sentence on a misdemeanor.

29. Jameson Brisendine lit a fire in a dumpster one block from South Willow Street behind a department store. No one was harmed or threatened to be harmed because of this action.

The department store did not seek restitution for the dumpster. Accordingly, the State agreed to a suspended jail sentence on a misdemeanor arson. Mr. Brisendine was sentenced on December 11, 2020 by the same Judge who sentenced Mr. Stroud. See Def.'s Mot. Attachment Q.

30. The fourth individual, Dylan Smith, threw bottles at police officers. On March 1, 2021, Mr. Smith pled guilty to 2 – 4 years in New Hampshire State prison as part of a global resolution with the Merrimack County Attorney's Office. See State's Exhibit B, p. 8. This global plea was negotiated by undersigned counsel prior to Mr. Stroud's January 7, 2021 plea. See State's Exhibit C ("01/05/2021 *P&S continued for global with Hills-No"*).

31. Each sentence was appropriate to the conduct committed and nothing more. Mr. Stroud incited violence against the police. Toledo and Brisendine committed crimes against property that resulted in little to no damage. Had the Defendant's trial counsel brought these cases up at the sentencing hearing the State would have quickly distinguished the three men's behavior and the clear justification for each sentence recommendation.

32. Moreover, the same Judge that sentenced Mr. Stroud on January 7, 2021, sentenced Mr. Brisendine on December 11, 2020. See Def.'s Mot. Attachment Q. As such, the Court already had full knowledge of that conduct and sentence.

33. The State provided the Court with the video of both Stroud's and Toledo's crime for sentencing. As such, the sentencing judge had full knowledge of both individual's conduct and would have been able to distinguish their behavior and sentences as well.

34. Not presenting the sentences of others involved at the South Willow Street incident at the capped plea was not deficient to the point that the Defendant was "actually prejudiced such that there is a reasonable probability that the result of the proceeding would have been different" as is required to prove ineffective assistance of counsel. State v. Laforest, 140

N.H. 286, 292 (1995).

35. The plea negotiations with Mr. Toledo are not material to sentencing because his conduct did not incite violence against anyone. Mr. Stroud did. Accordingly, that information would not have led to a reasonable probability of a different result. If there's any doubt, the Court can review the video of Stroud's and Toledo's conduct (previously submitted as State's Exhibit A for the January 7, 2021 plea and sentencing hearing) and determine that.[4] There was no ineffective assistance of counsel or manifest injustice.

II. Neither Brady v. Maryland, Kyles v. Whitley, nor any other case cited by the Defendant requires the State to provide in discovery publically available charging documents publically available sentences, or the plea negotiations of defendants involved in other criminal cases arising from the same incident.

a. *The charging documents and sentences, that the Defendant alleges were withheld, were in fact publically available before the January 7, 2021 plea.*

36. The Defendant alleges that the State committed Brady violations by failing to disclose "exculpatory charging evidence [and] failing to disclose sentencing disparities." Def.'s Mot. ¶ 32. In fact, all of this information was publically available and none of it is exculpatory evidence.

37. Exculpatory evidence negates or disproves guilt. Mr. Stroud's behavior is on clear video. There is no doubt as to what he did. The other defendant's charges and sentences do not negate his guilt and are not exculpatory as the Defendant claims.

38. Secondly, Brady v. Maryland does not require proactive production of publically available documents from other matters. Brady prevents the suppression of favorable evidence. Brady v. Maryland, 373 U.S. 83, 87 (1963) ("We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment.").

[4] Toledo's conduct is at approximately 22:30 in the video.

39. The documents were publically filed with the Superior and District Courts. There was no suppression by the State as the Defendant asserts.

40. Similarly, the sentencing information was publically available via case summaries for the defendants who had pled at that time: Jameson Brisendine, Kayla Sharp, Ryan Yianakopolos, Michael Krasyn, and Andrew Magoon. There was no suppression by the State of the sentencing information.

