

ARIZONA SUPREME COURT

STATE OF ARIZONA,

Petitioner,

v.

BENNETT LAQUAN WILLIAMS,

Respondent.

No. CR-23-0068-PR

Court of Appeals

No. 1 CA-CR 22-0197 PRPC

Maricopa County Superior Court

No. CR 2016-002220-001

STATE OF ARIZONA'S SUPPLEMENTAL BRIEF

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I. Introduction

This Court granted review of the State’s Petition for Review and asked the parties to address an additional issue:

1. 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 the Smart and Safe Arizona Act, A.R.S. § 36-2862 (the “Act”); and
2. If so, may the State allege a different prior conviction to enhance the sentence?

(ASC Minute Letter dated 08/23/2023.)

The parties agree that the Court of Appeals erroneously voided the plea agreement. Not only did the Court of Appeals deprive the parties of their bargained-for benefit, but voiding the plea agreement results in an intolerable situation where defendants may strategically decide to forego a subsequent plea offer and potentially avoid prosecution due to the passage of time. *Cf. State v. Taylor*, 196 Ariz. 549, 551, ¶ 9 (App. 1999) (“It would be poor policy to reward an absconder with the option of claiming the benefits of a plea agreement if it suited him or repudiating the agreement if the passage of time made it advantageous to do so.”) As to first issue, the State requests that the Court follow its own directive issued a half-century ago:

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. To allow a defendant to come back into court and challenge a plea bargain after every change in the law not contemplated by defendant or his counsel at the time of the plea would result in no plea bargain ever being final.

State v. Nunez, 109 Ariz. 408, 411 (1973) (citing *McMann v. Richardson*, 397 U.S. 759 (1970)); *see also Brady v. United States*, 397 U.S. 742, 757 (1970) (explaining there is no constitutional requirement that allows a defendant “to disown his solemn admissions in open court” of guilt “simply because it later develops” that the State’s case is weaker than thought or the potential penalty is lessened). The parties otherwise concurrently stand on their earlier briefing of this issue.

The answer to this Court’s second question is yes: The State may prove a prior to substitute for the expunged marijuana conviction and support the bargained-for sentence. Permitting the State to replace the expunged conviction with a different, properly proven prior conviction does nothing more than enforce the material terms of the parties’ original bargain. The chance choice of a marijuana prior conviction to support the plea agreement’s sentence should not provide Williams half the sentence he agreed to for subsequent and serious crimes, especially when he acknowledged the existence of a half-dozen other prior convictions in the same plea agreement. Williams knowingly agreed to the sentence negotiated in his plea—and that sentence, not the CR number of the prior conviction supporting it, is the material term to be maintained. Holding otherwise would deprive the State of the benefit of its bargain, contravene fundamental notions of fairness, and violate the intent of the voters in passing the Act.

II. Argument

A. The nature and quality of the prior conviction is not a material term of the plea agreement.

The Court of Appeals, relying on its previous decision in *State v. Szpyrka*, noted a “need for a factual basis for a prior conviction to make an offense repetitive,” and “when such a prior conviction is later vacated, there is clearly no factual basis to support” either the prior or the guilty plea. *State v. Williams*, 254 Ariz. 516, 520, ¶ 13 (App. 2023) (citing *Szpyrka*, 223 Ariz. 390, 392, ¶ 4 (App. 2010)). The Court of Appeals further contended that the expungement of the prior “altered materially” the plea agreement, and that it lacked authority “to modify the sentence so as to deviate from the intent of both the state and the defendant.” *Id.* at 520–21, ¶ 15 (quotation omitted).

