Criminal Proceedings - Plea Bargaining

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Criminal Proceedings—Plea Bargaining—The United States Court of Appeals for the Third Circuit has held that an unconsummated plea agreement cannot be enforced absent detrimental reliance.

Virgin Islands v. Scotland, 614 F.2d 360 (3d Cir. 1980).

On November 4, 1978, St. Clair Springette and his co-defendant, Raymond Scotland, were charged with two counts of burglary\(^1\) and two counts of grand larceny.\(^2\) At his arraignment on the four counts, Springette entered a plea of not guilty and a discovery conference followed. At the conference, the Assistant United States Attorney was informed of two other criminal cases pending against Springette, in which he was charged with grand larceny,\(^3\) buying and receiving stolen property,\(^4\) and third degree burglary.\(^5\) The government thereupon proposed a plea arrangement to dispose of all the charges pending against Springette.\(^6\) According to the terms of the plea arrangement, Springette could plead guilty to one count of third degree burglary in either of the two cases involving burglary and to a misdemeanor in the case charging grand larceny and receiving stolen property.\(^7\) The remaining charges would then be dropped. There were no other conditions to the entering of the pleas. The government’s position on a sentence recommendation was to depend upon whether Springette would be willing to testify against his co-defendant, Scotland.\(^8\)

After Springette was informed of the plea arrangement by his counsel,\(^9\) he agreed to plead guilty to one count of burglary and to the misdemeanor of petit larceny,\(^10\) with the understanding that the charges under the four-count indictment would be dismissed.\(^11\) When

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5. See V.I. Code Ann. tit. 14, § 444(1) (Supp. 1979). The charges of grand larceny and receiving stolen property were docketed as criminal case No. 78-147 and the charge of third degree burglary was docketed as No. 78-200. Virgin Islands v. Scotland, 614 F.2d 360, 361 (3d Cir. 1980).
6. 614 F.2d at 361.
7. The guilty plea to the charge of burglary could be entered in either the instant case, No. 78-129, or in No. 78-200. The misdemeanor guilty plea would be entered in No. 78-147. Id.
8. Id.
9. Springette had different counsel in each of his three cases. The plea proposal was conveyed by his counsel for the instant case, No. 78-129. Id.
10. The third degree burglary guilty plea was to be entered in case No. 78-200 and the misdemeanor guilty plea in case No. 78-147. Id.
11. Id.

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the Assistant United States Attorney learned of Springette’s acceptance of the plea proposal, she advised Springette’s counsel that the government would adhere to the terms of the original plea proposal only if Springette would agree to make a sworn statement that an earlier statement made to the police implicating Scotland was true. Springette refused to do so. At trial, Springette made an oral motion requesting that the district court compel specific performance of the plea bargain agreement. He contended that the government had impermissibly added a new requirement to the agreement after being informed of his acceptance of the initial plea offer. Springette’s motion was denied and he was convicted on the four counts lodged against him. Springette appealed to the United States Court of Appeals for the Third Circuit for reconsideration of his argument, contending that his acceptance of the initial plea offer entitled him to specific performance on the terms of that offer. The court of appeals rejected the appellant’s contention and affirmed the judgment of the district court.

At trial, Springette made an oral motion requesting that the district court compel specific performance of the plea bargain agreement. He contended that the government had impermissibly added a new requirement to the agreement after being informed of his acceptance of the initial plea offer.

Springette’s motion was denied and he was convicted on the four counts lodged against him. Springette appealed to the United States Court of Appeals for the Third Circuit for reconsideration of his argument, contending that his acceptance of the initial plea offer entitled him to specific performance on the terms of that offer. The court of appeals rejected the appellant’s contention and affirmed the judgment of the district court.

Writing for the three-judge panel, Judge Gibbons rejected the decision of the United States Court of Appeals for the Fourth Circuit in Cooper v. United States that a defendant has a constitutional right to

12. Id. at 362. Following his arrest, Springette had made a statement on October 20, 1978, implicating Scotland in the No. 78-219 offenses. The statement had been made under oath but during the plea negotiations neither the defense counsel nor the Assistant United States Attorney were aware of this. Id. at 362 n.2.

13. Id. at 362.

14. Id. A motion for specific performance was made immediately after the Assistant United States Attorney altered the plea arrangement. Memoranda of law on the question of whether the plea arrangement should have been enforced were filed by both sides by order of the judge. Brief for Appellant at 6.

15. 614 F.2d at 362.

