

**IN THE CIRCUIT COURT OF MARYLAND
FOR BALTIMORE CITY**

ANTOINE PETTIFORD,
Petitioner

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v.

Civil Case No. _____

STATE OF MARYLAND,
Respondent

**PETITION TO VACATE JUDGMENTS AND SENTENCES PURSUANT TO THE
UNIFORM POST CONVICTION PROCEDURE ACT**

I. INTRODUCTION

Petitioner, Antoine Pettiford, through undersigned counsel, respectfully asks this Court to vacate his convictions and sentences, in Case Numbers 101032015 and 102059025 in the Circuit Court for Baltimore City. The sentences imposed by the Court in these cases should be vacated as they are illegal due to an invalid period of incarceration imposed as a condition of probation. Moreover, the convictions should also be vacated as this illegal condition of probation is irreconcilable with the terms of his plea agreement and has denied him the benefit of the plea agreement. Mr. Pettiford also requests an expedited hearing on this matter. In support of this argument, Mr. Pettiford states the following:

II. FACTUAL AND PROCEDURAL BACKGROUND

_____ On June 12, 2002, in the Circuit Court for Baltimore City, Mr. Pettiford pled guilty to two counts of possession with intent to distribute cocaine (PWID cocaine) and one count of conspiracy to distribute cocaine.¹ Mr. Pettiford only agreed to plea guilty to these charges after the court

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Mr. Pettiford pled guilty to one count of PWID cocaine under case number 101032015, and pled guilty to another count of PWID cocaine and one count of conspiracy to distribute cocaine under

promised to carry out a binding plea agreement, in which it would impose (1) concurrent sentences of seven years, all of which would be suspended with the exception of one year and (2) three years of supervised probation. P. & S. Tr. 15, 17, 19, 28.² Additionally, as a part of the plea agreement, the Court advised Mr. Pettiford that he would not have to report to the Division of Corrections to carry out this one year period of incarceration until July 17, 2002. P. & S. Tr. 19. However, the Court gave no indication to Mr. Pettiford that this one year period of incarceration was to be a condition of probation. P. & S. Tr. 19. Thus, Mr. Pettiford's understanding, as clearly expressed on the record in a subsequent hearing, was that his probation would not begin until after his one year period of incarceration. P. R. Tr. 14, 18.³

Nonetheless, after Mr. Pettiford entered his guilty plea, the Court, in actually sentencing him, declared that the one year period of incarceration was a specific condition of probation even though such condition was contrary to the plea agreement. P. & S. Tr. 39 - 40. The Court then issued a written Order that initiated Mr. Pettiford's probation term immediately upon his sentencing date of June 12, 2002 and prior to the time that his period of incarceration was to commence on July 17, 2002. See Exhibit 3 (Order For Probation).

case number 102059025.

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P. & S. Tr. refers to the transcript of the guilty plea hearing as well as the sentencing hearing that occurred on the same day in the Circuit Court for Baltimore City, Md. on June 12, 2002 before the Honorable John Themelis. A copy of this transcript is attached. See Exhibit 1.

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P.R. Tr. refers to the transcript of Mr. Pettiford's probation revocation hearing that occurred on October 4, 2002 before the Honorable John Themelis. A copy of the transcript is attached. See Exhibit 2.

While Mr. Pettiford was awaiting this one year incarceration period to commence, a violation of probation warrant was executed upon him on July 8, 2002. This warrant accused him of violating his probation because he was arrested on July 5, 2002 for new state criminal charges.⁴ Additionally, he was accused of violating his probation because he did not immediately report to the Division of Parole and Probation after he was sentenced to probation on June 12, 2002. On October 4, 2002, the Court made a finding that Mr. Pettiford violated his probation solely based on his failure to report to the Division of Parole and Probation. P. R. Tr. 14. Mr. Pettiford admitted to this violation, but in doing so, his counsel emphasized the following:

[W]hat Mr. Pettiford wanted me to advise the Court is that his intention is not to willfully violate his probation. When he agreed to the split sentence and the turn in date, I – I think the understanding that he had in his mind was that his obligation to report did not commence until after he had turned himself in, served the one year. While I understand he signed an order [subsequent to the plea agreement], there is an understanding – there was a misunderstanding on his part. And that is his own fault, he acknowledges. However, he did not understand his probation to actually – or his obligations were for it to start after he served the sentence.

