

NOTICE
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2011 IL App (4th) 100601-U

Filed 11/4/11

NO. 4-10-0601

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Pike County
CRAIG E. CLARK,)	No. 07CF123
Defendant-Appellant.)	
)	Honorable
)	Michael R. Roseberry,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Appleton and Cook concurred in the judgment.

ORDER

¶ 1 *Held:* The court affirmed the trial court's judgment finding defendant's consecutive three-year sentences on revocation of conditional discharge did not violate the five-year sentence cap originally negotiated by the parties where later negotiations modified the terms of the plea agreement, rendering the superseded five-year sentence cap inapplicable and more importantly, where defendant violated the terms of conditional discharge and was resentenced.

¶ 2 In August 2008, defendant, Craig E. Clark, entered a negotiated guilty plea on eight counts of theft over \$300 (720 ILCS 5/16-1(a)(1)(A) (West 2006)). In exchange for pleading guilty, defendant received concurrent three-year prison sentences on four counts and concurrent 30-month conditional discharge terms on the other four counts. In June 2010, the trial court revoked defendant's conditional discharge on the four remaining counts of theft over \$300 and sentenced him to concurrent three-year prison sentences on two counts, to run consecutively to concurrent three-year prison sentences on the other two counts. Defendant

appeals, arguing the court violated the original plea agreement's terms when it sentenced him to more than five years' imprisonment upon revoking his conditional discharge. We affirm.

¶ 3

I. BACKGROUND

¶ 4 In November 2007, the State charged defendant by information with 10 counts of theft over \$300 (720 ILCS 5/16-1(a)(1)(A) (West 2006)) (counts I, II, IV through X, and XII), one count of unlawful possession of a stolen vehicle (625 ILCS 5/4-103(a)(1) (West 2006)) (count III), and one count of aggravated fleeing or attempting to elude a peace officer (625 ILCS 5/11-204.1(a)(1) (West 2006)) (count XI).

¶ 5 In June 2008, defendant entered a partially negotiated guilty plea in exchange for a five-year sentencing cap. Pursuant to the plea, defendant pleaded guilty to eight counts of theft over \$300 (counts I, II, IV, and VI through X), and the State dismissed the charges for unlawful possession of a stolen vehicle (count III), aggravated fleeing or attempting to elude a peace officer (count XI), and two counts of theft over \$300 (counts V and XII). The trial court made the following statements while admonishing defendant:

"[T]he sentence could be up to five years in the Illinois Department of Corrections. The minimum term would be two years, the maximum term would be five years.

The Court could sentence you to consecutive sentences but if the Court did that then the maximum would be ten years. In other words, the two terms could be consecutive.

Now I told you that you could receive an extended term but the agreement is that there would be a maximum of five years so that would be the maximum you could receive if the Court accepts the plea agreement." (Emphasis added.)

The court conditionally accepted the plea agreement and agreed to cap defendant's sentence at five years, pending a presentence investigation report.

¶ 6 In August 2008, the matter came before the trial court for sentencing. At the hearing, the court learned the parties had finalized a fully negotiated plea agreement. Under the terms of the fully negotiated plea, defendant pleaded guilty to eight counts of theft over \$300 (counts I, II, IV, and VI through X), and the remaining counts were dismissed. In exchange for pleading guilty, defendant received concurrent three-year prison sentences on counts I, II, IV, and VI and concurrent 30-month conditional discharge terms on counts VII through X. The court accepted the plea agreement, stating:

"Well this is not the sentence the Court had thought about *** while reading the pre-sentence investigation report but I will concur with the plea agreement. And you understand Mr. Clark you previously entered an open plea of guilty but now that will be considered a negotiated plea because we're actually negotiating this case. Do you understand that?"

Defendant stated he understood. The court then sentenced defendant and admonished him regarding the terms of his conditional discharge, stating:

"[I]f you violate any conditions of conditional discharge *** the

State can file a motion to revoke, *** and you could still receive up to five years in the Department of Corrections on the other offenses."

Defendant again indicated he understood.

¶ 7 In August 2009, the State filed a petition to revoke defendant's conditional discharge. The State's petition alleged defendant violated the terms of his conditional discharge by committing forgery(720 ILCS 5/17-3(a)(2) (West 2008)), and he pleaded guilty to two counts in Cass County case No. 09-CF-22. The petition to revoke defendant's conditional discharge related only to counts VII through X for theft over \$300.

¶ 8 In January 2010, defendant entered into a fully negotiated plea agreement with the State on its petition to revoke his conditional discharge, admitted the allegations of the petition, and received concurrent five-year prison sentences on all four counts. Defendant's concurrent five-year prison sentences also ran concurrently with his four-year prison sentences for forgery in Cass County, case No. 09-CF-22. The trial court accepted the plea agreement and sentenced defendant.

