IN THE SUPREME COURT OF MISSISSIPPI

No. 2021-CT-01101-SCT

SOWETO RONNELL LOVE

Appellant,

v.

STATE OF MISSISSIPPI

Appellee.

On Appeal from the Circuit Court
of Tate County, Mississippi

BRIEF OF AMERICAN CIVIL LIBERTIES UNION AND AMERICAN CIVIL LIBERTIES UNION OF MISSISSIPPI AS AMICI CURIAE IN SUPPORT OF NEITHER PARTY

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**Pro hac vice motion forthcoming*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

STATEMENT ON ORAL ARGUMENT

Amici the American Civil Liberties Union of Mississippi and the national ACLU respectfully submit that oral argument may be helpful in this case, and they respectfully request that their counsel be afforded the opportunity to present oral argument on behalf of the amici. This case presents legally significant issues that divided the Court of Appeals below. Especially considering that Mr. Love is *pro se* and incarcerated, and that his present challenge presents valid legal issues but also certain potential risks to him, amici believe that their participation in oral argument might assist the Court in crafting a decision that navigates important issues concerning the importance of ensuring that a defendant's guilty plea, and also seeks to ensure that Mr. Love's attempt to vacate his plea is itself knowing, intelligent, and voluntary.

INTRODUCTION

This case arises from appellant Soweto Love's motion to vacate his guilty plea to two habitual-offender crimes that each carried five-year mandatory minimum sentences. Because defendants relinquish constitutional rights when they plead guilty, their pleas are considered involuntary, and thus invalid, unless they are informed of any applicable mandatory minimum sentence. *See Vittitoe v. State*, 556 So. 2d 1062, 1064–65 (Miss. 1990). Here, before pleading guilty, Mr. Love was never told that he would receive two five-year mandatory minimum sentences. Instead, at his plea hearing, the circuit court incorrectly said that the applicable mandatory minimum sentence was only one year on each count.

Yet the circuit court denied Mr. Love's motion for post-conviction relief, and a divided Court of Appeals affirmed. The Court of Appeals majority reasoned that Mr. Love could have inferred that he would receive a five-year sentence on each count because, in his plea petition, he acknowledged having two prior convictions and referred to the possibility that he "may" be sentenced to the statutory maximum. But that is far short of what the law requires. It is not enough to give defendants a trail of breadcrumbs that, if followed, *might* lead them to the realization that their mandatory minimum sentence is not one year but actually five years per count. They must instead be told, before pleading guilty, of the actual minimum sentences they face. That did not happen here.

Amici, who are the ACLU of Mississippi and the national ACLU, submit this brief to demonstrate that Mr. Love's plea was involuntary, but also to raise a concern about the relief he is seeking. Amici respectfully suggest that, before issuing any order that would restore Love's plea of not guilty, the Court take steps to ensure that Mr. Love—who is *pro se*—is informed of the charge and sentence exposure he might face if his guilty plea were to be vacated and the initial charges revived. This Court could, for example, remand the case with instructions for the

circuit court to restore Mr. Love's plea of not guilty only after that court inquires as to whether Love appreciates the risks of that outcome. In short, just as Mr. Love should have been informed of the consequences of pleading guilty before entering that plea, he should be informed of the consequences of pursuing post-conviction relief.

INTEREST OF AMICI CURIAE

The American Civil Liberties Union ("ACLU") is a nationwide, nonprofit, nonpartisan organization with nearly two million members and supporters dedicated to protecting the principles embodied in the state and federal Constitutions and our nation's civil rights laws. The ACLU of Mississippi, founded in 1969, is its statewide affiliate and is committed to the same mission. Amici have a longstanding interest in explaining and defending constitutional rights at different stages of a criminal case.

