In the
Supreme Court of Ohio

STATE OF OHIO,	:	Case No. 2024-1276
	:	
Appellant,	:	On Appeal from the
	:	Cuyahoga County
v.	:	Court of Appeals,
	:	Eighth Appellate District
D.T.,	:	
	:	Court of Appeals
Appellee.	:	Case No. 112955

BRIEF OF *AMICUS CURIAE* OHIO ATTORNEY GENERAL DAVE YOST IN SUPPORT OF APPELLANT

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes and Rules

Other Authorities

INTRODUCTION

When a defendant pleads guilty, he is effectively admitting to the court that "you caught me; I committed these crimes." Implicit in that admission is a recognition that the defendant can point to nothing that excuses his criminal behavior and that he is willing to take responsibility for his actions. That recognition is why the Court held 150 years ago that a guilty plea waives most claims that a defendant might wish to raise on appeal. The only claims that survive a guilty plea, it held, are claims that the trial court did not have the authority to punish the defendant either because the court lacked subject-matter jurisdiction or because the actions to which a defendant admitted did not, in fact, constitute a crime at all. *Carper v. State*, 27 Ohio St. 572, 575 (1875).

That is right and proper. A defendant who pleads guilty *should* be prevented from appealing in most cases. A guilty plea, after all, is more than just an acknowledgement of the specific facts of a case. It is a broad admission of criminal culpability. A defendant who pleads guilty "is not simply stating that he did the discrete acts described in the indictment; he is admitting guilt of a substantive crime." *United States v. Broce*, 488 U.S. 563, 570 (1989). After giving a guilty plea its proper effect, the only claims that should survive the plea are challenges to a court's subject-matter jurisdiction (because subject-matter jurisdiction cannot be waived) and challenges to the knowing and voluntary nature of his plea (because a guilty plea must be knowing, intelligent, and voluntary).

Despite the clear logic of this approach, the United States Supreme Court has, in a few cases, identified a handful of additional claims that a defendant who pleads guilty may also raise on appeal. *See Class v. United States*, 583 U.S. 174, 176 (2018) (constitutionality of statute of conviction); *Blackledge v. Perry*, 417 U.S. 21, 25, 30–31 (1974) (vindictive prosecution); *Menna v. New York*, 423 U.S. 61, 62 & n.2 (1975) (per curiam) (certain Double Jeopardy claims). In none of those decisions, however, did it offer a clear and consistent legal theory for why those specific additional claims will survive a guilty plea. Those decisions are therefore of little persuasive value beyond their immediate context. The absence of a clear legal theory gives courts little to work with when seeking to apply those decisions to new sets of facts and other types of claims. Other courts, including this Court, are nevertheless obligated to follow controlling United States Supreme Court precedent, regardless of how thinly reasoned that precedent might be.

The Court should go no further than that, however. Rather than guess at how the United State Supreme Court might apply its precedent when faced with a new set of claims and facts, it should do the constitutional minimum. It should allow defendants who plead guilty to pursue the specific set of claims that the United States Supreme Court (or this Court's own precedent) say survive a guilty plea. But outside of that handful of claims, it should hew to the principled distinction that defendants who plead guilty waive all challenges other than challenges to a court's subject-matter jurisdiction and the knowing and voluntary nature of the plea.

In this case, that means that the Court should hold that D.T. waived his statutory challenges to the juvenile court's competency and amenability proceedings. Neither of D.T.'s challenges is a jurisdictional challenge, and neither is one of the handful of challenges that United State Supreme Court's more recent precedent requires appellate courts to entertain even in the face of a defendant's guilty plea. The Court should therefore reverse the Eighth District majority's decision which did not just allow D.T. to pursue his claims—it granted him relief on the basis of those claims.

STATEMENT OF AMICUS INTEREST

The Attorney General is Ohio's chief law officer and "shall appear for the state in the trial and argument of all civil and criminal causes in the supreme court in which the state is directly or indirectly interested." R.C. 109.02. The Attorney General also sometimes serves as special counsel in cases of significant importance, including in cases that involve juveniles. He is interested in protecting the rights of criminal defendants while also ensuring the finality of guilty pleas.

