Ignorance Is Not Necessarily Bliss: The Third Circuit Expands the Requirements for a Knowing and Voluntary Plea in Jamison v. Klem

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IGNORANCE IS NOT NECESSARILY BLISS: THE THIRD CIRCUIT EXPANDS THE REQUIREMENTS FOR A KNOWING AND VOLUNTARY PLEA IN JAMISON v. KLEM

I. Introduction

Historically, defendants' fundamental rights have been a cornerstone in the American criminal justice system; in recent years, however, the Supreme Court has considerably limited the constitutional rights of defendants who forgo a jury trial by entering a plea of guilty or nolo contendere. This trend is concerning because an overwhelming majority of criminal cases result in guilty pleas. In 2004, over ninety-five percent of all cases adjudicated in federal district courts resulted in a plea of guilty or nolo contendere.

A guilty plea, which is ostensibly comparable to a guilty verdict in a jury trial, represents "the most substantial surrender of constitutional rights in the criminal justice system." Despite the significant role that guilty pleas play in the American legal system, recognizable judicial safeguards for defendants' rights during the plea process did not emerge until the late 1960s. The Supreme Court, finally acknowledging the vital im-

3. See Bureau of Justice Statistics, U.S. Dep't of Justice, Sourcebook of Criminal Justice Statistics Online (2004), http://www.albany.edu/sourcebook/pdf/t5172004.pdf (indicating, for federal district courts in fiscal year 2004, there were 74,782 convictions, 71,692 of which were by guilty pleas and 460 of which were by pleas of nolo contendere).
4. John P. Cronan, Is Any of This Making Sense? Reflecting on Guilty Pleas to Aid Criminal Juror Comprehension, 39 Am. Crim. L. Rev. 1187, 1223 (2002) ("[A] criminal defendant's plea of guilty is 'perhaps the law's most significant waiver of constitutional rights.'" (citing United States v. Andrades, 169 F.3d 131, 132 (2d Cir. 1999))). The Supreme Court noted that defendants who enter a guilty plea effectively waive three fundamental constitutional rights: (1) the right against compulsory self-incrimination; (2) the right to a trial by jury; and (3) the right to confront one's accusers. See Boykin v. Alabama, 395 U.S. 228, 243 (1969); see also U.S. Const. amend. V ("No person shall be ... compelled in any criminal case to be a witness against himself"); U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed ... [and] to be confronted with the witnesses against him.").
portance of protecting defendants' constitutional rights during the plea process, announced that a guilty plea is not valid unless it is both knowing and voluntary.\textsuperscript{6} Although courts have generally accepted that a plea is voluntary when it is "the voluntary expression of [the defendant's] own choice,"\textsuperscript{7} what constitutes a "knowing" plea has been a contentious and widely litigated issue.\textsuperscript{8}

When the knowing and voluntary requirement was first announced, "knowing" narrowly meant only that the defendant must be aware of the nature of the charged offense.\textsuperscript{9} With the evolution of criminal jurisprudence, a "knowing" plea now requires that the defendant understands the relevant circumstances and direct consequences of entering a guilty plea.\textsuperscript{10} Despite the unanimous acceptance of this standard, a debate rages among the circuit courts regarding what direct consequences a defendant must be informed of prior to entering a guilty plea.\textsuperscript{11} Although the vast majority of circuit courts have declared that maximum sentences constitute direct consequences, only a minority of circuit courts characterize minimum sentences as direct consequences.\textsuperscript{12}

Recently, the Third Circuit Court of Appeals in \textit{Jamison v. Klem}\textsuperscript{13} expanded the due process protections of defendants' constitutional rights by

\textsuperscript{6} See id. at 466 ("[I]f a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void.").

\textsuperscript{7} Brady v. United States, 397 U.S. 742, 748 (1970) (defining standard for voluntary pleas). The standard for voluntariness was premised on existing principles governing the admissibility of confessions under the Fifth and Fourteenth Amendments. See Thomas R. McCoy & Michael J. Mirra, \textit{Plea Bargaining as Due Process in Determining Guilt}, 32 \textit{STAN. L. REV.} 887, 899-900 (1980) (recounting origins of knowing and voluntary plea requirement). Those principles were designed to exclude confessions given under circumstances creating a risk of inaccuracy or coercion. See id. at 900 (citing J. Wigmore, \textit{Evidence in Trials at Common Law § 2251} (McNaughton rev. 1961)).


\textsuperscript{9} See \textit{McCarthy}, 394 U.S. at 462 (reversing guilty plea because judge failed to inform defendant of elements of charged offense).

\textsuperscript{10} See \textit{Brady}, 397 U.S. at 748 ("Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of relevant circumstances and likely consequences.").

\textsuperscript{11} Compare United States v. Vaval, 404 F.3d 144, 152 (2d Cir. 2005) (holding failure to inform defendant of mandatory minimum penalty does not constitute reversible error), United States v. Powell, 354 F.3d 362, 369 (5th Cir. 2003) (same), United States v. Berrio-Callegas, 219 F.3d 1, 1 (1st Cir. 2000) (same), United States v. Elkins, 176 F.3d 1016, 1021 (7th Cir. 1999) (same), and United States v. Young, 927 F.2d 1060, 1063 (8th Cir. 1991) (same), \textit{with} United States v. Fernandez, 205 F.3d 1020, 1029 (7th Cir. 2000) (holding failure to advise defendant of mandatory minimum sentence is reversible error), United States v. Goins, 51 F.3d 400, 405 (4th Cir. 1995) (same), \textit{and} United States v. Hourihan, 936 F.2d 508, 509-10 (11th Cir. 1991) (same).

\textsuperscript{12} For a further discussion of the circuit courts' characterization of maximum and minimum sentences, see infra notes 61-68 and accompanying text.

\textsuperscript{13} 544 F.3d 266 (3d Cir. 2008).
classifying mandatory minimum sentences as direct consequences.14 This Casebrief identifies the Third Circuit's analytical approach for determining the bounds of direct consequences and serves as a guide to practitioners challenging the constitutional validity of guilty pleas within the circuit.15 Part II reviews the Supreme Court's decisions establishing the knowing and voluntary plea requirement.16 Additionally, Part II examines circuit courts' conflicting interpretations of the Supreme Court's knowing and voluntary standard.17 Part III analyzes Jamison, which sets forth the Third Circuit's rationale for declaring that mandatory minimum sentences are direct consequences of guilty pleas.18 Part IV considers whether Jamison is consistent with the Supreme Court's intent, Congress's goals in enacting statutory safeguards for the criminal plea process, and other circuit courts' interpretations of the knowing and voluntary standard.19 Furthermore, Part IV includes an economic analysis examining the efficiency of the Third Circuit's ruling.20 Finally, Part V concludes with the prediction that Jamison will be the last major expansion of defendants' rights during the plea process.21

II. WHAT YOU DON'T KNOW CAN HURT YOU

A. Federal Safeguards Protecting the Rights of Defendants Entering Guilty Pleas

The United States government has struggled to balance the need for a centralized government and the necessity of protecting individual rights since its inception.22 The original drafting of the Constitution contained

14. See id. at 277 (declaring judges must inform defendants of applicable mandatory minimum sentence to protect defendants' fundamental constitutional rights).
15. For an analysis of the Third Circuit's opinion in Jamison, see infra notes 86-132 and accompanying text.
16. For a discussion of Congress's and the Supreme Court's development of the knowing and voluntary plea requirement, see infra notes 22-60 and accompanying text.
17. For an examination of the circuit courts' applications of the knowing and voluntary plea requirement, see infra notes 61-68 and accompanying text.
18. For an analysis of the Third Circuit's rationale in Jamison for invalidating the defendant's guilty plea entered without knowledge of the mandatory minimum sentence, see infra notes 86-95 and accompanying text.
19. For a discussion of Jamison in the context of current legal doctrine on knowing and voluntary pleas, see infra notes 97-105 and accompanying text.
20. For an economic analysis of the efficiency of Jamison, see infra notes 110-28 and accompanying text.
21. For an examination of recent trends indicating Jamison will be the last major expansion of defendants' rights during the plea process, see infra notes 129-32 and accompanying text.
22. See Kurt T. Lash, The Original Meaning of an Omission: The Tenth Amendment, Popular Sovereignty, and "Expressly" Delegated Power, 85 Notre Dame L. Rev. 1889, 1900 (2008) (discussing tensions between Republican and Federalist ideals during drafting of United States Constitution). The Federalists argued that a Bill of Rights was unnecessary because the Constitution only granted the federal govern-
neither an express limitation on federal power nor any explicit protections of individual rights. To ensure the Constitution’s ratification, the Federalist framers agreed to amend the Constitution by including a Bill of Rights. Although the enactment of the Bill of Rights included many provisions ensuring defendants’ constitutional rights during a criminal trial, it did not contain any provisions expressly protecting the rights of defendants pleading guilty to criminal charges.

