

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GORDON L. MANIS)
) No. 148, 2000
 Defendant Below,)
 Appellant,) Court Below: Superior Court
 v.) of the State of Delaware in
) and for New Castle County
)
 STATE OF DELAWARE,) I.D. No. 9812000028
)
 Plaintiff Below)
 Appellee.)

Submitted: August 7, 2001

Decided: August 16, 2001

Before **WALSH, HOLLAND** and **STEELE**, Justices.

ORDER

This 16th day of August, 2001, on consideration of the briefs of the parties, it appears to the Court that:

1. Gordon L. Manis pleaded guilty to Manslaughter and Driving Under the Influence and the Superior Court sentenced him on January 7, 2000 to 30 months at Level V, 6 months at Level IV (Work Release) and 1 year at Level IV (Home Confinement). Manis then filed and the Superior Court denied his Motion for Sentence Correction.¹ On this appeal Manis argues that because the Superior Court accepted a plea agreement he entered

¹ See Super. Ct. Crim. R. 35(a).

on June 7, 1999,² which specified a sentence of “10 years at Level V suspended after 30 months for probation,” the Superior Court erred when it later imposed a sentence exceeding 30 months at Level V. Manis contends that the Superior Court must impose a sentence no greater than that provided in the plea agreement.

2. On March 13, 2001, after briefings and supplemental memoranda, we remanded this case to the Superior Court asking whether it sentenced Manis in excess of the Rule 11(e)(1)(C) plea agreement and if so whether it should not impose a sentence no greater than that provided for in the agreement. The Superior Court issued a Report after Remand on May 21, 2001 explaining that it did not sentence Manis to a punishment greater than that specified in the plea agreement. Because we find that the Superior Court’s report on remand accurately and persuasively explains that the Court did sentence Manis within the terms of the plea agreement and its statutory authority, we affirm.

3. The facts in this case are simple but tragic. On December 1, 1998, Manis caused a fatality in a motor vehicle collision at the intersection of Routes 13 and 273. Police arrested Manis at the scene. On January 19, 1999, a Superior Court Grand Jury indicted Manis and charged him with:

² See Super. Ct. Crim. R. 11(e)(1)(C).

Murder in the Second Degree; Driving a Vehicle While Under the Influence of Alcohol and/or Drugs; Failure to have Required Insurance; and Driving While License is Suspended.

4. On June 7, 1999, Manis entered into a plea agreement pursuant to Superior Court Criminal Rule 11(e)(1)(C). This rule permits the parties to “agree that a specific sentence is the appropriate disposition of the case,” subject to approval by the Superior Court. The parties’ plea agreement provided that Manis would plead guilty to Manslaughter and Driving Under the Influence and that a nolle prosequi would be entered as to all the remaining charges. The plea agreement further provided for a sentence of “10 years Level V, suspended after 30 months for probation.”

5. On October 7, 1999, the parties appeared for a plea in Superior Court. Manis pleaded guilty to manslaughter and driving under the influence of alcohol. The Superior Court did not impose a sentence at that time; instead, the Superior Court ordered a presentence report.

6. On January 7, 2000, Manis appeared for sentencing before a Superior Court judge different from the one who presided at the October 7, 1999 hearing. According to Manis, the second judge sentenced him to a punishment in excess of what the parties had agreed to in the plea agreement that the Superior Court had accepted during the October 7, 1999 hearing.

During this sentencing hearing, the Superior Court stated: “So the Court will exercise its discretion and defer to the parties’ agreement with respect to sentence. That will mean two and a half years in prison.” The Superior Court then sentenced Manis to 30 months at Level V to be followed by 6 months at Level IV (Work Release), to be followed by 1 year at Level IV (Home Confinement). The Superior Court also revoked Manis’ driving privileges for 15 years.