STATEMENT OF THE CASE

I. Mr. Love's plea and sentence

In January 2018, Mr. Love was indicted on six charges relating to an alleged attempt to obtain Oxycodone from a pharmacy in 2017. R. 25–27. On August 29, 2018, citing seven prior felony convictions sustained by Mr. Love, the State moved to amend the indictment to charge him as a habitual offender and as a recidivist under Miss. Code Ann. § 99-19-81 and § 41-29-147. R. 42–45. The motion was granted. R. 46–47. At the time of Mr. Love's alleged offenses, the habitual-offender statute provided:

> Every person convicted in this state of a felony who shall have been convicted twice previously of any felony or federal crime upon charges separately brought and arising out of separate incidents at different times and who shall have been sentenced to separate terms of one (1) year or more in any state and/or federal penal institution, whether in this state or elsewhere, shall be sentenced to the maximum term of imprisonment prescribed for such felony, and such sentence shall not be reduced or suspended nor shall such person be eligible for parole or probation.

Miss. Code Ann. § 99-19-81 (West 2014).

By the time the State charged Mr. Love as a habitual offender, the habitual-offender statute had been amended to require that the defendant be sentenced to the statutory maximum "unless the court provides an explanation in its sentencing order setting forth the cause for deviating from the maximum sentence . . . ." Miss. Code Ann. § 99-19-81 (West 2018). But, by law, Mr. Love was still subject to the prior, harsher version of the statue. *See* Miss Code Ann. § 99-19-1; *Wilson v. State*, 194 So. 3d 855, 874 (¶61) (Miss. 2016) ("Section 99-19-1 clearly requires the trial court to sentence an offender under a sentencing statute in place at the time of the crime.").

In September 2019, Love and his then-counsel executed a "Petition to Enter Plea of Guilty" to two counts of the indictment. R. 48–54. The plea petition purported to state that Mr. Love had been "informed . . . as to the maximum and minimum punishment which the law provides for the offense charged in the indictment." R. 50. Specifically, the petition asserted that maximum sentence was five years for each count and that the minimum sentence was one year for each count. *Id.* But the petition was not accurate. Due to the habitual-offender charge, the minimum sentence on each count, as well as the maximum, was five years' imprisonment.

Elsewhere, the petition acknowledged that "defendants who are sentenced as habitual offenders" are ineligible for parole. R. 51. But it nowhere acknowledged that defendants sentenced as habitual offenders, under the pre-2018 law, were automatically sentenced to the statutory maximum. To the contrary, the petition stated that, if Love had previously been convicted of two or more felonies and had been sentenced to separate terms of at least one year of imprisonment, then he "*may* be sentenced to the maximum term of imprisonment." R. 52 (emphasis added). The petition nowhere acknowledged that Love had in fact been charged as a habitual offender and, in consequence of his plea, would automatically be sentenced to the statutory maximum term for each count.

The circuit court held a plea hearing on September 16, 2019. Like the petition, the circuit court told Mr. Love that his maximum punishment was five years on each count and his "minimum punishment [was] one year on each count." R. 64. The circuit court also seemed to indicate that it could impose "whatever sentence" it might choose between the one-year minimum and the five-year maximum. R. 65. Again, this was incorrect. As a habitual offender, Mr. Love's minimum sentence on each count, as well as his maximum, was five years' imprisonment. During the plea hearing, the circuit judge did not mention the habitual-offender statute. Nor did the State mention either the habitual-offender statute or Mr. Love's prior felony convictions. R. 57–59.

Mr. Love was sentenced on October 26, 2020. Sentence/Contempt of Ct. Hr'g Tr. (Cir. Ct. of Tate Cnty., Oct. 26, 2020) 5:4–5. The State asserted that Mr. Love had "pled as a recidivist and as a habitual offender." *Id.* at 6:26–28. Mr. Love argued, among other things, that he believed he had "signed a waiver . . . saying that I wouldn't be charged as a habitual offender." *Id.* at 9:13–10:2. The circuit judge sentenced Love to the mandatory minimum term of five years' imprisonment, to be served consecutively on each of the two counts of conviction. *Id.* at 16:26–29, 17:2–18:2.

II. Mr. Love's post-conviction challenge

In March 2021, Mr. Love filed a *pro se* motion for post-conviction relief ("PCR"). R. 7–15. In his PCR motion, Mr. Love argued multiple times that his plea was involuntary and requested an evidentiary hearing. R. 10, 13. Among other things, Mr. Love argued that his plea had been involuntary, R. 10, and that "[h]e could not have been sufficiently informed of the maximum and minimum sentences of the offense." R. 11.

