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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of General Sessions
The Honorable Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2024-000286

THE STATE,

Respondent,

v.

TONY TIJUAN SWEET,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUE ON APPEAL

Subject matter jurisdiction is the power of the court to hear and determine a class of cases. Sweet pleaded guilty to Trafficking in Illegal Drugs under S.C. Code §44-53-370(e)(3). 20 months later, he moved to vacate the conviction on the ground that the court did not have subject matter jurisdiction because fentanyl is not an “opium” within the meaning of the statute. Did the circuit court abuse its discretion by refusing to vacate the conviction?

STATEMENT OF THE CASE

A Greenville County grand jury indicted Appellant Tony Sweet for Trafficking in Illegal Drugs. S.C. Code Ann. §44-53-370(e). In the indictment, the State alleged Sweet violated the statute by possessing 4–14 grams of fentanyl. On May 31, 2022, Sweet pleaded guilty before the Honorable Edward W. Miller, Circuit Court Judge. In exchange for his plea, the State allowed Sweet to plead guilty to a first offense even though he was eligible to be sentenced for a second or subsequent offense. (Tr.p.13–14, 18). As a result, Sweet faced a sentence of 7–25 years instead of a mandatory minimum of 25 years. Had Sweet been indicted for PWID fentanyl third offense, he would have been facing a sentence of 10–30 years. See S.C. Code Ann. § 44-53-110, S.C. Code Ann. § 44-53-210 (c), and § 44-53-370 (b)(1). Sweet also pleaded guilty to trafficking in methamphetamine.

The case was on the trial docket when Sweet decided to plead guilty. (May 2022 Tr.p.7). Pursuant to plea agreement, Sweet agreed to work as an informant for Greenville County’s drug enforcement unit and his sentencing was delayed. (May 2022 Tr.p.11, 15). Sweet was subsequently arrested for additional drug offenses involving large quantities of cocaine, heroin, and fentanyl. (Tr.p.15).

In October 2023, Sweet filed a written motion to vacate his conviction. Sweet claimed the plea court was without jurisdiction to accept his plea because fentanyl is not an “opium” within the meaning of §370(e). On February 27, 2024, Circuit Court Judge Perry H. Gravely convened a sentencing hearing and denied Sweet’s motion to vacate. Judge Gravely sentenced Sweet to 22 years’ incarceration on both

charges. In this direct appeal, Sweet alleges the lower court erred by refusing to vacate his conviction because the court was without jurisdiction to accept his plea.

STANDARD OF REVIEW

A sentence will not be overturned absent an abuse of discretion. An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support. State v. Pogue, 430 S.C. 384, 386, 844 S.E.2d 397, 398 (Ct. App. 2020).

ARGUMENT

The trial court had subject matter jurisdiction to accept Sweet's plea to Trafficking in Illegal Drugs, and Sweet waived his right to contest his guilt by pleading guilty.

Sweet argues the trial court did not have subject matter jurisdiction to accept his guilty plea to Trafficking in Illegal Drugs because the indictment alleged he was guilty by virtue of trafficking in fentanyl, which Sweet argues does not meet the statutory definition of an "opium." See S.C. Code Ann. §44-53-370(e)(3) (prohibiting trafficking in "any morphine, opium, salt, isomer, or salt of an isomer thereof, including heroin"). An indictment is a notice document; it does not vest the court with jurisdiction. State v. Gentry makes clear that "subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong" State v. Gentry, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005) (emphasis added). "Circuit courts obviously have subject matter jurisdiction to try criminal matters." Id. at 101, 610 S.E.2d at 499. Accordingly, the circuit court had jurisdiction to accept his plea, and Sweet waived his right to contest his guilt by pleading guilty. This Court should affirm.¹

Sweet was charged with Trafficking in Illegal Drugs, a valid criminal offense. Even though the indictment alleged he was guilty by virtue of possessing fentanyl, indictments do not vest the court with subject matter jurisdiction. Id. The trial court had the power to adjudicate the charged offense of Trafficking in Illegal Drugs, and thus had subject matter jurisdiction to accept his plea. See United

¹ The State filed a brief addressing an identical argument in State v. Lillian Mae Bates, <https://ctrack.sccourts.org/public/caseView.do?csIID=78153>.

