

REL: May 29, 2020

Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2019-2020

CR-18-0986

Terrance Patrick Saulters

v.

State of Alabama

**Appeal from Jefferson Circuit Court
(CC-14-4672)**

On Application for Rehearing

MINOR, Judge.

The opinion issued on March 13, 2020, is withdrawn, and the following opinion is substituted therefor.

Terrance Patrick Saulter pleaded guilty, as a part of a negotiated agreement, to second-degree arson. See § 13A-7-42, Ala. Code 1975. The Jefferson Circuit Court refused to sentence Saulter under the plea agreement based on Saulter's failure to appear at the scheduled sentencing hearing. Saulter moved to withdraw his guilty plea, arguing that his presence at the sentencing hearing was not a part of the plea agreement. The circuit court denied Saulter's motion, and Saulter appealed. Because the plea agreement did not include an express condition that Saulter appear at the sentencing hearing and because the circuit court did not condition its acceptance of the plea agreement upon Saulter's appearance at sentencing, we reverse and remand.

Facts and Procedural History

A Jefferson County grand jury indicted Saulter on December 5, 2014, for one count of second-degree arson. (C. 45.) Saulter and the State reached an agreement for Saulter to plead guilty in exchange for a 20-year sentence of imprisonment, split to serve 3 years followed by probation. Saulter pleaded guilty on November 30, 2015. (C. 100.)

At the guilty-plea hearing, the circuit court discussed

the plea agreement with Saulter, noting that the range of punishment for Saulter, as a habitual felony offender, was 20 to 99 years or life imprisonment. The circuit court recited the agreed-upon sentence but did not state that it would impose that sentence. The circuit court also did not state that if Saulter failed to appear for sentencing, the court could refuse to follow the terms of the plea agreement. The circuit court scheduled sentencing for January 4, 2016.

At Saulter's request, the circuit court continued the sentencing hearing until January 15, 2016. (C. 22.) Saulter did not appear at the sentencing hearing, however, and he was not arrested until 3 years later. (C. 24; May 9, 2019, sentencing hearing, R. 3-4.¹) The circuit court imposed a 20-year sentence of imprisonment, split to serve 5 years followed by 3 years of probation. (C. 32.)

Saulter objected to the sentence because its split portion was 5 years rather than the 3-year split portion under the plea agreement. The circuit court refused to follow the agreement on the basis that Saulter's failure to appear for

¹Because the transcripts of the hearings are separately paginated, each citation to a hearing transcript includes the date of that hearing.

sentencing in 2016 had violated, the court said, an implied condition of his plea agreement. (June 19, 2019, hearing, R. 7-8.) The circuit court later denied Saulter's motion to withdraw his guilty plea.

Discussion

Saulter argues that he has a right to withdraw his guilty plea because the circuit court did not follow the terms of the plea agreement.² Saulter argues correctly that Alabama law does not support the circuit court's position that Saulter's appearance at sentencing was an implied condition of his plea agreement. Indeed, the State concedes that the circuit court exceeded its discretion in refusing to permit Saulter to withdraw his guilty plea.

This Court's decision in Taylor v. State, 677 So. 2d 1284 (Ala. Crim. App. 1996), controls this case. In Taylor, the circuit court refused to follow the sentencing range in a plea agreement because the defendant had twice failed to appear for sentencing. 677 So. 2d at 1285. In reversing the circuit

²See, e.g., Rule 14.3(c)(2)(iv), Ala. R. Crim. P. ("If the court rejects the plea agreement, the court shall ... [a]fford the defendant the opportunity to withdraw the defendant's offer to plead guilty").

court's judgment refusing to permit the defendant to withdraw his guilty plea, this Court noted that the plea agreement did not condition its terms upon the defendant's appearance at sentencing. This Court distinguished State v. Holman, 486 So. 2d 500 (Ala. 1986), because,

"[i]n Holman, the trial court [had] accepted the plea agreement on the following express condition: 'If you fail to appear [at the sentencing hearing] ... I reserve the option to sentence you up to life in the penitentiary.' 486 So. 2d at 501-02. On appeal, the Alabama Supreme Court interpreted this statement to be an amendment to the plea agreement."

