**For Publication**

# IN THE SUPREME COURT OF THE VIRGIN ISLANDS

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| **SIDONE N. LAKE,**<br>Appellant/Petitioner,<br><br>v.<br><br>**GOVERNMENT OF THE VIRGIN ISLANDS, OFFICE OF THE ATTORNEY GENERAL, EMPLOYEES OF THE BUREAU OF CORRECTIONS: Director, Assistant Director, Warden, Assistant Warden, et al.,**<br>Appellees/Respondents. | ) | **S. Ct. Civ. No. 2015-0116**<br>Re: Super. Ct. Civ. No. 586/2014 (STT) |

On Appeal from the Superior Court of the Virgin Islands
Division of St. Thomas & St. John
Superior Court Judge: Hon. Adam G. Christian

Considered: July 12, 2016
Filed: October 3, 2018

**BEFORE:** **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and **IVE ARLINGTON SWAN**, Associate Justice.

**APPEARANCES:**

**Sidone N. Lake**
Lecanto, Fla.
*Pro se*,

**Dionne G. Sinclair, Esq.,**
**Royette V. Russell, Esq. (argued),**
Assistant Attorneys General
*Attorneys for Appellees.*

## OPINION OF THE COURT

**CABRET, Associate Justice.**

Sidone Lake, proceeding *pro se*, appeals the Superior Court's October 6, 2015 order dismissing his petition for a writ of habeas corpus. In his petition, Lake alleged that his guilty plea

was not knowing and intelligent because he was not informed of the minimum sentence he faced, that the prosecution breached the plea agreement by opposing his motion for reduction of sentence, and that the trial court wrongfully imposed a sentence in excess of the twenty-year recommendation of the People. For the following reasons, we reverse the October 6, 2015 order of the Superior Court and remand with instructions to issue the writ and conduct further proceedings in accordance with the Virgin Islands Habeas Corpus Rules and this Court's precedent.

## I. FACTUAL AND PROCEDURAL BACKGROUND

On February 18, 2010, officers of the Virgin Islands Police Department were dispatched to a St. Thomas housing community in response to reports of a shooting death. On arrival, officers encountered Lake in blood-stained clothing with his girlfriend and the mother of his child, Kalelia Vanterpool, who was wounded and unresponsive. In Lake's initial statement to investigating police officers, he claimed that during an argument Vanterpool pulled a gun from under a pillow while seated on her bed and pointed it at him. He stated that he hit her right hand, which wielded the gun, causing the weapon to discharge and fatally wound Vanterpool. However, the physical evidence did not support Lake's account of the events leading up to Vanterpool's death. An autopsy report indicated that Vanterpool's wounds were not self-inflicted. And contrary to Lake's statement, the medical examiner concluded that Vanterpool was shot from a distance of more than eighteen inches, while the crime scene reconstructionist concluded that she was shot from approximately five to six feet away. In light of the evidence, the People of the Virgin Islands charged Lake with first-degree murder, 14 V.I.C. § 921, unauthorized use of a firearm during a crime of violence, 14 V.I.C. § 2253(a), voluntary manslaughter, 14 V.I.C. § 924(1), possession of

marijuana with intent to distribute, 19 V.I.C. § 604(a)(1), and unauthorized possession of a firearm, 14 V.I.C. § 2253(a).

At his April 8, 2010 arraignment, Lake initially entered a plea of not guilty to the charges against him. However, on January 4, 2011, Lake and the People executed a plea agreement, pursuant to which Lake agreed to plead guilty to second-degree murder, and in exchange, the People would dismiss all remaining charges with prejudice and recommend that Lake be sentenced to incarceration for a period of twenty years. Six days later, on January 10, 2011, the Superior Court held a change of plea hearing. After questioning Lake during the plea allocution, the court accepted his guilty plea to second degree murder and dismissed the remaining charges against him.

On March 10, 2011, the Superior Court held a sentencing hearing, at which the People recommended that Lake be sentenced to incarceration for a period of twenty years on his guilty plea to second-degree murder. *People v. Lake*, Super. Ct. Crim. No. ST-10-CR-F151, 2011 V.I. LEXIS 50, at *3 (V.I. Super. Ct. Sept. 9, 2011) (unpublished). Despite that recommendation, the Superior Court sentenced Lake to incarceration for a period of thirty years, explaining that it considered the lower sentence insufficient due to the circumstances of the crime and Lake's subsequent attempt to deceive investigators about his criminal actions. *Lake*, 2011 V.I. LEXIS 50, at *3.

