

Memorandum of Law in Support of Petition

Table of Contents

Title	Page No.:
Procedural History	1
Statement of Facts	2-3
Legal Standards	3-7
POINT I. Plea Result in a Manifest Injustice Requiring Withdrawal (State v. Slater)	7-11
POINT II. Trial Counsel's Actual Conflict of Interest Violated Defendant's Sixth Amendment Rights (Cuyler/ Chesson/ Murray)	11-15
	16-22
POINT III. Ineffective Assistance of Counsel (Strickland/ Fritz) - Counsel's Deficient Performance Prejudiced the Defense	
POINT IV. The Prosecution of a Civil Wage Dispute as a Criminal Matter Violated Fundamental Fairness	22-26
POINT V. Brady/ Giglio Violations and Newly Discovered Evidence Require Reversal	27-32
POINT VI. Inhumane Jail Conditions Coerced the Plea, <u>Undermining</u> Its Voluntariness	32-36
Conclusion	36-37

Procedural History

Petitioner Devon Barber incorporates by reference the procedural history set forth in his Verified Petition (see Verified Petition ififl-4). In summary, Mr. Barber pled guilty on October 26, 2022 to two third-degree offenses (aggravated assault and terroristic threats) under a single plea agreement that resolved Indictment Nos. 22-09-01413-1 and 22-10-01440-1. He was sentenced on January 4, 2023 to concurrent three-year probation terms, with all other charges dismissed. No direct appeal was taken (appeal rights were waived). This is Mr. Barber's first PCR petition, filed within five years of conviction and thus timely under R. 3:22-12. There are no prior PCR proceedings or appeals on these issues.

Statement of Facts

The relevant facts are detailed in Mr. Barber's Certification (attached as Exhibit B) and summarized here for context. In 2022, Mr. Barber was employed by the alleged victim (J.H.) to assist in rehabilitating a house. A dispute arose when J.H. failed to pay Mr. Barber's wages. On July 11, 2022, after attempts to collect payment, Mr. Barber posted a **mechanic's lien notice** on the property, asserting a claim via his business *Tiller-stead LLC*. An altercation later occurred at the site: J.H. and others confronted Mr. Barber, who was retrieving his tools. Police arrived to find Mr. Barber holding a crowbar, which he immediately surrendered. J.H. claimed Mr. Barber had assaulted him and made a violent threat, allegations Mr. Barber denies. Mr. Barber was arrested and spent over three months in pretrial detention at Atlantic County Justice Facility. During detention, Mr. Barber experienced **severe overcrowding and deplorable conditions** (triple-bunking, unsanitary environment, threats of violence) that caused him significant distress. Ultimately, under pressure of these conditions and on advice of counsel, Mr. Barber pled guilty to obtain release on probation. He allocuted to the charges as instructed, but maintains that his

plea was not truly voluntary and that he is *factually innocent* of any intentional injury or unlawful threat.

Crucial evidence supporting Mr. Barber's position was not presented or disclosed at the time of the plea. For example, communications about the wage dispute (showing Mr. Barber's intent was to get paid, not to extort) were never utilized. Witness accounts indicating Mr. Barber did not initiate violence were not explored. And the **notice posted on the property** - a key piece of evidence - was mischaracterized by the State as a sign of criminal intent, when in fact it was related to a lawful debt claim.

In addition, since the plea, **new evidence** has emerged: a witness certification corroborating Mr. Barber's lack of intent to harm, prior instances of the victim withholding pay from others (impeaching his motives), and official reports documenting the egregious jail conditions at Atlantic County Jail in 2022. These facts establish the basis for the legal arguments below. Mr. Barber contends that enforcement of his plea under these circumstances would be a miscarriage of justice.

Legal Standards

Post-Conviction Relief (PCR): PCR is "New Jersey's analogue to the federal writ of habeas corpus," designed to ensure that a defendant was not unjustly convicted. A first PCR petition is a defendant's last opportunity to raise constitutional or jurisdictional errors that were not addressed on direct review. *State v. Preciose* emphasizes that PCR courts should grant evidentiary hearings where the defendant presents a *prima facie* case for relief. The facts must be viewed in the light most favorable to the petitioner in determining whether an evidentiary hearing is warranted. A petitioner bears the burden of proving his claims by a preponderance of the evidence. *Preciose*, 129 N.J. at 459.

Under *Rule 3:22-2*, a conviction may be attacked if: (a) it was obtained in violation of the federal or state constitution, (b) the court lacked jurisdiction, or (c) the sentence was not authorized by law or is otherwise open to collateral attack. Mr. Barber's claims primarily invoke subsection (a) - constitutional violations (ineffective assistance, involuntariness of plea, due process violations) - and also implicate (b) and (c) to the extent fundamental fairness and legality of the proceedings are at issue.

Manifest Injustice Standard (Withdrawal of Plea): After sentencing, a guilty plea may be withdrawn only to correct a "manifest injustice." *R. 3:21-1; State v. Slater*, 198 N.J. 145, 157 (2009). This is a higher standard than the pre-sentencing "interest of justice" standard. In *Slater*, the New Jersey Supreme Court established a **four-factor test** to evaluate post-sentence plea withdrawal motions:

1. Whether the defendant has asserted a colorable claim of innocence.
2. The nature and strength of the reasons for withdrawing the plea.
3. The existence of a plea bargain (i.e., whether the plea was part of an agreement).
4. Whether withdrawal would result in unfair prejudice to the State or unfair advantage to the defendant.

No single Slater factor is mandatory or dispositive; all factors are considered and balanced. The burden is on the defendant, but where the factors in favor of withdrawal are substantial and prejudice to the State is minimal, leave to withdraw "should generally be granted" to avoid injustice. Notably, a post-sentence withdrawal is discretionary with the court, but an abuse of that discretion occurs if a manifest injustice is shown and relief is nonetheless denied.

Ineffective Assistance of Counsel: Claims of ineffective assistance are governed by the two-pronged test of *Strickland v. Washington*, 466 U.S. 668 (1984), adopted in New Jersey by *State*

v. Fritz, 105 N.J. 42 (1987). A defendant must demonstrate: (1) that counsel's performance was deficient, falling below an objective standard of reasonable professional conduct; and (2) that the deficiency prejudiced the defense, meaning there is a reasonable probability that, but for counsel's errors, the result would have been different. In the plea context, prejudice means there is a reasonable probability that, but for counsel's unprofessional errors, the defendant would not have pled guilty and would have insisted on going to trial (*Hill v. Lockhart*, 474 U.S. 52, 59 (1985)). New Jersey courts recognize a strong presumption of counsel's competence, but that presumption can be overcome by specific evidence of substantial lapses by counsel. A successful Strickland/Fritz claim satisfies *R. 3:22-2(a)* as a constitutional deprivation.

Conflict of Interest (Cuyler Standard): When a defendant's attorney has an actual conflict of interest that adversely affected the representation, it violates the Sixth Amendment independently of Strickland's prejudice prong. Under *Cuyler v. Sullivan*, 446 U.S. 335 (1980), if a defendant shows that an actual conflict **adversely affected** counsel's performance, prejudice is presumed and the conviction must be reversed. New Jersey courts similarly hold that a defendant is entitled to conflict-free counsel, and a conflict that substantially taints the attorney's strategic decisions constitutes a denial of effective assistance. In *State v. Bellucci*, for example, the Supreme Court of New Jersey noted that a potential conflict must be "substantial" and have affected the defense for relief to be warranted. *State v. Murray*, 162 N.J. 240 (2000), though dealing with a time-bar issue, reaffirmed that a serious attorney conflict can amount to a fundamental injustice. Importantly, a retained counsel is held to the same standard as appointed counsel in this regard.

