

2000

State of Utah v. Jonathon Soper : Brief of Respondent

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc2

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Jack W. Kunkler; Attorney for Appellant.

Vernon B. Romney; Attorney General for the State of Utah; William W. Barrett; Assistant Attorney General; Attorney for Respondent.

Recommended Citation

Brief of Respondent, *Utah v. Soper*, No. 14501.00 (Utah Supreme Court, 2000).
https://digitalcommons.law.byu.edu/byu_sc2/351

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH
DOCUMENT
KFU
45.9
.52
DOCKET NO.

UTAH SUPREME COURT

BRIEF

14501

RECEIVED
LAW LIBRARY

14 JUN 1977

BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School



IN THE SUPREME COURT OF THE
STATE OF UTAH

STATE OF UTAH,

:

Plaintiff-Respondent,

Case No.
14501

:

-vs-

JONATHON SOPER,

:

Defendant-Appellant.

:

BRIEF OF RESPONDENT

Appeal from a denial of a motion to set aside
a guilty plea and judgment of the Third Judicial District
Court in and For Salt Lake County, State of Utah, the
Honorable Bryant H. Croft, presiding.

VERNON B. ROMNEY
Attorney General

WILLIAM W. BARRETT
Assistant Attorney General

236 State Capitol
Salt Lake City, Utah 84114

Attorneys for Respondent

JACK W. KUNKLER
Salt Lake Legal Defender Association

343 South Sixth East
Salt Lake City, Utah 84102

Attorney for Appellant

FILED

SEP 10 1976

TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF THE NATURE OF THE CASE-----	1
DISPOSITION IN THE LOWER COURT-----	1
RELIEF SOUGHT ON APPEAL-----	1
STATEMENT OF FACTS-----	2
ARGUMENT	
POINT I: WHERE APPELLANT WAITED EIGHT MONTHS TO COMPLAIN ABOUT THE BREACH OF A PLEA BARGAINING AGREEMENT, APPEAR- ING BEFORE THE COURT ON NUMEROUS OCCASIONS WITHOUT BRINGING TO THE ATTENTION OF THE COURT THE BREACH OF THE AGREEMENT, HE HAS WAIVED HIS RIGHT TO HAVE THE GUILTY PLEA VACATED-----	2
POINT II: IF THE COURT FINDS THAT APPELLANT SHOULD BE GRANTED A REMEDY, APPELLANT IS ENTITLED TO NO MORE THAN THE BENEFIT OF HIS BARGAIN--	7
CONCLUSION-----	9

CASES CITED

Machibroda v. U. S., 368 U.S. 487, 82 S.Ct. 510, 7 L.Ed.2d 473 (1962)-----	7
Santobello v. New York, 404 U.S. 257, 30 L.Ed.2d 427, 92 S.Ct. 495 (1971)-----	4,5,7
State v. Lee Lim, 79 Utah 68, 7 P.2d 825 (1932)-----	6
State v. Plum, 14 Utah 2d 124, 378 P.2d 671 (1963)-----	6
Walters v. Harris, 460 F.2d 988 (1972)-----	7

STATUTES CITED

Utah Code Ann. § 77-24-3 (1953), as amended----	2,3
---	-----

IN THE SUPREME COURT OF THE
STATE OF UTAH

STATE OF UTAH,

Plaintiff-Respondent,

-vs-

JONATHON SOPER,

Defendant-Appellant.

:

:

:

:

:

Case No.
14501

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

This is an appeal from a denial of appellant's motion to vacate a guilty plea, said motion based upon the breach of a plea bargaining agreement.

DISPOSITION IN THE LOWER COURT

The trial court denied appellant's motion to vacate his guilty plea to a third degree felony.

RELIEF SOUGHT ON APPEAL

Respondent seeks to have the denial of appellant's motion to vacate affirmed.

STATEMENT OF FACTS

Respondent accepts appellant's Statement of Facts but wishes to add that the Memorandum Decision (R-57) of the trial court judge issued after the full hearing on the Motion to Vacate (T-1) states that the court was not made aware of the breached plea bargaining agreement until December 5, 1975, when the Motion to Vacate the plea was officially brought before the court. Further, the Motion to Vacate was denied for the reason that appellant had waited eight months to complain of the breached agreement, letting the sentencing and numerous other opportunities pass before bringing to the court's attention the unkept agreement (R-57).

ARGUMENT

POINT I

WHERE APPELLANT WAITED EIGHT MONTHS TO COMPLAIN ABOUT THE BREACH OF A PLEA BARGAINING AGREEMENT, APPEARING BEFORE THE COURT ON NUMEROUS OCCASIONS WITHOUT BRINGING TO THE ATTENTION OF THE COURT THE BREACH OF THE AGREEMENT, HE HAS WAIVED HIS RIGHT TO HAVE THE GUILTY PLEA VACATED.

It is within the discretion of the trial court to determine whether a guilty plea may be withdrawn. This rule of law in Utah is set forth in Utah Code Ann.

§ 77-24-3 (1953), as amended, which provides in part that:

". . . the court may at any time before judgment, upon a plea of guilty, permit it to be withdrawn and a plea of not guilty substituted."

The Utah Legislature has thus codified the sound public policy of prohibiting the withdrawal of a guilty plea after the imposition of sentence, and has authorized the trial court to examine each request to withdraw a guilty plea according to the unique circumstances of each case.

The instant case concededly involves the breach of a plea bargaining agreement on the part of the state. Nevertheless, respondent submits that Utah Code Ann. § 77-24-3 (1953), as amended, still operates to place discretion within the trial court to decide whether a guilty plea may be withdrawn, even though the guilty plea may have been induced by a breached plea bargaining agreement.

