

COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

SUFFOLK COUNTY

DAR No.

Appeals Court No.
2018-P-1587

COMMONWEALTH

V.

ANGEL CAMACHO

ON APPEAL
FROM A JUDGEMENT OF THE SUFFOLK SUPERIOR COURT

**APPELLANT'S APPLICATION FOR
DIRECT APPELLATE REVIEW**

For the Defendant/Appellant:

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February 6, 2019

REQUEST FOR DIRECT APPELLATE REVIEW

In 2013, the defendant was allowed to withdraw his 2009 guilty plea in light of Annie Dookhan's misconduct. He pled guilty the same day. Simply because the defendant moved quickly to resolve his case, he was unable to benefit from Bridgeman v. District Attorney for Suffolk Dist., 471 Mass. 465 (2015) (Bridgeman I), which held that if a Dookhan defendant successfully withdraws a guilty plea they cannot be charged with a more serious offense than originally convicted of or given a more severe sentence if convicted again. Therefore, when the defendant entered his 2013 plea, he did so under the belief that if he went to trial, he was facing a maximum penalty of 22.5 years and not the 6-8 years he was originally sentenced to.

In the motion at bar, the defendant sought to withdraw his 2013 guilty plea, arguing that Bridgeman I should be applied retroactively and that, therefore, his 2013 guilty plea was involuntary. The Commonwealth argued, inter alia, that the motion should be denied because the defendant waived

his right to collateral review of his conviction. Without reaching the merits of the defendant's motion, the trial court agreed with the Commonwealth and denied the motion, holding that the defendant waived his right to collateral review of his conviction as part of the 2013 plea agreement.

This Court should accept the defendant's application in order to determine two important issues: (1) whether Bridgeman I should be applied retroactively and (2) whether (or to what extent) collateral-challenge waivers are unenforceable.

STATEMENT OF PRIOR PROCEEDINGS

The defendant is appealing the denial of a motion to withdraw his 2013 guilty plea.

On January 6, 2009, the defendant was arraigned in Suffolk Superior Court and pled not guilty to the following offenses:

- Offense #1: Trafficking two-hundred grams or more of cocaine (G.L. c. 94C, § 32E(b));
- Offense #2: Trafficking cocaine within one-hundred feet of a public park (G.L. c. 94C, § 32J);
- Offense #3: Unlawfully distributing cocaine (G.L. c. 94C, § 32A);
- Offense #4: Unlawfully distributing cocaine within one-hundred feet of a public park (G.L. c. 94C, § 32J).

Record Appendix (R.A.) 70-73.¹

On November 5, 2009, the defendant offered to plead guilty to so much of Offense #1 charging trafficking in more

¹ Citations to the Record Appendix are to the record appendix that was submitted to the Appeals Court along with the defendant's brief.

than twenty-eight but less than one-hundred grams of cocaine. Id at 5. The Commonwealth filed nolle prosequis as to the rest of the offenses. Id at 5-6. The plea judge accepted the joint sentencing recommendation and sentenced the defendant to not less than 6 years and not more than 8 years in a state prison. Id at 5.

Approximately four years later, the defendant moved to withdraw his guilty plea, arguing that Annie Dookhan's misconduct rendered it involuntary. R.A. 78-83. The motion was allowed by agreement from the Commonwealth on December 10, 2013. R.A. 48. On that same day, the defendant pled guilty to a lesser included offense of Offense #1, possession of cocaine with intent to distribute. Id. at 5. He was sentenced to three and a half years to three and a half years and a day in state prison. Id. at 18. The sentence was deemed served. Id.

A few years later, the Supreme Judicial Court decided Bridgeman v. District Attorney for Suffolk Dist., 471 Mass. 465 (2015) (Bridgeman I), holding that, with regard to

Dookhan defendants seeking to vacate a guilty plea, the Commonwealth cannot seek more serious charges or a more serious sentence than imposed under the original plea agreement.

On March 16, 2018, the defendant filed a motion to withdraw his 2013 guilty plea, arguing that Bridgeman I is retroactive and the plea was therefore involuntary, because he was under the mistaken impression that he faced a maximum possible sentence of 22.5 years if he were to be convicted at trial instead of the sentence he originally pled to, which was only 6-8 years. R.A. 5-31. The Commonwealth filed its opposition on June 20, 2018. The Honorable Christine M. Roach denied the motion on July 6, 2018, without a hearing. Addendum (Add.) 10. Specifically, the motion judge denied the defendant's motion to withdraw his plea in a one sentence endorsement:

Motion denied, I see no reason why the waiver executed in the midst of all parties addressing the lab issues and with full understanding that the SJC would ultimately rule on appropriate remedies, is not enforceable and valid as to this defendant.

Id. The defendant filed a notice of appeal on November 6, 2018. R.A. 4. The case was entered in the Appeals Court on November 20, 2018. On November 29, 2018, a Single Justice of the Appeals Court deemed the notice of appeal timely filed.

STATEMENT OF THE FACTS

Facts Underlying Plea.

At the 2013 hearing, the Commonwealth recited the following facts underlying the plea:

That on the afternoon of September 18th of 2008, Mr. Camacho, the defendant before you, drove a minivan into the parking lot of a Burger King on Bennington Street in East Boston, that he had a passenger in the passenger seat of that car. That police officers witnessed Mr. Camacho hand an unknown object to that person, then witnessed that person hand what appeared to be currency to Mr. Camacho. The passenger exited the car. The police stopped that person. He told the police that he had bought a certain amount of cocaine from Mr. Camacho in exchange for \$200. The police subsequently stopped the car that Mr. Camacho was driving, ultimately brought the car back to the police station, searched the car, Your Honor, and among other items that I would suggest are consistent with the distribution of narcotics, found a digital scale; eleven air fresheners; a bottle of cologne; \$200 stuffed into the side door of the driver's seat of the car; \$135 in the sun visor; two boxes of plastic sandwich bags and a

box of tinfoil; several personal papers in the name of the defendant; two cell phones, Your Honor; and in a drawer under the passenger seat of the car, two large bags of the substance the Commonwealth would have proven was in fact cocaine that weighed approximately 200 grams, one hundred mgs I should say.