Brady/Giglio Violations: *Brady v. Maryland*, 373 U.S. 83 (1963) established that the prosecution's suppression of evidence favorable to the accused violates due process where the evidence is material to guilt or punishment. *Giglio v. United States*, 405 U.S. 150 (1972)

extended this principle to impeachment evidence affecting the credibility of key witnesses.

Evidence is "material" if there is a reasonable probability that disclosure would have changed the outcome of the proceeding. A Brady violation, once established, merits relief under *R. 3:22-2(a)* because it is a constitutional infringement on the right to a fair trial (or fair plea process). In the plea context, the Supreme Court has held that Brady applies as well - nondisclosure of material exculpatory information can render a plea involuntary or unintelligent (*United States v. Ruiz*, 536 U.S. 622 (2002), albeit noting that certain impeachment evidence need not be disclosed pre-plea). New Jersey's courts have similarly recognized that **prosecutors must disclose exculpatory evidence prior to a plea** and that a failure to do so can warrant PCR if the defendant was prejudiced (see, *e.g.*, *State v. Bell*, 217 N.J. 336 (2014)). The standard for materiality in the plea scenario is whether there is a reasonable probability that, but for the suppression of the evidence, the defendant would have refused the plea and gone to trial.

Newly Discovered Evidence: To obtain relief based on newly discovered evidence (whether a new trial or other remedy), the defendant must satisfy a three-prong test: **(1)** the evidence is material to the issue and not merely cumulative, impeaching, or contradictory to what was presented before; **(2)** the evidence was discovered after the guilty plea (or trial) and was not discoverable earlier with reasonable diligence; and **(3)** the evidence would probably change the outcome if a new trial were held (see *State v. Carter*, 85 N.J. 300,314 (1981); *State v. Nash*, 212 N.J. 518, 549 (2013)). In PCR posture, newly discovered evidence that meets this test can establish a claim under *R. 3:22-2(a) 01- (d)* (if the evidence could not reasonably have been raised earlier). Relief may include vacating the conviction and allowing withdrawal of the plea to let the new evidence be evaluated by a fact-finder.

Involuntariness/Coercion: A guilty plea is valid only if it represents a voluntary and intelligent choice among the alternatives. *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). Rule 3:9-2 requires the court, before accepting a plea, to ensure there is a factual basis and that the plea is made voluntarily, "**not as a result of any threats or of any promises or inducements not disclosed on the record,**" and with an understanding of the charge and consequences. If a plea is the product of coercion - whether by direct threats, improper promises, or oppressive circumstances - it is involuntary and unconstitutional. Courts have recognized that *psychological and physical pressures* can render a plea involuntary (see, e.g., *State v. Magee*, 222 N.J. 164 (2015), noting that a defendant's personal characteristics and external pressures are relevant to voluntariness). In Mr. Barber's case, the combination of being jailed in harsh conditions and being pressured by conflicted counsel and the prosecution must be evaluated to determine if his plea was truly voluntary. If not, fundamental fairness and due process demand that the plea be set aside.

With these standards in mind, Petitioner now presents his legal arguments for relief.

POINT I: Withdrawal of the Guilty Plea is Necessary to Correct a Manifest Injustice Under *State v. Slater*

Mr. Barber's plea should be vacated because enforcing it would perpetuate a manifest injustice. The four *Slater* factors, considered in totality, weigh heavily in favor of allowing him to withdraw his guilty plea:

1. Colorable Claim of Innocence: From the outset and consistently throughout PCR, Mr. Barber has asserted his innocence of any *intentional* crime. He does not dispute that an altercation occurred, but he avers that he neither purposefully caused injury nor threatened violence - critical intent elements of the convicted offenses. In his sworn certification, Mr.

Barber explains that any injury to J.H. was accidental or precipitated by J.H.'s aggression, and that his statements were misconstrued demands for payment, not threats to commit harm. This is not a mere "bald assertion" of innocence; it is supported by specific facts: the absence of any weapon use aside from holding a work tool, the content of pre-dispute communications about money, and the lack of any direct threat language (no witness heard Mr. Barber explicitly threaten to kill or inflict violence, aside from the victim's contested account). The Judgments of Conviction even note that Mr. Barber *"believed he was owed money and was attempting to take ownership of the property through his Sovereign Citizenship"*, confirming that the entire genesis was a financial dispute, not an intent to terrorize. This factor strongly favors withdrawal - Mr. Barber has maintained a colorable innocence claim consistently (even at sentencing, he attempted to explain he felt "railroaded," akin to Slater's protestations).

2. Nature and Strength of Reasons for Withdrawal: Mr. Barber's reasons are compelling. He alleges that his plea was the product of multiple serious problems: (a) ineffective assistance of counsel (discussed in Point 111) including counsel's failure to investigate and his coercive pressure; (b) an actual conflict of interest on the part of counsel (Point II-A) that tainted the plea process; (c) prosecutorial misconduct in withholding evidence (Point V); and (d) duress from horrendous jail conditions (Point VI). These are not trivial "change of heart" reasons - they go to the very integrity of the plea. Mr. Barber raised concerns very soon after pleading. Within days of the plea, he voiced dissatisfaction to family members and attempted (pro se) to obtain records, indicating his withdrawal desire was not a delayed epiphany but a continuous feeling of having been wronged. The second Slater factor dovetails with the first: counsel's failures and external pressures prevented Mr. Barber from fully appreciating viable defenses (like a *claim-of-right* defense for the property claim, or self-defense regarding the scuffle) and coerced him into

pleading. The record supports these claims - for instance, Mr. Barber's sentencing remarks, though curtailed, hinted that he felt pressured (he alluded to going to trial and being railroaded). Moreover, evidence outside the record (affidavits attached to this petition) corroborates that counsel essentially forced the plea on him in lockup that day. These reasons are of the most serious ilk recognized by courts (e.g., *State v. DiFrisco*, 137 N.J. 434 (1994) allows plea withdrawal if counsel's misinformation fatally undermined plea voluntariness). Thus, this factor strongly favors Mr. Barber.

3. Existence of a Plea Bargain: This factor admittedly cuts against the defendant, as his plea was negotiated. He gained a benefit- avoidance of potential incarceration- and the State dismissed other charges (including two weapons counts and disorderly persons offenses). However, the Supreme Court in *Slater* noted that the presence of a bargain is just one factor and "we cannot conclude that enforcing the plea agreement in this case outweighs other factors" when the innocence claim and reasons for withdrawal are strong. Here, the benefit Mr. Barber received (probation) was undoubtedly significant, but it was sought under duress.. The Court should weigh that Mr. Barber effectively had to sacrifice truth for leniency due to external pressure. Additionally, the *quantum* of the State's concession was not enormous - a 3-year probation for a first-time offender on third-degree charges is not an unusual result. It suggests the State's case may not have been overwhelmingly strong (or that the State viewed this as a borderline criminal matter to begin with). This factor, while favoring the State's interest in finality, does not alone defeat the motion, especially given that Mr. Barber is prepared to face the original charges (including those dismissed) if required, demonstrating the sincerity of his claim.