The circuit court denied relief on August 26, 2021. R. 30–38. The court ruled that Mr. Love's guilty plea had been knowing, voluntary, and intelligent because, among other things,

"Love understood . . . the minimum and maximum sentence that Mr. Love could receive for each charge that he was pleading guilty to." R. 32. In support of that ruling, the court excerpted the portion of the plea hearing in which it had told Mr. Love that "[t]he minimum punishment [was] one year on each count." R. 35.

Again, that was not correct. Mr. Love's minimum sentence, as a habitual offender, was five years' imprisonment on each count. In fact, in ruling on Mr. Love's PCR, the circuit court acknowledged that it had sentenced Love to "five (5) years' incarceration" on each count, "as a Section 99-19-81 habitual offender." R. 31.

III. Mr. Love's appeal

Mr. Love appealed. In his *pro se* appellate brief, Love repeatedly argued that his plea was involuntary, App. Br. at 3, 5–8. For example, he argued that he "did not have [the] knowledge" of "what might happen to him in the sentencing phase as a result of having entered the plea of guilty," *id.* at 7, and that "it was impossible for the trial court to find that [he] understood . . . the maximum and minimum penalties provided by law." *Id.*

The State argued that Love had waived various arguments, including his argument about the voluntariness of his plea, but none of the judges of the en banc Court of Appeals endorsed that waiver argument. The Court of Appeals majority noted that Mr. Love had raised the voluntariness issue in the PCR motion, and that the "[c]ircuit court ultimately ruled on whether Mr. Love understood the minimum and maximum sentences for each charge." Slip op. at 7 (¶13).

On the merits, the Court of Appeals split 6 to 4, with the majority voting to affirm the denial of Mr. Love's post-conviction motion. The majority reasoned that, in his plea petition, Mr. Love had "[a]cknowledged that he had previously been convicted of two felonies," and that "[t]he petition explained who qualified as a habitual offender and the consequences of pleading guilty as a habitual offender." *Id.* at 8–9 (¶15). In explaining which "consequences" Mr. Love

had acknowledged, the majority pointed to the portion of the plea petition in which Love had said that "if I am convicted of *another felony*, then I *may* be sentenced to the maximum term of imprisonment" for each count. *Id.* at 9 (¶15) (emphasis added).

Four judges dissented. *Id.* at 12. They pointed out that nowhere during the plea was Mr. Love advised or did he acknowledge that he was pleading as a habitual offender. *Id.* at 14, 15. Nor, at sentencing, did the State "[r]ecite any prior felony conviction to support a finding that Mr. Love was a habitual offender." *Id.* at 14 (¶26). The dissent pointed out that although the plea petition said that Mr. Love "may face enhanced sentences in the future," he was not informed "of the consequences of his plea in the present case, i.e., that *he would be sentenced to the maximum punishment for the offenses* without eligibility for parole." *Id.* at 18 n.8 (emphasis added).

Mr. Love petitioned this Court for a writ of certiorari, which this Court granted on March 4, 2024. Mr. Love did not file a supplemental brief as authorized under Mississippi Rule of Appellate Procedure 17(h).

SUMMARY OF ARGUMENT

I. Mr. Love's challenge to the voluntariness of his plea has not been waived. He has consistently raised that argument in his post-conviction papers, and both the circuit court and the Court of Appeals addressed it.

II. Mr. Love's plea was not knowing, voluntary, and intelligent. As a matter of constitutional law and criminal procedure, a defendant cannot plead guilty and waive his trial rights unless he understands the maximum and minimum penalties prescribed by law. *See Boykin v. Alabama*, 395 U.S. 238, 243–44 (1969); *Chunn v. State*, 669 So. 2d 29, 32 (Miss. 1996) (en banc); MRCrP 15.3(d)(2). Here, Mr. Love was incorrectly told that the minimum penalty prescribed by law was one year of imprisonment on each of the two counts to which he pled guilty. In fact, the minimum penalty was five years' imprisonment on each count. His plea was

therefore involuntary as a matter of law. *See Vittitoe*, 556 So. 2d at 1065; *Wrenn v. Stat*e, 207 So. 3d 1252, 1257 (¶15) (Miss. Ct. App. 2017).