On July 15, 2011, Lake's attorney, Samuel L. Joseph, Esq., filed a motion for reduction/reconsideration of sentence ("motion for reduction of sentence") under Superior Court Rule 136. Lake claims this motion was filed without his consent and contained false information. In that motion, Attorney Joseph emphasized that Lake had expressed extreme remorse, enrolled in a G.E.D. course, obtained employment in the correctional facility's kitchen based on his exemplary behavior, desired to pursue vocational training, and wanted to be part of his minor daughter's life.

*Lake*, 2011 V.I. LEXIS 50, at *6. The People filed a written opposition to Lake's motion. *Id.* at *1. In a September 9, 2011 memorandum opinion, the Superior Court denied Lake's motion for reduction, concluding that Lake had not "met the exacting burden of persuasion to revisit his sentence." *Lake*, 2011 V.I. LEXIS 50, at *8.

Lake filed his *pro se* petition for a writ of habeas corpus in the Superior Court on December 15, 2014, which he later amended on February 10, 2015. In his amended petition, Lake challenged his conviction and sentence on the following grounds: (1) Lake was unaware of the minimum sentence he would face upon pleading guilty to second-degree murder and therefore his guilty plea was neither knowing nor intelligent in violation of his Fourteenth Amendment right to due process; (2) by opposing his motion for reduction of sentence, the People breached the plea agreement in violation of Lake's Fourteenth Amendment right to due process; (3) Lake's counsel violated his Sixth Amendment right to effective assistance of counsel by failing to correctly advise him of the minimum penalty he faced, and by filing a motion for reduction of sentence containing factual inaccuracies without Lake's permission; and (4) by imposing a sentence in excess of the People's twenty year recommendation, the trial judge violated Rule 11 of the Federal Rules of Criminal Procedure.[1]

The Superior Court denied Lake's petition in an October 6, 2015 order, explaining that Lake was not entitled to withdraw his plea, because Federal Rule 11 did not apply in the Virgin Islands. However, the court failed to substantively address Lake's allegation that the People

[1] Lake's remaining allegations, which relate to the deprivation of his rights occurring before the entry of his guilty plea, are insufficient to state a prima facie claim for relief under our precedent. *Elliott v. Gov't of the V.I.*, 60 V.I. 702, 707 (V.I. 2014) ("[A] defendant who has pled guilty has waived, for purposes of . . . a collateral action for habeas corpus, all errors that purportedly occurred prior to acceptance of the plea agreement." (citing *Bruno v. People*, 59 V.I. 748, 757 n.7 (V.I. 2013))).

violated the plea agreement and that, at the time he entered into the plea agreement, he was uninformed of the potential minimum and maximum sentences he would face. The Superior Court also declined Lake's request for reconsideration of his motion for reduction of sentence, reasoning that the request was untimely and otherwise unsupported by any allegations that would justify reconsideration. Lake filed a timely notice of appeal with this Court on November 9, 2015. *See* V.I. APP. R. P. 5(a)(4).

## II. JURISDICTION AND STANDARD OF REVIEW

"The Supreme Court [has] jurisdiction over all appeals arising from final judgments, final decrees or final orders of the Superior Court, or as otherwise provided by law." V.I. CODE ANN. tit. 4, § 32(a). "An order denying a petition for a writ of habeas corpus relief is a final order from which an appeal may lie." *Rivera-Moreno v. Gov't of the V.I.*, 61 V.I. 279, 292 (V.I. 2014) (alteration, citation, and internal quotation marks omitted). Since the Superior Court's October 6, 2015 order denied Lake's petition for writ of habeas corpus and dismissed it with prejudice, this Court possesses jurisdiction over the appeal. *Blyden v. Gov't of the V.I.*, 64 V.I. 367, 374 (V.I. 2016). "A trial court's conclusions of law in dismissing a petition for writ of habeas corpus are subject to plenary review." *Elliott v. Gov't of the V.I.*, 60 V.I. 702, 706 (V.I. 2014) (citation omitted).

In addition to the foregoing, we note that Lake is proceeding in this matter *pro se*. We have long held that, in considering filings made by a *pro se* litigant, it is the policy of this Court to give such litigants "greater leeway in dealing with matters of . . . pleading," *Joseph v. Bureau of Corr.*, 54 V.I. 644, 650 (2011) (citing *Dennie v. Swanston*, 51 V.I. 163, 169 (V.I. 2009)), and that the claims pled by such litigants are to be read liberally, so as to make the strongest arguments that they suggest. *See, e.g.*, *Moorhead v. Mapp*, 62 V.I. 595, 601 n. 6 (2015) (observing that the

"Superior Court is required to apply a more liberal pleading standard" to documents filed by a *pro se* litigant, in order to "determine what claims are actually being asserted"); *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (submissions of a *pro se* litigant "must be construed liberally and interpreted to raise the strongest arguments that they suggest") (collecting cases).

