

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	No. 12AP-34
v.	:	(C.P.C. No. 10CR-05-2881)
Brian S. Church,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on December 4, 2012

Ron O'Brien, Prosecuting Attorney, and *Michael P. Walton*,
for appellee.

Yeura R. Venters, Public Defender, and *David L. Strait*, for
appellee.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, P.J.

{¶ 1} Defendant-appellant, Brian S. Church, appeals following a judgment of conviction for drug trafficking entered by the Franklin County Court of Common Pleas, contending that the trial court erred in denying his motion to dismiss.

{¶ 2} On March 5, 2010, appellant was charged in Franklin County Municipal Court case No. 10CR-3622 with one count of possession of a controlled substance and one count of failure to use a crosswalk. On March 31, 2010, the trial court conducted a hearing on the matter at which time the court discussed with appellant the terms of a negotiated plea, whereby appellant would enter a guilty plea to the crosswalk charge in exchange for dismissal of the drug possession charge. Appellant entered a guilty plea to

the charge of failing to use a crosswalk, and the court noted on the record that the drug possession charge was dismissed as part of the plea agreement.

{¶ 3} On May 12, 2010, appellant was indicted on one count of trafficking in marijuana in Franklin County Court of Common Pleas case No. 10CR-2881. On October 12, 2010, appellant filed a motion to dismiss on double jeopardy grounds. Specifically, appellant argued that the trafficking offense in the common pleas court and the possession offense in the municipal court involved the same marijuana (same incident), and therefore the dismissal of the possession charge precluded the subsequent indictment for trafficking in the same drugs. The state filed a memorandum contra appellant's motion to dismiss. By decision and entry filed May 19, 2011, the trial court denied appellant's motion to dismiss.

{¶ 4} On January 10, 2012, appellant entered a no contest plea in common pleas court to one count of trafficking in marijuana. The trial court sentenced appellant by judgment entry filed January 12, 2012, imposing a three-year period of community control.

{¶ 5} On appeal, appellant sets forth the following single assignment of error for this court's review:

The trial court erred in overruling Defendant-Appellant's motion to dismiss.

{¶ 6} Under his single assignment of error, appellant asserts that the trial court erred in denying his motion to dismiss. Appellant argues that the dismissal of the misdemeanor drug charge in municipal court, as part of a negotiated plea in which the state did not reserve the right to pursue more serious drug charges, barred the state's subsequent prosecution in the common pleas court for drug trafficking involving the same marijuana.

{¶ 7} In denying appellant's motion to dismiss, the trial court analyzed the issue under the "same elements" test of *Blockburger v. United States*, 284 U.S. 299 (1932). In considering the elements of possession and trafficking, the trial court held that, while both charges "are based on the same marijuana in the Defendant's possession, the elements of a Possession charge and a Trafficking charge are not the same or included in

each other [and] [t]herefore they are not the same offense and there is no double jeopardy violation."

{¶ 8} Appellant argues that this case is controlled by the Supreme Court of Ohio's decision in *State v. Dye*, 127 Ohio St.3d 357, 2010-Ohio-5728. In *Dye*, the Supreme Court "recently reiterated that a 'negotiated guilty plea' bars successive prosecutions where the defendant would reasonably believe that his or her plea would bar further prosecutions for any greater offense related to the same factual scenario." *State v. Edwards*, 8th Dist. No. 94568, 2011-Ohio-95, ¶ 23, citing *Dye*.

{¶ 9} Under the facts of *Dye*, the defendant was charged in 1999 with aggravated vehicular assault, and he entered a negotiated guilty plea in which the state failed to reserve the right to bring any future charges. Seven years later, when the victim died of complications from his injuries, the state pursued new charges of aggravated vehicular homicide. *Dye* moved to have the charges dismissed under the authority of *State v. Carpenter*, 68 Ohio St.3d 59 (1993), arguing that his 1999 guilty plea was a negotiated guilty plea within the meaning of *Carpenter* and, therefore, further prosecution for the 1999 incident was precluded. The trial court denied the motion to dismiss and found *Dye* guilty of aggravated vehicular homicide, sentencing him to nine years imprisonment.

{¶ 10} On appeal, the court of appeals agreed with *Dye*'s claim that his prosecution for aggravated vehicular homicide was barred under *Carpenter*. On further appeal, the Supreme Court affirmed the appellate court, holding in part:

Dye's 1999 guilty plea to aggravated vehicular assault was a "negotiated plea" to a lesser offense within the meaning of *Carpenter*. *Carpenter* thus required the state to expressly reserve its right to bring a later homicide charge against *Dye* in the event that the victim died from injuries sustained in the aggravated vehicular assault to which *Dye* had pleaded guilty. Accordingly, the state was precluded from bringing the aggravated-vehicular-homicide charge against *Dye* after the victim died.

Dye at ¶ 28.

