ARIZONA SUPREME COURT

STATE OF ARIZONA, Petitioner, v. BENNETT LAQUAN WILLIAMS, Respondent.	CR- Court of Appeals No. 1 CA-CR 22-0197 PRPC Maricopa County Superior Court No. CR 2016-002220-001

PETITION FOR REVIEW

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I. Issue presented for review

Whether the Court of Appeals erred by finding that a plea agreement is void when a marijuana-related conviction that was used to enhance its sentence has been expunged pursuant to A.R.S. § 36-2862.

II. Additional issues presented but not decided

All issues presented were decided by the Court of Appeals. The Court of Appeals also held that Williams' claims, raised in a third petition for post-conviction relief, were not precluded; and that the expungement provisions of the Smart and Safe Arizona Act, A.R.S. § 36-2862, apply retroactively.

III. Background

In 2017, Respondent Bennett LaQuan Williams pled guilty to two counts of sex trafficking, both class 2 felonies. *State v. Williams*, ___ Ariz. ___, 2023 WL 1977216, at ¶ 1 (App. 2023) (the "Opinion", attached as Appx. A). These were non-dangerous offenses but were repetitive by virtue of a 2004 felony conviction for possession or use of marijuana. *Id.* Including the marijuana conviction, Williams avowed to having no more than seven prior felony convictions in any jurisdiction. *Id.*; (*see also* Appx. B, Plea Agreement at ¶ 5; Appx. C, State's Allegation of Historical Priors). The plea agreement listed the appropriate category 2 sentencing ranges. (Appx. B at ¶ 1.) The parties stipulated to concurrent

sentences of 12 years, just above the presumptive, (*id.* at ¶ 2), which the trial court followed at sentencing, *Williams* at ¶ 1.

In the 2020 General Election, Arizona voters adopted Proposition 207, enacting into law the Smart and Safe Arizona Act (the "Act"). *Id.* at ¶ 2. The Act legalized possession and use of small amounts of marijuana and, relevant to this matter, allowed expungement of certain marijuana convictions such as Williams' 2004 conviction. *See* A.R.S. § 36-2862(A), (C)(1)(a).

The 2020 General Election publicity pamphlet provided to all Arizona voters (the "Publicity Pamphlet") described the Act's "[f]indings and declaration of purpose" and did not mention the expungement provisions, but did cite "the efficient use of law enforcement resources." (Appx. D at 56.)[1] The final page of the Publicity Pamphlet dedicated to the Act provided a "descriptive title" of the Act and a summary of a "yes" vote, both stating the Act would allow for expungement of marijuana offenses. (*Id.* at 126.) These portions of the Publicity Pamphlet are reproduced on page 14 of the Petition.

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[1] The State appends to the Petition only the cover page and pertinent pages of the Publicity Pamphlet and cites to the page number appearing on the document itself.

Williams successfully petitioned for expungement of his 2004 marijuana conviction; consequently, the conviction supporting the stipulated sentence and category 2 sentencing ranges in Williams' plea agreement lacked any legal effect. *Williams* at ¶ 2. Williams filed a pro se petition for post-conviction relief requesting resentencing as a category 1 offender, which the trial court denied. *Id.*; (Appx. E, Order Denying PCR). Williams then obtained counsel and filed a petition for review with the Court of Appeals. (Appx. F.) The State responded, agreeing that he was entitled to resentencing. (Appx. G; *see also* Appx. H, Williams' Reply Brief.)

The Court of Appeals issued an Opinion in which it applied contract principles to conclude that expungement of the marijuana conviction supporting Williams' enhanced sentence was a material alteration of the plea agreement "frustrating its purpose." *Williams* at ¶ 15 (quotation omitted). Because the court "lack[ed] authority to order Williams to be resentenced pursuant to a modified plea as both Williams and the State request," the court vacated the plea agreement entirely and reinstated Williams' charges. *Id.* at ¶¶ 15–16.

This Petition follows.

