NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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September 27, 2021

LETTER OPINION

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Re: *Commonwealth v. Rey Oraa Amparado*
Case Number FE-2020-276

Dear Counsel:

Before the Court is a Plea Agreement entered into by the Commonwealth and the Defendant pursuant to Rule 3A:8(c)(1)(C) of the Rules of the Supreme Court of Virginia.[1] A

[1] Rule 3A:8(c)(1)(C) reads as follows:

(c) *Plea Agreement Procedure.* –

(1) The attorney for the Commonwealth and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon entry by the defendant of a plea of guilty, or a plea of nolo contendere, to a charged offense, or to a lesser or related offense, the attorney for the Commonwealth will do any of the following:

(A) * * *

plea entered into by the parties pursuant to Rule 3A:8(c)(1)(C) may be accepted or rejected by the Court.[2]

The Court, having now had the opportunity to consider the presentence report and having heard argument from the parties with respect to whether the Court should accept or reject the Plea Agreement, hereby rejects the Plea Agreement. The agreement was rejected in open court at a hearing conducted on September 24, 2021.

The purpose of this opinion is to explain the Court's reasons for rejecting the Plea Agreement. *See, generally, United States v. Robertson*, 45 F.3d 1423, 1438 (Tenth Cir. 1995) (citations omitted). ("Accordingly, we hold that in order to insure district courts exercise sound judicial discretion and adequately respect the principle of prosecutorial independence, courts must set forth, on the record, the prosecution's reasons for framing the bargain and the court's justification for rejecting it.") *See also United States v. Miller*, 722 F. 2d 562, 566 (9th Cir. 1983) and *United States v. Moore*, 916 F.2d 131,1135-36 (Sixth Circuit 1990).[3]

BACKGROUND

On August 17, 2020, the Defendant was indicted on four counts of rape of a child less than 13 years of age. Although each of the counts of the indictment are identical, the Commonwealth stated in one of its pleadings that the first three counts involve rapes that allegedly occurred when the victim was in Fifth Grade and the fourth count involves a rape that allegedly occurred when the victim was in Seventh Grade.[4] The victim would have been between 10-12 years of age during this time frame. In addition to the allegations of rape, the Commonwealth was granted permission by the Court to introduce "prior bad acts" evidence at

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(B) * * *

(C) Agree that a specific sentence is the appropriate disposition of the case. In any such discussions under this Rule, the court may not participate.

[2] See Rule 3A:8(c)(2) ("If the agreement is of the type specified in subdivision (c)(1)(A) or (C), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider a presentence report.")

[3] Although these are opinions from federal courts based on the Federal Rules of Criminal Procedure, the principles set out in these opinions apply with equal force to the issues before the Court today.

[4] See Commonwealth's Supplemental Response to Defendant's Motion to Disclose Brady Information, Or Alternatively, To Dismiss the Case (filed June 21, 2021) at Page 4. This is consistent with the Commonwealth's proffer of facts at the time of the plea.

trial. On June 24, 2021, the Commonwealth filed its "prior bad acts" notice with the Court, consisting of 13 additional allegations involving the Defendant and the victim.[5]

PLEA AGREEMENT

A jury trial in the above-entitled matter was set to begin on July 6, 2021. On July 1st, however, the Commonwealth moved to amend the indictment with respect to Counts I and II. The Commonwealth's motion, without objection from the Defendant, was to amend each count from rape of a child less than 13 years of age to Aggravated Sexual Battery.[6] Rape of a child less than thirteen years of age carries a maximum penalty of life in prison and a minimum penalty of not less than five years in prison. *See* Virginia Code Section 18.2-61(B). Aggravated sexual battery carries a maximum penalty of twenty years in prison and a fine of not more than $100,000 and a minimum term of not less than one year in prison. *See* Virginia Code Section 18.2-67.3(B). In accordance with the Commonwealth's motion, Counts I and II were amended.

The Commonwealth and the Defendant entered into a plea agreement, the terms of which were as follows:

1. The Defendant would enter a plea to the two amended counts of the indictment, charging the Defendant with aggravated sexual battery.

2. The Defendant "shall" be sentenced to 3 years of active incarceration and 37 years of suspended incarceration.

3. Count III and Count IV, each of which charged the Defendant with rape of a child less than 13 years of age, were to be *nolle prossed.*[7]

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[5] The 13 allegations of "prior bad acts" included several incidents of forcing the victim to perform oral sex on the Defendant, and an additional rape when the victim was in the Fifth Grade.

