

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

**RESPONDENT BENNETT WILLIAMS' SUPPLEMENTAL BRIEF**

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## **INTRODUCTION**

In 2017, Bennett Williams pled guilty to two counts of sex trafficking, a class two non-dangerous felony. Pursuant to the plea agreement, the State agreed to allege only one prior felony conviction – one count of possession of marijuana in CR2003-021645-001. The State further agreed to dismiss any allegations that Mr. Williams had committed any other prior felony offenses. Pursuant to the plea agreement, Mr. Williams was sentenced as a category two repetitive offender and sentenced to two concurrent terms of 12 years in ADC.

In November of 2020, the citizens of Arizona passed Proposition 207, which created an avenue for those with certain marijuana offenses to expunge and vacate their convictions and remaining sentences. Pursuant to this change in the law, Mr. Williams filed an expungement petition in CR2003-021645-001, which was granted. Mr. Williams then filed a Petition for Post-Conviction Relief, arguing that he was entitled to resentencing because the conviction used to enhance his sentence had been vacated and was no longer valid. Although the superior court denied his petition, the court of appeals reversed, holding that Prop. 207 was a significant change in the law that would have changed Mr. Williams' sentence.

But the court of appeals went further than either party asked, and instead of returning Mr. Williams to the superior court for resentencing, ordered that the entire plea agreement be thrown out. This harsh remedy was not required by the law and

was not sought by either party. Both the State and Mr. Williams agree that this remedy is not the appropriate one in this case.

Instead, Mr. Williams merely asks for a new sentencing hearing where the State is held to its promise not to allege any other historical prior felonies.

### **ISSUES PRESENTED**

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 A.R.S. § 36-2862.
2. If so, may the State allege a different prior conviction to enhance the sentence?

### **ARGUMENT**

- I. The Court of Appeals erred in finding that the 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.**

Mr. Williams agrees with the State that the court of appeals erred in voiding his plea agreement and requiring that the parties start over from scratch. Counsel has fully briefed this issue in Mr. Williams' Response to the State's Petition for Review.

- II. The State should be held to its agreement and may not allege a different prior conviction to enhance the sentence.**
  - A. The State may not allege other priors without vacating the plea agreement, which it cannot do in this circumstance.**

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). The United States Supreme Court has said 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*, 404 U.S. at 499 (emphasis added). Once a defendant has “fulfilled all other obligations under the agreement, under settled notions of fundamental fairness the government was bound to uphold its end of the bargain.” *United States v. Carrillo*, 709 F.2d 35, 37 (9th Cir. 1983).

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. But as part of the plea, the State agreed 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*” (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 its 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.

Instead, the remedy Mr. Williams is owed is the same remedy that was commanded in *Santobello* – specific performance of the plea agreement, in which the State promised not to allege any other prior felonies. 404 U.S. at 263. The only other remedy would be the one that the State has specifically disclaimed – rescission of the plea agreement in its entirety. *Puckett v. United States*, 556 U.S. 129, 137 (2009) (“When a defendant agrees to a plea bargain, the Government takes on certain obligations. If those obligations are not met, the defendant is entitled to seek a remedy, which might in some cases be rescission of the agreement, allowing him to take back the consideration he has furnished, *i.e.*, to withdraw his plea.”). That remedy, however, is unavailable to the State.

While a defendant may withdraw from a plea agreement “if the court has rejected a provision in the plea agreement regarding the sentence or the term and conditions of probation,” *State ex rel. Polk v. Hancock*, 237 Ariz. 125, 129 ¶ 14 (2015), the State may generally *not* withdraw from a plea agreement after it is accepted by the court “because jeopardy has attached, and proceeding to trial would place the defendant in double jeopardy in violation of the state and federal constitutions,” *id.* at 130 ¶ 15 (citing U.S. Const. Amend. V; Ariz. Const. art. 2, § 10). Thus, even if the change in the law permitted a party to withdraw from a plea agreement, only the defendant – and not the State – would hold the power to void the plea.