Those premises—that the exact identity of the prior conviction in Williams’ plea was a material term, and that modification of the sentence is necessary—are wrong. First, “[c]ritical to plea bargaining is the concept of reciprocal benefits. When either the prosecution or the defendant is deprived of benefits for which it has bargained, corresponding relief will lie from concessions made.” *People v. Collins*, 21 Cal. 3d 208, 214 (1978). In upholding those reciprocal benefits, courts “are not obliged to follow blindly the law of contracts in assessing plea agreements. Cases may arise in which the law of contracts will not provide a sufficient analogy and mode of analysis. We do not purport to superimpose contract principles upon all

such cases.” *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). The refusal to be strictly leashed to contract principles reflects the axiom that “[c]ourts must interpret plea agreements in a way that promotes fair play and equity to protect the integrity of plea agreements.” *State v. Brockman*, 277 Md. 687, 697 (1976). Enforcement of the mutually designed material terms, and of general principles of fairness, is the primary consideration in such cases:

This phase of the process of criminal justice, and the adjudicative element inherent in accepting a plea of guilty, must be attended by safeguards to insure the defendant what is reasonably due in the circumstances. Those circumstances will vary, but a constant factor is 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.

Santobello v. New York, 404 U.S. 257, 262 (1971). The equitable notion applies equally to both parties.

The existence of a prior conviction is material to the enhanced sentence of a plea agreement; but the nature and quality of the prior conviction is no more material than the make and model of the truck which delivers the agreed-upon goods by the agreed-upon time.¹ Substitution of one proven historical prior for another does not

¹ For defendants sentenced as dangerous offenders, A.R.S. § 13-704, the nature of the prior conviction may matter. Convictions expunged pursuant to the Act, however, do not implicate the dangerous offenders sentencing statutes.

deprive a defendant, who pled guilty in open court and agreed to a stipulated sentence, of any material term of his agreement. *Cf. State v. Nunez*, 109 Ariz. 408, 411 (1973) (disfavoring retroactive vacatur of a plea due to unforeseeable changes in the law).

A material term is understood to be “of the essence,” in that it is fundamental to the successful performance of an agreement. *Cf. Miller v. Long Family P’ship*, 151 Ariz. 306, 361 (App. 1986); *see also Neeley v. Banders Trust Co. of Tex.*, 757 F.2d 621, 628 (5th Cir. 1985) (defining an “essential” term as “one that the parties reasonably regarded, at the time of contracting, as a vitally important ingredient in their bargain” such that “[f]ailure to fulfill such a promise. . . would seriously frustrate the expectations of one or more of the parties as to what would constitute sufficient performance of the contract as a whole”).

Williams’ plea agreement referenced the now-expunged marijuana conviction as the prior historical felony supporting his category 2 sentence; but the agreement also required Williams to acknowledge the existence of a half-dozen other felony convictions. (Appx. B at ¶ 5.) In the bounded universe of sentencing at a higher category, drug possession and attempted murder carry identical weight. The specific nature, quality, or CR number of the prior conviction cited in support of the enhanced sentence is neither essential nor material to the plea agreement. The “vitally important ingredient” is the existence of *any* constitutionally sound felony

conviction—a material term to which Williams assented. The only way to seriously frustrate the expectations and intent of the parties would be to interpret the plea agreement otherwise.

B. Public policy and notions of fairness require the State be permitted to prove another prior conviction and keep the plea agreement and sentence intact.

Public policy and notions of fairness require finding there is no bar to resentencing exactly as stipulated by the negotiated plea agreement. *Cf. People v. Dist. Ct. of City & Cty. of Denver*, 673 P.2d 991, 998 n.9 (Colo. 1983) (after finding part of a sentence issued pursuant to a plea agreement was illegal, approving of resentencing so long as such sentence does not exceed the plea agreement’s stipulated ten years). The determinative balance of cases addressing a plea agreement with an illegal sentence are not situated like this case, where the sentence is illegal retroactively and only ministerially; and such issue is easily mended via substitution of another prior conviction already referenced by the plea.

The other cases involve sentences that were illegal in the inducement—the sentences were not permitted even when the bargain was made. *See, e.g., Craig v. People*, 986 P.2d 951, 960 (Colo. 1999) (“There cannot be a breach of a plea agreement when the agreement itself cannot be recognized because it contains, as an integral component, an illegal promise that materially induced the defendant to plead guilty.”); *State v. Wilson*, 226 W. Va. 529, 535 (2010) (“No sound public policy

supports allowing the parties to bargain for an illegal sentence, and we cannot uphold a plea bargain that has as its object an illegal sentence.”) (quoting *State ex rel. Gessler v. Mazzone*, 212 W. Va. 368, 374 n.4 (2002)) (citing *Chae v. People*, 780 P.2d 481, at 487 (Colo. 1989); *State v. Nemeth*, 214 N.J.Super. 324 (1986) (“There can be no plea bargain to an illegal sentence.”); *Agoney v. Feinberg*, 517 N.Y.S.2d 834, 837 (1987) (an illegal sentence “is not validated by a plea bargain”)) (cleaned up).

