For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

FELIPE JIMENEZ CARABALLO Appellants/Defendant, v. **PEOPLE OF THE VIRGIN ISLANDS,** Appellee/Plaintiff.	)	**S. Ct. Crim. No. 2020-0005** Re: Super. Ct. CR. No. F63/2019 (STT)

On Appeal from the Superior Court of the Virgin Islands
Division of St. Thomas & St. John
Superior Court Judge: Hon. Renee Gumbs Carty

Considered: November 17, 2020
Filed: September 21, 2021

Cite as: 2021 VI 16

BEFORE: **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and **IVE ARLINGTON SWAN**, Associate Justice.

ATTORNEYS:

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OPINION OF THE COURT

SWAN, Associate Justice.

¶1 Appellant, Felipe Jimenez Caraballo ("Caraballo"), pled guilty to aggravated assault and battery, domestic violence, in violation of 14 V.I.C. § 298(3) and 16 V.I.C. § 91(b)(1)(2) pursuant

to an amended plea agreement dated October 25, 2019. The Superior Court subsequently sentenced Caraballo in accordance with a December 23, 2019 judgment and commitment to three years incarceration and further ordered him to pay $75 in court costs. Caraballo contends on appeal that the People breached the parties' plea agreement and that the Superior Court violated the Virgin Islands Rules of Criminal Procedure when it failed to adopt the sentence the People recommended. For the reasons elucidated below, we vacate Caraballo's sentence and remand the case to the Superior Court to conduct a plea agreement hearing consistent with Rule 11 of the Virgin Islands Rules of Criminal Procedure before a different Superior Court judge.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

¶2 Caraballo had an altercation with his wife on St. John on or about February 18, 2019. The kerfuffle between the couple resulted in the People charging Caraballo on March 12, 2019 in a four count information with two counts of first degree burglary, domestic violence in violation of 14 V.I.C. § 442(1), 14 V.I.C. § 442(4) and 16 V.I.C. § 91(b)(3); simple assault and battery, domestic violence, in violation of 14 V.I.C. § 299(2) and 16 V.I.C. § 91(b)(1)(2); and disturbance of the peace, domestic violence, in violation of 14 V.I.C. § 622(1) and 16 V.I.C. § 91(b)(1).

¶3 On October 23, 2019, Caraballo and the People consummated a second amended plea agreement. The second amended plea agreement added a fifth charge—count five—aggravated assault and battery, in violation of 14 V.I.C. § 298(3). In relevant part, the second amended plea agreement provided that in exchange for Caraballo's plea of guilty to count five—aggravated assault and battery—the People agreed to dismiss the remaining four counts of the information. Also applicable to Caraballo were the following paragraphs regarding the sentence the People recommended:

1. One (1) year incarceration, suspended all but thirty (30) days;

> 2. Supervised probation for the suspended term;
>
> 3. Upon completion of the term of incarceration, the Defendant shall report to the Department of Mental Health, Alcoholism and Drug and Dependency Services, and thereafter shall take part in any and all additionally recommended treatment, to be monitored by the Department of Probation and Parole;
>
> 4. Defendant shall enroll in and successfully complete an anger management course, to be monitored by the Department of Probation and Parole;
>
> 5. Restitution to the victim(s); and
>
> 6. Defendant shall pay standard court cost and fees
>
> Acceptance of the above stated plea offer must be done in writing, by signing this letter in the space provided below and returning the original, by electronic mail or otherwise, to this office.
>
> The defendant understands and acknowledges that if he accepts this plea agreement and is not a United States citizen by birth or a naturalized United States citizen, he may be subject to deportation proceedings.

(J.A. 28-29.)

¶4 On October 25, 2019, the Superior Court held a change of plea hearing for Caraballo. On the morning of the hearing, Caraballo's attorney informed the court that Caraballo was absent and that she was unable to contact him. The Superior Court judge adjourned the hearing to reconvene at 4:00 p.m. and informed Caraballo's attorney that Caraballo needed to be present when the hearing reconvened.

¶5 Immediately prior to recess, the Superior Court informed the attorneys that the court reviewed the second amended plea agreement and was concerned that "[t]he factual basis has to be consistent with the charge" and "that [count five of] the second amended plea agreement was misleading without including that the acts occurred in the context of domestic violence and cannot

be without the domestic violence component because it's his wife." (Appellant's Br. 4; J.A. 46.) Notedly, the second amended plea agreement allowed Caraballo to plead guilty to count five—aggravated assault and battery without including that the acts occurred in the context of domestic violence. Consequently, the Superior Court instructed the People to rewrite the second amended plea agreement in such a manner that the factual basis of domestic violence and the maximum penalty of five years were unambiguous.

