

JEREMIAH ROLLE,

Petitioner,

VS.

STATE OF FLORIDA,

Respondent.

CASE NO. SC13-  
L.T. Case No. 4D12-1839

## PETITIONER’S BRIEF ON JURISDICTION

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## STATEMENT OF THE CASE AND FACTS

Petitioner<sup>1</sup> and two codefendants were charged with carjacking with a firearm and robbery with a firearm. Petitioner was also charged with fleeing or attempting to elude a law enforcement officer at high speed. Petitioner entered an open plea of no contest to all three charges after being told that the minimum penalty was ten years in prison and the maximum penalty was life in prison.

At the sentencing hearing one month later, the State informed the trial court that it was extending an offer to Petitioner in which it would recommend an adult sentence of four years in prison followed by six years probation in exchange for Petitioner's "cooperation and truthful testimony" in the case against one of Petitioner's codefendants. The State asked for a brief recess so that it could "take a sworn statement" from Petitioner. The State noted, "Of course, one of the special conditions would be he'd have to testify truthfully in the [codefendants's case]. . . . I'd like to hear the statement in terms of what [Petitioner] is going to say before [the State] negotiate[s] anything."

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<sup>1</sup>Petitioner, Jeremiah Rolle, was the defendant in the trial court and the appellant in the Fourth District Court of Appeal. Respondent, the State of Florida, was the prosecution and the appellee respectively. In the brief, the parties will be referred to as they appear before this Court.

Petitioner's attorney objected to the State's proposed offer and argued that the State could not extend an offer only to revoke it if the State "doesn't like what [Petitioner] says." The trial court told Petitioner's counsel that Petitioner would have to "decide whether to proceed [with sentencing] or accept the state's offer." Petitioner chose to give a statement to the State, and a recess was taken.

When the sentencing hearing resumed, the State told the court that it was not satisfied with Petitioner's testimony. Petitioner's counsel, on the other hand, said that Petitioner had "testified truthfully," so that the State was bound by its bargain. The trial court found that the State was not obligated to recommend the shorter sentence, as there was no "meeting of the minds" between the parties about the terms of the proposed agreement as the parties had not unconditionally agreed to a reduced sentence recommendation.

The State then asked that Petitioner be sentenced to twenty years in prison, while Petitioner asked to be sentenced as a youthful offender. The trial judge sentenced Petitioner to the minimum term of ten years in prison followed by five years probation.

On appeal, the Fourth District Court of Appeal affirmed Petitioner's judgment of conviction and sentence. The Court began its analysis by holding that

even assuming that the parties had reached a binding agreement, the court would not have been obligated to impose the lesser sentence in that – even under the most favorable interpretation of the purported agreement – the state was simply required to make a sentencing *recommendation*.

The Court went on to find that there was no binding agreement because the State “conditioned its assent on the proffered testimony.” The Court then concluded, again, that

Even if there had been such an agreement, the court would not have been obligated to follow it because the state – in the best case scenario for Rolle – was only required to *recommend* a sentence.

The Fourth District Court of Appeal denied Appellant’s timely motion for rehearing on June 6, 2013. Petitioner filed his notice that he intended to seek discretionary review in this Court on June 27, 2013. This jurisdictional brief follows.

## SUMMARY OF THE ARGUMENT

In the instant case, the Fourth District Court of Appeal held that even if the State breached its plea agreement requiring that it make a specific sentencing recommendation, the error was harmless because the trial judge retained his sentencing discretion. This decision directly and expressly conflicts with the decisions of other district courts of appeal and this Court holding that the State's breach of its agreement renders the defendant's plea involuntary, regardless of the fact that the sentencing judge retains sentencing discretion.

## ARGUMENT

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN THE INSTANT CASE DIRECTLY AND EXPRESSLY CONFLICTS WITH A DECISION OF THIS COURT OR OF ANOTHER DISTRICT COURT OF APPEAL.

In its decision below, the Fourth District Court of Appeal affirmed Petitioner's conviction and sentence, holding that he and the State did not enter into an enforceable plea agreement requiring the State to recommend a shorter sentence in exchange for Petitioner's cooperation in its case against his codefendant. In so holding, the district court first specifically observed that

even assuming that the parties had reached a binding agreement, the court would not have been obligated to impose the lesser sentence in that – even under the most favorable interpretation of the purported agreement – the state was simply required to make a sentencing *recommendation*.