## III. DISCUSSION

The decision to grant a writ of habeas corpus constitutes an intermediate step in the statutory procedure that does not address the underlying merits of the petitioner's allegations or entitle the petitioner to the ultimate relief sought in the petition. *Simon v. Gov't of the V.I.*, 67 V.I. 702, 707 (V.I. 2017); *Blyden*, 64 V.I. at 375; *Rivera-Moreno*, 61 V.I. at 311. Instead, issuance of the writ simply requires the Government to file a return responding to the petition and, ordinarily, to produce the petitioner in court for a hearing on the merits of his or her allegations. V.I. H.C.R. 1(d)(2).[2]

When presented with a petition for a writ of habeas corpus, the Superior Court must "first determine whether the petition states a prima facie case for relief — that is, whether it states facts that, if true, would entitle the petitioner to discharge or other relief — and … whether the stated claims are for any reason procedurally or substantively barred as a matter of law." V.I. H.C.R. 2(b)(1); *see also Blyden*, 64 V.I. at 376 (citing *Rivera-Moreno*, 61 V.I. at 311). If the court determines that the petition does not state a prima facie case for relief or that the claims stated

[2] During the pendency of this appeal, this Court adopted the Virgin Islands Habeas Corpus Rules, which entered into effect December 1, 2017. By their own terms, these rules apply to "habeas corpus proceedings pending on the effective date of the rules or amendments, unless: (i) the Supreme Court of the Virgin Islands specifies otherwise by order; or (ii) the Superior Court makes an express finding that applying them in a particular previously-pending action would be infeasible or would work an injustice." V.I. H.C.R. 1(e)(2). As these rules merely distill, and do not depart from, this Court's extant habeas corpus jurisprudence, no injustice could result from application of the rules to this matter.

within it are all procedurally barred, the court will deny the petition outright. V.I. H.C.R. 2(b)(4); *see also Rivera-Moreno*, 61 V.I. at 311 (citing *People v. Romero*, 883 P.2d 388, 391 (Cal. 1994)). "If it appears that the petition states a prima facie case for relief and that the claims are not all barred as a matter of law, Superior Court must issue a writ of habeas corpus, requiring further proceedings on the petition … within the initial 60 days after the filing of the petition, or within 45 days after filing of any informal response requested by the court...." V.I. H.C.R. 2(b)(5); *see also Rivera-Moreno*, 61 V.I. at 311 (citing 5 V.I.C. § 1304; *Romero*, 883 P.2d at 393).

**A. Trial Court's Acceptance of Lake's Guilty Plea**

By entering a plea of guilty, a criminal defendant waives certain fundamental constitutional rights, including the right to be tried before a judge or a jury. *McCarthy v. United States*, 394 U.S. 459, 466 (1969). "Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences." *Brady v. United States*, 397 U.S. 742, 748 (1970). "As part of the knowing requirement, the defendant must be advised of and understand the direct consequences of a plea." *Bryan v. Gov't of the V.I.*, 56 V.I. 451, 458 (V.I. 2012) (citation and internal quotation marks omitted). One such consequence of which a defendant must be aware is any minimum or maximum potential sentence he or she faces, and so a defendant who enters a plea of guilty based upon misinformation concerning potential penalties does not act with sufficient awareness of the likely consequences. *See id.*at 458-59 ("[W]hen [defendant] pled guilty to second degree murder without first being informed of the mandatory minimum sentence, he did not know the direct consequences of his plea, and this rendered his plea uninformed and less than knowing."); *see also Hart v. Marion Corr. Inst.*, 927 F.2d 256, 259 (6th Cir. 1991) ("[B]ecause [defendant] was incorrectly informed of the possible term of incarceration before the plea was entered, his plea was not entered with a

'sufficient awareness of the relevant circumstances and likely consequences.'") (quoting *Brady*, 397 U.S. at 748). A trial court's acceptance of such an uninformed, unknowing guilty plea violates the due process clause of the Fourteenth Amendment.[3] *Id.* at 459.