IV. This Court should grant review because the Court of Appeals erred by applying contract principles without considering vital policy concerns or the intent of the voters in approving the Act.

The Court of Appeals erred by failing to recognize that this case presents an instance where courts "are not . . . obligated to apply a contract analysis to plea agreements because contract law may not provide a sufficient analogy." *Coy v. Fields*, 200 Ariz. 442, 445, ¶ 9 (App. 2001) (citations omitted). Policy concerns and the intent of the voters in passing the Act require that the Opinion be vacated. This Court should hold where a conviction pursuant to a plea agreement was enhanced by a now-expunged marijuana conviction, the sentence is vacated but the guilty plea remains in effect. The State may then prove another historical prior which supports resentencing the defendant at the original category; alternatively, the defendant may be resentenced at the now-applicable lower category. A.R.S. § 13-703(H)–(J).

The Petition presents an issue of law arising out of contract, which this Court reviews de novo. *JTF Aviation Holdings, Inc. v. CliftonLarsonAllen LLP*, 249 Ariz. 510, 513, ¶ 14 (2020) (citation omitted).

A. Expungement of a marijuana conviction supporting an enhanced sentence in a plea agreement voids only the sentence, not the entire plea.

"Plea agreements are contractual in nature and subject to contract interpretation." *Coy*, 200 Ariz. at 445, ¶ 9 (citations omitted). In *State v. Szpyrka*,

the Court of Appeals applied strict contract principles to vacate a plea agreement where an historical prior conviction supporting its enhanced sentence was vacated due to a *Brady* violation recognized on direct appeal. 223 Ariz. 390, 391, ¶¶ 1–2 (App. 2010). The court noted the general rule that "where a plea agreement is materially altered by the nullification of one of its provisions, frustrating the agreement's purpose, rescission of that agreement *may* be warranted." *Id.* at 392, ¶ 5 (citing, *inter alia*, *Coy*, 200 Ariz. at 445, ¶ 8) (emphasis added). Under the facts of that case, the court answered the open question—whether rescission of the entire agreement *may* be warranted—affirmatively. *Id.* at 392–94, ¶¶ 5–9.

1. Even applying contract principles alone, the Court of Appeals erred.

Because the Act rendered Williams' marijuana conviction expungable, but did not automatically expunge it, Williams' plea agreement was not void but voidable. *Yank v. Juhrend*, 151 Ariz. 587, 589 (App. 1986) ("According to the Restatement (Second) of Contracts § 7 (1979), '[a] voidable contract is one where one or more parties have the power, by a manifestation of election to do so, to avoid the legal relations created by the contract, or by ratification of the contract to extinguish the power of avoidance.'"). If "the original situation of the parties can be and is restored substantially," then avoidance may be permitted. Restatement (Second) of Contracts § 7 (1981) ("Restatement"). But as described later in this Petition, depending on the age of the plea agreement it may be impossible to

restore the parties to their pre-plea positions due to evidence becoming stale; therefore, contract law would prohibit avoidance of the plea agreement.

Furthermore, the Act likely constitutes supervening governmental action: the plea was entered under the "basic assumption . . . that the law will not directly intervene to make performance impracticable." Restatement at § 264. The plea agreement's sentence may therefore be voided under the doctrine of partial impracticability of performance, by which Williams "can render a reasonable substitute performance in place of the impracticable part"—a modified sentence agreed to by the parties. *Id.* at § 270.

But contract law may not permit even that, and instead would bar Williams from voiding the plea agreement at all: "a party who seeks to justify his non-performance under this Section must have observed the duty of good faith and fair dealing imposed by § 205 in attempting, where appropriate, to avoid [the new law's] application." Restatement at § 264(b). By proactively petitioning for expungement of the marijuana prior, Williams did the opposite of avoiding the new law's application. But surely a defendant cannot be punished for seeking expungement of a prior conviction. *Cf. State ex rel. Polk v. Hancock*, 237 Ariz. 125, 129, ¶ 9 (2015) ("This policy would be severely compromised if the state and a defendant could bargain away the defendant's ability to lawfully use medical marijuana.") It is therefore necessary to diverge from the tenets of contract law.