41. Lastly, this information is not necessarily "evidence" material to guilt or punishment. The charging documents, sentencing sheets, and plea negotiations are immaterial to the Defendant's guilt. The only case cited by the Defendant that pertains to evidence material to punishment was factual evidence about the crime itself. United States v. Weintraub, 871 F.2d 1257, 1265 (5th Cir. 1989) ("The prosecution withheld impeachment evidence [after trial] that casted doubt on the amount of cocaine Weitraub was distributing."). As illustrated further below, the Defendant cited no cases that base a Brady violation on charging documents, sentencing information, or plea negotiations.

b. Kyle Toledo's case was open at the time of Mr. Stroud's plea. For the State to provide his plea negotiations to the Defendant would have been unusual and unfair to Mr. Toledo.

42. Kyle Toledo's case had not resolved before Mr. Stroud's January 7, 2021 sentencing hearing. The State is not aware of any requirement, nor has the Defendant cited any, to provide plea negotiations of active cases for a defendant to prepare for sentencing.

43. Secondly, disclosure of plea negotiations in an active case would be unfair treatment to the negotiating defendant.

44. Furthermore, providing those plea negotiations could also be interpreted as improperly encouraging a plea. It could be seen as a signal from the State that since others are

pleading guilty, the defendant should as well.

45. Finally, Mr. Toledo's conduct was so fundamentally different from what Mr. Stroud did that it was not material to punishment of Mr. Stroud's crime.

c. *The Defendant cites no legal authority to support his Brady violation claim.*

46. The Defendant claims that the State violated his rights under Brady by not providing publically available charging documents and publically available sentences. See Def.'s Mot. ¶ 33. However Brady provides a trial right that has not been extended by the Supreme Court of the United States to plea bargaining.

47. The Court specifically declined to extend Brady's disclosure requirement of impeachment information to plea bargaining. U.S. v. Ruiz, 536 U.S. 622, 629 (2002) ("We must decide whether the Constitution requires that preguilty plea disclosure of impeachment information. We conclude that it does not.").

48. When analyzing Brady in the context of plea bargaining, the Supreme Court of the United States went further to state:

> [W]e have found no legal authority embodied either in this Court's past cases or in cases from other circuits that provides significant support for the Ninth Circuit's decision. To the contrary, this Court has found that the Constitution, in respect to a defendant's awareness of relevant circumstances, does not require complete knowledge of the relevant circumstances, but permits a court to accept a guilty plea, with its accompanying waiver of various constitutional rights, despite various forms of misapprehension under which a defendant might labor.
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> U.S. v. Ruiz, 536 U.S. 622, 630 (2002).

49. The New Hampshire Supreme Court has not extended Brady to the plea bargaining context. Neither has the Court required the State to proactively provide publically available information about cases arising from the same incident, which is also not exculpatory.

50. In U.S. v. Mathur, the United States Court of Appeals, First Circuit explicitly contained Brady and Kyles to the trial context:

> The animating principle of Brady is the "avoidance of an unfair trial." Brady, 373 U.S. at 87, 83 S.Ct. 1194. It is, therefore, universally acknowledged that the right memorialized in Brady is a trial right. See, e.g., United States v. Moussaoui, 591 F.3d 263, 285 (4th Cir.2010). Consequently, courts enforce Brady in order "to minimize the chance that an innocent person [will] be found guilty." Id. The core question is whether, despite the suppressed evidence, the accused "received a fair trial, understood as a trial resulting in a verdict worthy of confidence." Kyles, 514 U.S. at 434, 115 S.Ct. 1555.
>
> In urging us to extend Brady's prejudice component to pretrial plea negotiations, the defendant exhorts us to break new ground. He does not cite a single case standing for this novel approach but, rather, relies on authority extolling the importance of plea negotiations. See, e.g., Corbitt v. New Jersey, 439 U.S. 212, 222 n. 12, 99 S.Ct. 492, 58 L.Ed.2d 466 (1978). Although we recognize that plea negotiations are important, that fact provides no support for an unprecedented expansion of Brady. See United States v. Ruiz, 536 U.S. 622, 632, 122 S.Ct. 2450, 153 L.Ed.2d 586 (2002) (warning that the benefits of plea bargaining would be undermined by an extension of Brady into the pretrial realm).
>
> U.S. v. Mathur, 624 F.3d 498, 507 (1st Cir. 2010)

51. The Defendant cites a number of non-precedential cases to urge the Court to adopt a rule contrary to the Mathur court. See Def.'s Mot. ¶ 16, 17. However, each case can be clearly distinguished from the instant case.