Lake argues that the trial court's acceptance of his guilty plea violated his right to due process because he was misinformed as to the minimum sentence to which he would be exposed upon entering his plea. In denying Lake's petition, the Superior Court characterized his allegations as nothing more than "conclusory avowals" and concluded that Lake "provide[d] no factual substance for his claims . . . that his rights under [the] Sixth and Fourteenth Amendments to [the] United States Constitution were violated," or "that his plea was not knowing, not voluntary, or coerced…." However, Lake specifically alleges that his trial counsel informed him that by pleading guilty, Lake "would be subjected to 'six months to 25 years'" in prison and that, as a result, Lake was "not knowing or [sic] being informed of the 'maximum minimum five years.'"[4] Interpreting this language liberally, Lake has alleged not only that his trial counsel incorrectly advised him as to the minimum sentence he would face, but also that Lake was, in fact, unaware of the statutory minimum sentence for second-degree murder at the time he entered his guilty plea. Accepting these factual allegations as true, Lake has sufficiently demonstrated a prima facie case that he did not enter his plea of guilty with sufficient awareness of the likely consequences of doing so, and consequently, that the trial court's acceptance of his unknowing and unintelligent guilty plea violated his Fourteenth Amendment right to due process. *See Bryan*, 56 V.I. at 458.

[3] "[T]he Due Process Clause of the Fourteenth Amendment . . . [is] applicable to the Virgin Islands by virtue of section 3 of the Revised Organic Act." *Rivera-Moreno*, 61 V.I. at 315 n. 11 (citing 48 U.S.C. § 1561).

[4] Section 923(b) of title 14 of the Virgin Islands Code provides that a conviction for second-degree murder carries a penalty of imprisonment for not less than five years, and establishes no maximum penalty.

Accordingly, Lake is entitled to the issuance of a writ of habeas corpus and the Superior Court erred in denying his petition on this ground.

**B. Motion for Reduction of Sentence**

Lake further argues that he is entitled to habeas relief because the People breached their plea agreement by objecting to his motion for reduction of sentence in violation of his Fourteenth Amendment right to due process.[5] Where "a plea rests in any significant degree on a promise . . . of the prosecutor, so that it can be said to be part of the inducement or consideration," due process requires that the prosecutor fulfill his or her promise. *Santobello v. New York*, 404 U.S. 257, 262 (1971); *Heywood v. People*, 63 V.I. 846, 859 (V.I. 2015) (holding that defendant's due process rights were violated where terms of plea agreement required prosecution to recommend youthful offender treatment but prosecution actively argued against that position at sentencing and on appeal). In the event that the prosecution breaches the terms of a plea agreement, the defendant is entitled to withdraw his plea or, alternatively, to have the terms in the plea agreement enforced. *Heywood*, 63 V.I. at 860 (directing the court on remand to either "provide [defendant] with [an equivalent to specific performance], or permit him to withdraw from his plea agreement and proceed to trial on the original charges").[6]

[5] Specifically, Lake alleged that the People's "objection and opposition to the term of years for which [Lake] was sentence[d] in contradiction to the agreed terms of the plea accepted." Construed liberally, we interpret this as an allegation that the People's opposition to Lake's motion for reduction of sentence violated the terms of the plea agreement.

[6] *See also United States v. Bohn*, 959 F.2d 389, 391 (2d Cir. 1992) ("When a plea bargain . . . has not been honored, the remedy is either to enforce the bargain or to afford the defendant an opportunity to vacate the guilty plea." (citation omitted)); *White v. United States*, 425 A.2d 616, 618 (D.C. 1980) ("If the government violates its bargain, … the court must remand the case for resentencing or, in appropriate cases, to allow withdrawal of the defendant's plea." (citations omitted)); *State ex rel. Miller v. Whitley*, 615 So. 2d 1335, 1336 (La. 1993) ("[I]f a guilty plea is induced by a plea bargain … and [the defendant] pleaded guilty in part because of that [plea bargain], the bargain must be enforced or the [defendant] be allowed to withdraw from the plea" (citations omitted)).

While the Supreme Court of the United States has clearly established that a plea agreement requiring the prosecution to "recommend" a specific sentence or sentence range binds the prosecution through sentencing, there exists a difference of opinion as to whether the prosecution's obligations under the terms of such plea agreements extend to post-sentencing proceedings such as motions and hearings for reduction of sentence. *See, e.g.*, *State v. Lankford,* 903 P.2d 1305, 1311 (Idaho 1995) (discussing split in authority). Some federal circuit courts of appeal have concluded that a prosecutor's obligation to recommend a certain sentence generally terminates once the court imposes its sentence. *See, e.g.*, *United States v. Ligori*, 658 F.2d 130, 131 (3d Cir. 1981) (agreement to "make no recommendation as to the sentence to be imposed by the Court … extended only to the court's initial imposition of sentence and not to a subsequent motion to reduce sentence pursuant to rule 35"); *United States v. White*, 724 F.2d 714, 717 (8th Cir. 1984) (government's opposition to appellant's Rule 35 motion to reduce sentence did not breach plea agreement because "the government was not 'recommending' a sentence, but merely arguing in support of a sentence already adopted by the court");[7] *Bergman v. Lefkowitz*, 569 F.2d 705, 716 (2d Cir. 1977) (plea agreement binding prosecutor to recommend in good faith that the court impose no additional sentence did not require prosecutor to join in any appeal or post-conviction proceeding with respect to any additional sentence so imposed). These courts view the issue through the lens of contract law and conclude that unless specific terms are included in the agreement explicitly extending the prosecutor's obligation to post-sentencing proceedings, such an obligation does not extend to motions for reduction of sentence or to appellate proceedings. *See Brooks v. United States*, 708 F.2d 1280, 1281 (7th Cir. 1983) ("A plea bargain is, in law, just