[6] Although not stated explicitly by the parties, the Court's understanding is that the amendments of the indictment were an implicit part of the plea agreement, since the plea agreement required the Defendant to plead guilty to two counts of aggravated sexual battery, which would necessitate the amendments since the Defendant was actually charged with four counts of rape of a child less than 13 years of age.

[7] The actual language in the two Plea Agreements covering Counts I and II reads as follows: "The Commonwealth *nolle prossed* FE-2020-276-III, 276-IV as part of this agreement." At this point, however, Counts III and IV have not been *nolle prossed.* It is the Court's understanding that the counts are to be *nolle prossed* in the event the Court accepts the Plea Agreement and not that they are to be *nolle prossed* whether or not the Court accepts the Plea Agreement.

4. There was to be a no-contact order with the victim and her family.

5. There was no agreement with regard to probation or the terms of the suspended sentence.

Thus, the plea agreement provided the Defendant three distinct benefits: (1) Counts III and IV, charging the Defendant with rape of a child less than 13 years of age, were to be *nolle prossed*; (2) The remaining two counts were amended from rape of a child less than 13 years of age (maximum sentence: life) to aggravated sexual battery (maximum sentence: 20 years); and (3) even though the two counts of conviction carried a maximum combined *potential* term of incarceration of 40 years, the court was required to impose a sentence of active incarceration of just three years. In addition, the Defendant was permitted to enter a plea pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), which meant the Defendant was not required to admit or acknowledge his guilt.

The Court asked the Commonwealth whether the victim and her mother were consulted with regard to the plea agreement. The Assistant Commonwealth's Attorney advised the Court that the victim and her mother were consulted and that they were, in fact, in the courtroom. When asked whether the victim and her mother concurred in the resolution of the case, the Assistant Commonwealth's Attorney informed the Court that "they are angry with the way it's resolving but they're not objecting to it." (Transcript of Plea Hearing, at 4.)

The Commonwealth proffered to the Court the facts that it would have proven at trial. Those facts included the four rapes of the victim by the Defendant, who was a member of the victim's extended family.[8] This is how the Commonwealth described the defendant's four rapes of the victim:

> On December 18, 2019, the Herndon Police Department received a walk-in report about an alleged sexual abuse of a child [ ] * * * [by family member] Rey Amparado.[9] Detective Laura Baker (now Nicholson) of the Herndon Police Department conducted a preliminary interview before bringing the victim to a forensic interview at SafeSpot Child Advocacy Center. Had this case gone to trial [the victim] would have testified to at least four instances of sexual abuse by Rey Amparado, the defendant. The first incident occurred in the defendant's vehicle at a storage unit … which is located in Fairfax County. When the victim was in fifth

[8] The precise familial relationship of the victim to the Defendant is not further described in this Letter Opinion, in order to protect the victim's privacy. For the same reason, the Court does not refer to the victim in this Letter Opinion by the initials used in the indictment.

[9] The Court has deleted from the Commonwealth's proffer the victim's initials, date of birth, and the precise familial relationship between the victim and the Defendant, and the victim's home address and other location addresses. The crimes set forth in the proffer occurred during the time period when the victim was 10-12 years old.

> grade during the 2017-2018 school year. She would have testified that he drove her there, just the two of them. Parked between two RV-styled vehicles, put a sunshade in the windshield, pulled her pants down and proceeded to have vaginal intercourse with her by putting his penis into her vagina. The second incident occurred at the victim's home at [ ], which is located in Fairfax County, when the victim was in fifth grade or the 2017-2018 school year. The victim and the defendant were in the room she shared with her mother and her brother. He put her on the bed, pulled off her pants and put his penis into her vagina. She would testify that she felt something down there, could see pubic hair, and that he was resting his weight with his arms on either side of her head. A third incident occurred in the victim's home in [ ], in her cousin's room in the spring of the victim's fifth grade, or the 2017-2018 school year. The victim remembers it because it was picture day and she was wearing a flowered dress. She went into the room to view the fish tank. The defendant came into the room, closed the door, picked the victim up. Put her on the bed, lifted her dress up. Pulled down her underwear, pulled down his pants, and penetrated her vagina with his penis. A fourth incident occurred in the defendant's vehicle at a storage unit at [ ], which is located in Fairfax County, when the victim was in seventh grade, or in the fall of 2019. The defendant drove the victim as well as the victim's … brother to the storage unit. Parked between two RV-styled vehicles, put a sunshield in the windshield. Put a sleeping bag in between the driver and front passenger seat and the rear compartment of the car. Gave his phone or an iPad to the younger brother, gave another phone to the victim. Laid her on her back, pulled down her pants, pulled his pants down and penetrated her for [sic] vagina with his penis while the victim was watching videos on his phone. All of these events occurred within Fairfax County.