**B. The possibility of a change in the law is a risk undertaken in every plea agreement.**

It is well-settled that this Court applies contract principles when interpreting and enforcing plea agreements. *State v. Robertson*, 249 Ariz. 256, 262 ¶ 24 (2020). And it has long been established law in Arizona that “the right to contract may be abridged by proper exercise of the state’s police power.” *Am. Fed. of Labor v. Am. Sash & Door Co.*, 67 Ariz. 20, 40 (1948). Thus, baked into every plea agreement – and, indeed, every contract – is the possibility that the law may change, thus altering the relative rights and privileges afforded each party under the contract. As the court of appeals found in this case, Prop. 207 was just such a change.

The State, like the parties to other types of contracts, is not “unequivocally granted immunity from future changes in state law.” *State v. Chamberlain*, 120 P.3d 319, 331 (Kan. 2005). Rather, a plea bargain “is deemed to incorporate and contemplate not only existing law but the reserve power of the state to amend the law or enact additional laws for the public good and in pursuance of public policy.” *People v. Gipson*, 12 Cal. Rptr. 3d 478, 482 (2004) (internal quotations and citations omitted). Prop. 207 has changed the law by making one provision of the plea agreement – the use of Mr. Williams’ prior marijuana possession offense as a historical prior felony – an illegal term. But this Court has recognized that “the state may not rescind a plea agreement because an illegal term is excised from the agreement.” *Robertson*, 249 Ariz. at 262 ¶ 25.

Furthermore, since the State is “accountable for knowing Arizona law when it negotiates, drafts, and enters into plea agreements,” any burden of a provision of the plea agreement becoming illegal and unenforceable must fall on the state. *Fields*, 200 Ariz. 442, 446 ¶ 13. “[W]hen an error has been made in imposing an illegal sentence...the mistake is the State’s burden to bear.” *State v. Dean*, 226 Ariz. 47, 53 ¶ 20 (App. 2010). Even though the defendant in this case is “reaping a benefit” from the illegality of a term in the plea agreement, the State cannot withdraw from a plea agreement “relying on a mistake of law.” *Jackson v. Schneider*, 207 Ariz. 325, 328 ¶ 12 (App. 2004).

The plea agreement that was negotiated in 2017 now contains an illegal provision because the prior historical felony alleged in that plea is no longer a felony and cannot form the basis of a repetitive offender enhancement. Mr. Williams’ sentence pursuant to that plea agreement is now an illegal sentence and must be corrected – regardless of whether Mr. Williams himself “invited the error.” *Robertson*, 249 Ariz. at 262 ¶ 28. The State is constitutionally prohibited from withdrawing from a plea once it has been accepted by the court. *Hancock*, 237 Ariz. at 130 ¶ 15. Accordingly, the only constitutional remedy in this case is to keep the plea agreement in place and resentence Mr. Williams without the offending illegal provision of the plea agreement.

**C. Even if the legalization of marijuana were not treated as a change in law, the State should have foreseen that marijuana would be legalized in 2017, and cannot withdraw from the plea agreement.**

In *State v. Szpryka*, 223 Ariz. 390, 393 ¶ 8 (App. 2010), the court of appeals departed from the holding of *Fields* and permitted the State to withdraw from a plea agreement that had already been executed when a prior conviction was vacated on appeal. But *Szpryka* differs from this case in two important respects. First, this case deals with a legal, rather than a factual, change rendering one provision unenforceable – just as in *Fields*. Second, the court of appeals permitted the State to withdraw from the plea agreement in *Szpryka* only because the State was “in no better position than [the Defendant] to know the prior conviction ultimately would be vacated.” 223 Ariz. at 393 ¶ 8. However, here, unlike in *Szpryka*, 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 the District of Columbia had already passed laws legalizing recreational marijuana and marijuana legalization issues had been appearing on Arizona ballots for over two decades.<sup>1</sup>

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<sup>1</sup> As Mr. Williams argued in his briefing before the court of appeals and in his Response to the State’s Petition for Review, this Court should defer ruling on this issue until the superior court has had the opportunity to consider it in the first instance because the issues presented are factual and have not yet been determined by 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

