

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

AKEEL CODRINGTON

Plaintiff)

CASE NO. ST-16-MC-0000058

ACTION FOR: WRIT OF HABEAS
CORPUS

VS

GOVERNMENT OF THE VIRGIN
ISLANDS
VIRGIN ISLANDS OFFICE OF

Defendant

**NOTICE OF ENTRY OF
MEMORANDUM OPINION &
ORDER**

TO: PAMELA R. TEPPER, ESQ., AAG
AKEEL CODRINGTON- via mail
JUDGES, MAGISTRATES, LAW CLERKS, IT
ESTRELLA H. GEORGE, ACTING CLERK OF THE
COURT

Please take notice that on November 23, 2016 a(n) **MEMORANDUM
OPINION & ORDER** dated November 18, 2016 was entered by the Clerk in the
above-entitled matter.

Dated: November 23, 2016

Estrella H. George
Acting Clerk of the Court

CAMEIL A. CLARKE
COURT CLERK II

² The plea offer was dated May 5, 2008.

exchange, the [Government would] move to dismiss the remaining counts.”³ The terms of the offer stated that the “parties agree that the judge could sentence [Petitioner] to a minimum sentence of ten years (inclusive of the mandatory five year sentence up to the statutory maximum). The parties further agree that it will be left to the Court to determine what the statutory maximum is for Second Degree Murder.”⁴ In addition, the offer stated that the “parties shall reserve their right to set forth evidence and make their own allocutions and sentencing recommendations.”⁵ Petitioner crossed out the language “to set forth evidence,” initialed the change to the document, and signed the plea offer document on May 6, 2008. Petitioner also filed a motion for a hearing for change of plea on May 7, 2008. The Government filed a notice to the Court on May 8, 2008, indicating that Petitioner’s change to the plea offer document was treated as a counteroffer and was rejected by the Government. The Government also stated that the original plea offer would be resubmitted to Petitioner and would expire on May 9, 2008. On May 9, 2008, the Court held a hearing on the matter, during which Petitioner indicated that he objected to the “set forth evidence” term in the plea offer, and the Government stated that Petitioner’s counteroffer striking that language was unacceptable.⁶ Consequently, Petitioner declared to the Court that he was ready for trial⁷ and filed proposed jury instructions.

From that point, the record does not reveal any other evidence of plea negotiations between the parties, and the case proceeded toward trial. The Government amended the Information on

³ Plea Agreement. The Plea Agreement was filed with the Court on May 7, 2008.

⁴ *Id.*

⁵ *Id.*

⁶ See Record of Proceedings for the May 9, 2008, hearing.

⁷ *Id.*

August 8, 2008, and Counts Three and Five were deleted. Following a trial, a jury found Petitioner guilty on all three remaining counts.

On November 21, 2008, the Court sentenced Petitioner to a term of life imprisonment with regard to Count One; to a term of imprisonment of fifteen years with regard to Count Two, with this sentence running consecutive to the sentence imposed on Count One; and to a term of five years imprisonment with regard to Count Three,⁸ with this sentence running concurrent with the sentences imposed on Counts One and Two.⁹

Petitioner filed an appeal, and the Supreme Court of the Virgin Islands affirmed Petitioner's conviction on July 20, 2012.¹⁰ Petitioner then filed a Petition for Writ of Habeas Corpus on September 13, 2016.

STANDARD

"Habeas corpus is an equitable remedy whereby individuals who are restrained in violation of their constitutional rights may seek release."¹¹ Both the Virgin Islands Revised Organic Act and the Virgin Islands Code recognize habeas corpus as a form of relief. Section 3 of the Revised

⁸ In the Amended Information, Count Four (Possession of Stolen Property) was restated as Count Three.