P. R. Tr. 14.

Consistent with this understanding, Mr. Pettiford testified that he believed his only obligation upon sentencing was to report to the Division of Corrections on July 17, 2002, the date his one year period of incarceration was to commence. P. R. Tr. 18. Although the Order entered by the Court subsequent to Mr. Pettiford's plea agreement directed him to report to Parole and Probation on June 13, 2002 - the day after his sentencing, Mr. Pettiford missed this provision in his reading of the Order. P.R. Tr. 18. Further, the Court never orally communicated this command to Mr. Pettiford

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These state criminal charges were ultimately dismissed in lieu of a federal charge of felon in possession of a firearm, on which Mr. Pettiford recently pled guilty on March 3, 2004, in the United States District Court for the District of Maryland.

either prior to or after he pled guilty on June 12, 2002. The Court only orally communicated to Mr. Pettiford that he was to report to the Division of Corrections on July 17, 2002. P.R. Tr. 39. Thus, Mr. Pettiford assumed that he was not to report to probation authorities until after his one year period of incarceration.

Nevertheless, the Court made a finding of violation against Mr. Pettiford and revoked Mr. Pettiford's probation. The Court then lifted the suspension on Mr. Pettiford's sentences, and re-imposed a concurrent confinement period of seven years on the underlying convictions. P.R. Tr. 19. Mr. Pettiford has now been incarcerated for approximately one year and eight months on these charges. Mr. Pettiford is currently serving these sentences at Roxbury Correctional Institution in Hagerstown, Maryland.

Mr. Pettiford is also currently awaiting sentencing on a federal conviction for a felon in possession of a firearm offense to which he pleaded guilty in the United States District Court of Maryland on March 4, 2004.⁵ Mr. Pettiford's sentencing on this charge is set for May 12, 2004. If the convictions at issue in this petition are not vacated, they will have significant impact on the terms of Mr. Pettiford's federal sentence and how it is to be served. In particular, under the Federal Sentencing Guidelines, and specifically, §5G1.3(a), as long as Mr. Pettiford is serving an undischarged term of imprisonment with the States of Maryland, his federal sentence "shall be imposed to run consecutively to the undischarged term of imprisonment."⁶ Thus, the collateral

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This federal offense is the same offense referred to in footnote four of this petition.

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The convictions at issue also contribute to Mr. Pettiford's status as an Armed Career Criminal under 18 U.S.C. §924(e) which, because of his conviction in his federal case under 18 U.S.C. §922(g)(1) (felon in possession of a firearm) and his criminal record, requires a mandatory minimum sentence of fifteen years imprisonment (without parole) in federal court. If the convictions

consequences of these invalid convictions cannot be minimized. Accordingly, Mr. Pettiford respectfully asks that this Court vacate his underlying convictions and sentences for the reasons below.

III. ARGUMENT

A. A Petition To Vacate Mr. Pettiford's Conviction Pursuant To The Uniform Post Conviction Procedure Act Is The Proper Vehicle For Relief.

The Uniform Post Conviction Procedure Act, Md. Code Crim. Proc. § 7-101 et seq., authorizes a person convicted of a state crime who is confined under sentence of death or imprisonment or is on parole or probation to collaterally attack a sentence or judgment that was imposed in violation of the Constitution of the United States or the Constitution or laws of the State. See Stone v. State, 405 A.2d 345, 349 (Md. 1979) (confirming that Uniform Post Conviction Procedure Act is appropriate vehicle for attacking illegal sentence). In this case, Mr. Pettiford is currently imprisoned on judgments and sentences that were imposed in violation of the laws of Maryland as well as the United States Constitution. Accordingly, the Uniform Post Conviction Procedure Act is the appropriate vehicle for relief.

