IN THE SUPREME COURT OF THE STATE OF DELAWARE

EDWIN FRADY,	§	No. 429, 1999
	§	
Defendant Below,	§	Court Below: Superior Court
Appellant,	§	of the State of Delaware in and
	§	for New Castle County
v.	§	
	§	Cr.A. No. VN89-11-0391-01
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: November 14, 2000
Decided: December 19, 2000

Before **VEASEY**, Chief Justice, **WALSH** and **BERGER**, Justices.

ORDER

This 19th day of December 2000, upon consideration of the briefs and supplemental memoranda of the parties, it appears to the Court that:

(1) In September 1990, Edwin Frady pleaded guilty to third-degree unlawful sexual intercourse and third-degree burglary. On January 11, 1991, the Superior Court sentenced Frady to thirteen years in prison, with the last eight years suspended. After Frady's release on probation, he was ordered not to have unsupervised contact with persons under the age of eighteen.

(2) In March 1999, Frady was charged with seven counts of fourth-degree rape based on his sexual involvement with a female under the age of eighteen. After a hearing on August 26, 1999, the Superior Court found that Frady had committed fourth-degree rape and had therefore violated his probation conditions.[1] Based on this finding, the Superior Court reinstated six of the seven years remaining on Frady's 1991 sentence.

(3) In September 1999, Frady filed a notice of appeal from the Superior Court's decision. Frady contends that he is entitled to a new hearing because the court found that he had committed fourth-degree rape based solely on hearsay evidence. On March 13, 2000, during the pendency of this appeal, Frady entered into a plea bargain with the State under which Frady agreed to plead guilty to second-degree unlawful sexual contact and the State agreed to drop the remaining fourth-degree rape charges.

(4) In its supplemental brief, the State argues that Frady's guilty plea conclusively establishes a probation violation of some sort and that the evidentiary issue in the present appeal is therefore moot. We agree and accordingly dismiss Frady's appeal.

[1] At the hearing, Frady also admitted to several other probation violations, including traffic violations, cocaine use, and violation of curfew.

(5) An issue becomes moot if intervening events cause a party to lose its standing to pursue the issue during the pendency of the action.[2] A party has standing to pursue an issue where "'1) there is a claim of injury-in-fact; and 2) the interest sought to be protected is arguably within the zone of interest to be protected or regulated by the statute or constitutional guarantee in question.'"[3] In the present case, the parties dispute only the presence of an injury-in-fact.[4]

(6) Frady presents two theories to support his claim that the Superior Court's allegedly erroneous decision constitutes an injury-in-fact. Frady first contends that the Superior Court could not find that he violated his probation based on his plea of guilty to second-degree unlawful sexual contact because his conduct did not satisfy the statutory requirements for the offense under 11 *Del. C.* § 768. Section 768 prohibits "intentional[] . . . sexual contact with another person who is less than 16 years of age . . . ." Since the alleged victim in the present case was over sixteen years old at the time of the offense, Frady maintains that he could not be convicted of unlawful sexual contact in the second degree. As a result, Frady argues, his plea of guilty to second-degree unlawful

[2] *See General Motors Corp. v. New Castle County*, Del. Supr., 701 A.2d 819, 823 (1997).

[3] *Id.* (quoting *Gannett Co. v. State*, Del. Supr., 565 A.2d 895, 897 (1989)).

[4] The State concedes that Frady's guilty plea "does not operate to moot, in a technical sense, the claims raised in this appeal." The State nevertheless argues that "[a]s a practical matter, the entrance of the guilty plea amounts to a resolution of the issues raised on appeal." In other words, the State disputes whether the Court's resolution of this appeal will have an impact on Frady's eventual sentence.

sexual contact cannot constitute a probation violation. Frady further reasons that he is entitled to a new hearing if the Superior Court's finding of fourth-degree rape was supported solely by hearsay evidence and that his present appeal is therefore not moot. We disagree.