¶ 9 On January 20, 2010, defendant filed a *pro se* petition to withdraw his guilty plea and vacate his sentence. In February 2010, the trial court appointed counsel to represent defendant on the petition. In April 2010, defense counsel filed an amended motion to withdraw defendant's guilty plea and vacate his sentence.

¶ 10 In May 2010, the trial court granted defendant's petition and vacated his admission and sentence. Defendant informed the court he wished to admit the allegations of the State's petition to revoke conditional discharge and proceed to sentencing. The court then

admonished defendant regarding the possible punishment he could receive at sentencing, stating:

"[Y]ou could be sentenced to no less than two nor more than five years on each of these offenses.

Now, what you need to understand is the sentences could run consecutively; in other words one after the other.

So do you understand that on resentencing, you could be looking at ten years in the Department of Corrections?"

Defendant stated he understood, and the court set the matter for resentencing.

¶ 11 In June 2010, the trial court resentenced defendant to three years' imprisonment on counts VII, VIII, IX, and X and ordered the sentences on counts VII and VIII be served consecutively to the sentences on counts IX and X.

¶ 12 In July 2010, defendant filed a motion to reconsider his sentence, arguing the trial court erred in imposing consecutive sentences without stating the basis for the consecutive sentences on the record. In August 2010, the court denied defendant's motion, finding the consecutive sentences were necessary to protect the public.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, defendant argues his six-year sentence violates the five-year cap he originally negotiated with the State in June 2008. The State argues the August 2008 fully negotiated plea agreement superseded the June 2008 partially negotiated plea agreement, rendering the terms of the earlier agreement inapplicable. We agree with the State.

¶ 16

A. Defendant's Plea Agreement

¶ 17 Illinois courts "have repeatedly held that fully negotiated guilty pleas *** are governed by principles of contract law." *People v. Absher*, 242 Ill. 2d 77, 87, 950 N.E.2d 659, 666 (2011). "[I]t is the existence of a sentencing concession on the part of the State which triggers the application of contract principles." *Id.* Parties to a contract are free to modify the terms at any time. See *Schwinder v. Austin Bank of Chicago*, 348 Ill. App. 3d 461, 468, 809 N.E.2d 180, 189 (2004). "A 'modification' of a contract is a change in one or more respects which introduces new elements into the details of the contract, or cancels some of them, but leaves the general purpose and effect undisturbed." *Id.*

¶ 18 In the case at bar, defendant entered into a contract with the State when the State agreed to cap his sentence at five years and dismiss some of the charges in exchange for a guilty plea. See *People v. Linder*, 186 Ill. 2d 67, 74, 708 N.E.2d 1169, 1172 (1999) (contract principles apply where the State agrees to dismiss certain charges and cap the possible sentence on the remaining charges). Though the original June 2008 partially negotiated plea agreement involved a five-year sentencing cap, the original plea was modified when the parties entered into a fully negotiated plea agreement. Further, the trial court informed defendant the new negotiated plea would replace the "open plea" between the parties. Under the fully negotiated plea, defendant received a three-year prison sentence and 30 months' conditional discharge. The new sentencing terms clearly superseded the original five-year sentencing cap and contained no agreement regarding a possible sentence upon revocation of defendant's conditional discharge.

¶ 19 Defendant claims his case is analogous to *People v. Taylor*, 368 Ill. App. 3d 703, 859 N.E.2d 20 (2006), arguing "a defendant cannot be sentenced in excess of what he was told

he could receive at the time he pled guilty." We disagree with defendant's contention and find the ruling in *Taylor* inapposite to the issue in the present case. In *Taylor*, 368 Ill. App. 3d at 707, 859 N.E.2d at 25, the court found an extended-term sentence improper upon revocation of the defendant's probation where the trial court failed to admonish him, pursuant to statute, on the possibility of an extended-term sentence prior to accepting the negotiated guilty plea. Here, defendant was not subject to extended-term sentencing. Here, at the time of the original plea, and again at the final admission to the conditional discharge violations, defendant was admonished he could receive consecutive sentences totaling 10 years. In addition, defendant's argument he was "sentenced in excess of what he was told he could receive at the time he pled guilty" is unpersuasive because the parties' fully negotiated plea agreement did not provide for defendant's possible sentence upon revocation of his conditional discharge.

¶ 20 Defendant's August 2008 fully negotiated plea agreement superseded the original June 2008 partially negotiated plea agreement and did not include a sentence cap. Thus, defendant's argument the trial court's resentencing him to two consecutive three-year prison sentences violated the five-year sentence cap necessarily fails. More importantly, once defendant violated the terms of his conditional discharge, any prior plea agreement was no longer effective. Defendant had been admonished early on about the possibility of consecutive sentences and was reminded of that possibility at the time he admitted violating his conditional discharge. He cannot now contend the court lacked the power to impose such a sentence when he violated the terms of the plea agreement.

¶ 21 III. CONCLUSION

¶ 22 For the foregoing reasons, we affirm the trial court's judgment. As part of our

judgment we grant the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 23 Affirmed.