**1. By 2017, when Mr. Williams’ plea agreement was executed, several states had already legalized marijuana and several more states were trending toward legalization.**

In 2012, Colorado and Washington became the first two states to legalize the recreational use of marijuana. 2012 Amendment 64 (codified as Colo. Const. art. XVIII (2012)); Initiative Measure No. 502, (Wash. 2011). In 2013, Vermont approved legislation to decriminalize marijuana. 18 Vt. Stat. Ann. S.A. §4230. In 2014, Maryland followed Vermont’s lead and decriminalized marijuana. Senate Bill 364, H.B. 1101.6, 2013 Gen. Assemb., (Md. 2013). Following, in 2014, Alaska and Oregon voters legalized recreational marijuana. AS 17.38 (Alaska 2014) and Measure 91, §1-86 (2014). By the end of 2014, over 23 states had legalized some form of medical marijuana through legislation.<sup>2</sup> In 2015, Delaware joined in the decriminalization efforts of marijuana, and during the year, five more states legalized medical marijuana in some form. H.B. 39, 148th Gen. Assemb., (Del. 2015). Finally, in 2016, California joined three other states in legalizing marijuana for recreational use. Cal. Health & Safety Code § 11018 (2015).

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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”).

<sup>2</sup> National Conference of State Legislatures (NCSL), *State Medical Cannabis Laws*, <https://www.ncsl.org/health/state-medical-cannabis-laws>.

Thus, by 2017, seven states and the District of Columbia had legalized some form of recreational marijuana. Several other states had decriminalized certain marijuana possession or had passed medical marijuana statutes.

## **2. Arizonans have long favored some form of legal marijuana.**

In 1996, Arizona voters passed an initiative called the Drug Medicalization, Prevention, and Control Act with a 65% majority – becoming the second state in the country to legalize medical marijuana in a limited capacity. *State of Arizona Official Canvass, Proposition 200, 1996 Official Canvas- General Election. 18 (1996)*. The proposition allowed physicians to prescribe or recommend marijuana for certain debilitating or terminal illnesses. *Drug Medicalization, Prevention, and Control Act of 1996, Prop. 200, 1996 Ballot Propositions. 32-49, 42 (1996)*. After Prop 200 was adopted by Arizona voters, however, within the year, the legislature effectively nullified the voter initiative by passing H.B. 2518. *H.B. 2518, 43rd Leg., Reg. Sess. (Az. 1997)*.

The same proposition returned as Prop 300 in the 1998 legislative session with provisions to allow licensed medical professionals to prescribe schedule I drugs to treat debilitating diseases or to relieve pain and suffering. *Proposition 300, 1998 Ballot Propositions. 122-145, 124-125 (1998)*. However, Prop 300 further required first-time drug offenders to be sent to jail instead of an alternative treatment plan through a treatment facility or probation. *Id.* The proposition was supported by the

Maricopa County Attorney, Richard M. Romley, and the governor of Arizona, Jane Dee Hull. *Proposition 300*, 1998 Ballot Propositions. 122-145, 134 (1998). Even with the support of political leaders urging citizens to vote yes, Prop 300 was rejected by voters in 1998 with 57% opposition. *Proposition 300*, 1998 Ballot Propositions. 122-145, 124-125 (1998). The rejection of Prop. 300 was due, in part, to the opposition of legalization advocates, who argued that Prop 300 was building stricter laws for criminalization, which Arizona voters had roundly rejected in 1996. *Proposition 300*, 1998 Ballot Propositions. 122-145, 138-139 (1998). The opposition called for citizens to vote against the bill because it was “an opportunity to teach the Legislature to respect the will of the public.” *Id.* The will of the public was clear – there was a demand for drug addiction to be treated as a mental health issue rather than a criminal behavior. *Id.*

In 2002, Proposition 203 called for legalizing medical marijuana in Arizona but failed, winning only 43% of the vote. *State of Arizona Official Canvass*, Proposition 203, 2002 Official Canvas- General Election. 14 (2002). Prop 203 would have allowed medical marijuana patients to grow two plants and enacted new marijuana sentencing reforms for those charged with nonviolent drug offenses. *Prop. 203*, 2002 Ballot Propositions. 109-127, 119-120 (2002). Included in the marijuana sentencing reform plans, the proposition would have expanded mandated drug treatment programs and helped remedy the broken and problematic medical

marijuana laws by giving those in need access to pain relief treatment prescribed by a licensed physician. *Id.* The proposition failed again partly because of some unpopular sentencing reform strategies attached to the bill. *Id.* at 123.

