

# **IN THE COURT OF APPEALS OF OHIO**

SEVENTH APPELLATE DISTRICT  
MONROE COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

JUSTIN R. BROWN,

Defendant-Appellant.

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**OPINION AND JUDGMENT ENTRY**  
**Case No. 22 MO 0007**

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Criminal Appeal from the  
Court of Common Pleas of Monroe County, Ohio  
Case Nos. 2020-329, 2017-422

**BEFORE:**

Mark A. Hanni, Cheryl L. Waite, Carol Ann Robb, Judges.

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**JUDGMENT:**

Reversed and Remanded.

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*Atty. James L. Peters*, Monroe County Prosecutor, 101 N. Main Street, Room 15,  
Woodsfield, Ohio 43793, for Plaintiff-Appellee (No Brief filed) and

*Atty. Joshua Baumann*, Fiat Lex, LLC, P.O. Box 208, East Palestine, Ohio 44413, for  
Defendant-Appellant.

Dated: August 3, 2023

**HANNI, J.**

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{¶1} Defendant-Appellant Justin R. Brown appeals from a Monroe County Common Pleas Court judgment sentencing him on his community control violation.

{¶2} Appellant was convicted of one count of theft from an elderly person, a fourth-degree felony, on November 17, 2020. The trial court sentenced him to a term of three years of community control sanctions, including six months in jail and payment of restitution.

{¶3} On February 10, 2021, Plaintiff-Appellee, the State of Ohio, filed a motion to modify sentence. The motion alleged that on January 31, 2021, Appellant failed to report to his supervising officer and failed to notify his supervising officer of his change of residency as required by his community control terms. The motion alleged this was in violation of the terms of Appellant's community control stemming from the 2020 conviction as well as a conviction from a 2017 case on a fifth-degree felony.

{¶4} The trial court initially held a hearing on the State's motion on June 8, 2022, where it appointed Appellant counsel and set the matter for another hearing.

{¶5} On June 28, 2022, the court held a second hearing. Here, Appellant appeared with counsel. Counsel stated that Appellant had reached an agreement with the State. Pursuant to the agreement, Appellant entered an admission to the community control violation. In exchange, the State agreed to stand silent at sentencing. The court then set the matter for a sentencing hearing.

{¶6} On August 1, 2022, the trial court held Appellant's sentencing hearing. A different prosecutor appeared for the State than the prosecutor who appeared at the previous hearing. This prosecutor requested that the court sentence Appellant to all of the remaining jail time available noting that Appellant had remaining jail time on his sentence and had failed to pay on his restitution. Defense counsel requested that Appellant remain on community control sanctions and that the court extend those sanctions if it felt that was necessary. The trial court ordered that Appellant continue on the community control sanctions as previously ordered. As an additional part of his community control sanctions, the court sentenced Appellant to ten months in jail for

violating community control on the 2020 conviction and three months for violating community control on the 2017 case, to be served concurrently.

{¶17} Appellant then filed a motion for reconsideration of his sentence, given the fact that the State had agreed to stand silent at sentencing and had failed to do so. Counsel stated in the motion that the State was not opposed to the motion due to the “unintentional, but admitted, error.” The trial court did not overrule this motion until October 14, 2022.

{¶18} In the meantime, Appellant filed a timely notice of appeal on August 26, 2022. He also filed a motion to stay his sentence with the trial court. The trial court denied Appellant’s motion to stay his sentence. Upon Appellant’s motion with this court, we stayed the remainder of his jail sentence pending this appeal. Appellant now raises two assignments of error for our review.

{¶19} Appellant’s first assignment of error states:

THE TRIAL COURT ERRED BY IMPOSING SENTENCE WHEN THE STATE RECOMMENDED A MAXIMUM SENTENCE FOR THE STIPULATED COMMUNITY CONTROL VIOLATION AFTER IT HAD AGREED TO MAKE NO RECOMMENDATION IN EXCHANGE FOR MR. BROWN’S STIPULATION.

{¶10} Appellant argues the trial court erred in imposing a maximum jail sentence, recommended by the State, when the State had agreed to stand silent at sentencing.

{¶11} It is well accepted that “[p]lea agreements are an essential and necessary part of the administration of justice.” *State v. Carpenter*, 68 Ohio St.3d 59, 61, 623 N.E.2d 66 (1993), citing *Santobello v. New York* (1971), 404 U.S. 257, 261, 92 S.Ct. 495, 30 L.Ed.2d 427. At its core, a plea agreement is contractual in nature and subject to contract-law standards. *Santobello*, supra; *Baker v. United States*, 781 F.2d 85, 90 (C.A.6, 1986). Moreover, the agreement should be construed strictly against the government. *State v. Namack*, 7th Dist. Belmont No. 01 BA 46, 2002-Ohio-5187, ¶ 25. In *Santobello*, the prosecutor promised to stand silent at sentencing in exchange for the defendant’s guilty plea. The prosecutor failed to keep that promise, and the United States Supreme Court held:

This phase of the process of criminal justice, 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.