1. This case merits diverging from strict contract principles.

Courts "are not obliged to follow blindly the law of contracts in assessing plea agreements" because "cases may arise in which the law of contracts will not provide a sufficient analogy and mode of analysis." *State v. Taylor*, 196 Ariz. 549, 551, ¶ 8 (App. 1999) (quoting *United States v. Carrillo*, 709 F.2d 35, 36–37, n.1 (9th Cir. 1983)) (cleaned up). Other jurisdictions have approved such a break from contract law to allow courts to determine "what is fair in the circumstances by reference to public policy considerations outside the law of contract." *Rojas v. State*, 450 A.2d 490, 493 (Md. Ct. Spec. App. 1982) (citations omitted).

Here, the Court of Appeals erred by failing to recognize discrete considerations—"public policy considerations outside the law of contract"—which merit departure from the "usual disposition" applied in cases like *Szpyrka*. Unlike *Szpyrka*, which acknowledged that rescission is not mandated but "may be warranted," the facts of this case—consideration of the Act, its purpose, and policy implications—demand vacating the sentence while leaving intact the guilty plea.

Vacating the sentence alone is not only consistent with important contract principles, but also ensures a result that does not cross vital policy concerns regarding plea bargaining. First, the State's proposed rule aligns with "the parties' expectations" that the original plea "will be honored by the other party and second, that redress is available when necessary in the courts." *Santobello v. New*

York, 404 U.S. 257, 260–62 (1971). Expungement of a prior conviction supporting an enhanced sentence voids that sentence; but an enhanced sentence becoming retroactively illegal, such as what occurred here, does not violate the parties' expectations when they entered the plea. This is consistent with the norm recognized by this Court that "[a] plea bargain properly entered into and adhered to by the parties should not be set aside because of changes in the law occurring after the plea." *State v. Nunez*, 109 Ariz. 408, 411 (1973).

The plea was properly entered into and adhered to—certainly, the sentence being rendered illegal by a completely unrelated voter initiative years later cannot be said to have been an "impermissible inducement" correctable only by vacating Williams' plea. *Contra Chae v. People*, 780 P.2d 481, 486 (Colo. 1989) (vacating a plea agreement "because the basis on which the defendant entered the plea included the impermissible inducement of an illegal sentence"). The core of the plea agreement—Williams' knowing, intelligent, and voluntary admission of guilt to a discrete crime—should not be affected at all. Vacating only the sentence aligns with the parties' expectations by keeping the plea in place, while also providing the parties with proper redress by the courts: resentencing procedures.

Even if the State is permitted to prove another of the six felony convictions to which Williams avowed, he retains the benefit of his original bargain. This is neither a surprise outcome nor is it inconsistent with the plea agreement—it is

merely the substitution of another valid historical prior that, by chance, was not selected at the time to support the sentence agreed to by the parties. *See United States v. McIntosh*, 612 F.2d 835, 837 (4th Cir. 1979) ("With predictability and reliance as the foundation of plea bargaining itself, we must apply fundamental contract and agency principles to plea bargains as the best means to fair enforcement of the parties' agreed obligation."). Had the State known in 2017 that marijuana convictions were soon to become expungable, a different historical prior would have been selected to support Williams' sentence. But the State is not charged with the duty of prophecy: when illegal acts are later legalized by voter initiative, defendants should not receive the windfall endorsed by the Opinion.

The Court of Appeals saw no reason not to rely on *Szpyrka*, but this case is not *Szpyrka*. There, the prior conviction enhancing the plea was vacated on direct appeal—a process bound by the strict time limits of Criminal Rule 31.2(a)(2). The enhancing prior conviction necessarily occurred in close temporal proximity to the subsequent plea agreement voided by the reversal of the prior conviction. *See Szpyrka*, 223 Ariz. at 391, ¶¶ 1–2. Here, the Act has no time constraints for expungement and therefore presents distinguishable "public policy considerations outside the law of contract" which merit departure from the general rule. *Rojas*, 450 A.2d at 493. The Court of Appeals failed to acknowledge this distinction.