In 2010, Prop 203 received its second chance when the Arizona Medical Marijuana Act (AMMA) appeared on the ballot. *Arizona Medical Marijuana Act, Proposition 203, 2010 Ballot Propositions. 72-83 (2010).* This time, the proposition passed with 50.1% of the vote. *State of Arizona Official Canvass, Proposition 203, 2010 Official Canvas- General Election. 15 (2010).* The proposition allowed patients registered with Arizona's medical marijuana program or their caretakers to possess up to 2.5 ounces of medical marijuana. *Arizona Medical Marijuana Act, Proposition 203, 2010 Ballot Propositions. 72-83, 83 (2010) (Codified as A.R.S. §36-2801).*

By 2016, an initiative called "adult use" proposed recreational cannabis. Proposition 205 would have allowed consumers over the age of 21 to grow up to six plants for personal use or purchase marijuana through licensed dispensaries, which would have been taxed to benefit Arizona public schools' funding and substance abuse programs. *"Adult Use," Proposition 205, 2016 Ballot Propositions. 16-57, 83 (2016).* The recreational marijuana initiative failed with 48.7% of the vote. *State of Arizona Official Canvass, Proposition 205, 2016 Official Canvass General Election 21 (2016).* Thus, almost a full year before Mr. Williams' plea agreement was executed, Arizona voters only narrowly avoided allowing legalized marijuana.

Three years later, in November 2020, 60% of Arizona voters passed Prop 207, the Smart and Safe Arizona Act. *State of Arizona Official Canvass, Proposition 207, 2020 Official Canvass- General Election. 16 (2020)*. Prop 207 allowed for the legalization, taxation, and recreational use of marijuana for adults 21 and over and retroactive reform for marijuana convictions that would allow certain convictions to be expunged if they met the requirements. *The Smart and Safe Arizona Act, Proposition 207, 2020 Ballot Propositions. 56-126 (2020)* (Codified in A.R.S. Title 36, Chapter 28.2).

During plea negotiations in the present case, the prosecutor should have reasonably known that Arizona was on the path to legalizing marijuana because of the extensive legislative history in Arizona and the legalization that had occurred in other states. When the plea deal was signed in 2017, medical marijuana had been legal for 11 years. In 2016, nine months before the plea was signed, the first attempt to legalize recreational marijuana was put on the ballot and had the support of 48.7% of Arizona voters. It was reasonable to anticipate in 2017 that the initiative would gain the support of the additional 1.4% of Arizona voters needed to pass in a succeeding election – especially in light of the rapid growth in support for recreational marijuana use across the country at the time.

The prosecutor in this case chose to use Mr. Williams’ conviction for “possession of marijuana” as a historical prior when there were two other out-of-

state offenses he could have used in its place. Given the probable chance of marijuana becoming legal in the near future, the prosecution could have used a prior conviction that would not soon be subject to expungement.

It was the State that chose to allege a historical prior that had the potential to be expunged in the near future. But the State should have known, based on the extensive history of legalization efforts in Arizona and the rest of the country, that legalization would inevitably occur. Therefore, the State should bear the burden of a change in the law and it should now be precluded from alleging a different historical prior during resentencing following the expungement of the previous historical prior.

### **CONCLUSION**

Mr. Williams respectfully requests that the Court affirm paragraphs 1-13 of the Court of Appeals opinion, vacate paragraphs 14-17 of the Court of Appeals opinion, and remand this case to the superior court for a resentencing where no additional prior historical felony convictions may be alleged.

September 20, 2023

Respectfully submitted,

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