After making further inquiries, the Court determined that the Defendant's Alford pleas of guilty were made freely, intelligently, and voluntarily and accepted the Defendant's guilty pleas. The Court expressly withheld a finding of guilt on Counts I and II and advised the parties that it would determine at the time of sentencing whether to accept or reject the plea agreement. The Court ordered a presentence investigation and report and set sentencing for September 24, 2021.

DISCUSSION

A plea agreement that requires the Court to impose a specific sentence constitutes an "attempt to completely curtail" the Court's "discretion to sentence within the applicable range …." *United States v. Robertson*, 45 F.3d 1423, 1439 (10th Cir. 1995). A sentencing court may "reject the results of a plea negotiation if it concludes that the resulting agreement is not in the best interest of justice." *Gov't of the Virgin Islands v. Walker*, 261 F.3d 370, 375-376 (3d Cir. 2001).

Absent such a plea agreement, the Defendant's pleas to Counts I and II would have given the Court discretion to sentence the Defendant to as much as 40 years of active incarceration. The plea agreement presented to the Court, however, limited the Court to imposing three years of active incarceration.

Given the facts before this Court – specifically, the Defendant's repeated acts of raping this child beginning when she was in the Fifth Grade and continuing into the Seventh Grade – a plea agreement that requires the Court to impose a sentence of just three years of active incarceration does not remotely reflect the gravity of the Defendant's misconduct.

At the time of the plea, the Court asked the Commonwealth to explain its rationale for entering into this plea. This is what the Assistant Commonwealth Attorney stated:

> Your Honor, the Commonwealth's basis for the plea, the first one as this Court is aware based on all the filings from both our office and the defense there have been a lot of issues as far as getting discovery and evidence both to my office's possession as well as to defense's possession. This has continued even past the discovery deadline as was kind of argued on the 17th, to the point that I even sent an email to Mr. Kennedy earlier this week that the Commonwealth had received an extraction of a phone dump that was in the defendant's possession when he was arrested. Part of the basis of this plea is that this Commonwealth is unsure if I could ever be completely certain that all material that the defense is entitled to has been given to the defense. At this time I can say with certainty I have given the defense everything I have possession of personally. But that is not my standard under Brady and I don't know if I would ever be able to with certainty know, especially given the lead detective's testimony on the 17th (inaudible). That is one basis, Your Honor. Another one is the Commonwealth's perception of how the jury would respond to Detective Baker's and (inaudible) testimony on the stand at trial regarding her investigation. One of the Commonwealth's biggest concerns is whether, despite whether the jury believes our victim – which we would hope and I believe they would – that the detective's testimony regarding her investigation and the continual new evidence that the Commonwealth is becoming aware of and it should have been aware of for a while would create doubt in the jury's minds to where we would not be able to surpass beyond a reasonable doubt.

Thus, the Commonwealth expressed what amounts to four rationales for entering this agreement, none of which the Court finds persuasive.[10]

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[10] At the hearing of September 24, 2021, the Court gave the Commonwealth the opportunity to supplement its previously-expressed rationale for entering into the plea agreement. The Commonwealth indicated that the basis for entering into the plea agreement "was still the same."

First, the Commonwealth noted that there had been problems producing discoverable and *Brady* material to the defense. The Court is well aware of this issue and, in fact, conducted an evidentiary hearing on June 17, 2021, pursuant to a defense motion to dismiss the indictment and for other relief. On June 25, 2021, the Court issued an Order denying the motion. In that Order, the Court stated: "The Court held that the motion for disclosure of additional Brady material and for an evidentiary hearing was resolved through the additional production of material by the Commonwealth and by the evidentiary hearing conducted by the Court on June 17, 2021, but also stated that Defendant's Counsel could make additional requests to the Court if any Brady Material was outstanding." The Court also stated that it would give consideration to a continuance request if sought by the defense based on the late production of material. No continuance motion was filed.

