

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
HURON COUNTY

State of Ohio

Court of Appeals Nos. H-12-017  
H-12-021

Appellee

Trial Court Nos. 12CRB00552A  
12CRB00552B  
12CRB00554A  
12CRB00554B

v.

Robert M. Tite

Appellant

**DECISION AND JUDGMENT**

Decided: April 5, 2013

\* \* \* \* \*

G. Stuart O’Hara, Jr. Huron County Law Director, and  
Scott M. Christophel, Assistant Law Director, for appellee.

Michael J. Camera, for appellant.

\* \* \* \* \*

**YARBROUGH, J.**

**I. Introduction**

{¶ 1} Appellant, Robert Tite, appeals the judgment of the Norwalk Municipal Court, following a jury trial, finding him guilty on one count of each of the following

misdemeanor offenses: (1) drug paraphernalia in violation of R.C. 2925.14(C)(1); (2) possession of marijuana in violation of R.C. 2925.11; (3) possession of shotgun shells in violation of R.C. 1531.02; and (4) hunting without wearing hunter orange in violation of R.C. 1531.02.

## **II. Facts and Procedural Background**

{¶ 2} On December 1, 2011, Tite was charged with carrying a concealed weapon, using weapons while intoxicated, drug paraphernalia, possession of marijuana, possession of shotgun shells, and hunting without wearing hunter orange. Pursuant to a plea agreement, Tite entered a no contest plea to carrying a concealed weapon and using weapons while intoxicated. In exchange for his no contest plea, the state agreed to dismiss the remaining charges and recommend a favorable sentence. The trial court accepted the plea agreement, dismissed the applicable charges, and sentenced Tite to a seven-month term of incarceration.

{¶ 3} Tite subsequently appealed his sentence to this court, arguing that the trial court erred in finding him guilty, and that the two offenses for which he was found guilty should have merged for purposes of sentencing. *See State v. Tite*, 6th Dist. No. H-12-010, 2013-Ohio-207 (affirming Tite's convictions). Upon learning of Tite's decision to appeal his convictions, the state re-filed the four charges that were dismissed pursuant to the plea agreement.

{¶ 4} On June 4, 2012, Tite filed a motion to dismiss, arguing that the plea agreement precluded the state from prosecuting him. In response, the state argued that it was no longer bound by the plea agreement because Tite breached it by appealing his

sentence. The trial court agreed with the state and denied Tite's motion. A jury trial followed, and Tite was found guilty of each of the offenses and sentenced to an aggregate of 150 days in jail plus fines and court costs.

### **III. Assignments of Error**

{¶ 5} On appeal, Tite assigns the following errors for our review:

I. THE COURT ERRED BY NOT DISMISSING ALL CHARGES BASED UPON THE DEFENDANT'S PLEA BARGAIN AGREEMENT WITH THE STATE.

II. THE COURT ERRED BY NOT DISMISSING THE CHARGES BECAUSE THE CHARGES WERE FILED IN VIOLATION OF THE DEFENDANT'S RIGHT TO A SPEEDY TRIAL.

III. THE COURT ERRED BY FINDING THE DEFENDANT GUILTY OF POSSESSION OF DRUG ABUSE PARAPHERNALIA AND POSSESSION OF MARIJUANA WITHOUT THE BENEFIT OF AN EXPERT'S TESTIMONY THAT WAS WITHIN A REASONABLE DEGREE OF SCIENTIFIC CERTAINTY.

### **IV. Analysis**

{¶ 6} In his first assignment of error, Tite argues that the trial court erred when it denied his motion to dismiss the charges based on the preexisting plea agreement.

{¶ 7} A plea agreement is a contract between the state and the defendant, which is interpreted and enforced using principles of contract law. *State v. Butts*, 112 Ohio App.3d 683, 686, 679 N.E.2d 1170 (8th Dist.1996); *Baker v. United States*, 781 F.2d 85,

90 (6th Cir.1986). “[W]hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.” *Santobello v. New York*, 404 U.S. 257, 262, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971). Whether a party to a plea agreement breached the terms and obligations of the agreement is a matter entrusted to the sound discretion of the trial court, which will not be disturbed absent an abuse of discretion. *See State v. Matthews*, 8 Ohio App.3d 145, 146, 456 N.E.2d 539 (10th Dist.1982).

{¶ 8} In this case, Tite argues that the state should not be allowed to retry him for charges that were dismissed pursuant to a prior plea agreement. He contends that the state’s offer to dismiss these charges persuaded him to plead no contest to carrying a concealed weapon and using weapons while intoxicated.

{¶ 9} In response, the state argues, as it did in the trial court, that it is not bound by the plea agreement because Tite breached the agreement when he appealed his initial sentence. In its appellate brief, the state asserts the following:

The state was induced into this agreement based upon defendant’s agreement to enter a plea of no contest on two of the charges and accepting the sentence that was specifically discussed prior to defendant’s change in plea. It was the state’s expectation that this plea agreement would be a final resolution of all matters. Defendant did not raise any arguments regarding the legality of his conviction or sentence during plea negotiations. Nor did defendant disclose his intent to appeal his conviction or sentence.

{¶ 10} While we are mindful of the state’s expectation that the plea agreement would constitute a “final resolution of all matters,” the record does not support the state’s assertion that the plea agreement required Tite to forgo his right to appeal. The plea agreement was set forth during the following colloquy, which took place during sentencing:

[Defense Counsel]: Your honor, just a few things. It’s my understanding that the State received complaints from the Ohio Department of Natural Resources just recently out of this chain of events that lead to these charges, and it’s my understanding that those charges will not be pursued and that no violation of probation will be filed against the defendant as part of the agreement.

The Court: Mr. Christophel?

[Prosecutor]: That’s correct, your Honor; and the charges – those reports were based out of the same incident as these offenses.

The Court: And also on the possession drug abuse incident based on these pleas?

[Prosecutor]: The state moves to nolle that charge, your Honor.

The Court: That charge will be nollied.

{¶ 11} Clearly, in exchange for Tite’s no contest plea, the state agreed to dismiss all charges against Tite except the carrying a concealed weapon and using weapons while intoxicated charges. The state failed to discuss any additional requirement that Tite was

to forgo his right to appeal. Further, the fact that the plea agreement would be revoked if Tite exercised his right to appeal was never mentioned.

{¶ 12} Consequently, we find no support for the state's argument that Tite breached the plea agreement when he appealed his initial sentence. On the contrary, Tite fulfilled his obligations under the plea agreement by pleading no contest to the carrying a concealed weapon charge and the using weapons while intoxicated charge. Since Tite's appellate rights were not a subject of the plea agreement, his appeal of the convictions had no affect on the state's promise to dismiss the remaining charges. *See State v. Legree*, 61 Ohio App.3d 568, 573 N.E.2d 687 (6th Dist.1988) (holding that a plea agreement is not breached when a party fails to fulfill an alleged promise that is not part of the record). When the state re-filed those charges, it violated the terms of the plea agreement. Since the state breached the plea agreement, the trial court abused its discretion when it denied Tite's motion to dismiss.

{¶ 13} Accordingly, Tite's first assignment of error is well-taken. Having found Tite's first assignment of error well-taken, the remaining assignments of error are moot.

## **V. Conclusion**

{¶ 14} For the foregoing reasons, the judgment of the Norwalk Municipal Court is reversed and the convictions and sentence are vacated. Costs of this appeal are assessed to appellee pursuant to App.R. 24.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

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JUDGE

Arlene Singer, P.J.

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JUDGE

Stephen A. Yarbrough, J.  
CONCUR.

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JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
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