And for the record, Your Honor, the drugs were tested at the Hinton Lincoln Drug Lab. Annie Dookhan was the confirmatory chemist during those tests and I would note for the record that Mr. Camacho is before the Court today acknowledging that those -- that that substance was in fact cocaine, and that the Commonwealth could have proven that beyond a reasonable doubt.

R.A. 53-54.

Facts Developed Since 2013 Plea.

On January 19, 2016, the defendant pled guilty in a United States District Court to possessing heroin with the intent to distribute. R.A. 91. The conviction in the case at bar caused the defendant's federal sentencing range to more than triple from 60-71 months to 188-235 months. R.A. 101-102. The defendant was sentenced to 188 months. R.A. 88.

After his sentencing, the defendant contacted the Committee for Public Counsel Services and asked for help in challenging the conviction in the case at bar. R.A. 35 at ¶ 13.

STATEMENT OF THE ISSUES

1. Should the decision in Bridgeman v. District Attorney for Suffolk Dist., 471 Mass. 465 (2015) (Bridgeman I), holding that a Dookhan defendant who successfully withdraws a guilty plea cannot be charged with a more serious offense than originally convicted of or given a more severe sentence if convicted again, be applied retroactively?

This defendant raised and properly preserved this issue in his new-trial motion.

2. Should all collateral-review waivers in plea agreements be declared void because they violate public policy? Alternatively, should there be an exception to collateral-review waivers where the defendant is arguing that the plea was involuntary?

The Commonwealth raised the waiver issue in its opposition to the defendant's new-trial motion and the motion judge based her denial on the purported waiver. Therefore, the issue of the enforceability of the waiver is properly before this court. See United States v. Ibarra-

Coronel, 517 F.3d 1218, 1221 (10th Cir. 2008) ("Whether a defendant's appeal waiver set forth in a plea agreement is enforceable is a question of law we review de novo.")

ARGUMENT

I. **Bridgeman I should be applied retroactively**

This Court has unchecked authority to make an exercise of its superintendence power under G.L. c. 211, § 3, retroactive:

When announcing a new common-law rule, a new interpretation of a State statute, or a new rule in the exercise of our superintendence power, there is no constitutional requirement that the new rule or new interpretation be applied retroactively, and we are therefore free to determine whether it should be applied only prospectively.

Commonwealth v. Dagley, 442 Mass. 713, 721 n.10 (2004)

(emphasis added).

This Court exercised its superintendence power in Bridgeman I, when it held that

in cases in which a defendant seeks to withdraw a guilty plea under Mass. R. Crim. P. 30(b) as a result of the revelation of [Annie] Dookhan's misconduct, and where the motion is allowed, the defendant cannot (1) be charged with a more serious offense than that of which he or she initially was convicted under the terms of the plea agreement; and (2) if convicted again, cannot be given a more severe sentence than that which originally was imposed.

471 Mass. at 477. However, this Court did not state whether Bridgeman I would apply retroactively or only prospectively. This Court should take this opportunity to declare Bridgeman I retroactive because it would be consistent with the reasoning underlying that decision and, more broadly, with basic notions of justice.

In deciding Bridgeman I, this Court noted the unprecedented nature of Dookhan's "egregious misconduct" and how the "systemic lapse" she spurred was "entirely attributable to the government." 471 Mass. at 474, 476. This Court also noted that "[w]ere it not for Dookhan's actions, defendants would not be in the position of having to seek postconviction relief from her malfeasance in the first instance." Id. at 476. This Court further noted that "a defendant who files a motion to withdraw a guilty plea as a consequence of Dookhan's misconduct is not doing so in the context of an ordinary criminal case". Id. at 475. "[I]n the wake of government misconduct that has cast a shadow over the entire criminal justice system, [this Court thought it]

most appropriate that the benefit of [its] remedy inure to the defendants.” Id. at 476, quoting Commonwealth v. Scott, 467 Mass. 336, 352 (2014) (internal quotation marks omitted). In accordance with this reasoning, this Court decided to break from the typical practice of placing those defendants who successfully withdraw pleas in the same position as those who have not yet entered a plea. Id. at 474-478.

In light of the unprecedented nature of Dookhan’s widespread misconduct, the shadow it cast over the entire criminal justice system, and this Court’s decision to ensure that the remedy it provided would inure to the benefit of defendants, this Court should declare that when it spoke of “defendants” it was including all defendants impacted by Dookhan’s misconduct and not just those who had the good fortune of withdrawing their pleas after Bridgeman I was decided.

II. Collateral-review waivers in plea agreements should be deemed per se unenforceable because they violate public policy. Alternatively, there should be an exception to enforcement where the defendant is challenging the voluntariness of the plea.

The motion judge denied the defendant's motion to withdraw his plea in a one-sentence endorsement:

Motion denied, I see no reason why the waiver executed in the midst of all parties addressing the lab issues and with full understanding that the SJC would ultimately rule on appropriate remedies, is not enforceable and valid as to this defendant.

Add. 10.