[7] Federal Rule of Criminal Procedure 35 governs motions for the correction or reduction of sentence in federal court.

another contract.") (citing *United States v. Mooney*, 654 F.2d 482, 486 (7th Cir. 1981) ("In the absence of any [explicit] indication that the parties expected the Government not to oppose a Rule 35 motion, we would hesitate to imply such a condition.")). To hold otherwise, these courts reason, would effectively require the court to declare that a plea agreement contains implicit terms neither contemplated nor agreed to by the parties, and would impose an undue and unfair burden upon the prosecution. *See Brooks*, 708 F.2d at 1282 (7th Cir. 1983) ("The government gives up a lot when it gives up its right to oppose the defense counsel's arguments for leniency at the sentencing hearing; it would be giving up much more if it gave counsel another free shot at the judge in the form of a Rule 35(b) motion.").

Conversely, other jurisdictions have followed the lead of the United States Court of Appeals for the Fifth Circuit in holding that, unless otherwise specified in the terms of the plea agreement, a prosecutor's obligation to recommend a particular sentence extends to all proceedings relevant to sentencing, including motions for reduction of sentence. *See United States v. Ewing*, 480 F.2d 1141, 1143 (5th Cir. 1973); *see also United States v. Campbell*, 711 F.2d 159, 160 (11th Cir. 1983) ("[I]n this instance it is reasonable to conclude that the plea agreement the government made would foreclose opposition to a motion to reduce."). The reasoning of the Fifth Circuit is worthy of inclusion here:

> We must determine the significance of the Government's apparently inadvertent breach of its promise not to oppose probation. Although the promise was kept when sentence was imposed, it was not kept at the hearing to reduce the sentence. Strong guidance is provided by *Santobello v. New York*, 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971). In that case the defendant agreed to enter a guilty plea in exchange for the Government's promise not to make a sentence recommendation. At the sentencing hearing the Government inadvertently failed to keep its part of the bargain. The Supreme Court held that the Government's failure to afford the defendant the benefit of his bargain invalidated the guilty plea regardless of whether or not the sentencing judge was influenced by that failure. Fair administration of the criminal process and the interests of justice do not permit

> the prosecution to violate, whether intentionally or unintentionally, promises made in the negotiation of guilty pleas.
>
> Our case is almost identical to *Santobello* except for the fact that the prosecution fulfilled its commitment at the initial sentencing hearing only to breach it at the subsequent hearing on Ewing's Rule 35 motion for the reduction of sentence. But this distinction is of little import because both of these proceedings were integral parts of the sentencing process in this case. Surely when Ewing obtained the Government's promise not to oppose probation in exchange for his plea of guilty, he did so in the expectation that the benefits of that promise would be available throughout the proceedings relevant to the determination of his sentence. The Government was obligated to fulfill its commitment at least until the question of Ewing's sentence was finally resolved by the sentencing judge.

*Id.* Courts following this approach focus their analysis more on the reasonable expectations of the defendant in entering into the plea agreement than on the language of the agreement itself. *See, e.g., State v. Thomas*, 294 A.2d 57, 61 (N.J. 1972) ("If plea bargaining is to fulfill its intended purpose, it must be conducted fairly on both sides and the results must not disappoint the reasonable expectations of either."). These courts emphasize the importance of adherence to the axiomatic principle of criminal jurisprudence that any ambiguity in the criminal law must be resolved in favor of the accused. *See, e.g., United States v. Giorgi*, 840 F.2d 1022, 1026 (1st Cir. 1988) ("Given the relative interests implicated by a plea bargain, we find that the costs of an unclear agreement must fall upon the government … we hold that the government must shoulder a greater degree of responsibility for lack of clarity in a plea agreement."); *United States v. Harvey*, 791 F.2d 294, 300 (4th Cir. 1986) ("[C]onstitutional and supervisory concerns require holding the Government to a greater degree of responsibility than the defendant (or possibly than would be either of the parties to commercial contracts) for imprecisions or ambiguities in plea agreements."); *see also State v. Wills*, 765 P.2d 1114, 1120 (1988) (ambiguous plea agreements must be strictly construed in favor of defendant). Thus, these courts find that in the absence of relevant, express terms, plea agreements are ambiguous concerning the prosecution's post-sentencing obligations,

and due process requires that the prosecution adhere to the recommended sentence agreed upon by the parties at all proceedings relevant to sentencing, including post-sentencing motions for reduction of sentence. *See Wills*, 765 P.2d at 1119-20 (holding that the State's promise to make favorable sentence recommendations "binds the State at the subsequent hearing on the defendant's motion to modify sentence, absent language in the plea agreement limiting the State's promise to the original sentencing hearing").