The lack of protection for defendants during the plea process remained for over a century, as the federal government did not explicitly protect defendants’ rights during the plea process until the middle of the twentieth century. In 1944, Congress enacted Rule 11 of the Federal Rules of Criminal Procedure, outlining the procedures judges must follow when accepting and rejecting guilty pleas. Enacted to protect defendants’ rights by guaranteeing knowing, intelligent, and voluntary pleas, Rule 11 reads:

23. See Lash, supra note 22, at 1900 (“[T]he Constitution as originally proposed lacked any provision expressly limiting the scope of federal power—an omission especially disconcerting for those who also questioned the omission of a Bill of Rights.”).

24. See id. (recounting historical background culminating with enactment of Bill of Rights).

25. See, e.g., U.S. CONST. amend. V (“No person shall be ... compelled in any criminal case to be a witness against himself.”); U.S. CONST. amend. VI (“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime have been committed ... [and] to be confronted with the witnesses against him.”).


A defendant may plead not guilty, guilty, or with consent of the court, nolo contendere. The court may refuse to accept a plea of guilty, and shall not accept the plea without first determining that the plea is made voluntarily with understanding of the nature of the charge. If a defendant refuses to plead or if the court refuses to accept a plea of guilty or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.\(^{29}\)

Although the original version of Rule 11 generally articulated the congressional desire to protect defendants' rights throughout the plea process, the language of the rule was ambiguous as to how a court could ensure a knowing and voluntary plea to safeguard against post-conviction attacks.\(^{30}\) Reacting to inconsistent holdings among lower courts that resulted from the vague and impractical language of Rule 11, Congress subsequently amended the Rule.\(^{31}\) The current version of Rule 11 includes a 2002 amendment that dictates the procedures for questioning defendants prior to accepting guilty pleas.\(^{32}\) The 2002 amendment requires that the court inquire whether the defendant understands: (1) the constitutional

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30. See DeWaelsche, supra note 2, at 509 ("Unfortunately, sentencing judges were often remiss in determining the voluntariness of the plea and the defendant's understanding of the charge.").

31. See Fed. R. Crim. P. 11 (current through 2002 amendment). As a result of the 1966 amendment to Rule 11, the sentencing judge was required to: (1) address the defendant personally; (2) ascertain that the plea was entered voluntarily and the defendant understood the nature of the charge against him; (3) determine the defendant comprehended the consequences of a guilty plea; and (4) ensure that there was a factual basis for the plea. See Fed. R. Crim. P. 11 (1966 amendment). Then, in 1974, Rule 11 was expanded to include a detailed list of advice the court must offer the defendant prior to accepting a guilty plea including the constitutional rights being waived, the mandatory minimum penalty, and the maximum penalty. See Fed. R. Crim. P. 11 (1974 amendment). In 1982, Rule 11 was amended to require that the defendant be advised of "the effect of any special parole term" resulting from a guilty or nolo contendere plea. See Fed. R. Crim. P. 11 (1982 amendment). The 1983 amendment added a new subsection (h) which provided that "[a] variance from the requirements of this rule is harmless error if it does not affect substantial rights." See Fed. R. Crim. P. 11 (1983 amendment). In 1985, the Rule was amended to include a provision which obliged judges to inform the defendant that his sentence may include restitution, as a component of the maximum sentence. See Fed. R. Crim. P. 11 (1985 amendment). In 1999, Congress amended the Rule again to ensure that the court advise the defendant of all appellate rights that are forfeited as a result of pleading guilty or nolo contendere. See Fed. R. Crim. P. 11 (1999 amendment). See generally Cook, supra note 28, at 606-12 (recounting evolution of Rule 11).

32. See Fed. R. Crim. P. 11 (2002 amendment). The 2002 amendment expanded Rule 11(b)(1), substantially enhancing the advice a court must offer to the defendant prior to accepting a plea:

(1) Advising and Questioning the Defendant. Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:
rights being waived; (2) the nature of the charges; (3) the maximum penalty; (4) the mandatory minimum penalty; (5) any applicable forfeiture; and (6) the court’s role in determining an appropriate sentence. The current version of Rule 11 articulates a comprehensive standard for knowing and voluntary pleas, which has allowed more effective administration of Rule 11 by lower courts.

(A) the government’s right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under oath;

(B) the right to plead not guilty, or having already so pleaded, to persist in that plea;

(C) the right to a jury trial;

(D) the right to be represented by counsel—and if necessary have the court appoint counsel—at trial and at every other stage of the proceeding;

(E) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses;

(F) the defendant’s waiver of these trial rights if the court accepts a plea of guilty or nolo contendere;

(G) the nature of each charge to which the defendant is pleading;

(H) any maximum possible penalty, including imprisonment, fine, and term of supervised release;

(I) any mandatory minimum penalty;

(J) any applicable forfeiture;

(K) the court’s authority to order restitution;

(L) the court’s obligation to impose a special assessment;

(M) in determining a sentence, the court’s obligation to calculate the applicable sentencing-guideline range and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a); and

(N) the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence.

Id.

33. See id. (articulating legislative standard for knowing and voluntary pleas). Rule 11(b) is qualified by Rule 11(h), the harmless error provision, which states that “any variance from the procedures required by this rule which does not affect substantial rights shall be disregarded.” Id. This provision “rejects the extreme sanction of automatic reversal” absent proof that the defendant’s substantial rights have been impacted. Fed. R. Crim. P. 11 advisory committee’s note (1983). The harmless error provision provides the lower courts with a great deal of discretion, often leading to inconsistent applications of the knowing and voluntary plea requirement. See DeWaelsche, supra note 2, at 510-15 (discussing effectiveness of current Rule 11).

34. See id. (analyzing impact of Rule 11 amendments).
B. The Evolution of the Knowing and Voluntary Plea Standard

Several of the Rule 11 amendments are the result of Supreme Court decisions that refined the requirements for a knowing and voluntary plea.\textsuperscript{35} The Supreme Court first held that a plea entered involuntarily and unintelligently violated defendants’ constitutionally guaranteed rights of due process in \textit{McCarthy v. United States}.\textsuperscript{36} McCarthy pleaded guilty to three counts of tax evasion; prior to accepting his guilty plea, however, the district court failed to inquire whether the defendant understood the nature of the charges against him.\textsuperscript{37} Setting aside the defendant’s guilty plea, the Supreme Court held that the plea was not entered knowingly and voluntarily.\textsuperscript{38} The Court’s opinion not only emphasized the importance of protecting defendants’ constitutional rights during the plea process,\textsuperscript{39} 

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\item \textsuperscript{35} See \textit{Fed. R. Crim. P.} 11 advisory committee’s note (1944). The original version of Rule 11 was substantially a restatement of pre-existing law. See \textit{id.} (citing \textit{Fogus v. United States}, 34 F.2d 97 (4th Cir. 1929)) (recognizing court’s affirmative duty to ascertain that plea is knowing and voluntary). The 1974 amendment codified the Supreme Court’s pronouncement that a defendant must be aware that certain constitutional rights are being waived by pleading guilty. See \textit{Fed. R. Crim. P.} 11 (1974 amendment) (citing \textit{Boykin v. Alabama}, 395 U.S. 238 (1969)). Additionally, the 1974 amendment restated another Supreme Court decision, requiring that the court address the defendant personally, on the record, prior to accepting a guilty plea. See \textit{id.} (citing \textit{McCarthy v. United States}, 394 U.S. 459 (1969)).