16. Id. Springette was originally sentenced on January 4, 1979, to five years of confinement on each count, the sentences to run concurrently. Later, the sentences were reduced to four concurrent six month terms. The charges under case No. 78-200 were dismissed. Brief for Appellant at 2.

17. Springette’s notice of appeal was filed on January 4, 1979. On July 25, 1979, his sentence was reduced to four concurrent six month terms. Brief for Appellant at 2. The appeal was argued December 7, 1979, and decided February 6, 1980, several months after his release. 614 F.2d at 360.

18. 614 F.2d at 361.

19. The panel consisted of Judges Gibbons, Weis, and Garth. Id.

20. 594 F.2d 12 (4th Cir. 1979). In Cooper the defendant agreed to the government’s plea offer when informed of its terms by his counsel, but before counsel could convey the acceptance to the government, the Assistant United States Attorney withdrew the offer on the instructions of his superior. Id. at 15. The Cooper court held that the defendant was entitled to specific performance even if the acceptance was not communicated to the
specific performance of a plea offer if he accepted the offer before the
government withdrew it. The court in Cooper founded its decision
upon notions of fundamental fairness within the substantive due pro-
cess guarantees of the fifth amendment, as well as upon the sixth
amendment right to effective assistance of counsel.

Judge Gibbons rejected the Cooper rationale that an unconsum-
mated plea bargain violates the sixth amendment right to effective
assistance of counsel, and moved on to examine the weightier sub-
stantive due process arguments advanced in Cooper. Noting that the
United States Supreme Court has recognized and encouraged plea
bargaining, Judge Gibbons addressed the advantages of the plea
bargaining process recognized by the United States Supreme Court in
Brady v. United States. In that decision, the Supreme Court found
that the major advantages of plea bargaining for the defendant are
reduced exposure to penalties and the imposition of a lighter sentence.
Society's interests are furthered through prompt punishment which is
usually more effective and which frees prosecutorial time for cases in-
volving more substantial issues. In addition, the Supreme Court
reasoned that a defendant who pleads guilty is considered to be more
remorseful and better suited to rehabilitation.

In light of the advantages of the plea bargaining process, Judge Gib-
bons addressed the government's contention that the granting of
specific performance of an unconsummated plea agreement would un-
duly interfere with judicial and prosecutorial discretion and discour-
government before the withdrawal. Id. at 19. The court narrowly confined its decision to a
specific, unambiguous, and reasonable proposal made without any reservation related to a
superior's approval, by a prosecutor with apparent authority at that time. Id. The pro-
posal was communicated promptly to the defendant who assented promptly and une-
quivocally to its terms and indicated his assent to his counsel. The prosecutor's attempted
withdrawal was not based on extenuating circumstances that were unknown when the
proposal was extended. Id. See 614 F.2d at 362.

21. 614 F.2d at 362. The Scotland court reviewed the facts in Cooper and found no
significant distinctions between that case and Scotland. Id. at 362-63 & n.3.

22. Id. at 362 (citing 594 F.2d at 18).

23. 614 F.2d at 363. The Scotland court held that a defendant's loss of confidence in
his attorney because of an unfavorable change in the plea bargaining process does not im-
plicate sixth amendment rights. The court further declared that the appropriate sixth
amendment focus is on the defense counsel's performance, not on the defendant's percep-
tions of defense counsel. Id. The court in Cooper had found an obligation in the govern-
ment to negotiate with "scrupulous" fairness in discussing guilty pleas because the
defendant's perception of the process and the reliability of his own counsel could
necessarily jeopardize the effectiveness of counsel's assistance. Id. (citing 594 F.2d at 19).

24. 614 F.2d at 363.

25. Id.

26. Id. at 363-64. See Brady v. United States, 397 U.S. 742, 753 (1970).

27. 614 F.2d at 364 (citing 397 U.S. at 753).
age plea proposals. The court has not rejected the government's argument that holding the prosecutor to his offer would negate the court's ability to accept or reject a guilty plea, and pointed out that a court could always hold the government to its offer and then subsequently review the plea proposal on its merits to determine whether to accept or reject the plea. Judge Gibbons did find merit, however, in the government's contention that specific performance would discourage prosecutorial plea proposals. He reasoned that forcing the government to be more careful about its plea proposals would not be detrimental, but might result either in delays in bargaining or in fewer plea proposals. Such results would diminish the advantages of resource saving, quick disposition, and quick punishment.