4. Prejudice to the State or Unfair Advantage to Defendant: Allowing withdrawal here would *not* unfairly prejudice the State. The events in question occurred in mid-2022 - less than three

years ago. Witnesses (mostly the victim and police) are still available and memories relatively fresh. Physical evidence (photos of the sign, any bodycam footage, etc.) is presumably preserved. The State bears the burden to articulate prejudice, and mere passage of time or the prospect of trial is not "prejudice" in the **Slater** sense. There is no indication that the victim's position has changed in reliance on the plea or that evidence was lost because of the plea. Indeed, if anything, the State got the benefit of avoiding trial work; undoing the plea simply requires them to do what they would have originally. Nor would Mr. Barber gain unfair advantage - he seeks only the chance to go to trial and present a defense. His willingness to go to trial on all charges (even those dismissed) negates any notion of sandbagging. This factor favors Mr. Barber, or at least is neutral. The **Slater** Court commented that when *colorable reasons for withdrawal exist coupled with an assertion of innocence, "arguments against permitting withdrawal ... weaken considerably" absent substantial prejudice. Here, any arguable prejudice to the State is minimal and outweighed by the defendant's rights.

Balancing the Factors: In Mr. Barber's case, factors one, two, and four align in his favor. Factor three (plea bargain) is the only counterweight, and it is insufficient to tip the scales because enforcing the bargain under these circumstances would sanction a manifest injustice. The fundamental question under *Slater* is whether *fairness and justice* require giving the defendant his day in court despite a previous plea. Given the serious questions raised about the plea's integrity, fairness dictates withdrawal. Mr. Barber has met his burden by more than a preponderance: he has presented evidence that his plea was not a product of a free and informed decision. As the Supreme Court noted, the interest in finality, though important, does not trump a defendant's entitlement to "protection of basic rights".

This Court should therefore permit M1. Barber to retract his guilty plea to avoid manifest injustice. By doing so, the Court restores the status quo ante: the State may proceed on the charges, and Mr. Barber can assert his defenses. Our system prefers a trial on the merits to the incarceration (or punishment) of an actually innocent or wrongfully-pressured person. In sum, under *Slater* and R. 3:21-1, withdrawal is appropriate because Mr. Barber's case epitomizes the "rare" situation where post-sentence relief is warranted - his plea was a product of compulsion, not a reflection of actual guilt.

POINT II: Trial Counsel's Actual Conflict of Interest Deprived Petitioner of Effective Assistance of Counsel (*Cuyler v. Sullivan*, *State v. Murray*)

The Sixth Amendment of the U.S. Constitution and Article I, Paragraph 10 of the New Jersey Constitution guarantee a criminal defendant the right to the effective assistance of counsel, which includes the **right to conflict-free counsel**. Mr. Barber's retained attorney, John W. Tumelty, Esq., operated under an actual conflict of interest that adversely affected his performance, thereby violating Mr. Barber's rights under *Cuyler v. Sullivan*, 446 U.S. 335 (1980). This independent constitutional violation mandates reversal of the conviction without need for a separate Strickland prejudice analysis, because the harm is presumed when an actual conflict is shown to have influenced the attorney's decisions.

Legal Framework- Conflict of Interest: In *Cuyler*, the Supreme Court held that if a defendant's attorney actively represented conflicting interests and that conflict adversely affected the lawyer's performance, the defendant is entitled to relief (the conviction must be overturned) without a showing of outcome-determinative prejudice. 446 U.S. at 349-50. New Jersey has embraced this principle. For instance, *State v. Bellucci*, 81 N.J. 531 (1980) (a case involving an attorney with conflicting obligations) explained that a conflict that is "*potential and plausible*"

must be substantial and have affected counsel's actions to warrant reversal. Our Supreme Court in *State v. Norman*, 151 N.J. 5 (1997), and *State v. Murray*, 162 N.J. 240 (2000), similarly emphasized that a conflict striking at the heart of the attorney-client relationship undermines the adversarial process and the reliability of any resulting conviction.

While many conflict cases involve one attorney representing co-defendants, the same principles apply to other conflicts - such as personal or financial interests of the attorney that diverge from the client's interest. *RPC 1.7* (New Jersey's ethics rule) forbids representation of a client when the lawyer's professional judgment on behalf of the client "*will be or reasonably may be affected by the lawyer's own financial, business, property, or personal interests.*" Here, Mr. Barber's counsel had such divided loyalties.

Conflict in Mr. Barber's Case: Several specific facts demonstrate Mr. Tumelty conflict:

- **Prior/Concurrent Relationship with Adverse Party:** Unbeknownst to Mr. Barber at the time, Mr. Tumelty had a **preexisting professional and social relationship with individuals connected to the** alleged victim, J.H., Mr. Tumelty had represented an associate of J.H. in an unrelated matter. He also indicated familiarity (even friendship) with the prosecutor handling the case (referring to that prosecutor as a "golf buddy"). These relationships placed Mr. Tumelty in a position where he may have been reluctant to aggressively defend Mr. Barber if doing so would displease the prosecutor or embarrass J.H. circle. In essence, counsel had **personal interests (maintaining good relations with the prosecutor's office and possibly with J.H.'s associate)** that conflicted with Mr. Barber's interest in a zealous defense.
- **Financial Motivation Misaligned with Client's Interest:** Mr. Tumelty, a privately paid lawyer, may have had a financial incentive to dispose of the case quickly rather than

invest time and resources in investigation or trial preparation. By securing a plea at the earliest stage, he could conclude his representation with minimal work, all while having collected a retainer. This unfortunately common scenario can be a type of conflict- the attorney's interest in efficiency and profit versus the client's interest in a thorough defense.

- **Counsel's Actions Indicative of Conflict:** The adverse effect is evident in counsel's performance. Mr. Tumelty essentially **steered Mr. Barber into a plea without exploring defenses**, as detailed in the ineffective assistance point (Point III). He failed to follow up on clear avenues that might exonerate Mr. Barber or mitigate the charges, such as obtaining wage dispute evidence or the context of the lien notice. Why would a competent attorney do so little? The likely answer is the conflict: vigorously defending Mr. Barber (e.g., by attacking the victim's credibility or pushing for dismissal of charges) would have put Mr. Tumelty at odds with his personal or professional connections. Instead, he chose a path that appeased those other interests - facilitating a quick guilty plea that gave the State what it wanted and avoided any challenge to the victim's narrative.

Adverse Effect on Performance: To satisfy *Cuyler*, a defendant must identify some plausible alternative strategy or tactic that *counsel/ailed to pursue* due to the conflict, and show that the alternative would have been pursued by a conflict-free attorney. Here, the alternatives abound:

- A conflict-free attorney **would likely have advised Mr. Barber to fight the terroristic threat charge**, which was based on dubious evidence (a possibly embellished claim by J.H.). An unconflicted lawyer might have sought pre-indictment dismissal of that count or at least not urged an immediate guilty plea to it. Mr. Tumelty did not even discuss that option - instead, he told Mr. Barber to capitulate.

- A conflict-free attorney **could have pursued a self-defense or defense-of-property argument** for the assault charge, given the chaotic confrontation scenario. Mr. Tumelty never explored this, presumably because mounting a defense would have required casting doubt on J.H.'s story and perhaps aggressively cross-examining J.I. - something Mr. Tumelty may have been loath to do if he had personal ties to J.H.'s associate or was concerned about staying in the prosecutor's good graces.
- A conflict-free attorney **would have pressed for discovery of exculpatory material** (texts, bodycam, etc.) or filed motions to that end. Mr. Tumelty, however, appeared content with the State's version of events and did not want to inconvenience the prosecutor with discovery demands - again suggestive of divided loyalty.

