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TWEEDY v. STATE:

A Trial Judge May Not Impose a Sentence Greater than the Outlined Punishment of an Accepted Plea Agreement, even when the Added Condition Immediately Follows the Defendant's Acceptance

By: James Hanratty

The Court of Appeals of Maryland held that a trial judge's imposition of a sentence greater than one already accepted in a plea agreement is an illegal sentence. *Tweedy v. State*, 380 Md. 475, 845 A.2d 1215 (2004). A trial judge is, therefore, prohibited from adding any additional conditions to a plea agreement after a defendant has assented to the terms of the deal, even if the judge's added conditions immediately follow a defendant's consent. *Id.*

Millard Tweedy ("Tweedy") was indicted by a Baltimore City Grand Jury on several narcotics charges, including possession with the intent to distribute. Subsequent to the indictment, Tweedy appeared in the Circuit Court for Baltimore City and entered a guilty plea for possession with the intent to distribute. Tweedy's counsel advised him of the terms of the plea, specifically, that in exchange for his guilty plea, Tweedy's sentence would be limited to five years with all but six months suspended. As an additional provision, Tweedy's sentence would be further reduced if he agreed to perform certain remedial activities prior to the sentencing date. Tweedy verbally agreed to the above-stated terms. Thereafter, the trial judge ruled, if Tweedy failed to appear for sentencing, his sentence would be increased to the full five-year term. Tweedy failed to appear for sentencing and the trial judge entered a sentence of five years.

Tweedy filed a Motion to Correct an Illegal Sentence and requested that, pursuant to the terms of the plea agreement, the five-year sentence be suspended except for six months. The trial judge denied Tweedy's motion without a hearing. Thereafter, Tweedy filed a timely appeal to the Court of Special Appeals of Maryland, which upheld the trial court's decision in an unreported opinion. The Court

of Appeals of Maryland granted *certiorari* to consider whether a trial judge may impose a sentence greater than that outlined in an accepted plea agreement.

The court of appeals began its analysis by comparing plea agreements to contracts, noting that neither may be “unilaterally broken with impunity or without consequence.” *Id.* at 482, 845 A.2d at 1219. The court explained that plea agreements are commonly accepted procedures throughout the country, which have been recognized by the Maryland General Assembly by way of Maryland Rule 4-243(c). *Id.* at 484-85, 845 A.2d at 1220-21. This Rule states, “the judge shall embody in the judgment the agreed sentence, disposition, or other judicial action encompassed in the agreement.” *Id.*

Tweedy contended that he accepted the plea agreement before the trial judge supplemented it with the added requirement of Tweedy’s presence. *Id.* at 483, 845 A.2d at 1219-20. By contrast, the State argued, the plea had not yet been accepted by the court; therefore, the trial judge was free to compel Tweedy’s presence at sentencing as an additional condition of the agreement. *Id.* The State further argued that Tweedy’s failure to object to the added term operated as an implied consent. *Id.*

The court of appeals focused on the chronology of the trial procedures to establish when the plea agreement was accepted. *Id.* at 486, 845 A.2d at 1221. The court found Tweedy assented to the terms of the agreement, the court accepted the plea agreement, and the trial judge advised Tweedy of the consequences of his failure to appear at sentencing. *Id.* Thus, the additional increased punishment occurred *after* the plea was accepted and was, therefore, illegal. *Id.* (Emphasis added). In this regard, the court of appeals recognized that conditions requiring appearance at sentencing are valid if the plea agreement is presented to the defendant and the plea agreement is accepted. *Id.* at 486-87, 845 A.2d at 1221-22.

Upon this finding, the court of appeals granted Tweedy’s request that the original plea agreement be specifically performed. *Id.* at 489, 845 A.2d at 1223. The court stated, “it is well settled that where the defendant has not received the benefit of a plea bargain to which he is entitled, the defendant may elect to have the bargain specifically enforced or withdraw the guilty plea.” *Id.* at 488, 845 A.2d at 1222. Moreover, even though the present case involved a court’s

failure, not a prosecutor's failure, to uphold a plea agreement, the defendant's options remained the same. *Id.* at 489, 845 A.2d at 1223.

As an additional matter, in *dicta*, the court expressed its concern over the trial court's decision to continue with sentencing despite Tweedy's absence. *Id.* at 498, 845 A.2d at 1228. The court explained that sentencing *in absentia* is contrary to a criminal defendant's right to be present at every stage of their trial. *Id.* at 490, 845 A.2d at 1225. The court of appeals also stated that sentencing *in absentia* deprives a defendant of the opportunity to explain his/her absence, thereby limiting the evidence gathering function of the trial court. *Id.* at 490, 845 A.2d at 1224. The court utilized the test established in *Pickney v. State*, 350 Md. 201, 711 A.2d 205 (1998), for when a defendant can waive his/her right to be present. *Id.* at 493, 845 A.2d at 1226. The test requires that the defendant know of the time and place of the proceeding, and that nonappearance be knowing and deliberate. *Id.* at 493, 845 A.2d at 1226. The court must then balance the interests of efficient criminal justice against the rights of the defendant. *Id.* The court of appeals found that only in "extraordinary cases" after analyzing all of the "relevant circumstances" should *in absentia* proceedings be permitted. *Id.* The trial court's failure to investigate the reasons for Tweedy's absence and the court's refusal to employ alternative methods to compel his appearance were particularly troublesome for the court of appeals. *Id.* at 498-99, 845 A.2d at 1228-29.

The concurrence by Judge Harrell centered on the issue of *in absentia* sentencing and questioned the methodology the majority employed to invalidate Tweedy's sentence. *Id.* at 500-01, 845 A.2d at 1229-30. The concurrence shared the majority's disfavor of *in absentia* criminal proceedings, but favored a holistic view of plea acceptances, rather than the majority's concentration on a "particular part" of the plea procedure. *Id.*

In *Tweedy v. State*, the court of appeals' view of when a plea is accepted is based on a rigid, compartmentalized analysis of criminal proceedings. The court of appeals has established a protocol which requires that all terms of a plea agreement be stated before the defendant accepts the offer. This standard will theoretically protect defendants from harsher sentences after they have pled guilty, but the practical effects of this decision may lead to an overemphasis on

procedure. If a judge inadvertently forgets to add a term to the agreement before the defendant accepts, the omitted term is eliminated. This standard may prove to be too onerous for trial judges, who are often faced with large dockets and hectic timetables.