B. The Sentences Imposed By The Court Are Invalid As They Include A Term Of Incarceration As A Condition of Probation.

It is well established in the State of Maryland that absent express statutory authority, a court cannot impose a sentence of imprisonment as condition of probation. Stone v. State, 405 A.2d 345, 348 (Md. 1979). Although Maryland Code, Criminal Procedure Section 6-225 now permits a court

at issue are vacated as a result of the Petition herein, Mr. Pettiford will still be an Armed Career Criminal and subject to the fifteen year mandatory minimum sentence because he otherwise has three convictions which qualify him as an Armed Career Criminal (although such a status could be in doubt if another one of Mr. Pettiford's qualifying convictions is also vacated).

to impose imprisonment as a condition of probation in all local jurisdictions in Maryland, statutory law did not permit such condition in Baltimore City at the time of Mr. Pettiford's judgment and sentence. See Exhibit 4 (Md. Code, Crim. Proc. § 6-225 (2002)). On June 12, 2002, the date Mr. Pettiford was convicted and sentenced on the charges at issue, statutory law only permitted courts in Calvert County, Cecil County, Charles County, Harford County, and St. Mary's County, to impose a sentence of imprisonment as a condition of probation. Id. This option of imprisonment was simply not available in Baltimore City at that time. Accordingly, the Court's imposition of a one year period of incarceration as a term of probation in Mr. Pettiford's cases was unquestionably illegal.⁷

C. Appropriate Relief Is Vacature Of Mr. Pettiford's Sentences As Well As His Convictions.

The Court's error can only be remedied by a vacature of Mr. Pettiford's illegal sentences as well as his convictions. This is the only appropriate remedy as his illegal sentences cannot be "reconciled with the plea bargain or otherwise corrected so as to give [Mr. Pettiford] the benefit of the bargain." Holmes v. State, 763 A.2d 737, 740 (Md. 2000); see also McCormick v. State, 381 A.2d 442, 452-53 (Md. 1978) (where accused did not receive benefit of the plea bargain because court imposed harsher punishment than that contemplated in plea agreement, he should have been allowed to withdraw guilty plea); Banks v. State, 466 A.2d 69, 72, 75 (Md. 1983) (if court fails to

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Although Mr. Pettiford's trial counsel did not object to the imposition of the illegal sentences, this claim is not waived. It is well established in Maryland that a court at any time may review allegedly illegal sentences regardless of whether such an objection was ever made. Griffin v. State, 769 A.2d 259, 261 (Md. 2001); Preston v. State, 470 A.2d 395, 398 (Md. 1984); O' Connor v. Warden, 253 A.2d 434, 438-39 (Md. 1969). However, if the Court nonetheless, finds that Mr. Pettiford waived his right to challenge the illegality of the sentences imposed and to seek the relief he is requesting for such violation, then Mr. Pettiford alternatively asserts that his counsel rendered him ineffective assistance of counsel in violation of the Sixth Amendment for not raising such claim that would have entitled him to vacature of his conviction and sentence.

follow through on sentencing provision embodied in binding plea agreement, defendant has not received benefit of the plea bargain and should be given option of withdrawing plea); Rojas v. State, 450 A.2d 490, 494 (Md. 1982) (where neither state nor defendant received intended benefit of plea bargain due to unenforceable term of the bargain, vacature of guilty plea was appropriate remedy).

The illegal sentences here cannot be reconciled with the plea agreement as they are directly contrary to the terms of the guilty plea agreed upon by Mr. Pettiford. Mr. Pettiford entered into a binding plea agreement which could only be reasonably understood as a promise by the Court to impose a one year period of incarceration to be followed by three years of supervised probation. The plea agreement did not contemplate a commencement of probation immediately upon Mr. Pettiford's sentencing with a one year period of incarceration as a condition of that probation. In no manner did the Court either, implicitly or explicitly, suggest such a sentence. This is evident in the record where the Court recited the terms of the plea agreement on June 12, 2002:

Concurrent sentences of seven, suspend all but 1, 3 years supervised probation. I recommend COPS. They'll be special conditions and he won't have to report until 07-17-02 [to Division of Corrections] and he'll need a summons for the Sheriff's Office on that date. And he'll need a summons for the Sheriff's Office on that date.

P. & S. Tr. at 19.⁸

Although the Court did not expressly provide that Mr. Pettiford's probation period was to commence after the completion of his one year period of imprisonment, this is the only reasonable inference that can be drawn from the plea agreement. See Ridenour v. State, 787 A.2d 815, 818 (Md. Ct. Sp. App. 2001) (a plea agreement is a contract, the terms of which necessarily must be interpreted in light of the parties' reasonable expectations). An inference to the contrary that Mr.