III. Given Mr. Love's *pro se* status and given that vacating his plea could expose him to greater punishment—through the resuscitation of previously dismissed charges—amici respectfully suggest that this Court exercise its discretion to remand this case with instructions for the circuit court. Specifically, the circuit court could be instructed to vacate Mr. Love's guilty plea and restore his not guilty plea only after taking steps to ensure that Mr. Love understands the risks of that result and wishes to vacate his plea notwithstanding those risks.

ARGUMENT

I. Mr. Love's challenge to the voluntariness of his plea has not been waived.

In its supplemental brief to this Court, the State argues that Mr. Love has waived some aspect of his challenge to the voluntariness of his plea. The most significant aspect of Mr. Love's challenge to the voluntariness of his plea is his claim that his plea was involuntary because he was not informed that it would yield mandatory sentences of five years' imprisonment on each count. For two reasons, that claim is fully preserved for this Court's review.

First, Mr. Love challenged the voluntariness of his plea in his PCR motion, his brief to the Court of Appeals, and his petition to this Court. The PCR motion argued that Mr. Love "could not have been sufficiently informed of the maximum and minimum sentences of the offense[.]" R. 10; Slip. Op. at 6. On appeal, he argued that "it was impossible for the [circuit] court to find that [he] understood the nature and consequences of the plea, and the maximum and minimum penalties provided by law." App. Br. at 7; Slip. Op. at 6–7. Those arguments put the circuit court, the Court of Appeals, and the State on notice that Love was challenging his plea because, among other asserted reasons, he did not know that he would receive a mandatory ten-year sentence.

Particularly for a *pro se* litigant, that was sufficient. In *Hannah v. State*, 943 So. 2d 20 (Miss. 2006), this Court adjudicated a *pro se* defendant's ineffective assistance of counsel and voluntariness of plea claims on the merits, although they were only mentioned twice in the summary. *Id.* at 23 n.1. The Court "credit[ed] not so well pleaded allegations, so that a prisoner's meritorious complaint may not be lost because inartfully drafted." *Id.*; *see also Abdul-Alim Amin v. Universal Life Ins. Co. of Memphis, Tenn.*, 706 F.2d 638, 640 n.1 (5th Cir. 1983) (refusing to dismiss a *pro se* party's appeal because "his brief, liberally construed, contains an assertion of trial court error"). More generally, this Court affords latitude to incarcerated individuals seeking review of claims implicating liberty interests. *See, e.g.*, *Sinko v. State*, 192 So. 3d 1069, 1073 (¶12) (Miss. Ct. App. 2016) (addressing an inmate's claim that he's eligible for parole, raised first time on appeal, because it is "an important [issue] that deserves prompt resolution."); *Wheat v. Thigpen*, 793 F.2d 621, 625 (5th Cir. 1986) (observing that Mississippi courts, in post-conviction review, often review claims that the defendants could have but did not raise in direct appeal).

Second, because the Court of Appeals "actually considered and decided" the question whether Mr. Love's plea was voluntary, it is an "elementary rule that it is irrelevant to inquire how and when" the question was raised. *Manhattan Life Ins. Co. of New York v. Cohen*, 234 U.S. 123, 134 (1914); *see also Orr v. Orr*, 440 U.S. 268 (1979) (adjudicating a litigant's unexcused tardy claim, raised late in the state court litigation and may well be procedurally barred, because the state court had "actually considered and decided" the question); *Harris v. Reed*, 489 U.S. 255 (1989) (reversing the circuit court's refusal to adjudicate a late claim as procedurally barred, because the Illinois appellate court had adjudicated it).

In short, Mr. Love has properly challenged the voluntariness of his plea, the Court of Appeals addressed it, and the State has briefed it. The issue is not waived.

II. Mr. Love's plea was involuntary because he was misinformed of the minimum sentence.

Mr. Love's plea was not knowing, voluntary, and intelligent because he was never informed of, and was affirmatively misinformed of, the applicable mandatory minimum sentence.