The motion judge is presumably referring to the document entitled "Waiver Of Defendant's Rights Pursuant To Plea Agreement", which the defendant and his attorney signed and which was submitted to the court during the 2013 plea. R.A. 103-105. The relevant language is the following:

I am also waiving, after discussion with my lawyer, the right to file a motion to vacate this guilty plea based on information that may come to light in the future about the state laboratory.

...

I understand that I am giving up and waiving my right to the discovery of further information, the right to challenge the admissibility of evidence about the controlled substances at trial, the right to seek to vacate this guilty plea, and also the right to appeal from a conviction after trial.

R.A. 103-104 (emphasis added).

A. Collateral-review waivers should be deemed unenforceable, per se.

Neither this Court nor the Appeals Court has considered the viability of a collateral-review waiver.² This Court should take this opportunity to consider them and hold that they are per se unenforceable because they significantly inhibit an appellate court's ability to review and

² While neither this Court nor the Supreme Judicial Court has explicitly addressed the validity of collateral-review waivers, the Appeals Court has, in a footnote, held that "a waiver of direct appeal based on incompetent advice incident to a plea agreement does not waive a defendant's right to challenge the plea agreement on grounds of ineffective assistance of counsel." Commonwealth v. Pike, 53 Mass. App. Ct. 757, 761 n.5 (2002) (emphasis added). In Pike, the defendant waived his right to direct appeal of one conviction as part of a plea deal on another charge. Id. at 757-764.

correct errors and thus frustrate the important public policy goals underlying the right to collateral review.

"[I]t is a principle universally accepted that the public interest in freedom of contract is sometimes outweighed by public policy, and in such cases the contract will not be enforced." Beacon Hill Civic Ass'n, v. Ristorante Toscano, Inc., 422 Mass. 318, 321 (1996). Because the widespread use of collateral-review waivers in plea agreements would result in the insulation of the vast majority of convictions from appellate review, the interest in enforcement of waivers is far outweighed by the harm to public policy.

There are numerous public policy reasons for collateral challenges beyond the simple, yet essential, error-correction function: (1) articulation or systematic development of the law, (2) assurance that the law will be applied with some degree of uniformity to equally-situated individuals, and (3) legitimation of the law in the eyes of the public. Calhoun, *Waiver of the Right to Appeal*, 23 Hastings Const. L.Q. 127,

163-164 (1995)³, citing Paul D. Carrington, Daniel J. Meador, & Maurice Rosenberg, Justice on Appeal 3 (1976); Resnick, J., Precluding Appeals, 70 Cornell L. Rev. 603, 619 (1985).

The Commonwealth will surely argue that there are competing public policy reasons supporting the use of collateral-review waivers, specifically: finality and economy for the government and increased bargaining power for the defendant. But the broad public benefits of collateral review should not be sacrificed in the name of finality and efficiency, especially because this Commonwealth already has a well-developed area of law that addresses these concerns. See Commonwealth v. Lopez, 426 Mass. 657, 662-

³ While the Calhoun article specifically refers to "appeal" waivers, the public policy reasons for "appeals" discussed in his article are equally applicable to "collateral review", essentially another avenue for appealing a conviction. This is especially true in Massachusetts, where the only way to challenge a conviction resulting from a guilty plea is a collateral challenge through Mass. R. Crim. P. 30. See Commonwealth v. Huot, 380 Mass. 403, 406 (1980) ("A motion for new trial is the appropriate device for attacking the validity of a guilty plea"), abrogated on other grounds by Commonwealth v. Azar, 435 Mass. 675 (2002).

663 (1998) (explaining how the strict requirements of Rule 30 of the Massachusetts Rules of Criminal Procedure, and the law interpreting it, adequately limit collateral-review challenges). And the claim that collateral-review waivers increase a defendant's bargaining power because they give them an extra bargaining chip is belied by the fact that collateral-review waivers have not become common in Massachusetts. In reality, widespread use of the waivers would likely come in the form of provisions in boilerplate plea agreements (much like in the case at bar), and the provision would not be a bargaining chip for the defendant but a threshold requirement the defendant must meet to be able to engage in plea negotiations with the Commonwealth.

B. Assuming waivers are acceptable, they should be inapplicable when the defendant is challenging the voluntariness of the plea.

If this Court finds that collateral-review waivers do not offend public policy, it should recognize an exception when a defendant is challenging the voluntariness of the plea, an exception applied in numerous federal circuits. United

States v. Hernandez, 242 F.3d 110, 113-114 (2d Cir. 2001) (appeal waiver unenforceable where "defendant is challenging the constitutionality of the process by which he waived those rights"); United States v. Carreon-Ibarra, 673 F.3d 358, 362 n.3 (5th Cir. 2012) (appeal waiver "cannot be enforced 'to bar a claim that the waiver itself--or the agreement of which it was a part--was unknowing or involuntary'"), quoting United States v. White, 307 F.3d 336, 343 (5th Cir. 2002); In re Acosta, 480 F.3d 421, 422 (6th Cir. 2007) ("in cases where a defendant argues that his plea was not knowing or voluntary, or was the product of ineffective assistance of counsel [], it would be entirely circular for the government to argue that the defendant has waived his right to an appeal or a collateral attack when the substance of his claim challenges the very validity of the waiver itself") (citation omitted); United States v. Behrman, 235 F.3d 1049, 1051 (7th Cir. 2000) ("Some constitutional theories-- particularly claims that the plea agreement was involuntary or the result of ineffective assistance of counsel--concern the

validity of the plea agreement and thus would knock out the waiver of appeal along with the rest of the promises; all terms stand or fall together."); United States v. Andis, 333 F.3d 886, 889-890 (8th Cir. 2003) (waiver only enforceable if "both the waiver and plea agreement were entered into knowingly and voluntarily"); United States v. Mitchell, 633 F.3d 997, 1001 (10th Cir. 2011) ("if a guilty plea is not knowing and voluntary, it is void and any additional waivers in the plea agreement generally are unenforceable") (citation omitted); United States v. Puentes-Hurtado, 794 F.3d 1278, 1284 (11th Cir. 2015) ("an appeal waiver or collateral attack waiver which is part of a guilty plea is unenforceable if the plea itself is involuntary and unintelligent").