Instead, the Opinion mints get-out-of-jail-free cards for defendants imprisoned for years- or even decades-old serious crimes that were resolved by plea agreements stipulating to sentences enhanced by then-valid marijuana convictions. If such plea agreements—and therefore convictions—are voided and the charges reinstated, the defendants may choose not to enter a new plea, recognizing the severe difficulty, even impossibility, of the State carrying its burden so many years later. The Opinion nullifies the defendant's voluntary admission of guilt; the State is forced to offer a new plea; and the defendant will realize that in the many years that have passed since his original plea, the evidence against him has become stale. Witnesses' memories will have faded, or they may be unavailable for several reasons. The Opinion puts that defendant in the position to reject any new plea offer and force the State to trial regarding old crimes that can no longer be proved—crimes which the defendant already admitted he is guilty of. In its rush to apply contract principles, the Opinion overlooks this intolerable result. *Cf. State v. King*, 250 Ariz. 433, 440, ¶ 31 (App. 2021), *review denied* (July 26, 2022) (recognizing the "critical interest in finality" and citing, *inter alia*, Justice Pelander's concurrence in *State v. Miles*, 243 Ariz. 511, 519, ¶ 35 (2018), stating that allowing a petitioner to seek relief "decades later based solely on newly discovered mental-health evidence and expert opinions seems at odds with the interests of finality and victim rights" (cleaned up)).

Just as concerning is the potential effect on victims—at least those still available—who will learn that the traumatic event they believed long-ago concluded by the justice system is now back to pre-trial posture. Their perpetrator's admission of guilt in open court has been thrown out—and thrown out for the ridiculous reason that an older and unrelated marijuana conviction was expunged. Worse still, depending on the evidence available after all this time, some victims will see their perpetrators go free without any conviction at all. The Opinion will unnecessarily open old wounds, is contrary to justice, and stands in defiance of Arizona's well-established policy of protecting victims—specifically, it contravenes the Arizona Constitution's guarantee to victims of a "prompt and final conclusion of the case after the conviction and sentence." Ariz. Const. art. 2, § 2.1(A)(10). These concerns alone merit departure from strict contract principles. This Court should hold that when a guilty plea contains a sentence enhanced by a marijuana conviction that has been expunged pursuant to the Act, the sentence is void; but the guilty plea remains effective.

Finally, even if this Court does not believe the State should be permitted to prove another prior to support resentencing the defendant at the original category of the plea agreement, the Court should hold that the trial court and parties may modify the plea agreement so its sentencing provisions embrace the newly appropriate (lower) sentencing category. Williams urged this very position before

the Court of Appeals. Unlike the Opinion, this result aligns with the principles of plea bargaining, the dire policy concerns raised above, and the voters' intent when they approved the Act.

B. The voters did not approve the Act to void plea agreements for crimes unrelated to possession of marijuana.

As just described, the Opinion empowers the Act to expunge not only marijuana offenses, but potentially much more serious crimes if the conviction was by guilty plea and the sentence was enhanced by a prior marijuana conviction. It was not the intent of the voters to vacate guilty pleas for any crime that falls outside the immunity grants of the Act—and it certainly was not their intent to do so when those crimes may now be impossible to prove.

This Court's "primary objective in interpreting a voter-enacted law is to effectuate the voters' intent." *Ariz. Citizens Clean Elections Comm'n v. Brain*, 234 Ariz. 322, 324–25, ¶ 11 (2014) (citations omitted). To the extent this case is viewed through the lens of whether the Opinion is consistent with the voters' intent, the answer is clearly no. The Act provides for expungement only of marijuana offenses within the parameters of A.R.S. § 36-2862(A). A plain reading of that statute reveals that the voters did not intend to immunize sex trafficking from criminal prosecution, much less void a knowing, intelligent, and voluntary plea to two counts of the crime. And yet that is the real effect of the Opinion.