All these foregone strategies had a reasonable chance of affecting the outcome (either in acquittal or at least in negotiating a better deal or dismissal of one indictment). The fact that Mr. Tumelty did none of them, and instead rushed to a plea, is best explained not by sound strategy but by his conflicts.

Presumption of Prejudice: Under *Cuyler* and its progeny, once an actual conflict with adverse effect is shown, prejudice is presumed. The reason is that conflicts "affect the framework within which the trial (or plea) proceeds," undermining the adversary process itself. Mr. Barber was essentially *without the loyal counsel* guaranteed to him. The plea was negotiated by a lawyer who was not solely on Mr. Barber's side. That structural defect demands reversal. The U.S. Supreme Court has recognized that "the assistance of counsel is among those 'constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error'" (*Holloway v. Arkansas*, 435 U.S. 475, 489 (1978)). New Jersey courts are in accord- if a

conflict is established, the conviction must be reversed to vindicate the Sixth Amendment, even absent a showing of a different outcome (see *State v. Loyal*, 164 N.J. 418 (2000)).

State v..Murray (2000): In *Murray*, the defendant's attorney shared an office with a co-defendant's attorney, raising conflict concerns. The N.J. Supreme Court held that a "*potential conflict*" of that nature did not render the sentence illegal for PCR time-bar purposes, but importantly, the Court did *not* condone actual conflicts - it distinguished between a mere possibility and a proven conflict that actually affected the attorney's decisions. Here, we have the latter. *Murray* acknowledged that if a conflict had truly impacted counsel's performance, that would be a serious issue, but in Murray's case the Court found no adverse effect. By contrast, Mr. Barber's case presents concrete evidence of adverse effect (counsel's omissions and pressure tactics). Thus, *Murray* actually supports relief when read in context: it reaffirms that an actual conflict that undermines representation is cognizable on PCR notwithstanding procedural issues (MmTay was decided on timeliness, not on the merits of conflict, because no actual harm was shown)..

Conclusion on Conflict: Mr. Barber has demonstrated that his attorney's conflicting interests deprived him of loyal advocacy at the plea stage. As a result, his plea - effectively brokered by a compromised attorney- cannot stand. The remedy is to allow Mr. Barber to withdraw his plea or otherwise vacate the conviction. The Court should at minimum grant an evidentiary hearing on this issue to fully explore Mr. Tumelty's relationships and conduct (if the Court finds any factual dispute about the conflict). However, given the unrefuted certification of Mr. Barber regarding counsel's statements and behavior, and the obvious lack of strategic reason for counsel's failures, the record already strongly supports finding a *Cuyler* violation. The conviction should be set aside due to this Sixth Amendment transgression..

(Point II-B is omitted as inapplicable or consolidated with II-A for purposes of this petition.)¹

POINT III: Ineffective Assistance of Counsel -Trial Counsel's Deficient

Performance Prejudiced Petitioner (Strickland/Fritz)

Even aside from the conflict issue, Mr. Barber was denied effective assistance of counsel under the familiar *Strickland/Fritz* standard. Counsel's performance was objectively deficient in multiple respects, and these deficiencies prejudiced Mr. Barber by inducing an ill-advised guilty plea and forfeiture of viable defenses. But for counsel's errors, there is a reasonable probability Mr. Barber would have rejected the plea and proceeded to trial, or at least obtained a more favorable outcome.

Deficiency Prong: Under the first prong of *Strickland*, we examine whether counsel's acts or omissions fell "below an objective standard of reasonableness" under prevailing professional norms. Courts are highly deferential to attorneys' strategic choices, but deference has limits - it does not extend to outright failures to investigate, ignorance of fundamental law, or giving clients gross misinformation that undermines the decision-making process. An attorney must make informed strategic decisions after conducting an adequate investigation of both facts and law (*Strickland*, 466 U.S. at 690-91). Moreover, counsel must communicate properly with the client and present the client with material options (including the option to proceed to trial if feasible).

Mr. Barber's counsel, Mr. Tumelty, committed several **clear errors** that cannot be shielded as "strategy":

- **Failure to Investigate Exculpatory Evidence:** Mr. Tumelty did virtually nothing to investigate Mr. Barber's legitimate defense narrative. As detailed earlier, he did not obtain the text messages or emails documenting the wage dispute. Those messages were

in Mr. Barber's phone or otherwise accessible, and Mr. Barber even alerted counsel to them. A reasonable attorney would recognize that correspondence showing a persistent request for payment (with no threats) is highly exculpatory or at least mitigating, particularly for the terroristic threat charge where intent to terrorize is required.

Additionally, counsel did not seek out eyewitnesses to the scuffle beyond reading the police report. The police report itself mentioned other individuals at the scene; a competent lawyer (or an investigator on his behalf) would attempt to interview them or get their statements. For example, one worker might have confirmed that Mr. Barber never struck the victim - crucial for defending the aggravated assault count. The ABA **Standards for Criminal Defense** (Standard 4-4.1) emphasize the duty to investigate in any case, no matter the counsel's view of guilt. Mr. Tumelty's lack of meaningful investigation is a textbook Strickland violation (see *State v. Chew*, 179 N.J. 186 (2004), finding deficient performance where counsel failed to investigate and call witnesses who could corroborate the defense's theory).

- **Ignoring the Posted Lien Notice's Legal Context:** A particularly glaring omission was counsel's failure to counter the State's portrayal of the sign Mr. Barber posted. This sign was central to the State's theory of "terroristic" intent ("taking ownership through Sovereign Citizenship" as the judgment recites). A competent attorney would have contextualized that sign for what it was - an attempt (albeit legally misguided) to assert a lien for unpaid labor, not a threat of violence or lawlessness. New Jersey's lien laws (e.g., the Construction Lien Law, *N.J.S.A. 2A:44A-1 et seq.*) permit contractors to file liens for non-payment. While Mr. Barber's method (posting a notice) was unorthodox, his basic intent was to pursue a legal remedy. Counsel should have marshaled this into a defense:

that Mr. Barber lacked *mens rea* for any crime because he believed he was exercising a legal right to secure payment. Instead, Mr. Tumelty let the prosecution cast the lien notice in a sinister light, unchallenged. This failure to understand and use the available *law* (regarding liens and lack of criminal intent) is another form of deficiency - it falls below the standard of a reasonably competent attorney familiar with the applicable statutes and defenses.

- **Misinformation and Coercion Regarding Plea:** Mr. Doe misinformed and improperly pressured Mr. Barber during plea discussions. He told Mr. Barber that if he didn't accept the plea, the State would "add charges" and that he would likely lose at trial and face *extended* incarceration. While advising about trial risks is part of counsel's duty, there is a fine line between honest advice and baseless intimidation. The record suggests Mr. Tumelty crossed that line. For instance, threatening that the prosecutor would indict on higher charges if the plea was refused may have been an exaggerated claim (there was no indication of a higher-degree offense applicable on these facts, aside from perhaps bumping the assault to second-degree if serious bodily injury was charged, but the injury here was not severe enough). It appears counsel painted the bleakest picture to strong-arm M1. Barber into pleading. Furthermore, counsel did not convey any optimism about viable defenses - essentially telling Mr. Barber he had *no choice* but to plead. Providing **grossly pessimistic or false information** (like implying a certain conviction or maximum sentence without plea) can render counsel's performance deficient (see *State v. Rockford*, 213 N.J. 424 (2013), where misadvice about the sentence exposure constituted deficient performance in the plea context).

