

ARIZONA SUPREME COURT

STATE OF ARIZONA,

Petitioner,

v.

BENNETT LAQUAN WILLIAMS,

Respondent.

Arizona Supreme Court  
No. CR-23-0068-PR

Arizona Court of Appeals  
No. 1 CA-CR 22-0197 PRPC

Maricopa County Superior Court No.  
CR2016-002220-001

**RESPONSE TO PETITION FOR REVIEW**

Randal McDonald (#032008)  
Robert Dormady (#031755)  
POST-CONVICTION CLINIC  
Sandra Day O'Connor College of Law  
111 E. Taylor St.  
Phoenix, Arizona 85004  
Telephone: 480-965-2874  
[Randal.Mcdonald@asu.edu](mailto:Randal.Mcdonald@asu.edu)  
[Robert.Dormady@asu.edu](mailto:Robert.Dormady@asu.edu)

Attorneys for Respondent  
Bennett Laquan Williams

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## **INTRODUCTION**

Respondent Bennett Williams agrees with the State that the court of appeals erred by completely vacating the plea agreement and reinstating the original charges against him. He also agrees with the State the remainder of the court of appeals' opinion, which holds that Prop. 207 is a change in the law that applies to him, is correct.

Mr. Williams disagrees with the State in only one respect – he disagrees that the State should be able to allege new priors that were specifically disallowed in the parties' original plea agreement. The State should not be permitted to effectively rewrite the plea agreement years after it was executed.

## **QUESTION PRESENTED**

Whether the court of appeals erred by voiding Mr. Williams entire plea agreement when he expunged a marijuana conviction that was utilized as a prior felony offense to enhance Mr. Williams' sentence.

## **FACTUAL BACKGROUND**

Respondent does not object to the factual background presented in the State's Petition for Review.

## **MR. WILLIAMS AGREES THAT THIS COURT SHOULD GRANT REVIEW FOR THE LIMITED PURPOSE OF VACATING PARAGRAPHS 14-17 OF THE COURT OF APPEALS OPINION**

The State and Mr. Williams agree on most of the issues in this case. They agree that paragraphs 1-13 of the court of appeals opinion, in which the court of appeals holds that A.R.S. § 36-2862, the Smart and Safe Arizona Act, enacted by

Arizona voters in 2020 (“Prop. 207”) is a change in the law that entitles Mr. Williams to relief. *State v. Williams*, 524 P.3d 1172, 1176 (Ariz. Ct. App. 2023) (“[I]f a prior conviction used to make an offense repetitive is later vacated, the resulting sentence is no longer valid.”). They also agree that paragraphs 14-17 of the opinion, in which the court of appeals holds that the proper remedy is “vacating the plea agreement (and resulting convictions and sentences) [and] reinstating the original charges,” *id.* at 1177, is an improper remedy, and that this Court should instead “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,” State’s PR at 5. And they agree that the proper remedy is a remand to the trial court for a resentencing. *Id.* Mr. Williams joins fully in those portions of the State’s Petition for Review.

The State and Mr. Williams disagree in only one respect – Mr. Williams does not believe that the State should be able to “prove another historical prior which supports resentencing at the original category.” State’s PR at 5. Were the State able to do that, it would effectively be able to unilaterally impose a new and different plea agreement – one to which the parties never agreed. Instead, the State must be held to its end of the plea agreement, and may not allege any of the six prior offences referenced in paragraph 3 of the plea agreement as historical priors. *See* Appx. B,

Plea Agreement at ¶ 3.<sup>1</sup> However, because the State has not attempted to prove any additional priors at resentencing – and because there is no factual basis for those priors in the record – this Court should not decide this issue until it has been presented to the superior court and the court of appeals.