And in stating its conclusion, the district court once again expressly stated:

We approve of the trial court's ruling and the sentence imposed. There was no binding agreement between the state and Rolle. Even if there had been such an agreement, the court would not have been obligated to follow it because the state – in the best case scenario for Rolle – was only required to *recommend* a sentence.

Accordingly, the district court held that the State's failure to comply with a plea agreement which required it to make a sentencing *recommendation* was in



essence harmless because it did not require the trial judge to impose the recommended sentence. By so holding, however, the district court ignored the well-established law holding that where the State reneges on its promise to make a sentencing recommendation, the plea becomes an involuntary one. As unambiguously stated by this Court in Tillman v. State, 522 So.2d 14, 16 (Fla. 1988):

A defendant agrees to plead guilty based specifically on the agreement he or she has made with the state. Any breach of that agreement by the state renders the plea involuntary.

This Court addressed this issue in Thomas v. State, 593 So. 2d 219 (Fla. 1992), where the prosecutor "reluctantly" stood by his agreement to recommend a four-month jail term, as contemplated by the plea agreement, after being told by the trial court that if he stood silent in the face of the recommendation of the presentence investigation report for a greater sentence, the defendant would be allowed to withdraw his plea. This Court held that

in this case it can hardly be said that the state attorney adhered to the terms of the plea bargain. First, the state attorney made clear to the court that the prosecution no longer desired to recommend a four-month sentence. Then, the state attorney openly opposed a departure below the guidelines, which would have been necessary to give effect to the bargain.

The State contends that its actions were appropriate because it was unaware of Thomas's prior record as reflected in the PSI report. Even if this constituted

grounds to excuse the State's compliance with the terms of the plea [footnote omitted], the defendant was nevertheless entitled to withdraw his plea because he was deprived of the benefit of his bargain, *i.e.*, the persuasive effect of the State's original recommendation.

*Id.* at 220-221.

O'Berry v. State, 37 Fla. L. Weekly D1324 (Fla. 2d DCA June 14, 2013)

recently reached the same conclusion. There, the defendant moved to withdraw his plea after sentencing when the State broke its plea agreement to recommend a forty-year sentence and instead recommended that he be sentenced to life in prison. When defense counsel objected to this change, the prosecutor reluctantly acknowledged that he had agreed to recommend forty years.

Even though the trial stated that he sentenced the defendant to fifty years in prison based on his own independent assessment, the Second District Court of Appeal held that the State violated the plea agreement, and the defendant was entitled to relief. It cited with approval a decision which held that “[T]he mere appearance of a breach by the state is itself grounds for relief regardless of whether the breach affected the sentence.” O'Berry, quoting Mehl v. State, 958 So.2d 645, 468 (Fla. 4<sup>th</sup> DCA 2007). O'Berry also relied on a decision by this Court,

It appears that the Fourth District Court of Appeal's decision below was significantly based on an erroneous view that the fact that the State agreed only to

make a non-binding sentencing *recommendation* rendered harmless any error in disregarding the plea agreement. This position is, however, in direct and express conflict with the settled law of this State. In order to ensure that future appeals are not disposed of based on the erroneous view of the Fourth District Court of Appeal in the instant case, this Court should exercise its discretion and accept jurisdiction of this appeal for further review.

## CONCLUSION

Based on the foregoing argument and the authorities cited, Petitioner requests that this Court exercise its discretion and accept jurisdiction of the instant cause for review.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to Richard Valuntas, Assistant Attorney General, Office of the Attorney General, Ninth Floor, 1515 N. Flagler Drive, West Palm Beach, Florida 33401-3432, by U.S. mail this 2d day of JULY, 2013.

/s/ Tatjana Ostapoff  
Assistant Pubic Defender

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY that this brief has been prepared in 14 point Times New Roman font, in compliance with Fla. R. App. P. 9.210 (a)(2).

/s/ Tatjana Ostapoff  
Assistant Public Defender