⁹ The Court takes judicial notice of the record in Petitioner's criminal case. See *People of the Virgin Islands ex rel. J.G.*, 59 V.I. 347, 364, 2013 V.I. Supreme LEXIS 33, *33, 2013 WL 3379089 (VI. 2013) (a "trial court may take judicial notice of the existence of a document that has been filed with it, [but] it may not assume, through judicial notice, that the contents of those documents are true unless the other requirements for judicial notice are met). See also *Gottsch v. Bank of Stapleton*, 235 Neb. 816, 834, 458 N.W.2d 443, 455, 1990 Neb. LEXIS 223, *35-36, 14 U.C.C. Rep. Serv. 2d (Callaghan) 150 (Neb. 1990) ("A court will take judicial notice of its own acts and records in the same case, of facts established in prior proceedings in the same case, of the authenticity of its own records of another case between the same parties, of the files of related cases in the same court, and of public records on file in the same court. In addition judicial notice will be taken of the record, pleadings or judgment of a case in another court between the same parties or involving one of the same parties, as well as the record of another case between different parties in the same court") (citing M. Graham, *Handbook of Federal Evidence* § 201.3 at 72-73 (2d ed. 1986)).

¹⁰ See *Codrington v. People of the Virgin Islands*, 57 V.I. 176, 178, 2012 V.I. Supreme LEXIS 56, *1, 2012 WL 2949139 (VI. 2012).

¹¹ *Ledesma v. Gov't of the V.I.*, 2016 V.I. LEXIS 167, *3 (V.I. Super. Ct. Oct. 13, 2016).

Organic Act states that “[a]ll persons shall have the privilege of the writ of habeas corpus.”¹² In addition, the Virgin Islands Legislature “enacted chapter 91 of title 5 of the Virgin Islands Code [to] establish a procedure for seeking habeas corpus relief under Virgin Islands law, [which] codifies the right to habeas corpus and explains the process through which it can be obtained.”¹³ Under the statute, “every person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint.”¹⁴

“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, entitle the petitioner to relief — and also whether the stated claims are for any reason procedurally barred.”¹⁵ The habeas petitioner “bears the burden of proving the facts supporting the petition or establishing grounds entitling him to relief.”¹⁶ “If a petitioner alleges that he is illegally imprisoned, the petition must state how the imprisonment is illegal.”¹⁷ “The petitioner must state specific factual allegations which require habeas relief rather than conclusory or speculative allegations.”¹⁸ In addition, “the habeas corpus petition is not a vehicle for directly appealing a

¹² 48 U.S.C. § 1561.

¹³ *Rivera-Moreno v. Government of the Virgin Islands*, 61 V.I. 279, 293-294, 2014 V.I. Supreme LEXIS 46, *13-15 (VI. 2014) (citing 5 V.I.C. §§ 1301-25).

¹⁴ *Id.*

¹⁵ *Rivera-Moreno*, 61 V.I. at 311, (citing *People v. Romero*, 883 P.2d 388, 391 (1994) (explaining the habeas corpus procedure under California's nearly identical statutes)).

¹⁶ *Ledesma*, 2016 V.I. LEXIS 167, *5-6.

¹⁷ *Id.*, citing 5 V.I.C. § 1302(2).

¹⁸ *Mitchell v. Wilson*, 62 V.I. 326, 330 (V.I. Super. Ct. 2015). See also *Townes v. Jarvis*, 577 F.3d 543, 550, 2009 U.S. App. LEXIS 16244, *17 (4th Cir. Va. 2009) (citing *Edwards v. City of Goldsboro*, 178 F.3d 231, 244 (4th Cir. 1999)).

conviction or relitigating trial.”¹⁹ As the Supreme Court of the Virgin Islands has stated, “a writ of habeas corpus is an inappropriate medium to rehash ... issues” decided at trial or on appeal.²⁰

“If the court determines that the petition does not state a prima facie case for relief or that the claims are all procedurally barred, the court will deny the petition outright,” but “if it appears that the writ ought to issue,” the Superior Court “shall grant [a writ of habeas corpus] without delay.”²¹ “Notably, the habeas corpus statute is procedural — the issuance of the writ does not decide the issues or guarantee the petitioner is entitled to relief.”²²