Vacatur is sensible in circumstances where the sentence was illegal at the time it was negotiated and was concretely a part of the inducement for the parties (namely the defendant) to enter the plea agreement. But that is not the case here. The State and Williams agreed that he would plead guilty to discrete crimes; serve a stipulated category 2 sentence; and, as required by law, the stipulated sentence was proper because he had at least one historical prior conviction. The plea agreement was legal; it was not the product of improper inducement or coercion—and Williams does not suggest otherwise. Of particular interest is that the same material plea, with a new CR number plugged in as the supporting prior, is still legal today. The circumstances of this case are markedly distinct from the numerous cases in which the material term of the sentence itself was illegal when the plea was entered. The result should also differ.

Finally, the Opinion of the Court of Appeals and Williams’ position would require disparate results among identically situated defendants, based on the most ministerial detail: Which of a pleading defendant’s several prior convictions were cited in support of a sentence pursuant to a guilty plea to a subsequent crime. Imagine a defendant Smith, whose position and criminal history are identical to Williams in every way except that the asterisk on the first page of his plea cites to his 1993 California conviction for being a felon in possession of a firearm. (*See* Plea, Appx. B; State’s Allegation of Priors, Appx. C.) After Arizona’s 2020 election, both Smith and Williams would have their marijuana convictions expunged, and would still have the same criminal record.

But according to the Court of Appeals, Smith’s plea and sentence would remain in effect, while Williams’ must be vacated and his charges reinstated. And per Williams’ position—mandatory resentencing at a lower category—Smith would remain in prison for ten years while Williams’ sentence would be reduced to five. There is no justification for such disparate outcomes among identical defendants, and this Court should not countenance such a result. *Cf. State v. Kayer*, 194 Ariz. 423, 439, ¶ 57 (1999) (“A disparity in sentences between codefendants and/or accomplices can be a mitigating circumstance if no reasonable explanation exists for the disparity.”) (citing *State v. Henry*, 189 Ariz. 542, 551 (1997); *State v. Mann*, 188 Ariz. 220, 230 (1997); *State v. Schurz*, 176 Ariz. 46, 57 (1993)).

Instead, the Court should enforce the parties' bargain and hold that expungement of a conviction supporting an enhanced sentence in a subsequent plea does not vacate the sentence when the State can prove another historical prior conviction. The bargain was struck; its material terms have suffered no change; and the agreed-upon sentence should be enforced.

C. By voting in favor of the Act, the voters did not intend to reduce sentences for unrelated crimes when other non-marijuana prior convictions exist and support an enhanced sentence.

The “primary objective in construing statutes adopted by initiative is to give effect to the intent of the electorate.” *State v. Matlock*, 237 Ariz. 331, 334, ¶ 10 (App. 2010) (quoting *State v. Gomez*, 212 Ariz. 55, 57, ¶ 11 (2006)). Because the Act is silent on the exact issue presented by this case, the Court may “attempt to determine the electorate’s intent by looking to the statutory scheme as a whole and consider[] the statute’s context, historical background, effects and consequences, and purpose and spirit.” *Id.* (citation omitted).

The State agrees with Williams—by word and by action, in the several cases the State has conceded to post-expungement resentencings—that the voters’ intended that where no other historical prior conviction exists to substitute for an expunged marijuana conviction, then that defendant should be resentenced at a lower category. That result is innate in the Act: Its clear purpose and spirit requires that no

conviction or punishment persist for certain defined acts involving the possession of marijuana.