¶6 Acting on the instructions of the Superior Court, the People revised count five of the information referenced in the second amended plea agreement. The revision resulted in a new amended plea agreement dated October 25, 2019, which charged Caraballo in count five with aggravated assault and battery, domestic violence, in violation of 14 V.I.C. § 298(3) and 16 V.I.C. § 91(b)(1)(2). Considering the revision of the second amended plea agreement, the People also filed a motion to amend the information on October 25, 2019, which the Superior Court granted. Subsequently, the Superior Court reconvened and held the change of plea hearing in which it accepted Caraballo's guilty plea on the terms of the October 25, 2019 amended plea agreement.

¶7 Caraballo's sentencing hearing was held on December 10, 2019. After instructing and advising Caraballo on the meaning of his guilty plea, the Superior Court sentenced him to three years of incarceration, ultimately rejecting the People's recommendation of a sentence of one year of incarceration with all but thirty days suspended. Caraballo filed a timely notice of appeal, and this appeal ensued.

II. JURISDICTION

¶8 "The Supreme Court [has] jurisdiction over all appeals arising from final judgments, final decrees or final orders of the Superior Court." 4 V.I.C. § 32(a). Because the December 23, 2019 judgment and commitment resolved all the issues between the parties, it is a final appealable order

pursuant to section 32(a). *See, e.g., Browne v. People,* 56 V.I. 207, 216 (V.I. 2012) (recognizing that in a criminal case, a written judgment embodying the adjudication of guilt and the sentence imposed based on that adjudication constitutes a final judgment for purposes of 4 V.I.C. § 32(a)).

III. STANDARD OF REVIEW

¶9 The standard of review for this Court's examination of the Superior Court's application of law is plenary, while the trial court's findings of fact are reviewed for clear error. *St. Thomas-St. John Bd. of Elections v. Daniel,* 49 V.I. 322, 329 (V.I.2007). This Court ordinarily reviews a sentence only for abuse of discretion, unless the Superior Court bases its decision on the application of legal precepts, in which case this Court exercises plenary review. *Williams v. People,* 59 V.I. 1024, 1031 (V.I. 2013). Nevertheless, where an appellant fails to object to a Superior Court order or decision, we review for plain error, but only if the challenge was forfeited, rather than waived. *Murrell v. People*, 54 V.I. 338, 346-47 (V.I. 2010), *Phipps v. People*, 54 V.I. 543, 546 (V.I.2011); *Connor v. People*, 59 V.I. 286, 290 (2013); *Puckett v. United States*, 556 U.S. 129, 133-34 (2009) (plain error is the appropriate standard of review when defendant alleges government breach of plea agreement for first time on appeal).

IV. DISCUSSION

A. The prosecutor's allocution at Caraballo's sentencing hearing did not materially breach the parties' duly executed amended plea agreement.

¶10 Caraballo argues for the first time on appeal that the People materially breached the amended plea agreement by mentioning aggravating factors pertaining to him during allocution at the sentencing hearing, causing the judge to impose a harsher penalty than was recommended by

the amended plea agreement. Caraballo cites the following statements offered by the prosecutor as aggravating factors the mention of which resulted in a material breach of the plea agreement:

> The Defendant's wife, in an effort to get away from the Defendant and his violent nature, violent conduct, decided to spend the night at the neighbor's house because the Defendant, in this matter, was drunk. When he discovered that, he went and then entered the home of the neighbor, where the wife was residing temporarily, and he dragged her out of the home by her hair, like she was an animal. . . . And then when he learned that the police would be called, he then fled the scene. The people are just, based on this Defendant's criminal history, the People are concerned with his willingness to comply with a sentence that consist solely of probation. Because he has shown us that he is unable to do so in the past. The defense or the People rather, have highlighted, just now that the Defendant had a 2014 domestic violence case that was subsequently dismissed. However, Your Honor, based on the probable cause fact sheet from that case, where the Defendant was arrested, he allegedly punched his wife in the right side of her face in 2014, then pushed her in the chest backward, while she was pregnant. And as a result of that, she sustained two abrasions.

