

[Cite as *State v. Huffman* , 2018-Ohio-3315.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107093

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

SAVONTE D. HUFFMAN

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-16-611587-B

BEFORE: Stewart, J., Kilbane, P.J., and Jones, J.

RELEASED AND JOURNALIZED: August 16, 2018

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MELODY J. STEWART, J.:

{¶1} The grand jury returned an indictment charging defendant-appellant Savonte Huffman with two counts of aggravated robbery and one count of receiving stolen property. Huffman agreed to plead guilty to the indictment, and as part of the plea bargain, the state agreed that the sentence in this case would run concurrent with a sentence imposed in Cuyahoga C.P. No. CR-16-605264-A, where Huffman pleaded guilty to aggravated murder with a firearm specification — an offense with an agreed sentencing range from 23 years to life in prison to 33 years to life in prison. The court accepted the guilty plea and memorialized it in a journal entry that stated: “CASE #CR-611587 IS TO BE CONCURRENT TO CASE #CR-605264.” Nevertheless, and over objection by defense counsel, the court stated that it would not accept the recommendation for concurrent sentencing and ordered Huffman to serve the sentences on all three counts consecutively (a total of 33 years) and then ordered him to serve the 33-year sentence consecutive to a sentence of 33 years to life in CR-16-605264-A.

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{¶2} Huffman appeals, arguing that the consecutive sentences in this case violated the terms of the plea agreement, particularly given that the court issued a journal entry stating that the sentence in this case would run concurrent with the sentence in CR-16-605264-A. The state concedes the error. That concession is merited — on direct appeal from Huffman’s conviction in CR-16-605264-A, we found that the court erred because “it is apparent that appellant entered his plea with an agreed understanding that concurrent sentences would be imposed.” *State v. Huffman*, 8th Dist. Cuyahoga No. 105805, 2018-Ohio-1192, ¶ 13. Although the court is free to reject any plea agreement, when a “plea is inherently intertwined with the agreed sentence, the court must express its acceptance or rejection of the agreement for it to be clear the plea is knowingly, voluntarily, and intelligently made.” *Id.* at ¶ 18. As was the case in Huffman’s prior appeal, we find that “the proper remedy is to remand this case to the trial court to resentence appellant under the plea agreement or to allow appellant to withdraw his guilty plea.” *Id.* at ¶ 22. The assignment of error is sustained.

{¶3} Judgment reversed and remanded.

It is ordered that appellant recover of appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MELODY J. STEWART, JUDGE

MARY EILEEN KILBANE, P.J., and
LARRY A. JONES, SR., J., CONCUR

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