A. A defendant must be advised of any applicable mandatory minimum sentence.

"A plea of guilty constitutes a waiver of some of the most basic rights of free Americans, those secured by the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States, as well as those comparable rights secured by Sections 14 and 26, Article 3, of the Mississippi Constitution of 1890." *Tiller v. State*, 440 So. 2d 1001, 1005 (Miss. 1983). For that reason, a guilty plea is itself unconstitutional absent an affirmative showing that it was intelligent and voluntary. *See Boykin v. Alabama*, 395 U.S. 238, 243–44 (1969); *Chunn v. State*, 669 So. 2d 29, 32 (Miss. 1996) (en banc); *Alexander v. State*, 605 So. 2d 1170, 1172 (Miss. 1992). A trial court must "make sure [the accused] has a full understanding of what the plea connotes and of its consequence." *Boykin*, 395 U.S. at 244.

In Mississippi, this constitutional mandate is codified in the Rules of Criminal Procedure, which provide that "it is the duty of the trial court . . . to inquire and determine . . . [t]hat the accused understands the nature and consequences of the plea, and the maximum and minimum penalties provided by law." MRCrP 15.3(d)(2). Under this framework, "[w]hen the circuit court fails to advise the defendant of the applicable maximum and minimum sentences, the defendant's guilty plea must be vacated . . . unless the defendant received that information from some other source, such as his attorney." *Wrenn v. Stat*e, 207 So. 3d at 1257 (¶15) (citation omitted); *see also Drennan v. State*, 695 So. 2d 581, 586 (Miss. 1997).

A trial court's duty to ensure that the accused understands "the maximum and minimum penalties provided by law" is vitally important where, as here, the defendant has been charged with offenses carrying mandatory minimum penalties. It is not enough to ask whether the defendant "ha[s] been advised of the . . . minimum sentences that he could receive for each of the offenses"—without saying what those sentences *are*—because that would be "tantamount to asking an accused whether he had been advised of his constitutional rights, without enumerating those rights." *Ward v. State*, 708 So. 2d 11, 16 (¶¶27–29) (Miss. 1998). Thus, the applicable mandatory minimum sentence is "one of this State's important expressions of what an accused should know before he waives trial and pleads guilty." *Vittitoe v. State*, 556 So. 2d 1062, 1065 (Miss. 1990).

For example, in *Vittitoe*, this Court held that the defendant's plea was involuntary because the trial judge failed to inform him of an applicable three-year mandatory minimum sentence. 556 So. 2d at 1065. Although the trial judge imposed a 25-year sentence that fell far above the three-year minimum, Vittitoe he testified that he would not have pled guilty if he had known of the minimum, and this Court set aside his plea. *Id.* at 1063–65. The Court reasoned that "[b]ecause Vittitoe was ignorant of the mandatory minimum sentence for the charge to which he was pleading and stated that he would not have pled had he known this information, it cannot be said that his plea was 'voluntarily and intelligently made.'" *Id.* at 1065.

Likewise, in *Wrenn*, the Court of Appeals applied those principles to a habitual-offender prosecution. 207 So. 3d at 1257 (¶15). There, the defendant pled guilty to a gun charge as a habitual offender under Miss. Code Ann. § 99-19-81, and the trial judge imposed a mandatory minimum sentence of 10 years' imprisonment. *Id.* at 1255 (¶8). Wrenn's plea petition expressly acknowledged the statutory charges against him, including § 99-19-81. *Id.* at 1254 (¶4). Moreover, at his plea hearing, the judge specifically told Wrenn that he was "offering a plea

under the habitual criminal statute," which "provide[d] for enhanced punishment." *Id.* at 1254 (¶5). Thus, unlike Mr. Love, Wrenn both acknowledged (in his plea petition) and was told (in his plea hearing) that he was pleading guilty under the habitual-offender statute.

