

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

SEAN LONG,

Defendant-Appellee.

UNPUBLISHED

April 8, 1997

No. 193687

Oakland Circuit Court

LC No. 94-DA6164

Before: MacKenzie, P.J., and Holbrook, Jr., and T. P. Pickard*, JJ.

PER CURIAM.

Defendant was indicted by the Oakland County Citizens' Grand Jury and charged with conspiracy to possess with intent to deliver over 650 grams of cocaine. The district court dismissed the case and the circuit court affirmed. After this Court denied the prosecution's application for leave to appeal, the Supreme Court remanded to us for consideration as on leave granted. *People v Long*, 450 Mich 1025 (1996). We affirm.

This case arises from defendant's alleged involvement in the distribution of cocaine for the Vallejo organization, a group of large-scale cocaine traffickers. Before defendant was indicted in this Oakland County case, the so-called "Vallejo case," he pleaded guilty in a Washtenaw County case known as the "Burgess case." Both cases were the culmination of an investigation conducted by the Southeast Michigan Conspiracy Organization (SEMCO), a task force comprised of several state and federal law enforcement agencies. As part of the Burgess case plea agreement negotiated by defendant's attorney and special assistant attorney general Eric Kaiser, who served as SEMCO prosecutor, defendant was to be "debriefed" concerning both the Burgess and Vallejo operations.

In the district court, defendant moved for dismissal of the Vallejo case on the basis that the plea agreement reached in the Burgess case precluded any further prosecution of defendant. The motion resulted in a combined preliminary examination and evidentiary hearing. At the hearing, the district court

* Circuit judge, sitting on the Court of Appeals by assignment.

indicated that there was sufficient evidence to bind over defendant. In a subsequent written opinion, however, the court ruled that it had jurisdiction to address defendant's motion to dismiss and found that defendant's plea agreement in the Burgess case precluded his prosecution in the Vallejo case:

Having considered all of the related testimony, this Court finds that there was a plea agreement reached between Eric Kaiser, in his capacity as SEMCO prosecutor, and Richard Lustig, as then counsel for Sean Long; and that agreement would forestall any further *state* prosecution of Long in the Vallejo matter.

The Oakland County prosecutor is bound by the plea agreement. *Santobello* [v *New York*, 404 US 257; 92 S Ct 495; 30 L Ed 2d 427 (1971)].

Finally, pursuant to *Santobello*, *supra*, and *Cooper* [v *United States*, 594 F2d 12 (CA 4, 1979)], this Court finds that specific performance of the plea agreement that there would be no further *state* prosecution of Sean Long is the proper remedy.

Therefore, the charges against Sean Long are dismissed, bond is canceled and the defendant is released. [Emphasis in the original.]

On appeal, the circuit court affirmed the conclusion that the district court had subject matter jurisdiction to decide the motion to dismiss. The circuit court also affirmed the district court's dismissal of the case on the basis that defendant's prosecution in the Vallejo case was barred under the terms of the plea agreement in the Burgess case.

On appeal, the prosecution first contends that the district court did not have jurisdiction to decide defendant's motion to dismiss. We disagree.

The examining magistrate's function is to determine whether a crime has been committed and whether there is probable cause for charging the defendant with that crime. MCL 766.13; MSA 28.931. The inquiry is not limited to whether the prosecution has presented evidence on each element of the offense, however. *People v King*, 412 Mich 145, 154; 312 NW2d 629 (1981). Rather, magistrates are required to make their determination "after an examination of the whole matter." *Id.*, quoting *People v Evans*, 72 Mich 367, 387; 40 NW 473 (1888). Thus, in *King*, *supra*, our Supreme Court concluded that the district court properly weighed defenses and analyzed conflicting evidence when deciding whether to bind over the defendant as charged.

The district court may also conduct hearings and rule on allegations of due process violations where the facts warrant. *People v Laws*, 218 Mich App 447, 453; 554 NW2d 586 (1996). The circumstances in this case clearly warranted such a hearing. A prosecutor's failure to keep promises made as a part of the plea bargaining process implicates fairness and due process considerations. See *Santobello*, *supra*, 404 US 261-262. Under *Laws*, *supra*, therefore, the district court in this case had jurisdiction to conduct an evidentiary hearing and rule on whether the charge against defendant

constituted a breach of a promise in the Burgess case plea agreement not to engage in additional state prosecution of defendant.

The prosecutor also argues that defendant should have been estopped from presenting evidence augmenting the description of the plea agreement as it appears in the transcript in the Burgess case. We disagree. Unlike *People v Serr*, 73 Mich App 19; 250 NW2d 535 (1976), this defendant only sought to interpret the terms of the plea agreement, not to disavow it. Under the circumstances of this case, where defendant's guilty plea carried significant sentencing implications and was clearly the product of extensive plea bargaining, we conclude that the brief description of the plea agreement at the Burgess plea-taking did not estop him in the Vallejo case from presenting evidence of the discussions that took place during plea negotiations and ultimately led to the guilty plea.

The prosecution next claims that the district court clearly erred in determining that the Burgess case plea agreement included the promise that defendant would not be subjected to further state prosecution. The claim is without merit. The letters between Kaiser and defense counsel during plea negotiations clearly supported the inference that both understood defendant would not be prosecuted at the state level for his role in the Vallejo case if he pleaded guilty in the Burgess case. Additionally, Kaiser admitted that he had no intention of bringing state charges against defendant in the Vallejo case. In view of this evidence, the district court did not clearly err in determining that the plea agreement in the Burgess case precluded further state prosecution.

The prosecution also argues that the district court erred in concluding that the Oakland County prosecutor was bound by the terms of the SEMCO plea agreement. Again, we disagree. Kaiser acknowledged that he was authorized as special assistant attorney general to represent the state in the six southeastern counties. The attorney general has supervisory powers over all prosecuting attorneys. MCL 14.28; MSA 3.181. See also *In re Watson*, 293 Mich 263, 270; 291 NW 652 (1940). The attorney general's assistants may also appear for the state in any action, with the same powers and in the like capacity as the attorney general. *Id.* It was therefore within Kaiser's power as an assistant attorney general to bind the Oakland County prosecutor to the terms of the plea agreement.

Finally, the prosecution contends that the district court abused its discretion in ordering specific performance of the plea agreement. Generally, fundamental fairness requires that promises made pursuant to plea agreements be respected. *People v Ryan*, 451 Mich 30, 41; 545 N.W.2d 612 (1996). The two conditions of this rule are that (1) the agent who made the promise at issue was authorized to make the promise, and (2) the defendant relied on the promise to his detriment. *Id.* As previously stated, Kaiser was authorized to bind the Oakland County prosecutor to the terms of the plea agreement. Further, contrary to the prosecutor's argument, defendant detrimentally relied on the promise when he pleaded guilty in the Burgess case. "[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, supra*, 404 US 262. We find no abuse of discretion in the court’s decision to order specific performance in this case.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Donald E. Holbrook, Jr.
/s/ Timothy J. Pickard