(Appellant's Br. 6) (emphasis in original). Caraballo claims that the People briefly paused to address the Superior Court and continued with their colloquy providing that:

> there was a 2018 case against the Defendant for delaying and obstructing; that case was subsequently dismissed. However, Your Honor, these cases whether or not they have been dismissed or they went forward they just indicate that the Defendant has interactions with the criminal justice system. And he has shown that he has problems abiding by the laws of this territory. While the Defendant was out on bail in that 2018 case that was subsequently dismissed, he committed the crime that we are here for today. So he couldn't even comply with the pretrial release conditions, in that matter; because if he did, we won't be here today for this case, Your Honor. The Defendant has shown that he has no respect, whatsoever, for authority; meaning law enforcement. He has no respect, whatsoever, for the Court because he was Ordered by the Court, while on pretrial release in 2018, to not violate any of the laws of this territory and he did so. Again, that is why we are here today. Now the Court has mentioned, that there are some character letters here for the presentence report. The People have had a chance to review those character letters. However, Your Honor, I would like to focus on the

> letter that was written by the Defendant himself on November 15, 2019. Where he indicates that he is asking the Court for a second opportunity so that he may continue forward with his family. This, Your Honor, will not be a second opportunity, because as I've indicated before, he was charged with domestic violence in 2014. He had another case in 2018 for delaying and obstructing. Wow, here we are again in 2019. So this appears to me to be him asking for more than just a second chance."

(J.A. 88) (emphasis in original). To further bolster his argument, Caraballo cites *Lake v. Gov't of the V.I.*, 69 V.I. 843, 851 (V.I. 2018) for the proposition that "where a plea rests in any significant degree on a promise . . . of the prosecutor, so that it can be said to be part of the inducement or consideration due process requires that the prosecutor fulfill his or her promise." (Appellant's Br. 9-10.)

¶11 When a criminal defendant fails to object to a Superior Court decision or order or fails to assert a claim in an appellate brief, this Court ordinarily reviews only for plain error. *See* V.I.S. CT. R. 4(h), *see also Francis v. People*, 52 V.I. 381, 390 (V.I. 2009). For this Court to reverse the Superior Court under the plain error standard of review, there must be (1) 'error,' (2) that is 'plain,' and (3) that 'affect[s] substantial rights.' " *Id.* (quoting *Johnson v. United States*, 520 U.S. 461, 466-67 (1997)). However, even "[i]f all three conditions are met," this Court may reverse the Superior Court "only if (4) the error seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings." *Id.* at 390-91, *see also Irons v. People*, 57 V.I. 473, 477-78 (V.I. 2012) (recognizing plenary review standard where the challenge to a guilty plea is based on a constitutional right and an abuse of discretion standard of review for a sentencing determination).

¶12 With respect to the first step of the plain error analysis, we must determine whether the People breached the plea agreement. Plea agreements are contracts, and the court must resort to contract law in interpreting the agreement or in determining whether a breach occurred. *Santobello*

v New York, 404 U.S. 257, 263 (1971); *United States v. Elashyi*, 554 F3d 480, 501 (5th Cir. 2008). In this case, we look to contract standards to determine whether the People's conduct was inconsistent with Caraballo's reasonable understanding of the agreement when he pled guilty to aggravated assault and battery, domestic violence, in violation of 14 V.I.C. § 293(3) and 16 V.I.C. § 91(b)(1) & (2) in an amended plea agreement dated October 23, 2019. (J.A. 28-29.). In determining whether the People breached the plea agreement, like Caraballo contends, this Court examines the plain meaning of the agreement itself and construes any ambiguities in the agreement against the government as the drafter." *United States. v. Williams*, 510 F.3d 416, 425 (3d Cir. 2007), *United States v. Gebbie*, 249 F. 3d 540, 545 (3d Cir. 2002).

¶13 The gravamen of the amended plea agreement provided *inter alia* that in exchange for Caraballo's plea of guilty to count five—aggravated assault domestic violence—the People would recommend that the defendant serve one year of incarceration with all but thirty days suspended, with supervised probation for the suspended term; that the defendant would actively participate in recommended treatment at Department of Mental Health, Alcoholism and Dependent Services; and that he would complete an anger management course. At sentencing, the People recommended that the Superior Court "sentence [Caraballo] in accordance with the [amended] plea agreement that was executed on October 25, 2019." (J.A. 85.) In harmony with the amended plea agreement, the People also requested completion of an anger management course and alcohol and drug dependency service that is offered via the Department of Mental Health Alcoholism and Drug Dependency.