7. On March 10, 2000, Manis filed a Motion for Sentence Correction in an attempt to have his sentence reflect the *verbatim* sentence contained in the plea agreement. On March 28, 2000, The Superior Court denied Manis’ motion and stated that “assuming without deciding that [Manis’] sentence exceeds the Rule 11(e)(1)(C) plea agreement, the Superior Court is not bound by Rule 11(e)(1)(C) agreements.”³ Manis contends that “given the parties’ Rule 11(e)(1)(C) plea agreement, the Superior Court was bound to impose a sentence no greater than that provided for in the plea agreement once the Superior Court had accepted [it].”⁴

³ In this appeal, the State acknowledges that “any statements by the sentencing judge in the post-sentencing proceedings that the trial court is not bound by the provisions of Delaware Superior Court Criminal Rule 11(e)(1)(C) are legally incorrect.”

⁴ See Super. Ct. Crim. R. 11(e)(3). Rule 11(e)(3) states:

If the court accepts the plea agreement, the court shall inform the parties either after taking the plea where immediate sentencing is contemplated or immediately prior to sentencing in cases where a presentence report has

8. The issue in this case is whether the Superior Court accepted the plea agreement on October 7, 1999 and then violated the terms of that agreement when it sentenced Manis on January 7, 2000 to a punishment greater than that provided in the plea agreement. Manis contends that when the parties presented the plea agreement to the Superior Court on October 7, 1999, the presiding Superior Court judge accepted the guilty plea and the terms of the plea, which specified 10 years at Level V suspended after 30 months and probation. According to Manis, the Superior Court judge announced that he accepted the Rule 11(e)(1)(C) plea agreement, entered judgments of guilt, and ordered a presentence investigation. Manis argues that because he was then precluded from withdrawing his guilty plea, the plea agreement became binding.

9. The State refutes Manis' argument that the Superior Court accepted the plea agreement on October 7, 1999. Rather, the State argues, the Superior Court accepted only Manis' guilty plea at that hearing. Because the Superior Court did not accept the plea agreement on October 7, 1999, it did not violate the terms of the plea agreement when it later sentenced Manis on January 7, 2000. Moreover, the State refutes Manis' argument that once

been ordered that it will embody in the judgment and sentence the disposition provided for in the plea agreement. Nothing stated herein

he entered a guilty plea, he was legally unable to withdraw, arguing that until the Superior Court expressly accepted the agreement, Manis was free to withdraw.⁵

10. In its Report after Remand, the Superior Court explained that the Superior Court judge who presided over the October 7, 1999 hearing neither “defer[ed] to the parties’ agreement with respect to sentencing” nor “announce[ed] his acceptance of the Rule 11(e)(1)(C) plea agreement.”⁶ Instead, in its report, the Superior Court explained that the “presiding judge entered findings of guilt but deferred accepting or rejecting the plea agreement until there was an opportunity to consider the presentence report.” In fact, the “presiding judge did not intend, much less promise, to defer to the plea agreement. Furthermore, the presiding judge specifically left open the possibility that [Manis] would serve the mandatory prison sentence ‘and whatever else the Court may impose.’”

11. In its report, the Superior Court explained that during the January 7, 2000 sentencing hearing the presiding judge “incorrectly attributed to the judge who presided over the plea colloquy” the language

precludes the court from thereafter reducing the sentence imposed pursuant to Rule 35(b) of these rules or 11 *Del. C.* § 4217.

⁵ In its Supplemental Memorandum, the State argues Manis acquiesced by failing to timely withdraw his guilty plea.

⁶ Report on Remand page 2-3.

that the court would defer to the parties' agreement. The Superior Court clarified the remark, explaining that the phrase was meant to be literal, that it applied only to the amount of time the court would impose at Level V. The phrase was not meant to apply to Manis' entire sentence. The Superior Court explained that the plea agreement does not mention Level IV supervision. The agreement could have accounted for descending levels of supervision and/or specifically excluded Level IV supervision.

12. The Superior Court noted in its report that during an office conference held on February 14, 2000, Manis' primary concern was that his imprisonment might exceed 30 months while he awaited placement at Level IV supervision for work release. At that point the Superior Court modified Manis' sentence so that all Level IV time would be spent at home confinement. Manis did not object to this modification on the theory that it violated the plea agreement nor did he attempt to withdraw from the plea agreement – an option which the Superior Court then offered Manis.⁷ Manis also did not request reargument. He then filed this appeal.

