Federal Criminal Procedure--Guilty Plea Satisfaction Guaranteed

T. J. Hales
Southern Methodist University Dedman School of Law, thales@smu.edu

FEDERAL CRIMINAL PROCEDURE—GUILTY PLEA SATISFACTION GUARANTEED

*T.J. Hales**

IN *United States v. Harden*, the Seventh Circuit determined that accepting a guilty plea in a felony case is "too important" a task to be delegated to federal magistrate judges under the "additional duties" clause of 28 U.S.C. § 636, the Federal Magistrates Act (the Act).[1] Of the four circuits that have ruled on this issue, the Seventh is the first to deny district courts the flexibility to delegate this crucial portion of plea proceedings to magistrates.[2] Under this holding, wise defendants will wriggle out of a plea made before a magistrate "for any reason or no reason" before it is accepted by the district court.[3] In so holding, the Seventh Circuit has both eviscerated magistrate plea colloquies and disregarded the purpose of the Act.

After criminal defendant Stacy Lee Harden pleaded "not guilty" at his arraignment to a felony charge of possession with intent to distribute cocaine, he had a change of heart.[4] Harden decided to plead "guilty" to the charge, and he did so by written plea agreement.[5] He also signed a Notice Regarding Entry of Plea of Guilty, consenting to administration of his Rule 11 plea proceedings by a magistrate judge and to the magistrate's acceptance of the guilty plea if it was made knowingly, voluntarily, and intelligently.[6]

Before beginning the colloquy, the magistrate reminded Harden of the Notice contents and asked whether Harden understood the finality of the magistrate's acceptance of his plea.[7] Harden replied "Yes, sir," and confirmed that he consented to the magistrate's accepting his plea.[8] Conclud-

* J.D. Candidate, SMU Dedman School of Law, May 2016; B.B.A. Business Fellows and Economics, Honors Scholar with Distinction, Baylor University, May 2013. I would like to thank Professor William J. Bridge and Angela M. Oliver for their helpful edits and comments. I would also like to thank my friends and family for their persistent encouragement.

1. United States v. Harden, 758 F.3d 886, 888 (7th Cir. 2014).
2. *See id.* at 891.
3. *See* FED. R. CRIM. P. 11(d).
4. *See Harden*, 758 F.3d at 887.
5. *See id.*
6. *Id.* at 887, 888–89 (quoting Brady v. United States, 397 U.S. 742, 748 (1970)).
7. *See id.*
8. *Id.*

ing the colloquy, the magistrate accepted Harden's felony guilty plea, noting that the district judge would conduct the sentencing hearing and decide whether to accept the written plea agreement.[9] The district judge later accepted the plea agreement, made multiple findings adverse to Harden, and sentenced Harden within the guideline range.[10] On appeal, the Seventh Circuit reversed the district court's judgment and interpreted the Act narrowly to exclude magistrate acceptance of felony guilty pleas.[11]

Under the "additional duties" clause of the Act,[12] district courts may delegate to magistrates unlisted duties "comparable in responsibility and importance" to duties otherwise authorized under the Act.[13] Whether duties are "comparable" depends upon such factors as the level of complexity,[14] the degree of finality,[15] and the amount of discretion involved in the magistrate's action.[16] Furthermore, the delegation is only possible with the parties' consent, which acts as a "limitation" on the Act's grant of otherwise "expanded jurisdiction" to magistrates.[17] The district court in *Harden* delegated the defendant's plea proceedings pursuant to the court's local rules and the "additional duties" clause of the Act.[18] Thus, the Seventh Circuit needed to determine whether the acceptance of a felony guilty plea was comparable in "responsibility and importance" to the other duties entrusted to magistrates under the Act.[19]

The Seventh Circuit focused primarily on the finality of guilty pleas, equating the importance of accepting pleas in felony cases with that of conducting entire felony trials.[20] It reasoned that all defendants pleading guilty thereby waive the right to trial before a judge or jury, assuming proper consent.[21] Most defendants will, as part of the plea bargain, also waive their appellate and habeas corpus rights.[22] The *Harden* court de-