STATEMENT OF THE CASE AND FACTS

I. The State charged D.T. in juvenile court for a series of robberies that he committed when he was fourteen years old.

D.T. was fourteen years old when he committed a series of carjackings (or attempted carjackings). *State v. D.T.*, 2024-Ohio-4482, ¶4 (8th Dist.) ("App.Op."). On five separate occasions on the days surrounding Christmas 2021, *see id.*, D.T. approached individuals who were in or near their vehicles, pointed a gun at them, and demanded their keys and

other belongings. App.Op. at ¶¶36–41. While one of his victims managed to escape, on the four other occasions, D.T. stole his victim's car and significantly damaged it before later abandoning it. *Id.* While most of D.T.'s victims were not physically injured, *see* App.Op. at ¶¶36–39, his fifth and final victim was not so lucky. D.T. shot her in the stomach and thigh before stealing her purse and driving away with her car. App.Op. at ¶41. The State filed five separate delinquency complaints against D.T. in juvenile court and moved to bind D.T. over to the general division of the common pleas court so that he could be tried as an adult. App.Op. at ¶¶4–5.

While the case was still pending in juvenile court, D.T.'s counsel orally moved for a competency evaluation of D.T. App.Op. at ¶6. The juvenile court granted the motion and referred D.T. to the Cuyahoga County Juvenile Court Diagnostic Clinic. *Id.* Dr. Frankl Ezzo, a doctor at the clinic, prepared a report in which he concluded that D.T. was competent and that D.T. did not "'have deficits that substantially compromise his ability to understand the nature and objective of his court proceedings or to assist in his defense.'" App.Op. at ¶8 (quoting report). The juvenile court did not hold a hearing on the report or its findings, *see* App.Op. at ¶12, but the report was made a part of the record, *see id.*, and D.T.'s counsel acknowledged that D.T. was "sent 'for a competency evaluation and he came back as competent,' App.Op. at ¶139 (Gallagher, Eileen T., J, dissenting) (quoting June 13, 2022 Tr. at 12); *see also* App.Op. at ¶13 (maj. op.).

D.T. waived a probable cause hearing and stipulated that the State would have been able to show probable cause to believe that he committed the crimes with which he was charged. App.Op. at ¶13. Because D.T. was fourteen at the time he committed the charged crimes, the juvenile court ordered a psychological evaluation, as well as an investigation in to D.T.'s history, so that it could determine whether he was amenable to rehabilitation in the juvenile court system. App.Op. at ¶14; *see also* R.C. 2152.12(C) (requiring the juvenile court to order an investigation before transferring a juvenile to adult court). Dr. Lynn Williams conducted the psychological evaluation of D.T. and prepared a report. App.Op. at ¶15.

Once the report was complete, the juvenile court held an amenability hearing to determine whether D.T. should be transferred to the general division of the common pleas court and tried as an adult. App.Op. at ¶16. Numerous witnesses, including Dr. Williams, D.T.'s five victims, a Cleveland police officer, D.T.'s mother, his sister, and the social service coordinator at the Cuyahoga County Juvenile Detention Center, all testified at the hearing. *Id.* Dr. Williams testified, among other things, that D.T. had been involved with the juvenile court and adjudicated delinquent on three prior occasions. App.Op.¶ at 28. She further testified that D.T. "scored in the high range" for risk of future violence, App.Op. at ¶31, and that he had mixed prospects for treatment amenability, App.Op. at ¶33. At the close of the hearing, and after hearing from witnesses who testified on D.T.'s behalf as well, the juvenile court concluded that D.T. was not amenable to

rehabilitation in the juvenile justice system. App.Op. at ¶53. Approximately a week later, the juvenile court issued an order in which it identified the factors that it considered when making its amenability determination. App.Op.¶ at 54.

II. The juvenile court bound D.T. over to face trial as an adult, and D.T. eventually pleaded guilty.

The adult court that received D.T.'s transferred case ordered that D.T. receive a psychiatric evaluation for the purpose of determining whether D.T was competent to stand trial. App.Op.¶58. That evaluation, like the earlier evaluation conducted in juvenile court, determined that D.T. was competent. App.Op.¶59. D.T.'s counsel stipulated to the report's findings and the adult court did not hold a further hearing on the report. App.Op.¶60.

After stipulating that he was competent, D.T. proceeded to plead guilty. App.Op.¶61. The court sentenced D.T. to an aggregate prison sentence of between 21 and 24 years. App.Op.¶62. Of that total sentence, the trial court imposed 15 years for five different firearm specifications, which the court ordered D.T. to serve consecutively and prior to the remaining parts of his sentence. *Id.*

III. D.T. appealed and an Eighth District panel majority reversed.

D.T. appealed to the Eighth District Court of Appeals. He raised two assignments of error on appeal. App.Op.¶ at 63. He argued (1) that the juvenile court and adult court both violated his statutory rights when they each failed to hold a competency hearing and (2) that the juvenile court abused its discretion when it determined that he was not

amenable to rehabilitation in the juvenile court system. *Id.* The State, in response, argued that D.T. had waived his claims when he pleaded guilty and that D.T.'s claims were meritless. App.Op. at ¶¶70, 89, 113.

