

February 2, 2015

Scott S. Harris, Clerk
United States Supreme Court
One First Street, N.E.
Washington, D.C. 20543

Re: Toca v. Louisiana, No. 14-6381

Dear Mr. Harris:

Pursuant to Rule 46.1 of the Supreme Court rules, petitioner, George Toca, and respondent, the State of Louisiana, respectfully request that this case be dismissed as moot, and that each party shall remain responsible for its own costs.¹

On Tuesday, January 27, 2015, after Mr. Toca's opening brief had been filed, an agreement was reached between Petitioner's counsel and the Orleans Parish District Attorney's Office that would allow Mr. Toca to be immediately released. *See* Attachment A. On Thursday, January 29, 2015, a hearing was held in the Orleans Parish Criminal District Court. Mr. Toca accepted this plea agreement and his prior conviction and mandatory life-without-parole sentence were formally vacated. Mr. Toca pled guilty to lesser crimes, received a term of years sentence, and has been released. *See* Attachments B, C, and D.

Mr. Toca contended in his petition for writ of certiorari and in his opening brief that *Miller v. Alabama*, 132 S. Ct. 2455 (2012), must be applied retroactively to his case and others on collateral review. *Miller* held that it is cruel and unusual to impose a mandatory life-without-parole sentence on a child who was under the age of 18 at the time of the crime. Mr. Toca is no longer subject to a mandatory life-without-parole sentence, and, therefore, *Miller* is now inapplicable to his case. Because Mr. Toca no longer has a mandatory life-without-parole sentence, there is no live case or controversy before this Court. *United States v. Juvenile Male*, 131 S. Ct. 2860, 2864 (2011). As a result, dismissal of this case as moot is appropriate.

For these reasons, the parties agree to stipulate that the case is moot and must be dismissed.

¹ This Court has permitted Mr. Toca to proceed *in forma pauperis*.

Respectfully submitted,

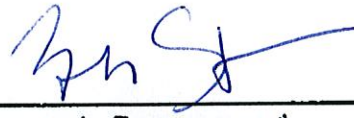


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Attorneys for Petitioner

ATTACHMENT A

GEORGE TOCA

CRIMINAL DISTRICT COURT

V.

PARISH OF ORLEANS

BURL CAIN, WARDEN

CASE NUMBER 301-875 "G"

FILED: _____

**JOINT MOTION OF THE STATE AND PETITIONER TO VACATE CONVICTION
AND SENTENCE AND ENTER PLEA**

COME NOW, Petitioner, George Toca, through undersigned counsel and Respondent, the State of Louisiana, through the Orleans Parish District Attorney's Office. Petitioner and Respondent jointly move this Court to vacate Mr. Toca's 1985 conviction of second-degree murder and sentence of life without parole. Petitioner and Respondent further move this Court to accept Mr. Toca's plea of guilty to attempted armed robbery and his no-contest plea to manslaughter and sentence him to 40 years and 21 years respectively at hard labor to run consecutively. In support of their joint motion, Petitioner and Respondent represent to the Court the following agreement that has been reached in order to bring a resolution to this case:

1. In light of new evidence discovered by Petitioner since his conviction and presented through his application for post-conviction relief (as amended and supplemented), and after further review of the evidence and the facts in this case, the State agrees to vacate Petitioner's second-degree murder conviction and life sentence.
2. In exchange for the State's agreement to vacate his conviction, the Petitioner agrees to enter a plea of guilty to one count of manslaughter under *North Carolina v. Alford*, 400 U.S. 25 (1970), and to two counts of attempted armed robbery. The State agrees that the Petitioner will be sentenced to twenty-one (21) years on the manslaughter count and forty (40) years for each count of attempted armed robbery. The State further agrees that Petitioner's attempted armed robbery sentences are to be served concurrent to each other and consecutive to his 21-year sentence on the manslaughter count, with credit for time served on all charges.
3. The State submits that there is a factual basis for Mr. Toca's pleas to attempted armed robbery and manslaughter.
4. Petitioner agrees and does hereby waive all rights to challenge this plea agreement, his guilty pleas and the convictions and sentences imposed pursuant hereto except for violations of the specific terms of the agreement contained in this document, including the agreed sentence.

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JAN 29 2015

BY: _____

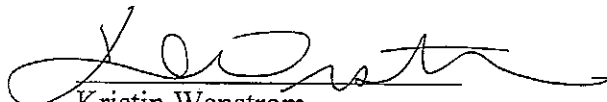
Petitioner explicitly waives all rights under Louisiana and U.S. law and the Louisiana and U.S. constitutions to challenge these pleas and sentences.