*Santobello*, 404 U.S. at 262.

{¶12} We addressed this issue previously in *State v. Adams*, 7th Dist. Mahoning No. 13 MA 54, 2014-Ohio-724. In *Adams*, the appellant agreed to enter an *Alford* plea to the felonious assault charge he was facing. In exchange, the State agreed to make no recommendation and to instead stand silent at sentencing. At the sentencing hearing, the State was represented by a different assistant prosecutor. This prosecutor addressed the court and expressed how the victim's life had been negatively affected by the appellant's actions. He asked the court to follow the recommendation that the appellant be sentenced to a prison term as recommended by the presentence investigation. And then he asked the court to impose the maximum sentence of eight years in prison. The trial court sentenced the appellant to six years in prison.

{¶13} On appeal, the appellant argued the State's obvious breach of the plea agreement by failing to stand silent at sentencing was plain error. He asked this court to withdraw his plea.

{¶14} In analyzing the appellant's argument, we pointed out that the prosecution's statements clearly breached the plea agreement. *Id.* at ¶ 29. We further concluded the breach was "not minor or technical", noting that the state went from agreeing to stand silent to insisting on a maximum sentence in order to protect the victim and the public and providing facts in support of its recommendation. *Id.* at ¶ 30. We went on to find that "*the difference between standing silent and pressing for a maximum sentence of eight years is great.*" *Id.* at ¶ 34; (Emphasis sic.). We acknowledged that it would be difficult for the appellant to affirmatively show his sentence would have been different had the prosecutor fulfilled the State's promise to stand silent. *Id.* But we found it was likewise impossible to say, under these facts, that the State's recommendation did not contribute to the trial

court's sentencing decision. *Id.* In finding plain error, we pointed out: "The state's recommendation is a well-recognized tool in the plea bargaining process, which is an essential component of the criminal justice system. The state's promise to refrain from insisting upon a lengthy sentence is a favorable factor in a decision to enter a plea. And, the state's recommendation of a maximum sentence does carry great weight." *Id.* at ¶ 36.

{¶15} Upon finding plain error, we went on to discuss the appropriate remedy. We noted that the appellant sought to vacate his plea. But we found that this was not the appropriate remedy. Instead, we found the appropriate remedy was to reverse the trial court's judgment and remand the case for a new sentencing hearing before a different trial judge where the State was to abide by its agreement. *Id.* at ¶ 37-39, citing *Santobello*, 404 U.S. 257, and *United States v. Barnes*, 278 F.3d 644 (6th Cir.2002).

{¶16} At the sentencing hearing in this case, the prosecutor (who was a different prosecutor than at the plea hearing) asked the trial court:

Obviously, we would request that his jail time that is still pending in the '17 case be revoked, and he serve all of that time in the 2020 case.

I believe he had additional time, and we'd ask that he serve that as well, and as far as – I just spoke with our office, he's not paid anything on restitution.

(Tr. 21). The court next heard from Appellant's counsel. (Tr. 21-22).

{¶17} The trial court then stated: "What I would like are the victims to be paid back, but I'm being unrealistic thinking that's going to happen. It hasn't happened yet, so, what the Court will do is the following." (Tr. 22). It went on to sentence Appellant to an additional ten months for his violation in the 2020 case and three months for his violation in the 2017 case, to be served concurrently.

{¶18} It is clear in this case that the prosecutor's statement to the trial court breached the agreement the State entered into with Appellant to stand silent at sentencing. And the trial court relied on the prosecutor's statement in sentencing appellant. As was the case in *Adams*, this was plain error.

{¶19} Accordingly, appellant's first assignment of error has merit and is sustained.

{¶20} Appellant's second assignment of error states:

THE TRIAL COURT ERRED WHEN IT SENTENCED MR. BROWN TO SERVE TEN MONTHS IN JAIL WHEN THE MAXIMUM JAIL SENTENCE PERMITTED BY LAW IS SIX MONTHS.

{¶21} Here, Appellant contends the trial court erred in sentencing him to ten months when the maximum sentence was six months.

{¶22} Given the merit of Appellant's first assignment of error, his second assignment of error is now moot.

{¶23} For the reasons stated above, the trial court's judgment is hereby reversed. The matter is remanded for a new sentencing hearing before a different trial judge where the State shall abide by its agreement.

Waite, J., concurs.

Robb, J., concurs.

For the reasons stated in the Opinion rendered herein, the first assignment of error is sustained. The second assignment of error is moot. It is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Monroe County, Ohio, is reversed. The matter is remanded for a new sentencing hearing before a different trial judge where the State shall abide by its agreement. Costs to be taxed against the Appellee.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

**NOTICE TO COUNSEL**

**This document constitutes a final judgment entry.**