52. In United States v. Weintraub, Weintraub was convicted after trial by a jury in the Northern District of Texas on three charges related to cocaine distribution. 871 F.2d 1257, 1259 (5th Cir. 1989). The prosecution withheld impeachment evidence that casted doubt on the amount of cocaine Weitraub was distributing. Id. at 1265. The court found that the amount of cocaine was material to sentencing. Id. Here, the other defendant's charges and sentences do not cast doubt on the severity of what Mr. Stroud did and pled guilty to. Mr. Stroud recorded himself

committing the crime. Unlike Weitraub, this was a plea and there is no doubt as to what Mr. Stroud did or the severity of his actions. The Defendant's actions are on clear video.

53. In Ferrara v. U.S., the prosecution withheld the recantation of a key witness from the defendant - exculpatory information that casted serious doubt about the defendant's guilt. 456 F.3d 278, 280 (1st Cir. 2006). The government in Ferrara purposely withheld the information and manipulated the witness which rendered the defendant's plea not knowing and voluntary. Id. Here, there is no doubt as to Mr. Stroud's guilt. There is a video recording of his conduct. The publically available information that the Defendant alleges was withheld is not exculpatory.

54. Matthew v. Johnson goes against the Defendant's argument: the United States Court of Appeals, Fifth Circuit found no Brady violation in the government's failure to provide exculpatory information before a plea to a sexual assault. 201 F.3d 353, 362 (5th Cir. 2000) ("In light of the Court's Brady v. Maryland line of cases, it is apparent to us that, at a minimum, a state court would not have felt compelled to hold that the prosecutor's failure to supply Matthew with the CPS documents prior to entry of his plea constituted a Brady violation.").

55. In Sanchez v. U.S., the Court of Appeals, Ninth Circuit found that the prosecution had not violated Brady because the Court surmised that the defendant would have objectively not sought a trial– in contrast to what the defendant asserted. The Court found that the exculpatory evidence did not amount to a viable defense. 50 F.3d 1448, 1453-54 (9th Cir. 1995) ("In this case, however, we conclude that Brady did not require the government to disclose as exculpatory evidence the Murcias' status as informants for the LASD… the test for whether the defendant would have chosen to go to trial is an objective one that centers on "the likely persuasiveness of the withheld information." Miller, 848 F.2d at 1322. As previously discussed, the outrageous government conduct claim is not viable. In addition, an entrapment defense almost certainly

would fail."). Here, the Defendant alleges that the publically available charging and sentencing information would be used in the sentencing hearing, not to seek a trial. As such, Sanchez is inapplicable.

56. In U.S. v. Wright, "[a]ccording to appellant, on the morning his trial was to begin, the government threatened to indict several members of his family if he did not agree to plead guilty." U.S. v. Wright, 43 F.3d 491, 497 (10th Cir. 1994). Here, neither the Defendant nor his family were threatened during plea bargaining.

57. In White v. U.S., the defendant "entered an Alford plea in 1982 to one count of transporting a minor across state lines for purposes of prostitution… For reversal White argues the district court erred in refusing to set aside his plea on the grounds that the sole witness has recanted the testimony which provided the only factual basis for the interstate element, and that the government failed to disclose evidence favorable to White on the issue of guilt, thereby rendering his plea unintelligent." 858 F.2d 416, 417 (8th Cir. 1988). Here, the Defendant did not enter an Alford plea and the evidence against him is a video recording of the act. Moreover, the allegedly suppressed information does not cast doubt on whether the Defendant committed the conduct.

