IN THE

DISTRICT COURT OF APPEAL

FIRST APPELLATE DISTRICT OF FLORIDA



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| LOGAN M. STEELE,<br><br>Petitioner,<br><br>v.<br><br>STATE OF FLORIDA,<br><br>Respondent. | Case No. 1D18-4881<br>Original Proceeding<br>2nd Jud. Cir. Case No. 2016-CF-3029 |

**PETITIONER'S REPLY TO THE STATE'S "RESPONSE TO ORDER TO SHOW CAUSE"**

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Petitioner Steele submits the following reply to the State's response to his petition for a writ of certiorari. For all of the reasons set forth in the certiorari petition, Petitioner Steele continues to assert that he is entitled to relief.

In its response, the State asserts that the "Pretrial Intervention Agreement" in this case was illegal because the "Petitioner lacked the consent of the victim" – which the State asserts is required pursuant to section 948.08(2), Florida Statutes. *See* Response at 5-6. As explained in the Petitioner's petition, the contract in this case is more akin to the "settlement agreement" described in *State v. Simons*, 22 So. 3d 734 (Fla. 1st DCA 2009), as opposed to the formal "pretrial intervention program" described in section 948.08. Notably, the contract signed by the Petitioner – *a contract that was drafted by the prosecutor* (A-5)[1] – and the prosecutor makes *no reference* to section 948.08. Hence, section 948.08 does not apply to this case. But even assuming *arguendo* that section 948.08 does apply to this case, the failure to comply with a specific provision of section 948.08 does not render the contract in this case void. In support of this argument, the Petitioner continues to rely on this Court's decision in *Carson v. State*, 37 So. 3d 884 (Fla. 1st DCA 2010). In *Carson*, the Court considered the question of whether a criminal defendant who accepts the benefits of

[1] References to the documents included in the appendix to the Petitioner's certiorari petition will be made by the designation "A" followed by the appropriate page number.

a negotiated plea bargain could later collaterally attack his negotiated sentence as "illegal." The defendant in *Carson* entered into a negotiated plea bargain with the State and was sentenced to drug offender probation. The defendant later challenged the drug offender probation because such probation could only be imposed on those defendants convicted of the purchase or possession of a controlled substance (and the defendant was convicted of felony battery on a pregnant woman). In holding that a defendant was *not* permitted to withdraw his plea, the Court held:

> We also reject Appellant's claim on the merits. In the State's response to our show cause order, it correctly cited this court's case law holding that *a person who "bargained for [an] obligation [has] thereby waived any objection to the legality of the sentence containing [a] condition of probation*." *Allen v. State*, 642 So. 2d 815, 816 (Fla. 1st DCA 1994). The State further cited case law holding that because a plea agreement is a contract, Appellant contracted for drug offender probation. *See* [*State v.*] *Gutierrez*, 10 So. 3d [158,] 159 [(Fla. 3d DCA 2009)] (holding that trial court is without authority to mitigate sentence imposed pursuant to negotiated plea); *see also State v. Simons*, 22 So. 3d 734 (Fla. 1st DCA 2009) (holding that it is a settled principle of criminal procedure that courts may force the government to honor a plea agreement). As we stated in *Allen*, "Having accepted the benefits of his plea bargain, [Appellant] will not be relieved of his burdens under the contract." 642 So. 2d at 816.
>
> Once a defendant receives the very real benefit of probation in a plea agreement and then violates that probation, it is too late to consider an argument that he should not have received the probationary sentence. In our view, it is not "illegal" to allow a defendant to agree to serve a special type of probation, e.g., because of a substance abuse problem, even though the trial court could not impose such a condition on an unwilling defendant convicted at trial. *Ackermann* [*v. State*], 962 So. 2d [407,] 408 [(Fla. 1st DCA 2007)]. As the State noted in its response,

> courts have recognized that "once a defendant has enjoyed the benefits of probation without challenging the legality of [the] sentence, the defendant is thereafter precluded from an order revoking probation." *Matthews v. State*, 736 So. 2d 72, 75 (Fla. 4th DCA 1999) (quoting *Gaskins v. State*, 607 So. 2d 475 (Fla. 1st DCA 1992), *overruled on other grounds*, *State v. Powell*, 703 So. 2d 444 (Fla. 1997)). In *Gaskins*, we stated in clear terms that a defendant who accepts the benefits of a probationary sentence will not be heard to claim the sentence was improper after the probationary sentence is revoked. *Id.* at 476.

