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## Benny Deanda Jr. Wins Retrial By Claiming His Sentence Is Too Short

When you lose a hand at poker, you might wager "double or nothing" to win back what you've lost. But first-degree murder convictions are more often one-and-done.

Yet after accepting a guilty plea in 2001, an Illinois man has won a retrial on the basis that the 30-year-sentence he is currently serving is not harsh enough.

"My client's plea is void because it was never legally allowed," Illinois Office of the State Appellate Defender Levi Harris told The Huffington Post.

Harris represents 26-year-old Benny Deanda, Jr., who after serving 10 years in prison will again go to trial for the 2001 murder of Mario Jiminez following the discovery that [the plea deal he accepted is against state law](#).

Typically, a convicted murderer in Illinois faces between 20 and 60 years in prison, with a 15 year enhancement in cases involving a firearm, Harris explains. That means that Deanda should have received a minimum 35-year deal and thus the plea deal he accepted is void.

"The Supreme Court recognized that the state has the authority to enter plea agreements on charges of its choosing; however, a trial court does not have the authority to accept a negotiated guilty plea below the mandatory minimum sentence of 35 years' imprisonment for first-degree murder with the use of a firearm," the court filing explains.

Harris discovered the error eight years after Deanda began his sentence, and only because a dismissed post-conviction petition renewed focus on the case.

"It's a situation where the plea itself is illegal, so he basically gets to start from scratch through no fault of his own," Harris said.

Now, Deanda will have a second chance to present the self defense argument his attorneys say he was persuaded to forgo nearly 10 years ago.

"People tend to think that if someone has pleaded guilty, they must be guilty," Harris said. "But if you're staring at life in prison and you're offered 30 years, you might take the deal."

Of course, Deanda hopes that by risking a minimum five additional years behind bars, the retrial will ultimately yield less prison time, perhaps by downgrading the charges upon which he is convicted to involuntary manslaughter. But it's also possible -- if not likely -- that the re-trial will lead to a harsher sentence, which could keep Deanda in prison until he's 80 years old, or even for life.

However, Chicago-based criminal defense lawyer Joel Brodsky says that the decision to seek a retrial must be a calculated one.

"You'd think the defense discovered some substantial weakness that they had not known before," Brodsky said. "And why was the state fighting so hard to keep the 30 years? Something came up after the plea that made him want a retrial."

Winning that retrial didn't come easy, though. Harris only managed to convince the court by using the precedent-setting Illinois Supreme Court case [People vs. Pierre White](#), which established that any plea bargain set by a trial court not accounting for sentencing enhancements - in this case, possession of a firearm -- will be void.

At first glance, the seemingly illogical move of pointing out a too-lenient sentence comes off as the discovery of a loophole or a technicality. But based on this precedent, as both Harris and Brodsky agree, the circumstance is simply an illegal plea.

"The state can ask why didn't he bring it up years ago," Harris says. "But when it's void it doesn't matter."

So a decade after closing the books, prosecutors will be forced to rebuild a story they thought had been laid to rest.

"It's much harder to try a case 10 years later," explained Steve Cron, a California-based criminal defense attorney. "The prosecution may be thinking they are going to have a tough time now, as they go back and start from scratch to recreate the case."

And as with Brodsky, the question of "why now?" is one that immediately came to Cron's mind.

"It makes you wonder whether [the defendant] found new evidence or if a witness is no longer available," Cron added.

New evidence or desire to argue for self-defense, Cron and Brodsky agree that Deanda is rolling the dice by reopening his case.

"Talk about playing Russian roulette, though. He's doing it," Cron says. "[Deanda] was facing almost a life sentence, so maybe from his perspective, why not take the gamble?"

Deanda's attorney thinks he has an idea why.

"If you are an innocent man, 30 years for innocence is not a good deal," Harris says. "It's a hell of a bad deal."