58. In Campbell v. Marshall, the government withheld the location of a firearm prior to a plea of guilty to two aggravated murder counts. 769 F.2d 314, 316 (6th Cir.1985). The court found that the non-disclosure did not render the plea involuntary or not knowing because the court could not say "it would have been controlling in the decision whether to plead." Id. at 324. In Campbell the suppressed evidence was possibly favorable evidence that could be used to prove or disprove innocence. Here, the State did not withhold anything, the information was publically available.

59. In Kyles v. Whitley, the government suppressed evidence "favoring Kyles" that raised "a reasonable probability that its disclosure would have produced a different result at trial" 514 U.S. 419, 420 (1995). "A review of the suppressed statements of eyewitnesses—whose testimony identifying Kyles as the killer was the essence of the State's case—reveals that their disclosure not only would have resulted in a markedly weaker case for the prosecution and a markedly stronger one for the defense, but also would have substantially reduced or destroyed the value of the State's two best witnesses." Id. Kyles involves trial rights and does not address discovery obligations of the State in the plea context. Here, the Defendant's conduct is on a clear video. The publically available documents would not have weakened the State's case at trial. Kyles is inapplicable.

60. In summary, none of the cases cited by the Defendant stand for the proposition that the State has violated the Defendant's rights under Brady by failing to provide publically available charging documents, publically available sentencing information, or plea negotiations by defendants in open cases arising from the same event. In stark contrast, each case cited by the Defendant involves suppressing exculpatory evidence by the government and other forms of gross misconduct which did not occur here.

CONCLUSION

61. The Defendant's plea was voluntary. The Defendant's trial counsel was not ineffective for failing to compare Mr. Stroud's threats of violence to a surrounded, outnumbered police officer with Mr. Toledo's throwing of a firework. The State did not violate the Defendant's rights under Brady. All of the information that the Defendant alleges was suppressed was in fact publically available on the Court's website and immaterial to the Defendant's case.

62. The individuals involved in the South Willow Street incident were treated fairly and sentenced based on their conduct and nothing more. Mr. Stroud committed a more serious crime and was sentenced accordingly.

WHEREFORE, the State respectfully requests that this Honorable Court:

A. Deny the Defendant's Motion to Withdraw Plea;

B. Schedule a hearing thereon, if necessary; and

C. Grant any such other relief as may be proper and just.

DATED: March 5, 2021

Respectfully Submitted,

/s/ Thomas J. Craig
Thomas J. Craig #269608
Assistant County Attorney

CERTIFICATION

I hereby certify that a copy of the foregoing pleading has this day been sent via e-filing to Donna Jean Brown, Esq., counsel for the defendant.

/s/ Thomas J. Craig
Thomas J. Craig

STATE'S EXHIBIT B

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File Date: 3/1/2021 10:28 AM
Merrimack Superior Court
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THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
http://www.courts.state.nh.us

Court Name: Merrimack Superior Court
Case Name: State v. Dylan Smith
Case Number: 17-CR-1215 Charge ID Number: ____________
(if known)

STATE PRISON SENTENCE

Plea/Verdict: True	
Crime: Probation Violation	Date of Crime: 11/16/2020

A finding of GUILTY/TRUE is entered.

CONVICTION AND CONFINEMENT

☐ A. The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b or of an offense recorded as Domestic Violence. See attached Domestic Violence Sentencing Addendum.

☑ B. The defendant is sentenced to the New Hampshire State Prison for not more than 4 years, nor less than 2 yeaes

There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year.

Pretrial confinement credit: 3 days.

☑ C. This sentence is to be served as follows:

☑ Stand committed ☐ Commencing ____________

☐ ____________ of the minimum sentence and ____________ of the maximum sentence is suspended.

Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing at the request of the State. The suspended sentence begins today and ends _____ years from ☐ today **or** ☐ release on ____________

☐ ____________ of the sentence is deferred for a period of _____ year(s). The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of _____ year(s). Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed, suspended and/or further deferred. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for your arrest.