An Eighth District panel majority held that D.T.'s claimed errors were meritorious and had not been waived. App.Op. at ¶¶70–80, 100, 133. The majority therefore vacated the juvenile court's bindover order and remanded the case for a competency hearing and written determination of competency. App.Op. at ¶133. The majority also ordered the juvenile court, if it again determined that D.T. was competent, to "reconsider the evidence and its amenability determination, resolve any inconsistencies in its findings, identify on the record all factors it considered in determining D.T.'s amenability, weigh those factors and explain the basis for its amenability determination." *Id.*

Judge Eileen T. Gallagher dissented. The dissent did not address the State's plea-waiver argument, choosing instead to address D.T.'s underlying claims—which it would have held were without merit. App.Op. at ¶¶145, 164 (Gallagher, Eileen T., J, dissenting). Noting that D.T. did not object to the juvenile court's failure to hold a competency hearing, the dissent would have held that plain error review applied and that D.T. had not shown that any such error occurred. App.Op. at ¶139 (Gallagher, Eileen T., J, dissenting). The record, the dissent wrote, did not contain "sufficient indicia of incompetency to suggest the juvenile court's failure to strictly adhere to the procedural requirements … rose to the level of plain error." App.Op. at ¶143 (Gallagher, Eileen T., J, dissenting). The

dissent also would have rejected D.T.'s amenability claim. It wrote that the juvenile court had "complied with its obligations" under the relevant statues and that the "majority's belief that something more was required of the juvenile court promotes an analysis" that was not supported by those statutes. App.Op. at ¶153.

The State appealed to this Court. It presented a single Proposition of Law in which it challenged the Eighth District majority's determination that D.T. had not waived his competency and amenability claims when he pleaded guilty. The Court accepted the case for review. *01/28/2025 Case Announcements*, 2025-Ohio-231.

ARGUMENT

<u>*Amicus Curiae* Ohio Attorney General's Proposition of Law:</u>

> *A voluntary guilty plea in an adult court waives the issues of competency or amenability in juvenile court.*

A guilty plea is "a complete admission of the defendant's guilt," Crim.R. 11(B)(1); *State v. Beasley*, 2018-Ohio-16, ¶11. That is why a "valid guilty plea by a counseled defendant … generally waives the right to appeal all prior nonjurisdictional defects." *Beasley*, 2018-Ohio-16 at ¶15. This Court has long recognized that a guilty plea does not waive *all* claims of error, however. It has held that a defendant who pleads guilty may still "object to the jurisdiction of the court … over the subject-matter" and may also argue that "no offense was charged against" the defendant. *Carper*, 27 Ohio St. at 575.

Although the effect of a guilty plea should primarily be a question of state law, *cf.* Crim.R. 11(B)(1), the Court has often looked to federal precedent when determining

whether a defendant waived a specific claimed error by pleading guilty, *see State v. Spates*, 64 Ohio St. 3d 269, 273 (1992) (following *Tollett v. Henderson*, 411 U.S. 258 (1973)); *State v. Fitzpatrick*, 2004-Ohio-3167, ¶78 (same). And for many years, whether the Court looked to state or federal law was a distinction without a difference. Federal law tracked Ohio law in that it recognized that a defendant's decision to plead guilty "represents a break in the chain of events which has preceded it" and that defendants who plead guilty waive all "claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." *Tollett*, 411 U.S. at 267. The only other claims that federal courts allowed defendants who pleaded guilty to raise were claims that challenged "the voluntary and intelligent character of the guilty plea." *Id.*

Approximately fifty years ago, the United State Supreme Court broke with this long-standing principle and began to recognize other claimed errors that, like jurisdictional challenges, were not waived by a valid guilty plea. It held that, despite a guilty plea, a defendant may argue that "on the face of the record the court had no power to enter the conviction or impose the sentence." *Broce*, 488 U.S. at 569 (describing earlier holdings). And it held that, despite pleading guilty, defendants may argue that a statute of conviction was unconstitutional, *Class*, 583 U.S. at 176, that they may challenge a prosecution as vindictive, *Blackledge*, 417 U.S. at 25, 30–31, and that they may raise some Double Jeopardy claims, *Menna*, 423 U.S. at 62 (per curiam), but not others, *Broce*, 488 U.S. at 576. Even so, the class of claims that the United States Supreme Court has held survive a guilty plea

remains small; that court has reaffirmed that a guilty plea still wipes out most claims about "government conduct that takes place before the plea." *Class*, 583 U.S. at 182.