In the instant case, the trial court determined that a Motion to Vacate a guilty plea brought eight months after the breach of the plea bargaining agreement, including a full five months after the imposition of sentence, was too late for defendant to withdraw the guilty plea. The trial court stressed that the passage of eight months was not the critical factor but rather that defendant had said nothing about the breach during

that time even though he had numerous opportunities to complain of the breach. By remaining silent about the breach of the agreement defendant waived his right to complain after eight months had gone by, the trial court held.

Defendant has not established that the trial court abused its discretion in denying the Motion to Vacate the guilty plea. Although defendant relies on the United States Supreme Court case of Santobello v. New York, 404 U.S. 257, 30 L.Ed.2d 427, 92 S.Ct. 495 (1971) to argue that the trial court judge abused his discretion as a matter of law, the Santobello case involved a different factual situation than that at issue herein.

In Santobello, the prosecutor agreed to offer no recommendation for sentencing in exchange for defendant's guilty plea to a lesser charge. However, at the time of sentencing a new prosecutor who was not made aware of the agreement recommended the maximum sentence. The defendant's attorney immediately objected and sought to withdraw the guilty plea. The trial court judge refused to permit the withdrawal of the guilty plea, stating that he was not influenced by the prosecutor's recommendation.

The United States Supreme Court found that Santobello's guilty plea had been induced by the prosecutor's promise to offer no recommendation as to sentencing. The Court thus remanded the case for a determination by the trial court relative to whether the circumstances of the case required the withdrawal of the guilty plea and a new trial, or specific performance of the agreement on the plea and resentencing by another judge.

In the instant case defendant did not immediately object to the breach of the plea bargaining agreement. In fact, he waited until December 5, 1975, to move the court to withdraw the guilty plea he had entered on March 4, 1975. Defendant did not mention at the time of sentencing on the guilty plea that he had in fact appeared in Brigham City and entered a guilty plea to a gun charge and that he was given a concurrent sentence on the second charge.

The trial court judge has correctly distinguished the above factual situation from the Santobello case and thus Santobello cannot be said to require as a matter of law the withdrawal of the guilty plea in the instant case. The trial court judge in the instant case carefully weighed Santobello, as his memorandum decision (R-57)

indicates, found it premised upon a different factual situation than that at issue herein, and determined that defendant's failure to complain of the unkept plea bargain for eight months, including the time of sentencing, waived defendant's right to withdraw the guilty plea.

The Utah Supreme Court has held that it is within the sound discretion of the trial court to either allow or disallow a guilty plea to be withdrawn. State v. Lee Lim, 79 Utah 68, 7 P.2d 825 (1932). The Supreme Court will look to the particular facts of each case to determine if the trial court judge abused his discretion in refusing to permit the withdrawal of a guilty plea. State v. Plum, 14 Utah 2d 124, 378 P.2d 671 (1963).

Given the fact that defendant herein passed up numerous opportunities to complain of the unkept plea bargain, that he permitted eight months to pass before complaining about the breached agreement, that he said nothing at the time of sentencing, that the concurrent sentence had long since been served, the trial court judge in his discretion properly determined that defendant waited far too long to seek to withdraw his guilty plea. Defendant has failed to prove that the trial court judge abused his discretion in refusing

to permit the withdrawal of a guilty plea given the above factual situation.

Other cases cited by appellant require no more than that there be a full factual inquiry into a defendant's allegation that a guilty plea was induced by an unkept promise. Walters v. Harris, 460 F.2d 988 (1972); Machibroda v. U.S., 368 U.S. 487, 82 S.Ct. 510, 7 L.Ed.2d 473 (1962). In the instant case, appellant was given a full hearing, the above facts were weighed, and the trial court denied the Motion to Vacate.

POINT II

IF THE COURT FINDS THAT APPELLANT SHOULD BE GRANTED A REMEDY, APPELLANT IS ENTITLED TO NO MORE THAN THE BENEFIT OF HIS BARGAIN.

If the court should find that the factual situation herein requires a remedy for appellant, respondent would argue that appellant is entitled to the benefit of his bargain, and no more. Appellant relies on Santobello v. New York, supra, to establish that his guilty plea should be withdrawn. However, if the court should find Santobello applicable to the instant case, respondent would note that the Santobello court remanded that case for a determination as to whether the defendant should be permitted to

withdraw his guilty plea and go to trial or whether he should be given the benefit of his bargain.

To permit appellant herein to withdraw his guilty plea at this late date would greatly prejudice the state. Appellant would then be given a trial many months after the incident which is the subject of the guilty plea. This delay certainly would create difficulty in gathering witnesses and facts necessary for trial. Appellant would greatly benefit by his own lack of diligence in bringing to the attention of the court the breach of the plea bargaining agreement.

Respondent would thus argue that appellant is entitled to no more than the benefit of his bargain; should the court find that appellant is entitled to a remedy. Although appellant has long since served a concurrent sentence on the guilty plea entered in Box Elder County, the record could be corrected to comply with the plea bargaining agreement. To permit appellant to withdraw his guilty plea and go to trial punishes the state for appellant's failure to complain of the breach of the plea bargaining agreement. To give appellant the benefit of his bargain

would place the parties in the position anticipated at the time the plea bargain was agreed upon.

CONCLUSION

Where appellant let eight months pass before he complained about the breach of a plea bargaining agreement, including five months after the imposition of sentence, and let numerous opportunities go by without complaining about the unkept agreement, appellant has waived his right to have the guilty plea vacated. If the court should find that appellant is entitled to a remedy, he should be given no more than the benefit of the bargain.

Respectfully submitted,

VERNON B. ROMNEY
Attorney General

WILLIAM W. BARRETT
Assistant Attorney General

Attorneys for Respondent