☐ D. The sentence is ☐ consecutive to case number and charge ID ____________
☐ concurrent with case number and charge ID ____________

☐ E. See Addendum to State Prison Sentence Sexual Offender Assessment and Treatment.

☐ F. See Addendum to State Prison Sentence Substance Use Disorder Assessment and Treatment.

☐ G. The Court recommends to the Department of Corrections:

☐ Screen and/or assess for drug and alcohol treatment needs.

☐ Sentence to be served at House of Corrections

☐ ____________

If required by statute or Department of Corrections policies and procedures, the defendant shall provide a sample for DNA analysis.

PROBATION

☐ A. The defendant is placed on probation for a period of __________ year(s), upon the usual terms of probation and any special terms of probation determined by the Probation/Parole Officer.
Effective: ☐ Forthwith ☐ Upon release from ______________________________
The defendant is ordered to report immediately, or immediately upon release, to the nearest Probation/Parole Office.

☐ B. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.
Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.

FINANCIAL OBLIGATIONS

☐ A. **Fines and Fees:**
Fine of $ ______________, plus a statutory penalty assessment of $ 0.00 __________ to be paid:
☐ Today
☐ By ________________
☐ Through the Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed by DOC for the collection of fines and fees, other than supervision fees.
☐ $ ____________ of the fine and $ _____________ of the penalty assessment is suspended for ________ year(s).
A $25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.

☐ B. **Restitution:**
The defendant shall pay restitution of $ __________________ to ________________________
☐ Restitution shall be paid through the Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.
☐ At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.
☐ Restitution is not ordered because: ______________________________

☐ C. **Appointed Counsel: NOTE:** Financial Obligations, Section C is NOT a term and condition of the sentence.
☐ The Court finds that the defendant has the ability to pay:
counsel fees and expenses in the amount of $ ___________
payable through ___________________________ in the amount of $ _________ per month.
☐ The Court order for repayment is suspended until the time of the defendant's release from state prison.
☐ The Court finds that the defendant has no ability to pay counsel fees and expenses.

____

____

Case Name: State v. Dylan Smith
Case Number: 17-CR-1215
STATE PRISON SENTENCE

OTHER CONDITIONS

- [x] A. The defendant is to participate meaningfully in and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.
- [x] B. Subject to the provisions of RSA 651-A:22-a, the Department of Corrections shall have the authority to award the defendant earned time reductions against the minimum and maximum sentences for successful completion of programming while incarcerated.
- [ ] C. Under the direction of the Probation/Parole Officer, the defendant shall tour the
  - [ ] New Hampshire State Prison
  - [ ] House of Corrections
- [ ] D. The defendant shall perform ______ hours of community service and provide proof to ______________ within ______ ________ of today's date.
- [ ] E. The defendant is ordered to have no contact with ______________________________ either directly or indirectly, including but not limited to contact in-person, by mail, phone, email, text message, social networking sites or through third parties.
- [ ] F. Law enforcement agencies may [ ] destroy the evidence [ ] return evidence to its rightful owner.
- [x] G. The defendant and the State have waived sentence review in writing or on the record.
- [x] H. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
- [x] I. Other:

Probation is Terminated and Supervision Fees are waived.

For Court Use Only

Honorable Andrew R. Schulman
March 1, 2021

STATE'S EXHIBIT C

01/05/2021	**Probation Violation Hearing** (8:30 AM) *Plea Hearing Scheduled* Charges: 5	
01/05/2021	Court Order (Judicial Officer: Schulman, Andrew R) *P&S continued for global with Hills-No -- Env. 1499816*	Index # 66
02/26/2021	Withdrawal *State - George Waldon, Esq.* Party: Prosecutor Merrimack County Attorney	Index # 69
02/26/2021	Appearance *State - Wayne Coull, Esq.* Party: Prosecutor Merrimack County Attorney	Index # 70
03/01/2021	**Plea and Sentencing Hearing** (8:30 AM) *Plea Taken* Charges: 5	
03/01/2021	Sentence Sheet *Sentencing Sheet*	Index # 67
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