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9. *Id.*
10. *Id.*
11. *Id.* at 887–89.
12. 28 U.S.C. § 636(b)(3) (2012).
13. *See* Peretz v. United States, 501 U.S. 923, 933 (1991).
14. *See* United States v. Benton, 523 F.3d 424, 432 (4th Cir. 2008); United States v. Woodard, 387 F.3d 1329, 1332–33 (11th Cir. 2004).
15. *See Harden*, 758 F.3d at 889; *Benton*, 523 F.3d at 430–31; *Woodard*, 387 F.3d at 1334; United States v. Ciapponi, 77 F.3d 1247, 1251–52 (10th Cir. 1996).
16. *Benton*, 523 F.3d at 432; *Woodard*, 387 F.3d at 1332–33.
17. *Peretz*, 501 U.S. at 931 (O'Connor, J., dissenting) (quoting Gomez v. United States, 440 U.S. 858, 870 (1989)).
18. *Harden*, 758 F.3d at 887–88.
19. *Id.* at 888. The court also considered whether the defendant could appeal the issue of the magistrate's authority to accept the guilty plea, given the waiver of appellate rights in the plea agreement. *Id.* at 889–90. Reasoning that courts likely would never reach this issue in such circumstances—either waiver of appellate rights or forfeiture would almost always stand in the way—the court placed the defendant's case in a "narrow exception to waiver and forfeiture . . . necessary for the review of judicial authority to act with consent." *Id.* at 890. The court declined to consider whether the delegation was constitutional, as it disposed of the case on statutory grounds. *Id.* at 891.
20. *See id.* at 889.
21. *Id.* at 888.
22. *Id*.

clared that this waiver makes an accepted guilty plea "even more final than a guilty verdict."[23] In attempting to support its felony trial analogy, the court observed that even though plea colloquy questions are not difficult to ask, the process is important because it allows the magistrate to assess whether a defendant's plea is made knowingly, voluntarily, and intelligently.[24] It concluded that because the result of a plea colloquy is "a final and consequential shift in the defendant's status," the acceptance of a felony guilty plea is as important as conducting felony trial.[25]

Next, the Seventh Circuit turned to the issue of defendants' rights and what it considered to be the countervailing concern of judicial efficiency.[26] Although the U.S. Supreme Court in *Peretz v. United States* articulated the Act's policy in favor of granting "federal judges significant leeway to experiment with possible improvements in the efficiency of the judicial process,"[27] the Seventh Circuit criticized the other circuits for relying on this language.[28] Though the Seventh Circuit believed that concern for efficiency was "understandable," it maintained that "the prevalence of guilty pleas [did] not render them less important"; Congress, the court argued, would have more explicitly authorized magistrates to accept guilty pleas in felony cases if such were Congress's intent.[29] Nevertheless, the Seventh Circuit agreed with numerous other courts that a magistrate may conduct a plea colloquy in order to make a report and recommendation.[30]

By contrast, the Fourth Circuit in *United States v. Benton* held that magistrates may accept felony guilty pleas and that to hold otherwise would be detrimental to the criminal justice system.[31] Crucially, the *Benton* court determined that neither conducting a plea colloquy nor accepting a plea is as complex or discretionary as conducting voir dire in a felony case or presiding over an entire civil or misdemeanor trial, both of which are acts "unquestionably within a magistrate judge's authority."[32] Accepting a guilty plea, the court said, is the "natural culmination of a plea colloquy," part and parcel of a "ministerial function that magistrate judges commonly perform on a regular basis."[33] The *Benton* court also noted that the district court has "ultimate control" over magistrate pro-

23. *Id.*

24. *Id.* at 888–89.

25. *Id.* at 889. The court neglected to compare the complexity and discretion involved in felony trials with that involved in Rule 11 plea colloquies; it based its analogy solely upon the finality of guilty pleas. *See id.* at 888–89.

26. *Id.* at 889. The court claimed that the prevalence of guilty pleas in federal criminal adjudication highlights the importance of protecting defendants' rights against courts that overzealously pursue the goal of judicial efficiency. *See id.* at 891–92.

27. Peretz v. United States, 501 U.S. 923, 932 (1991).

28. *See Harden*, 758 F.3d at 891.

29. *Id.* at 891–92.

30. *Id.* at 891. Thus, the efficiency-rights dichotomy this court propounds falls fully upon the last step of a Rule 11 colloquy: the acceptance of the guilty plea. *See id.*

31. United States v. Benton, 523 F.3d 424, 433 (4th Cir. 2008).

32. *Id.* at 432.

33. *Id.* at 431 (citation omitted).

ceedings and that defendants have a right to request de novo review of the plea colloquy whether the magistrate accepts the plea or merely makes a recommendation.[34] The critical difference during district court review is that, when a magistrate accepts the plea, the defendant must provide a "fair and just reason" rather than "any reason or no reason" to withdraw the plea.[35] Therefore, according to the *Benton* court, requiring magistrates to make a recommendation instead of accepting the plea "risks rendering plea proceedings before magistrate judges meaningless."[36]