\item \textsuperscript{36} 394 U.S. 459 (1969).

\item \textsuperscript{37} See \textit{id.} at 462 (reciting essential facts). When McCarthy entered a plea of guilty to “willfully and knowingly” attempting to evade tax payments, the district judge only inquired if he desired to plead guilty, if he understood that such a plea waived his right to a jury trial, and if he knew the plea subjected him to imprisonment for as long as five years and to a fine not to exceed $10,000. See \textit{id.} (discussing defendant’s guilty plea). McCarthy stated that he understood these consequences and wanted to plead guilty. See \textit{id.} (summarizing district court’s resolution of case). At the sentencing hearing McCarthy stated that he did not “deliberately” evade tax payments; however, the judge decided that McCarthy’s actions did not appear to be accidental and therefore, he denied the petition to suspend the sentence. See \textit{id.} (reporting procedural posture). On appeal, the United States Court of Appeals for the Seventh Circuit held that the district court had complied with Rule 11. See \textit{id.} (summarizing appellate opinion). In its opinion, the Seventh Circuit announced that a judge is not required to address the defendant personally to determine whether he understands the nature of the charge. See \textit{id.} (reporting procedural posture).

\item \textsuperscript{38} See \textit{id.} at 472 (holding plea was entered unknowingly and involuntarily in violation of defendant’s constitutional rights). The Court emphasized the importance of strictly adhering to Rule 11 procedures to protect defendants’ right of due process. See \textit{id.} at 465 (“[T]he more meticulously the Rule is adhered to, the more it tends to discourage, or at least to enable more expeditious disposition of, the numerous and often frivolous post-conviction attacks on the constitutional validity of guilty pleas.”).

\item \textsuperscript{39} See \textit{id.} at 472 (stating it is “not too much to require that, before sentencing defendants to years of imprisonment, district judges take the few minutes necessary to inform them of their rights and to determine whether they understand the action they are taking”).
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but it also provided the first definition of "knowing": at a minimum, defendants must be aware of the elements of the charged offense.40

That same year, the Supreme Court reaffirmed the critical importance of ensuring that a guilty plea is knowingly and voluntarily entered in Boykin v. Alabama.41 Boykin was indicted on five counts of common law robbery.42 Boykin pleaded guilty to all five counts and was sentenced to death for each indictment.43 Asserting that his plea was involuntary and unknowing because "the judge asked no questions of [the] petitioner concerning his plea," Boykin appealed.44

In Boykin, the Supreme Court noted that a guilty plea waives three fundamental constitutional rights: (1) the right against self-incrimination; (2) the right to trial by a jury; and (3) the right to confront one's accuser.45 Recognizing the importance of protecting defendants' constitutional rights, the Court refused to "presume a waiver of these three important federal rights from a silent record."46 Thus, expanding the McCarthy standard for a "knowing" plea, Boykin articulated additional requirements.47 The Court stated that, "the record examination of the defendant which should include, inter alia, an attempt to satisfy itself that the defendant understands the nature of the charges . . . the acts sufficient to constitute the offenses for which he is charged and the permissible range of sentences."48

Although McCarthy and Boykin announced and attempted to define the "knowing" plea requirement, lower courts continued to inconsistently

40. See id. at 471 (announcing that courts must inform defendant of elements of charged offense prior to accepting defendant's guilty plea).
42. See id. at 239 (reciting essential facts). Boykin was a twenty-seven year old African-American male accused of committing five armed robberies over a two-week period in Mobile, Alabama. See id. (same).
43. See id. at 240 (noting defendant's sentence).
44. Id. at 239 (asserting guilty plea is constitutionally invalid because district court never directly addressed defendant prior to accepting plea). The Alabama Supreme Court affirmed the lower court's decision to uphold the plea. See id. (reporting procedural posture).
45. See id. at 243 (citing Duncan v. Louisiana, 391 U.S. 145, 149 (1968) (finding that right to jury trial guaranteed by Sixth Amendment applies to states through Fourteenth Amendment); Pointer v. Texas, 380 U.S. 400, 406 (1965) (finding that right to confront one's accusers guaranteed by Sixth Amendment applies to states through Fourteenth Amendment); Malloy v. Hogan, 378 U.S. 1, 6 (1964) (holding that privilege against self-incrimination guaranteed by Fifth Amendment applies to states through Fourteenth Amendment)).
46. Id. at 243-44 ("What is at stake for an accused facing death or imprisonment demands the utmost solicitude of which courts are capable in canvassing the matter with the accused to make sure he has a full understanding of what the plea connotes and of its consequence.").
47. See id. at 244 n.7 (announcing heightened standard for knowing and voluntary pleas).
48. Id. (quoting Commonwealth v. Rundle, 237 A.2d 196, 197-98 (Pa. 1968)).
interpret and apply the standard for a "knowing" plea. In 1970, *Brady v. United States* helped resolve the ambiguity and impracticality of the Supreme Court's previous rulings by articulating a new standard for a "knowing" plea. Brady, on trial for kidnapping charges, faced the death penalty because he harmed the victim during the crime; Brady pleaded guilty and received a sentence of fifty years in prison. Brady challenged his sentence, arguing his plea was made involuntarily and unknowingly. Once again, recognizing the crucial importance of shielding defendants' constitutional rights during the plea process, the Supreme Court announced that "[w]aivers of constitutional rights . . . must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences."

Attempting to clarify this vague standard for a "knowing" plea, the Court expounded that "[a] plea of guilty [must be] entered by one fully aware of the direct consequences." This short, concise language has drastically altered the guilty plea process. Courts have construed this language by negative implication to mean that defendants do not need to be informed of some consequences—appropriately termed collateral consequences. Applying the *Brady* definition of a "knowing" plea, lower courts must explain to the defendant only direct consequences, not collat-


51. See id. at 748 (requiring knowledge of relevant circumstances and direct consequences for "knowing" pleas).

52. See id. at 743 (reciting essential facts). Brady's plea was accepted after the trial judge inquired twice, on the record, whether the plea was voluntary. See id. (same).

53. See id. at 744 (challenging plea's constitutionality). Brady claimed that his guilty plea was not voluntary because: (1) 18 U.S.C. § 1201(a) coerced his plea; (2) his counsel exerted impermissible pressure upon him; (3) he was misinformed that a plea would reduce the sentence; and (4) the trial judge failed to comply with Rule 11. See id. (asserting basis for constitutional challenge). After hearing Brady's appeal, the U.S. District Court for the District of New Mexico held that the plea was voluntary and denied relief; this decision was affirmed by the Court of Appeals for the Tenth Circuit. See id. at 745 (reciting procedural posture).

54. See id. at 748 ("That a guilty plea is a grave and solemn act to be accepted only with care and discernment has long been recognized.").

55. Id. (announcing that "knowing" pleas require defendants' awareness of relevant circumstances and likely consequences); see also Henderson v. Morgan, 426 U.S. 637, 650 (1976) (reiterating that defendants "must be informed of the consequences of [their] plea").

