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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2291**

State of Minnesota,
Respondent,

vs.

Giorgio Jovon Tyler,
Appellant.

**Filed December 5, 2011
Affirmed
Peterson, Judge**

Hennepin County District Court
File No. 27-CR-10-6058

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

Melissa Sheridan, Assistant State Public Defender, Eagan, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Kalitowski, Judge; and
Peterson, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

Appellant argues that he is entitled to specific performance of his plea agreement because the record does not support the district court's finding that he breached the plea agreement. We affirm.

FACTS

As part of a negotiated plea agreement, appellant Giorgio Tyler pleaded guilty to a simple-robbery charge. Respondent State of Minnesota agreed to a sentence of 39 months, with execution stayed for three years and appellant to serve 150 days in the workhouse. This sentence was a dispositional departure from the presumptive executed 33-month sentence.¹ In return, appellant agreed to (1) cooperate with the presentence investigation; (2) provide a factual basis for his plea that included the names of the people with whom he committed the offense; and (3) testify truthfully, accurately, and completely at his codefendants' trial. Appellant concedes on appeal that his plea agreement was conditioned on his performance of these terms. In laying the factual basis for his plea while under oath at the plea hearing, appellant identified Kenneth Johnson, Corey Maull, and Darail Murphy as the people with whom he committed the robbery.

The district court scheduled appellant's sentencing and placed appellant on conditional release. Appellant failed to communicate with probation and failed to attend

¹ The presumptive-sentence range was from 29 months to 39 months, based on appellant's criminal-history score of 3 and an offense-severity level of V. Minn. Sent. Guidelines IV (2008).

a scheduled meeting with the probation officer performing the presentence investigation. Because he violated his conditional release, the district court issued a conditional-release warrant. Appellant also failed to appear for sentencing, and he was arrested.

The prosecutor interviewed appellant while he was in custody. Appellant initially said that Johnson and Maull, whom he had previously implicated, were not involved in the robbery. Appellant said that he committed the offense with Murphy and two other individuals whom he did not identify. After taking a break, during which appellant spoke with his attorney, the interview resumed, and appellant told another version of the robbery, in which he committed the offense with Murphy, Maull, and a third individual whom he identified as James. Appellant also spoke with a probation officer and told a fourth version of the robbery, in which he denied that he was involved. The probation officer's report states that appellant "insists he is not guilty of this offense, stating he was only attempting to help his friend, whom he believed was involved in a fight."

Because appellant gave inconsistent statements about the robbery, the prosecutor believed that he could not, "in good conscience and as an officer of the court," call appellant to testify at trial. The state, therefore, did not call appellant to testify at his codefendants' trial.²

At appellant's sentencing hearing, the state asserted that appellant violated the terms of the plea agreement, and, therefore, it was not obligated to uphold its agreement to a dispositional departure on sentencing. Appellant requested that the district court sentence him according to the plea agreement. The district court found that appellant

² Maull and Johnson were tried jointly and convicted of aggravated robbery.

breached the plea agreement by failing to cooperate with the presentence investigation and by giving “different statements that were contrary to his sworn testimony,” which “destroyed his own usefulness as a witness.” The court sentenced appellant to a presumptive executed sentence of 39 months in prison. This appeal followed.

D E C I S I O N

In sentencing matters, a district court has broad discretion, and this court will not reverse absent a clear abuse of discretion. *State v. Lundberg*, 575 N.W.2d 589, 591 (Minn. App. 1998), *review denied* (Minn. May 20, 1998). Only in a “rare” case will a reviewing court reverse a district court’s imposition of a presumptive sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). We will reverse a district court’s findings of fact only if they are clearly erroneous. *State v. Critt*, 554 N.W.2d 93, 95 (Minn. App. 1996), *review denied* (Minn. Nov. 20, 1996).

Generally, after a court accepts a plea containing an agreement on sentencing, the terms of the agreement should be fulfilled. *State v. Pearson*, 479 N.W.2d 401, 405 (Minn. App. 1991), *review denied* (Minn. Feb. 10, 1992). But a court is not required to honor a plea agreement that has been breached. *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000). A defendant who breaches a plea agreement is not entitled to specific performance of the agreement. *See State v. Rud*, 372 N.W.2d 434, 435 (Minn. App. 1985) (affirming sentence exceeding sentence provided for in plea agreement when defendant violated plea agreement and had been warned that violation would result in execution of sentence), *review denied* (Minn. Sept. 26, 1985). “In determining whether a plea agreement was violated, courts look to what the parties to the plea bargain

reasonably understood to be the terms of the agreement.” *Brown*, 606 N.W.2d at 674 (quotations omitted).

It is undisputed that the terms of the plea agreement required appellant to cooperate with the presentence investigation and testify truthfully, accurately, and completely at his codefendants’ trial. Appellant contends that the state proved only that he “missed his first appointment with the presentence investigator” and did not prove that he did not cooperate with the presentence investigation. But failing to appear for an appointment with the presentence investigator was a failure to cooperate with the presentence investigation. Also, appellant was eventually interviewed for the presentence investigation while he was in custody, and the presentence-investigation report states that appellant was only “somewhat cooperative.” The report states that appellant “put up a defensive front and was limited in the information he provided. It was clear based on his statements of not being guilty of this offense, he did not want to participate in the interview.” The record supports the district court’s finding that appellant failed to cooperate with the presentence investigation, which was a breach of the plea agreement.

Appellant argues that the state did not prove that he breached the plea agreement by not testifying at his codefendants’ trial because the state did not call him as a witness at the trial. Appellant contends that had the state called him as a witness at the trial and he then failed to testify truthfully, the district court would have had a basis for finding a breach, but without giving him a chance to testify, there was no basis for finding a willful breach.

The district court found that appellant was “aware of the importance of the agreement and of his testimony” and, by giving multiple inconsistent statements, appellant demonstrated “bad faith,” was “untruthful,” and “destroyed his own usefulness as a witness.” The record shows that, when interviewed by the prosecutor after the plea hearing, appellant gave a statement that was inconsistent with his plea-hearing testimony. Then, after conferring with his attorney, appellant gave another statement about the robbery that was different from the statement he gave earlier in the interview and different from his plea-hearing testimony.

The plea agreement required appellant to testify truthfully, accurately, and completely at his codefendants’ trial. Appellant’s statements to the prosecutor about the robbery, which identified different people as those with whom appellant committed the robbery, were inconsistent and could not have been truthful and accurate. When preparing for trial, the state gave appellant a chance to testify. But, by providing inconsistent statements about the robbery, appellant destroyed his own credibility, which prevented the prosecutor from calling him as a witness. Therefore, even though appellant was not called to testify at trial, the district court’s finding that appellant breached his agreement to testify truthfully, accurately, and completely is not clearly erroneous. Because appellant breached the plea agreement, he was not entitled to specific performance of the agreement. *See Rud*, 372 N.W.2d at 435 (holding that appellant breached plea agreement by being untruthful and destroying his credibility as a witness).

Affirmed.