WHEREFORE, Petitioner and Respondent jointly move this Court to grant their motion, vacate Mr. Toca's conviction and sentence, accept his guilty plea to manslaughter under *Alford v. North Carolina* and attempted armed robbery, and sentence him to 21 years and 40 years to run consecutively with credit for time served.

Respectfully submitted,



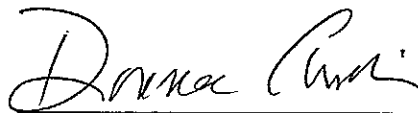
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Counsel for Respondent, State of Louisiana

ATTACHMENT B

GEORGE TOCA

CRIMINAL DISTRICT COURT

V.

PARISH OF ORLEANS

BURL CAIN, WARDEN

CASE NUMBER 301-875 "G"

FILED: _____

ORDER VACATING CONVICTION, ACCEPTING GUILTY PLEAS, AND RESENTENCING IN ACCORDANCE WITH PLEAS

Upon consideration of the joint motion of the Petitioner, Mr. George Toca, DOC#126024, and the Respondent, the State of Louisiana, and pursuant to the parties' agreement:

1. The Court hereby ORDERS that Mr. Toca's conviction of second degree murder imposed on April 16, 1985 and sentence of life imprisonment imposed on April 23, 1985 in the Parish of Orleans are hereby VACATED.
2. The Court takes notice that Mr. Toca maintains his innocence of the manslaughter of his friend, Eric Batiste, and that he is pleading guilty to bring an immediate end to his life sentence, of which he has already served 31 years in prison.
3. Therefore, the Court hereby accepts Mr. Toca's plea of guilty without an admission of guilt, pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), to the charge of one count of Manslaughter, La. R.S. 14:31.
4. The Court also hereby accepts a plea of guilty to two counts of Attempted Armed Robbery, La. R.S. ~~14:64, 14:77(D)(1)~~ 14:(27)64 ^{EM} _{PANDUEY}
5. The Court finds that there is a factual basis for Mr. Toca's pleas and hereby ORDERS that a judgment of conviction be entered in one count of manslaughter and two counts of attempted armed robbery, and that Mr. George Toca, DOC# 126024, be sentenced to:

- a. Twenty-one (21) years at hard labor for the single count of manslaughter without the benefit of probation, parole or suspension of sentence but with credit for time served.

- b. Forty (40) years at hard labor for the each of the two (2) counts of attempted armed robbery without the benefit of probation, parole or suspension of sentence but with credit for time served. The Court hereby

Clerk's Office

1/29 2015
A True Copy

by _____ Deputy Clerk

Hon. Arthur A. Morrell
Clerk of Criminal District Court
Orleans Parish

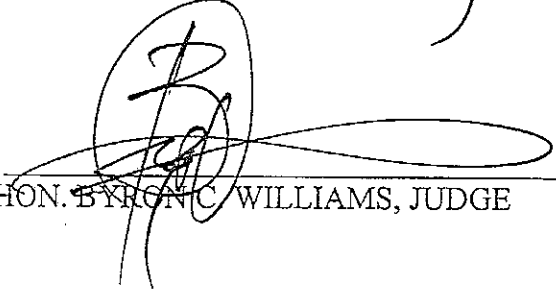
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BY: _____

ORDERS that the two (2) forty (40) year sentences on the two (2) counts of armed robbery be served CONCURRENTLY. The Court further ORDERS that these concurrent sentences be served CONSECUTIVELY with the twenty-one (21) year sentence for one count of manslaughter.

6. All fees and court costs in this matter shall be waived.

THUS DONE AND SIGNED this 29th day of January, 2015.



HON. BYRON C. WILLIAMS, JUDGE

PLEASE SERVE:

Ashley Bradley
Louisiana State Penitentiary Records Department
Angola, LA 70712
Facsimile: (225) 655-0858

Clerk's Office 1/29 20 15

A True Copy

by  Deputy Clerk

Hon. Arthur A. Morrell
Clerk of Criminal District Court
Orleans Parish

ATTACHMENT C

SENTENCE OF THE COURT

STATE OF LOUISIANA, PARISH OF ORLEANS
CRIMINAL DISTRICT COURT

SECTION "G"
JUDGE BYRON C WILLIAMS
CASE NO. 301-875
DATE 1/29/2015
MOTION NO. 651192

*Conviction of 7-16-1985 is
vacated + set aside.
Sentence of 4-23-1985 is
vacated + set aside*

To the Sheriff for the Parish of Orleans --Greetings

WHEREAS GEORGE C TOCA JR
was by law lately convicted/submitted before the Criminal District Court for
the Parish of Orleans of