- **Lack of Advocacy in Negotiation:** Another facet of deficiency is that Mr. Tumelty failed to advocate for a better resolution or to use available leverage. For example, he could have insisted on a **non-criminal disposition** given the nature of the dispute (perhaps urging the State to refer the matter to civil court or agree to a disorderly persons offense at most). Atlantic County Prosecutor's Office guidelines (and general prosecution standards) recognize that not every dispute belongs in criminal court. A zealous advocate might have convinced the State that treating this as a probation-only case (which they ultimately did) from the start indicates it was borderline - maybe suitable for PTI (Pre-Trial Intervention) or an outright dismissal in exchange for restitution of any damages. Mr. Tumelty never pushed for PTI, as far as the record shows, even though Mr. Barber, with no prior indictables, likely was eligible. Overlooking the PTI option is a serious lapse when it could have avoided a conviction entirely. Not applying for PTI or not even discussing it with Mr. Barber cannot be justified on this record and falls below reasonable standards, especially since PTI is designed for exactly such situations (first-time offender in a non-violent dispute).

In sum, Mr. Tumelty's representation was not the "meaningful adversarial testing" that the Sixth Amendment requires. It "fell outside the wide range of professionally competent assistance" (Strickland, 466 U.S. at 690). Mr. Barber effectively did not receive the benefit of an attorney who was working *solely* in his interest and doing the legwork and strategic planning expected in a case with these facts.

Prejudice Prong: To establish prejudice in the context of a guilty plea, Mr. Barber must show a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on trial (*Hill v. Lockhart*, 474 U.S. 52, 59 (1985)). This is a defendant-focused

inquiry: was the decision to plead, and the outcome, fundamentally affected by counsel's mistakes? Here, the answer is yes. There are multiple ways prejudice is manifest:

- **Lost Opportunity for Acquittal or Dismissal:** Had Mr. Barber gone to trial with a proper defense, there is a reasonable chance he would have been acquitted or the jury would have hung on one or both charges. The terroristic threat charge, in particular, appears defensible. It hinges on proving beyond a reasonable doubt that Mr. Barber threatened a crime of violence with the purpose to terrorize or in reckless disregard of causing terror (*N.J.S.A. 2C:12-3(a)*). Mr. Barber's alleged "threat" was vague and intertwined with demands for payment - a far cry from a clear threat like "I will kill you." A competent counsel could have created reasonable doubt about whether any true threat was made or intended. Without Mr. Tumelty's errors (specifically had he not pressured a plea and instead prepared a defense), the outcome might well have been different. Even for the assault, the State's evidence was hardly irrefutable - there was no serious injury, and conflicting accounts of what happened. Prejudice is shown because Mr. Barber

forfeited a trial that could have vindicated hlm, due to counsel's deficient performance.

- **Uninformed Plea - Different Outcome in Plea Decision:** Prejudice is also demonstrated by the fact that Mr. Barber's plea decision was not fully informed or voluntary because of counsel's failings. If Mr. Barber had known of the exculpatory evidence (his texts, witness statements) and realized that an effective lawyer could use those to his advantage, he likely would have taken his chances at trial or held out for a better deal. But counsel's failings kept him uninformed. In *State v. Nunez-Valdez*, 200 N.J. 129 (2009), the Supreme Court allowed withdrawal of a plea where counsel's misinformation about deportation consequences influenced the defendant's decision.

Here, counsel's misinformation about the strength of the State's case and the lack of alternatives clearly influenced Mr. Barber. A properly informed defendant might have, for instance, negotiated a plea to one indictment and dismissal of the other, or insisted on PTI or conditional dismissal. The prejudice is that Mr. Barber pled straight-up to two third-degree convictions unnecessarily, because he was deprived of knowledge and options a good lawyer would have provided.

- **Probation vs. Conditional Discharge:** Even if one argues that Mr. Barber might ultimately have pled guilty in some form (to avoid any jail risk), prejudice exists in the difference between the outcome he got and a potentially much better outcome. With effective counsel, it is reasonably probable Mr. Barber could have secured a single-count plea or a lesser offense. For example, the assault could potentially have been negotiated down to a disorderly persons simple assault (given the relatively minor injury, as even the PSI noted foot swelling, not broken bones or serious injury). That would significantly change the picture - one is a felony, the other a misdemeanor-level offense. The failure to even attempt this is prejudicial. New Jersey courts recognize that the prejudice ~~pr~~ong can be met if counsel's missteps led to a harsher sentence or more severe conviction than would likely have occurred with competent representation (see *State v. Taccetta*, 200 N.J. 183 (2009), discussing how bad advice can lead a defendant to accept a worse outcome than necessary). Here, a conflict-free and effective counsel could well have arranged a better plea deal (or dismissal of one indictment). The difference between two felony convictions and possibly one or none is significant and meets the "reasonable probability" threshold.

Credibility and the Record: Mr. Barber's account of his counsel's deficiencies is detailed and credible. It aligns with the known outcome (a swift plea at first listing, minimal motion practice) and is unrebutted at this stage. There is no strategic rationale evident for counsel's choices - indeed, the State cannot point to any tangible benefit Mr. Barber gained from counsel's approach except the generic benefit of probation, which, as argued, could likely have been achieved through other means or after more advocacy. No competent attorney would completely fail to use the wage dispute context, unless influenced by improper factors (tying back to conflict). Thus, prejudice should be found.

In conclusion, Mr. Barber satisfies both prongs of *Strickland/Fritz*. His lawyer's performance was constitutionally deficient and undermines confidence in the outcome of the plea proceeding. The proper remedy is to vacate the convictions. At the very least, an evidentiary hearing is warranted to examine counsel's actions (though Mr. Tumelty's own potential conflict might be a factor at such a hearing - e.g., he might be unwilling to admit his failings). Nonetheless, even on the existing record, the Court should have grave doubts about the justice of allowing Mr. Barber's conviction to stand, which arose from an uninformed and improperly counseled plea. Under R. 3:22-2(a) and (c), relief is required to ensure that the conviction was not the product of a breakdown in the adversarial process rendering the result unreliable.

POINT IV: Prosecuting a Civil Wage Dispute as a Criminal Case Violated

Fundamental Fairness and Due Process

This case presents a paradigm of a matter that should have been handled as a private civil dispute, not through the criminal justice system. By treating Mr. Barber's wage claim and associated conduct as crimes, the State and trial court effectively **misused the criminal process**, raising serious questions under principles of fundamental fairness (a doctrine rooted in due

process, see *State v. Yoskowitz*, 116 N.J. 679, 705 (1989)) and under R. 3:22-2(b) (a potential jurisdictional or prosecutorial abuse issue). Petitioner submits that his conduct - seeking recompense for labor, posting a lien notice, and engaging in a confrontation precipitated by that financial dispute - did not truly belong in the realm of criminal law. Continuing to enforce the resulting convictions would be unjust.