**I. The State has not yet alleged any additional priors, so this Court need not decide whether it should be able to do so.**

In general, a petition for review to this Court may only address “issues that were decided by the Court of Appeals that the petitioner is presenting for Supreme Court review.” Ariz. R. Crim. P. 31.21 (d)(1)(A). Because neither the superior court nor the court of appeals have addressed the question of whether the State may allege priors other than those contemplated by the plea agreement when the priors alleged in the plea agreement are vacated, this Court should not address that issue. *See State v. Ramirez*, 126 Ariz. 464, 468 (App.1980) (appellate court will not consider on review claims not raised below). This is so because this Court should not address an issue that has not been squarely presented – and which may not be presented – to the trial court. Accordingly, the question of whether the State can allege new and different priors at Mr. Williams’ resentencing is an issue that has not been factually developed because it presents a scenario that has not yet occurred. This Court should refrain from issuing an opinion on this matter at this time.

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<sup>1</sup> References to “Appx.” Are to the Appendix attached to the State’s Petition for Review.

When the State alleges a prior felony conviction to enhance a defendant's sentence, the existence of that conviction is a question of fact that must be found by the trial court. *State v. Morales*, 215 Ariz. 59, 61 ¶ 6 (2007). "This is generally accomplished through a hearing in which the state 'offer[s] in evidence a certified copy of the conviction ... and establish[es] the defendant as the person to whom the document refers.'" *Id.* (quoting *State v. Lee*, 114 Ariz. 101, 105 (1976)). Because the State has not made the requisite showing, and because the Defendant has not admitted to any other prior convictions after a colloquy pursuant to Rule 17.6, *see Morales*, 215 Ariz. at 61 ("Rule 17.6 applies equally to an admission by a defendant and a stipulation by defense counsel to the existence of a prior conviction."), this Court has no record of any factual findings to review.

At a resentencing hearing, the State may move to withdraw from the plea and allege other historical priors. If that were the case, the Defendant would have a right to object to both the State's withdrawal from the plea and the assertion of other, unpled prior convictions. But until the resentencing occurs, there is no record upon which this Court could make any evaluation of the legality of either of those acts. Accordingly, this Court should not rule on the question of whether any additional prior felony convictions may be alleged at the resentencing until the superior court has had an opportunity to rule on such a request in the first instance. *See Schaefer v.*

*Murphey*, 131 Ariz. 295, 299 (1982) (“As an appellate court, we are confined to reviewing only those matters contained in the record”).

**II. Should this Court decide to take up the question, it should hold that the State cannot now allege the previously dismissed convictions.**

The State undertook the risk of only alleging a marijuana offense in plea bargaining and Mr. Williams did not breach the plea agreement. The State must fulfill its promises made in plea bargaining and bears the risk if a provision turns out to be unenforceable. *Santobello v. New York*, 404 U.S. 257, 262 (1971); *Coy v. Fields*, 200 Ariz. 442, 446 ¶ 13 (App. 2001). In *Santobello*, the United States Supreme Court held that “when 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.” 404 U.S. at 499.

In Mr. Williams’ case, the State’s promise not to allege any historical priors other than the marijuana conviction induced Mr. Williams to take the plea, and thus must be fulfilled. The plea agreement specifically notes that the State believed Mr. Williams had other prior felony convictions that it could have alleged at his original sentencing. Indeed, the plea agreement explicitly states that the allegation of Mr. Williams’ previous convictions, with the exception of his admitted marijuana conviction, “*shall* not be brought against the Defendant by the Maricopa County Attorney’s Office” *See* Appx. B, Plea Agreement at ¶ 3 (emphasis added). Therefore, at sentencing, the State did not argue, and the Court did not find, that Mr.

Williams had any other prior felony convictions that could have enhanced his sentence. The State should be held to their word and should not be given a second bite at the apple by nullifying a commitment that it made when selecting which prior conviction should be used against Mr. Williams in the plea agreement.

Moreover, the State bears the risk when a provision in one of its plea agreements proves to be illegal and unenforceable. *Fields*, 200 Ariz. 442, 446 ¶ 13. In *Fields*, the defendant entered into a plea agreement with the state where he pled guilty to a class six felony. *Id.* at 443 ¶ 2. The maximum term of probation for a class six felony is three years. *Id.* at 443 ¶ 3. However, the plea stated that “defendant may be placed on lifetime probation.” *Id.* Because of the provision, the defendant was sentenced to 15 years of probation, making the agreement illegal and unenforceable under statutory law. *Id.* at 446 ¶ 13. When the defendant filed a motion to have his term reduced to the three-year maximum, the state argued that the sentence was a material provision of the plea agreement because the prosecutors dropped certain charges in exchange for the extended probation. *Id.* at 445 ¶ 8. The Arizona Court of Appeals rejected that argument and remanded the case for sentencing anew because the original sentence was illegal and void. *Id.* at 446 ¶ 14. In other words, the State is “accountable for knowing Arizona law when it negotiates, drafts, and enters into plea agreements.” *Id.* at 446 ¶ 13. In Mr. Williams' case, the State did comply with statutory law at the time of the plea, but it accepted