**STATEMENT OF REASONS WHY DIRECT APPELLATE REVIEW
IS APPROPRIATE**

Massachusetts Rule of Appellate Procedure 11(a) states that an appeal is appropriate for direct appellate review if the questions presented in the appeal are

(1) questions of first impression or novel questions of law which should be submitted for final determination to the Supreme Judicial Court; (2) questions of law concerning the Constitution of the Commonwealth or questions concerning the Constitution of the United States which have been raised in a court of the Commonwealth; or (3) questions of such public interest that justice requires a final determination by the full Supreme Judicial Court.

Here, each question raised presents an issue of first impression. This Court has not addressed the retroactivity of Bridgeman I. Nor has it addressed the enforceability of collateral-review waivers in plea agreements.

Moreover, each question raises an issue of great public interest. The retroactivity of Bridgeman I raises the issue of whether Dookhan defendants should be denied the significant benefit of that decision simply because they chose to move diligently to resolve their cases. And the

enforceability of collateral-review waivers puts an issue squarely before this Court that, if left unaddressed, could result in the insulation of the vast majority of convictions from appellate review--a result that would significantly impair this Court's ability to correct errors and define law.

CERTIFICATE OF COMPLIANCE

I, Matthew Malm, hereby certify pursuant to Mass. R. App. P. 16(k) that this application complies with the Mass. R. App. P. 11(b), which defines the form and content of applications for direct appellate review. Additionally, pursuant to Mass. R. App. P. 16(k), I certify the following information:

- Font Name and Size: Century Schoolbook, 14 point
- Word-Processing Program: Microsoft Word
- Number of Non-Excluded Words: 1915

/s/ Matthew Malm
Matthew Malm

CERTIFICATE OF SERVICE

I hereby certify under the pains and penalties of perjury that I have today made service on counsel for the Commonwealth by sending a copy of the Defendant's Application for Direct Appellate Review via the e-filing system:

ADA John P. Zanini
Office of the District Attorney/Suffolk
One Bulfinch Place
Boston, MA 02114

Dated: February 6, 2019

/s/ Matthew Malm
Matthew Malm

ADDENDUM

Trial Court Docket	Add. 1
New-Trial-Motion Decision	Add. 10

[Skip to main content](#)**0884CR11178 Commonwealth vs. Camacho, Angel**

- Case Type
- Indictment
- Case Status
- Open
- File Date
- 12/09/2008
- DCM Track:
- A - Standard
- Initiating Action:
- COCAINE, TRAFFICKING IN c94C §32E(b)
- Status Date:
- 12/09/2008
- Case Judge:
-
- Next Event:
-

[All Information](#) [Party](#) [Charge](#) [Event](#) [Tickler](#) [Docket](#) [Disposition](#)**Party Information****Commonwealth**

- Prosecutor

[Alias](#)**Party Attorney**[More Party Information](#)**Suffolk County District Attorney**

- Prosecutor

[Alias](#)**Party Attorney**

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[More Party Information](#)**Camacho, Angel**

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Add. 1

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[More Party Information](#)**Party Charge Information**

- **Camacho, Angel**

- - Defendant

Charge # 1 :

94C/32E/A-0 - Felony COCAINE, TRAFFICKING IN c94C §32E(b)

- Original Charge

- 94C/32E/A-0 COCAINE, TRAFFICKING IN c94C §32E(b) (Felony)

- Indicted Charge

-

- Amended Charge

-

Charge Disposition

Disposition Date

Disposition

12/10/2013

Guilty Plea - Lesser Included

- **Camacho, Angel**

- - Defendant

Charge # 2 :

94C/32J-3 - Felony DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J

- Original Charge

- 94C/32J-3 DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J (Felony)

- Indicted Charge

-

- Amended Charge

-

Charge Disposition

Disposition Date

Disposition

11/05/2009

Nolle Prosequi

- **Camacho, Angel**

- - Defendant

Charge # 3 :

94C/32A/C-0 - Felony COCAINE, POSSESS TO DISTRIBUTE c94C §32A(c)

- Original Charge

- 94C/32A/C-0 COCAINE, POSSESS TO DISTRIBUTE c94C §32A(c) (Felony)

- Indicted Charge

-

- Amended Charge

-

Charge Disposition

Disposition Date

Disposition

11/05/2009

Nolle Prosequi

- **Camacho, Angel**
- - Defendant
- **Charge # 4 :**
94C/32J-3 - Felony DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J

- Original Charge
- 94C/32J-3 DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J (Felony)
- Indicted Charge
-
- Amended Charge
-

