

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2008 KA 1295

STATE OF LOUISIANA

VERSUS

RALPH CARR

Judgment Rendered: December 23, 2008

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 3-07-0480

Honorable Bonnie Jackson, Judge

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State – Appellee

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Defendant – Appellant
Ralph Carr

BEFORE: PARRO, McCLENDON, AND WELCH, JJ.

JEW
RHP
ME

WELCH, J.

The defendant, Ralph Carr, was charged by bill of information in docket number 3-07-0480 with illegal use of weapons, a violation of La. R.S. 14:94(B), and possession of a firearm by a convicted felon, a violation of La. R.S. 14:95.1. Pursuant to a plea agreement, the defendant pled guilty to the offense of illegal use of weapons and the reduced offense of attempted possession of a firearm by a convicted felon.

In a separate bill of information in docket number 4-06-0455, the defendant was charged with manslaughter, a violation of La. R.S. 14:31.¹ Pursuant to a plea agreement, the defendant entered a guilty plea. In a third bill of information in docket number 9-06-0612, the defendant was charged with illegal possession of stolen firearms, a violation of La. R.S. 14:69.1; possession of a firearm by a convicted felon, a violation of La. R.S. 14:95.1; and possession of cocaine, a violation of La. R.S. 40:967(C).² Pursuant to a plea bargain, the defendant entered guilty pleas to illegal possession of stolen things (valued between \$300 and \$500), a violation of La. R.S. 14:69(B)(2), attempted possession of a firearm by a convicted felon, and possession of cocaine.

The trial court subsequently sentenced the defendant for all of the foregoing convictions as follows:

Docket number 3-07-0480 (the present case). The trial court sentenced the defendant to serve two years at hard labor for his conviction for illegal use of weapons and five years at hard labor for his conviction of attempted possession of a firearm by a convicted felon. The trial court ordered these sentences to be served concurrently with each other, but consecutive to the sentence ordered in docket number 4-06-0455.

Docket number 4-06-0455. The trial court sentenced the defendant to serve twenty-five years at hard labor for his manslaughter conviction.

¹ The defendant's appeal from that matter is addressed in the companion appeal issued this same date, *State v. Carr*, 2008 KA 1297.

² The defendant's appeal from that matter is addressed in the companion appeal issued this same date, *State v. Carr*, 2008 KA 1296.

Docket number 9-06-0612. The trial court sentenced the defendant to serve two years at hard labor for his conviction for illegal possession of stolen things, seven years at hard labor for his conviction for attempted possession of a firearm by a convicted felon, and three years at hard labor for his conviction of possession of cocaine. The trial court ordered these sentences enumerated in this docket number to be served concurrently with each other and consecutive to the sentences in docket numbers 3-07-0480 and 4-06-0455.³

The defendant appeals, arguing the trial court failed to sentence him in accordance with the plea agreement. The reply brief filed by the State acknowledges that the trial court promised a thirty-year maximum sentencing cap for all of the defendant's convictions, and submits this matter to this court to render a decision that is in accordance with the law.

FACTS

Although the defendant was charged in three different bills of information, he pled guilty to all of his charges on September 24, 2007. During the trial court's **Boykin** examination, the trial court informed the defendant of the penalty range of each offense. At the conclusion of the **Boykin** examination, the trial court stated:

Now, I will tell you, Mr. Carr, that I have entered into an agreement with you that if I accept your plea, your sentences will not exceed thirty years. That's the maximum that the court – that you face as part of this plea agreement. I don't know what your actual sentence is going to be, Mr. Carr, because I don't have enough input about you or from the family members of the person who was killed, but I'm simply telling you that if I do accept your pleas on all of these charges, the maximum penalty that you will face will be thirty years.

In response to the trial court's question to the defendant as to whether he understood, the defendant specifically asked if the maximum penalty of thirty years was only on the manslaughter charge. The trial court responded, "The total penalty on all of the charges, I have given you a cap of thirty years. That's the maximum." The defendant then entered into a guilty plea, which was accepted by

³ Although the trial court failed to indicate that all or a portion of the sentences would be served without benefit of parole, probation, or suspension of sentence, such an error does not affect the statutory requirements that all or a portion of a sentence will be served without parole, probation, or suspension of sentence. See La. R.S. 15:301.1.

the trial court.

DISCUSSION

Both the defendant and the State admit that the trial court's sentences exceed the thirty-year maximum sentence promised to the defendant. Under the substantive criminal law, there are only two alternative remedies available for a breach of a plea bargain: (1) specific performance of the agreement, or (2) nullification or withdrawal of the plea. **Santobello v. New York**, 404 U.S. 257, 263, 92 S.Ct. 495, 499, 30 L.Ed.2d 427 (1971); **State v. Chalaire**, 375 So.2d 107, 109 (La. 1979); **State v. Canada**, 2001-2674, p. 5 (La. App. 1st Cir. 5/10/02), 838 So.2d 784, 788.

In the present case, the defendant is requesting this court to remand this matter to the trial court in order for the trial court to fashion a sentence as to all three bills of information, which will result in the specific performance of the plea bargain.

The sentencing function is exclusively within the province of the trial court's authority; however, where the plea agreement calls for a legal sentence and the trial court agrees, the trial court is bound by the terms of the agreement. See **State v. Terrebonne**, 2001-2632, pp. 4-5 (La. App. 1st Cir. 6/21/02), 822 So.2d 149, 152. Because the trial court imposed a sentence more onerous than that called for by the terms of the maximum sentencing cap stated by the trial court, we must vacate the sentence and remand this matter to the trial court for resentencing in accordance with the maximum sentencing cap.⁴

In conducting our review for errors under La. C.Cr.P. art. 920(2), we note the trial court failed to impose the mandatory fine as required for convictions of attempted possession of a firearm by a convicted felon of not less than one

⁴ The defendant is not precluded from appellate review by La. C.Cr.P. art. 881.2(A)(2) because his sentences are not in conformity with the plea agreement. See **Terrebonne**, 2001-2632 at p. 5, 822 So.2d at 152.

thousand dollars nor more than twenty-five hundred dollars. See La. R.S. 14:27(D)(3) and 14:95.1(B).

CONCLUSION

For the foregoing reasons, the defendant's convictions are affirmed. However, his sentences are vacated and this matter is remanded to the trial court for resentencing in accordance with the original plea agreement that set forth a thirty-year maximum for all of the defendant's convictions.

CONVICTIONS AFFIRMED, SENTENCES VACATED AND REMANDED FOR RESENTENCING IN ACCORDANCE WITH PLEA AGREEMENT.