an obvious risk that the laws concerning the legality of marijuana would likely change. By the reasoning in *Fields*, the State must bear the burden when a provision in its plea deal turns out to be unenforceable.

Furthermore, once the court accepts a plea, the State generally may not withdraw from the agreement, unless the defendant breached his obligations under the agreement, because jeopardy attaches. *Dominguez v. Meehan*, 140 Ariz. 329, 331 (App. 1983), *approved*, 140 Ariz. 328 (1984)); *see also Ricketts v. Adamson*, 483 U.S. 1, 4 (1987). Unlike the defendant in *Ricketts*, Mr. Williams did not breach any plea obligation by applying for marijuana expungement, so it follows that the State may not withdraw from the plea agreement.

Finally, while Mr. Williams accepts that the State does not have prophetic foresight, it is not unfair to expect reasonable foresight. In fact, the State could have foreseen that marijuana laws were likely to change in the future. This factually distinguishes Mr. Williams's case from *State v. Szpyrka*, where the defendant entered a plea agreement in which the state alleged one historical prior felony conviction and agreed to dismiss all other charges. 223 Ariz. 390, 391 ¶ 1 (App. 2010). When that alleged prior was later vacated due to constitutional violations, the court permitted the State to withdraw from the plea agreement, holding that the State was in no better position than defendant to know the prior conviction ultimately would be vacated, and thereby render illegal the enhanced sentence. *Id.* at 393 ¶ 8.

However, here, unlike in *Szpyrka*, the State *was* in a better position than the defendant to know that the prior conviction alleged in the plea would eventually render the plea invalid. At the time of the plea offer—August 2017—eight states and Washington, D.C. had already passed laws legalizing recreational marijuana.<sup>2</sup> Indeed, Arizona itself had legalized the use of marijuana for certain medical uses. *See* A.R.S. § 36-2802 (Arizona Medical Marijuana Act). In addition, the same year Mr. Williams was sentenced, Prop. 205 was proposed to legalize marijuana in Arizona. Although that initiative failed to make the ballot that year, the State could have foreseen that marijuana laws would likely change in the near future and could have chosen to allege a different prior conviction instead.

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<sup>2</sup> Another reason that this Court should defer ruling on this issue until the superior court has had the opportunity to consider it in the first instance is that there is no significant record on this issue and no evidence concerning the state of marijuana laws in other jurisdictions has been submitted to the superior court. Because the superior court declined to even grant a resentencing, there was no opportunity for the parties to offer evidence in support of their respective arguments on this issue. *See State v. Schackart*, 190 Ariz. 238, 247 (1997) (holding appellate court “does not act as a fact-finder” and “generally [does] not consider materials that are outside the record on appeal”).

## CONCLUSION

Mr. Williams joins in the State's request that this Court vacate paragraphs 14-17 of the court of appeals opinion, while maintaining the rest of the opinion. Mr. Williams further joins in the State's request that this Court remand this case to the superior court for resentencing on the original plea offer.

However, Mr. Williams respectfully requests that this Court not issue an order which permits the State to allege new and unpled prior convictions as sentencing enhancements. Instead, Mr. Williams should be resentenced to a lower level of repetitive offender.

April 14, 2023

Respectfully submitted,

### POST-CONVICTION CLINIC

By: *s/ Randal McDonald*

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Randal McDonald  
Robert Dormady  
Randy@rbmcdonaldlaw.com  
111 E. Taylor St.  
Phoenix, Arizona 85004  
Telephone: 480-965-2874

Attorneys for Respondent  
Bennett Laquan Williams