

Affirmed as Reformed and Memorandum Opinion filed April 26, 2016.



In The

Fourteenth Court of Appeals

NO. 14-15-00596-CR

JACQUELIN BYRD, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 262nd District Court
Harris County, Texas
Trial Court Cause No. 1422399**

MEMORANDUM OPINION

In a plea bargain, appellant agreed to plead guilty to a single count of theft in exchange for a recommended sentence of six years' imprisonment. The terms of the plea bargain were memorialized in a written document that was signed by appellant, her attorney, the assistant district attorney, and the trial judge. The boilerplate language preceding the trial judge's signature stated as follows:

This document was executed by the defendant, [her] attorney, and the attorney representing the State, and then filed with the papers of the

case. The defendant then came before me and I approved the above and the defendant entered a plea of guilty. After I admonished the defendant of the consequences of [her] plea, I ascertained that [she] entered it knowingly and voluntarily after discussing the case with [her] attorney. It appears that the defendant is mentally competent and the plea is free and voluntary. I find that the defendant's attorney is competent and has effectively represented the defendant in this case. I informed the defendant that I would not exceed the agreed recommendation as to punishment.

The plea bargain did not contain any written conditions.

After the parties executed this document, the trial judge reset the case for sentencing to allow appellant to "get [her] affairs in order." When the sentencing date arrived, appellant did not appear in person, and the case was reset again. At the next setting, appellant appeared in open court. The trial judge stated that appellant's plea bargain had been contingent upon her appearance at the previous setting. Because appellant had not appeared at the previous setting, the trial judge claimed that she "was not required to follow the plea bargain agreement." The trial judge then asserted that she was free to sentence appellant "anywhere within the range of punishment."

Defense counsel objected at this point. Counsel asserted that, because of the plea bargain, the trial judge had no authority to consider the full range of punishment. Counsel also moved to withdraw appellant's guilty plea. The trial judge did not rule on the objection or motion. Instead, the trial judge found that appellant was guilty and assessed her punishment at eight years' imprisonment.

In her first issue on appeal, appellant argues that the trial judge erred by assessing punishment above the terms of the plea bargain. In connection with this issue, appellant asks that we reform the trial court's judgment to reflect a term of imprisonment for six years rather than eight years. In two alternative issues,

appellant argues that the trial judge erred by not allowing appellant to withdraw her plea of guilty. Should we reach these issues, appellant asks that we remand for a new trial. The State concedes that the trial judge erred with respect to appellant's first issue. We agree, and because appellant prefers that the judgment be reformed, we do not address her two alternative issues. *See* Tex. R. App. P. 47.1; *Wright v. State*, 158 S.W.3d 590, 595 (Tex. App.—San Antonio 2005, pet. ref'd); *Otero v. State*, 768 S.W.2d 848, 852 (Tex. App.—Corpus Christi 1989, no pet.).

A plea bargain is a contract between the State and the defendant. *See Moore v. State*, 295 S.W.3d 329, 331 (Tex. Crim. App. 2009). Like any contracting party, the State is free to negotiate a wide variety of stipulations and conditions to reach an agreement with the defendant. *Id.* at 331–32. If an agreement is reached, and if the trial court accepts the agreement, then the State and the defendant are bound by the terms of the agreement. *Id.* This means that a defendant may insist on the benefits of the bargain that she reached with the State. *See Blanco v. State*, 18 S.W.3d 218, 220 (Tex. Crim. App. 2000). If the agreement is capable of enforcement, the defendant is entitled to specific performance. *See Perkins v. Court of Appeals for Third Supreme Judicial Dist. of Tex.*, 738 S.W.2d 276, 283–84 (Tex. Crim. App. 1987) (orig. proceeding). If the agreement cannot be enforced, or if the trial court rejects the agreement, the defendant has an unqualified right to withdraw her plea of guilty. *See Moore*, 295 S.W.3d at 332 (citing Tex. Code Crim. Proc. art. 26.13(a)(2)).

The trial court's role during the plea-bargain process is to advise the defendant whether it will accept or reject the agreement. *Id.* The trial court has no authority to unilaterally insert un-negotiated terms into the agreement. *Id.*

The trial court may accept the agreement with conditions, such as by requiring the defendant to appear in court at a specific time, or by requiring the

defendant to participate in a presentence investigation. *See, e.g., Holland v. State*, 112 S.W.3d 251, 255 (Tex. App.—Austin 2003, no pet.); *Papillion v. State*, 908 S.W.2d 621, 622 (Tex. App.—Beaumont 1995, no pet.). However, when the trial court imposes such conditions, the court must delay its unconditional acceptance of the agreement until after the conditions have been fulfilled. *See Moore*, 295 S.W.3d at 332. If the trial court accepts the agreement before the conditions have been fulfilled, and if the conditions were not expressly negotiated by the State in the agreement itself, then the trial court cannot refuse to give effect to the agreement on the basis of those un-negotiated terms. *See Papillion*, 908 S.W.2d at 624; *see also State v. Moore*, 240 S.W.3d 248, 253 n.26 (Tex. Crim. App. 2007) (discussing *Papillion*).

We apply general contract-law principles when determining the intended content of a plea agreement. *See Ex parte De Leon*, 400 S.W.3d 83, 89 (Tex. Crim. App. 2013). We examine the written agreement, as well as the formal record, to ascertain the terms of the plea agreement, and we will imply a term only when necessary to effectuate the intention of the parties. *Id.*

In this case, the written plea agreement contains no express provision requiring appellant to appear in court on a specific date for sentencing. There is also no transcript of the plea hearing, which might show whether this requirement was ever discussed. The State could have negotiated for such a requirement in the plea agreement, but it did not. The trial judge, likewise, could have deferred her acceptance of the agreement until appellant appeared for sentencing, but she did not. Because the trial judge signed the agreement without written conditions negotiated by the State, the trial judge unconditionally accepted the agreement. Appellant is now entitled to the benefit of the bargain that she reached with the State.

We reform appellant's judgment of conviction to reflect a sentence of six years' imprisonment, in accordance with the terms of the plea bargain. The judgment is affirmed as so reformed.

/s/ Tracy Christopher
Justice

Panel consists of Justices Boyce, Christopher, and Jamison.
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