

A Deal is a Deal, Unless You are in State Court

By: Wayne C. Fricke; May 2006

Recently, the Ninth Circuit upheld the dismissal of all charges pursuant to a plea agreement after the defendant moved to dismiss the charge to which he had pleaded guilty. As part of the plea agreement, the Government dismissed a general conspiracy charge contained within the indictment. See United States v. Transfiguracion, No. 04-10457 (Ninth Cir. April 5, 2006).

The initial plea and agreement was based on a conspiracy to smuggle narcotics from California to Guam in the late 1990s. The plea was to a violation of 18 U.S.C. §2 and 21 U.S.C. §§ 952 (a) and 960 which made it illegal to import controlled substances “into the United States from a place outside thereof.” After the plea was entered and the defendants cooperated with the Government as part of the plea, the Ninth Circuit decided the case of United States v. Cabaccang, 332 F.3d 622 (9th Cir. 2003), which held that smuggling of drugs from California to Guam did not constitute the crime of importation of a controlled substance into the United States from any place outside thereof. As a result, the facts that formed the foundation of the plea no longer constituted the crime and the defendants moved to dismiss the conviction. The Government agreed that Cabaccang required the dismissal because there was no factual basis for the plea. The Government then attempted to reinstate the original conspiracy charges because of the “mutual mistake of law” as to the factual basis of the plea agreement. The District Court refused and dismissed the charges pursuant to the agreement. The Government appealed.

While the Ninth Circuit acknowledged that typically plea agreements are based on contract law, it refused, based on prior precedents, to apply it in the context of a plea when the defendant had already cooperated as part of the agreement. Quoting United States v. Barron, 172 F.3d 1153, 1158 (9th Cir. 1999) the Court stated:

A plea bargain is not a commercial exchange. It is an instrument for the enforcement of the criminal law. What is at stake for the defendant is his liberty . . . what is at stake for the Government is its interest in securing just punishments for violation of the law and its interest that an innocent act not be punished at all. The interest and the judicial context in which they are weighed require that something more than contract law be applied.

Given that the liberty of the defendants were at stake and they had already cooperated with the government to fulfill their bargain, the court held it could not allow the government to rescind the plea agreement on the premise that all the parties were mistaken because, while unfortunate, it could not void an otherwise valid plea agreement.

Moreover, the court would not allow the government to prosecute on the original indictment based on a clause within the plea agreement that read “if defendants guilty plea is rejected, withdrawn, vacated, or reversed at any time, the United States will be free to prosecute defendant for all charges of which it then has knowledge.” Again, relying on Barron and other cases the court found that the motion to dismiss the informations was not a violation of the agreement because they neither recanted, rejected nor vacated their pleas. Ultimately the court decided that because the government was the drafter of the agreement it could have included a clause that would have allowed for the very contingency that developed but because it did not, it was bound to the literal terms of the plea agreement.

Conversely, the Washington Supreme Court refused to follow the same analysis in the case of State v. Bisson, ____ Wn.2d ____ (2006). In Bisson the parties were mistaken as to a provision in the plea as it related to concurrent sentences for deadly weapon enhancements. In essence, the State, which prepared the plea agreement, wrote it in such a way so as to allow for the possibility of concurrent sentences, which in fact is not possible. The Court of Appeals held in favor of Bisson, much like the Ninth Circuit in Transfiguracion. However, the State Supreme Court reversed. As the dissent pointedly stated, the majority acknowledged that the law was entirely on the side of the defendant, but inexplicably reached the opposite result, even though an earlier case from the Washington Supreme Court used the same argument to benefit the State. The question remains as to whether Bisson should file a federal habeas attack to receive the relief that the Ninth Circuit appears to be more willing to give.

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