

NOTICE
This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2021 IL App (4th) 190368-U

NO. 4-19-0368

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
April 13, 2021
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Coles County
JASON A. RIDDLE,)	No. 18CF256
Defendant-Appellant.)	
)	Honorable
)	Brien J. O'Brien,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Knecht and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in denying defendant’s motion to withdraw his guilty plea because defendant was denied the benefit of his plea bargain with the State.

¶ 2 In November 2018, defendant pleaded guilty to a charge of cruelty to animals (510 ILCS 70/3.01(a) (West 2016)). Pursuant to defendant’s plea bargain, the State agreed that, at defendant’s sentencing hearing, it would not recommend defendant be sentenced to a period of incarceration exceeding 30 months. When defendant failed to appear for his sentencing hearing, the trial court conducted the hearing in defendant’s absence, and the State recommended defendant be sentenced to five years’ imprisonment. Defendant was ultimately sentenced to five years’ imprisonment. Defendant *pro se* filed a motion to reduce his sentence. Later, through counsel, defendant filed a motion to withdraw his guilty plea, which the court denied.

¶ 3 On appeal, defendant argues the trial court erred in denying his motion to withdraw his guilty plea because he was denied the benefit of his plea bargain with the State or, in the alternative, the court's admonishments during the plea hearing did not comply with Illinois Supreme Court Rule 402 (eff. July 1, 2012). Defendant also argues the court erred in failing to conduct a *Krankel* inquiry into the allegations of ineffective assistance of counsel contained in his *pro se* motion to reduce his sentence. We reverse the denial of defendant's motion to withdraw his guilty plea and remand for further proceedings.

¶ 4 I. BACKGROUND

¶ 5 On April 27, 2018, the State charged defendant with aggravated cruelty to animals (510 ILCS 70/3.02(a) (West 2016)), a Class 4 felony, alleging that he struck a dog with a broom multiple times. Later, the State reduced the charge to cruelty to animals (*id.* § 3.01(a)), which, pursuant to section 3.01(d) of the Humane Care for Animals Act (*id.* § 3.01(d)), the State also charged as a Class 4 felony because defendant had previously been convicted of that offense.

¶ 6 In November 2018, defendant pleaded guilty to the charge of cruelty to animals. In exchange for defendant's plea, the State agreed that, at the sentencing hearing, it would recommend the court impose a sentence of not more than 30 months' incarceration. In response to the court's questioning, defendant agreed that there "[were] no promises being made to [him] *** in return for [his] plea of guilty, other than the State [would] not recommend anything more than 30 months in the Department of Corrections [(DOC)]," "the sentencing judge *** [would] have the power to impose the maximum penalties provided by Illinois law for the offense for which [he had] been charged," and "even if the State recommend[ed] 30 months in the [DOC], [the court was] not bound by that[.]" The court further admonished defendant that he was "extended term

eligible due to a prior conviction, which mean[t] that [defendant] could be sentenced from one to six years in the Department of Corrections.” After admonishing defendant, the court accepted defendant’s plea, finding it was voluntarily and knowingly made and supported by a factual basis. After scheduling defendant’s sentencing hearing for January 15, 2019, the following colloquy occurred:

“THE COURT: I’m also ordering the [p]robation [d]epartment to prepare a presentence investigation report. And Mr. Riddle, you’re ordered to cooperate with the [p]robation [d]epartment in the preparation of that report.

DEFENDANT: Yes, Your Honor.

THE COURT: If you fail to appear on January 15th at 1 p.m., you can be sentenced in your absence, and that sentence would be binding upon you as if you had been present. Do you understand[?]

DEFENDANT: Yes. Thank you, Your Honor.”

Following the plea hearing, defendant was released from custody on a recognizance bond.

¶ 7 Defendant did not cooperate in the preparation of the presentence investigation report and failed to appear for the sentencing hearing on January 15, 2019.