Judge Gibbons next addressed the effect of a remedy of specific performance on prosecutorial discretion. According to the court, the plea bargaining process implicates the prosecutor's functions as an administrator, an advocate, a judge of fairness, and a quasi-legislator. Judge Gibbons noted that plea agreements are often likened to unilateral contracts because consideration is not given for the prosecutor's promise until the defendant enters his guilty plea. The court reasoned that because constitutional standards require more than contract principles, a defendant may withdraw his plea at any time before officially entering it, or he may withdraw it at any time after it has been entered if it was not entered voluntarily and knowingly. Although agreeing that a prosecutor does not necessarily have the same rights of withdrawal, the court concluded that to compel specific performance of an unconsummated plea arrangement would be an unjustifiable interference with prosecutorial discretion.

Although Judge Gibbons accepted the government's arguments of interference with prosecutorial discretion and discouragement of pleas as persuasive, he found that the "convincing factor" for denying the appellant's request for specific performance lay in the availability of an

28. 614 F.2d at 364.
29. Id. The court always has the discretion to accept or reject a guilty plea, after it has thoroughly inquired into the basis for the agreement and the expectations of the defendant. Fed. R. Crim. P. 11.
30. 614 F.2d at 364.
31. Id.
32. Id.
34. 614 F.2d at 364. The court noted that the United States Supreme Court in Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978), was reluctant to interfere in plea bargaining, holding that a prosecutor's threat to bring more serious charges if the defendant did not enter a guilty plea and the subsequent initiation of those charges was not a violation of due process. 614 F.2d at 364 n.13.
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adequate remedy for breach of an unconsummated plea agreement. He reasoned that a defendant's right to a trial by jury was a more than adequate alternative remedy, and that to hold otherwise would belittle that fundamental right. Judge Gibbons maintained that no rational basis exists for holding that a trial is sufficient for a defendant who was not afforded a plea arrangement, and insufficient for one who was. He reasoned that because the courts cannot compel the prosecutor to offer a plea bargain, and because Springette did not allege detrimental reliance, he is in the same position as if he had not been offered a plea bargain. Judge Gibbons maintained that if a defendant detrimentally relies on the government's promise, due process guarantees are implicated. Because no such reliance was alleged, the court held that the defendant's agreement to plead guilty in accordance with the government's initial plea offer did not give the defendant a right to specific performance of the terms of that offer.

Virgin Islands v. Scotland squarely addresses whether a plea agreement can arise before the formal entry of the plea, and whether a defendant is entitled to compel specific performance for such a breached plea bargain. The United States Supreme Court was first presented with a request for relief for a broken plea agreement in Santobello v. New York. The Santobello Court was not faced with whether a plea agreement can arise before formal entry of the plea because Santobello had formally entered his guilty plea in reliance on the prosecution's promises. The Court, however, did address the availability of relief for a broken plea agreement. Reaffirming the importance of the plea bargaining process, a plurality of the Supreme Court held that Santobello had a constitutional right to some relief from the state's breach of the plea bargaining agreement. The Court, unfortunately, did not

35. 614 F.2d at 365.
36. Id.
37. Id.
38. Id.
40. Santobello entered a plea of guilty in return for the prosecutor's promise to drop other charges and to make no recommendations as to sentencing. A new prosecutor, who was unaware of his predecessor's agreement, was appointed, and recommended to the court that the maximum one year sentence be imposed. Id. at 259.
41. Id. at 257.
42. Id. at 262. The plurality opinion was written by Chief Justice Burger who was joined by Justices Douglas, White, and Blackmun. Id. at 257. Justice Douglas wrote a separate concurring opinion. Id. at 263. An opinion, concurring in the decision to reverse, but dissenting from the decision to leave the choice of remedy to the state court on remand, was written by Justice Marshall who was joined by Justices Brennan and Stewart. Id. at 267.
clearly indicate the source of the defendant's right to relief.\textsuperscript{43} The plurality sanctioned either the granting of specific performance or vacatur of the plea, remanding the choice of remedy question to the state court.\textsuperscript{44} Justice Douglas, in his concurring opinion, argued for a "constitutional rule" entitling a defendant to relief from broken plea agreements, where "considerable, if not controlling, weight" would be given to the defendant's preference for a particular relief.\textsuperscript{45} Justice Marshall, concurring in part, joined the plurality in its finding that some remedy is constitutionally required but dissented from the remand of the case without any constraints on the nature of the relief. He argued that where a defendant requests the vacatur of a guilty plea, he should have an absolute right to that remedy.\textsuperscript{46} Justice Marshall further stated, in dicta, that in circumstances where a prosecutor has broken a plea agreement, a defendant may be entitled to compel specific performance.\textsuperscript{47}