56. *Brady*, 397 U.S. at 755 (quoting Shelton v. United States, 246 F.2d 571, 572 n.2 (5th Cir. 1957)).

57. See Chin, supra note 49, at 728 (discussing lower courts' interpretations of *Brady*); see also United States v. Sambro, 454 F.2d 918, 992 (D.C. Cir. 1971) ("We presume that the Supreme Court meant what it said when it used the word 'direct'; by doing so, it excluded collateral consequences.").
eral consequences.\footnote{See Chin, supra note 49, at 704 (examining implications of direct-collateral distinction announced in \textit{Brady}). Some courts define direct consequences as those consequences that are largely automatic. \textit{See id.} (discussing one interpretation of "direct consequences"); \textit{see also} United States v. Littlejohn, 224 F.3d 960, 966-67 (9th Cir. 2000) (declaring direct consequences are those which occur as automatic responses to pleading guilty). Other courts interpret direct consequences as those within the court's control. \textit{See Chin, supra note 49, at 704 (discussing another interpretation of "direct consequences"); see also United States v. Gonzales, 202 F.3d 20, 27 (1st Cir. 2000) ("What renders the plea's immigration effects 'collateral' is not that they arise 'virtually by operation of law,' but the fact that deportation is 'not the sentence of the court which accept[s] the plea but of another agency over which the trial judge has no control and for which he has no responsibility." (quoting Frutchman v. Kenton, 531 F.2d 946, 949 (9th Cir. 1976))).} Nonetheless, there remains a circuit split over what con-

\footnote{58.} \footnote{59. See \textit{Guilty Pleas}, supra note 8, at 397-402 (noting circuit courts' inconsistent application of direct-collateral distinction).}

C. Circuit Courts' Application of the Collateral Consequence Rule

The majority of circuit courts, confronted with defendants challenging their pleas' validity, have upheld guilty pleas by expanding the definition of collateral consequences and narrowing the definition of direct consequences.\footnote{60. See Chin, supra note 49, at 705 (reporting confusion among lower courts over which consequences are direct); \textit{see also} United States v. Russell, 686 F.2d 35, 38 (D.C. Cir. 1982) ("The distinction between a collateral and a direct consequence of a criminal conviction, like many of the lines drawn in legal analysis, is obvious at the extremes and often subtle at the margin.").} Nonetheless, there remains a circuit split over what con-

\footnote{61. See Chin, supra note 49, at 705-06 (listing consequences of criminal convictions that circuit courts have deemed collateral); \textit{see also}, e.g., United States v. Humphrey, 164 F.3d 585, 587 (11th Cir. 1999) (determining possibility of consecutive rather than concurrent sentences to be collateral consequence); Parry v. Rosemeyer, 64 F.3d 110, 114-15 (3d Cir. 1995) (holding revocation of probation is not direct consequence); United States v. U.S. Currency in the Amount of $228,536.00, 895 F.2d 908, 914-17 (2d Cir. 1990) (determining civil forfeiture to be collateral consequence of criminal conviction); Holmes v. United States, 876 F.2d 1545, 1548-49 (11th Cir. 1989) (ruling ineligibility of parole to be collateral consequence); Torrey v. Estelle, 842 F.2d 234, 236 (9th Cir. 1988) (determining potential relocation from youth center to prison to be collateral consequence); Landry v. Hoepfner, 840 F.2d 1201, 1217 (5th Cir. 1988) (ruling loss of professional license to be collateral consequence of criminal conviction); United States v. Rubalcaba, 811 F.2d 491, 494 (9th Cir. 1987) (recognizing consecutive rather than concurrent sentencing to be collateral consequence of criminal conviction); United States v. King, 618 F.2d 550 (9th Cir. 1980) (holding potential civil tax liability to be collateral consequence); Sanchez v. United States, 572 F.2d 210, 211 (9th Cir. 1977) (declaring revocation of parole to be collateral consequence); Fruchtmann v. Kenton, 531 F.2d 946 (9th Cir. 1976) (determining potential deportation is not direct consequence of criminal conviction); United States v. Saldana, 505 F.2d 628, 628 (5th Cir. 1974) (recognizing that potential consecutive rather than concurrent sentences is not direct consequence of criminal conviction); Paradiso v. United
stitutes direct consequences.\textsuperscript{62} Central to this debate, one question is repeatedly posed: is a mandatory minimum sentence a direct consequence?\textsuperscript{63}

In \textit{Boykin}, the Supreme Court announced that a defendant must be aware of "the permissible range of sentences."\textsuperscript{64} By implication, this makes a sentence range a direct consequence of a guilty plea.\textsuperscript{65} Nonetheless, most circuit courts have not required the court to inform the defendant of the sentence range, minimum to maximum. Interpreting the Supreme Court's decision, the majority of circuit courts hold that, at a minimum, a defendant must be aware of the offense's maximum penalty because the maximum penalty is a direct consequence of a criminal conviction.\textsuperscript{66}

\textbf{States,} 482 F.2d 409, 415 (3d Cir. 1973) (finding consecutive rather than concurrent sentencing to be collateral consequence of criminal conviction); Cuthrell v. Dir., Patuxent Inst., 475 F.2d 1364, 1366-67 (4th Cir. 1973) (deciding civil commitment to be collateral consequence); Weaver v. United States, 454 F.2d 315, 317-18 (7th Cir. 1971) (declaring revocation of probation is not direct consequence); United States v. Vermeulen, 436 F.2d 72, 75 (2d Cir. 1970) (recognizing that consecutive rather than concurrent sentencing is not direct consequence of criminal conviction); Trujillo v. United States, 377 F.2d 266, 268-69 (5th Cir. 1967) (determining ineligibility of parole is not direct consequence); Meaton v. United States, 328 F.2d 379, 380 (5th Cir. 1964) (finding loss of civic rights to be collateral consequence); United States v. Cariola, 323 F.2d 180, 186 (3d Cir. 1963) (holding disenfranchisement to be collateral consequence of criminal conviction); Redwine v. Zucker, 317 F.2d 336 (D.C. Cir. 1963) (recognizing dishonorable discharge from armed services to be collateral consequence); United States v. Parrino, 212 F.2d 919, 921 (2d Cir. 1954) (finding deportation is not direct consequence of criminal conviction); United States v. Okelberry, 112 F. Supp. 2d 1246, 1248 (D. Utah 2000) (citing United States v. Morse, 36 F.3d 1070, 1072 (11th Cir. 1994)) (determining disqualification from public benefits to be collateral consequence); State v. Vasquez, 889 S.W.2d 588, 590 (Tex. App. 1994) (citing United States v. Banda, 1 F.3d 554 (5th Cir. 1993)) (declaring that ineligibility to serve on jury is not direct consequence of criminal conviction).


63. For a discussion of whether a mandatory minimum is a direct consequence, see infra notes 64-109 and accompanying text.


65. \textit{See} Brady v. United States, 397 U.S. 742 (1970) (holding that, for plea to be "knowing," defendant must be aware of direct consequences of guilty plea); \textit{Boykin}, 395 U.S. at 244 n.7 (stating that defendant must be informed of permissible range of sentences).