Second, the Commonwealth indicated that it had reservations as to how the jury would view the testimony of Detective Baker (now Nicholson). The detective testified at the June 17, 2021 hearing and it was clear to the Court that the detective had not been adequately responsive to requests from the Commonwealth's Attorney for documents and other material that needed to be produced to the defense. However, the requested material – including recorded interviews of the victim – were ultimately produced to the defense. Further, even after the June 17, 2021, hearing at which Detective Nicholson testified, the Commonwealth asserted that the Defendant's *Brady* motion to dismiss should be denied because, in part, "no prejudice has been suffered" by the defense. *Commonwealth's Supplemental Response to Defendant's Motion to Disclose Brady Information, Or Alternatively, To Dismiss The Case*, at 7.

Third, the Commonwealth stated that it could not be positive that all discoverable material had been produced to the defense. The Commonwealth represented, however, that it had produced all *Brady* material in its actual possession. The Commonwealth appears to have reservations as to whether additional *Brady* material may remain in the possession of others. If that is the case, however, there are remedies other than entering into a plea agreement that does not reflect the gravity of the Defendant's misconduct. This would include seeking the authority of the Court to issue appropriate orders. Significantly, entering into a plea agreement does not necessarily even solve the problem articulated by the Commonwealth.[11]

Finally, the Commonwealth expressed what it called one of its "biggest concerns." This is that the jury might have a reasonable doubt as to the Defendant's guilt because of the quality

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[11] While a guilty plea might relieve the Commonwealth of its obligation to disclose impeachment evidence, *see United States v. Ruiz*, 536 U.S. 622 (2002), the Supreme Court "has not addressed the question of whether the Brady right to exculpatory information, in contrast to impeachment information, might be extended to the guilty plea context." *United States v. Moussaoui*, 591 F.3d 263, 286 (2010). *See also Dicks v. Bishop*, Civil Action No. GLR-17-3667, 2019 WL 6878985 (D. Md. Dec. 17, 2019), at *8 (noting that the Fourth Circuit "has not determined whether pre-plea withholding of exculpatory Brady material is a cognizable claim in federal habeas review").

of the detective's investigation and the tardy disclosure of discoverable material. The Court might understand this argument if the Commonwealth was suggesting that these matters would cause the jury to not believe the victim, but that is not what the Commonwealth was asserting. To the contrary, the Commonwealth stated that it expects that the jury *would* believe the victim, *see* Transcript of Plea Hearing, at 21.

Equally significant is what the Commonwealth is not arguing. It is not arguing that the victim is unable or unwilling to cooperate with the prosecution of this matter. (The Commonwealth advised the Court that the victim and her mother are "angry with the way it's resolving....") Nor is the Commonwealth arguing that it does not believe the victim. (Indeed, if the Commonwealth had such reservations, it could not have ethically gone forward with the prosecution.)[12] Nor is the Commonwealth arguing that it believes three years of incarceration is an appropriate sanction given the Defendant's crimes.

At the hearing on September 24, 2021, defense counsel argued for the Court to accept the plea agreement.

REVIEW AND CONSIDERATION OF THE PSI and VICTIM IMPACT STATEMENTS

The Presentence Investigation Report and Victim Impact Statements reinforces the Court's judgment that the plea agreement should be rejected. This is for three reasons:

First, the Defendant expresses no remorse or acceptance of responsibility for the commission of these offenses. Indeed, he blames the child victim for the commission of these offenses.

Second, the high end of the guideline range for the instant offense is six years and six months, which is more than double the amount of active incarceration the Court would be permitted to impose were it to accept the plea agreement.[13]

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[12] At the hearing on September 24, 2021, the Commonwealth reiterated that it believed the victim and also believed that the jury would believe the victim. Nevertheless, the Commonwealth expressed the concern that the jury would have "doubt" based on the detective's investigation.

[13] The Sentencing Guidelines for the period of active incarceration was calculated by the Probation Officer as follows: 2 years and 1 month at the low end, 4 years and 8 months at the midpoint, and 6 years and 6 months at the high end. This calculation was based on the Defendant pleading guilty to two counts of aggravated sexual battery, in accordance with the plea agreement entered into by the Commonwealth and the Defendant.