But the Court of Appeals vacated Wrenn's plea. It reasoned that Wrenn had been "misinformed" of the applicable minimum sentence at his plea hearing, where the circuit court said that "*the minimum punishment is one year in prison*." *Id.* at 1255 (¶4), 1257 (¶16) (emphasis added). The court added that "the same misinformation—that the applicable minimum sentence was one year in prison—was also set out in Wrenn's petition to plead guilty." *Id.* at 1257 (¶16). That misinformation, the court explained, was not cured by the fact that "the circuit court warned [Wrenn] that he *could* receive the maximum sentence provided for by law," because, "by advising Wrenn that he *might* receive the statutory maximum, the circuit court only reinforced its prior misstatements that Wrenn was eligible to be sentenced to anything less." *Id.* at 1259 (¶21) (emphasis in original).

B. Mr. Love was not advised of the applicable mandatory minimum sentence.

Under the reasoning of this Court in *Vittitoe* and the Court of Appeals in *Wrenn*, Mr. Love's plea was involuntary because he was given incorrect information about the applicable mandatory minimum sentence. In fact, the similarities between this case and *Wrenn* are striking.

As in *Wrenn*, Mr. Love was charged as a habitual offender under § 99-19-81. And as in *Wrenn*, because Mr. Love's alleged offenses before the habitual-offender statute was modified in July 2018, the circuit court had no discretion to impose a sentence below the statutory maximum. *See* Miss Code Ann. § 99-19-1. Yet, again as in *Wrenn*, Mr. Love's plea petition incorrectly said that "[t]he minimum punishment is 1 year each count," R. 50, and the circuit court incorrectly said at the plea hearing that Mr. Love's "minimum punishment [was] one year on each count,"

R. 64. These statements left Mr. Love not just "ignorant of the mandatory minimum sentence for the charge to which he was pleading," *see Vittitoe*, 556 So. 2d at 1065, but "erroneously advised" as to the mandatory minimum, *see Wrenn*, 207 So. 3d at 1259 (¶22).

Although the Court of Appeals below concluded that Mr. Love's plea was voluntary because, his plea petition said that Mr. Love "*may* be sentenced to the maximum term of imprisonment" for each count," that conclusion cannot be squared with the Court of Appeals' own prior decision in *Wrenn*. *See* slip op. at 9 (¶15). As *Wrenn* shows, "by advising [Love] that he *might* receive the statutory maximum, the circuit court only reinforced its prior misstatements that [Mr. Love] was eligible to be sentenced to anything less." *Wrenn*, 207 So. 3d at 1259 (¶21). What is more, as the dissenting justices explained below, the plea petition's reference to the possibility that Mr. Love "may be sentenced to the maximum" appears to have been referencing some possible "enhanced sentences in the future," rather than "the consequences of [Mr. Love's] plea in the present case." Slip op. at 18 n.8. This case is therefore quite unlike cases in which defendants have made statements establishing their awareness of mandatory minimum sentences. *See Willis v. State*, 321 So. 3d 584, 588 (¶10) (Miss. Ct. App. 2021) (plea was not involuntary where plea petition acknowledged that "the only possible sentence is LIFE WITHOUT THE POSSIBILITY OF PAROLE"); *Duncan v. State*, 315 So. 3d 1075, 1079 (¶13) (Miss. Ct. App. 2020) (holding that habitual-offender plea was voluntary where defendant "had previously been found to be a habitual offender," and at sentencing the defendant himself said, "'Just go on and give me the 5 years'").

The simple truth is that "[a]t no time during his plea colloquy did the court inform [Mr. Love] of the ten-year mandatory minimum sentence" that he would receive by virtue of the five-year mandatory minimum sentences on the two counts to which he was pleading guilty. *Wrenn*, 207 So. 3d at 1259 (¶22). Moreover, as far as amici are aware, the post-conviction

proceedings in this case have not produced any evidence that, before pleading guilty, Mr. Love learned about the mandatory minimum sentences from some other source, like his attorney. This record renders Mr. Love's plea involuntary as a matter of law. *See Vittitoe*, 556 So. 2d at 1065.

III. The Court should exercise its discretion to ensure that Mr. Love's current course of action is knowing, voluntary, and intelligent.