66. \textit{See}, \textit{e.g.}, United States v. Minore, 292 F.3d 1109, 1113 (9th Cir. 2002) (holding judges must advise defendants of statutory maximums associated with charges prior to accepting plea); United States v. DeJesus-Abad, 263 F.3d 5, 8 (2d Cir. 2001) (holding courts must inform defendants at plea allocution of maximum possible penalty for charged offense); United States v. Fernandez, 205 F.3d 1020, 1028 (7th Cir. 2000) (determining court's failure to accurately advise defendant of maximum penalty constitutes reversible error); United States v. Gigot, 147 F.3d 1193, 1198-99 (10th Cir. 1998) (deciding guilty plea entered without knowledge of offense's maximum penalty is invalid); United States v. Coscarelli, 105 F.3d 984, 990-91 (5th Cir. 1997) (ruling court's failure to inform defendant about maximum penalty...
Conversely, the majority of circuit courts classify mandatory minimum sentences as collateral consequences; accordingly, failure to inform a defendant of mandatory minimums constitutes harmless error as long as the defendant, prior to pleading, was aware of the maximum sentence. On the other hand, a minority of circuit courts classifies mandatory minimums as direct consequences; under this interpretation, failure to inform a defendant of mandatory minimums constitutes reversible error. Thus, with disagreement among the circuit courts, defendants' fundamental constitutional rights at stake, and principles of due process at the core of the issue, the Third Circuit's decision in Jamison v. Klem provided necessary guidance to judges and practitioners confronted with post-conviction attacks asserting that a plea was involuntarily or unknowingly entered.

penalty constitutes reversible error); United States v. Gray, 63 F.3d 57, 60-61 (1st Cir. 1995) (finding reversible error when court misinformed defendant about maximum possible sentence); United States v. DeFusco, 949 F.2d 114, 119 (4th Cir. 1991) (determining failure to advise defendant of applicable maximum sentence is reversible error); United States v. Salmon, 944 F.2d 1106, 1130 (3d Cir. 1991) (ruling offense's maximum penalty is direct consequence of plea therefore requiring that defendant be advised of it).

On the other hand, a minority of circuit courts has held that failure to inform a defendant of the applicable maximum sentence constitutes harmless error. See, e.g., United States v. Ferguson, 132 F.3d 34, 39 (6th Cir. 1997) (determining failure to advise defendant of maximum sentences is harmless error); United States v. Young, 927 F.2d 1060, 1062 (8th Cir. 1991) (holding failure to inform defendant of maximum penalties is not reversible error).

67. See, e.g., United States v. Vaval, 404 F.3d 144, 152 (2d Cir. 2005) (ruling court's failure to inform defendant of mandatory minimum penalty does not entitle defendant to withdraw plea because court had informed defendant of maximum penalty); United States v. Powell, 354 F.3d 382, 389 (5th Cir. 2003) (determining court's failure to inform defendant of mandatory restitution does not constitute reversible error); United States v. Berrio-Callejas, 219 F.3d 1, 1 (1st Cir. 2000) (finding court's failure to inform defendant of mandatory minimum sentence constitutes harmless error); United States v. Elkins, 176 F.3d 1016, 1021 (7th Cir. 1999) (deciding court's failure to inform defendant that he could be sentenced to term of supervised release in addition to statutory maximum imprisonment constitutes harmless error); Young, 927 F.2d at 1062 (holding that where defendant actually knew statutory maximum and minimum sentences, district court's violation of Rule 11 was harmless error).

68. See, e.g., Fernandez, 205 F.3d at 1029 (deciding that failure to advise defendant of mandatory minimum constitutes reversible error); United States v. Goins, 51 F.3d 400, 405 (4th Cir. 1995) (holding failure to inform defendant that guilty plea would result in mandatory minimum sentence of five years constitutes reversible error); United States v. Hourihan, 936 F.2d 508, 509-10 (11th Cir. 1991) (allowing defendant to withdraw plea because court failed to inform defendant of mandatory minimum sentence).

69. See Jamison v. Klem, 544 F.3d 266 (3d Cir. 2008) (considering validity of guilty pleas entered without knowledge of applicable mandatory minimum sentence).
III. "There Is Nothing More Frightening Than Ignorance in Action" 70

A. The Third Circuit Defines Direct Consequences

Although the Third Circuit has defined and redefined collateral consequences, 71 the court did not define direct consequences until 1991—over twenty years after Brady announced the direct-collateral distinction. 72 In United States v. Salmon, 73 four defendants were found guilty of conspiracy and crimes relating to the distribution and sale of cocaine. 74 Washington, one of the defendants, received an enhanced sentence because he was classified as a "career offender" based on two prior convictions. 75 Washington challenged his status as a "career offender," asserting that his pleas of guilty and nolo contendere to the predicate offenses were entered


71. See, e.g., United States v. Romero-Vilca, 850 F.2d 177, 179 (3d Cir. 1988) (declaring deportation to be collateral consequence of guilty plea); Kincade v. United States, 559 F.2d 906, 909 (3d Cir. 1977) (announcing delayed prison sentence due to subsequent state court conviction to be collateral consequence); United States v. Crowley, 529 F.2d 1066, 1072 (3d Cir. 1976) (recognizing job loss to be collateral consequence of guilty plea); United States v. Cariola, 323 F.2d 180, 186 (3d Cir. 1963) (declaring deprivation of voting rights to be collateral consequence of conviction).


73. 944 F.2d 1106 (3d Cir. 1991).

74. See id. at 1113 (reciting essential facts). An undercover police officer arranged to buy cocaine from Washington and Surratt, two of the defendants. See id. at 1111-12. Due to the large request for cocaine, Washington had to arrange a meeting with three separate cocaine suppliers to fulfill the undercover officer's order. See id. at 1112. During the meeting, Washington met with two men, later identified as co-defendants Fitzpatrick and Salmon; the three men conferred at the trunk of Fitzpatrick's Oldsmobile. See id. The three men and Surratt, who was present at a previous drug exchange with the undercover police officer, were arrested. See id. A grand jury indicted Fitzpatrick, Salmon, Surratt, and Washington in a five-count indictment: count one charged all four defendants with conspiring to possess with intent to distribute less than 500 grams of cocaine in violation of 21 U.S.C. § 846; count two charged Washington and Surratt with possession with intent to distribute less than 500 grams of cocaine in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C); count three charged Washington, Salmon, and Fitzpatrick with the same offense; count four charged Washington with intentionally using a firearm during a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1); and count five charged Washington with possession of a firearm by a convicted felon in violation of 18 U.S.C. § 924(c)(1). See id. at 1112-13 (reciting five-count indictment for conspiracy, drug trafficking, and firearm violations).

75. See id. at 1113 (sentencing Washington, as career criminal, to terms of 210 months incarceration for first three counts and 120 months imprisonment for count five). Washington was classified as a career offender based on two prior convictions; in 1975, Washington pleaded nolo contendere to selling heroin and in 1980, he pleaded guilty to burglary with a dwelling. See id. at 1129-30 (detailing Washington's criminal history).
unknowingly because he was unaware of the convictions’ impact on future sentences.  

Rejecting Washington’s argument, the Third Circuit affirmed the “career offender” classification and the enhanced prison sentence. In its opinion, the court not only reaffirmed the direct-collateral distinction announced in Brady; it also defined direct consequences. The Third Circuit declared in Salmon that “the only consequences considered direct are the maximum prison term and fine for the offense charged.”  

Four years later, in Parry v. Rosemeyer, the Third Circuit reaffirmed Salmon’s definition of direct consequences. Parry pleaded guilty to robbery and criminal conspiracy; he was sentenced to a maximum of twenty-three months in prison for the robbery and two years of probation for conspiracy. Parry completed his prison term, but while on probation, he was arrested for burglary and subsequently sentenced to a prison term of two to ten years for his previous conspiracy offense.  

Parry filed a petition for habeas corpus alleging his guilty plea was involuntary and unknowing because he was not advised that, following a parole violation, the court could revoke probation and impose a prison sentence. Citing Salmon, the Third Circuit denied Parry’s habeas petition, concluding that the repercussions of a probation violation are not

76. See id. at 1130 (challenging constitutionality of career offender classification).

77. See id. (upholding Washington’s career offender classification and subsequent enhanced sentence).

78. See id. (“Due process requires that a guilty plea be voluntary, that is, that a defendant be advised of and understand the direct consequences of a plea.”); see also United States v. Crowley, 529 F.2d 1066, 1072 (3d Cir. 1976) (declaring due process does not require defendant, prior to pleading guilty, to be informed of “collateral, but foreseeable, adverse consequences”).