Third, the victim impact statements submitted by the child victim as well as the child's mother and grandmother make absolutely clear the devastating impact that the defendant's crimes had on this child. In addition to submitting a victim impact statement, the victim's mother testified at the hearing on September 24, 2021. The victim's mother testified to the profound psychological and emotional injury inflicted by the Defendant on the victim and the victim's family.[14]

CONCLUSION

The Commonwealth has the right to enter into plea agreements that reflect its judgment as to what constitutes an appropriate resolution of a criminal case. But when those plea agreements curtail the exercise of the Court's judicial discretion with regard to sentencing, the Court must make its own determination as to the interest of justice. Here, the Court concludes, and so finds, that a sentence of active incarceration of just three years – given the Defendant's egregious and repeated acts of sexual abuse of this child, and even in light of the Commonwealth's expressed concerns – is not at all in the interest of justice. A three year period of incarceration neither reflects the gravity of the Defendant's misconduct, nor the harm that the Defendant caused this child. Therefore, pursuant to Rule 3A:8(c)(2), the Court rejects the plea agreement.

At the hearing on September 24, 2021, and in accordance with Rule 3A:8(c)(4), the Court advised the Defendant personally in open court that the Court would not accept the plea agreement. The Rule further states: "Thereupon, neither party will be bound by the plea agreement. The Defendant has the right to withdraw his plea of guilty or plea of nolo contendere and the court must advise the Defendant that, if he does not withdraw his plea, the disposition of the case may be less favorable to him than that contemplated by the plea agreement; and the court must further advise the Defendant that, if he chooses to withdraw his plea of guilty or of nolo contendere, his case will be heard by another judge, unless the parties agree otherwise." The Defendant was so advised.

Defense counsel then noted several objections to the Court's rejection of the plea agreement.[15] Defense counsel also stated that, in the event the Court overruled his objections,

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[14] The victim's mother also testified that, in the event the Court rejected the plea and the matter proceeded to trial, the victim's mother understood that her daughter would be required to testify at trial and confirmed that her daughter was prepared to do so.

[15] The Defendant made several objections to the Court's rejection of the plea agreement. These objections were as follows:

(1) Defense counsel asserted that the Court's decision violated the constitutional principle of "separation of powers." The Defendant argued that the plea agreement was entered into due to concerns about the case's "triability" and "suitability for trial," and that these concerns were

"executive" functions of the public prosecutor, and, therefore, it would violate "separation of powers" for a trial court to reject a plea agreement entered into with these considerations in mind. The Court disagrees. The Court's authority to "accept or reject" a plea agreement that requires imposition of a specific sentence is explicitly authorized by Rule 3A:8(c)(2). That authority does not depend on the Commonwealth's rationale for entering into the agreement. When a Court exercises its discretionary authority to "accept or reject" a plea agreement, it is exercising a judicial function, not an executive function.

(2) Defense counsel asserted that the Court's rejection of the plea agreement constitutes an "abuse of discretion" under *Lawlor v. Commonwealth*, 285 Va. 187 (2013). In *Lawlor*, the Supreme Court identified "the 'three principal ways' by which a court abuses its discretion: 'when a relevant factor that should have been given significant weight is not considered; when an irrelevant or improper factor is considered and given significant weight; and when all proper factors, and no improper ones, are considered...." *Id.* at 213, quoting *Landrum v. Chippenham & Johnston-Wiullis Hosps., Inc.*, 282 Va. 346, 352 (2011). The Court disagrees that it abused its discretion by rejecting this plea agreement. The Court rejected the plea agreement because it considered a three-year period of active incarceration to be wholly inadequate. It is not an abuse of discretion to reject a plea agreement on this basis. *See, e.g., United States v. Bean*, 564 F.2d 700, 704 (5th Cir. 1977) ("A decision that a plea bargain will result in the Defendant's receiving too light a sentence under the circumstances of the case is a sound reason for a judge's refusing to accept the agreement.")

(3) Defense counsel objected to the Court's use of the word "permitted," as in the Court's statement that the Defendant was "permitted" to enter an *Alford* plea as part of the plea agreement. It appears to be defense counsel's view that the Commonwealth cannot deny a Defendant the right to enter an *Alford* plea even when the plea is made pursuant to a negotiated plea agreement. However, there is certainly case law recognizing that the government may refuse to enter into a plea agreement that involves an *Alford* plea. *See, e.g., United States v. Jones*, 103 Fed.appx. 479, 2004 WL 1465677 (4th Cir. 2004) (unpublished)("... the Government was completely within its rights to refuse an *Alford* plea in satisfaction of the plea agreement....") The Court need not resolve that question because it is of no significance in the instant case. The Court did not reject the plea agreement because it was an *Alford* plea. The Court rejected the plea agreement because it concluded that a three-year period of active incarceration was wholly inadequate.