Pettiford's probation was to commence immediately upon his sentencing and that incarceration was to be a condition of probation, is dependent upon an erroneous view of the law. As pointed out above, at the time Mr. Pettiford pled guilty, incarceration could not legally be a condition of probation in Baltimore City. Thus, it would have been anything but reasonable for Mr. Pettiford to infer that his guilty plea was based upon an agreement that he would receive an illegal sentence. Accordingly, the plea agreement can only be interpreted as one that mandated a one year period of incarceration that was to be followed by probation, and not as a condition of probation. Indeed, this was Mr. Pettiford's understanding as his counsel explicitly expressed on the record in his probation violation hearing:

[W]hat Mr. Pettiford wanted me to advise the Court is that his intention is not to willfully violate his probation. When he agreed to the split sentence and the turn in date, I – I think the understanding that he had in his mind was that his obligation to report [to probation] did not commence until after he had turned himself in, served the one year, and then was to be released on the probation after that.

P.R. Tr. 14 (emphasis added).⁹

Thus, the illegal sentences actually imposed by the Court are irreconcilable with the legal sentences that the Court was obligated to impose under the plea agreement.

Moreover, the Court's illegal sentences clearly deprived Mr. Pettiford of the benefit of the plea bargain. Under the terms of the plea agreement, Mr. Pettiford would not have been subject to probation until he completed a year of confinement. Accordingly, he would not have been subject

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It is true that after Mr. Pettiford pled guilty and upon sentencing, the Court declared that the one year period of incarceration was a term of probation and then subsequently issued an Order that immediately initiating a probation period. Nonetheless, this is irrelevant. What is critical here is Mr. Pettiford's reasonable understanding at the time of the plea agreement. It was only reasonable for Mr. Pettiford to interpret the terms of the plea agreement as imposing a one year period of incarceration to be followed by a period of probation.

to abide by any terms of probation prior to this confinement, and thereby, would not have been exposed to violation of probation prior to this confinement. However, the Court's illegal sentence that commenced his probation immediately upon his sentencing and prior to his incarceration in jail, subjected him to the terms of probation in a time period much earlier than that anticipated by the plea agreement. Further, it is precisely during this period of time, before Mr. Pettiford even reported to the Division of Corrections to start serving his one year sentence, that Mr. Pettiford's probation was violated. If Mr. Pettiford had received the benefit of the plea agreement, he would not have been subject to probation at this time, and he would not have been faced with a probation violation charge that has critically impacted his sentence. As a result of the probation violation, Mr. Pettiford has now been sentenced to a total of seven years confinement - six years more than that mandated by the plea agreement. Of those seven years, Mr. Pettiford has already been confined for over a year and eight months - eight months more than authorized by the plea agreement. These eight months cannot be taken back. With such serious deprivation of his liberty, it is hard to dispute that Mr. Pettiford has been denied the benefit of the plea agreement promised by the Court.

As Mr. Pettiford's illegal sentences are irreconcilable with the plea agreement promised by the Court, and he has been denied the benefit of the agreement, due process under the Fourteenth Amendment of the United States Constitution mandates that his convictions should be vacated. This is the only appropriate remedy here that would fully address the Court's failure to abide by its very serious obligation to carry out the terms of a binding plea agreement. Any other result "would violate the sanctity of the plea agreement process and seriously undermine the principles on which that process is based. If a defendant could not rely upon the plea bargain, the chilling effect upon the very institution of plea bargaining would be devastating." Chertkov v. State, 642 A.2d 232, 238

(Md. 1994) (citation omitted).

IV. PETITIONER REQUESTS AN EXPEDITED HEARING

Where, as here, a petitioner establishes that the Uniform Post Conviction Procedure Act is an appropriate avenue for relief, he is entitled to a prompt hearing. Md. R. Ct. 4-406.¹⁰ In light of his pending federal case, Mr. Pettiford requests an expedited hearing and decision on the petition.

Without an expedited hearing and decision, a federal court may sentence Mr. Pettiford based on the prior state conviction at issue here, which will result in a significantly increased term of imprisonment. In order to avoid an additional period of unnecessary incarceration, Mr. Pettiford respectfully requests that the hearing and decision on the petition be scheduled prior to May 2004, his sentencing date.

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Maryland Rule of Court 4-406 requires that a hearing be held promptly on a petition under the Uniform Post Conviction Procedure Act unless the parties stipulate that the facts stated in petition are true and that the facts and applicable law justify the granting of relief.

V. CONCLUSION

For all the foregoing reasons, Mr. Pettiford respectfully requests that this Court hold an expedited hearing and grant this petition for relief under the Uniform Post Conviction Procedure Act.