79. Salmon, 944 F.2d at 1130 (citing United States v. Pearson, 910 F.2d 221, 223 (5th Cir. 1990)) (indicating direct consequences are limited to maximum penalties).

80. 64 F.3d 110 (3d Cir. 1995).

81. See id. at 114 (defining direct consequences as offense’s maximum prison term and fine).

82. See id. at 112 (reciting essential facts). At the guilty plea hearing, the judge recounted the terms of the plea agreement to the defendant; the judge, however, failed to inform the defendant of the repercussions of a probation violation. See id. (discussing defendant’s guilty plea).

83. See id. (reporting aftermath of Parry’s probation violation). After being found guilty by a jury, Parry was sentenced to an additional four to eight years of imprisonment on the new burglary charges. See id. at n.3 (recounting results of Parry’s trial).

84. See id. (asserting guilty plea was entered into unknowingly and involuntarily). After unsuccessfully seeking relief in state court under the Post Conviction Relief Act, 42 Pa. Cons. Stat. Ann. § 9541, Parry filed a petition for habeas corpus in the District Court for the Western District of Pennsylvania. See id. (noting procedural posture). The District Attorney of Allegheny County adopted the Report and Recommendation filed by the magistrate judge and dismissed the petition. See id. (same).
direct consequences.\textsuperscript{85} The clear and concise definition of direct consequences, announced in \textit{Salmon} and applied in \textit{Parry}, provided guidance for nearly twenty years to Third Circuit courts confronted with defendants challenging the validity of their guilty pleas.

B. Jamison v. Klem: \textit{Redefining Direct Consequences}

In the 2008 case, \textit{Jamison v. Klem}, the Third Circuit significantly altered its guilty plea jurisprudence by undermining the \textit{Salmon} definition of direct consequences.\textsuperscript{86} In September 2000, Jamison was arrested for drug possession with intent to sell.\textsuperscript{87} Jamison pleaded guilty; the court sentenced him to five to ten years in prison and imposed a fine of $30,000.\textsuperscript{88} Jamison filed a pro se petition for habeas corpus challenging the voluntariness of his guilty plea.\textsuperscript{89} Specifically, Jamison claimed that his

\textsuperscript{85} See id. at 114 ("The only consequences considered direct are the maximum prison term and fine for the offense charged." (quoting United States v. Salmon, 944 F.2d 1106, 1130 (3d Cir. 1991))). The Third Circuit noted that Parry, prior to pleading guilty, was informed that the maximum penalty for conspiracy was ten years imprisonment; the court determined that knowledge of the applicable maximum penalty precluded Parry from successfully claiming his plea was "unknowing." See id. at 114 n.6. Concluding the opinion, the Third Circuit noted its recent decisions limiting "direct consequences." See id. at 114; see also, e.g., United States v. Romero-Vilca, 850 F.2d 177, 179 (3d Cir. 1988) (declaring deportation to be collateral consequence); Kincade v. United States, 559 F.2d 906, 909 (3d Cir. 1977) (ruling consecutive rather than concurrent sentencing is not direct consequence of pleading guilty); United States v. Crowley, 529 F.2d 1066, 1072 (3d Cir. 1976) (holding job loss due to felony conviction to be collateral consequence of pleading guilty); United States v. Cariola, 323 F.2d 180, 186 (3d Cir. 1963) (determining loss of voting rights to be collateral consequence).

\textsuperscript{86} See Jamison v. Klem, 544 F.3d 266 (3d Cir. 2008) (considering validity of guilty pleas entered without knowledge of applicable mandatory minimum sentence).

\textsuperscript{87} See id. at 268 (reciting essential facts). Jamison was charged in two separate cases; one case charged him with possession of cocaine and marijuana with intent to deliver, and the other case charged him with possession of marijuana, driving without a license, and reckless endangerment. See id. (noting charges against Jamison).

\textsuperscript{88} See id. at 269 (recounting factual background). Prior to trial, Jamison rejected the prosecution's plea agreement; the agreement offered a prison sentence for between four and eight years. See id. at 268 (same). After Jamison entered an open guilty plea, the prosecution continued to recommend four to eight years. See id. at 269 (noting Jamison's guilty plea and Government's recommended sentence). After accepting the plea, the court sentenced Jamison to five to ten years in prison, imposed a fine of $30,000 for the cocaine conviction, and enacted a concurrent sentence of two to four years for the marijuana charge. See id. at 269-70 (describing Jamison's sentence).

\textsuperscript{89} See id. at 268 (challenging guilty plea's constitutionality). Concluding that Jamison's plea was entered unknowingly because Jamison was not advised of the mandatory minimum sentence, the magistrate judge recommended that Jamison's habeas petition be granted. See id. (reciting procedural posture). The district court rejected the recommendation and denied the petition, noting that the Supreme Court has not explicitly required courts to advise defendants of the charges' mandatory minimum penalties. See id. (same). Specifically, the district court
plea was involuntary and unknowing because prior to accepting his guilty plea, he was not informed of the mandatory minimum sentence; instead, the judge advised him only of the maximum sentence. 90 The government, relying on Parry, argued that "a maximum prison term and fine for the challenged offense are the only direct consequences of a state court plea." 91

In an unprecedented shift in guilty plea jurisprudence, the Third Circuit declared that mandatory minimum sentences are direct consequences. 92 The court reasoned that mandatory minimums are more relevant to the defendant's decision to enter a plea than maximum sentences, which are rarely imposed. 93 Further, the court reasoned that the Salmon definition of direct consequences only applies to factually similar cases and was narrowly meant to explain that "[d]ue process does not . . . require that a defendant be advised of adverse collateral consequences of pleading guilty, even if they are foreseeable." 94

In declaring that mandatory minimum sentences are direct consequences, the Third Circuit's pivotal decision in Jamison effectively overruled Salmon's bright-line definition of a "knowing" plea. 95 What replaces

found the state courts' rejection of Jamison's claim was neither contrary to, nor an unreasonable application of, Supreme Court precedent. See id. (same).

90. See id. at 269 (describing Jamison's plea process and sentencing). Jamison used the court record to show that he was not adequately informed of the applicable mandatory minimum sentence during the plea process. See id. (same). First, the only statement made at the plea hearing regarding the mandatory minimum sentence was a brief statement by the prosecution that "[they] will be filing mandatory on the drug case." See id. (same). Second, during the hearing, the judge told Jamison that because there was no agreement with the Commonwealth, sentencing would be left in the court's discretion. See id. ("The judge asked Jamison if he understood that sentencing was 'basically up to the court,' and Jamison affirmed that he did."). Third, the written guilty plea colloquy Jamison filled out and signed only addressed whether Jamison acknowledged the applicable maximum penalty. See id. (recounting Jamison's plea process).

91. Id. at 277 (quoting Parry v. Rosemeyer, 64 F.3d 110 (3d Cir. 1995)).

92. See id. ("The mandatory minimum is no less direct a consequence of a guilty plea.").

93. See id. ("In fact, the mandatory minimum sentence may be far more relevant than the theoretical maximum because that is rarely imposed.").

94. Id. at 278 (quoting Parry, 64 F.3d at 114) (alteration in original). The Third Circuit asserted that the rule from Salmon should only be applied in factually similar cases, not to all cases where a defendant is challenging a guilty plea's constitutionality. See id. (recounting Third Circuit's rationale for distinguishing Salmon and Parry from Jamison). The court claimed that when Parry and Salmon are considered in context, it is clear that the holdings are consistent with Jamison because all three cases are reasonable applications of the direct-collateral distinction first announced by the Supreme Court in Brady v. United States: a "knowing" plea mandates that a defendant must be informed of the direct consequences of pleading guilty, but not the collateral consequences. See id. (asserting that Salmon, Parry, and Jamison are consistent).

