

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2011 KA 0589**

**STATE OF LOUISIANA**

**VERSUS**

**MAURICE J. ANDERSON**

*ME*  
*89 P*

**Judgment Rendered: NOV - 9 2011**

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On Appeal from the Twenty-First Judicial District Court  
In and for the Parish of Livingston  
State of Louisiana  
Docket No. 16759

Honorable Elizabeth P. Wolfe, Judge Presiding

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Maurice J. Anderson

Maurice J. Anderson  
Bossier Medium Security  
Plain Dealing, Louisiana

In Proper Person

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**BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.**

*Welch J. concurs in result*

**McCLENDON, J.**

Defendant, Maurice J. Anderson, was charged by bill of information with simple burglary of an inhabited dwelling, a violation of LSA-R.S. 14:62.2. Defendant entered a plea of not guilty. As part of the plea agreement, defendant later withdrew his prior plea and entered a plea of guilty as charged. Defendant stipulated to his status as a third-felony habitual offender.<sup>1</sup> The trial court sentenced defendant to ten years imprisonment at hard labor, one year to be served without the benefit of probation, parole, or suspension of sentence. The trial court later denied defendant's oral motion to withdraw his guilty plea and set a date for a habitual offender hearing.

The State filed a habitual offender petition seeking defendant's adjudication as a third-felony habitual offender. The trial court sentenced defendant to "eight additional years" under the habitual offender petition and ordered that the sentence be served without the benefit of probation, parole, or suspension of sentence. Thereafter, the trial court granted defendant's motion to reconsider sentence.<sup>2</sup> The State filed a motion to clarify the trial court's ruling on defendant's motion to reconsider sentence, arguing in part that the State presented evidence to establish defendant's status as a fourth-felony habitual offender. The trial court vacated the original sentence and sentenced defendant to twenty years imprisonment at hard labor.<sup>3</sup>

Defendant appealed the trial court's ruling. On appeal, defendant argued the trial court erred in vacating the original sentence imposed on October 5, 2004 (the date of defendant's **Boykin** examination) because the plea agreement was not honored. According to defendant, the terms of the plea agreement

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<sup>1</sup> At the time of this proceeding the State had not yet filed a habitual offender bill of information. Defendant did not stipulate to his habitual offender status after the State subsequently filed a habitual offender bill of information.

<sup>2</sup> In granting the motion to reconsider sentence, the trial court did not expressly vacate any prior sentence or impose a new or revised sentence.

<sup>3</sup> While the trial court did not state that the sentence was to be served at hard labor, it appears as though the trial court strictly increased the period of incarceration from ten to twenty years. Thus, the revised sentence would be served in the same manner as the original sentence, at hard labor. This is consistent with the minutes for the revised sentence.

provided defendant would plead guilty and stipulate that he was a third-felony habitual offender and would receive ten years imprisonment under the habitual offender statute.

After a thorough review of the procedural history, this court found the record supported defendant's understanding of the plea agreement. See State v. Anderson, 07-0948 (La.App. 1 Cir. 2/20/08), 977 So.2d 308 (unpublished), writ denied, 08-0608 (La. 10/3/08), 992 So.2d 1011. We specifically found that the State agreed to charge defendant as a third-felony habitual offender, defendant agreed to stipulate to third-felony habitual offender status, and the trial court agreed to impose an enhanced sentence of ten years imprisonment. In conflict with the plea agreement, defendant was ultimately adjudicated a fourth-felony habitual offender and sentenced to twenty years imprisonment, as opposed to ten years imprisonment. In finding defendant was entitled to specific performance of the original plea agreement, this court affirmed the conviction based on the guilty plea to simple burglary of an inhabited dwelling, and vacated the habitual offender adjudication and all sentences imposed in the matter. The case was remanded to the trial court for further proceedings in compliance with the plea agreement.

This court, in part, instructed the State to file a new habitual offender petition, charging defendant as a third-felony habitual offender. We further instructed the trial court to impose an enhanced sentence of ten years imprisonment at hard labor as originally agreed (assuming defendant's stipulation to his status as a third-felony habitual offender as charged in the new habitual offender petition, after being advised of the allegations in the habitual offender petition and of his right to remain silent). We noted that in the event defendant did not stipulate to his status as a third-felony habitual offender as agreed, the State had the right to proceed in accordance with law with a hearing on the habitual offender information. This court further noted that in the event defendant was not found to be a third-felony habitual offender as charged, the

trial court, the State, and defendant would not be bound by the plea agreement, and any further proceedings would begin anew.

