

OHIO COURT OF APPEALS, SIXTH APPELLATE DISTRICT

State v. Livingston

2026-Ohio-1080 · No. WD-25-036 · Decided March 27, 2026

SUMMARY

The Sixth District Court of Appeals of Ohio affirmed Henry Livingston III’s 30-month sentence for abduction following his guilty plea, after the State dismissed a rape charge. The court held that the State breached its agreement not to make a sentencing recommendation by presenting information intended to influence sentencing, but concluded that the breach did not constitute plain error because Livingston failed to show that it affected his plea or sentence.

CASE DETAILS

COURT	Ohio Court of Appeals, Sixth Appellate District
WRITING FOR THE COURT	Charles E. Sulek; Gene A. Zmuda; Myron C. Duhart
JURISDICTION	Ohio Court of Appeals, Sixth Appellate District, Wood County
DECIDED	March 27, 2026
DOCKET	WD-25-036
DISPOSITION	affirmed
PROCEDURAL POSTURE	Livingston pleaded guilty to abduction after the State dismissed a rape charge and was sentenced to 30 months of imprisonment. He appealed, arguing that the State breached the plea agreement by making sentencing-related comments after agreeing to remain silent or make no sentencing recommendation.
STANDARD OF REVIEW	Plain-error review under Crim.R. 52(B), because Livingston did not object to the prosecutor's sentencing comments.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals decision
PARTIES	Henry Livingston, III v. State of Ohio

TOPICS

- plea bargaining
- sentencing
- criminal procedure
- preservation of error
- appellate procedure

PRACTICE AREAS

- criminal procedure
- plea bargaining
- sentencing
- appellate procedure

QUESTIONS PRESENTED

1. Whether the State breached the plea agreement by making sentencing-related comments after agreeing to remain silent or decline to make a sentencing recommendation.
2. Whether the breach constituted plain error requiring reversal when Livingston did not object at sentencing.

HOLDINGS

1. The plea agreement was not ambiguous because Livingston agreed that the prosecutor's statement that the State would decline to make a sentence recommendation reflected his understanding of the agreement.
2. An agreement to take no position on the sentence does not entirely foreclose the State's participation in sentencing, but it prevents the State from attempting to influence the sentence through conjecture, opinion, or disparaging information already before the court. The prosecutor breached the agreement by presenting sentencing factors and specifically asking the court to consider them.
3. The breach did not constitute reversible plain error because Livingston failed to show that, but for the error, he would not have entered the guilty plea or that the outcome of the proceedings would have been different.

KEY QUOTATIONS

“An agreement by the prosecution to take no position on the sentence does not entirely foreclose the State’s participation in the sentencing hearing.” (¶ 11)

“The State may “‘provide relevant factual information or correct misstatements’ without running afoul of an agreement,”” (¶ 11)

“restricted ‘from attempting to influence the sentence by presenting the court with conjecture, opinion, or disparaging information already in the court’s possession.’” (¶ 11)

“Speculative claims of but for the error, a defendant would have been sentenced differently or that the defendant would not have entered the plea are not sufficient to establish plain error.” (¶ 14)

FACTUAL BACKGROUND

Livingston was indicted for abduction and rape arising from an incident at a hotel in Perrysburg, Ohio. Under a plea agreement, the State dismissed the rape charge and Livingston pleaded guilty to abduction. The State agreed at the plea hearing to remain silent or decline to make a sentencing recommendation, but at sentencing it discussed victim harm, seriousness and recidivism factors, remorse, and Livingston's failure to participate in the presentence investigation, and asked the court to consider those matters.

PROCEDURAL HISTORY

A Wood County grand jury indicted Livingston for abduction and rape. The parties entered a plea agreement under which the rape charge was dismissed and Livingston pleaded guilty to abduction; at the plea hearing, the State agreed to remain silent or decline to make a sentence recommendation. At sentencing, the prosecutor

discussed seriousness, recidivism, victim harm, and remorse and asked the court to consider those matters. Livingston did not object, so the appellate court reviewed for plain error and affirmed the judgment.

DISPOSITION

affirmed

CASES CITED

- State v. Roby, 2022-Ohio-223, ¶¶ 12, 19
- State v. Rogers, 2015-Ohio-2459, ¶¶ 22-23
- State v. Barnes, 94 Ohio St.3d 21, 27 (2002)
- State v. Shell, 2020-Ohio-295, ¶ 10
- State v. Ross, 2008-Ohio-5388, ¶¶ 12, 14
- Santobello v. New York, 404 U.S. 257, 262 (1971)
- State v. Montgomery, 2008-Ohio-4753 (4th Dist.)
- State v. Ahlers, 2015-Ohio-131, ¶¶ 12-13, 16
- State v. Crump, 2005-Ohio-4451, ¶ 11