Charge Disposition

Disposition Date

Disposition

11/05/2009

Nolle Prosequi

Events

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
12/29/2008 09:30 AM	Magistrate's Session		Arraignment		Rescheduled
01/06/2009 09:30 AM	Magistrate's Session		Arraignment		Held as Scheduled
02/24/2009 09:30 AM	Magistrate's Session		Pre-Trial Conference		Held as Scheduled
03/31/2009 09:30 AM	Magistrate's Session		Status Review		Rescheduled
05/12/2009 09:30 AM	Magistrate's Session		Hearing on Compliance		Rescheduled
05/18/2009 09:30 AM	Criminal 1		Hearing		Held as Scheduled
06/08/2009 09:00 AM	Criminal 5		Final Pre-Trial Conference		Canceled
06/10/2009 09:30 AM	Magistrate's Session		Non-Evidentiary Hearing on Suppression		Held as Scheduled
06/24/2009 09:00 AM	Criminal 5		Jury Trial		Canceled
07/09/2009 09:00 AM	Criminal 9		Evidentiary Hearing on Suppression		Held as Scheduled
07/16/2009 09:00 AM	Criminal 5		Final Pre-Trial Conference		Rescheduled
07/21/2009 09:00 AM	Criminal 9		Bail Hearing		Held as Scheduled
07/30/2009 09:00 AM	Criminal 5		Jury Trial		Rescheduled
09/02/2009 09:00 AM	Criminal 5		Final Pre-Trial Conference		Not Held
09/02/2009 09:00 AM	Criminal 4		Final Pre-Trial Conference		Held as Scheduled
09/10/2009 09:00 AM	Criminal 5		Hearing		Held as Scheduled
09/14/2009 09:00 AM	Criminal 5		Jury Trial		Rescheduled
11/05/2009 09:00 AM	Criminal 5		Jury Trial		Canceled
11/05/2009 09:00 AM	Criminal 5		Hearing for Change of Plea		Held as Scheduled
11/09/2009 09:00 AM	Criminal 5		Hearing for Sentence Imposition		Held as Scheduled
12/19/2012 09:00 AM	Criminal 4		Hearing to Stay Sentence (JP Lab)		Held as Scheduled
02/11/2013 09:00 AM	Criminal 4		Status Review (JP Lab)		Not Held
02/11/2013 09:00 AM	Criminal 10		Status Review (JP Lab)		Held as Scheduled
03/11/2013 09:00 AM	Criminal 10		Status Review (JP Lab)		Held as Scheduled
04/17/2013 09:00 AM	Criminal 10		Status Review (JP Lab)		Held as Scheduled
05/21/2013 09:00 AM	Criminal 10		Status Review (JP Lab)		Held as Scheduled
05/28/2013 09:00 AM	Criminal 10		Status Review (JP Lab)		Held as Scheduled
10/01/2013 09:00 AM	Criminal 10		Status Review (JP Lab)		Held as Scheduled
12/10/2013 09:00 AM	Criminal 10		Status Review (JP Lab)		Held as Scheduled

Ticklers				
<u>Tickler</u>	<u>Start Date</u>	<u>Due Date</u>	<u>Days Due</u>	<u>Completed Date</u>
Pre-Trial Hearing	01/06/2009	01/06/2009	0	12/10/2013
Final Pre-Trial Conference	01/06/2009	06/08/2009	153	12/10/2013
Case Disposition	01/06/2009	07/05/2009	180	12/10/2013