Where, as here, a defendant establishes that he was not advised of the applicable minimum penalty before pleading guilty, this Court may "reverse the judgment below, restore [the defendant's] plea of not guilty . . . and remand for such further proceedings as may be appropriate." *Vittitoe*, 556 So. 2d at 1065. But, on the record in this case, amici respectfully suggest that, instead of immediately restoring Mr. Love's plea of not guilty, this Court may wish to remand with instructions for the circuit court to restore Mr. Love's plea of not guilty *only after taking steps to ensure that Mr. Love understands the risks of that result*.

This kind of remand, with instructions, is warranted here for two reasons. First, it seems possible that Mr. Love will risk substantial additional exposure if his guilty plea is vacated and the original charges—including both habitual-offender and recidivist charges—are resuscitated. Second, Mr. Love is *pro se*, and thus it is unclear whether anyone has advised him of the risks associated with his PCR motion. In short, just as it is mandatory to ensure that a defendant's plea is knowing, voluntary, and intelligent, it would at least be prudent to ensure that a defendant's effort to vacate his plea is knowing, voluntary, and intelligent.

Such a remand would be within the scope of this Court's authority. When defendants seek to withdraw their guilty pleas, and thus risk the punishments associated with their initial charges, courts sometimes exercise their discretion to ensure that the defendants understand the risks

associated with withdrawing their pleas.[1] Here, similarly, this Court could exercise its own discretion to require, or at least to urge, the circuit court on remand to make such an inquiry of Mr. Love, and to restore Mr. Love's plea of not guilty if, but only if, he wishes to proceed despite the risks. *Cf. Goldsby v. State*, 124 So. 2d 297, 300 (Miss. 1960) ("[The Supreme Court of Mississippi] has the responsibility to supervise the administration of criminal justice in the state courts . . . .").

CONCLUSION

For the reasons set forth above, this Court should hold that Mr. Love's plea was involuntary but take steps to ensure that Mr. Love is appropriately advised as to his potential charge and sentence exposure before his prior plea of not guilty is restored.

THIS the 9th day of May 2024.

[1] *See, e.g.*, *Rubio v. United States*, Nos. 8:04 CV 248 T 27MCC, 8:00 CR 196 T 27MSS, 2006 WL 2038537, *4 (M.D. Fla. July 19, 2006) (where defendant sought to withdraw plea over counsel's objection, the state trial court judge expressly asked him "Do you understand that the consequences of that may very well result in a conviction and a sentence that would be at least as severe as what is now proposed . . . but may very well be more severe. . . ?"); *People v. Pitts*, No. 5-17-0283, 2021 WL 1611877, *5 (Ill. Ct. App. Apr. 26, 2021) (defense counsel asked defendant on direct whether he "understood the court could impose a longer prison sentence if his motion [to withdraw plea] was granted"); *State v. Benson*, No. 80159-7-I, 2020 WL 6557961, *1 (Wash. Ct. App. Nov. 9, 2020) (stating that trial court held off ruling on defendant's motion to withdraw his guilty plea until defendant "[h]ad the opportunity to consult with [counsel] about the possible adverse consequences of withdrawing the guilty plea"); *State v. Metzger*, No. 115,056, 2017 WL 2838268, at *8–9 (Kan. Ct. App. June 30, 2017) (reversing conviction and remanding to allow withdrawal of plea because the defendant was not informed of his mandatory life post-release supervision, when the defendant "has been fully informed of the potentially adverse consequences of withdrawing his pleas," that he would be forgoing a favorable plea bargain, "charged with the original charges in both the cases," and if he gets convicted he may have to serve more time).

Respectfully submitted,

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**Pro hac vice motion forthcoming*

CERTIFICATE OF SERVICE

I, Joshua Tom, hereby certify that I electronically filed the foregoing document with the Clerk of the Court using the MEC system which sent notification of such filing to all counsel of record on this 9th day of May 2024.

A true and correct copy has also been sent by U.S. Mail to the Honorable Judge Gerald W. Chatham Sr., Tate County Circuit Court, 201 S. Ward Street, Senatobia MS 38668 on this 9th day of May 2024.

/s/ Joshua Tom
Joshua Tom