Count 1,	Violation	RS 14	31	<i>amended</i>	MANSLAUGHTER
Count 2,	Violation	RS 14	(27)64	<i>added</i>	ATT ARMED ROBBERY
Count 3,	Violation	RS 14	(27)64	<i>added</i>	ATT ARMED ROBBERY

And was thereupon sentenced, on 1/29/2015
THE DEFENDANT, GEORGE C TOCA JR, THROUGH COUNSEL WAIVED ALL
DELAYS AND REQUESTED IMMEDIATE SENTENCING.
COURT ORDERED THE CONVICTION IMPOSED ON 04/16/1985 AND THE
SENTENCE IMPOSED ON 04/23/1985 BE VACATED AND SET ASIDE.
PURSUANT TO THE PLEAS,
THE COURT IMPOSED THE FOLLOWING SENTENCE:

AS TO COUNT 1, RS 14 31, UNDER N. CAROLINA V. ALFORD:
21 YEARS, AT THE DEPARTMENT OF CORRECTIONS AT HARD LABOR.
THIS SENTENCE IS CONSECUTIVE WITH THESE COUNTS: WITH COUNTS 2
AND 3.
THIS SENTENCE IS CONCURRENT WITH THESE CASES: WITH ANY OTHER
SENTENCE IMPOSED.
THIS SENTENCE IS TO RUN CONCURRENT WITH AND IS COTERMINOUS WITH
ANY OTHER SENTENCE.
THIS SENTENCE IS WITHOUT BENEFIT OF PROBATION, PAROLE OR
SUSPENSION.

THE DEFENDANT IS GIVEN FULL CREDIT FOR ANY AND ALL TIME SERVED.
FINES AND FEES ARE WAIVED.
PURSUANT TO ARTICLE 892 OF THE CODE OF CRIMINAL PROCEDURE, THE
CRIMINAL CLERK SHOULD NOTIFY THE DEPARTMENT OF CORRECTIONS.
PURSUANT TO ARTICLE 930.8, THE COURT NOTIFIED THE DEFENDANT THAT
IF HE INTENDS TO ASK FOR POST-CONVICTION RELIEF, HE MUST FILE AN
APPLICATION WITHIN TWO YEARS OF THIS SENTENCE.

AS TO COUNT 2, 14 (27)64:
40 YEARS, AT THE DEPARTMENT OF CORRECTIONS AT HARD LABOR.
THIS SENTENCE IS CONCURRENT WITH THESE COUNTS: COUNT 3.
THIS SENTENCE IS CONSECUTIVE WITH THESE COUNTS: WITH COUNT 1.
THIS SENTENCE IS CONCURRENT WITH THESE CASES: WITH ANY OTHER
SENTENCE IMPOSED.
THIS SENTENCE IS TO RUN CONCURRENT WITH AND IS COTERMINOUS WITH
ANY OTHER SENTENCE.
THIS SENTENCE IS WITHOUT BENEFIT OF PROBATION, PAROLE OR
SUSPENSION.

THE DEFENDANT IS GIVEN FULL CREDIT FOR ANY AND ALL TIME SERVED.
PURSUANT TO ARTICLE 892 OF THE CODE OF CRIMINAL PROCEDURE, THE
CRIMINAL CLERK SHOULD NOTIFY THE DEPARTMENT OF CORRECTIONS.
PURSUANT TO ARTICLE 930.8, THE COURT NOTIFIED THE DEFENDANT THAT
IF HE INTENDS TO ASK FOR POST-CONVICTION RELIEF, HE MUST FILE AN
APPLICATION WITHIN TWO YEARS OF THIS SENTENCE.

AS TO COUNT 3, 14 (27)64:
40 YEARS, AT THE DEPARTMENT OF CORRECTIONS AT HARD LABOR.
THIS SENTENCE IS CONCURRENT WITH THESE COUNTS: COUNT 2.
THIS SENTENCE IS CONSECUTIVE WITH THESE COUNTS: WITH COUNT 1.
THIS SENTENCE IS CONCURRENT WITH THESE CASES: WITH ANY OTHER

(CONTINUED)

SENTENCE OF THE COURT

STATE OF LOUISIANA, PARISH OF ORLEANS
CRIMINAL DISTRICT COURT

SECTION "G"
JUDGE BYRON C WILLIAMS
CASE NO. 301-875
DATE 1/29/2015
MOTION NO. 651192

(CONTINUED FOR GEORGE C TOCA JR)

SENTENCE IMPOSED.