The State filed a new habitual offender petition on October 23, 2008. The petition represented that defendant should be adjudicated a third-felony habitual offender. The predicate convictions listed in the petition were theft over \$500 (docket number 73656, 21st Judicial District Court, Tangipahoa Parish) and simple burglary (docket number 87213, 21st Judicial District Court, Tangipahoa Parish). The date of conviction for both of the offenses was March 29, 1999. Defendant filed a motion to quash on March 5, 2009, arguing that since the guilty pleas<sup>4</sup> for the predicate offenses were entered on the same day, the two convictions should be counted as a single conviction under LSA-R.S. 15:529.1B and the applicable law. At the habitual offender hearing, the trial court granted defendant's motion to quash. Following presentation of evidence by the State and argument by both parties, the trial court adjudicated defendant a second-felony habitual offender and sentenced him to ten years imprisonment at hard labor.

Defendant again appealed to this court, arguing that the trial court erred in adjudicating him a second-felony habitual offender because the State failed to prove that he was the same person convicted of the prior felonies listed in the habitual offender petition. We agreed with defendant's argument and reversed the habitual offender adjudication, vacated the enhanced sentence, and remanded for further proceedings. In doing so, this court noted that when defendant did not stipulate to being a third-felony habitual offender, the original plea agreement was no longer binding, and the trial court was not obligated to sentence defendant to ten years imprisonment at hard labor (a condition of the plea agreement). See **State v. Anderson**, 09-1460 (La.App. 1 Cir. 2/12/10), 30 So.3d 285 (unpublished).

On remand, on April 26, 2010, upon argument by the State and the defense, the trial court stated its intention to sentence defendant to twelve years

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<sup>4</sup> Both pleas were nolo contendere pleas.

imprisonment, with the first year to be served without benefit of probation, parole, or suspension of sentence. At that point, defendant stated his desire to withdraw his guilty plea. The trial court denied defendant's motion to withdraw his guilty plea and sentenced him to twelve years imprisonment at hard labor with the first year to be served without the benefit of probation, parole, or suspension of sentence. The trial court noted that based on the credit for time served and good time, defendant had already served the imposed term of imprisonment. Defendant now appeals again, filing a counseled brief, a pro se writ of mandamus, and pro se supplemental brief, challenging the trial court's denial of his motion to withdraw his guilty plea.

### **STATEMENT OF FACTS**

As defendant entered a guilty plea herein, the facts were not developed in the record. As noted during the **Boykin** hearing and stated in the bill of information, defendant's guilty plea relates to the December 21, 2001 simple burglary of an inhabited dwelling located in Albany, Louisiana.

### **COUNSELED AND PRO SE ASSIGNMENT OF ERROR AND PRO SE MANDAMUS APPLICATION**

Defendant argues that by imposing the maximum sentence applicable to the charge upon remand, the trial court violated his due process rights and converted his guilty plea into a blind pleading that was not freely and knowingly entered. Defendant reiterates the fact, as recognized by this court as an integral part of the agreement, that at the time of his plea, he knew that he would be sentenced to ten years imprisonment. Defendant submits that if the plea agreement was no longer binding and the further proceedings were to begin anew, he should have been allowed to withdraw his former guilty plea as attempted at the April 26, 2010 hearing.

In his pro se mandamus application and supplemental brief, defendant argues that the prosecution and trial court were malicious, vindictive, and violated his due process rights by not allowing him to withdraw his former guilty plea and have the proceeding begin anew. Defendant also argues that he was

penalized for exercising his constitutional right to appeal. Defendant contends that the stress and frustration resulting from the trial court's actions caused him to lose approximately two hundred good time days. Defendant seeks issuance of a writ of mandamus directing the trial court to vacate his sentence and conviction, set the case for trial, allow him to be released from jail, and allow good time credit and parole.

The State contends that the trial court was within its discretion in not allowing defendant to withdraw his guilty plea, noting that defendant breached the plea agreement by refusing to plead guilty to the habitual offender petition and would have otherwise received the agreed-upon sentence. The State notes that this court did not reverse defendant's original guilty plea and contends that the transcript of the proceeding below clearly shows that the defense counsel, State, and trial court all believed defendant should be resentenced on the original plea. The State notes while the sentence imposed on remand is twelve years instead of ten, it consists of only one year to be served without benefit of parole, probation, or suspension of sentence.