¶14 Caraballo's claim that the prosecutor's use of aggravating factors influenced the Superior Court judge to impose a more severe sentence is unsupported by the record. The prosecutor has a duty to fulfill its promises in a plea agreement when such "a plea rests in any significant degree on

a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." *Santobello*, 404 U.S at 262. It is important when evaluating the prosecutor's allocution to note that the government must strictly comply with its agreement. *See United States v. Bowler*, 585 F.2d 851, 853 (7th Cir. 1978); *United States v. Miller*, 565 F.2d 1273, 1274 (3d Cir. 1977) ("[T]he Government must adhere strictly to the terms of the bargains it strikes with defendants."); *White v. United States*, 425 A.2d 616, 618 (D.C. App. 1980). However, *Santobello* prohibits not only explicit repudiation of the government assurances, "but must in the interest of fairness be read to forbid end-runs around them," *Santobello*, 404 U.S. at 262. Breaching a plea agreement is highly disfavored and "that the breach of [a plea] agreement was inadvertent does not lessen its impact." *Id.* "[I]t is manifest that the consideration which induced defendant's guilty plea was not simply the prospect of a formal recitation of a possible sentence, but rather the promise that a[] [prosecutor] would make a recommendation on sentencing." *United States v. Brown*, 500 F.2d. 375, 376 (4th Cir. 1974). Such a recommendation at sentencing "could reasonably be expected to be the sound advice, expressed with some degree of advocacy, of government officer familiar both with the defendant and with his record and cognizant of his public duty as a prosecutor for the United States." *Id.*

¶15 In this case, the prosecutor stated that in conjunction with the amended plea agreement the People recommended a term of one year of incarceration, with all but thirty days suspended. The prosecutor stated that she believed, due to the nature of Caraballo's offense, that some amount of incarceration, not probation, was a necessary punishment. To substantiate the basis for its recommendation, the prosecutor cited extensively to Caraballo's prior encounter with the law, which Caraballo considered aggravating and a material breach. It should not be ignored, however, that the prosecutor also stated that contact was made with Caraballo's wife, who indicated that the

couple had rekindled their relationship and that imposing a lengthy term of incarceration on Caraballo would seriously jeopardize financially their family of six. Subsequent to apprising the court of this and other similar information during allocution, the prosecutor summed up its allocution as follows:

> The Defendant and his wife, they have four children. And the People do not want to put the victim in an even worse off position by having the Defendant be incarcerated for an extended period of time, where he then can't support his family, especially when she has stressed to the People that he only behaves this way when he is drunk.

(J.A. 91.) And, accordingly, the People recommended the proposed sentence, including completion of courses for anger management and alcohol dependency. Admittedly, however, the prosecutor could have, and probably should have, advocated for Caraballo without using language like "he dragged her out of the home by her hair like she was an animal." Importantly, prosecutors must take notice that "although the government has a duty to provide the sentencing court with relevant factual information and to correct misstatements, it may not hide behind this duty to advocate a position that contradicts its promises in a plea agreement." *United States v. Munoz*, 408 F.3d 222, 227 (5th Cir. 2005); *see also United States v. Cachucha*, 484 F.3d 1266, 1270 (10th Cir. 2007) (holding that the government "owes [a] defendant a duty to pay more than lip service to a plea agreement") (internal quotation marks omitted). Given the context surrounding the prosecutor's statement, this Court cannot say that the prosecutor's statements during allocution were error, much less plain error.

B. The Superior Court's application of the law at Caraballo's sentencing violated his constitutional rights.

¶16 Secondly, Caraballo argues that the Superior Court violated Virgin Islands Rule of Criminal Procedure Rule 11 when after accepting the amended plea agreement, it failed to adopt

the recommended sentence, and instead imposed a harsher sentence. The People argue in opposition that Caraballo pled guilty under Rules 11(c)(1) and (2) of the Virgin Islands Rules of Criminal Procedure and that after the Superior Court disclosed the risk of a harsher sentence to him, he intelligently, knowingly, and voluntarily entered a plea of guilty and therefore no error occurred. This Court finds both arguments unpersuasive.

¶17 After a thorough review of the record, this Court believes that the Superior Court judge participated in the plea agreement in violation of the Virgin Islands Rules of Criminal Procedure. Although neither party raised this issue on appeal, "this Court has consistently considered issues not raised on appeal when the issue involves a plain error that affects a defendant's rights," and we further believe that the Superior Court's participation in the plea agreement will *per se* satisfy the four prongs of the plain error standard of review. *Galloway v. People*, 57 V.I. 693, 713 (V.I. 2012).