THIS SENTENCE IS TO RUN CONCURRENT WITH AND IS COTERMINOUS WITH ANY OTHER SENTENCE.

THIS SENTENCE IS WITHOUT BENEFIT OF PROBATION, PAROLE OR SUSPENSION.

THE DEFENDANT IS GIVEN CREDIT FOR TIME SERVED.

PURSUANT TO ARTICLE 892 OF THE CODE OF CRIMINAL PROCEDURE, THE CRIMINAL CLERK SHOULD NOTIFY THE DEPARTMENT OF CORRECTIONS.

PURSUANT TO ARTICLE 930.8, THE COURT NOTIFIED THE DEFENDANT THAT IF HE INTENDS TO ASK FOR POST-CONVICTION RELIEF, HE MUST FILE AN APPLICATION WITHIN TWO YEARS OF THIS SENTENCE.

NOW THEREFORE, you the said Sheriff, are hereby commanded to carry in full and entire execution every part of the aforesaid sentence. And in so doing, this shall be sufficient warrant and authority.

Defendants complete address:

Number and Street City, State, Zip Code

Telephone Number Date of Birth

WITNESS _____ JUDGE, presiding in said Criminal District Court, Section "G", for the Parish of Orleans, in the Hall of Sittings of the same City of New Orleans, this date 1/29/2015

MARCELLE BUTSCHER, Minuta Clerk

ATTACHMENT D

CRIMINAL DISTRICT COURT OF ORLEANS PARISH, LOUISIANA

Page 1

SECTION "G" Judge: THE HONORABLE BYRON C WILLIAMS
Minute Clerk: MARCELLE BUTSCHER
Court Reporter: VICTOR DIGIORGIO
Assist. D.A.: MICHAEL DANON
COREY MOLL

Date: THURSDAY, January 29, 2015

Case Number: 301-875

State of Louisiana

versus

GEORGE C TOCA JR

Violation: RS 14 30.1

THE DEFENDANT, GEORGE C TOCA JR, APPEARED BEFORE THE COURT FOR STATUS HEARING WITH COUNSEL, EMILY MAW, KRISTEN WENSTROM AND

CALVIN JOHNSON OF THE INNOCENSE PROGRAM.

STATE AND DEFENSE FILED:

-ORDER VACATING CONVICTION, ACCEPTING GUILTY PLEAS, AND RE-SENTENCING IN ACCORDANCE WITH PLEAS.

THE STATE AMENDED COUNT 1 OF THE BILL OF INFORMATION TO READ RS 14 31 MANSLAUGHTER.

THE STATE ADDED COUNT 2, RS 14 (27)64, ATT ARMED ROBBERY.
THE STATE ADDED COUNT 3, RS 14 (27)64, ATT ARMED ROBBERY.

IN ACCORDANCE WITH AGREEMENT BETWEEN THE STATE AND DEFENSE, COURT VACATED DEFENDANT'S CONVICTION OF 4/16/1985 AND THE LIFE SENTENCE IMPOSED ON 4/23/1985.

THE DEFENDANT, THROUGH COUNSEL, WITHDREW ALL FORMER PLEAS AND IN LIEU THEREOF ENTERED A PLEA UNDER ALFORD V. N. CAROLINA

AS TO COUNT 1 AND PLEAS OF GUILTY AS TO COUNTS 2 AND 3.

AS TO COUNT 1, RS 14 31 MANSLAUGHTER, GUILTY AS CHARGED.
AS TO COUNT 2, RS 14 (27)64 ATT ARMED ROBBERY, GUILTY AS
AS TO COUNT 2, RS 14 (27)64 ATT ARMED ROBBERY, GUILTY AS
CHARGED.

AS TO COUNT 3, RS 14 (27)64 ATT ARMED ROBBERY, GUILTY AS
AS TO COUNT 3, RS 14 (27)64 ATT ARMED ROBBERY, GUILTY AS
CHARGED.
CHARGED.

THIS COURT PERSONALLY INTERROGATED THE DEFENDANT AS TO HIS RIGHTS TO HAVE A TRIAL BY JUDGE OR JURY AND HIS RIGHT TO APPEAL IF CONVICTED; HIS RIGHT TO FACE HIS ACCUSERS, CROSS EXAMINE THE WITNESSES AGAINST HIM AND ENTER EVIDENCE IN HIS OWN BEHALF; HIS RIGHT TO REMAIN SILENT AT HIS TRIAL WHICH COULD NOT BE HELD AGAINST HIM, OR TO TESTIFY IN HIS OWN BEHALF, AND HIS RIGHT AGAINST SELF-INCRIMINATION, RIGHT TO COMPULSORY PROCESS AND TO SUBPOENA WITNESSES ON HIS OWN BEHALF. THE DEFENDANT ACKNOWLEDGED THAT HE UNDERSTOOD THOSE RIGHTS AND THAT BY ENTERING AN ALFORD PLEA AS TO COUNT 1 AND GUILTY PLEAS