¶ 8 At the sentencing hearing, defendant’s counsel represented to the trial court that defendant had left a voicemail message for her saying “I’m not coming” to the hearing. Defendant’s counsel further represented: “I may be wrong about what the [c]ourt did, but I know I told [defendant] that if he failed to appear, any cap by the State would be non-binding on the State as well because he had not kept up his end of the bargain.” The court then conducted a sentencing hearing in defendant’s absence. During the hearing, the State made the following

argument:

“Your Honor, I would ask you to take note that the defendant failed to show up for his own pre[]sentence investigation as well as failing to show up to his own sentencing hearing today after being ordered by this [c]ourt to do so.

I would argue that this shows a clear inability to follow [c]ourt orders. That along with the nature and circumstances of this case, believe [sic] that a community based sentence would be inappropriate.

I therefore would ask this [c]ourt to sentence the defendant to five years in the [DOC].”

Defendant’s counsel requested the court impose a 30-month term of probation or 1 year of incarceration. The court ultimately sentenced defendant to five years’ imprisonment and issued a warrant for his arrest.

¶ 9 On February 25, 2019, defendant *pro se* filed a motion for reduction of sentence. In his motion, defendant alleged as follows:

“I did not appear at my sentencing hearing because I was high on drugs [and] alcohol and I was in fear of being harshly punished, because of no contact with counsel, after repeated calls to her.

I feel I was sentenced harshly because I failed to appear at my sentencing hearing. I also feel my attorney *** was not forthcoming to me between my Nov[ember] 22nd release date, and January 15th. She had no contact with me until [January 10, 2019]. Also[,] drugs [and] alcohol played a huge part in this whole case and was never addressed even though I repeatedly asked [my attorney] to do

so.”

¶ 10 On March 1, 2019, a different attorney from the Coles County Public Defender’s Office entered his appearance as defendant’s counsel.

¶ 11 In April 2019, defendant’s new counsel filed a motion to withdraw defendant’s guilty plea. Citing *Santobello v. New York*, 404 U.S. 257 (1971), defendant argued he had been denied the benefit of his plea agreement because, instead of recommending a prison sentence of no more than 30 months, as required under the plea agreement, the State recommended a five-year prison sentence. Defendant additionally claimed his original counsel’s representation that “the State was no longer required to abide by the cap, due to defendant’s absence” was incorrect because “[his] appearance at the sentencing hearing was not made a condition of the cap.”

¶ 12 In June 2019, the trial court denied defendant’s motion, finding *Santobello* was distinguishable and finding defendant’s five-year prison sentence was warranted in light of his criminal history.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, defendant argues the trial court erred in denying his motion to withdraw his guilty plea because he was denied the benefit of his plea bargain with the State or, in the alternative, the court’s admonishments during the plea hearing did not comply with Illinois Supreme Court Rule 402 (eff. July 1, 2012). Defendant also argues the court erred in failing to conduct a *Krankel* inquiry into the allegations of ineffective assistance of counsel contained in his *pro se* motion to reduce his sentence.

¶ 16 As indicated, defendant first argues the trial court erred in denying his motion to

withdraw his guilty plea because he was denied the benefit of his plea bargain with the State. Specifically, defendant contends his constitutional right to due process was violated because he pleaded guilty in exchange for the State's promise not to recommend a sentence in excess of 30 months' imprisonment. The State concedes defendant's argument. For the reasons stated below, we agree with the parties and accept the State's concession that defendant was denied the benefit of his plea bargain.

¶ 17 Typically, a court of review examines a trial court's decision to deny a defendant's motion to withdraw a guilty plea for an abuse of discretion. See *People v. Glover*, 2017 IL App (4th) 160586, ¶ 29, 85 N.E.3d 815. "A defendant does not have an absolute right to withdraw his guilty plea [citation], but a defendant should be allowed to withdraw his plea where his plea was not constitutionally entered." *People v. Manning*, 227 Ill. 2d 403, 412, 883 N.E.2d 492, 498 (2008). In *People v. Whitfield*, 217 Ill. 2d 177, 183-84, 840 N.E.2d 658, 663 (2005), our supreme court explained:

"When seeking relief from a guilty plea, either directly or collaterally, there are two separate, though closely related, constitutional challenges that may be made: (1) that the plea of guilty was not made voluntarily and with full knowledge of the consequences, and (2) that defendant did not receive the benefit of the bargain he made with the State when he pled guilty."