Following the United States Supreme Court's lead, this Court has held that a guilty plea "'renders irrelevant those constitutional violations not logically inconsistent with the valid establishment of factual guilt and which do not stand in the way of conviction if factual guilt is established.'" *Fitzpatrick*, 2004-Ohio-3167 at ¶78 (quoting *Menna*, 423 U.S. at 62 n.2 (per curiam)); *see also State v. Wilson*, 58 Ohio St. 2d 52, 53-54 (1979). Applying that standard, the Court has further expanded the list of claims that will survive a guilty plea and has allowed defendants who plead guilty to argue on appeal that the statute that they were charged with violating was impermissibly retroactive under the Ohio Constitution. *State v. Swazey*, 2023-Ohio-4627, ¶¶29-30, 36.

It is against this legal backdrop that D.T. sought to argue that the juvenile court erred (1) by accepting a report that found him competent without first holding a hearing on that report and (2) that it further erred when it determined that he was not amenable to rehabilitation in the juvenile court system. The Eighth District should have held that D.T. had waived both arguments by pleading guilty. Neither of his claims challenged the adult court's subject-matter jurisdiction and there was not any other basis on which to conclude that either claim survived his guilty plea. The Court should therefore reverse and hold that D.T. waived his competency and amenability claims when he pleaded guilty.

I. Neither of the claims on which the Eighth District granted relief were the type of core claims that have historically survived a guilty plea.

Traditionally, a defendant like D.T. who pleads guilty was able to raise only a handful of claims on appeal. He could allege that the adult criminal court lacked subject matter jurisdiction. And he could challenge his plea on the basis that it was not knowing and voluntary. *See Tollett*, 411 U.S. at 267 (a defendant who pleads guilty may "attack the voluntary and intelligent character of the guilty plea" on appeal). The Eighth District majority did not grant relief on either basis.

A. D.T.'s claimed errors did not implicate the adult court's subject-matter jurisdiction.

Although D.T. argued on appeal that there were flaws in the process by which he was bound over from juvenile court, even if he is right, those flaws did not deprive the adult criminal court that accepted his guilty plea of subject-matter jurisdiction over his case. At most, D.T. identified errors that the juvenile court committed when it bound him over to face trial as an adult. The Court has held, however, that bindover errors do not deprive an adult criminal court of subject-matter jurisdiction. It has held that "[d]eviation from a bindover procedure" is a jurisdictional error "only if the applicable statute clearly makes the procedure a prerequisite to the transfer of subject-matter jurisdiction to an adult court." *Smith v. May*, 2020-Ohio-61, ¶29. Neither of D.T.'s claims on appeal met the standard that the Court established in *Smith*. At most, they "involved an error in the exercise of jurisdiction over that particular case, not a defect in the court's subject-matter

jurisdiction." *State v. Macklin*, 2024-Ohio-2687, ¶18 (Kennedy, C.J., concurring in judgment in part and dissenting in part).

The Eighth District majority did not hold otherwise. It explicitly declined to decide whether the errors D.T. alleged were "the type of errors that would deprive the adult court of jurisdiction." App.Op. at ¶80. For good reason. Neither D.T.'s competency claim nor his amenability claim call the adult court's subject-matter jurisdiction into question.

1. D.T.'s competency arguments did not challenge the adult court's subject-matter jurisdiction. There is no statute that "clearly" made the competency hearing that D.T. claims he was denied "a prerequisite to the transfer of subject-matter jurisdiction to an adult court," *see Smith*, 2020-Ohio-61 at ¶29, and D.T. did not even attempt to argue otherwise below. He did not cite *Smith*, or the jurisdictional test that the Court established in that case. D.T.'s opening brief on appeal did not even use the term "subject-matter jurisdiction" in the context of his competency claim. *See* D.T. Eighth Dist. Br.3–5, 11–14. And although D.T. asserted on reply that the juvenile court's failure to "comply with the mandatory statutory procedures regarding his competency … deprived the adult court of jurisdiction," he still did not point to anywhere in the relevant statutes that the General Assembly had "clearly" made compliance with those statutes a prerequisite to adult-court subject-matter jurisdiction. *See* D.T. Eighth Dist. Reply Br.4. That is perhaps because none do. *See* R.C. 2152.52–59; *see also* R.C. 2152.12.