Although the Supreme Court's decision in \textit{Santobello} provided support for the position that a defendant's request for vacatur should generally be granted,\textsuperscript{48} four Justices left the impression that a defendant may be able to compel specific performance where a prosecutor breaches the plea agreement.\textsuperscript{49} Because the Supreme Court has not

\textsuperscript{43} Chief Justice Burger did not explicitly state the constitutional basis for the decision, however, in order for the Supreme Court to have had jurisdiction under 28 U.S.C. § 1257 (1976), the Court must have been considering a constitutional issue. See \textit{Westen, supra} note 33, at 474 n.10. Chief Justice Burger found that relief was required in "the interests of justice" and was an appropriate recognition of the responsibilities held by the prosecutor in the plea bargaining process. 404 U.S. at 262. The Chief Justice also reviewed the traditional requirements that a guilty plea be entered "knowingly and voluntarily." \textit{Id.} at 261. See \textit{Westen, supra} note 33, at 477-528 for a comprehensive analysis of the possible constitutional basis on which \textit{Santobello} was decided.

\textsuperscript{44} 404 U.S. at 262-63. Although Santobello had requested rescission of the guilty plea, the New York Supreme Court Appellate Division, on remand, compelled specific performance of the plea bargain. People v. Santobello, 39 A.D.2d 654, 655, 331 N.Y.S.2d 776, 777 (App. Div. 1972).

\textsuperscript{45} 404 U.S. at 267 (Douglas, J., concurring). Justice Douglas' "constitutional rule" would require vacatur of the sentence where the prosecutor has breached his agreement and the granting of specific performance if the defendant requests. \textit{Id.}

\textsuperscript{46} \textit{Id.} (Marshall, J., concurring in part and dissenting in part).

\textsuperscript{47} \textit{Id.} at 268 (Marshall, J., concurring in part and dissenting in part). Because Santobello did not seek specific performance, Justice Marshall found it unnecessary to decide the issue. \textit{Id.}

\textsuperscript{48} Justice Marshall noted that a majority of the Court would seem to grant vacatur where requested by the defendant. His majority support consisted of the three Justices in dissent and Justice Douglas who would give "considerable, if not controlling, weight" to the defendant's preference. \textit{Id.}

\textsuperscript{49} Justice Marshall joined by Justices Brennan and Stewart, stated that where a prosecutor has broken a plea agreement, a defendant may be entitled to compel specific performance. \textit{Id.} See note 47 and accompanying text \textit{supra}. Justice Douglas would follow
Recent Decisions reexamined the issue of whether a defendant is entitled to compel specific performance for a breached agreement, the issue remains unsettled. Whether specific performance is available to a defendant for an agreement breached prior to the formal entry of a plea was not presented in Santobello and also remains unsettled.

State courts and lower federal courts have generally granted specific performance when a defendant requests it. Some of the courts have explicitly recognized the need to protect a defendant's expectations which were unrealized through a broken plea agreement.50 Some have simply cited Santobello as authority for granting specific performance.51 Other courts have based their decision on the defendant's detrimental reliance or on the prosecutor's bad faith.52 Some federal courts have remanded cases to the state court on the issue of relief, but in those cases, the defendants have not requested specific performance of the plea agreement.53

The Scotland court denied Springette specific performance because of the availability of an alternative remedy. The court reasoned that a jury trial on the original charges would afford Springette the same rights that he had before plea negotiations.54 The court's rationale would appear to be inconsistent with the Supreme Court's decision in Santobello. In remanding to the state court the option of granting

the defendant's preference. Id. at 267 (Douglas, J., concurring). See note 45 and accompanying text supra.

50. See, e.g., Palermo v. Warden, Green Haven State Prison, 545 F.2d 286, 296 (2d Cir. 1976) (where defendant relies on promises of prosecutor, he is entitled to have expectations realized; fundamental fairness and public confidence in government officials require prosecutors be held to meticulous standards); State v. Thomas, 61 N.J. 314, 322, 294 A.2d 57, 61 (1972) (pragmatic necessity and essential fairness dictate that the state will not disappoint a defendant's reasonable expectations); Commonwealth v. Zakrzewski, 460 Pa. 528, 533, 333 A.2d 898, 900 (1978) (where prosecutor breaks a plea agreement, defendant is entitled to the benefit of the bargain); State v. Tourtellotte, 88 Wash. 2d 579, 595, 564 P.2d 799, 803 (1977) (rejection of guilty plea and subsequent trial is an inadequate remedy where prosecutor withdrew his offer and requested that the court rescind the plea; specific performance was only remedy which protected defendant's expectations).