A criminal plea agreement is analogous to a civil compromise. LSA-C.C. art. 3071; **State v. Roberts**, 01-3030, p. 6 (La.App. 1 Cir. 6/21/02), 822 So.2d 156, 160, writ denied, 02-2054 (La. 3/14/03), 839 So.2d 31. Thus, in determining the validity of agreements not to prosecute or of plea agreements, the courts generally refer to rules of contract law. Contractual principles may be helpful by analogy in deciding disputes involving plea agreements. However, the criminal defendant's constitutional right to fairness may be broader than his or her rights under contract laws. **State v. Canada**, 01-2674, p. 4 (La.App. 1 Cir. 5/10/02), 838 So.2d 784, 787.

A guilty plea is constitutionally infirm if a defendant is induced to enter the plea by a plea bargain, or what he justifiably believes was a plea bargain, and that bargain is not kept. In such cases, the guilty plea was not given freely and knowingly. **State v. West**, 97-1638, p. 3 (La.App. 1 Cir. 5/15/98), 713 So.2d 693, 695. Under the substantive criminal law, there are only two alternative

remedies available for a breach of a plea bargain: (1) specific performance of the agreement, or (2) nullification or withdrawal of the plea. **Canada**, 01-2674 at p. 5, 838 So.2d at 788. Since a plea agreement is analogous to a contract that is formed by the consent of the parties established through offer and acceptance, any amendment or change to the agreement also must require the mutual consent to the change or amendment; without mutual consent to the change or amendment, the parties are not bound by it. **Canada**, 01-2674 at p. 8, 838 So.2d at 790. Where the plea agreement calls for a legal sentence and the trial court agrees to the sentence, this is analogous to a compromise and the trial court is bound by the terms of the agreement. Thus, the defendant has the right to enforce such an agreement. See **State v. Terrebonne**, 01-2632, pp. 4-5 (La.App. 1 Cir. 6/21/02), 822 So.2d 149, 152.<sup>5</sup>

This court, in the original opinion on appeal, has already determined that the record supports the defendant's understanding of the plea agreement. We specifically stated,

The State agreed to charge the defendant as a third-felony habitual offender, the defendant agreed to stipulate to third-felony habitual offender status, and the trial court agreed to impose an enhanced sentence of ten years imprisonment. In conflict with the plea agreement, the defendant was ultimately adjudicated a fourth-felony habitual offender and sentenced to twenty years imprisonment, as opposed to ten years imprisonment. While the defendant admitted to being a third-felony habitual offender at the time of his guilty plea, the State had not yet filed the habitual offender petition. The State ultimately sought fourth-felony habitual offender adjudication, despite a clear agreement that the defendant would be subjected to a third-felony habitual offender adjudication. The terms of the plea agreement were clearly stated in the record during the **Boykin** hearing and those terms were not kept. In the instant case, the trial judge was a party to the plea agreement; therefore the agreement must be enforced.

**Anderson**, 07-0948 at p. 11, 977 So.2d 308. Therein this court further noted, "In the event the defendant is not found to be a third-felony habitual offender as charged, the trial court, the State, *and the defendant* are not bound by the plea

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<sup>5</sup> Compare **State v. Hayes**, 02-0527, p. 8 (La.App. 1 Cir. 10/2/02), 836 So.2d 139, 145 (if the parties agree to a specific sentence, where the trial court has not agreed to abide by any such agreement, the trial court retains the discretion to reject such an agreement).

agreement, and any further proceedings will begin anew.” (Emphasis added.)

**Anderson**, 07-0948 at p. 12, 977 So.2d 308.

In reversing defendant’s habitual offender adjudication after defendant’s second appeal, this court stated, “Because the plea agreement is no longer valid, any further proceedings begin anew.” **Anderson**, 09-1460 at p. 9, 30 So.3d 285. While we find no evidence of malicious intent or retaliatory conduct, the imposition of the twelve-year sentence constituted an amendment or change to the agreement without mutual consent of defendant. When that occurred, defendant became vested with the “right to withdraw the plea,” and he elected to exercise that right. Cf. LSA-C.C. art. 2013. The trial court committed error by refusing to allow him to do so. Under the particular facts and circumstances of this case, defendant’s guilty plea was not free and voluntary, and, thus, was void. Pursuant to civil contract law, the fulfillment of a resolatory condition is retroactive to the inception of the obligation. See LSA-C.C. arts. 1767, 1775, and 2018. The remedy is to return the parties to their original positions. **Roberts**, 01-3030 at p. 7, 822 So.2d at 161. Accordingly, defendant’s guilty plea and sentence are vacated, and his plea of not guilty is reinstated. We find no further merit in defendant’s pro se writ of mandamus application and supplemental brief.

**GUILTY PLEA AND SENTENCE VACATED; REMANDED FOR FURTHER PROCEEDINGS.**