

[Cite as *State v. Williams*, 2017-Ohio-2662.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105025

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ADRIAN R. WILLIAMS

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-13-576076-A

BEFORE: McCormack, P.J., Blackmon, J., and Laster Mays, J.

RELEASED AND JOURNALIZED: May 4, 2017

ATTORNEYS FOR APPELLANT

Mark A. Stanton
Cuyahoga County Public Defender

By: John T. Martin
Assistant Public Defender
310 Lakeside Avenue, Suite 200
Cleveland, OH 44113

ATTORNEYS FOR APPELLEE

Michael C. O'Malley
Cuyahoga County Prosecutor

By: Mary McGrath
Assistant County Prosecutor
8th Floor, Justice Center
1200 Ontario Street
Cleveland, OH 44113

TIM McCORMACK, P.J.:

{¶1} Defendant-appellant Adrian R. Williams pleaded guilty in 2014 to gross sexual imposition and attempted kidnapping with a sexual motivation specification. The state agreed to a cap of five years for his offenses as part of the plea negotiations. The trial court acknowledged the plea agreement at the plea hearing, but did not warn Williams of the possibility of a longer prison term. At sentencing, the trial court sentenced him to an eight-year term for his offenses. Williams filed a direct appeal (8th Dist. Cuyahoga No. 101217) but voluntarily dismissed the appeal based on his counsel's advice.

{¶2} Instead of pursuing the direct appeal, Williams filed a motion at the trial court to withdraw his guilty plea. The trial court denied it. Williams appealed that decision to this court. He argued on appeal that the trial court erred by imposing a prison term greater than what the plea agreement provided, without forewarning him of that possibility before accepting his guilty plea. This court held that *res judicata* precluded Williams's claim because he could have advanced that argument in his direct appeal. *State v. Williams*, 8th Dist. Cuyahoga No. 103144, 2016-Ohio-2629.

{¶3} Subsequently, Williams, through counsel from the Public Defender's Office, filed a motion for leave to file a delayed appeal. Williams explained that he dismissed his direct appeal (Appeal No. 101217) based on counsel's advice. This court granted the delayed appeal. Williams's contention, which he raises in the first assignment of error, that the trial court erred in failing to advise him prior to accepting his

guilty plea that it was not bound by the recommended sentence, is now properly before us for a review.

{¶4} As this court explained in *State v. Dunbar*, 8th Dist. Cuyahoga No. 87317, 2007-Ohio-3261, the trial court is not obligated to follow the negotiated plea. However, before the trial court imposes a longer prison than what is recommended in the plea agreement, due process requires the trial court to put the defendant on notice of that possibility before accepting the guilty plea. Without the notification, the plea could not have been voluntary, knowing, or intelligent. *State v. Lumbus*, 8th Dist. Cuyahoga No. 99301, 2013-Ohio-4592.

{¶5} The trial court erred by failing to either forewarn Williams of a potentially longer prison term or to give him the opportunity to withdraw his guilty plea at the sentencing hearing. *Dunbar* at ¶ 141. Appropriately, the state concedes the error. The state agrees that Williams could have had a reasonable expectation that the trial court would implement the agreed prison sentence. The first assignment of error is sustained.

As the state also concedes, the proper remedy is to remand the case to the trial court to resentence Williams under the plea agreement, or to allow Williams to withdraw his guilty plea. *See Lumbus* at ¶ 52.

{¶6} Judgment reversed and remanded.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

TIM McCORMACK, PRESIDING JUDGE

PATRICIA ANN BLACKMON, J., and
ANITA LASTER MAYS, J., CONCUR