95. Compare id. at 277 ("The mandatory minimum is no less direct a consequence of a guilty plea."), with United States v. Salmon, 944 F.2d 1106, 1180 (3d Cir. 1991) ("[T]he only consequences considered direct are the maximum prison
the Salmon definition remains unclear. The Third Circuit’s proclamation in Jamison may have created a new bright-line definition of direct consequences, limited to only maximum and minimum penalties, or it may have simply overruled Salmon, concluding that direct consequences encompass more than just the offense’s maximum penalty.

IV. “A Little Learning Is a Dangerous Thing, But A Lot of Ignorance Is Just as Bad”

A. The Supreme Court, Congress, and the Third Circuit Agree: Knowledge Is Power

Although the Third Circuit’s holding in Jamison represents a vast departure from its previous analyses of the knowing and voluntary standard, it is consistent with the goals of the legislature and the pronouncements of the Supreme Court. Acknowledging the significant role of the guilty plea in the criminal justice system, Congress enacted Rule 11 to ensure guilty pleas were entered knowingly and voluntarily to protect defendants’ constitutional rights. The Supreme Court has echoed this sentiment; because a plea is a waiver of several constitutional rights, the Court requires that a plea be “an intentional relinquishment or abandonment of a known right or privilege.”

Expanding the definition of direct consequences to include mandatory minimum sentences is not only consistent with the judicial and legislative aim of guaranteeing that a guilty plea represents the defendant’s deliberate and informed decision, but there is also evidence that both the Supreme Court and Congress specifically intended mandatory minimums to be a requirement for a “knowing” plea. In Boykin v. Alabama, the Supreme Court announced that “the trial court . . . should include, inter alia, an attempt to satisfy itself that the defendant understands the nature of the charges, his right to a jury trial, the acts sufficient to term and fine for the offense charged.” (citing United States v. Pearson, 910 F.2d 221, 223 (5th Cir. 1990)).

97. For a discussion of how the Third Circuit’s holding in Jamison is consistent with congressional and judicial aims, see infra notes 98-102 and accompanying text.
98. See Fed. R. Crim. P. 11 advisory committee’s note (1944) (“The fairness and adequacy of the procedures on acceptance of pleas of guilty are of vital importance in according equal justice to all in the federal courts.”); Alicia Warning Truman, Note, Unexpected Evictions: Why Drug Offenders Should Be Warned Others Could Lose Public Housing If They Plead Guilty, 89 Iowa L. Rev. 1753, 1765 (2004) (“[T]hree objectives for the rule [are]: '(1) ensuring that the guilty plea is free from coercion; (2) ensuring that the defendant understands the nature of the charges against her; and (3) ensuring that the defendant is aware of the direct consequences of the guilty plea.’” (quoting United States v. Camacho, 233 F.3d 1308, 1314 (11th Cir. 2000))).
constitute the offenses for which he is charged and the permissible range of sentences." In Jamison, the Third Circuit determined that the Supreme Court's language in Boykin explicitly mandated that a defendant be informed of both mandatory maximums and minimums. Similarly, one of the requirements Congress enumerated in Rule 11(b) is that the sentencing judge must inform the defendant of "the mandatory minimum sentence." Based on this evidence, the Third Circuit's decision in Jamison is consistent with the principles and requirements pronounced by the Supreme Court and Congress.

B. The Other Circuit Courts Disagree: Less Is More

Despite the incontrovertible evidence of the Supreme Court's and legislature's intent to expand the "knowing" requirement to include mandatory minimums, only two other circuit courts have explicitly held that mandatory minimum sentences are direct consequences of entering a guilty plea. Jamison not only conflicts with the majority of circuit courts by classifying mandatory minimums as direct consequences, but it also stands in stark contrast to the other circuit courts' recent trend—narrowing the definition of direct consequences. The majority of circuit court decisions addressing post-conviction attacks have upheld the plea by expanding the definition of collateral consequences and simultaneously narrowing the definition of direct consequences. Repercussions of convictions deemed collateral consequences include: revocation of parole or probation, ineligibility for parole, civil commitment, civil forfeiture, consecutive rather than concurrent sentencing, higher penalties based on repeat offender laws, sex offender registration requirements, disenfranchisement, ineligibility to serve on a jury, disqualification from public benefits, ineligibility to possess firearms, deportation, dishonorable discharge from the armed services, and loss of business or professional licenses.

101. See Jamison v. Klem, 544 F.3d 266, 277 (3d Cir. 2008) (interpreting permissible sentence range as minimum and maximum sentences).
103. See United States v. Fernandez, 205 F.3d 1020, 1029 (7th Cir. 2000) (deciding failure to advise defendant of mandatory minimum constitutes reversible error); United States v. Goins, 51 F.3d 400, 405 (4th Cir. 1995) (holding failure to inform defendant that guilty plea would result in mandatory minimum sentence of five years constituted reversible error); cf. United States v. Hourihan, 936 F.2d 508, 509-10 (11th Cir. 1991) (allowing defendant to withdraw plea because court failed to inform defendant of mandatory minimum sentence).
104. See Chin, supra note 49, at 705-06 (noting recent expansion of collateral consequences and subsequent contraction of direct consequences).
105. See id. (listing recent circuit court decisions expanding collateral consequences).
106. See id. (noting recent circuit court cases addressing direct-collateral distinction); see also, e.g., United States v. Humphrey, 164 F.3d 585, 587 (11th Cir.
One potential explanation for this trend is the fear that expanding the definition of direct consequences would expose a large number of convictions to reversal. Additionally, some commentators fear that adjudicating an increased number of constitutional challenges would substantially raise courts’ administrative costs. Although most circuit courts use the increased costs argument to justify narrowing direct consequences and subsequently limiting defendants’ rights, there are other
costs and benefits which the circuit courts have not properly evaluated, such as the economic efficiency of deeming mandatory minimums direct consequences of guilty pleas.109

C. The Efficiency of the Third Circuit’s Rule

Over the last thirty years, scholars have applied economic analysis to substantive areas of the law to determine whether a particular judicial or legislative doctrine is efficient.110 Although efficiency has been interpreted in various ways,111 one definition, Kaldor-Hick’s efficiency, has been largely adopted by economists.112 In a Kaldor-Hick’s analysis, a rule is efficient if those individuals who benefit from it would prefer the rule even if they were obliged to compensate those individuals harmed by the rule.113 In other words, if the total benefit to society exceeds the total cost to society, the rule is efficient.114 To further increase the net benefit, or surplus, to society, a rule should place the cost on the cheapest cost avoider.115 The cheapest cost avoider is the party who has the lowest cost,

109. For a discussion of the costs and benefits of informing defendants of the mandatory minimum sentences for their crimes, see infra notes 110-28 and accompanying text.


111. See John D. Graham, Saving Lives Through Administrative Law and Economics, 157 U. Pa. L. Rev. 395, 404-14 (2008) (describing evolution of economic efficiency). The basis of modern economic efficiency can be found in the philosophy promulgated by welfarists. See id. at 405 (same). Welfarists believed that it was possible to determine whether a rule causes an improvement or a degradation of society. See id. (explaining principles of welfarism). Italian economist Vilfredo Pareto took the basic concept of welfarism and articulated an empirically precise definition of economic efficiency; this theory is aptly named the Pareto Criterion. See id. at 408 (discussing Pareto’s contributions to economic analysis). The Pareto Criterion uses individual preferences, based on full information of both known and possible consequences, to determine whether a rule makes at least one person better off without making another person worse off. See id. (explaining principles of Pareto Criterion).

