

The Supreme Court of the State of Louisiana

STATE OF

No.2020-KK-01356

LOUISIANA VS.

LARRY EARL MILES

IN RE: Larry Earl Miles - Applicant Defendant; Applying For Supervisory Writ,
Parish of Assumption, 23rd Judicial District Court Number(s) 17-CR-000054, 1st
Circuit Court of Appeal, Number(s) 2020 KW 0649;

March 09, 2021

Writ application granted. See per curiam.

JTG

SJC

WJC

JBM

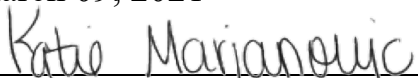
PDG

Weimer, C.J., concurs and assigns reasons.

Hughes, J., concurs for the reasons assigned by Chief Justice Weimer.

Supreme Court of Louisiana

March 09, 2021



Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 2020-KK-01356

STATE OF LOUISIANA

VS.

LARRY EARL MILES

On Supervisory Writ to the 23rd Judicial District Court, Parish of Assumption

PER CURIAM:

This case involves the lower courts' denial of defendant's "Motion to Enforce Original Plea Agreement and/or Withdraw Plea and/or Reconsider Sentence," wherein the state entered into a plea agreement with the defendant, which contained terms that the state knew or should have known it would be unable to enforce. Larry Earl Miles, the defendant in this case, was arrested and charged with felony possession of a firearm on December 8, 2016, in Assumption Parish. Two months later, on February 8, 2017, defendant was indicted in the United States District Court, Middle District of Louisiana, on drug conspiracy charges. Defendant entered a guilty plea in the Assumption Parish state court for the firearm charge and was sentenced to 18 years at hard labor with credit for time served. Pursuant to a plea agreement, his 18-year sentence was to run **concurrently** with any sentence from the unrelated federal case. The trial court accepted defendant's guilty plea. By the time of his state court sentencing following the plea agreement, the federal court had sentenced him to 68 months at hard labor (five years and seven months). Defendant's counsel, counsel for the state, and the trial judge at sentencing all informed defendant that his sentences would run concurrently as specifically set forth and confirmed in the text of the plea agreement. However, the Federal Bureau of Prisons *refused* to allow the 18-year sentence to run concurrently with his federal sentence. Defendant

asks this Court modify his sentence to conform to the intent of the plea agreement or to allow him to withdraw his guilty plea.

In this case, the state, defense counsel, and the trial court judge all assured defendant, who has only attained an eighth grade education, that his sentences would run concurrently. Neither the text of his plea agreement nor his *Boykin* colloquy with the trial court alerted the defendant that the fulfilment of the terms of the plea agreement were partially contingent on the decisions of the Federal Bureau of Prisons. “Implicit in the bargain is the fact that but for each element of the sentence... [the] defendant would not have pled guilty.” *State v. Hooper*, 358 So.2d 916, 917 (La. 1978). Here, the state made a deal that it knew or should have known that it could not uphold, and the defendant waived fundamental constitutional rights in order to receive the terms of that deal. We find that, under facts of this case, the inability of the state to enforce the terms of the agreement renders the agreement constitutionally deficient.

Though defendant has already been sentenced, the trial court may vacate the guilty plea in a factual scenario like this, where circumstances prevented defendant from knowingly and voluntarily entering a guilty plea:

Beginning with *State ex rel. Clark v. Marullo*, 352 So.2d 223 (La.1977), this court has held that the trial court could properly vacate a plea of guilty even after sentence when it determined that the facts surrounding a guilty plea rendered it “constitutionally deficient.” Also, in *State v. Galliano*, 396 So.2d 1288 (La.1981), this court held that the Trial Judge had authority to grant a motion to vacate the sentence and to allow the withdrawal of a plea of guilty when the plea was not both voluntary and intelligently entered. In that case the defendant had not been advised of the statutory minimum sentence, his knowledge of the consequences of the plea was questionable, and, therefore, the *Boykin* colloquy was constitutionally deficient.

State v. Lewis, 421 So.2d 224, 225–26 (La. 1982). As in *Lewis*, defendant should have the opportunity to have his sentence vacated. The terms of the agreement included specific agreements about the length of the sentence to be imposed, and how it would be served, with apparent agreement between the parties as to the net

term of imprisonment defendant will serve. Accordingly, we grant defendant's application, vacate defendant's sentence, and remand this matter to the district court with instructions that the district court allow defendant to withdraw his guilty plea, and for further proceedings consistent herewith.

REVERSED AND REMANDED.