

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2002-KA-1153 C/W**
VERSUS * **NO. 2002-KA-1154 C/W**
WALTER DAN THOMPSON * **NO. 2002-KA-1155**
* **COURT OF APPEAL**
* **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
* * * * *

APPEAL FROM
25TH JDC, PARISH OF PLAQUEMINES
NOS. 96-4562 C/W 96-5201 C/W 97-0945, DIVISION "A"
Honorable Anthony D. Ragusa, Judge

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Judge Dennis R. Bagneris, Sr.

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(Court composed of Judge Steven R. Plotkin, Judge Dennis R. Bagneris, Sr.,
and Judge David S. Gorbaty)

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REVERSED AND REMANDED

In this civil appeal from a grant of forfeiture of defendant's property, the sole issue is whether a prior plea agreement in a criminal case precludes the forfeiture.

On February 12, 1997, defendant, Walter Dan Thompson, Jr., was charged by bill of information with four counts of failure to report data, in violation of La. R.S.56:345. Specifically, the bill of information stated that Mr. Thompson failed to provide a commercial fishery data report to the Department of Wildlife and Fisheries for the months of October 1996, November 1996, December 1996, and January 1997. On March 3, 1997, Mr. Thompson pled not guilty. On June 14, 2000, Mr. Thompson withdrew the former plea of Not Guilty and entered a plea of Guilty pursuant to a plea bargain agreement to the charges. He was sentenced as follows:

Count 1: \$250 & cost or thirty (30) days Parish Prison. And to pay \$200 fee to Louisiana Department of Wildlife and Fisheries.

Count 2: \$250 & cost or thirty (30) days Parish Prison. And to pay \$200 fee to Louisiana Department of Wildlife and Fisheries.

Count 3: \$250 & cost or thirty (30) days Parish Prison. And to pay \$200 fee to Louisiana Department of Wildlife and Fisheries.

Count 4: \$250 & cost or thirty (30) days Parish Prison. And to pay \$200 fee to Louisiana Department of Wildlife and Fisheries.

The sentence called for the executory fines to be due on July 20, 2000, which Mr. Thompson paid in full.

On June 21, 2000, the State of Louisiana filed a motion to have “the articles held as seized in anticipation of criminal prosecution and held in evidence in the above numbered and styled matter be forfeited and destroyed since the case is now complete.” The parties do not dispute that Mr. Thompson was not notified, served or had any knowledge of the hearing. Thereafter, the trial court, without the presence of Mr. Thompson or his attorney, ordered “that all articles held as evidence in the above numbered and styled case be forfeited to the Louisiana Department of Wild Life and Fisheries and that the Department be authorized and empowered to destroy all articles held as such evidence.”

On June 30, 2000, Mr. Thompson filed a Motion to Nullify, Vacate and/or Set Aside Order to Forfeit Evidence and to Empower Department to Destroy All Articles Held as Such Evidence. On September 18, 2001, the trial court, after a hearing, denied Mr. Thompson’s Motion to Vacate.

Mr. Thompson’s sole issue on appeal is whether the trial court erred in

ordering the forfeiture of evidence and ordering the Department to destroy all articles held as such evidence when forfeiture was not a part of the plea agreement and sentence, and when the motion was done by oral motion without notifying the defendant of the motion or hearing and without defendant appearing at the hearing.

DISCUSSION

To place this matter in proper perspective, we must first address the proper penalty for not filing monthly returns to the department by dealers and commercial fishermen. At the time Mr. Thompson was charged in 1997, the La. R.S. 56:345, statute stated:

A. (1) Any wholesale or retail dealer buying fish from anyone other than a licensed wholesale/retail dealer shall on or before the tenth of each month make a return to the department on forms provided or approved for the purpose, showing in detail the quantity of each kind of fish purchased during the preceding month. However, restaurants and retail grocers who buy fish exclusively from licensed wholesale/retail dealers shall not be subject to the requirements of this Subsection and shall not be required to make a return to the department; however, this exemption shall not apply to licensed restaurants and retail grocers who purchase fish from anyone other than a licensed wholesale/retail dealer.

(2) A soft shell crab shedder shall on or before the tenth of each month make a return to the department on forms provided or approved for the purpose, showing the quantity and prices of premolt or buster crabs purchased from licensed commercial fishermen and of soft shell crabs produced and sold.

B. Any commercial fisherman selling to anyone other than a resident wholesale/retail dealer shall on or before the tenth of

each month make a return to the department on forms provided or approved for the purpose, showing in detail the quantity of each kind of fish sold during the preceding month. Such forms shall be adopted by the department as rules and regulations in accordance with the Administrative Procedure Act.

C. The Department of Wildlife and Fisheries shall draft regulations prescribing procedures to preserve the confidentiality of any data, information, or statistics submitted or collected pursuant to this Section, for approval by the Wildlife and Fisheries Commission and promulgation under the Administrative Procedure Act. Such regulations shall allow compliance with those federal procedures as set forth by the United States Department of Commerce or its agencies for confidentiality of fishing statistics collected from individuals or firms by the Department of Commerce or its agencies.

