

Review of Recent Juvenile Cases (2007)

by
The Honorable Pat Garza
Associate Judge
386th District Court
San Antonio, Texas

Once a trial court accepts a plea bargain, it has a mandatory duty to make a disposition in accordance with the terms of the pleas bargain.[In re J.H.](07-3-6)

On May 23, 2007, the San Antonio Court of Appeals granted a writ of mandamus compelling a trial court to follow plea agreement which it had accepted, but then rescinded days later.

¶ 07-3-6. *In re J.H.*, MEMORANDUM, No. 04-07-00208-CV 2007 Tex.App.Lexis 3927 (Tex.App.— San Antonio, 5/23/07).

Facts: J.H., a juvenile alleged to have engaged in delinquent conduct, negotiated a plea bargain agreement with the State. Pursuant to this agreement, J.H. pled "true" to committing the offense of aggravated sexual assault in two cases. n2 The trial court accepted the plea bargain agreement and placed J.H. on probation. Days later, the trial court rescinded its approval of the plea bargain agreement in open court, allowed J.H. to withdraw his pleas, and reinstated the cases on the court's jury trial docket. J.H. then filed a pleading entitled "Respondent's Plea in Bar," arguing his retrial for the same delinquent conduct would violate his constitutional right to be free from double jeopardy. The trial court denied the plea in bar.

n2 The State filed two petitions arising from the same incident.

J.H. now seeks a writ of mandamus compelling the trial court to follow the plea bargain agreement. J.H. alleges the trial court lacked the authority to rescind its approval of the plea agreement and that it clearly abused its discretion by overruling his plea in bar. This court provided the State and the trial court an opportunity to respond to the mandamus petition; however, only the trial court has filed a brief in this original proceeding.

Held: Petition for Writ of Mandamus Conditionally Granted.

Memorandum Opinion: Although juvenile delinquency proceedings are civil proceedings, they are quasi-criminal in nature. *State v. C.J.F.*, 183 S.W.3d 841, 847 (Tex. App.--Houston [1st Dist.] 2005, pet. denied); *In re J.F.R.*, 907 S.W.2d 107, 109 (Tex. App.--Austin 1995, no writ). The Texas Rules of Civil Procedure govern juvenile proceedings, except when in conflict with Title 3 of the Texas Family Code. See *TEX. FAM. CODE ANN. § 51.17(a)* (Vernon Supp. 2006). Additionally, because a juvenile delinquency proceeding seeks to deprive a juvenile of his liberty, a juvenile is guaranteed the same constitutional rights as an adult in a criminal proceeding. *In the Matter of J.R.R.*, 696 S.W.2d 382, 383 (Tex. 1985) ("A juvenile is entitled to due process and is thus given double jeopardy protection..."); *C.J.F.*, 183 S.W.3d at 848.

The Texas Code of Criminal Procedure provides that before the trial court accepts a plea of guilty from a defendant it shall inquire as to the existence of any plea bargain agreement. *TEX. CRIM. PROC. CODE ANN. art. 26.13(a)(2)* (Vernon Supp. 2006). *Article 26.13(a)(2)* further mandates that "the court shall inform the

defendant whether it will follow or reject such agreement in open court and before any finding on the plea." *Id.* After the trial court accepts a plea bargain agreement, however, a criminal defendant may insist on the benefit of his plea agreement with the State and is entitled to enforce the agreement by specific performance. *Wright v. State*, 158 S.W.3d 590, 595 (Tex. App.--San Antonio 2005, pet. ref'd) (citing *Perkins v. Court of Appeals for the Third Supreme Judicial Dist. of Tex.*, 738 S.W.2d 276, 283-284 (Tex. Crim. App. 1987) (en banc)). Thus, in a criminal proceeding "[t]he trial court has a 'ministerial, mandatory, and non-discretionary duty' to follow the plea bargain agreement once it has been approved by the court." *Id.* (quoting *Perkins*, 738 S.W.2d at 285). When the trial court has a ministerial duty to enforce a plea agreement, but instead withdraws its approval of the agreement, mandamus may issue to correct the error. *See Perkins*, 738 S.W.2d at 284-285 (when the trial court rescinded its approval of a plea agreement and the law did not authorize such action, the court of appeals properly granted mandamus relief); *In re Gooch*, 153 S.W.3d 690, 694 (Tex. App.--Tyler 2005, orig. proceeding) (granting mandamus relief when the trial court violated its mandatory duty to enforce a plea bargain agreement).