112. See id. at 410 (summarizing foundation and principles of Kaldor-Hick’s efficiency).

113. See id. (examining Kaldor-Hick’s efficiency analysis). The “compensation” described is hypothetical; it is a costless transfer from those who benefit from the rule to those who are harmed by the rule of an amount equal to their harm. See id. (same).

114. See id. (summarizing Kaldor-Hick’s efficiency analysis). Hypothetically, under a Kaldor-Hick’s efficient rule, the benefited parties could fully compensate the harmed parties and still derive a benefit—this benefit is referred to as the “surplus” and represents a net gain in social welfare. See id. (describing Kaldor-Hick’s efficient rule); see also John R. Hicks, The Foundations of Welfare Economics, 49 Econ. J. 696, 711-12 (1939) (examining principles underlying Kaldor-Hick’s efficiency).

often resulting from easier, cheaper access to information or lower transaction costs.\textsuperscript{116}

Analyzing the Third Circuit's decision for economic efficiency, it is clear that the benefits of informing a defendant of the mandatory minimum sentence exceed the costs.\textsuperscript{117} Here, the benefit is the value of protecting defendants' constitutional rights; because Americans highly value their individual liberties, this benefit has an extraordinarily high value.\textsuperscript{118} Furthermore, informing defendants of mandatory minimums would reduce the number of direct appeals and collateral attacks on final judgments for Rule 11 violations—decreasing court costs.\textsuperscript{119} Conversely, the cost of defining direct consequences to include mandatory minimums is the expense, if any, of an increase in the number of post-conviction attacks by defendants who entered pleas without being informed of the mandatory minimums.\textsuperscript{120}

After a cost-benefit analysis conclusively reveals that informing defendants of mandatory minimums is efficient, the next step in the Kaldor-Hick's analysis is determining whether the judge or the defendant is the cheapest cost avoider.\textsuperscript{121} Requiring defendants to inform themselves of the applicable penalties would be extremely costly because there are a high number of defendants, each with a relatively low understanding of the complexities of federal and state sentencing guidelines.\textsuperscript{122} Each of these numerous defendants would incur significant search costs trying to determine the permissible sentence range, forcing defendants to incur high information and transaction costs.\textsuperscript{123}

\textsuperscript{116} See id. ("[L]iability should be placed on the 'cheapest cost avoider,' which is the party who has easier, cheaper access to the information needed to accurately calculate accident costs and avoidance costs."); see also Guido Calabresi & Jon T. Hirschoff, \textit{Toward a Test for Strict Liability in Torts}, 81 \textit{Yale L. J.} 1055, 1060 (1972) (noting costs should be placed on party who is "in the best position to make the cost-benefit analysis between accident costs and accident avoidance costs and to act on the decision once it is made") (emphasis omitted).

\textsuperscript{117} For an analysis of the economic efficiency of the rule announced in \textit{Jami-son}, see infra notes 118-28 and accompanying text.

\textsuperscript{118} See United States v. Andrades, 169 F.3d 131, 132 (2d Cir. 1999) ("A criminal defendant's plea of guilty is perhaps the law's most significant waiver of constitutional rights, and district courts must not accept this waiver lightly.").

\textsuperscript{119} See DeWaelsche, supra note 2, at 527 (describing benefits of strict adherence to Rule 11).

\textsuperscript{120} See Note, \textit{Rule 11}, supra note 108, at 1415 (speculating "[post-conviction attacks] may well cancel out much of the savings in judicial time and resources that the reliance on guilty pleas was meant to produce").

\textsuperscript{121} See Sacks, supra note 115, at 1091 (asserting cheapest cost avoider should bear burden to increase net societal gain).

\textsuperscript{122} See \textit{Bureau of Justice Statistics}, supra note 3 (indicating that for federal district courts, in fiscal year 2004, there were 83,391 defendants).

\textsuperscript{123} See Michael W. Loudenslager, \textit{Giving Up the Ghost: A Proposal for Dealing with Attorney "Ghostwriting" of Pro Se Litigants' Court Documents Through Explicit Rules Requiring Disclosure and Allowing Limited Appearances for Such Attorneys}, 92 \textit{Marq. L. Rev.} 103, 133 (2008) ("These judges 'expressed concern about pro se litigants who appear before them having received limited assistance from an attorney and hav-
Alternatively, the cost imposed on a judge forced to inform the defendant of the mandatory minimums would be insignificant. First, the number of judges in the federal and state judicial system is limited.124 Second, judges must be aware of the applicable minimum and maximum sentence range to comply with sentencing guidelines; therefore, no added cost is associated with researching this information.125 Thus, judges have minimal information costs. Finally, judges are already responsible for informing the defendant, on the record, of certain requisite information; adding one additional requirement would not unduly burden the judge.126 Based on the foregoing, the judge is the cheapest cost avoider; therefore, it would be less costly for the judges to inform the defendants of the applicable mandatory minimums.127 From an economic perspective, the Third Circuit’s rule in Jamison is efficient, resulting in a net gain to society.128

V. Conclusion

Departing from its previous holdings, the Third Circuit’s decision in Jamison enhances defendants’ rights by expanding the definition of direct consequences to include mandatory minimum sentences.129 Although this decision is consistent with the congressional mandates of Rule 11 and the Supreme Court’s decision in Boykin, it represents an anomaly in the

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126. See Boykin v. Alabama, 395 U.S. 238, 244 n.7 (1969) (“[T]he record examination of the defendant [ ] should include, inter alia, an attempt to satisfy itself that the defendant understands the nature of the charges . . . the acts sufficient to constitute the offenses for which he is charged and the permissible range of sentences.”).


129. See Jamison v. Klem, 544 F.3d 266, 277 (3d Cir. 2008) (determining judges must inform defendants of applicable mandatory minimum sentence to protect defendants’ fundamental constitutional rights).
guilty plea jurisprudence of the other circuit courts.\textsuperscript{130} Recognizing the vital importance of ensuring individuals' constitutional rights, and considering the legislative history of Rule 11, the majority of circuit courts currently classifying mandatory minimums as collateral consequences should adopt the \textit{Jamison} holding classifying mandatory minimums as direct consequences.

This is not to say that \textit{Jamison} marks the beginning of an unbounded expansion of defendants' rights during the plea process; rather, \textit{Jamison} is an exception to the overall trend narrowing defendants' rights.\textsuperscript{131} As this recent trend indicates the circuit courts' unwillingness to independently enhance defendants' rights, it is likely that the circuit courts will expand defendants' rights \textit{only} to the extent necessary to comply with the enumerated requirements of Rule 11.\textsuperscript{132} Therefore, unless Congress intercedes, the \textit{Jamison} decision will represent the last major expansion of defendants' rights during the plea process.

\textit{Kristen M. Hall}

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\textsuperscript{130} For a discussion of how the Third Circuit's holding in \textit{Jamison} is consistent with congressional and judicial aims, see \textit{supra} notes 97-102 and accompanying text. Although it has been thirty-five years since Rule 11 was amended, explicitly requiring courts to inform defendants of mandatory minimum sentences, most courts still fail to comply with this statute. \textit{See DeWael'sche, supra} note 2, at 528 (noting judges' failure to comply with Rule 11).

\textsuperscript{131} The majority of circuit court decisions handed down after the Supreme Court announced the direct-collateral distinction expanded the definition of collateral, such that a defendant need not be informed of the consequence to enter a knowing guilty plea. \textit{See Chin, supra} note 49, at 705-06 (noting recent circuit court cases addressing direct-collateral distinction). For citation to several circuit court cases that expand collateral consequences while narrowing direct consequence, see \textit{supra} note 106.

\textsuperscript{132} \textit{Cf. Chin, supra} note 49, at 705-06 (noting that, after Supreme Court announced direct-collateral distinction, circuit courts avoided expansion of defendants' rights by broadening scope of collateral consequences).