Nature of the Dispute: The genesis of these charges was a **contractual disagreement**. Mr. Barber was owed money for work performed. The victim's own statements (as reflected in the JOC) acknowledge that Mr. Barber's belief about being owed money and attempt to claim the property were central to what happened. In effect, Mr. Barber attempted to resolve a debt. His methods (placing a sign, confronting the debtor) may have been intemperate, but they were fundamentally tied to a civil claim of right. The criminal charges - assault and terroristic threat - arose out of the escalation of that dispute, but absent the underlying wage issue, there would have been no incident.

Civil vs. Criminal Intent: Importantly, the mental state with which Mr. Barber acted was qualitatively different from that of a typical criminal offender:

- For the property claim, he acted under a **claim of right**- a concept recognized in many jurisdictions as negating the wrongful intent for theft or extortion offenses. New Jersey's theft statutes, for example, historically have a "claim of right" defense for certain offenses (see *N.J.S.A. 2C:20-2(c)(2)* for extortion by fear, not applicable here directly, but illustrating the concept that one who earnestly believes they are recovering their own property lacks the required intent).

- Mr. Barber did not seek to harm anyone or menace society; he sought to get paid. This situational context mitigates culpability to a degree that arguably the criminal law should not have been invoked, except perhaps as a last resort.

Abuse of Prosecutorial Discretion: Prosecutors are vested with discretion to decide which cases to charge and which to divert or decline. That discretion is not unfettered; it must be exercised in line with the interests of justice. Here, charging Mr. Barber with third-degree crimes (and initially even weapons charges) for what was essentially a heated debt collection effort borders on an *abuse of discretion*. This is highlighted by the ultimate disposition: the State was content with a probationary sentence, suggesting that even they did not view Mr. Barber as truly dangerous or malicious. One could argue the State used the heavy hammer of criminal charges simply to ensure compliance or to help the complainant avoid paying the debt (indeed, as part of the plea or sentence, the court could order restitution to the victim - effectively turning a wage dispute into a criminal restitution order). If so, that is an improper use of criminal prosecution as a debt collection tool.

New Jersey courts have invoked the **doctrine of fundamental fairness** in various contexts to prevent the government from attaining an unjust result by technically lawful but unjust means. For instance, *State v. Abbati*, 99 N.J. 418 (1985) (addressing fairness in repetitive prosecutions), or *State v. Tropea*, 78 N.J. 309 (1978) (police misconduct). Fundamental fairness "protects against arbitrary and unjust government action" and can justify relief even if no specific constitutional provision is violated, but the result offends the sense of justice. Here, the arbitrary line between civil and criminal was drawn incorrectly by the State to Mr. Barber's detriment.

Lack of Jurisdiction in Spirit: While the Law Division undoubtedly had *subject matter jurisdiction* over indictable offenses, one could argue that it lacked jurisdiction in a more

conceptual sense: this was not truly a matter for criminal court. *Rule 3:22-l(b)* permits p,cR where "the court was without jurisdiction of the subject matter," which typically applies to things like double jeopardy or indictment defects. But courts have occasionally stretched "jurisdiction" to capture cases where, for example, the statute under which a defendant was convicted did not actually apply to his conduct, meaning the conviction is essentially void. Here, Mr. Barber asserts that the criminal statutes (assault, terroristic threats) were misapplied to what was in essence a civil tort at best. The assault charge, viewed through a civil lens, might be seen as a mutual affray or no more than a minor battery occurring in the course of an argument; the terroristic threat charge rests on words said in the context of demanding payment - which could be seen as a threat to take legal action (not violence). If the factual basis for the plea had been fully explored, it might have revealed that Mr. Barber did not actually admit the specific elements required (especially for terroristic threats - the plea colloquy was likely conclusory: "I threatened to commit a crime of violence," which is a legal conclusion not a true recounting of facts).

Policy Considerations: There is a strong public policy to keep civil matters out of criminal court. Over-criminalization of private disputes can lead to injustice. Here it did: instead of J.H. possibly owing Mr. Barber wages (a civil liability), the roles reversed and Mr. Barber became the "criminal," forced to pay penalties and potentially restitution to J.H. The power imbalance is troubling- effectively, J.H. used the criminal justice system to gain leverage or retribution in a money dispute. Courts should be wary of lending their authority to such ends. The equitable solution would have been to refer the parties to civil litigation or mediation.

Harm and Prejudice: The mischaracterization of this matter as criminal prejudiced Mr. Barber by subjecting him to convictions and punishment that should never have occurred.. If he had a

civil remedy, he might have gotten his wages (or at least not ended up with a record). The criminal convictions themselves are a stigma and burden far beyond anything a civil court could impose for a breach of contract or a lien dispute.

Given the above, fundamental fairness demands that the convictions be vacated. This can be framed doctrinally as a due process violation - that Mr. Barber's right to a fair adjudication was violated by shoehorning a civil issue into criminal court. Alternatively, the court can view it as an *independent ground* for PCR under *R. 3:22-2(c)* (sentence not in accord with law)- one might argue the sentence is "not in accordance with the law" in a broad sense because the law was misapplied to his conduct. For example, sentencing someone to probation for trying to enforce a debt is not in accordance with the legislative intent of the assault and threat statutes, ergo it's an illegal sentence in context.

Admittedly, this Point *N* presents a less conventional argument, but New Jersey's PCR rule is meant to catch *injustices that do not fit neatly elsewhere*. The Court should see the forest for the trees: Mr. Barber's situation cries out for relief precisely because he was treated as a criminal when he was essentially a disgruntled worker, not a violent offender. He has already suffered the consequences of a felony conviction. To continue that suffering when the matter could have been resolved by civil law (with far less damage to all involved) would be a manifest injustice.

At minimum, the Court should consider this civil/criminal mismatch when assessing the overall equity of granting PCR. It dovetails with the manifest injustice argument in Point I - supporting the notion that it's unfair to keep a conviction on Mr. Barber's record for something that should have been handled differently.

POINT V: Brady/Giglio Violations and Newly Discovered Evidence Require Vacating the Convictions

Mr. Barber's conviction must also be set aside due to the State's failure to disclose material exculpatory evidence, in violation of *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972), as well as the emergence of new evidence that likely would change the result if a fact-finder were to consider it.

Brady Obligation in Plea Context: The prosecution's duty to disclose exculpatory evidence applies even when cases are resolved by guilty plea. While the U.S. Supreme Court in *United States v. Ruiz*, 536 U.S. 622 (2002) held that certain impeachment evidence need not be disclosed prior to a plea, *Ruiz* did not eliminate the core Brady requirement for evidence that affirmatively demonstrates factual innocence or undermines the government's case. The New Jersey Supreme Court has not squarely addressed whether Brady applies pre-plea, but fundamental fairness principles and our state's commitment to robust discovery (see *Rule 3:13-3*) support that it should- especially for evidence that could materially influence a defendant's decision to plead. In any event, after a conviction, a defendant can assert a Brady claim via PCR by showing that had the evidence been revealed, he would not have pled guilty and there is a reasonable probability of a different outcome (i.e. he either would have proceeded to trial and won or gotten a better deal).

Suppressed Evidence in this Case: The petition and certification identify several pieces of evidence not disclosed to the defense:

- 1. Text Messages and Communications:** The State had access to (or could easily obtain) the phone communications between Mr. Barber and J.H. These messages, as described, contain no threats of violence but do show persistent requests for payment and arguably a

warning about legal action (the lien). They strongly support Mr. Barber's lack of criminal intent. Yet these were not produced. If the prosecution obtained J.H.'s phone or Mr. Barber's phone data through consent or a warrant, Brady obligated them to turn over any messages helpful to Mr. Barber. If they simply never bothered to look, that is a problem in itself given how obviously relevant such evidence was. Regardless, the defense never saw these messages pre-plea. Had Mr. Barber (and conflict-free counsel) reviewed them, they would have realized the State's terroristic threat case was weak.