AS TO COUNTS 2 AND 3, HE WAS GIVING UP THOSE RIGHTS. THE COURT

THEN FOUND THAT THE DEFENDANT FREELY AND VOLUNTARILY WAIVED HIS RIGHTS ACCORDED BY LAW AND THAT THERE WAS A SUBSTANTIAL FACTUAL BASIS TO ENTERTAIN AN ALFORD PLEA OF GUILTY AS TO COUNT 1, AND

PLEAS OF GUILTY AS TO COUNTS 2 AND 3.

THE COURT ORDERED THE PLEA RECORDED.

THE DEFENDANT, GEORGE C TOCA JR, THROUGH COUNSEL WAIVED ALL

(CONTINUED)

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by *[Signature]* Deputy Clerk
Hon. Arthur A. Morrell
Clerk of Criminal District Court
Orleans Parish

CRIMINAL DISTRICT COURT OF ORLEANS PARISH, LOUISIANA

Page 2

SECTION "G" Judge: THE HONORABLE BYRON C WILLIAMS

Date: THURSDAY, January 29, 2015

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GEORGE C TOCA JR

(CONTINUED)

DELAYS AND REQUESTED IMMEDIATE SENTENCING.

COURT ORDERED THE CONVICTION IMPOSED ON 04/16/1985 AND THE SENTENCE IMPOSED ON 04/23/1985 BE VACATED AND SET ASIDE. PURSUANT TO THE PLEAS,

THE COURT IMPOSED THE FOLLOWING SENTENCE:

AS TO COUNT 1, RS 14 31, UNDER N. CAROLINA V. ALFORD:

21 YEARS, AT THE DEPARTMENT OF CORRECTIONS AT HARD LABOR.

THIS SENTENCE IS CONSECUTIVE WITH THESE COUNTS: WITH COUNTS 2 AND 3.

THIS SENTENCE IS CONCURRENT WITH THESE CASES: WITH ANY OTHER SENTENCE IMPOSED.

THIS SENTENCE IS TO RUN CONCURRENT WITH AND IS COTERMINOUS WITH ANY OTHER SENTENCE.

THIS SENTENCE IS WITHOUT BENEFIT OF PROBATION, PAROLE OR SUSPENSION.

THE DEFENDANT IS GIVEN FULL CREDIT FOR ANY AND ALL TIME SERVED.

FINES AND FEES ARE WAIVED.

PURSUANT TO ARTICLE 892 OF THE CODE OF CRIMINAL PROCEDURE, THE CRIMINAL CLERK SHOULD NOTIFY THE DEPARTMENT OF CORRECTIONS. PURSUANT TO ARTICLE 930.8, THE COURT NOTIFIED THE DEFENDANT THAT IF HE INTENDS TO ASK FOR POST-CONVICTION RELIEF, HE MUST FILE AN APPLICATION WITHIN TWO YEARS OF THIS SENTENCE.

AS TO COUNT 2, 14 (27)64:

40 YEARS, AT THE DEPARTMENT OF CORRECTIONS AT HARD LABOR.

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THIS SENTENCE IS CONSECUTIVE WITH THESE COUNTS: WITH COUNT 1.

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AS TO COUNT 3, 14 (27)64:

40 YEARS, AT THE DEPARTMENT OF CORRECTIONS AT HARD LABOR.

(CONTINUED)

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Deputy Clerk
Hon. Arthur A. Morrell
Clerk of Criminal District Court
Orleans Parish

CRIMINAL DISTRICT COURT OF ORLEANS PARISH, LOUISIANA

Page 3

SECTION "G" Judge: THE HONORABLE BYRON C WILLIAMS

Date: THURSDAY, January 29, 2015

Case Number: 301-875

State of Louisiana

versus

GEORGE C TOCA JR

(CONTINUED)

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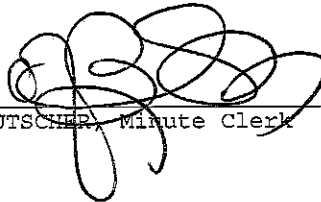
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THIS CASE IS CLOSED FOR THIS DEFENDANT.



MARCELLE BUTSCHER, Minute Clerk

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Shuler Deputy Clerk
Hon. Arthur A. Morrell
Clerk of Criminal District Court
Orleans Parish