52. See, e.g., Geisser v. United States, 513 F.2d 826, 864 (5th Cir. 1975) (defendant gave information to government at personal risk); State v. Pope, 17 Wash. App. 609, 614, 564 P.2d 1179, 1182 (1977) (where the state has acted in bad faith, considerable weight should be given to the defendant's choice of remedy).


54. 614 F.2d at 365.
specific performance, the Supreme Court in *Santobello* implied that vacatur and the resulting retrial is not always a sufficient remedy. The *Scotland* court noted that the basic estoppel principle recognized in *Santobello* might arguably be extended to cover a situation where the plea was not entered but where the defendant relied in some other way making a fair trial impossible. This requirement that detrimental reliance be found before specific performance can be granted does not follow from the Supreme Court's reasoning in *Santobello*. The plurality in *Santobello* found that constitutional standards require that the defendant be treated with fairness throughout the plea bargaining process. The Supreme Court in *Santobello* did not address the issues of the entry of the plea, but founded its decision on the "interests of justice" and the government's duty to fulfill its promises made during plea negotiations.

The *Scotland* court formulated its analysis by examining the *Cooper* court's reasoning. In reviewing the substantive due process argument advanced by the *Cooper* court, the *Scotland* court focused on the recognized advantages of the plea bargaining process. The court reasoned that finding a due process right to demand specific performance of an unconsummated plea might interfere with the prompt disposition of criminal cases and could delay negotiations which would result in reduced savings of judicial and prosecutorial resources. To support its reasoning, the *Scotland* court relied on *Bordenkircher v. Hayes*, noting that in *Bordenkircher* the Supreme Court left to the discretion of the prosecutor the charges which would be brought against the defendant.

The *Bordenkircher* Court, however, narrowly confined its decision to the case where the prosecutor presents the unpleasant alternatives to which a defendant is rightfully subject. The prosecutor in *Bordenkircher* had carried out his threat to reindict the defendant if he did not

55. *Id.*
56. 404 U.S. at 261.
57. *Id.* at 262-63.
58. The *Scotland* court stated that the defendant benefits through reduced exposure to penalty with a lighter sentence, and society benefits through savings on judicial and prosecutorial resources. 614 F.2d at 363-64.
59. 434 U.S. 357 (1978). In *Bordenkircher* the Supreme Court held that a defendant's due process rights were not violated when, to encourage a guilty plea, the prosecutor threatened more serious charges and subsequently brought an indictment on those charges. *Id.* at 365. The Supreme Court stated that "[i]n our system, so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion." *Id.* at 364.
60. 614 F.2d at 364 n.13.
61. 434 U.S. at 365.
plead guilty to the offense with which he was originally charged. In Scotland, the prosecutor did not use his discretion to choose between alternative indictments but rather used it to revoke his earlier offer. The Bordenkircher Court stated that even though broad discretion is awarded to prosecuting attorneys, there are undoubtedly constitutional limits to the exercise of the discretion in situations where there is potential for abuse.\textsuperscript{2}

The Scotland court elevated considerations of judicial efficiency and prosecutorial discretion above a defendant's due process rights, reversing the traditional notion that constitutional considerations are limitations on judicial and prosecutorial procedures.\textsuperscript{3} Constitutional rights are, by definition, rights held by individuals to place limits on the conduct of their government.\textsuperscript{4} Thus, the Scotland court misdirected its attention to the prosecutorial system instead of to the constitutional rights of defendants. The issue of when in the plea bargaining process a defendant's rights arise was lost in the court's concern for prosecutorial discretion. The court failed to recognize the importance of conducting a judicial system that is fair to defendants, and the necessity of providing an equitable framework for plea bargaining.\textsuperscript{5}

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\textsuperscript{2} Id.
\textsuperscript{3} See Ownbey v. Morgan, 256 U.S. 94, 111 (1920).
\textsuperscript{5} Stating that plea bargaining has been controversial, the Alaska Attorney General banned plea bargaining in his state, effective August 15, 1975. See NATIONAL INST. OF JUSTICE, U.S. DEPT OF JUSTICE, ALASKA BANS PLEA BARGAINING (1980).