Like the Texas Code of Criminal Procedure, Title 3 of the Texas Family Code gives the trial court broad discretion in accepting or rejecting plea bargain agreements in juvenile proceedings. *See TEX. FAM. CODE ANN. § 54.03(j)* (Vernon Supp. 2006). However, after a trial court accepts a plea bargain agreement in a juvenile case, the law imposes a duty on the trial court to make a disposition in accordance with the terms of the agreement. *See id.* Specifically, *section 54.03(j)* provides:

When the state and the child agree to the disposition of the case, in whole or in part, the prosecuting attorney shall inform the court of the agreement between the state and the child. The court shall inform the child that the court is not required to accept the agreement. The court may delay a decision on whether to accept the agreement until after reviewing a report filed under Section 54.04(b). If the court decides not to accept the agreement, the court shall inform the child of the court's decision and give the child an opportunity to withdraw the plea or stipulation of evidence. If the court rejects the agreement, no document, testimony, or other evidence placed before the court that relates to the rejected agreement may be considered by the court in a subsequent hearing in the case. A statement made by the child before the court's rejection of the agreement to a person writing a report to be filed under Section 54.04(b) may not be admitted into evidence in a subsequent hearing in the case. *If the court accepts the agreement, the court shall make a disposition in accordance with the terms of the agreement between the state and the child.* *Id.* (emphasis supplied).

Section 54.03(j) controls in this case. It is undisputed that the trial court accepted the plea bargain agreement and J.H. started serving his term of probation. By rescinding approval of the plea agreement and returning J.H.'s cases to the trial docket, the trial court violated its mandatory duty to make a disposition in accordance with the terms of the plea bargain agreement as required by *section 54.03(j)* of the Texas Family Code.

The trial court argues its action was authorized by *Texas Rule of Civil Procedure 329b(d)* n3 and *section 54.05(d)* of the Texas Family Code. We disagree. First, the Texas Family Code is clear that to the extent there is a conflict, *Texas Rule of Civil Procedure 329b(d)* must yield to the express requirements of *section 54.03(j)*. *See TEX. FAM. CODE ANN. § 51.17(a)* (Vernon Supp. 2006). Second, *section 54.05(d)* of the Texas Family Code, which allows a trial court to modify a disposition in a juvenile matter, does not apply here. The challenged action simply did not occur in the context of a disposition modification proceeding, which requires the filing of a petition, reasonable notice to all parties, and a hearing. *See TEX. FAM. CODE ANN. § 54.05(d)* (Vernon Supp. 2006).

n3 *RULE 329B(D)* PROVIDES: "THE TRIAL COURT, REGARDLESS OF WHETHER AN APPEAL HAS BEEN PERFECTED, HAS PLENARY POWER TO GRANT A NEW TRIAL OR TO VACATE, MODIFY,

CORRECT, OR REFORM THE JUDGMENT WITHIN THIRTY DAYS AFTER THE JUDGMENT IS SIGNED." *TEX. R. CIV. P. 329b(d)*.

Conclusion: When a trial court has a duty to follow a plea bargain agreement and fails to do so, mandamus is the appropriate remedy. *See Perkins, 738 S.W.2d at 284-85; In re Gooch, 153 S.W.3d at 694.* Accordingly, we conditionally grant the writ. The trial court is ordered to: (1) reinstate the December 4, 2006 order placing J.H. on probation; (2) remove the underlying cases from the trial docket; and (3) vacate the order denying J.H.'s plea in bar. The writ will issue only if we are notified that the trial court has not done so within ten days of the date of this opinion.