

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

RECEIVED

MAY 31 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DAMEON THOMPSON,

APPELLANT

APPELLATE CASE NO. 2015-001029

INITIAL BRIEF OF APPELLANT

WANDA H. CARTER
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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in denying appellant's request for a hearing on his sentencing reconsideration motion in order to argue for specific performance per the sentencing terms of the plea agreement that reflected an eight-year sentencing cap or to withdraw the guilty pleas because the outcome of the case did not reflect the terms agreed upon via the plea bargain.

STATEMENT OF THE CASE

Appellant Dameon L. Thompson pled guilty to failure to stop for a blue light (2013-GS-18-437) and trafficking in crack cocaine, first offense, (2013-GS-18-438) during the November 2014 term of the Dorchester County General Sessions Court before Judge Kristi Lee Harrington. Sentencing was deferred until the January 2015 term of the Charleston County General Sessions Court before Judge Harrington during which time appellant pled guilty to an additional seven offenses.¹ Appellant received an aggregate fifteen-year prison term on all nine of his convictions. Peter Shahid represented appellant at both proceedings, and Assistant Solicitor Nina Savas appeared on behalf of the state at both proceedings.

Appellant appealed. This brief follows.

¹ Possession with intent to distribute crack cocaine (2014-10-7267); Possession with intent to distribute cocaine (2014-GS-10-7270); Failure to stop for a blue light, second offense (2014-GS-10-7271); Failure to stop for a blue light, second offense (2014-GS-10-7275); Hit and Run (2014-GS-10-7276); Possession with intent to distribute marijuana (2014-GS-10-7273); Possession with intent to distribute cocaine (2013-GS-10-7493).

ARGUMENT

The trial judge erred in denying appellant's request for a hearing on his sentencing reconsideration motion to argue for specific performance per the sentencing terms of the plea agreement that reflected an eight-year sentencing cap or to withdraw the guilty pleas because the outcome of the case did not reflect the terms agreed upon via the plea bargain.

After petitioner pled guilty on January 8, 2015, in Charleston County to four PWID drug charges emanating from Charleston County, the trial judge honored the agreement that his prior crack cocaine trafficking drug conviction obtained in Dorchester County on November 3, 2014, would not be used as a prior for the purpose of enhancing his sentence, and that appellant would be sentenced for all five drug convictions at "the same time"...all [as] one." Sentencing Transcript p. 6, l. 19 – p. 7, l. 14. Also during the sentencing proceeding, the solicitor referenced a plea bargain reached in the case as follows:

Your Honor, as part of this plea agreement, the state is recommending eight years. This is in addition to the trafficking in Dorchester County...We are doing these all as first offenses so the defendant does not get a second strike on his record as he has a first one from the trafficking that was part of our agreement here today with the defense that the state is willing to do. And we feel that eight years is a very minimal amount in consideration of the severity of these crimes and the severity of the drug case. Sentencing Transcript p. 15, l. 18 – p. 16, l. 9.

However, instead of honoring the eight-year sentencing cap per the plea bargain, the trial judge sentenced appellant to imprisonment for an aggregate period of fifteen years on the PWID drug charges (and three years on the trafficking drug charge) in violation of the plea agreement. Sentencing Transcript p. 36, l. 18 – p. 38, l. 3.

On January 9, 2015, appellant filed a request for a hearing on his sentencing reconsideration motion in order to argue for specific performance of the plea agreement or leave to withdraw the guilty pleas in the case. Tr. _____. In the motion, trial counsel argued as follows:

The Court imposed the maximum sentence of fifteen (15) years on the possession with intent to distribute cocaine and cocaine base in indictment numbers 2014GS1007270, 2014GS1007267, and 2013GS1007493. These sentences were ordered to run concurrently with each and to run concurrent with the sentences imposed in the above referenced cases. The sentence imposed in those other matters was the maximum sentence allowed by law.

The sentence imposed by this Court was a maximum sentence even though the State negotiated a lesser included offense and recommended a sentence of almost one-half of the maximum possible sentence. In addition, the fifteen-year sentence imposed is a third more severe than the maximum sentence for the greater offense of trafficking as opposed to possession with intent to distribute.

The negotiated plea was construed so that the Defendant would be treated as a first time drug offender; however, this Court's sentence treated the Defendant as a repeat offender. While the Defendant recognizes the Court has a wide discretion in imposing a sentence of up to fifteen years for the possession with intent to distribute charges, the Court did not announce its reason for deviating from the recommended negotiated sentence of eight (8) years and for the recommended sentence by the probation office of ten years suspended upon the service of six years.