{¶ 11} As noted, the court in *Dye* relied upon its earlier decision in *Carpenter*, in which the Supreme Court held that "[t]he state cannot indict a defendant for murder after the court has accepted a negotiated guilty plea to a lesser offense and the victim later dies

of injuries sustained in the crime, unless the state expressly reserves the right to file additional charges on the record at the time of the defendant's plea." *Carpenter* at syllabus.

{¶ 12} In the instant case, appellant contends the *Carpenter/Dye* analysis applies to preclude his successive prosecution on a greater offense (drug trafficking). In response, the state focuses primarily upon principles of double jeopardy. We note, however, that "[t]he rule in *Carpenter* was based on contract-law principles, not the Double Jeopardy Clause." *Dye* at fn. 2. More specifically, "[t]he basis for the rule announced in *Carpenter* was the application of contract law to the construction of the plea agreement." *Id.* at ¶ 20. The court in *Carpenter* emphasized that "[p]lea agreements are an essential and necessary part of the administration of justice." *Carpenter* at 61, citing *Santobello v. New York*, 404 U.S. 257, 261 (1971).

{¶ 13} The state also cites *State v. Zima*, 102 Ohio St.3d 61, 2004-Ohio-1807, a case in which the Supreme Court of Ohio, in discussing its decision in *Carpenter*, held that the prosecution was not barred from successive prosecutions of the defendant for the offense of driving under the influence and the offense of aggravated vehicular assault. The facts of *Zima*, however, differ from the instant case in that, at the time Zima entered her plea in municipal court, she had already been indicted in the common pleas court for aggravated vehicular assault. In *State v. Harrison*, 122 Ohio St.3d 512, 2009-Ohio-3547, ¶ 48, the Supreme Court discussed the import of this fact, noting:

In *Zima*, this court found that the defendant did not qualify for dismissal of the state charge, because the defendant had already been indicted for aggravated vehicular assault in the common pleas court by the time she had entered her plea in municipal court, and "[n]either the municipal court nor the city prosecutor had the authority to dismiss those pending felony charges." * * * Thus, any expectation she had that she would be free from further charges was not reasonable.

{¶ 14} In *State v. McDonough*, 8th Dist. No. 84766, 2005-Ohio-1315, ¶ 9, the court noted that the decision in *Zima* "does not mean there can never be circumstances where a plea negotiation in a municipal court cannot be binding upon a court of common pleas." Rather, " 'the judicial power to try an accused in Municipal Court springs from the same organic law that created the state court with general jurisdiction to try an

accused. Thus, the state and the city are parts of a single sovereignty.' " *Id.*, quoting *State v. Best*, 42 Ohio St.2d 530, 533 (1975).

{¶ 15} In the instant case, the municipal court dismissed the possession charge as part of a negotiated plea agreement. The trial court informed appellant that "the offer is to allow you to plead to the jaywalking violation and dismiss the drug abuse." (Tr. 2.) After appellant entered his plea of guilty, the court stated: "Your guilty plea is accepted to the jaywalking violation and the other matter is dismissed as part of the plea agreement." (Tr. 2.) The record fails to indicate that the prosecution expressly reserved the right to pursue more serious drug charges against appellant at the time of that plea. As noted by appellant, the subsequent trafficking charge brought in the common pleas court involved the same marijuana (i.e., arose out of the same incident) that served as the basis for the dismissed possession charge.

{¶ 16} Pursuant to *Carpenter*, "effect must be given to the intention of the state and the defendant in their plea bargain, and courts should enforce what they perceive to be the terms of the original plea agreement." *Dye* at ¶ 22. In *Carpenter*, the court "decided that Carpenter's expectation that his initial guilty plea would terminate prosecutions was reasonable under the circumstances." *Dye* at ¶ 19, citing *Carpenter* at 62. Similarly, in *Dye*, the court determined that Dye had "a reasonable expectation that his plea of guilty would end criminal prosecution based on this incident." *Dye* at ¶ 26.

{¶ 17} Under the facts and circumstances of the present case, we conclude that appellant had a reasonable expectation, based upon the negotiated plea agreement entered in the municipal court, that he would not be subject to more serious drug charges arising out of the incident. *Dye*; *Carpenter*. Accordingly, because appellant entered a negotiated plea, and the state did not expressly reserve the right to bring future charges, the negotiated plea barred prosecution of the charge in this case. *Edwards* at ¶ 25 (where a single act and course of conduct led to drug charges in both cases, the trial court did not err in dismissing charges based on additional drugs found after the appellees had entered guilty pleas). See also *McDonough* at ¶ 11 (defendant had reasonable basis to believe that plea agreement entered in municipal court would include dismissal of charges brought in common pleas court where the second charge arose from the same incident and involved the same license plates that formed the basis of the initial charge of use of illegal plates).

{¶ 18} Based upon the foregoing, we sustain appellant's single assignment of error. The judgment of the Franklin County Court of Common Pleas is reversed, and this matter is remanded to that court for further proceedings in accordance with law, consistent with this decision.

*Judgment reversed;
cause remanded.*

SADLER and CONNOR, JJ., concur.