(4) Defense counsel asserted that it was improper for the Court to cite the Defendant's "lack of remorse" for his misconduct because this was a plea entered pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970). The Court disagrees. An *Alford* plea is not some impenetrable cloak that shields a Defendant from the Court's consideration of "lack of remorse." As the Court of Appeals of Virginia stated in *Smith v. Commonwealth*, 27 Va. App. 357, 363 (1998), "We agree with our sister states that a trial court may consider a Defendant's lack of remorse at sentencing, even when the Defendant has chosen to enter an *Alford* plea. * * * Consequently, we hold that a Defendant's *Alford* plea does not require that the trial court disregard his lack of remorse at sentencing." If a trial court may consider "lack of remorse" in the exercise of its

the Defendant would withdraw his pleas of guilty, request the Court to recuse itself, and request a status hearing. The Court overruled the Defendant's objections, and the pleas were, therefore, deemed withdrawn. At that point, the Commonwealth requested to withdraw its previous amendments of the two counts [from rape to aggravated sexual battery] given the Court's rejection of the plea agreement. The defense objected and the Court held that the parties would need to take this issue up with another judge of this Court since, pursuant to Rule 3A:8(c)(4), the Court could not continue to hear matters in the case.

The matter was set for a status hearing on October 8, 2021, at 9:00 a.m. An Order, in accordance with this Letter Opinion, shall issue.

Sincerely,

[redacted]

Randy I. Bellows
Circuit Court Judge

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sentencing discretion, surely it may also consider "lack of remorse" in determining whether to accept or reject a plea that curtails the Court's sentencing discretion.

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA	)	**CRIMINAL NUMBER FE-2020-276**
VERSUS	)	
REY AMPARADO	)	**INDICTMENT – AGGRAVATED SEXUAL BATTERY (COUNTS I and II) and RAPE (COUNTS III and IV)**

ORDER

On September 24, 2021, Nathan Freier, the Assistant Commonwealth's Attorney, REY AMPARADO, the Defendant, Bryan Kennedy and Jessica Newton, Counsel for the Defendant, and Ernie Bartolome, an Interpreter fluent in the Tagalog language, appeared before this Court. The Defendant is indicted for the felonies of AGGRAVATED SEXUAL BATTERY (COUNTS I and II) and RAPE (COUNTS III and IV) and he appeared while in custody.

This case came before the Court this date for a determination of whether the Court will accept or reject the plea agreement and for sentencing, if appropriate. The Probation Officer of this Court, to whom this case had been referred for investigation, appeared in open Court with a written report. Copies of the report were previously furnished to Counsel for the Defendant, the Commonwealth's Attorney, and the Court.

The Court heard the testimony of the victim's mother and heard the argument of Counsel regarding the plea agreement.

For the reasons stated in open court, and in the Court's letter opinion, and pursuant to Rule 3A:8(c)(2) of the Rules of the Supreme Court of Virginia, the Court rejected the Plea Agreement. After rejecting the Plea Agreement, the Court complied with its notification obligations under Rule 3A:8(c)(4). The Defendant noted objections to the Court's ruling and advised the Court that, in the event the objections were overruled, the Defendant would withdraw his guilty pleas, request the Court to recuse itself, and request a status hearing. The objections were overruled and the pleas of guilty were, therefore, deemed withdrawn. Pursuant to the Rules of the Supreme Court, this Court will not hear further matters in this case. The Commonwealth's Attorney requested to withdraw its previous amendments of the two counts of the indictment (Counts I and II) given the Court's rejection of the plea agreement. The Court advised that the

parties would need to take this issue up with another judge of the court since the Court could not hear further matters in the case.

By agreement of the parties, the case was set for a status hearing on **October 8, 2021 at 9:00 a.m.**

The Defendant was remanded to the custody of the Sheriff.

Entered on September 27, 2021.

JUDGE RANDY I. BELLOWS

IB/ccs
E-2020-276