The Supreme Court of Ohio

CASE ANNOUNCEMENTS

September 5, 2023

[Cite as *09/05/2023 Case Announcements #2*, 2023-Ohio-3095.]

APPEALS NOT ACCEPTED FOR REVIEW

2023-0550. State v. Reddick.
Portage App. No. 2022-P-0039, **2023-Ohio-765**.
Donnelly, J., dissents, with an opinion.
Stewart and Brunner, JJ., dissent.

DONNELLY, J., dissenting.

{¶ 1} Most criminal disputes in the United States justice system are not resolved through trial by jury but through plea agreements negotiated by counsel and presented to trial court judges for approval. In 2022, in the federal criminal-justice system, 91.4 percent of criminal defendants either pled guilty (89.5 percent) or were found guilty (1.9 percent). Pew Research Center, *Fewer Than 1% of Federal Criminal Defendants Were Acquitted in 2022* (June 14, 2023), available at https://www.pewresearch.org/short-reads/2023/06/14/fewer-than-1-of-defendants-in-federal-criminal-cases-were-acquitted-in-2022/#:~:text=The%20overwhelming%20majority%20of%20defendants,Office%20of%20the%20U.S.%20Courts (accessed Aug. 21, 2023) [https://perma.cc/QK5S-CLNC]. To complete the statistics, 8.2 percent of cases were dismissed and .4 percent of cases resulted in acquittal. *Id*. In Ohio, roughly 2.5 percent of criminal cases go to trial, a percentage close to the federal rate of 2.3 percent (i.e., 1.9 percent plus .4 percent). *See* Futty, *Trials a Rarity in Ohio, U.S.*, Columbus Dispatch (Jan. 12, 2014), available at https://www.dispatch.com/story/news/crime/2014/01/13/trials-rarity-in-ohio-u/24100696007/ (accessed June 23, 2023) [https://perma.cc/C8T9-KCLH]; Trevas, *Trial Rates in Ohio Continue*

Decline, Statistical Report Reveals, *Court News Ohio (Sept. 30, 2014)*, https://www.courtnewsohio.gov/happening/2014/OCS_093014.asp#:~:text=While%20the%20civil%20trial%20rate,percent%20for%20traffic%20case%20trials (accessed June 23, 2023) [https://perma.cc/RJ3Z-GNJY].

{¶ 2} After her newborn baby was found dead, Breyona Reddick was charged with aggravated murder, among other offenses.[1] Sentences for aggravated murder include death, R.C. 2929.03(C)(2)(a)(i), which does not appear to have been charged, and life without the possibility of parole, R.C. 2929.03(A)(1)(a). With the sentencing consequences that flow from a conviction on such serious charges, prosecutors have enormous leverage to induce guilty pleas. After initially pleading not guilty and attempting to challenge the state's evidence that the baby was alive at birth, Reddick eventually decided to enter a negotiated plea agreement. The discussions and inducements that led to that decision and any promises made in exchange for her admission of guilt, as in the vast majority of plea negotiations, likely occurred off the record. Whatever specific provisions were eventually included in the written plea agreement have not been made available to us.

{¶ 3} Reddick did not plead guilty to aggravated murder or even murder, both of which involve purposeful action. She pled guilty to *involuntary manslaughter*, which has no independent mens rea: not purposefully, not knowingly, not recklessly, not even negligently. R.C. 2903.04(A) states, "No person shall cause the death of another or the unlawful termination of another's pregnancy as a proximate result of the offender's committing or attempting to commit a felony." The mens rea imputed to Reddick is that of the felony that undergirds the plea to *involuntary manslaughter*. *See, e.g.*, *State v. Fry*, 125 Ohio St.3d 163, 2010-Ohio-1017, 926 N.E.2d 1239, ¶ 43. But Reddick did not plead guilty to an underlying felony. No underlying felony is even mentioned in the plea. That issue wasn't raised, but I nonetheless find it intriguing because it highlights a problem with many pleas in Ohio—they aren't necessarily based on the facts of the case. *See* Johnson, *Lying at Plea Bargaining*, 38 Ga.St.U.L.Rev. 673 (2022); Turner, *Transparency in Plea Bargaining*, 96 Notre Dame L.Rev. 973 (2021); Donnelly, *End Factually Baseless Plea Bargains*, 42:3 Litigation 6, 7 (2016).

1. Because we have no record in this case, the facts in this opinion are taken from the briefs and the court of appeals opinion, *State v. Reddick*, 11th Dist. Portage No. 2022-P-0039, 2023-Ohio-765.

{¶ 4} Reddick was sentenced to an indefinite term of imprisonment of 10 to 15 years. In her memorandum in support of jurisdiction, Reddick makes a troubling accusation about what took place before imposition of this sentence: she accuses the state of breaching its agreement with her to not recommend a sentence. This issue is vitally important for all Ohioans, and especially future criminal defendants, because of the number of criminal cases that end in plea agreements. Moreover, we know that innocent people have accepted pleas; entire books have been written on the subject. *See* Rakoff, *Why the Innocent Plead Guilty and the Guilty Go Free: and Other Paradoxes of Our Broken Legal System* (2021); Kassin, *Duped: Why Innocent People Confess—and Why We Believe Their Confessions* (2022). And we know that to be constitutional, pleas must be made knowingly, voluntarily, and intelligently. *State v. Dangler*, 162 Ohio St.3d 1, 2020-Ohio-2765, 164 N.E.3d 286, ¶ 10. Ensuring that pleas are made knowingly, voluntarily, and intelligently, however, is not easy.