*Carson*, 37 So. 3d at 886 (emphasis added). Pursuant to *Carson*, once the State accepted the benefit of the contract in this case – and after the Petitioner fully performed all of his obligations under the contract – the State was thereafter precluded from challenging the legality of the contract and any argument regarding the legality of the contract – based on a purported failure of the alleged victim to consent to the contract – has been waived (and the State should therefore not be relieved of its burdens under the contract).[2] *See also In re Hudgens*, 233 P.3d 566, 569 (Wash. Ct. App. 2010) ("[A] defendant is entitled to specific performance even

[2] The State also asserts in its response that the "Pretrial Intervention Agreement" is "void" because the charge in this case is not a third-degree felony. *See* Response at 6. For the same reasons set forth above, once the State accepted the benefit of the contract in this case – and after the Petitioner fully performed all of his obligations under the contract – the State was thereafter precluded from challenging the legality of the contract and any argument regarding the legality of the contract – based on the nature of the charge in this case – has been waived.

when the terms of the plea agreement conflict with the law.").[3]

Finally, the State argues that the Petitioner violated the "Pretrial Intervention Agreement" during the period of supervision. *See* Response at 7. In making this argument, the State ignores that the contract specifically stated that there would be "[e]arly termination upon completion of community service hours if in full compliance." (A-12).[4] There is no dispute in this case that the Petitioner completed his community service hours condition on July 26, 2017 (as documented on the State of Florida Department of Corrections Public Service Hours form). (A-14-15).[5] There is also no dispute in this case that the Petitioner had not violated any condition of his contract as of July 26, 2017.

As explained in the certiorari petition, "[a] [pretrial intervention] agreement is in the nature of a contract, similar to a plea agreement[; t]hus, rules of contract law

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[3] As explained in the certiorari petition, "where the language of [a] contract is ambiguous, its provisions should be construed against the drafter." *Langford v. Paravant, Inc.*, 912 So. 2d 359, 361 (Fla. 5th DCA 2007) (citing *Ellsworth v. Insurance Co. of North America*, 508 So. 2d 395, 400 (Fla. 1st DCA 1987)).

[4] It is legally significant that the State – the party drafting the contract – used the language "early termination upon completion" rather than "the agreement may terminate early" or "the Defendant may petition to terminate early."

[5] Documentation of the completion of the community service hours condition was submitted to the State via an email to the Petitioner's monitoring officer at horace.catherine@mail.dc.state.fl.us on July 26, 2017. (A-16).

apply." *State v. Dempsey*, 916 So. 2d 856, 859 (Fla. 2d DCA 2005). Applying the rules of contract to the instant case, the Petitioner (1) completed/complied with all conditions of his contract with the State and (2) pursuant to the plain language of the terms of the contract, the contract "terminat[ed] upon completion of community service hours." Thus, the Petitioner is entitled to specific performance of the contract – i.e., the criminal charges in this case should be dismissed.

Accordingly, for all of the reasons set forth above and contained in the certiorari petition, the circuit court in this case erred by denying the Petitioner's "Motion to Enforce Terms of Pretrial Intervention Contract or in the Alternative Dismiss Information." As explained by this Court in *Simons*, if it is acceptable for the State to withdraw from a pretrial intervention contract *after* a defendant has performed under the contract, then the promise of pretrial intervention could be used as a device to collect from the defendant – in this case in the form of a $100 payment and 150 hours of community service – and could then be withdrawn after the defendant followed through on his end of the bargain. As stated by the Court in *Simons*:

> When the parties agree to settle a case they should be bound by their agreement. The incentive to settle a case by plea bargaining or by an agreement not requiring a plea would quickly disappear if one party could renege on an agreement without any consequence.

*Simons*, 22 So. 3d at 737. *See also State v. Kaczmarski*, 772 N.W.2d 702, 708 (Wis.

Ct. App. 2009) ("Applying our construction of the agreement to this case, we conclude that the district attorney was without authority under the terms of the deferred prosecution agreement to resume prosecuting Kaczmarski after the contract ended on October 31, 2005 . . . .").

Respectfully submitted,

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## CERTIFICATE OF SERVICE

Undersigned counsel certifies that a true and correct copy of the foregoing instrument has been furnished to:

Assistant Attorney General Steven Woods
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by email delivery this 15th day of April, 2019.

Respectfully submitted,

/s/ Michael Ufferman

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## CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that this pleading complies with the font requirements of Florida Rule of Appellate Procedure 9.100(l).

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