2. D.T.'s amenability claim suffered from similar problems to his competency claim. Although Ohio law requires juvenile courts to hold amenability hearings in some cases, it does not make an adult court's subject-matter jurisdiction dependent on the juvenile court's perfect compliance with those statutory procedures. The Court has explained, after all, that juveniles may waive their rights to an amenability hearing. *State v. D.W.*, 2012-Ohio-4544, ¶¶25-26. And it has further held that, as long as a case originates in juvenile court, even a total "failure to conduct an amenability hearing … [does] not deprive [an] adult court of subject-matter jurisdiction." *State ex rel. Parker v. Black*, 2022-Ohio-1730, ¶13 (per curiam) (citing *Smith*, 2020-Ohio-61 at ¶¶18, 26, 33). Thus, if an amenability hearing can be waived, and if even a total failure to conduct an amenability hearing does not deprive an adult court of subject-matter jurisdiction, then mere errors in the amenability proceedings that a juvenile court *did* hold certainly do not.

The ability to waive an amenability hearing makes Ohio different from States that treat amenability hearings as jurisdictional requirements that cannot be waived. The New Mexico Supreme Court, for example, has interpreted its state juvenile statutes as requiring juvenile courts to hold an amenability hearing as a "necessary predicate" to an adult court's "exercise of adult sentencing authority." *State v. Jones*, 2010-NMSC-012, ¶34. Unlike this Court, it has also held that an amenability hearing cannot be waived. *Id.* at ¶¶46–48.

The difference between how New Mexico and Ohio treat waiver of an amenability hearing also means that the effect of a guilty plea differs between the two states. The New Mexico Supreme Court has concluded that because an amenability hearing cannot be explicitly waived as a matter of New Mexico law, an amenability hearing also cannot be implicitly waived in connection with a guilty plea. *See State v. Rodriguez*, 2023-NMSC-004, ¶¶18–23. The opposite is true in Ohio. Because the Court has held that juveniles in Ohio *can* explicitly waive an amenability hearing, *D.W.*, 2012-Ohio-4544 at ¶¶25-26, they are not a necessary predicate to subject matter jurisdiction in an adult court and can therefore be implicitly waived by a guilty plea.

D.T. did not provide any compelling reason to conclude otherwise. As with his competency claim, D.T. did not initially argue in his opening brief that the amenability errors that he claimed the juvenile court made were jurisdictional; he asserted only that the juvenile abused its discretion when it concluded that he was not amenable to rehabilitation. *See* D.T. Eighth Dist. Br.15–38. It was again not until D.T.'s reply that he mentioned jurisdiction by arguing that an "amenability determination … is a jurisdictional prerequisite for transfer" to adult court. Even then, the only support that D.T. offered for his jurisdictional argument was the fact that the Eighth District had, in the past, reviewed "challenges to amenability decisions following a child's guilty plea in adult court." *See* D.T. Eighth Dist. Reply Br.6. But simply because the Eighth District had previously assumed that it could review such challenges does not mean that it was right. "assumptions

are not holdings." *United States v. Rodriguez-Rodriguez*, 453 F.3d 458, 460 (7th Cir. 2006); *see, e.g.*, *State v. Payne*, 2007-Ohio-4642, ¶¶11–12; *State ex rel. Gordon v. Rhodes*, 158 Ohio St. 129, syl. ¶1 (1952); *United States v. L. A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 38 (1952). And courts "risk error" when they rely on "assumptions that have gone unstated and unexamined." *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 145 (2011).

B. The Eighth District majority did not grant relief based on D.T.'s competency in adult criminal court at the time he pleaded guilty.

The Eighth District majority never addressed the adult court's subject-matter jurisdiction, in part because it expressed doubts about whether D.T. was competent to plead guilty in the first place. App.Op. at ¶80. The majority wrote that a "lower court's failure to hold a competency hearing or make a competency determination … 'goes directly' to whether a defendant's plea was voluntary, knowing, and intelligent." App.Op. at ¶75. And it is true that a defendant may not "plead guilty unless he does so 'competently and intelligently.'" *Godinez v. Moran*, 509 U.S. 389, 396 (1993) (quotation omitted). It is also true that defendants who plead guilty may nevertheless argue on appeal that they were incompetent and that their pleas were therefore not knowing and voluntary. *Tollett*, 411 U.S. at 267. But the Eighth District looked at the wrong court and the wrong competency proceedings when it questioned D.T.'s competency to plead guilty.