¶18 Rule 11 of the Virgin Islands Rules of Criminal Procedure governs the Superior Court's procedures for accepting or rejecting pleas and unambiguously and emphatically prohibits judicial participation in plea negotiations. Rule 11 provides that: "[a]n attorney for the government and the defendant's attorney, or the defendant, when proceeding pro se, may discuss and reach a plea agreement. The Court must not participate in these discussions without the consent of the parties." Rule 11(c)(1). Here, the trial record is devoid of any consent by either party. Rule 11's prohibition of the court's participation in plea negotiations serves very important functions, among them: "it diminishes the possibility of judicial coercion of a guilty plea; it protects against unfairness and partiality in the judicial process, and it eliminates the misleading impression that the judge is an advocate for the agreement, rather than a neutral arbiter." *United States v. Bradley*, 455 F.3d 453, 460 (4th Cir. 2006) (quoting *United States v. Cannady*, 283 F.3d 641, 644-45 (4th Cir. 2002)

(internal quotation marks omitted). Accordingly, Rule 11's "prohibition on judicial involvement in plea negotiations not only helps to ensure the voluntariness of a defendant's guilty plea [,but] it also protects the integrity of the court and preserves public confidence in the judicial system." *Bradley*, 455 F.3d at 461.[1]

¶19 In this case, the record reveals that the Superior Court violated the prohibition on the court's participation in plea agreement negotiations imposed by Rule 11, and that this participation was in error and that the error was plain. A more exhaustive review of the record demonstrates that the People and Caraballo executed a second amended plea agreement on October 23, 2019. The October 23, 2019 second amended plea agreement specified that Caraballo was charged with two counts of burglary in violation of first degree burglary, domestic violence in violation of 14 V.I.C. §§ 442(1), 442(4) and 16 V.I.C. § 91(b)(3); simple assault and battery, domestic violence in violation of 14 V.I.C. § 299(2) and 16 V.I.C. § 91(b)(1)(2); disturbing the peace, domestic violence in violation of 14 V.I.C. § 622(1) and 16 V.I.C. § 91(b)(1); and aggravated assault and battery, in violation of 14 V.I.C. § 298(3). Further, the second amended plea agreement expressly provided that "in exchange for a guilty plea to Count Five Aggravated Assault and Battery, the People will dismiss the remaining counts of the information and will recommend" the sentence of a term of one year of incarceration, with all but thirty days suspended," among other recommendations. (J.A. 29.)

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[1] Prior to the December 1, 2017 effective date of the Virgin Islands Rules of Criminal Procedure, plea agreements were governed by former Superior Court Rule 126, which permitted judges to participate in plea negotiations with or without the consent of the parties. *See Corraspe v. People*, 53 V.I. 470, 482-83 (V.I. 2010). Rule 11, by its own terms, modifies our prior precedents to now permit such judicial participation only with the parties' consent.

¶20 On October 25, 2019, the morning of Caraballo's change of plea hearing, Caraballo was prepared to plead guilty to aggravated assault and battery, but for his failure to appear. In addition to adjourning the change of plea hearing for later that day to give Caraballo's attorney some time to contact him, the Superior Court judge articulated concern that the factual basis of count five in Caraballo's second amended plea agreement was misleading. Specifically, the Superior Court judge was concerned that the victim Caraballo was charged with assaulting was his wife but count five only charged aggravated assault without the domestic violence component. The Superior Court informed the parties that "the plea offer is not written that way" and that "the factual basis has to be consistent with the charge." (J.A. 46.) In response, the prosecutor and Caraballo's attorney informed the court that the parties agreed on the charge of aggravated assault without the domestic violence charge, because, among other reasons, the People interviewed Caraballo's wife, who provided a letter indicating that she did not want to proceed and that "this plea as is to this charge was the best result," given that the parties believed that some term of incarceration and counseling would serve the interest of everyone involved. (J.A. 48.) In response, the Superior Court judge rebutted the parties contending that: "[The October 23, 2019 Second Amended Plea Agreement] is misleading though, and so – the appropriate thing would have to be – draft[ing] it in accordance with the statute. So, it would be the domestic violence, and the maximum of five years, and a minimum fine of not less than a thousand dollars." (J.A. 48-49.) Acting on the Superior Court judge's instructions, the parties abandoned the October 23, 2019 Second Amended Plea Agreement and later executed an Amended Plea Agreement dated October 25, 2019, that, in addition to aggravated assault, charged domestic violence in count five of the newly executed plea agreement.