ANALYSIS

In his Petition, Codrington asserts that his constitutional rights under the Sixth Amendment²³ and Fourteenth Amendment²⁴ were violated due to his trial counsel’s ineffective assistance and because the witnesses at trial submitted conflicting testimony. Petitioner also asserts that the prosecution committed misconduct by reneging on a plea agreement, which invokes his due process rights under the Fifth Amendment of the Constitution.²⁵

¹⁹ *Ledesma*, 2016 V.I. LEXIS 167, *3-5 (V.I. Super. Ct. Oct. 13, 2016) (citing *Rodriguez v. Bureau of Corr.*, 58 V.I. 367, 377 (V.I. 2013) (opining that “[i]t is settled legal precedent that criminal defendants are barred from using [post-conviction collateral attacks like habeas] to relitigate issues decided on direct appeal” (internal quotations and citation omitted)).

²⁰²⁰ *Ibrahim v. Gov.’t of the V.I.*, Civ. No. 2007/76, 2008 V.I. Supreme LEXIS 20, at *4 (V.I. Jan. 18, 2008).

²¹ *Rivera-Moreno*, 61 V.I. at 311 (citing 5 V.I.C. § 1304).

²² *Ledesma*, 2016 V.I. LEXIS 167, *3-5 (citing *Rivera-Moreno*, 61 V.I. at 312).

²³ The Sixth Amendment of the United States Constitution provides that “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.”

²⁴ The Fourteenth Amendment of the United States Constitution establishes that “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

²⁵ The Fifth Amendment of the United States Constitution provides that “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall

In order to successfully raise the issue of ineffective assistance of counsel under the Sixth Amendment, a petitioner “must prove that his trial counsel’s performance ‘fell below an objective ... standard of reasonableness.’”²⁶ “Tactical decisions about which competent counsel might disagree do not qualify as objectively unreasonable,”²⁷ and there is a “‘strong presumption that counsel’s conduct falls within a wide range of reasonable professional assistance.’”²⁸ In addition, a petitioner must prove that “his counsel’s conduct prejudiced him in the proceeding so that there is a ‘reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.’”²⁹

Petitioner asserts that he received ineffective assistance of counsel because counsel “engaged in misconduct that induced Petitioner to engage in conduct that substantially increased his sentence exposure and thus it is conceivable that this misconduct referred to as sentencing manipulation would lead a court to ignore a mandatory minimum sentence.”³⁰ Petitioner also “claim[s] ineffective assistance of said former trial counsel in matter of plea bargaining arena, establishing that ... counsel’s performance ... fell below an objective standard of reasonable competence ... and ... [Petitioner] was prejudiced by ... counsel’s deficient performance.”³¹

any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

²⁶ *Corraspe v. People*, 53 V.I. 470, 479 (V.I. 2010) (quoting *Hill v. Lockhart*, 474 U.S. 52, 57 (1985)).

²⁷ *Ibrahim v. Gov’t of the V.I.*, S. Ct. Civ. No. 2007-76, 2008 V.I. Supreme LEXIS 20, at *2 (V.I. Jan. 18, 2008) (unpublished) (citing *Bell v. Cone*, 535 U.S. 685, 702 (2002)).

²⁸ *Suarez v. Government of the Virgin Islands*, 56 V.I. 754, 759-760, 2012 V.I. Supreme LEXIS 49, *5-7, 2012 WL 2288434 (VI. 2012) (citing *Bell*, 535 U.S. at 702).

²⁹ *Suarez v. Government of the Virgin Islands*, 56 V.I. 754, 759-760, 2012 V.I. Supreme LEXIS 49, *5-7, 2012 WL 2288434 (VI. 2012) (quoting *Hill*, 474 U.S. at 57).

³⁰ Petition, at pages 3 and 4.

³¹ Petition, at page 3.