Competency is a question that must be decided by the court that ultimately *accepts* a defendant's guilty plea. *See* R.C. 2945.37(G); *cf. also Godinez*, 509 U.S. at 397-98 (there is no difference between competency to plead guilty and competency to stand trial); *State*

v. Mink, 2004-Ohio-1580, ¶57 (same). The relevant question for purposes of determining whether D.T.'s guilty plea was knowing and voluntary is therefore whether D.T. was competent *at the time he entered that plea*. There can be no legitimate dispute that he was. As the Eighth District majority acknowledged, the common pleas court ordered an evaluation of D.T., App.Op. at ¶58, that evaluation determined that D.T. was competent, App.Op. at ¶59, and D.T. stipulated to the report that memorialized the results of that evaluation, App.Op. at ¶60. D.T. stipulated, in other words, that he was competent.

The Eighth District majority looked at the wrong proceedings when it suggested otherwise. D.T. argued on appeal that the juvenile court's competency determination and the adult court's competency determinations were *both* flawed. D.T. Eighth Dist. Br.11–18. So while the Eighth District majority *could* have considered whether D.T. was competent to plead guilty in adult court, *see Tollett*, 411 U.S. at 267, that is not what it did. It explicitly granted relief based on D.T.'s juvenile competency claim alone. App.Op. at ¶100; *see also id.* at n.6 (declining to address D.T.'s adult competency claim). The majority wrote that D.T. could challenge the juvenile court's alleged "failure to comply with the juvenile competency statutes" because that failure went "directly" to whether D.T.'s plea was voluntary, knowing, and intelligent. *See* App.Op. at ¶¶71, 75 (quotation omitted). It was wrong; what did or did not happen in *juvenile* court is irrelevant to whether D.T. was competent when he pleaded guilty in *adult* court.

II. D.T.'s claims do not match any of the specific claims that this Court or the United States Supreme Court have held survive a guilty plea.

As discussed above, this Court and the United States Supreme Court have recognized a small set of claims that do not implicate a court's subject-matter jurisdiction but will nevertheless survive a defendant's guilty plea. *See above* at 9–10. D.T. did not bring any of those specific claims on appeal. He did not allege that the State vindictively prosecuted him as payback for a successful appeal. *See Blackledge*, 417 U.S. at 25, 30–31. He did not challenge the constitutionality of his statutes of conviction, *see Class*, 583 U.S. at 176, or assert that those statutes were impermissibly retroactive, *see Swazey*, 2023-Ohio-4627 at ¶36. And his claims were not the type of Double Jeopardy claims that survive a guilty plea. *Compare Menna*, 423 U.S. at 62 (claim survived) *with Broce*, 488 U.S. at 565 (claim did not survive). The only way that the Court could affirm the Eighth District's decision, therefore, is if it further expanded the universe of claims that defendants can raise even after pleading guilty. There are several reasons why it should not do so.

First, although the Court has in the past looked to the United States Supreme Court's decisions in cases like *Class* and *Menna* when determining whether a claim survives a guilty plea, *see Swazey*, 2023-Ohio-4627 at ¶30, the legal basis for those federal decisions in questionable. *Class*, the most recent of these decisions, offers no clear guidance on the relevant test for when a non-jurisdictional claim will survive a guilty plea, nor does it explain the legal foundation for that test. *Class* "identifies no fewer than five rules for

ascertaining the issues that" a defendant can raise after pleading guilty, but never specifies which one controls. *Class*, 583 U.S. at 186 (Alito, J., dissenting).

The *Menna* and *Blackledge* decisions provide even less guidance about the relevant test. Neither decision explained what those grounds were exactly. *Blackledge* does not tie its analysis to "the text of the Constitution or history or prior precedent," *id.* at 194 (Alito, J., dissenting), and *Menna* is even more barebones. It is a cursory per curiam decision whose "entire analysis [is] confined to a single footnote." *Id.* And *Menna*'s core holding, that a defendant who pleads guilty can still raise a Double Jeopardy claim on appeal, *see Menna*, 423 U.S. at 62–63, has been undermined by *Broce*, which held that a defendant *did* waive a Double Jeopardy claim when he pleaded guilty, *Broce*, 488 U.S. at 565.

The uncertainty over the ultimate legal basis for the decisions in *Menna* and *Blackledge* makes them dubious precedent at best. At least some members of the United State Supreme Court have questioned the continuing viability of those decisions, criticizing them as "vacuous," lacking in any "sound foundation," and producing "nothing but confusion." *Class*, 583 U.S. at 201 (Alito, J., dissenting). It is not this Court's role to clear up that confusion, however. It must leave to the United States Supreme Court "the prerogative of overruling its own decisions." *Mallory v. Norfolk Southern Ry.*, 600 U.S. 122, 136 (2023) (quotation omitted). But while the Court must continue to apply *Menna* and *Blackledge* as written, it should do no more than that. It should not significantly expand the

scope of those decisions by recognizing *additional* categories of claims that survive a defendant's guilty plea.