Respectfully submitted,

JAMES WYDA
Federal Public Defender

MICHAEL T. CITARAMANIS
Assistant Federal Public Defender

PARESH S. PATEL,
Staff Attorney

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Greenbelt, Maryland 20770
Telephone: (301) 344-0600
Fax: (301) 344-0019

Counsel for Antoine Pettiford

CERTIFICATE OF SERVICE

_____ I HEREBY CERTIFY that on the _____ day of April 2004, a copy of the foregoing Petition to Vacate Judgements and Sentences Pursuant to the Uniform Post Conviction Procedure Act and Request for Hearing was mailed, first-class postage prepaid to the Office of the State's Attorney for Baltimore City, Maryland.

MICHAEL T. CITARAMANIS
Assistant Federal Public Defender

**IN THE CIRCUIT COURT OF MARYLAND
FOR BALTIMORE CITY**

ANTOINE PETTIFORD,
Petitioner

v.

STATE OF MARYLAND,
Respondent

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Civil Case No. _____

ORDER FOR A HEARING

The Court, having considered the foregoing Petition to Vacate Judgments and Sentences Pursuant to the Uniform Post Conviction Procedure Act and Request for a Hearing, it is this _____ da April 2004,

ORDERED that a hearing in the above captioned case be scheduled by the Clerk's Office on _____, 2004.

JUDGE OF THE CIRCUIT COURT
BALTIMORE CITY

IN THE CIRCUIT COURT OF MARYLAND
FOR BALTIMORE CITY

ANTOINE PETTIFORD,
Petitioner

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v.

Civil Case No. _____

STATE OF MARYLAND,
Respondent

**ORDER GRANTING PETITION TO VACATE JUDGMENTS AND SENTENCES
PURSUANT TO UNIFORM POST CONVICTION PROCEDURE ACT**

The Court, having considered the foregoing Petition to Vacate Judgments and Sentences Pursuant to the Uniform Post Conviction Procedure Act, it is this _____ day of April 2004,

ORDERED that Petitioner's Petition to Vacate Judgments and Sentences is **GRANTED** and Petitioner's convictions and sentences in Case no.(s) 101032015 and 102059025 in the Circuit Court for Baltimore City, State of Maryland v. Antoine Pettiford, are hereby **VACATED**.

JUDGE OF THE CIRCUIT COURT
BALTIMORE CITY

**IN THE CIRCUIT COURT OF MARYLAND
FOR BALTIMORE CITY**

ANTOINE PETTIFORD,
Petitioner

v.

STATE OF MARYLAND,
Respondent

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Civil Case No. _____

**PETITION OF INDIGENCE TO WAIVE FILING FEES FOR
PETITION TO VACATE JUDGMENTS AND SENTENCES PURSUANT TO THE
UNIFORM POST CONVICTION PROCEDURE ACT**

Petitioner, Antoine Pettiford, by and through his attorneys, James Wyda, Federal Public Defender, Michael Citaramanis, Assistant Federal Public Defender, and Paresh Patel, Staff Attorney, hereby moves this Honorable Court to waive any and all costs associated with the filing of his Petition to Vacate Judgments and Sentences Pursuant to the Uniform Post Conviction Procedure Act on this _____ day of April 2004. The reason for this request is that Mr. Pettiford is incarcerated, indigent, and unable to afford any filing fee or other costs. The Office of the Federal Public Defender for the District of Maryland currently represents Mr. Pettiford in U.S. District Court because of his indigence.

Respectfully submitted,
JAMES WYDA
Federal Public Defender

MICHAEL T. CITARAMANIS
Assistant Federal Public Defender
PARESH S. PATEL
Staff Attorney
6411 Ivy Lane, Suite 710
Greenbelt, Maryland 20770
Telephone: (301) 344-0600
Fax: (301) 344-0600

CERTIFICATE OF SERVICE

_____ I HEREBY CERTIFY that on the _____ day of April 2004, a copy of the foregoing Petition of Indigence to Waive Filing Fees For Petition to Vacate Judgments and Sentences Pursuant to the Uniform Post Conviction Procedure Act and Request for Hearing was mailed, first-class postage prepaid to the Office of the State's Attorney for Baltimore City, Maryland.

MICHAEL T. CITARAMANIS
Assistant Federal Public Defender