Docket Information				
<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>	
12/09/2008	Indictment returned	1		
12/09/2008	MOTION by Commonwealth for summons of Deft to appear; filed & allowed (Ball, J.)	2		
12/09/2008	Summons for arraignment issued ret 12/29/2008			
12/15/2008	Summons returned without service.			
12/29/2008	Defendant not present, case continued until 1/6/2009 by agreement for arraignment. Wislon, MAG - B. Fahy, ADA - L. McInnes, Court Reporter			
01/06/2009	Defendant came into court			
01/06/2009	Interpreter present: T. West			
01/06/2009	Appearance of Deft's Atty: Carlos J Dominguez	3		
01/06/2009	Deft arraigned before Court			
01/06/2009	Deft waives reading of indictment			
01/06/2009	RE Offense 1:Plea of not guilty			
01/06/2009	RE Offense 2:Plea of not guilty			
01/06/2009	RE Offense 3:Plea of not guilty			
01/06/2009	RE Offense 4:Plea of not guilty			
01/06/2009	Deft notified of right to request drug exam			
01/06/2009	Bail satisfied: \$200,000.00 Surety or \$20,000.00 Cash w/o/p. Bail warnign read. Said bail having been met posted and verified via phone is ordered transferred from East Boston District Court #0805CR001838. Transfer Sheet filed in Clerk's Office.			
01/06/2009	Commonwealth files notice of appearance.	4		
01/06/2009	Commonwealth files statement of the case.	5		
01/06/2009	Commonwealth files notice of discovery.	6		
01/06/2009	Assigned to Track "A", see scheduling order			
01/06/2009	Tracking deadlines Active since return date			
01/06/2009	Case Tracking scheduling order (Gary D Wilson, Magistrate) mailed 1/7/2009			
01/06/2009	Continued to 2/24/2009 for hearing on PTC			
01/06/2009	Continued to 6/8/2009 for hearing on FPTH			
01/06/2009	Continued to 6/24/2009 for hearing on PTD (Gary D Wilson, Magistrate) - B. Fahy, ADA - C. Sproul, Court Reporter - C. Dominguez, Attorney			
02/24/2009	Defendant comes into court, hearing continued until 3/31/2009 re: to file motions.			
02/24/2009	Interpreter present: Farias, Maria on 2/24/2009			
02/24/2009	Pre-trial conference report filed	7		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
02/24/2009	Commonwealth files notice of discovery II. Wilson, Mag - B. Fahy, ADA - ERD/JAVS - C. Dominguez, Attorney	8	
03/31/2009	Defendant comes into court, hearing continued until 5/12/2009 re: discovery compliance. Wilson, Mag - J. Bucci for B. Fahy, ADA - JAVS - C. Dominguez, Attorney		
05/12/2009	Defendant comes into court, hearing continued until 5/18/2009 re: amending of tracking order. Wilson, Mag - B. Fahy, ADA - ERD/JAVS - C. Dominguez, Attorney		
05/18/2009	Defendant not in court for hearing re: tracking order		
05/18/2009	JOINT motion to amend tracking order, filed	9	
05/18/2009	Findings and order Motion to continue trial date, filed. (6/8/09 FPTH CANCELLED and 6/24/09 Trial date CANCELLED)	10	
05/18/2009	Tracking deadlines Amended since return date		
05/18/2009	Continued to 7/16/09 for hearing re: FPTH and Trial on 7/30/09 by agreement in the 5th Criminal Session Criminal (Ctrm. 817). (6/10/09 re: filing of Motion to Suppress non-calendar.) Ball. J - B. Fahy, ADA - ERD		
05/18/2009	MOTION (P#9) allowed.		
06/08/2009	Defendant brought into court on a special mittimus from Chelsea District Court. Continued to 6/10/09 re: to file motion to suppress. (Note: Bail was revoked pursuant to Ch 276. Sec 58 - 60 days until 7/20/09. Bail revoked on 5/21/09 by Judge LaMothe). Wilson, Mag - B. Fahy, ADA - ERD/JAVS		
06/10/2009	Defendant brought into court (Note: Attorney C. Dominquez interpreted to the defendant in spanish)		
06/10/2009	Defendant's MOTION to suppress evidence seized without a warrant with affidavit (unsigned) in support thereof, filed.	11	
06/10/2009	Continued to 7/9/2009 for hearing re: motion to suppress in the 9th Criminal Session (Ctrm 404) Wilson, MAG - J. Bucci for B. Fahy, ADA - ERD - C. Dominguez, Attorney		
07/09/2009	Deft. brought into court. Hearing Re: Deft's motion to suppress (paper #11).		
07/09/2009	After hearing paper #11 is taken under advisement. Case is continued to 7/21/09 for status hearing in 9th session. Case is also scheduled for trial on 9/14/09 in the 5th session by agreement. Hely, J - B. Fahy ADA - C. Dominquez ATTY - ERD		
07/16/2009	Deft files memorandum of law in support of motion to suppress.	12	
07/17/2009	Memorandum of decision and order on motion to suppress is filed. Paper #11 is denied. Parties mailed copy of the Court's decsion this date.[Hely , J)	13	
07/21/2009	Defendant brought into court. Hearing Re: Bail. After hearing the Court revokes all prior orders of bail and the deft. is now ordered to recognize the sum of Two million dollars surety or in the cash alternative Two hundred thousand dollars. Mittimus issued.		
07/21/2009	Case is returned to the 5th session (Room 817) and scheduled for FPTC on 9/2/2009 and T on 9/14/09 by agreement. Hely, J - J. Bucci ADA - C. Dominquez ATTY - ERD.		
09/10/2009	Defendant brought into court, continued until 11/5/2009 for Trial Fifth Session. Giles, J. - C. Dominguez, Attorney - R. Leroux, Court Reporter.		
11/05/2009	Defendant brought into court.		
11/05/2009	Defendant offers to plead guilty as to so much of Offense #001 charging : Trafficking in Cocaine over 28 grams less than 100 grams M.G.L. CH. 94C Sec. 32A(b)(2).		

<u>Docket Date</u>	<i>Docket Text</i>	<u>File Ref Nbr.</u>	<i>Image Avail.</i>
11/05/2009	After hearing Court accepts defendant's offer to plead guilty.		
11/05/2009	RE Offense 1:Guilty plea		
11/05/2009	Waiver of defendants' rights	14	
11/05/2009	Defendant warned per Chapter 278, Sec 29D of alien status		
11/05/2009	Defendant warned per Chapter 22E Sec. 3 of DNA		
11/05/2009	Defendant warned of potential loss of license.		
11/05/2009	Commonwealth moves for sentencing.		
11/05/2009	Defendant sentenced as to so much of Offense #001: MCI-Cedar Not less than Six (6) Years Not more than Eight (8) Years.		
11/05/2009	Commonwealth files Nolle Prosequi as to Offenses #002, #003 and #004.	15	
11/05/2009	RE Offense 2:Nolle prosequi		
11/05/2009	RE Offense 3:Nolle prosequi		
11/05/2009	RE Offense 4:Nolle prosequi		
11/05/2009	Victim-witness fee assessed: \$90.00.		
11/05/2009	Drug fee assessed: \$150.00.		
11/05/2009	Notified of right of appeal under Rule 64		
11/05/2009	Court Revokes prior order of bail.		
11/05/2009	Court orders defendant held on a Mittimus Without Bail. Mittimus Issued.		
11/05/2009	Court order execution of sentence stayed until 11/9/09.		
11/05/2009	Continued to 11/9/2009 for Revocation of Stay/Sentence Imposition Fifth Session. Donovan, J. - B. Fahy, ADA - C. Dominguez, Attorney - E. Tyler, Court Reporter.		
11/05/2009	Abstract sent to RMV		
11/09/2009	Court orders stay revoked/Sentence imposed. Mittimus Issued. Donovan, J.		
11/09/2009	Defendant files MOTION to revise and revoke sentence (Donovan, J and ADA B. Fahey notified 11/10/09)	16	
11/16/2009	MOTION (P#16) denied (Elizabeth B Donovan, Justice). Copies mailed 11/18/2009		
12/04/2009	Victim-witness fee paid as assessed in the sum of \$90.00.		
12/08/2009	Drug fee paid as assessed. 150.00		
03/03/2010	Deft files Motion for reconsideration of motion to revise and revoke (Donovan, J notified 3/3/10)	17	
03/05/2010	MOTION (P#17) denied Donovan, J dated 3/4/10 (Atty. S. DiLibero notified 3/5/10)		
04/20/2010	Deft files: Motion to request Transcript of Plea.	18	
04/20/2010	MOTION (P#18) allowed . Donovan, J.		
05/21/2010	Deft files: Motion for reconsideration of motion to revise and revoke (Notice sent 5/27/2010)	19	
06/03/2010	MOTION (P#19) denied as endorsed. on 6/1/2010. Donovan, J.		
08/27/2010	Recieved this date from Court reporter that transcript was mailed to Defendant's attorney	20	
12/03/2012	Defendant's Motion to Stay Sentence (Drug Lab)	21	
12/03/2012	Defendant's Motion To Vacate Guilty Plea (Drug Lab) with affidavit	22	

