

SUPERIOR COURT
OF THE
STATE OF DELAWARE

FRED S. SILVERMAN
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 North King Street, Suite 10400
Wilmington, DE 19801-3733
Telephone (302) 255-0669

August 17, 2010

(VIA FACSIMILE and U.S. MAIL)

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Carvel State Office Building
820 North French Street
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RE: *State v. Lamar Massas*
ID# 0908012073, 0802027272, 0708041610 &
0706005722

**Upon Defendant's Motion for Specific Performance of a
Plea Agreement – GRANTED**

Dear Counsel:

Part of the plea agreement entered on November 5, 2009 was the State's promise to recommend the three year, minimum/mandatory sentence for the offense to which Defendant agreed to plead guilty, possession of a deadly weapon (firearm) by person prohibited. In turn, Defendant agreed that he would have no contact with

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his co-defendant, Brianna Gallman. The State has told the court that after the plea was entered, Defendant made contact with Gallman.

Accordingly, the State announced that it intends to recommend more than the minimum/mandatory sentence. In response, Defendant filed this motion for specific performance of the plea agreement. According to Defendant, “although Mr. Massas is alleged to have engaged in shenanigans, and the State is free to remark upon them at sentencing, none of the alleged activities deprived the State of the benefit of its bargain.” Defendant is correct.

Primarily, the State relies on *Chavous v. State*.¹ In *Chavous*, after the plea was entered, Defendant, on his own, moved to withdraw his guilty plea. In response, the State declared the plea agreement breached, and it recommended a longer prison sentence than it had promised it would recommend under the agreement. *Chavous* held that the prosecutor jumped the gun. In *dicta*, *Chavous* suggested, “Before making a sentencing recommendation inconsistent with its obligation under the plea agreement, the State should have moved for a determination that a breach had occurred and for leave to make a different sentencing recommendation.”² Here, the State told the court that Defendant was up to “shenanigans,” and it unilaterally announced that it would recommend a longer prison sentence. So, again, the State jumped the gun. Now, the court must fashion a remedy.

If the State wishes to withdraw the plea and have the case returned to the trial calendar, we can discuss that tomorrow. Otherwise, the State is bound by its promise to recommend the minimum/mandatory and, consistent with Defendant’s request for relief, the State only has leave “to remark upon” Defendant’s post-plea

¹953 A.2d 282 (Del. 2008).

²*Id.* at 286-87.

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conduct. Before sentencing, the parties shall meet and confer about whether they can agree about what happened after the plea was entered, and what the State can tell the court. But, tomorrow the State **SHALL NOT** exceed the agreed upon sentence recommendation.

IT IS SO ORDERED.

Very truly yours,

/s/ Fred S. Silverman

FSS: mes
cc: Prothonotary (Criminal)