Second, even if the Court decides to adopt a broad interpretation of *Class, Menna* and *Blackledge*, D.T.'s claims still did not survive his guilty plea. Summarizing United States Supreme Court precedent, this Court has said that "[c]onstitutional violations that go to the ability of the state to prosecute, regardless of factual guilt, may be raised on appeal from a guilty plea." *Swazey*, 2023-Ohio-4627 at ¶29 (discussing *Menna*) and ¶30 (discussing *Class*) . Quoting *Menna*, it has written that a guilty plea "'renders irrelevant those constitutional violations not logically inconsistent with the valid establishment of factual guilt and which do not stand in the way of conviction if factual guilt is validly established.'" *Fitzpatrick*, 2004-Ohio-3167 at ¶78 (quoting *Menna*, 423 U.S. at 62 n.2).

D.T.'s claims fail at the first step. The threshold requirement under *Swazey* (and under *Class, Menna* and *Blackledge*) is that a defendant raise a constitutional claim. D.T. does not. Both his amenability and juvenile competency claims alleged only *statutory* violations. With respect to amenability, D.T. argued that the juvenile court abused its discretion when, after weighing the statutory amenability factors, it determined he was not amenable to rehabilitation. He further argued that the juvenile court violated R.C. 2152.12(I)(2) when it failed to adequately explain its conclusion that D.T. was not amenable. *See* D.T. Eighth Dist. Br.18–38. But juvenile courts are not required to issue written amenability findings, *see State v. Douglas*, 20 Ohio St. 3d 34, 36-37 (1985) (per curiam), and

even the requirement that a juvenile court state its reasons for binding a juvenile over for trial as an adult is exclusively a statutory one, *see* R.C. 2152.12(I)(2). The factors that juvenile courts must consider with respect to amenability are also statutory, *see* R.C. 2152.12(D) and (E), and any error in weighing those factors therefore does not give rise to a constitutional violation. The absence of a constitutional violation is clear from the Court's precedent; it has held, after all, that there is no constitutional right to an amenability hearing at all. *State v. Aalim*, 2017-Ohio-2956, ¶4.

Even if D.T. were right that the amenability proceedings in this case were flawed, those flaws still would not give rise to a claim that he could pursue on appeal under *Class, Menna* and *Blackledge*. For the reasons discussed above in the context of subject-matter jurisdiction, *see* 11–15, a flawed amenability determination does not implicate the State's "power to constitutionally prosecute" a defendant, *see Class*, 583 U.S. at 181–82 (quotation omitted), nor does it call into question "the very initiation of the proceedings against" D.T, *see Blackledge*, 417 U.S. at 30.

Although D.T.'s juvenile-competency claim at least referenced his constitutional rights and therefore comes closer to meeting the requirements of *Class, Menna* and *Blackledge* than his amenability claim, that claim too was, at its core, still just a statutory claim. While juveniles, like adult defendants, have a right to be competent to stand trial, *see, e.g., In re D.L.*, 2017-Ohio-2823, ¶16 (5th Dist.), States are given significant leeway to establish the procedures by which competency is determined, *Medina v. California*, 505 U.S. 437,

445–47 (1992). The only constitutional requirement is that a State's procedures must be "adequate to protect [the] right" to be competent. *See Pate v. Robinson*, 383 U.S. 375, 378 (1966). And while defendants are sometimes constitutionally entitled to a competency hearing, a court must hold a hearing only when "sufficient doubt exists" about a defendant's competency. *Id.* at 387. (There is debate about whether a juvenile defendant's competency right is limited to a right to be competent at a delinquency hearing or whether it includes a right to be competent at preliminary proceedings like bindover proceedings. *Compare State v. Cruz*, 2010-Ohio-3717, ¶¶10-12 (8th Dist.) *with* App.Op.¶93. The Attorney General does not address that question, but will assume for the sake of argument that it includes both.)