Thus, the choice between these two contrasting approaches is effectively a choice between two different methods of interpreting ambiguous terms in plea agreements. And while contract law provides a useful starting point for such interpretation, we are mindful that general principles of contract law "cannot be unthinkingly applied to the criminal justice system, which is interventionist by design and which gives the accused numerous procedural protections reflecting the fact that the parties in a criminal proceeding do not stand on an equal footing." *See* Daniel Frome Kaplan, *Where Promises End: Prosecutorial Adherence to Sentence Recommendation Commitments in Plea Bargains*, 52 U. CHI. L. REV. 751, 767 (1985). Viewed in this light, we think that the strict, contractual analysis utilized by the majority of circuit courts that have considered this particular issue is unduly limited in its approach, as it both fails to adequately address the due process concerns outlined by the Supreme Court in *Santobello,* and seems to violate the foundational principle of criminal law that ambiguities must be resolved in favor of the accused. *See, e.g.*, *People v. Rosario*, 62 V.I. 429, 450 (V.I. Super. Ct. 2015) (rule of lenity "applies not only to substantive criminal prohibitions, but also to the penalties they impose" (quoting *Gov't of the V.I. v. Knight*, 28 V.I. 249, 271 (3d Cir. 1993)); *In re Motylinski*, 60 V.I. 621, 639 (2014) (rule of lenity applies in both criminal and quasi-criminal contexts). Thus, we conclude that the approach of the Fifth Circuit, emphasizing the reasonable expectations of criminal defendants

entering into plea agreements, represents the better rule of interpretation—one more in keeping with the due process concerns discussed in *Santobello* and with our own precedent.

In *Santobello,* the Supreme Court established that "when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the *inducement or consideration*, such promise must be fulfilled." 404 U.S. at 261 (emphasis added). When a prosecutor promises to recommend a particular sentence to the court, it is reasonable for a defendant entering into a plea agreement to expect that promise to extend to all proceedings relevant to the determination of sentence. *See Ewing*, 480 F.2d at 1143; *see also* Kaplan, 52 U. CHI. L. REV. at 771 ("[I]t is reasonable to expect continuing prosecutorial adherence to the agreement: a prosecutor's commitment to a specified sentence recommendation would be of little value if the government's tongue is to be freed at a later, related proceeding."). In turn, when a defendant agrees to waive his right to trial and enter a guilty plea in exchange for what he reasonably believes to be a prosecutor's promise to recommend a particular sentence at all proceedings in which his sentence is at issue, that promise, as it is understood by the defendant, serves as consideration for the agreement and due process requires that it be fulfilled. *See Ewing*, 480 F.2d at 1143 (citing *Santobello*, 404 U.S. 257); *see also Wills*, 765 P.2d at 1119 (holding that ambiguity concerning prosecutor's obligations at sentence reduction hearing must be resolved in favor of defendant because "[t]here can then be no question … that the defendant's waiver of his constitutional right to jury trial is voluntary and knowing")*; see also* Kaplan, 52 U. CHI. L. REV. at 771 (application of this principle "is consistent with modern contract law and realistically enforces defendants' expectations, so that plea bargains may properly be considered to have been knowingly and intelligently entered into by these defendants"). Thus, we follow those courts adopting the approach of the Fifth Circuit and hold that where a plea agreement requiring the

prosecution to recommend a particular sentence or sentencing range to the court is ambiguous as to the scope of the prosecution's post-sentencing obligations, the prosecution remains bound to make the same recommendation at all proceedings relevant to sentencing, including proceedings on a motion for reduction of sentence.