13. The Superior Court concluded that Level IV supervision is not Level V imprisonment and that the sentence imposing home confinement did not exceed the Rule 11(e)(1)(C) plea agreement. The Superior Court

⁷ See report pat 6-7.

concluded that although the sentencing order might necessitate Manis holding at Level V for more than 30 months while he waited for the necessary equipment for home confinement, Manis could seek a sentence modification when and if the situation arises.

14. We review the trial court's denial of a motion for correction of sentence pursuant to Super. Ct. Crim. R. 35(a) for an abuse of discretion.⁸ Errors of law are reviewed de novo. Superior Court Criminal Rule 11(e)(2) provides, in part: "If the agreement is of the type specified in subdivision (e)(1)(C), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report." Absent fraud on the court, a plea agreement under the rule is binding on the Superior Court once it is accepted by the Superior Court.⁹

15. In this case, the Superior Court explained that language, which left the impression that that the Superior court accepted the plea agreement, was mistakenly attributed to the Superior Court judge presiding at the

⁸ See *Hamilton v. State*, Del. Supr., 285 A.2d 807, 808 (1971); *Shy v. State*, Del. Supr., 246 A.2d 926, 927 (1968).

⁹ Conversely, this Court has held that the Superior Court is not bound by plea agreements it has not accepted. *Sommerville v. State*, Del. Supr., 703 A.2d 629, 633 (1997). Superior Court Rule 11(e)(1)(C) is based upon a corresponding provision in the Federal Rules of Criminal Procedure. The Federal rule was recently amended to clarify that while the court retains absolute discretion whether to accept a Rule 11(e)(1)(C) Plea Agreement, "such a

October 7, 1999 hearing. In addition, because the agreement neither included Level IV supervision nor explicitly excluded it, the Superior Court did not violate the terms of the plea agreement.

16. The Superior Court's order is consistent with the plea agreement and current sentencing practice. Level IV is *not* imprisonment but a less intense level of supervision than Level V and a more intense level of supervision than Level III. Sentencing now places people at appropriate "levels of supervision" *and* generic references to "probation" have only historic meaning. A sentencing order is now crafted to reflect the intensity of supervision necessary and the resources available to devote to the appropriate level of supervision. Therefore, the Superior Court, on remand, correctly concluded that "when the Court sentenced defendant to home confinement, it did not exceed the Rule 11(e)(1)(c) plea agreement."

17. The plea agreement provided for 10 years at Level V suspended after 30 months. It appears that Manis' original concern was that it is not unusual for defendants to be held at Level V until "space becomes available" at Level IV, halfway house or home confinement for supervision or treatment (work release, a specific drug alcohol treatment center or program, etc.). Here, the concern apparently was the probability that he

plea agreement is binding on the court once it is accepted by the court." Fed. R. Crim. P.

could be held at Level V beyond the 30 months called for in the plea agreement while he waited for work release to become available (usually through a Level IV halfway house facility). The court modified the sentence to Level IV home confinement instead of Level IV halfway house. While Manis would still be held at Level V pending the availability of the home confinement equipment and supervision, the sentencing judge noted that the current wait was “about two week[s].” Manis also was on notice that “the hold order” could result in Level V supervision beyond the agreement if he had to wait for space at the halfway house or equipment availability for home confinement. The plea agreement could have specifically covered those considerations, but did not.

18. Finally, Manis overlooks the statutory requirements of 11 *Del. C.* § 4204(1), which states that

“[w]henver a court imposes a period of incarceration at Level V custody for 1 or more offenses that totals 1 year or more, then that court must include as part of its sentence a period of custodial supervision at either Level IV, III or II for a period of not less than 6 months to facilitate the transition of the individual back into society. The 6-month transition period required by this subsection may, at the discretion of the court, be in addition to the maximum sentence of imprisonment established by the statute.”

11(e)(1)(C); Fed. R. Crim. P. 11(e)(1)(C) advisory committee’s note.

In this case, after reviewing the presentence report, the Superior Court determined that it was an unacceptable risk to take Manis directly from Level V to Level III. The Superior Court imposed Level IV supervision for follow-up treatment and supervision during the hours Manis was not at work. This determination is well within an acceptable rational range of the court's discretion.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same here by is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Justice