¶21 These facts clearly demonstrate that the parties had already executed their plea agreement. The Superior Court expressed reservations about the factual basis of the amended plea agreement. Acting upon the Superior Court's instructions, the parties amended the second amended plea agreement to produce an executed amended plea agreement in conformity with the Superior Court's suggestion. The Superior Court subsequently accepted Caraballo's plea of guilty to the charge of aggravated assault and battery domestic violence and rejected the prosecutor's recommendation of one year of incarceration, with all but thirty days suspended and ultimately sentenced Caraballo to a term of three years of incarceration. The actions taken by the Superior Court contravened Rule 11's prohibition on judicial interference in the negotiation and formulation of plea agreements. The Superior Court initiated plea discussions with the parties and instructed them to add the domestic violence component to count five. The Superior Court's direct involvement produced the October 23, 2019 Amended Plea Agreement, with the amendment to count five. The Second Amended Plea Agreement was duly executed before the Superior Court Judge's comment and the court's comments caused the parties to abandon their original plea agreement and to then subsequently draft an amended plea agreement in harmony with the Superior Court's instructions. The Superior Court judge's actions and instructions can indisputably be characterized as conduct "with a view toward reaching a plea agreement," which is expressly prohibited by Rule 11 of the Virgin Islands Rules of Criminal Procedure. In effect, the Superior Court instructions successfully reopened the plea negotiations process to include the Superior Court in the renewed plea negotiations. The Superior Court's comments made it abundantly clear that it favored the inclusion of the domestic violence component. And the fact that subsequent to these comments a new plea agreement was executed, it appears that by directing the inclusion of a specific provision, added to the charge, the Superior Court acts constitute

participation in the plea negotiations in violation of Rule 11 of the Virgin Islands Rules of Criminal Procedure. Rule 11 of the Virgin Islands Rule of Criminal Procedure clearly gives the Superior Court judge the authority to reject the plea agreement with which the Superior Court did not fully agree. However, it is plain that the Superior Court cannot impose its view of what must be included in the plea agreement. *See* V.I. R. CRIM. P. 11(c)(1) ("An attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, may discuss and reach a plea agreement[, but t]he court must not participate in these discussions, without the consent of the parties.").

¶22 Since we will remand this matter to the Superior Court to conduct a plea agreement hearing consistent with the Virgin Islands Rules of Criminal Procedure, we will take the opportunity to address the parties' appellate arguments regarding how Caraballo's plea agreement was constructed and should be construed. The People provided an elaborate explanation regarding how Caraballo's amended plea agreement should be construed by this Court. The People are reminded however that Rule 11 is very specific. It would be incumbent on the People to state specifically what section of Rule 11 their plea agreement is referencing, especially since all ambiguities will be construed against the drafter, pursuant to our contract rules. *See, e.g., Williamson v. Hess*, 60 V.I. 284, 298 (V.I. 1979) (where the parties to a contract "are not at equal bargaining strength" and the contract is "prepared by the party with excessive bargaining strength who presents it to the other party for signature on a take it or leave it basis. . . . [c]ourts construe all ambiguities in such contracts against the party who prepared the contract" (citing J.D. CALAMARI & J. M. PERILLO, THE LAW OF CONTRACTS & 3 (1970) and RESTATEMENT OF CONTRACTS § 236(d) (1932)); *see also* RESTATEMENT (SECOND) of CONTRACTS § 206 (1981)) ("In choosing among the reasonable meanings of a promise or an agreement or a term thereof, that

meaning is generally preferred which operates against the party who supplies the words or from whom a writing otherwise proceeds.").

V. CONCLUSION

¶23 For the forgoing reasons, we vacate the Superior Court's December 23, 2019 judgment and commitment and remand the case to the Superior Court in order for it to conduct a plea agreement hearing consistent with Rule 11 of the Virgin Islands Rules of Criminal Procedure before a different Superior Court judge.

DATED this 21st day of September 2021.

IVE ARLINGTON SWAN
Associate Justice

ATTEST

VERONICA J. HANDY, ESQ.
Clerk of the Court

By: _____
Deputy Clerk

Dated: September 21, 2021