Lake argues that the Superior Court erred in denying his petition because he sufficiently made out a prima facie case for habeas relief on the basis of "[the prosecution's] own objection and opposition to the term of years for which [Lake] was sentence[d] in contradiction to the agreed terms of the plea accepted." In denying Lake's petition, the Superior Court did not address this allegation. However, construing this language liberally, Lake alleged that the prosecution breached the plea agreement by objecting to Lake's motion to reduce the thirty-year sentence imposed by the court when the terms of the plea agreement required the prosecution to recommend a sentence of twenty years. Additionally, Lake's characterization of the People's opposition as standing "in contradiction to the agreed terms of the plea accepted" clearly suggests that he believed that the prosecutor remained bound to recommend a sentence of twenty years even at post-sentencing proceedings on his motion for reduction of sentence. Therefore, because Lake sufficiently alleged that he entered into the plea agreement with the expectation that the prosecution would recommend a twenty year sentence at all relevant proceedings, and because Lake further alleged that the prosecution breached the plea agreement by opposing his motion to reduce the thirty year sentence imposed by the Court, he has successfully made out a prima facie case for habeas relief based upon the violation of his Fourteenth Amendment right to due process, and the Superior Court erred in denying his petition in this respect.

**C. Ineffective Assistance of Counsel**

Lake's petition also alleges two separate violations of his Sixth Amendment rights. First, Lake argues that his trial counsel's failure to accurately advise him of the minimum penalty he faced deprived him of his Sixth Amendment right to effective assistance of counsel. To prevail on a claim for ineffective assistance of counsel, a defendant must: "(1) identify acts or omissions of counsel that are alleged to have been outside the wide range of reasonable professional judgment and competent assistance and (2) show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Gumbs v. People*, 64 V.I. 491, 506 (V.I. 2016) (citations and internal quotation marks omitted). However, having concluded that Lake has sufficiently alleged a prima facie case for habeas relief on the ground that his guilty plea was entered in violation of his right to due process, we need not determine whether he also sufficiently alleged a prima facie case for relief under the more onerous standard applicable to ineffective assistance claims. *See, e.g. Hart,* 927 F.2d at 259 ("Because of this holding [that defendant's plea to the charge as it resulted in the sentence he received was not intelligently entered] we do not need to address [defendant's] claim of ineffective assistance of counsel.").

Additionally, Lake argues that the very filing of the motion for reduction itself violated his Sixth Amendment right to effective assistance of counsel because the motion contained factual inaccuracies and was filed by counsel without his permission. But the right to effective assistance of counsel is dependent on the right to counsel itself, which applies only to "critical stages" of a criminal prosecution. *See Wainwright v. Torna*, 455 U.S. 586, 587-88 (1982). And, in the context of determining whether a defendant has a right to be present at a hearing on a motion for correction of sentence, we have previously held that such a proceeding does not constitute a "critical stage" of sentencing. *Irons v. People* 57 V.I. 473, 479-80 (V.I. 2012). Moreover, a number of jurisdictions

have held that "a motion to reduce a criminal sentence—no matter the procedural vehicle used to assert it—is simply not a critical stage . . . when it occurs after judgment has been entered and a sentence imposed." *Director, Dep't of Corr. v. Kozich*, 779 S.E.2d 555, 561 (Va. 2015) (citing *United States v. Palomo*, 80 F.3d 138, 142 (5th Cir. 1996)); *United States v. Hamid*, 461 A.2d 1043, 1044 (D.C. 1983) (holding "that the Sixth Amendment right to the effective assistance of counsel does not apply to the post-conviction process in seeking a reduction of sentence"); *State v. Pierce*, 787 P.2d 1189, 1201 (Kan. 1990) (concluding that "a motion to modify sentence . . . is not a critical stage of the criminal prosecution and that an indigent defendant does not have a Sixth Amendment right to counsel"); *Patrick v. State*, 108 P.3d 838, 844 (Wyo. 2005) ("[T]he United States Constitution does not require counsel for indigent defendants seeking post-conviction [sentence reduction]."). (citations omitted)).

However, even assuming that the right to counsel and the right to the effective assistance attach to proceedings on motions for reduction of sentence, Lake has, in any event, failed to make out a prima facie case for habeas relief on this ground. As noted above, a successful claim for ineffective assistance of counsel requires a petitioner to show not only that counsel's actions were objectively unreasonable, but also that but for counsel's unprofessional errors, there is a reasonable probability that the result of the proceeding would have been different. *Gumbs*, 64 V.I. at 506. Lake's petition does not include any allegation that he suffered prejudice as a result of his counsel's decision to file the motion or that the result of the proceeding would have been different but for his counsel's actions. Thus, Lake has failed to make out a prima facie case for relief based upon his counsel's filing of the motion for reduction of sentence.