677 So. 2d at 1285.

Saulter's plea agreement did not include an express condition that he appear at sentencing, nor did the circuit court condition its acceptance of the plea upon Salter's appearance at sentencing.³ This Court notes the reasonableness of the circuit court's position, expressed at the hearing on Saulter's motion to withdraw his guilty plea, that the defendant's presence at sentencing is an implied condition of every plea agreement. Indeed, other jurisdictions

³Saulter's plea agreement noted that he would "be sentenced on January 4th, 2016." (C. 104.) The agreement did not, however, state that his appearance at sentencing was required as a condition of the agreement.

have adopted that position. See, e.g., United States v. Munoz, 718 F.3d 726, 730 (7th Cir. 2013) ("Regardless of whether a defendant commits additional crimes after absconding, his failure to appear for sentencing violates the conditions of pretrial release and one of the fundamental premises underlying any plea agreement: a willingness to face the consequences of admitted criminal conduct. As a result, we agree with our colleagues in the Fourth Circuit that a defendant breaches a plea agreement when he absconds before sentencing even if the agreement is silent on the subject. See United States v. David, 58 F.3d 113, 114-15 (4th Cir. 1995)."); United States v. David, 58 F.3d 113, 115 (4th Cir. 1995) ("The plea agreement between David and the government does not address the effect David's absconding would have on the government's obligations under the agreement. Nevertheless, we are of opinion that implicit in every such plea agreement is the defendant's obligation to appear for sentencing at the time appointed by the district court."); Crump v. State, [No. 2018-CA-00056-COA, July 30, 2019] ___ So. 3d ___ (Miss. Ct. App. 2019) ("We agree with the circuit court that, by failing to appear for sentencing, Crump, not the

State, breached [an implicit condition of] the plea agreement."). But decisions of this Court have rejected that position. Taylor, supra; see also Blow v. State, 49 Ala. App. 623, 274 So. 2d 652 (Ala. Crim. App. 1973). And we have not been asked to overrule those decisions.⁴ See, e.g., Ex parte McKinney, 87 So. 3d 502, 509 n.7 (Ala. 2011) ("[T]his Court has long recognized a disinclination to overrule existing caselaw in the absence of either a specific request to do so or an adequate argument asking that we do so.").⁵ Thus, a

⁴As noted, on original submission the State conceded that Saulter had a right to relief, and the State did not ask us to overrule our controlling decisions. In its application for rehearing, the State has reversed course and now asks that we overrule the cases that give Saulter a right to relief. This request is untimely, and we will not consider it. See, e.g., Ward v. State, 105 So. 3d 449, 452 n.1 (Ala. Crim. App. 2012) ("The well-settled rule of this Court precludes consideration of arguments made for the first time on rehearing. . . . We can not sanction the practice of bringing up new questions for the first time, in an ex parte application for rehearing." (quoting Water Works & Sewer Board of City of Selma v. Randolph, 833 So. 2d 604, 608-09 (Ala. 2002) (additional citations omitted))).

⁵In State v. Holman, 486 So. 2d 500 (Ala. 1986), the Alabama Supreme Court distinguished Blow v. State, 49 Ala. App. 623, 274 So. 2d 652 (Ala. Crim. App. 1973), because in Blow "the trial judge rejected the agreement, which did not specifically contemplate the defendant's failure to appear or his further violations." To the extent the Alabama Supreme Court has adopted the validity of the principles underlying Blow and similar decisions, we are not free to overrule those

circuit court may not consider the defendant's presence at sentencing an implied condition of a plea agreement; such a condition must be expressly included in the written plea agreement or stated in open court.⁶ Taylor, supra; Blow, supra.

The circuit court exceeded its discretion by refusing to allow Saulter to withdraw his guilty plea. Taylor, supra. See also Rule 14.3(c)(2), Ala. R. Crim. P. Thus, the circuit court's judgment is reversed, and the cause is remanded for proceedings consistent with this opinion.

APPLICATION OVERRULED; OPINION OF MARCH 13, 2020, WITHDRAWN; OPINION SUBSTITUTED; REVERSED AND REMANDED.

Windom, P.J., and Kellum, McCool, and Cole, JJ., concur.

decisions. See § 12-3-16, Ala. Code 1975 ("The decisions of the Supreme Court shall govern the holdings and decisions of the courts of appeals, and the decisions and proceedings of such courts of appeals shall be subject to the general superintendence and control of the Supreme Court as provided by Constitutional Amendment No. 328.").

⁶The guilty-plea forms included as an appendix to the Alabama Rules of Criminal Procedure could be revised to expressly state that the defendant's presence at sentencing is a condition of any plea agreement. See Rule 36, Ala. R. Crim. P.