(7) By pleading guilty to a crime as part of a plea agreement (that is, in exchange for the State's promise to drop or reduce certain charges), Frady admitted that he committed the crime charged.[5] As a general rule, the fact that a defendant did not actually commit the offense does not change the effect of a guilty plea made pursuant to a valid plea agreement.[6] For example, a defendant's guilty plea operates as a conviction for the purpose of establishing the elements of other crimes—even where the defendant's conduct did not actually satisfy the elements of the offense to which he pleaded guilty.[7] The policy behind this rule is apparent. Under a plea bargain, the defendant benefits from a reduction of charges by agreeing to admit to a particular crime. Having entered into this

[5] *Cf. Raison v. State*, Del. Supr., 469 A.2d 424, 426 (1983) ("[Under Super. Ct. Cr. R. 11(f),] when a guilty plea is entered pursuant to an agreement and the agreement is confirmed in open court, the factual basis for the plea may be established by the plea itself and by the circumstances under which it is taken.").

[6] *See Downer v. State*, Del. Supr., 543 A.2d 309, 313 (1988) ("'[T]he practice of accepting pleas to lesser crimes is generally intended as a compromise in situations where conviction is uncertain of the crime charged. The judgment entered on the plea in such situations may be based upon no objective state of facts. It is often a hypothetical crime . . . .'") (quoting *People v. Griffin*, N.Y. Ct. App., 166 N.E.2d 684, 686 (1960)).

[7] *Cf. Carter v. State*, Del. Supr., No. 314, 1994, Veasey, C.J. (July 18, 1995) (ORDER) (holding that a guilty plea to an offense that did not technically exist in statutes nevertheless forecloses the argument that the defendant is not a person prohibited from possessing a deadly weapon under 11 *Del. C.* § 1448(a)).

agreement voluntarily, the defendant may not later complain that he agreed to plead guilty to a crime that he did not actually commit.[8]

(8) Applying this rule to the present case, Frady's voluntary guilty plea to unlawful sexual contact in the second degree constitutes a violation of his probation, although Frady's conduct did not technically satisfy the elements of this offense. Frady's evidentiary appeal is therefore moot because his later guilty plea justifies the Superior Court's reinstatement of his 1991 sentence.

(9) Frady next argues that his appeal is not moot because the Superior Court imposed a longer sentence based on its finding that Frady committed fourth-degree rape than it would have imposed based on his plea of guilty to second-degree unlawful sexual contact.

(10) In this context, the presence of an injury-in-fact depends upon whether the Superior Court imposed a greater penalty on Frady (by virtue of its allegedly erroneous finding of fourth-degree rape) than it would have imposed based on Frady's guilty plea to second-degree unlawful sexual contact. The Superior Court's sentencing order, however, merely reinstated the suspended portion of Frady's 1991 sentence based on the court's finding of a probation

[8] *See Downer*, 543 A.2d at 312-13 ("Other courts have similarly ruled that guilty pleas to defective or nonexistent offenses will be upheld where the defendant has entered the plea under a plea bargain agreement from which he received a substantial benefit, even though a jury conviction on the same charge might be reversed.") (citations omitted).

violation. There is no doubt that a conviction for unlawful sexual contact would constitute a violation of Frady's probation and would justify the re-imposition of the suspended portion of the 1991 sentence under 11 *Del. C.* § 4334(c). Although there is a significant disparity between the maximum sentences for the two crimes,[9] there is nothing on the record to suggest that the Superior Court imposed a greater sanction on Frady than it would have imposed if the violation was the product of a less severe crime.[10] As a result, any error committed by the Superior Court in its finding of fourth-degree rape did not produce a cognizable injury to Frady, and the issue raised in Frady's present appeal is moot.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice

[9] Fourth-degree rape is a Class C felony that carries a sentence of up to ten years, whereas second-degree unlawful sexual contact is a Class G felony that carries a sentence of up to two years. *See* 11 *Del. C.* §§ 768 (fourth-degree rape); 770 (second-degree unlawful sexual contact); 4205(b) (defining felony sentences).

[10] The Superior Court reinstated Frady's sentence based on the nature of his conduct rather than on the precise crime charged: By becoming involved with a minor female, Frady violated the probation condition prohibiting unsupervised contact with minors. This fact, together with the court's broad authority to revoke probation, *see Brown v. State*, Del. Supr., 249 A.2d 269, 271-72 (1968), suggests that the reinstatement of Frady's suspended sentence was justified—regardless of how one labels Frady's conduct.