

SUPREME COURT OF VERMONT

State v. James Careau

2016 VT 18 (2016) · No. 2015-001 · Decided February 12, 2016

SUMMARY

The Vermont Supreme Court considers a defendant's challenge to a probation condition controlling where he could live and work and to the trial court's ruling that he could not seek a lesser sentence than the sentence specified in his plea agreement. The court affirms the sentence, holding that the plea agreement bound both parties to its specified sentence and did not permit the defendant to seek a downward departure. It reverses and remands as to probation condition 43 because imposing the condition without findings or explanation constituted plain error.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Dooley, J.; Reiber, C.J.; Skoglund, J.; Robinson, J.; Eaton, J.
JURISDICTION	Vermont
DECIDED	February 12, 2016
DOCKET	2015-001
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed from the Chittenden Superior Court's sentencing order following his guilty plea to sexual assault of a minor, challenging a probation condition and the trial court's ruling that seeking a lesser sentence would breach the plea agreement.
STANDARD OF REVIEW	Unpreserved challenges to probation condition 43 were reviewed for plain error. The plea-agreement issue was reviewed for legal error.
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion; precedential
PARTIES	James Careau v. State of Vermont

TOPICS

plea bargaining probation sentencing criminal procedure appellate procedure

PRACTICE AREAS

criminal procedure plea bargaining sentencing probation appellate procedure

QUESTIONS PRESENTED

1. Whether probation condition 43, giving the probation officer control over defendant's residence and employment, was plain error because it was overbroad and lacked findings showing that it was reasonably related to rehabilitation or necessary to protect public safety.
2. Whether a defendant breaches a plea agreement containing a specified sentence by requesting a less onerous sentence at sentencing.
3. Whether the defendant's right of allocution permits him to argue for a sentence contrary to the express terms of a specified-sentence plea agreement.

HOLDINGS

1. Imposing a probation condition controlling where a probationer may live and work, without findings explaining its necessity, is plain error when the condition is not shown to be reasonably related to rehabilitation or necessary to reduce risks to public safety.
2. When a plea agreement expressly includes a specified sentence, the defendant is bound by that sentencing term and breaches the agreement by seeking a lower sentence, even though the sentencing court itself is not bound and may impose the agreed sentence or a less onerous disposition.
3. The right of allocution does not permit a defendant to argue for a sentence that contravenes the explicit terms of a specified-sentence plea agreement, and the right may be waived or bargained away.

KEY QUOTATIONS

"We agree with the parties that Freeman controls and so strike condition 43 as plain error and reverse and remand the matter for the trial court to justify the condition, make it more specific, or eliminate it entirely." (¶ 9)

"Thus, we agree that if defendant were to seek a lower sentence, that action would be in violation of his responsibility under the agreement." (¶ 12)

"Rule 32(a)(1) affords defendant with a general right to present 'the fullest information possible concerning [his] life and characteristics,' rather than a specific mechanism for attacking agreed-upon sentences." (¶ 16)

FACTUAL BACKGROUND

Careau was charged with unlawful restraint of a person under eighteen and sexual assault of a person under sixteen. He entered a plea agreement under which he pleaded guilty to sexual assault of a minor in exchange for a sentence of five to fifteen years, all suspended except eighteen months, and dismissal of the unlawful-restraint count. The sentencing court imposed a probation condition requiring him to live and work wherever his probation officer approved and prohibiting changes without prior permission, without making findings explaining the condition's necessity.

PROCEDURAL HISTORY

Careau entered a guilty plea under an agreement providing for a sentence of five to fifteen years, all suspended except eighteen months. Before sentencing, the trial court ruled that he would breach the agreement by seeking a

downward departure, and the court later imposed the agreed sentence and probation condition 43. The Vermont Supreme Court affirmed the sentence but reversed and remanded regarding condition 43.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for the trial court to justify probation condition 43, make the condition more specific, or eliminate it entirely. Defendant's sentence was affirmed in all other respects.

CASES CITED

- State v. Freeman, 2013 VT 25, ¶ 17, 193 Vt. 454, 70 A.3d 1008
- State v. Johnstone, 2013 VT 57, ¶ 11, 194 Vt. 230, 75 A.3d 642
- State v. Carpenter, 2013 VT 28, ¶ 9, 193 Vt. 484, 70 A.3d 1023
- Santobello v. New York, 404 U.S. 257, 262 (1971)
- In re Meunier, 145 Vt. 414, 422, 491 A.2d 1019, 1025 (1985)
- State v. Hemingway, 2014 VT 48, ¶ 22, 196 Vt. 441, 97 A.3d 465
- United States v. Cimino, 381 F.3d 124, 127-28 (2d Cir. 2004)
- In re Kasper, 145 Vt. 117, 119, 483 A.2d 608, 609 (1984)
- In re Stevens, 144 Vt. 250, 260, 478 A.2d 212, 217 (1984)
- State v. Stanley, 2015 VT 117, ¶ 23
- State v. Saari, 152 Vt. 510, 521, 568 A.2d 344, 351 (1989)
- United States v. Sosa-Moreno, 367 F. App'x 929, 931, 2010 WL 675705, at *2 (10th Cir. Feb. 26, 2010)
- Williams v. New York, 337 U.S. 241, 247 (1949)