

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

No. 28589-8-III

Respondent,

)

)

) **Division Three**

v.

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)

JARED MARSHALL GOLLEHON,

) **UNPUBLISHED OPINION**

)

Appellant.

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)

Kulik, C.J. — Jared Gollehon contends that the State violated its obligations under a plea agreement. At the sentencing hearing, the investigating officer, who was also the victim of the crime, made a statement that Mr. Gollehon contends showed disagreement with the sentencing recommendation. Mr. Gollehon asserts this breached the agreement. But the trial court made it perfectly clear that it was relying on Mr. Gollehon’s criminal history, not statements made at sentencing. There was no breach of the agreement. We affirm the trial court’s sentencing decision.

FACTS

The State charged Jared Gollehon with first degree assault with a firearm enhancement, first degree unlawful possession of a firearm, and possession of a short-

barreled shotgun or rifle. Mr. Gollehon ran from Officer Greg Cobb and fired shots as he ran. In a negotiated agreement, the State amended the charges to first degree assault without the firearm enhancement and moved to dismiss the remaining two counts. The agreement required Officer Cobb to be in agreement with the terms. The State acknowledged that Mr. Gollehon would not have agreed to plead guilty without this assurance. The State indicated that Officer Cobb was in full agreement.

Mr. Gollehon entered an *Alford*¹ plea under the agreement. Mr. Gollehon's standard range sentence was 240 to 318 months but, as part of the plea agreement, the State agreed to recommend an exceptional sentence downward of 185 months. Mr. Gollehon's plea was accepted by the trial court and the prosecutor presented the agreed-upon sentencing recommendation. The court asked Officer Cobb, the arresting officer and victim, if he had anything to say at the sentencing. He responded, "Your Honor, I defer to the Prosecutor's judgment. Anything I have to say would be counter-productive at this time." Report of Proceedings (RP) at 11. The court sentenced Mr. Gollehon to 240 months, stating Mr. Gollehon's criminal history and shooting at a police officer did not warrant a downward sentence. The court expressed serious concern at a below range sentence for shooting at a police officer.

¹ *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

Mr. Gollehon later moved for a resentencing or to withdraw his guilty plea, asserting that the State had breached the plea agreement due to Officer Cobb's statement. The motion was denied, and the trial judge stated the reason he did not "adhere or go along with the plea agreement was not because of anything [Officer] Cobb said or didn't say. It was because of . . . the Defendant's criminal history and the crime to which he had just entered a plea of guilty." RP at 26. This appeal followed.

ANALYSIS

Here, Officer Cobb, as an investigating officer, is bound by the prosecutor's agreement and whether his statement breached the prosecutor's duty to fulfill its promises to Mr. Gollehon. The State violates a plea agreement when its conduct at the hearing "undercuts the basis for the waiver of constitutional rights implicit in the plea." *Santobello v. New York*, 404 U.S. 257, 268, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971) (Marshall, J. concurring in part and dissenting in part); *see also State v. Carreno-Maldonado*, 135 Wn. App. 77, 88, 143 P.3d 343 (2006). In *State v. Sanchez*, five justices agreed that an investigating officer is part of the prosecution team and is bound by the prosecutor's agreement. *State v. Sanchez*, 146 Wn.2d 339, 356-59, 46 P.3d 774 (2002). As a plurality decision, *Sanchez* indicates that Officer Cobb is bound by the plea agreement and its requirements.

An objective standard should be applied to determine whether the State has breached the agreement. *State v. Jerde*, 93 Wn. App. 774, 780, 970 P.2d 781 (1999). Here, Officer Cobb’s statement recognized that the sentencing was agreed and that any further statement was unnecessary. The trial court simply did not believe the recommended sentence was appropriate based on Mr. Gollehon’s extensive criminal record. And the court made that absolutely clear on the record, stating,

[T]he bottom line is, sitting where I am today is that I look at a criminal history and I look at the crime that he’s pled guilty to. And I can’t say that a sentence below the standard range is consistent with the interest of justice or the purposes of [chapter 9.94A RCW] the Sentencing Reform Act [of 1981]. I can’t say that, despite the fact that both parties want me to say that. I can’t do it, and I’m not willing to.

RP at 12-13.

We affirm the trial court’s sentencing decision.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Kulik, C.J.

WE CONCUR:

Sweeney, J.

Brown, J.