The trial judge denied the request for a hearing on the sentencing reconsideration motion and in effect the opportunity to withdraw the pleas by Order dated January 30, 2015. In the Order, the trial judge ruled that the sentences imposed upon appellant "would remain in place." Tr. _____

Specific performance is the remedy used where one has been denied a constitutionally-guaranteed right. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009), citing to Turner v. Tennessee 858 F.2d 1201 (6th Cir. 1988) and United States v. Morrison 449 U.S. 361 (1981). In

Davie, the Court held that counsel was ineffective in failing to communicate a plea offer to the defendant. Moreover, specific performance of a plea agreement is an allowable remedy. In Sprouse v. State, 355 S.C. 335, 585 S.E.2d 278 (2003), the case was remanded for specific performance on the plea agreement where counsel was ineffective in failing to ensure that the state adhered to the original plea agreement in order to grant the defendant the benefit of the bargain. In Sprouse, supra, the plea agreement breach was the solicitor's classification of the defendant's second-degree burglary offense as violent because this deviated from the plea agreement. See also Custodio v. State, 373 S.C. 4, 644 S.E.2d 36 (2007), where the case was remanded for specific performance where counsel was ineffective in failing to have a plea agreement enforced because the defendant detrimentally relied on the promised plea bargain. In Custodio, supra, there was a breach of a plea agreement that included a fifteen-year cap on non-violent burglary charges in exchange for the defendant's cooperation in returning stolen items and where there was reliance on the plea bargain by the defendant when he pled guilty in the case. In Jordan v. State, 247 S.C. 52, 374 S.E.2d 683 (1988), the Court remanded the case for specific performance on the plea agreement where the solicitor did not fulfill his promise not to oppose probation at the plea proceeding according to the plea agreement. See also Smith v. State, 413 S.C. 194, 775 S.E.2d 696 (2015), affirming reversal in Smith v. State, 407 S.C. 270, 754 S.E.2d 900 (S.C. Ct. App. 2014), and Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000). In Thompson, and Smith, the Court remanded for specific performance in both cases on both of the plea agreements where both of the solicitors promised not to make sentencing recommendations on the defendants' voluntary manslaughter pleas, but breached the agreements and asked for maximum sentencing in those cases.

As a rule, once a defendant enters a guilty plea and the plea is accepted by the court, due process requires that the plea bargain be honored. State v. Thrift, 312 S.C. 282, 440 S.E.2d 341

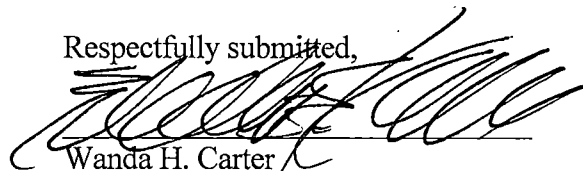
(1994); Santobello v. New York, 404 U.S. 257 (1971). Prosecutors are obligated to fulfill the promises they make to defendants when the promises are inducements to plead guilty. State v. Miller, 375 S.C. 370, 652 S.E.2d 444 (2007). Breached plea agreements will invalidate guilty pleas. Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000). In Thompson, there was a breached plea agreement in existence in appellant's case, and thus the trial judge erred in failing to hold a hearing to entertain the motion for specific performance or a request for the withdrawal of appellant's guilty pleas. The Thompson Court struck down a guilty plea where the plea agreement in that case was violated because the solicitor promised that there would be no specific sentencing recommendation requested in the case, but yet recommended the maximum sentence of thirty years at sentencing after the defendant plead guilty to voluntary manslaughter. Appellant was prejudiced because the sentence he received was greater than the sentence agreed upon via the plea bargain.

In the case at bar, the solicitor promised that appellant's guilty plea on the drug charges would result in an eight-year sentence per the terms of the plea bargain, but appellant did not receive the benefit of the plea bargain as he received a fifteen-year sentence in the case.

CONCLUSION

Based on the foregoing argument, petitioner requests that his sentences be vacated and his case remanded to the lower court for a new sentencing proceeding.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 31st day of May, 2016.

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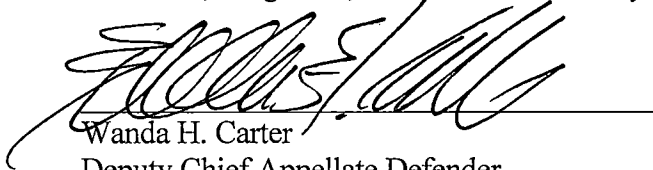
V.

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CERTIFICATE OF SERVICE

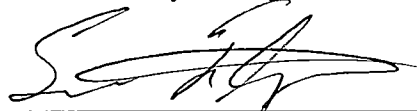
The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Dameon Lamar Thompson, #362864, at Macdougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, SC 29472 this 31st day of May, 2016.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 31st day of May, 2016.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: October 30, 2022.