STATE OF LOUISIANA	*	**NO. 2000-K-2183**
VERSUS	*	**COURT OF APPEAL**
HENRY TEMPLE	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
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BYRNES, J., CONCURS IN PART AND DISSENTS IN PART:

I agree with the majority that Henry Temple's multiple bill guilty plea was not voluntarily or intelligently entered. I respectfully dissent in part based on my conclusion that the trial court already properly resentenced Temple.

La. R.S. 14.3 provides:

> The articles of this Code cannot be extended by analogy so as to create crimes not provided for herein; however, in order **to promote justice and to effect the objects of the law**, all of its provisions shall be given a genuine construction, according to the fair import of their words, taken in their usual sense, in connection with the context, and with reference to the purpose of the provision. [Emphasis added.]

Any doubt as to the extent of the coverage of a criminal statute must be decided in favor of the accused. *State v. Carr*, 99-2209 (La. 5/26/00), 761

So.2d 1271; *State v. Burns*, 29,632 (La. App. 2 Cir. 9/24/97), 699 So.2d 1179.

Generally, when a guilty plea is invalid, the sentence is vacated, and the case is set for trial. See *State v. Galliano*, 396 So.2d 1288, 1289 (La. 1981)*; State v. Lewis*, 421 So.2d 224 (La. 1982); *State v. Smith*, 406 So.2d 1314 (La. 1981); *State v. Morris*, 98-2684 (La. App. 4 Cir. 3/10/99), 729 So.2d 1141, *writ not considered*, 99-1025 (La. 4/30/99), 741 So.2d 6.

In *State v. Smith*, *supra*, the Louisiana Supreme Court held that where the accused himself requested through post-conviction motion that his guilty plea be withdrawn in accordance with the terms of a pre-plea agreement, the trial court may properly withdraw the former plea and vacate the sentence. Following conviction after a trial, the trial court may impose a greater sentence than was imposed upon the guilty plea <u>without violating double jeopardy</u>. The trial court has the option to impose a sentence that he believes is just if the defendant is found guilty.

In the present case, considering that Temple already served the time that he thought he would receive and what would have occurred if he had been placed in the Department of Corrections under its Blue Waters program as the trial court originally recommended, in the interest of justice, I would affirm the trial court's new sentence of June 29, 2000. The trial court

suspended the remainder of Temple's sentence but put Temple on five years of active probation including enrollment and placement for completion in the Court's Drug Court Program.

The trial court stated:

> . . . Now, Mr. Temple, the Court's Drug Court Program meets here, the next time is Thursday morning. Mr. Temple, let me explain something to you, Mr. Temple. You are about to be one, placed in a program that is an intensive as anything you had to do in About Face, but again, more so. Let me tell you something right now. I am going to release you from jail. You have to come. You fail to come, you fail to show, you're going go to jail. We are going to drug-test you. If you come loaded, you are going to go to jail. You're going to go to an intensive drug treatment program. If you fail to participate in the same, you are going to go to jail. After the intensive portion of your drug treatment is complete, you will still be in drug treatment, just not in an intensive fashion. If you fail to participate, you are going to go to jail. You are also going to be required to work, go to school, both. If you fail to do so, you are going to jail. For some, and those some tell me that it is in some instances easier for them to go to jail in the beginning, instead of going to this program and having to put up with me and all that program entails. . . .

The trial court's June 29, 2000 sentence is equitable where Temple has already completed the intensive incarceration in the About Face Program. The trial court's sentence of June 29, 2000 imposed a greater sentence than the original sentence because the trial court placed Temple in

the intensive drug court program after he completed the intensive incarceration under the About Face Program.

To prevent a miscarriage of justice, the new sentence imposed by the trial court on June 29, 2000 is appropriate and just under the circumstances of this case. Temple should receive the same new sentence as imposed by the trial judge, which the trial court has the discretion to pronounce, if the case were remanded, if Temple were to withdraw his guilty plea, and if Temple were found guilty. The trial court has already reviewed Temple's case and has imposed a new sentence. It is unnecessary to remand this case where the trial court's sentence is just.

Accordingly, I would deny the State's writ application.