

SUPREME COURT OF SOUTH CAROLINA

State v. Wills

409 S.C. 183 (2014) · Decided July 16, 2014

OPINION

PLEICONES, J.

Justice PLEICONES. We granted certiorari to review the decision of the Court of Appeals affirming the circuit court’s decision to admit petitioner’s statement made in connection with a proffer agreement. *State v. Wills*, 390 S.C. 139, 700 S.E.2d 266 (Ct.App.2010).

We affirm. The first question raised by this case is whether a criminal defendant may waive the protections afforded by Rule 410, SCRE.¹ If we decide that he may, the next issue is whether the Court of Appeals was correct in holding that petitioner did so here.² We answer both questions “yes.” Rule 410, SCRE, titled “INADMISSIBILITY OF PLEAS, PLEA DISCUSSIONS, AND RELATED STATEMENTS,” provides: Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions: (1) a plea of guilty which was later withdrawn; (2) a plea of nolo contendere; (3) any statement made in the course of any court proceedings regarding either of the foregoing pleas; or (4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn. *185 However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

We agree with the Court of Appeals that a criminal defendant may waive the protections afforded by Rule 410. Here, petitioner and his attorney executed an agreement wherein petitioner agreed that if a subsequent polygraph examination demonstrated deception, inconsistencies, or that petitioner shot the victim, then “the terms of this proffer are null and void and any statements made by [petitioner] may be used against him by the State for any legal purpose, including... disposition of charges through plea or trial... and impeachment.” Proffer Agreement section 2 (emphasis supplied).

Further, section 7 provides in relevant part not only that petitioner’s violation of the Agreement would render the Proffer’s terms null and void, but also that “the State shall have the right to use any information obtained through this Proffer in any fashion, whether direct [or] collateral.... ” Applying the rules of contract construction here, “regardless of the agreement’s wisdom or lack

thereof,” we agree with the Court of Appeals that, on this record, petitioner’s Proffer Agreement, entered with the advice and consent of counsel, waived the protections of Rule 410, SCRE.

The decision of the Court of Appeals is AFFIRMED. TOAL, C.J., KITTREDGE, J., concur. BEATTY, J., dissenting in a separate opinion in which HEARN, J., concurs.. Although it is questionable whether the Rule 410 issue was preserved for appellate review, it formed the basis for the Court of Appeals’ decision upon which we granted certiorari, and we therefore address the merits..

The Court of Appeals’ opinion contains a full explanation of the facts of this case, including the terms of the Proffer Agreement.