When considering the myriad ramifications of voting in favor of Proposition 207, the voters never dreamed of the consequence created by the Opinion. The relevant portions of the Publicity Pamphlet are reproduced below:

Section 2. Findings and declaration of purpose

The People of the State of Arizona find and declare as follows:

1. In the interest of the efficient use of law enforcement resources, enhancing revenue for public purposes, and individual freedom, the responsible adult use of marijuana should be legal for persons twenty-one years of age or older, subject to state regulation, taxation, and local ordinance.

2. In the interest of the health and public safety of our citizenry, the legal adult use of marijuana should be regulated so that:

(a) Legitimate, taxpaying business people, and not criminal actors, conduct sales of marijuana.

(b) Marijuana sold in this state is tested, labeled and subject to additional regulations to ensure that consumers are informed and protected.

(c) Employers retain their rights to maintain drug-and-alcohol-free places of employment.

(d) The health and safety of employees in the marijuana industry are protected.

(e) Individuals must show proof of age before purchasing marijuana.

(f) Selling, transferring, or providing marijuana to minors and other individuals under the age of twenty-one remains illegal.

(g) Driving, flying or boating while impaired to the slightest degree by marijuana remains illegal.

DESCRIPTIVE TITLE

THE LAW WOULD ALLOW LIMITED MARIJUANA POSSESSION, USE, AND CULTIVATION BY ADULTS 21 OR OLDER; AMEND CRIMINAL PENALTIES FOR MARIJUANA POSSESSION; BAN SMOKING MARIJUANA IN PUBLIC; IMPOSE A 16% EXCISE TAX ON MARIJUANA SALES TO FUND PUBLIC PROGRAMS; AUTHORIZE STATE/LOCAL REGULATION OF MARIJUANA LICENSEES; AND ALLOW EXPUNGEMENT OF MARIJUANA OFFENSES.

A "YES" vote shall have the effect of allowing adults 21 years or older to use, possess, or transfer up to one ounce of marijuana and cultivate for personal use not more than six marijuana plants at a primary residence; banning smoking marijuana in public places and open spaces; amending criminal classifications and penalties for marijuana possession and use; allowing the retail sale of marijuana at licensed establishments; imposing a 16% excise tax on marijuana sales to fund community colleges, infrastructure, public safety, and public health programs; authorizing state and local regulation of the sale and production of marijuana by a capped number of licensees; and allowing courts to vacate and expunge certain marijuana arrests, charges, adjudications, convictions, or sentences.	**YES** ☐

(Appx. D at 56, 126.) No part of the Publicity Pamphlet indicated that the expungement provision of the Act may result in throwing out a guilty plea to *any crime* so long as it was pled to and its sentence was enhanced by a prior marijuana conviction.

Even the most eager, well-informed voter would not have considered such an outcome: none of the 102 arguments "against" Proposition 207 raised the concern, nor did the 10 arguments "for." (*Id.* at 79–125.) In fact, the opposite sentiment was expressed in the first argument supporting the Act: "[L]egalization will also free up our clogged criminal justice system to focus on serious crimes." (*Id.* at 79.) An admirable aim; but instead, the Opinion vacates guilty pleas to serious crimes that the State may now, several years later, be unable to prove.

The voters approved the Act but never imagined, and certainly did not intend, that it would provide the kind of windfall granted by the Opinion. Expungement pursuant to the Act should never void guilty pleas to other non-marijuana crimes.

V. Conclusion.

The Court of Appeals erred by strictly applying contract principles to plea agreements that had sentences enhanced by now-expunged marijuana priors. The Opinion failed to account for unconscionable outcomes, and ignored the intent of

the voters in approving the Act. The State urges this Court to accept review and reverse.

SUBMITTED this 20th day of March, 2023.

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