Add. 6

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
12/03/2012	Defendant's Motion for Discovery (Drug Lab)	23	
12/19/2012	Defendant brought into court for bail hearing on this date. Spanish Interpreter Maria Farias present and sworn.		
12/19/2012	MOTION (P#21) allowed as endorsed. Hinkle, Special MAG.		
12/19/2012	Court files order on stay of Execution of sentence as to #001.	24	
12/19/2012	Bail set: \$1,000.00 with surety or in the alternative \$100.00 cash. Bail Warning read. Mittimus Issued.		
12/19/2012	Bail: Conditions of Release - 1. GPS monitoring. 2. 10pm - 6am.		
12/19/2012	Commonwealth files Notice of Discovery, Decemeber 19, 2012. Hinkle, Special MAG - G. Spatz, ADA - LE/ERD - T. Coleman, Atty.	25	
12/31/2012	Defendant not present, First Assist. PO Linda Owensreprots to Court that defendant has not being tracked by GPS since 12/29/12 - in contact with defendant by phone by Probation and ELMO staff.		
12/31/2012	Defendant defaulted; warrant to issue at the request of the G. Ogus, ADA. (case to remain in session - 815 - Drug Lab cases) for 2/11/13. Wilson, MAG - G. Ogus, ADA - ERD- L. Owens, PO.		
12/31/2012	Warrant issued - GPS	26	
01/02/2013	Defendant brought into court hrg re: GPS Violation.		
01/02/2013	Default removed; warrant recalled		
01/02/2013	Recall Fee: waived. (GPS Battery Issue).		
01/02/2013	After hearing , Prior Order of Bail imposed on 12/19/12 of \$1,000 w/surety or \$100.00 cash is reinstated w/same terms & conditions of release.		
01/02/2013	Deft discharged. Note: Deft to report to Probation upon release re: GPS. Case has next event of 2/11/13 re: status. Wong, Mag - P. Tressler, ADA - ERD/JAVS		
01/07/2013	Notice of returned warrant without service		
02/11/2013	Defendant comes into court, case continued until 3/11/2013 by agreement Re: Status (Atty on trial in W. Roxbury). Cratsley, Special MAG - N. Cordeiro, ADA - ERD		
03/11/2013	Defendant came into court.		
03/11/2013	Attorney, Tonomey A Coleman's MOTION to withdraw as counsel of record for Angel Camacho and appoint substitute counsel filed.	27	
03/11/2013	MOTION (P#27) allowed.		
03/11/2013	Appointment of Counsel Michael B Roitman, pursuant to Rule 53		
03/11/2013	Commonwealth files Notice of Discovery 2/27/13.	28	
03/11/2013	Continued to 4/17/2013 for hearing Re: Status by agreement. Hinkle, Special MAG - S. Lord, ADA - ERD - M. Roitman, Atty.		
03/18/2013	Deft files Motion for funds to Obtain a transcript of his guilty plea colloquy and Affidavit in support of.	29	
03/18/2013	MOTION (P#29) allowed. Hinkle, Special MAG.		
03/18/2013	Court Reporter Tyler, Elizabeth C. is hereby notified to prepare one copy of the transcript of the evidence of 11/05/2009 . (Notified 3/19/13)		
04/17/2013	Defendant came into court. Spanish Interpreter present.		
04/17/2013	Deft files Motion to Modify the terms of his release.	30	
04/17/2013	MOTION (P#30) allowed. See endorsement.		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
04/17/2013	Defendant's curfew modified as follows: 3:00am to 11:00AM curfew Six (6) days a week. Wednesday curfew 10:00PM to 6:00AM.		
04/17/2013	Continued to 5/21/2013 for hearing Re: Possible Plea by agreement. Hinkle, Special MAG - P. Tresseler, ADA - ERD - M. Roitman, Atty.		
05/21/2013	Defendant came into court		
05/21/2013	Continued by agreement to May 28, 2013 for change of plea. Spanish Interpreter required for plea hearing. Donovan, Spec. Mag - N. Cordeiro, ADA - ERD - M. Rotiman, Attorney		
05/28/2013	Defendant comes to court. Interpreter present. Continued by agreement to October 1, 2013. Re: Status. Bail Warning given and Interpreter Required. Donovan, SP Mag - V. DeMoore, ADA - ERD - M. Roitman, Atty. interpreter requested		
07/24/2013	Transcript of testimony received Hearing re: Plea Change from Transcript of proceedings from Court Reporter Tyler, Elizabeth C.		
07/31/2013	Transcripts sent to Atty this date.		
10/01/2013	Defendant comes into court. continued to 12/10/13 by agreement for status. Donovan Sp Mag. N Cordiero ADA. M Roitman ATTY. ERD.		
12/10/2013	Defendant comes into Court.		
12/10/2013	Spanish Interpreter present		
12/10/2013	MOTION (P#22) allowed, Guilty Plea of 11/05/2009 Vacated (Carol S. Ball, Justice).		
12/10/2013	Defendant offers to plead guilty. Plea of guilty accepted by Court (Carol S. Ball, Justice). Defendant pleads guilty to Lesser Included Offense of #001 as charges: Possession of a Class B controlled substance with Intent to Distribute M.G.L. C. 94C, Sec 32A(a).		
12/10/2013	RE Offense 1:Guilty plea (lesser offense)		
12/10/2013	Defendant warned per Chapter 278, Sec 29D of alien status. Padilla warning read -U.S. Supreme Court (2010).		
12/10/2013	Defendant warned per Chapter 22E Sec. 3 of DNA		
12/10/2013	Waiver of defendants' rights purauant to plea agreement.	31	
12/10/2013	Waiver of defendants' rights filed. Commonwealth moves for sentencing.	32	
12/10/2013	Defendant sentenced to as to offense #001: M.C.I. Cedar Junction: MAX: three and one half (3 1/2) years. MIN: three and one half (3 1/2) years and 1 day. DEEMED SERVED.		
12/10/2013	Notified of right of appeal under Rule 64	33	
12/10/2013	Fee: VWF WAIVED by order of the Court.		
12/10/2013	Abstract sent to RMV (J.P. Lab Revoked)		
12/10/2013	ORDERED: G.P.S. ordered VACATED by order of the Court. Ball-J, A. Miller-DA, M. Roitman-Atty, JAVS		
09/26/2015	**Converted and manual data; Converted from MassCourt Lite, BasCot or ForeCourt(09/26/2015). Refer to case file for assessments, disbursements, and receipt validations.**		
09/26/2015	** On 12/28/2012 \$100.00 was received for case SUCR2008-11178, funds received by the surety Edgar Ospina. The defendant in the case is Angel Camacho. As of the date of conversion a remaining balance of \$100.00 was converted for BAIL.		
03/16/2018	Defendant 's Motion for Post-Conviction Relief, with Affidavits of Defendant and Counsel in Support of Motion (Notice sent to Roach-RAJ with copy of Motion and Docket Sheets)	34	Image
03/16/2018	Defendant 's Motion for Evidentiary Hearing on his Motion for Post-Conviction Relief (Notice sent to Roach-RAJ with copy of Motion and Docket Sheets)	35	Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
03/23/2018	Endorsement on Motion for Post Conviction Relief, (#34.0): Other action taken Commonwealth to respond to this motion within 90 days by no latter than June 25,2018.. Roach, RAJ..(copy sent to J. Zanini, ADA and M. Malm, Atty Judge: Roach, Christine M		Image
03/29/2018	Attorney appearance On this date Matthew Malm, Esq. added for Defendant Angel Camacho		
06/20/2018	Opposition to paper #34.0 Motion for New Trial filed by Commonwealth(Notice sent to Roach-RAJ with copy of Opposition and Docket Sheets)	36	
07/06/2018	Endorsement on Motion for post conviction relief, (#34.0): DENIED "Motion denied, I see no reason why the waiver executed in the midst of all parties addressing the lab issues and with full understanding that the SJC would ultimately rule on appropriate" remedies, is not enforceable and valid as to this defendant" (Copy to M Malm, Attorney and J. Zanini,,ADA) Judge: Roach, Christine M		Image
07/06/2018	Endorsement on Motion , (#35.0): DENIED (Copy to M. Malm, Attorney and J. Zanini, ADA) Judge: Roach, Christine M		Image
07/09/2018	Defendant 's Reply to Commonwealth's opposition to Defendant's motion for post conviction relief filed (Copy w/docket to Roach, RAJ) 8/16/18 No Action Necessary, see P#34	37	Image
11/06/2018	Notice of appeal filed by defendant regarding the denial of his motions for post-conviction relief and an evidentiary hearing	38	Image
11/13/2018	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Matthew Malm, Esq. Attorney: John P Zanini, Esq.		
11/13/2018	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Matthew Malm, Esq. Attorney: John P Zanini, Esq.		
11/20/2018	Appeal: notice of assembly of record sent to Counsel M. Malm, ADA J.Zanini and Clerk J.Stanton		
11/20/2018	Appeal: Statement of the Case on Appeal (Cover Sheet).	39	