Petitioner's ineffective assistance of counsel argument is based entirely on conclusory and speculative allegations, which are not grounds for habeas relief.

Petitioner also contends that the testimonies of government witnesses Steve Ramsey, Brian Russell, and Timotheus Ross were conflicting and did not corroborate one another.³² Courts have "consistently held that an issue which is raised in the trial court, and upon which conflicting testimony develops, cannot serve as a basis for habeas corpus."³³ Accordingly, by challenging the credibility of trial witnesses, Petitioner has not stated an adequate basis for habeas relief.

Codrington also claims that the prosecution committed misconduct by reneging on a plea deal. Petitioner asserts that sometime "between May 5, 2008, and August 11, 2008," he appeared before Judge James S. Carroll, III, on the matter of a plea agreement.³⁴ Petitioner states that "[o]n and/or between same said days and times approximated upon taking and agreeing to the then offered plea deal, Petitioner plead (sic) guilty in the presence of the Judge, Prosecutor, and his former ... counsel."³⁵ The "paper work for the plea deal was already signed by all parties involved, when abruptly the Prosecutor ... reneged on the signed plea deal/agreement. On being questioned by ... Judge James Carroll [III] as to why the [prosecutor] reversed its decision in matter of the plea deal/agreement, [the prosecutor] stated that Petitioner 'would not be given enough time for an open plea deal of second degree murder which was offered by the [Government]'.³⁶

³² Petition, at pages 6 and 7.

³³ *In re Shipp*, 62 Cal. 2d 547, 552, 399 P.2d 571, 575, 43 Cal. Rptr. 3, 7, 1965 Cal. LEXIS 273, *9-10 (Cal. 1965).

³⁴ Petition, at page 4.

³⁵ *Id.*

³⁶ *Id.*

Given that Petitioner's claim for prosecutorial misconduct is based on a plea agreement, he must allege facts indicating "(1) [the existence of] an agreement, (2) a duty created by that agreement, (3) a breach of that duty, and (4) damages."^{37 38}

"A court must accept as true a habeas petition's well-pleaded allegations ... but not its 'legal conclusions.'"³⁹ Petitioner's allegations, that parties had "paperwork for the plea deal ... signed by all parties involved" and that the Government "reneged" on the agreement, insufficiently state a claim for prosecutorial misconduct based on breach of a plea agreement.^{40 41} As a result, Petitioner does not state a prima facie case for habeas relief, and his Petition will be denied.

³⁷ *Creative Minds, LLC v. Reef Broad., Inc.*, 2014 V.I. LEXIS 81, *5 (V.I. Super. Ct. Sept. 24, 2014).

³⁸ See *State v. Deilke*, 2004 WI 104, P12, 274 Wis. 2d 595, 604-605, 682 N.W.2d 945, 950, 2004 Wisc. LEXIS 480, *9 (Wis. 2004) (courts "draw upon contract principles in determining the rights of the parties to a plea agreement and whether there has been a breach that is material and substantial").

³⁹ *Townes v. Jarvis*, 577 F.3d 543, 550, 2009 U.S. App. LEXIS 16244, *17 (4th Cir. Va. 2009).

⁴⁰ See, e.g., *Schiano v. MBNA*, 2013 U.S. Dist. LEXIS 81440, *85, 2013 WL 2452681 (D.N.J. Feb. 11, 2013) (court dismissed claim because plaintiffs did "not allege any specific terms of any specific contract or explain how these conclusory allegations supposedly constitute a breach of any contract, let alone a material breach." See also *No Cost Conf., Inc. v. Windstream Communs., Inc.*, 940 F. Supp. 2d 1285, 1299, 2013 U.S. Dist. LEXIS 54005, *26, 2013 WL 1629061 (S.D. Cal. 2013) (plaintiff must "plead the existence of a contract [and] its terms which establish the obligation [in] issue"). *Padilla v. United States*, 58 Fed. Cl. 585, 589, 2003 U.S. Claims LEXIS 363, *11 (Fed. Cl. 2003) (court ruled that a complaint alleging that the defendant "maliciously, purposely, and arbitrarily reneged and breached the [contract]," had "set[] forth nothing more than a conclusory allegation").