In this case, D.T. argued that the juvenile court failed to follow the statutory procedure for determining competency that the General Assembly laid out in R.C. 2152.51–59. Specifically, he argued that the juvenile court failed to hold the hearing that the statute required. *See* D.T. Eighth Dist. Br.12–14. But even assuming that the juvenile court's failure to hold a hearing was a statutory error, it was not a violation of D.T.'s constitutional rights. A court is constitutionally required to hold a competency hearing under *Pate* only when a criminal defendant's competency is in doubt, *see Pate*, 383 U.S. at 387, and the juvenile court here had no such doubts; all the evidence indicated that D.T. was competent. The juvenile court sent D.T. "'for a competency evaluation and he came back as competent.'" *See* App.Op. at ¶139 (Gallagher, Eileen T., J, dissenting) (quoting June 13,

2022 Tr. at 12). Even D.T. admitted that was the case; as he acknowledged in his briefing in the Eighth District that defense counsel stated on the record in juvenile court that "'we did send [D.T.] for a competency evaluation and he came back as competent.'" D.T. Eighth Dist. Br.13. Between D.T.'s on-the-record acknowledgement of the results of the competency evaluation and the results of that evaluation themselves, the juvenile court reasonably concluded that there was no reason to doubt D.T.'s competency. Without sufficient "indicia of incompetency within the record, no constitutional right to a hearing attached." *State v. Bock*, 28 Ohio St. 3d 108, 111 n.1 (1986). Under *Class, Menna* and *Blackledge*, then, D.T.'s competency claim could not survive his guilty plea because it did not allege a constitutional violation.

Even if a statutory claim *could* survive a guilty plea, D.T.'s competency claim in this case did not. Any statutory error the juvenile committed by failing to hold the hearing required by R.C. 2152.58(A) was harmless. The "failure to hold a mandatory competency hearing is harmless error where the record fails to reveal sufficient indicia of incompetency." *Bock*, 28 Ohio St. 3d at 110; *see also State v. Mills*, 2023-Ohio-4716, ¶3 (plurality op.) (same). The indicia in the juvenile court record points the opposite way—towards competency. Again, at the risk of repetition, two separate evaluations determined that D.T. was competent and D.T.'s attorney twice acknowledged his competency—once, informally, in juvenile court and again, via formal stipulation, before D.T. entered his guilty

plea in adult court. *See* App.Op. at ¶¶9–12, 59–60, 87, 99; *see also id.* at ¶139 (Gallagher, Eileen T., J, dissenting).

Finally, the Eighth District majority's failure to identify a constitutional violation is not the only error it made in handling *Class*, *Menna*, and *Blackledge*. The majority also misapplied the test that those cases establish. The majority asked whether the facts that D.T. admitted to when he pleaded guilty were relevant to his amenability and competency claims. *See* App.Op. at ¶76. But as *Broce* clarified, a defendant who pleads guilty "is not simply stating that he did the discrete acts described in the indictment; he is admitting guilt of a substantive crime." *Broce*, 488 U.S. at 570. A guilty plea admits "all of the factual and legal elements necessary to sustain a binding, final judgment of guilt and a lawful sentence." *Id.* at 569. Thus, by pleading guilty, D.T. did not just concede his factual guilt; he also conceded the other legal elements necessary to support his conviction and sentence. Those elements include that a criminal sentence was appropriate because he was not amenable to rehabilitation and that he was properly transferred to the court that ultimate imposed that sentence. The Eighth District majority ignored *Broce* when it held otherwise.

III. The Eighth District majority's remaining reason for allowing D.T. to pursue his claims on appeal lacks merit.

The Eighth District majority gave one additional reason for concluding that D.T. should be allowed to pursue his challenge to the juvenile proceedings even though he pleaded guilty after being bound over to common pleas court. The majority wrote that

D.T. should be allowed to appeal because it did not "believe a defendant must choose to go to trial, rather than enter a guilty plea, in order to preserve his or her right to challenge errors in the juvenile court's handling of competency issues or its amenability determination." App.Op. at ¶79. In doing so, the majority overlooked a significant third option: a no contest plea. Unlike a guilty plea, a no contest plea "is not an admission of defendant's guilt, but is an admission of the truth of the facts alleged in the indictment, information, or complaint." Crim.R. 11(B)(2). In recognition of that fact, this Court has held that a "plea of no contest does not preclude a defendant from asserting upon appeal that the trial court prejudicially erred in ruling on a pretrial motion." *Beasley*, 2018-Ohio-16 at ¶15 (citing Crim.R. 12(I)). Had D.T. pleaded no contest, and had the common pleas court accepted his plea, he could have done exactly what the Eighth District majority envisioned: appeal without entering a guilty plea or going to trial. *See Parker*, 2022-Ohio-1730 at ¶13 (per curiam) (juveniles may challenge amenability proceedings on appeal). There was no need for the Eighth District majority to distort existing precedent to reach that result.

CONCLUSION

For the foregoing reasons, the Court should reverse the Eighth District's decision.

Respectfully submitted,

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