D. Violation of the provisions of this Section shall constitute a class three violation.

La. R.S. 56:33. provides the following penalties to be imposed for a class three violation:

(1) For the first offense, the fine shall be not less than two hundred fifty dollars nor more than five hundred dollars, or imprisonment for not more than ninety days, or both;

(2) For the second offense, the fine shall be not less than five hundred dollars, nor more than eight hundred dollars, and imprisonment for not less than sixty days nor more than ninety days, and forfeiture to the commission of anything seized in connection with the violation;

(3) For the third offense and all subsequent offenses, the fine shall be not less than seven hundred fifty dollars, nor more than one thousand dollars, and imprisonment for not less than ninety days nor more than one hundred twenty days, and forfeiture to the commission of anything seized in connection with the violation.

(4) In addition to any other penalty, for a second or subsequent violation of the same provision of law the penalty imposed may include revocation of the permit or license under which the violation occurred for the period for which it was issued and barring the issuance of another permit or license for that same period.

(5) Violation of a class three offense shall not preclude aid for training or sale of gear nor the obtaining of a rod or reel license or other net license for a subsequent period. The provisions of this Paragraph shall be applied retroactively.

Before we address Mr. Thompson's argument regarding the plea agreement, we feel compelled to note the fact that the record is silent as to what items, if any, were seized in connection with Mr. Thompson's violations of La. R.S 56:345, Case Number 97-0945. The record does indicate that, prior to the charges under La. R.S. 56:345, Mr. Thompson was arrested and charged with other commercial fishing violations under Case Numbers 96-4562 and 96-5201. Further, the record indicates that, pursuant to the violations in Case Number 96-4562, Mr. Thompson's gear, net, equipment, vessels and fish were seized. However, on June 14, 2000, the State dismissed Mr. Thompson's violations in Case Numbers 96-4562 and 96-5201. If no items were seized in connection with La. R.S. 56:345, or if the items were seized pursuant to other charges that were subsequently dismissed, then the trial court erred in its order that all articles as evidence be forfeited to the Louisiana Department of Wild Life and Fisheries.

If in fact items were seized in connection with the four counts Mr. Thompson was charged with under La. R.S. 56:345, then a second offense penalty does in fact provide forfeiture to the commission of anything seized. However, Mr. Thompson argues that his plea agreement did not include any type of forfeiture of his property. We find merit to Mr. Thompson's argument.

A plea bargain is a contract between the state and one accused of a crime. *State v. Lewis*, 539 So.2d 1199 (1989), *State v. Nall*, 379 So.2d 731 (1980). Further, the United States Supreme Court in *Santobello v. New York* stated:

This phase of the process of criminal justice (plea bargaining), 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.

404 U.S. 257, 262, 92 S. Ct. 495, 498, 30 L.Ed.2d 427 (1971). See also

State v. Temple, 2000-2183 (La.App. 4 Cir. 5/16/01), 789 So.2d 639, 647.

Further, this Court in *State v. Carriere*, 611 So.2d 781 (La.App. 4 Cir.

1992), citing, *State v. Hayes*, 423 So.2d 1111 (1982), stated the following in

regards to a violation of a guilty plea:

It is well settled that when a guilty plea is induced by a plea bargain or by what a defendant justifiably believes is a plea

bargain, and that bargain is not kept, defendant is denied due process of law because the guilty plea was not freely and knowingly given.

Carriere, 611 So.2d at 783. Also, this Court in *State v. Armstead*, 599 So.2d 425 (La.App. 4 Cir. 1992), stated the following concerning prosecutorial promises:

When a guilty plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to have been a part of the inducement or consideration, such promise must be fulfilled. (Citations omitted)

Id. at 426.

In this case, the minute entry of June 14, 2000 states:

The defendant withdrew the former plea of Not Guilty and entered a plea of Guilty pursuant to a plea bargain agreement to the charges. The defendant was sentenced as follows:

SENTENCE: Count 1: \$250 & cost or thirty (30) days Parish Prison. And to pay \$200 fee to Louisiana Department of Wildlife and Fisheries. **Count 2:** \$250 & cost or thirty (30) days Parish Prison. And to pay \$200 fee to Louisiana Department of Wildlife and Fisheries. **Count 3:** \$250 & cost or thirty (30) days Parish Prison. And to pay \$200 fee to Louisiana Department of Wildlife and Fisheries. **Count 4:** \$250 & cost or thirty (30) days Parish Prison. And to pay \$200 fee to Louisiana Department of Wildlife and Fisheries. Executory July 20, 2000. Defendant notified in open Court of the executory date.

Mr. Thompson's sentence did not include any type of forfeiture of his

property. Accordingly, we find that it was error of the trial court to allow the State to increase that punishment merely because it did not specifically negate the punishment inherent in the proposed forfeiture.

For these reasons, we hereby reverse the trial court judgment, which ordered that all articles be forfeited to the Louisiana Department of Wild Life and Fisheries and that the Department be authorized and empowered to destroy all articles held as such evidence. Thus, the trial court is hereby ordered to return Mr. Thompson's property, or the equivalent thereof, immediately.

REVERSED AND REMANDED