States v. Scruggs, 714 F.3d 258, 262 (5th Cir. 2013) (“Subject matter jurisdiction, or the ‘court’s power to hear a case,’ is straightforward in the criminal context. . . . To invoke that grant of subject matter jurisdiction, an ‘indictment need only charge a defendant with an offense against the United States in language similar to that used by the relevant statute.”); United States v. De Vaughn, 694 F.3d 1141, 1149 (10th Cir. 2012) (claim that indictment “does not charge a crime” based on factual allegations was not jurisdictional in nature); Downer v. State, 543 A.2d 309, 312 (Del. 1988) (explaining “where the defendant’s conduct has brought him within the jurisdiction of the court to answer the State’s allegation of criminal activity and these allegations result in plea bargaining, the error is curable and the fundamental authority of the court to accept the result of the defendant’s bargain with the State remains intact. Thus, the court’s jurisdiction is not lost simply because the result of the bargaining is a plea to a nonexistent offense.”).

Even assuming fentanyl is not covered by the Trafficking in Illegal Drugs statute, Sweet’s plea is valid. “A defendant may, as part of a plea bargain, agree to plead guilty to a crime for which he has been indicted (or to which he has waived grand jury presentment), but of which he is not guilty.” Rollison v. State, 346 S.C. 506, 510, 552 S.E.2d 290, 292 (2001). “All that is required before a plea can be accepted is that the defendant understand the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights he is waiving, and that the record reflect a factual basis for the plea.” Id. at 511, 552 S.E.2d at 292.

Sweet had notice from the indictment of the nature of the State's allegation. Nonetheless, Sweet pleaded guilty pursuant to a deferred sentencing agreement in an effort to reduce his sentence.² The plea was a rational decision based on Sweet's perceived self-interest, the result of which was to waive any defense, legal or factual, to the charged crime. By pleading guilty, Sweet waived his right to contest the State's evidence and argue that fentanyl is not included within the definition of trafficking under §44-53-370(e)(3). Having waived his right to challenge the charge, Sweet may not now change his mind and decide to contest his guilt.

Neither this Court nor the supreme court has decided whether fentanyl is included in the definition of "illegal drugs" under § 370(e)(3). The fact that counsel subsequently became aware of a non-binding order from another circuit court (in the context of a motion to quash) finding fentanyl is not covered by §370(e)(3) does not change the voluntary nature of Sweet's plea. See McPherson v. State, 38 Kan. App. 2d 276, 282, 163 P.3d 1257, 1262 (2007) (collecting cases holding a defendant may validly plead guilty to a nonexistent crime pursuant to plea bargain); North Carolina v. Alford, 400 U.S. 25 (1970) (explaining defendant may plead guilty without conceding guilt to secure benefit of plea bargain). Sweet is in a fundamentally different posture than a defendant who moves to quash an indictment rather than plead guilty and finally resolve the criminal proceeding against him.

² Even if the State had charged Sweet with PWID fentanyl third offense, Sweet would have been facing 10–30 years instead of 7–25 years. See § 44-53-370 (b)(1).

“Few principles of South Carolina criminal law are as ingrained as the notion that a knowing, voluntary, and intelligent guilty plea ‘constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights.’” State v. Sims, 423 S.C. 397, 400, 814 S.E.2d 632, 633 (Ct. App. 2018). See also State v. Thomason, 341 S.C. 524, 534 S.E.2d 708 (Ct. App. 2000) (holding defendant waived double jeopardy claim by pleading guilty); State v. Tucker, 376 S.C. 412, 418, 656 S.E.2d 403, 406 (Ct. App. 2008) (“We hold that by proceeding with his guilty plea, Tucker waived any and all defects regarding his return to state custody under the IAD.”); State v. McKinney, 278 S.C. 107, 108, 292 S.E.2d 598, 599 (1982) (“Absent timely objection at a plea proceeding, the unknowing and involuntary nature of a guilty plea can only be attacked through the more appropriate channel of Post-Conviction Relief.”).

Sweet’s plea was voluntary. If Sweet wanted to contest his guilt, it was incumbent on him to raise any factual or legal defenses instead of pleading guilty and relinquishing that right. As the McPherson court explained, “if a defendant enters into a beneficial plea agreement voluntarily and intelligently, he or she forfeits the right to attack the underlying infirmity in the charge to which he or she pled.” McPherson, 38 Kan. App. 2d at 285, 163 P.3d at 1264. Sweet’s plea was “a lid on the box, whatever is in it, not a platform from which to explore further possibilities.” Sims, 423 S.C. at 402, 814 S.E.2d at 634 (quoting United States v. Bluso, 519 F.2d 473, 474 (4th Cir. 1975)). This Court should affirm.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the conviction and sentence of the lower court be affirmed.


Respectfully submitted,

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