**D. Rule 11**

Finally, Lake argues that the trial court's imposition of a thirty-year sentence—a sentence exceeding the twenty-year recommendation of the prosecutor—constituted an "illegal departure" from the sentence agreed upon by the parties in violation of Federal Rule of Criminal Procedure 11.[8] In rejecting this argument, the Superior Court, citing our decision in *Corraspe v. People*, 53 V.I. 470 (V.I. 2012), correctly noted that Federal Rule of Criminal Procedure 11 did not apply to plea agreements in the Superior Court, which were instead governed by Superior Court Rule 126.[9] However, during the pendency of this appeal, this Court adopted the Virgin Islands Rules of Criminal Procedure, including Rule 11,[10] which is substantively identical to its federal counterpart.[11]

[8] Although he provides no supporting factual allegations to make out a prima facie case for relief, Lake also characterizes his sentence as "excessive." However, we note that we have previously held that a similar sentence—incarceration for a period of twenty-five years—was not an excessive sentence on a conviction for second-degree murder under substantially similar circumstances. *See Irons*, 57 V.I. at 480-81.

[9] Superior Court Rule 126 provided:

> A defendant may plead guilty, not guilty or nolo contendere to any complaint or information. If a defendant refuses to plead or if the judge refuses to accept a plea of guilty, the judge shall enter a plea of not guilty. In no case shall the court accept a plea of guilty without first determining if the defendant understands the nature of the charge against him, and that the plea is voluntarily made. The defendant shall be entitled to change a plea of not guilty to guilty at any time before the findings. He shall be permitted to change a plea of guilty or nolo contendere to one of not guilty only by permission of the court. Where a plea of guilty is entered, the court may hear the witnesses in support of the complaint prior to judgment and sentence, and after such hearing, may, in its discretion, refuse to accept the plea.

[10] Virgin Islands Rule of Criminal Procedure 11(c)(1) provides in relevant part:

> "the plea agreement may specify that an attorney for the government will: (A) not bring, or will move to dismiss, other charges; (B) recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate (such a recommendation or request does not bind the court); or (C) agree that a specific sentence or sentencing range which the defendant and defendant's counsel agree to have imposed is the appropriate disposition of the case (such a recommendation or request binds the court once the court accepts the plea agreement)."

[11] Pursuant to S. Ct. Prom. No. 2017- 010, the Virgin Islands Rules of Criminal Procedure entered into effect on December 1, 2017.

Although the allegations in the petition clearly suggest that Lake believes the terms of his plea agreement were intended to bind the Court, at his change of plea hearing, Lake affirmatively acknowledged his understanding that, even after accepting the plea agreement, "the court could sentence [him] to more than twenty years." Given this acknowledgement, as well as the fact that Lake failed to include any reference to language in the plea agreement that would suggest it was intended to be binding in nature, it is difficult to see how Lake could plausibly allege a violation of Rule 11 on these grounds. Nevertheless, it is unnecessary for us to make such a determination in this case.

The Supreme Court of the United States has held that violations of Federal Rule of Criminal Procedure 11, standing alone, do not implicate constitutional rights and are thus not subject to collateral attack in petitions for habeas corpus, except insofar as a Rule 11 violation might also constitute an independent violation of protected constitutional rights. *See United States v. Timmreck*, 441 U.S. 780, 785 (1979) ("[C]ollateral relief is not available when all that is shown is a failure to comply with the formal requirements of the Rule.") (citing *Hill v. United States*, 368 U.S. 424, 429). We need not decide here whether habeas petitioners should be categorically barred from asserting formal violations of Virgin Islands Rule of Criminal Procedure 11. However, in keeping with the Supreme Court's reasoning in *Timmreck*, we find that because Lake has successfully made out a prima facie case attacking the validity of his guilty plea on Fourteenth Amendment due process grounds, our consideration of any additional Rule 11 violation would be superfluous at this stage of the proceedings as the Superior Court must, in any event, issue a writ on the basis of Lake's due process claim.

## IV. CONCLUSION

In his petition for writ of habeas corpus, Lake alleged that his guilty plea was unknowing and unintelligent because he was unaware of the minimum penalty he would face upon entering his plea of guilty to second-degree murder. Additionally, Lake alleged that the People breached the plea agreement by wrongfully opposing his motion for reduction of sentence. On either ground, Lake sufficiently stated a prima facie case for habeas relief on the basis of the violation of his Fourteenth Amendment right to due process, and the Superior Court therefore erred in dismissing his petition. Accordingly, we reverse the Superior Court's October 6, 2015 order, and remand this case to the Superior Court with directions to issue the writ and conduct further proceedings in accordance with the Virgin Islands Code, the Virgin Islands Habeas Corpus Rules, and this Court's precedent.

**Dated this 3rd day of October, 2018.**

**BY THE COURT:**

/s/ Maria M. Cabret
**MARIA M. CABRET**
**Associate Justice**

**ATTEST:**
**VERONICA J. HANDY, ESQ.**
**Clerk of the Court**