Here, the defendant has several other historical prior convictions that could have been used to properly enhance his agreed-upon sentence to a subsequent crime; but, merely by chance, those were not selected. Surely the voters did not intend to reduce or in any way affect a conviction and sentence under those circumstances. *Contra Harris v. Sup. Ct.*, 383 P.3d 648, 652 (Cal. 2016) (refusing to permit the state to reinstate charges when a plea was entered to a lesser-included charge that was later designated a misdemeanor by voter initiative, stating “entering into a plea agreement does not insulate the parties from changes in the law that the [electorate] has intended to apply to them”) (cleaned up).

The voters intended to eradicate the records and consequences of discrete and clearly defined offenses, including by lessening punishment in subsequent crimes where no priors exist other than the one now expunged. Nothing indicates they even imagined, much less intended, that their “yes” vote would cause career criminals to have their sentences for sex trafficking reduced by half. The voters certainly did not approve of the Smith hypothetical described in the previous section: The fact that the Act would indisputably provide Smith no claim for relief, while granting Williams a five-year windfall, clearly illustrates that affecting this plea agreement was wholly beyond the voters’ intent. Expungement pursuant to the Act should never

lessen any sentence stipulated by a plea agreement in a subsequent crime where the record reflects sufficient criminal history to support that sentence.

D. If the Court decides the State may not prove another prior to replace the expunged prior, then the State must be given the opportunity to withdraw from the plea.

If the Court decides that the State is not entitled to prove another historical prior to substitute for the one now expunged, then the Court should not require Williams be resentenced at a lower category. That would strike an indisputably material term of the plea agreement—the stipulated term of years—and deprive the State of the benefit of its bargain.

California’s supreme court has held that when a “[d]efendant seeks to gain relief from the sentence imposed but otherwise leave the plea bargain intact,” it “is bounty in excess of that to which he is entitled.” *People v. Collins*, 21 Cal. 3d 208, 215 (1978). Ornamental phrasing aside, the rule accurately reflects the necessary equitable considerations. “When a sentence is illegal, and such a sentence was the product . . . of a negotiated plea agreement, the state has the option of either agreeing to the appellant’s resentencing, or withdrawing from the plea agreement and proceeding to trial on the original charges.” *Bruno v. State*, 837 So. 2d 521, 523 (Fla. Dist. Ct. App. 2003) (citation omitted); *see also Rojas v. State*, 52 Md. App. 440, 445–46 (1982) (“[I]t would be unfair to allow [the defendant] to avoid his responsibilities under the plea agreement, yet demand the benefit of the bargain. . . .

The State, like the defendant, is mutually entitled to the benefit of the bargain.”) (citing Restatement (Second) of Contracts § 383 (1981)).

This Court could order the trial court to resentence Williams at a lower category pursuant to the plea agreement; but that would deprive the State of the material term of the stipulated sentence, and therefore under those circumstances the State must retain the power to withdraw from the plea. The State’s exercise of that discretion would permit the State to re-offer the plea with a substituted historical prior conviction; but it may also place a defendant in an impermissibly advantageous position, depending on the age of his case and the status of the State’s evidence and witnesses. Such outcomes have been warned against, and courts have therefore permitted the State to decide whether to vacate the plea or only the excessive portion of the sentence. *E.g. Jolly v. State*, 392 So.2d 54, 56 (Fl. Dist. Ct. App. 1981). The result is tolerable; but the better outcome is to sustain the original negotiated sentence whenever possible—especially in this case, where neither party would suffer any prejudice.

III. Conclusion

The Court should avoid depriving the parties of the bargained-for terms of their plea agreement. Consistent with that principle, the Court should vacate the Court of Appeals’ Opinion and hold that under the circumstances presented by this case, the State may substitute another historical prior into the existing plea

agreement. Critically, no party suffers prejudice in that event: The material terms of the plea agreement—the guilty plea, sentence, and the existence of a prior conviction supporting that sentence—remain intact. The parties will be situated in exactly the position for which they negotiated, and the voters will not suffer the disaffection of having their “yes” votes lead to the early release of criminals convicted of offenses wholly outside the purview of the Act.

Submitted on September 20, 2023.

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