⁴¹ The record suggests that the parties did not execute a plea agreement because they could not reach a meeting of the minds concerning the terms of the plea. By striking language from the Government's plea offer, Petitioner rejected the plea offer and submitted a counteroffer, which the Government rejected. "It is well settled that an enforceable contract requires an offer and acceptance ... consideration, (the bargained-for legal benefit and/or detriment), and a manifestation of mutual assent." *Terrace v. Williams*, 52 V.I. 225, 241 (V.I. 2009) (concurring opinion) (citing *Navair, Inc. v. IFR Americas, Inc.*, 519 F.3d 1131, 1137-39 (10th Cir. 2008) and *Fletcher-Harlee Corp. v. Pote Concrete Contractors, Inc.*, 482 F.3d 247, 250 (3d Cir. 2007)). An "offeree's power of acceptance is terminated by his rejection of the offer" or by "making of a counter-offer, unless the offeror has manifested a contrary intention or unless the counter-offer manifests a contrary intention of the offeree." Restatement (Second) of Contracts §§ 38 and 39. See also *James v. Fitzpatrick*, 1990 V.I. LEXIS 22, *5, 25 V.I. 124, 127, 1990 WL 10659036 (V.I. Terr. Ct. 1990); *Castolenia v. Crafa*, 2014 V.I. LEXIS 1, *7, 2014 WL 239427 (V.I. Super. Ct. Jan. 15, 2014); Arthur L. Corbin, Corbin on Contracts § 90, at 382-84 (1963); John E. Murray, Murray on Contracts § 42, at 110-11 (3d ed. 1990). "A reply to an offer which purports to accept it but is conditional on the offeror's assent to terms additional to or different from those offered is not an acceptance but is a counter-offer." Restatement (Second) of Contracts § 59. See also *Castolenia*, 2014 V.I. LEXIS 1, *7; *Brewer v. City of Seminole (In re De-Annexation)*, 2009 OK 18, P9, 204 P.3d 87, 89, 2009 Okla. LEXIS 17, *5 (Okla. 2009) ("an acceptance will not bind the offeror unless it is unconditional, identical to the offer, and does not modify, delete or introduce any new terms into the offer. An acceptance that modifies the terms of an offer is a counter offer and constitutes a

An Order consistent with this Opinion shall follow.

Dated: November 18, 2016

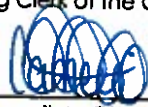
ATTEST: Estrella H. George
Acting Clerk of Court

by:

Donna D. Donovan

Court Clerk Supervisor 11/23/16


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

CERTIFIED A TRUE COPY
DATE: 11-23-16
ESTRELLA H. GEORGE
Acting Clerk of the Court
By: 
Cameil A. Clarke
Court Clerk II

rejection of the initial offer"). Applying the analysis required by *Banks v. Int'l Rental & Leasing Corp.*, 55 V.I. 967 (V.I. 2011), the Court finds that Restatement (Second) of Contracts §§ 38, 39 and 59 have been adopted by the Superior Court. A review of the case citations listed in the Restatement (Second) of Contracts §§ 38, 39 and 59 suggests that a majority of jurisdictions have adopted rules similar to the Restatement (Second) of Contracts §§ 38, 39 and 59. Finally, considering the apparent widespread application of this rule in a majority of jurisdictions and the absence of an identifiable minority rule, the Court finds that the Restatement (Second) of Contracts §§ 38, 39 and 59 represent the soundest rules for the Virgin Islands and are in accord with local public policy.

DIVISION OF ST. THOMAS AND ST. JOHN

Respondents.

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) **CASE NO. ST-16-MC-58**

Cameil A. Clarke
Court Clerk II