{¶ 5} We could solve much of that problem relatively simply: by adopting the standards used in the federal system. Federal plea bargains must include the factual basis for the plea. Fed.R.Crim.P. 11(b)(3). Judges in Ohio could inquire, on the record, about the factual basis for the plea and any representations that were made by the parties. Judges could specifically ask the state at plea hearings whether they have told the defense what sentence they intend to advocate for at the subsequent sentencing hearing. Is such an important issue something that should be kept from a defendant entering a plea? Judges could refuse to sanction the sometimes nebulous agreements that arise because our system has no objective criteria to guide trial court judges in the exercise of their discretion to accept or reject plea agreements. They could address the quintessential contractual question: was there a meeting of the minds? *See* Donnelly, *Truth or Consequences: Making the Case for Transparency and Reform in the Plea Negotiation Process*, 17 Ohio St.J.Crim.L. 423 (2020).

{¶ 6} I have concerns about whether there was a meeting of the minds in this case. Reddick's plea was induced, in part, by the state's agreement not to seek a particular sentence, and the state noted that Reddick was not subject to a mandatory prison sentence. Reddick argues that calling for any prison term violates that agreement, even if the state did not mention a particular number of years. The state argues that it agreed only to not seek a particular sentence, meaning a specific number of years. At this juncture, it is difficult to determine which of them is right. It is not hard to imagine that they did not agree to the same thing and, therefore, that there

was no meeting of the minds. But we are left with the strong impression that everyone in the courtroom knew that there was no chance that the trial court would impose probation; everyone, that is, except Reddick.

{¶ 7} If the prosecutor had said, "Your honor, even though we agree that this plea allows you the discretion to impose a sentence of probation, make no mistake, we will be asking for a prison term, but we leave the term up to you," I would not be writing this dissent. But that is not what occurred, according to the parties. At the plea hearing, the prosecutor stated, "[T]he penalty is anywhere from zero time in prison all the way up to 11 years." The prosecutor also said in open court, "I will not be asking for a prison term. I will not be stating four years, six years, three years, whatever. * * * I have some things I want to say, to place into the record, but they will not be an amount of time or anything like that." We don't know how well that statement reflects the agreement that the prosecutor and defense counsel reached. We certainly don't know what Reddick understood the prosecutor to have agreed to say or not say. At the sentencing hearing, the prosecutor walked right up to the line and, according to Reddick, crossed it; but how can we really know without a full argument on this important issue?

{¶ 8} How can Reddick knowingly plead guilty when she doesn't know, within reason, what the practical consequences will be, i.e., what sentence she is likely to receive? How can she voluntarily plead guilty when she is staring at the club of a potential life sentence if she rejects the government's offer to plead to an altogether different crime from the one she was initially charged with? How can she intelligently plead guilty when she doesn't know whether the prosecutor will adhere to that agreement and whether the judge will act as a neutral and enforce that agreement? In this case, it is unclear to me whether Reddick's plea was knowing, voluntary, or intelligent, let alone all three.

{¶ 9} Prosecutors wield the most power in the criminal-justice system through their inherent charging discretion. That is just reality. The neutrals in our criminal justice system—the judges—must therefore be especially mindful and protective when, as here, the state is not held to its burden of proof. Ordinarily in criminal cases, the system is designed to shine a light on the truth, but the plea-bargaining process is obscure at best and downright dark at worst. Our criminal justice system had been aptly described as "a system of pressure and pleas, not truth and trials." Hessick, *Punishment Without Trial: Why Plea Bargaining is a Bad Deal*, 5 (2022).

{¶ 10} Here, the prosecutor convinced a grand jury that Reddick had purposely killed her baby but then accepted a plea of *involuntary manslaughter*, which assumes a nonpurposeful act. Why? Why would the state allow Reddick to plead to a crime that included a possible sentence as lenient as probation? Did the prosecutor know that the judge would never impose such a sentence? Did defense counsel? Did Reddick? Would the state's position have been different if the case had been assigned to a different judge? If so, how can we countenance just a random (or more pointedly, unfair) system?

{¶ 11} The bottom line is that we don't know the factual basis of Reddick's plea. We don't know what the state agreed to say or not say at the sentencing hearing. We could easily know these things—and knowing them would make the criminal-justice system more transparent, more fair, and less random. We should strive for all three so that defendants can enter pleas that are actually knowing, voluntary, and intelligent.

{¶ 12} I would accept jurisdiction to determine the nature of the agreement between Reddick and the prosecutor, whether they had a meeting of the minds, and whether the prosecutor's comments at the sentencing hearing breached that agreement. I dissent.