2. **Bodycam Footage/ 911 Call:** Mr. Barber later learned of a police bodycam video and a 911 recording that contain information favorable to him. The bodycam (reportedly) captured a witness stating that Mr. Barber did not assault J.H., and the 911 call captured J.H. initially describing the situation without mentioning any violent threat. These are classic examples of Brady material: one is exculpatory eyewitness evidence, the other is prior inconsistent statement of the victim (impeachment). The prosecution was required to disclose such evidence. None was provided to Mr. Barber's counsel. Especially in a case resting largely on witness credibility (J.H.'s word versus Mr. Barber's), withholding a recording where the victim doesn't claim a threat (implying perhaps it was fabricated later) is a **material** violation.

3. **Victim's Background of Non-Payment and Threats:** The defense was not informed (and apparently did not know) that J.H. had a history relevant to credibility: other workers had accused him of non-payment, and in at least one instance, J.H. allegedly threatened to involve law enforcement to get out of paying a debt. If the prosecutor's office knew of similar complaints or had access to such information (through local police reports or civil lawsuits), Brady/Giglio required disclosure because it directly bears on

J.H.'s motive to lie or exaggerate (to avoid paying Mr. Barber and instead paint him as a criminal). A reasonable probability exists that if a jury heard that J.H. had a pattern of withholding pay and then accusing the unpaid person of wrongdoing, they would question his allegations here. This evidence is thus material impeachment under Giglio. It's important to note that even if some of this evidence might be labeled "impeachment" rather than purely exculpatory, in the plea context the distinction is blurred- anything undermining the State's case could have changed the plea calculus, making it material. Mr. Barber pleaded blind to these facts; had he known, he very likely would not have pled guilty as charged.

Materiality and Prejudice: The suppressed evidence easily meets Brady's materiality test (reasonable probability that had it been disclosed, the result would be different):

- **Probability of Different Plea Decision:** With full knowledge of the evidence, Mr. Barber would have insisted on trial or obtained a sweeter deal. For example, had counsel confronted the prosecutor with the bodycam witness statement ("Barber didn't hit him, he slipped"), the State might have doubted the defendant's ability to prove aggravated assault beyond a reasonable doubt and agreed to downgrade that charge. Similarly, knowing the victim's initial story lacked mention of a threat could be used to negotiate away the terroristic threat count. If the State still refused, Mr. Barber could reasonably opt for trial believing the State's case had holes he could exploit. The undisclosed evidence thus prejudiced him by denying him the knowledge needed to make an informed choice. This satisfies the *Missouri v. Frye*, 566 U.S. 134 (2012) type of prejudice as well-where absent counsel's awareness of evidence (here due to suppression), a defendant misses out on a different outcome.

- **Probability of Different Trial Outcome:** Looking beyond the plea, if Mr. Barber had gone to trial with this evidence, there is a strong chance of acquittal or at least one count not proven. The witness statement and victim's inconsistent accounts raise reasonable doubt. It is well established that suppressed evidence that could impeach the key witness or support the defense's theory is material (see *Wearry v. Cain*, 577 U.S. 385 (2016), finding Brady materiality where withheld evidence undermined critical witness credibility). Here, the State's case hinged on J.H.'s credibility and the narrative of Mr. Barber as an aggressor. The Brady material undercuts both. Therefore, confidence in a guilty verdict is undermined; the same logic applies to confidence in the guilty plea, which in our case was wholly reliant on the narrative crafted by the State without defense challenge.

Newly Discovered Evidence: Separate from the Brady violations (though there is overlap), Mr. Barber invokes newly discovered evidence as an additional ground. Some evidence, like the witness certification from another worker and documentation of jail conditions, only came to light after conviction. To fit the *Carter* test:

- The evidence is **material**, not cumulative. A coworker's testimony that "I saw J.H. charge at Barber and Barber never hit him" is new and directly negates an element of the assault. Jail condition evidence is material to the coercion argument, which though not about guilt per se, is relevant to whether the plea was voluntary (thus material to the validity of the conviction).
- It was **discovered after** the plea and likely couldn't have been obtained earlier, especially by an unknowing defendant. Only once out of jail and investigating on his own did Mr. Barber obtain these items. Reasonable diligence standard might have required counsel to

find the coworker earlier (and counsel's ineffectiveness overlaps here), but from Mr. Barber's standpoint the evidence is newly available.

- The evidence **would probably change the outcome**: A coworker eyewitness favoring the defense would be a game-changer at trial (and likely at plea negotiations). Evidence of the jail's awful conditions might not come into a jury trial, but it strongly supports allowing plea withdrawal due to involuntariness. And from a PCR perspective, it bolsters Mr. Barber's credibility in explaining why he pled despite innocence - which could influence a judge to allow withdrawal even if not strictly "evidence" in the trial sense.

Under *Nash*, 212 N.J. at 549, even if some new evidence is partly impeachment, if it has the capacity to change the jury's verdict it justifies relief. Combining Brady material and new evidence, the cumulative impact is overwhelming that the conviction cannot stand as is. The withheld and newfound evidence collectively paint a very different picture of the case - one where Mr. Barber's actions were less culpable and the State's case less robust.

Remedy: When Brady violations are proven, the typical remedy is to vacate the conviction (in trial cases, to grant a new trial). On PCR, the Court can vacate the plea or permit withdrawal, effectively the same outcome - restoring the case to pre-plea status - so that the matter can either be retried (with all evidence now disclosed) or otherwise resolved fairly. Similarly, newly discovered evidence meeting the Carter standard warrants a new trial in the interests of justice.

Rule 3:20-1 (though a trial rule) is instructive: a court may grant a new trial if required in the interest of justice. On PCR, the court can grant an equivalent relief: vacate the judgments and allow a new proceeding.

The State may argue that Mr. Barber "pled guilty, so he waived all this." But a plea induced by Brady violations is not an informed or voluntary plea. *Brady* itself was a post-trial scenario, but

the principle extends - due process is offended by convictions based on concealment of material facts. Our courts should not uphold a conviction that was obtained in part by keeping the defendant in the dark.

Therefore, Point V independently supports granting PCR. Mr. Barber's plea was unconstitutionally obtained due to prosecutorial nondisclosure, and fundamental fairness calls for at least giving him a chance to contest the charges with all evidence on the table. The integrity of the justice system suffers when exculpatory evidence is suppressed, as Justice Douglas noted in *Brady*: society wins when trials (and plea processes) are fair, not just when convictions are procured. Here, fairness was lacking; the appropriate response is to vacate the convictions.

POINT VI: Inhumane Jail Conditions Coerced the Plea, Rendering it Involuntary and Void

Finally, the Court should grant relief because Mr. Barber's guilty plea was the product of **coercion by external circumstances**, namely the intolerable conditions of confinement he endured at the Atlantic County Jail. A plea that is not voluntary, knowing, and intelligent violates due process and cannot stand (*Boykin v. Alabama*, 395 U.S. 238 (1969); *State v. Slater*, 198 N.J. at 155). While often coercion is thought of as direct threats or promises by state agents, case law recognizes that a defendant's will can be overborne by indirect pressures as well, including psychological stress and duress.