¶ 18 The "benefit of the bargain" challenge identified in *Whitfield* finds its roots in *Santobello v. New York*, 404 U.S. 257 (1971). *Whitfield*, 217 Ill. 2d at 184-85. In *Santobello*, the defendant pleaded guilty in exchange for the State's promise to "make no recommendation as to the sentence." *Santobello*, 404 U.S. at 258. During the subsequent sentencing hearing, the

prosecutor recommended defendant be sentenced to one year in prison. *Id.* at 259. The defendant's counsel objected to the State's recommendation, arguing it violated the terms of the defendant's plea agreement. *Id.* The trial court overruled the defendant's objection, explaining it was not "influenced" by the State's recommendation. *Id.* The court ultimately sentenced the defendant to one year in prison. *Id.* at 260. On review before the Supreme Court, the State conceded it had violated the terms of the defendant's plea agreement. *Id.* at 262. The Supreme Court agreed, noting the defendant had entered his guilty plea, in part, "on condition that no sentence recommendation would be made by the prosecutor." *Id.* The Supreme Court ultimately held:

"This phase of the process of criminal justice, and the adjudicative element inherent in accepting a plea of guilty, must be attended by safeguards to insure the defendant what is reasonably due in the circumstances. Those circumstances will vary, but a constant factor is that when 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." *Id.*

¶ 19 The Supreme Court's holding in *Santobello* clearly provides that a defendant has a due process right in the fulfillment of his plea bargain. *Whitfield*, 217 Ill. 2d at 185. Applying this reasoning, courts of review have determined:

"if a defendant pleads guilty in reliance on a promise by the State to recommend to the court a lesser sentence than that imposed and the State does not fulfill its promise, then the plea is not voluntary and may be withdrawn even though the State's recommendation, had it been made, would not have been binding on the court." *People v. Walker*, 256 Ill. App. 3d 466, 468, 628 N.E.2d 207, 208 (1993).

In addition, if a defendant's presence at his sentencing hearing is not a term of the plea agreement, his failure to attend the sentencing hearing will not relieve the State of its obligation to comply with the plea agreement. See *id.* at 468-69; see also *Robinson v. People*, 66 Ill. App. 3d 601, 603, 384 N.E.2d 420, 423 (1978).

¶ 20 Here, it is apparent from the record that the entirety of defendant's plea agreement with the State consisted of: (1) his agreement to plead guilty and (2) the State's agreement to limit its sentencing recommendation to 30 months' incarceration. Defendant's appearance at the sentencing hearing was not made a condition of the plea agreement. Therefore, the State was bound by the terms of the plea agreement to limit its sentencing recommendation to 30 months in prison, even when defendant failed to appear at the sentencing hearing. By recommending a prison term of five years, the State breached its agreement with defendant, in violation of his due process rights.

¶ 21 We further find that defendant's plea agreement was not altered by the trial court's admonishment that he could be sentenced *in absentia*. The admonishment was not made a part of the plea agreement, nor did defendant agree that, if he failed to appear, the State would not be bound by its agreement. Cf. *People v. Turner*, 397 Ill. App. 3d 883, 889, 924 N.E.2d 1, 5 (2010) (defendant's presence at sentencing hearing determined to be a condition of plea agreement based on counsel's statements).

¶ 22 Where, as here, a defendant is denied the benefit of his plea bargain, he is entitled to specific performance of his bargain or to be given the opportunity to withdraw his plea. *Whitfield*, 217 Ill. 2d at 202 (citing *Santobello*, 404 U.S. at 262-63). Defendant has requested that he be allowed to withdraw his guilty plea. The State agrees defendant is entitled to this relief. We reverse the trial court's order denying defendant's motion to withdraw his guilty plea and remand

with directions to allow defendant the opportunity to withdraw his guilty plea.

¶ 23 Having determined that reversal is required, we decline to address defendant's remaining contentions of error.

¶ 24 III. CONCLUSION

¶ 25 For the reasons stated, we reverse the trial court's judgment and remand for further proceedings.

¶ 26 Reversed and remanded.