

[Cite as *State v. Borts*, 2010-Ohio-4149.]

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MONTGOMERY COUNTY**

|                     |   |                                 |
|---------------------|---|---------------------------------|
| STATE OF OHIO       | : | Appellate Case No. 23752        |
|                     | : |                                 |
| Plaintiff-Appellee  | : | Trial Court Case No. 05-CR-5263 |
|                     | : |                                 |
| v.                  | : | (Criminal Appeal from           |
|                     | : | Common Pleas Court)             |
| STEVEN D. BORTS     | : |                                 |
|                     | : |                                 |
| Defendant-Appellant | : |                                 |

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OPINION

Rendered on the 3<sup>rd</sup> day of September, 2010.

JOHNNA M. SHIA, Atty. Reg. No. 0067685, Assistant Prosecuting Attorney, 301 W. Third Street, 5th Floor, Dayton, Ohio 45422  
Attorney for Plaintiff-Appellee

STEVEN D. BORTS, Inmate No. 519-314, London Correctional Facility, P.O. Box 740, London, Ohio 43140  
Defendant-Appellant Pro Se

DINKELACKER, J.

{¶ 1} Defendant-appellant Steven D. Borts was indicted on one count of aggravated burglary,<sup>1</sup> one count of kidnapping,<sup>2</sup> two counts of rape,<sup>3</sup> and one count of intimidation of

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<sup>1</sup> R.C. 2911.11(A)(1).

<sup>2</sup> R.C. 2902.01(A)(4).

<sup>3</sup> R.C. 2907.02(A)(2).

a crime victim.<sup>4</sup> On February 24, 2006, he entered a plea of guilty to the aggravated burglary and kidnapping charges. In exchange for his guilty plea, plaintiff-appellee State of Ohio agreed to the dismissal of the remaining counts.

{¶ 2} One month later, Borts filed a motion to withdraw his guilty plea, complaining that he was not satisfied with the performance of his trial counsel. The trial court appointed new counsel and set a hearing date for Borts's motion to withdraw his plea. On the date of the hearing, however, Borts abandoned his motion and asked to proceed to sentencing. Prior to conducting the sentencing hearing, the trial court engaged Borts in an extended colloquy to ensure that Borts truly wished to withdraw his motion. Satisfied that Borts was knowingly, intelligently, and voluntarily proceeding, the trial court sentenced him to 10 years in prison for the aggravated burglary charge and four years in prison for the kidnapping charge. The trial court ordered the terms to be served consecutively, for a total of 14 years in prison.

{¶ 3} On January 10, 2007, Borts filed a motion to withdraw his plea, which was denied by the trial court without a hearing. Borts appealed that decision, but later withdrew the appeal and filed a motion to enforce his plea agreement and to appoint counsel. The trial court denied both motions. Borts now appeals.

{¶ 4} In his sole assignment of error, Borts argues that the trial court improperly denied his motion to enforce his plea agreement. A plea bargain is subject to contract law principles.<sup>5</sup> When reviewing a decision finding no breach of a plea agreement, we must examine the record to determine the nature of the plea agreement, whether that

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<sup>4</sup> R.C. 2921.04(B).

<sup>5</sup> *State v. Flowers*, Montgomery App. No. 22751, 2009-Ohio-1945, at ¶6, citing *State v. Burks*, Franklin App. No. 04AP-531, 2005-Ohio-1262.

agreement was breached, and if so by whom.<sup>6</sup> Whether there has been a breach of a plea agreement is a determination that initially rests within the sound discretion of the trial court, and is reviewed on appeal under an abuse of discretion standard.<sup>7</sup>

{¶ 5} An abuse of discretion suggests a decision that is unreasonable, arbitrary, or unconscionable.<sup>8</sup> Few decisions rendered by a trial court are alleged to be arbitrary or unconscionable. Thus, the vast majority of cases in which an abuse of discretion is asserted are claims that the decision is unreasonable. A decision is unreasonable “if there is no sound reasoning process that would support that decision. It is not enough that the reviewing court, were it deciding the issue de novo, would not have found that reasoning process to be persuasive, perhaps in view of countervailing reasoning processes that would support a contrary result.”<sup>9</sup>

{¶ 6} In his brief, Borts claims that he pleaded guilty only to Aggravated Burglary with “counts 2, 3, 4, and 5 being dismissed.” He states that the written plea form indicates the possible prison terms were 3, 4, 5, 6, 7, 8, 9, or 10 years in prison. Since, he reasons, he received 14 years in prison, his sentence “is obviously outside of the agreed upon 10 years.”

{¶ 7} But what Borts neglects is that he also pleaded guilty to Kidnapping, a first degree felony. That count was not dismissed, as he represented in his motion below and his brief before this court. There are two plea forms in the record—one for each count,

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<sup>6</sup> Id.

<sup>7</sup> Id., citing *State v. Mathews* (1982), 8 Ohio App.3d 145; *State v. Wombold*, Montgomery App. No. 20000, 2004-Ohio-1932.

<sup>8</sup> *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

<sup>9</sup> *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.* (1990), 50 Ohio St.3d 157, 161.

each containing his signature. Even if, for some reason, Borts only had a copy of his plea form for the Aggravated Burglary count,<sup>10</sup> the form indicates that he was “pleading cts. 1 & 2” and “Dsms cts. 3, 4 & 5.”

{¶ 8} During the hearing in which Borts agreed to abandon his motion to withdraw his plea and proceed to sentencing, his attorney outlined the discussions he had had with Borts, concluding with “he has decided at this point to withdraw his motion to withdraw his plea, [and] go forward with sentencing as the Court indicated it would when it took his plea in February.” The trial court responded: “Right. And that was a range of 12 to 15 years that we agreed.” The trial court then addresses Borts directly and asked him if he wished to abandon his motion and proceed with sentencing “based upon where we’re at today.” Borts responded in the affirmative.

{¶ 9} Since his sentence of 14 years in prison falls within the range agreed to by the parties in this case, there was no breach of the plea agreement. Therefore, the denial of his motion to enforce his plea agreement was not an abuse of discretion. We overrule Borts’s sole assignment of error.

{¶ 10} The judgment of the Montgomery County Common Pleas Court is affirmed.

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BROGAN, J. and FAIN, J., concur.

(Hon. Patrick T. Dinkelacker, First District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

Johnna M. Shia, Esq.  
Steven D. Borts  
Hon. Michael L. Tucker

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<sup>10</sup> It was the only plea form attached to his Motion to Enforce Plea Bargain Agreement.

