



**IN THE
TENTH COURT OF APPEALS**

No. 10-13-00413-CR

JAMES EARL WILLIAMS,

Appellant

v.

THE STATE OF TEXAS,

Appellee

**From the 54th District Court
McLennan County, Texas
Trial Court No. 2012-623-C2**

DISSENTING OPINION

There are a couple of things in this appeal that are not subject to dispute because they do not depend on memory or credibility evaluation. As to one, the agreement, there is no dispute because it is written down. The agreement was that, as part of the 2002 plea agreement to resolve other pending charges, the State agreed it "is going to refuse prosecution of any other case in which the state has notice, ... unfiled cases." The other thing on which there is no disagreement is that the present murder charge was

known to the State at the time of the 2002 plea agreement. In essence, at the time of the plea agreement, it was an unfiled case of which the State had notice.

The Court in this appeal has determined there is an ambiguity in the agreement. I do not find one. There may have been a unilateral mistake about what unfiled cases were intended to be covered by the agreement. But there was no ambiguity. There may even have been a mutual mistake about what unfiled cases were intended to be covered by the agreement. But there was no ambiguity. No one has argued a mistake. There is no justification to look outside the agreement to determine the intent of the parties. Regardless of what they intended, what was written down as the agreement of the parties is clear.

The agreement was that the State would not prosecute any unfiled cases of which it had notice. The present murder case was one about which the State had notice. I can find no legal justification to let the State out of the deal that it made. Because I would reverse the judgment of conviction and remand this proceeding to the trial court with instructions to dismiss the charges against Williams, I respectfully dissent.

TOM GRAY
Chief Justice

Dissenting opinion issued and filed July 30, 2015