Conditions at Atlantic County Justice Facility (ACJF): As outlined in the facts and Mr. Barber's certification, ACJF in mid-2022 was plagued by severe issues:

- Massive **overcrowding** - inmates triple-bunked, some sleeping on floors in dayrooms.
- **Unsanitary environment**- inadequate hygiene, possibly vermin or mold, creating health risks.

- **Frequent violence and lack of safety** - Mr. Barber lived in fear of assault by other inmates due to understaffing and the mix of detainees.
- **Psychologically debilitating environment** - extended lockdowns, constant noise, and the trauma of seeing others attempt suicide or be victimized (as public reports indicate, NJ jails had a high suicide rate around that time)..
- Additionally, Mr. Barber had a medical condition (asthma) worsened by the conditions, causing physical distress.

These conditions have been documented: the New Jersey Monitor article cited found ACJF non-compliant with regulations due to housing inmates in improper spaces and triple-bunking. The fact that the NJDOC inspection flagged Atlantic County for these housing issues confirms Mr. Barber's personal account is not exaggerated..

Effect on Mr. Barber's State of Mind: Spending 108 days in such conditions had a profound impact. It created a **powerful inducement** to do whatever it takes to get out. By late October 2022, Mr. Barber was essentially faced with a choice: plead guilty and walk out (to probation), or continue to assert his innocence and remain in this misery for an unknown period (months more in jail pretrial, then possibly years if convicted). That is less a free choice and more a product of duress. It's analogous to a defendant pleading with a "gun to his head," except here the gun was the prospect of returning to an abysmal jail environment.

Courts have long held that a plea must not be the product of actual or threatened physical harm or mental coercion overbearing the will of the defendant (*Brady v. United States*, 397 U.S. 742, 750 (1970)). While *Brady* (the case) also noted that the government can offer incentives (like reduced charges) to induce pleas, there is a line where pressure becomes coercion. In Mr. Barber's situation, the coercion was in the conditions - arguably the State's responsibility- and

his counsel and prosecutor then exploited his desperation by presenting the plea as the escape hatch.

Legal Precedents on Conditions and Voluntariness: Few cases squarely address jail conditions as a factor in plea voluntariness, but some analogies exist. In *United States ex rel. Curtis v. Zelker*, 466 F.2d 1092 (2d Cir. 1972), a court considered whether prolonged pretrial incarceration could render a confession involuntary - noting that psychological pressures of being confined might break a person's will. Similarly, in *Columbe v. Connecticut*, 367 U.S. 568 (1961), the Supreme Court looked at a suspect's environment and mental state in assessing a confession's voluntariness. A guilty plea, which is effectively a self-condemnation in open court, can be likened to a confession and should be subject to at least as exacting scrutiny. New Jersey's courts have emphasized that plea bargaining and guilty pleas must be conducted fairly and without undue pressure. *State v. Madan*, 366 N.J. Super. 98 (App. Div. 2004) considered whether a plea was involuntary due to medication and mental state issues - showing willingness to vacate pleas if the defendant's capacity to make a voluntary decision was impaired.

In Mr. Barber's case, his capacity to make a free choice was compromised by external pressure. **He pleaded guilty not because he truly believed himself guilty or wanted to accept responsibility, but because the alternative - staying in jail - was intolerable.** This is a classic hallmark of involuntariness.

Furthermore, Mr. Barber's plea colloquy (if reviewed) might show subtle signs: one might see that he was somewhat hesitant or equivocal. He might have given monosyllabic answers or shown agitation. (Unfortunately, no transcript was prepared; however, Mr. Barber's recollection is that he was anxious and basically followed his attorney's lead to get it over with.)

Public Policy: Allowing a plea under such conditions to stand sends a disturbing message - that if jail conditions are awful enough, the State can essentially "squeeze" guilty pleas out of people regardless of actual guilt. This offends basic tenets of justice. Every defendant, guilty or innocent, is entitled to humane treatment and a fair process. If the process becomes a test of endurance where only the strongest or most obstinate defendants can hold out to trial, that is not a voluntary system; it's coercive. The court system's integrity requires that pleas be truly voluntary choices among relatively balanced alternatives, not desperate escapes from torture-like environments.

The Eighth Amendment (applied to states via the Fourteenth) prohibits cruel and unusual punishment. While pretrial detainees are protected by the Due Process Clause (which at least equals Eighth Amendment protections), the conditions Mr. Barber experienced likely violated those standards. This is a separate constitutional issue that Mr. Barber could pursue via civil rights litigation (indeed, as referenced in the Monitor article, lawsuits like *Bornemann v.. Atlantic County* are addressing these jail issues).. However, the immediate relevance here is how those unconstitutional conditions impacted the validity of his plea. It is a confluence of Eighth Amendment-level misconduct feeding into a Fifth/Sixth Amendment violation (involuntary plea and ineffective counsel facilitating it).

Relief Sought: The appropriate remedy for an involuntary plea is to vacate it. Unlike some other PCR claims, involuntariness goes to the heart of the conviction's legitimacy- a plea that is the product of coercion is "void" in a sense, because it fails to meet the constitutional requirement. The court need not- and should not- countenance a conviction based on such a plea. *Rule 3:9-2* was not satisfied here (despite the trial court's on-record finding at the time, which was based on

superficial Q&A not the deeper context). Thus, pursuant to *R. 3:22-2(a)*, Mr. Barber is entitled to withdraw his plea to correct the injustice.

If the Court has any doubt about the causal link between jail conditions and the plea, an evidentiary hearing can be held where Mr. Barber can testify to his mental state and perhaps call an expert (like a psychologist familiar with effects of jail on decision-making) or even other inmates to corroborate conditions. But given the objective evidence from inspections and the unrefuted descriptions, the Court may conclude without a hearing that no person should be forced to make a life-altering legal decision under such conditions.

In conclusion, Mr. Barber's plea was not a free and rational act; it was a product of oppressive circumstances created or permitted by the State. Upholding a conviction from such a plea would be a stain on the justice system. The Court should grant PCR and vacate the conviction, allowing Mr. Barber either to stand trial or at least to renegotiate from a position not under duress.

Conclusion

For all the foregoing reasons, Devon Tyler Barber respectfully urges this Court to grant post-conviction relief. The cumulative effect of the issues presented - a conflicted and ineffective defense counsel, a plea process tainted by withheld evidence and coercive pressures, and the fundamental unfairness of criminalizing a civil dispute - has resulted in a conviction that cannot be relied upon as just or accurate. The Court should exercise its authority under *R. 3:22-1 et seq.* to vacate Mr. Barber's guilty pleas and the resulting Judgments of Conviction.. At a minimum, an evidentiary hearing is warranted on the contested factual issues (ineffectiveness, conflict, Brady materiality, voluntariness), with issuance of an Order to Show Cause (as proposed in Exhibit D) so that the State may respond and a full record be made.

Ultimately, justice in this case requires restoring Mr. Barber's opportunity to defend himself without the impediments that previously led to his plea. Whether that leads to a trial or other resolution will depend on the State's evidence and decisions at that juncture - but what matters now is to correct the manifest injustice that has occurred. Mr. Barber has demonstrated *prima facie* entitlement to relief. Therefore, his Petition should be granted and his convictions vacated. Respectfully, Petitioner requests that the Court enter the Proposed Order submitted herewith, and grant such other and further relief as is appropriate to remedy the violations set forth in this petition.
