

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

June 8, 2022

[Cite as *06/08/2022 Case Announcements #2, 2022-Ohio-1838.*]

APPEALS NOT ACCEPTED FOR REVIEW

2022-0245. State v. Owens.

Preble App. No. CA2021-07-007, **2022-Ohio-160.**

Donnelly, J., dissents, with an opinion joined by Stewart, J.
Brunner, J., dissents.

DONNELLY, J., dissenting.

{¶ 1} Appellant, Terry Owens, pleaded not guilty to charges that included the alleged rape of a woman who happened to be close friends with members of the Preble County Sheriff's Office and the Preble County Victim Witness Program. Despite his fear that "everybody was in cahoots with each other," 2022-Ohio-160, ¶ 10, Owens followed the advice of his attorney and pleaded guilty to the rape charge after his attorney assured him that the judge assigned to his case was a good judge and would be fair. But as his sentencing approached, and after he got the impression that the victim was also friends with various court personnel, Owens believed that he was being set up and that he needed to rescind his guilty plea.

{¶ 2} Rather than move forward on Owens's request to withdraw his guilty plea, the defense attorney had an off-the-record discussion with the judge, during which the judge told the attorney that he planned on imposing a prison term at the " 'low end' " of the 3- to 11-year range that applied to the rape charge. *Id.* at ¶ 17. Once the defense attorney reassured Owens about the outcome of the sentencing hearing with the judge's stated plan for leniency, Owens decided he would move forward with his guilty plea.

{¶ 3} The trial judge imposed an eight-year prison sentence. During an off-the-record conversation the next day, the judge acknowledged to the defense attorney that he had gone back on his word, and he apologized. Despite the apology, the judge denied Owens’s motion to withdraw his guilty plea. The trial and appellate courts both held that Owens’s motion to withdraw his guilty plea was unjustified because he merely “had a change of heart” when he received an unexpected prison sentence. *Id.* at ¶ 35.

{¶ 4} Was Owens’s attempt to withdraw his guilty plea merely sour grapes over the imposition of a prison sentence that he ultimately deserved? Or was Owens lulled into waiving his constitutional right to trial, prevented from exercising that right through a false promise of leniency, and given a sentence he did not deserve?

{¶ 5} I have no idea whether eight years in prison is the sentence that Owens deserved, but I do know that the process of getting him to that sentence was antithetical to the fairness and transparency that are at the core of the constitutional right to procedural due process. Unfortunately, in Ohio, backroom discussions with judges about pleas and sentences in criminal cases, especially those that are subsequently relayed to defendants for consideration when entering a plea, are the norm. Backroom discussions can ensure that cases are resolved quickly. But they can also ensure that the public is left in the dark, that victims are left feeling betrayed, that attorneys are reluctant to challenge judges *on* the record about their prior statements, and that defendants are sentenced by ambush with no possibility of review.

{¶ 6} We need to have a profession-wide conversation about the injustices and other pitfalls of resolving criminal cases through off-the-record discussions. And it should start with this case.

{¶ 7} Because I would accept Owens’s jurisdictional appeal, I dissent.

STEWART, J., concurs in the foregoing opinion.