Likewise, the Tenth and Eleventh Circuits have held that magistrates may accept felony guilty pleas.[37] Both courts drew from *Peretz* that consent informs the statutory and constitutional analyses.[38] Overseeing felony voir dire, both courts reasoned, is analogous to accepting a guilty plea in responsibility and importance and thus is rightly delegated to a magistrate as an "additional duty" when the defendant consents.[39] A defendant's ability to request de novo review by the district court—a process that "adequately protects a defendant's [constitutional] rights"—further supports delegation of plea acceptance to magistrates under the Act, according to these courts.[40] Moreover, and like the Fourth Circuit, the Eleventh Circuit noted that conducting a plea colloquy is simpler than conducting entire civil or misdemeanor trials.[41] Moreover, this court observed that the law authorizes magistrates to determine whether an out-of-court statement was voluntary, which "is remarkably similar to the inquiry into the voluntariness of a guilty plea that underlies the Rule 11 proceeding."[42]

Underlying the circuit split is the U.S. Supreme Court's decision in *Peretz*, which interpreted the "additional duties" clause of the Act to include overseeing voir dire in felony trials.[43] Consent was key: in light of a defendant's consent, the Court noted, the "broad residuary clause" of "additional duties" grants "federal judges significant leeway to experiment with possible improvements in the efficiency of the judicial process."[44] Additionally, the Court suggested that magistrates could perform certain duties of "far greater importance" than those specified in the Act if the parties consent.[45] The Court juxtaposed the "generally subsidiary matters" that magistrates may address without consent with the very substantial matters that magistrates may address with consent, such as

34. *Id.* at 430.
35. *Id.* at 427 (quoting FED. R. CRIM. P. 11).
36. *Id.* at 432.
37. *See* United States v. Woodard, 387 F.3d 1329, 1330 (11th Cir. 2004); United States v. Ciapponi, 77 F.3d 1247, 1251 (10th Cir. 1996).
38. *See Woodard*, 387 F.3d at 1332; *Ciapponi*, 77 F.3d at 1250.
39. *See Woodard*, 387 F.3d at 1332; *Ciapponi*, 77 F.3d at 1250–51.
40. *See Ciapponi*, 77 F.3d at 1252; *see also Woodard*, 387 F.3d at 1334.
41. *See Woodard*, 387 F.3d at 1332–33.
42. *Id.* at 1333.
43. Peretz v. United States, 501 U.S. 923, 935 (1991).
44. *Id.* at 932–33.
45. *Id.* at 933.

supervising entire civil and misdemeanor trials, highlighting the gaps in responsibility and importance between the two kinds of duties.[46] The Court concluded that delegation of voir dire in felony cases "strikes the balance Congress intended between the interests of the criminal defendant and [judicial efficiency]."[47]

Concerns both of defendants' rights and of efficiency undercut the Seventh Circuit's analysis. The Seventh Circuit's analogy between guilty plea acceptance and felony trials fails because the court neglects to incorporate at least three critical factors used to evaluate the "responsibility and importance" of a duty under the Act.[48] Moreover, the Seventh Circuit's finality analysis is incomplete, for the court omits consideration of defendants' right to request de novo review of magistrate proceedings.[49] Lastly, it treats judicial efficiency and defendants' rights as mutually exclusive and thereby constructs a false dilemma.[50]

First, as the *Benton* and *Woodard* courts recognized, taking a plea is less complex even than other duties within a magistrate's authority and involves an amount of discretion comparable to at least some of those duties.[51] A plea colloquy is a long, searching, but standard line of inquiry rigidly detailed in Rule 11 of Federal Criminal Procedure.[52] Throughout, the magistrate must ensure that the plea is knowingly, voluntarily, and intelligently made.[53] No such simplicity inheres in conducting an entire civil or misdemeanor trial, duties which are "unquestionably within a magistrate judge's authority."[54] Also, the discretion in determining the voluntariness of a plea is similar to another task entrusted to magistrates: "[d]etermining the voluntariness of an out-of-court statement."[55] Voir dire in a felony case is also more complex and "implicates far greater discretion than the largely ministerial function played by the court during a plea colloquy."[56]

Further, the Seventh Circuit largely disregards the U.S. Supreme Court's charge that the statute is to be read more expansively in light of the parties' consent to trust magistrates with greater responsibilities than the "generally subsidiary matters" they may perform absent consent.[57] The Seventh Circuit's misplaced accusation that other circuits rely too heavily on the "significant leeway" language in *Peretz* ignores the purpose of the Act as declared by Congress and as interpreted by the U.S.

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46. *Id.*
47. *Id.* at 933–34.
48. *See* United States v. Harden, 758 F.3d 886, 888–89 (7th Cir. 2014).
49. *See id.*
50. *See id.* at 891–92.
51. United States v. Benton, 523 F.3d 424, 432 (4th Cir. 2008); United States v. Woodard, 387 F.3d 1329, 1332–33 (11th Cir. 2004).
52. *See* FED. R. CRIM. P. 11; *see also Benton*, 523 F.3d at 431.
53. *Harden*, 758 F.3d at 888–89.
54. *Benton*, 523 F.3d at 432; *see Woodard*, 387 F.3d at 1332–33.
55. *Woodard*, 387 F.3d at 1333.
56. *Benton*, 523 F.3d at 431 (internal quotation marks omitted).
57. *See* Peretz v. United States, 501 U.S. 923, 933 (1991).