Case Disposition

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
Disposed by Plea	12/10/2013	

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motion denied I see no reason why the waiver
executed, in the midst of all parties addressing the law
COMMONWEALTH OF MASSACHUSETTS understanding that the STC
would ultimately Rule on
SUFFOLK, ss. SUPERIOR COURT NO. Appropriate
0884CR11178 Remedies is
not enforceable
And void as to
this A.

COMMONWEALTH OF MASSACHUSETTS

v.

ANGEL CAMACHO

AS Petitioner J.
7/6/2018

MOTION FOR POST-CONVICTION RELIEF

NOW COMES the defendant, Angel Camacho, by and
through his Counsel, and respectfully submits to this
Honorable Court, pursuant to Mass. R. Crim. P. 30(b),
the following Motion for Post-Conviction Relief.

CLAIM FOR RELIEF

The defendant pled guilty to trafficking cocaine
in 2009. In 2013, the Commonwealth agreed to the
withdrawal of his plea because Annie Dookhan was a
chemist in his case. He subsequently pled guilty on
the same day. The defendant now comes before this
Court and asks it to apply Bridgeman v. District
Attorney for Suffolk Dist., 471 Mass. 465 (2015)
(Bridgeman I), retroactively and allow him to withdraw
his guilty plea because he entered into it believing
that the original charges were reinstated and he would
be subject to the maximum sentence allowed by law if
he went to trial.