Supreme Court.[58] The Seventh Circuit fails to explain adequately why accepting a felony guilty plea is analogous to conducting a felony trial with regard to the importance of the two duties, while the other circuits ruling on the issue fully and persuasively analogize this process to felony voir dire.[59]

The Seventh Circuit also fails to address the effect that a defendant's ability to request de novo review of a magistrate's findings has on finality.[60] Although most defendants waive many appellate rights when pleading guilty, the findings and the plea are subject to de novo review by the district court at defendant's request when a magistrate judge conducts the plea colloquy.[61] Whether the district court requires defendant to provide a fair and just reason to withdraw the plea (if a magistrate "accepts" the plea) or must allow withdrawal for any or no reason (if the magistrate makes a report and recommendation) is the critical difference on review.[62] From this angle, an accepted guilty plea is less binding than a verdict in a civil jury trial: an appellate court cannot substitute its reasonable interpretation of facts for a jury's, but a district judge may ignore the magistrate's findings of fact and conclusions of law, however reasonable, whether the magistrate accepts the plea or not.[63]

Finally, the Seventh Circuit constructs a false dichotomy between criminal rights and judicial efficiency.[64] A defendant can withdraw a guilty plea accepted by a magistrate for any "fair and just reason," which would "obviously include a defective plea proceeding."[65] Where a magistrate cannot accept the plea at the end of the colloquy, a defendant can withdraw the plea "for any reason or no reason" before the district court accepts it.[66] The potential for needless efficiency losses is twofold.[67] Not only would defendants have every incentive to use the magistrate's plea colloquy as a "dress rehearsal," district judges would "feel pressure to revisit [magistrate] plea procedures," even if defendants had not challenged them.[68] The tradeoff is enormous—"exacerbat[ing] the docket tensions already felt by district courts"—as well as illusory: as demonstrated, defendants have the right to request de novo review of any mag-

58. *See id.* at 932–33.

59. *See, e.g.*, *Benton*, 523 F.3d at 431–32; *Woodard*, 387 F.3d at 1332; United States v. Ciapponi, 77 F.3d 1247, 1250–51 (10th Cir. 1996).

60. *Compare Harden*, 758 F.3d at 888–89, *with Benton*, 523 F.3d at 432, *and Woodard*, 387 F.3d at 1334, *and Ciapponi*, 77 F.3d at 1251.

61. *Benton*, 523 F.3d at 430–31; *Woodard*, 387 F.3d at 1334; *Ciapponi*, 77 F.3d at 1251.

62. *See* FED. R. CRIM. P. 11; *Benton*, 523 F.3d at 432.

63. *Compare Benton*, 523 F.3d at 432 (noting that the district court has "ultimate control over [a] magistrate's plea acceptance"), *with* E.E.O.C. v. Mgmt. Hospitality of Racine, Inc., 666 F.3d 422, 431 (7th Cir. 2012) (noting that an appellate court must find that "no rational jury could have found for the prevailing party" to justify reversal).

64. *See Harden*, 758 F.3d at 891–92.

65. *Benton*, 523 F.3d at 432.

66. FED. R. CRIM. P. 11; *Benton*, 523 F.3d at 432–33.

67. *See Benton*, 523 F.3d at 432–33.

68. *See id.*

istrate proceeding.[69] The Seventh Circuit's reasoning mischaracterizes the nature of a defendant's position following magistrate acceptance of a defendant's guilty plea and thus fails to "strike[ ] the balance Congress intended between the interests of the criminal defendant and [judicial efficiency]."[70]

In sum, the Seventh Circuit's faulty approach would result in inefficient disposition of felony cases with no concomitant benefit. The Seventh Circuit miscasts a defendant's legal position following the administration of a plea colloquy and acceptance of a felony guilty plea by a magistrate. It fails to consider the impact on judicial efficiency in an already overburdened federal judiciary of rendering plea colloquies by magistrates essentially meaningless. It erroneously analogizes a felony trial to the acceptance of a felony guilty plea—a marginally discretionary task that is comparable in responsibility and importance to felony voir dire and is the natural culmination of the colloquy preceding it. Finally, it disregards the effect of a defendant's consent on the breadth of the Act's "additional duties" clause. For these reasons, the Seventh Circuit's determination that accepting felony guilty pleas is "too important" to fall within the "additional duties" clause of the Act is incorrect.

69. *Id.* at 430–31; United States v. Woodard, 387 F.3d 1329, 1334 (11th Cir. 2004); United States v. Ciapponi, 77 F.3d 1247, 1252 (10th Cir. 1996).

70. Peretz v. United States, 501 U.S. 923, 933–34 (1991).