

FOR PUBLICATION

Appeal No. 98-033

**IN THE SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff/Appellant,

v.

STEVEN M. CAMACHO,
Defendant/Appellee.

OPINION

Cite as: *Commonwealth v. Camacho*, 2002 MP 21

Criminal Case No. 98-0051 (R)
Submitted on Briefs August 27, 2001
Decided October 3, 2002

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BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; and JOHN A. MANGLONA, Associate Justice

DEMAPAN, Chief Justice:

¶1 The Commonwealth of the Northern Mariana Islands, Office of the Attorney General [hereinafter Government or Appellant] appeals the decision of the trial court granting Steven M. Camacho's [hereinafter Camacho] motion for specific performance of a plea bargain contract. We have jurisdiction pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands and 1 CMC § 3102(a). We reverse the trial court's decision prohibiting Appellant from withdrawing its plea offer and remand this matter for proceeding consistent with this opinion.

ISSUE PRESENTED AND STANDARD OF REVIEW

¶2 This case raises the issue of whether the trial court erred in granting Camacho's request for specific enforcement of a withdrawn plea offer. Whether the Government has entered into a binding plea agreement, such that it may not withdraw its offer without entitling the defendant to some form of relief, is a mixed question of law and fact. As such, the issue is subject to de novo review on appeal. *Rosario v Quan*, 3 N.M.I. 269, 276 (1992).

FACTS AND PROCEDURAL BACKGROUND

¶3 In October 1997, police officers interviewed Camacho as part of their investigation of Criminal Case No. 98-0051(R). During the interview, Camacho provided the officers with a signed, self-incriminating statement. On February 18, 1998, the Government filed an information in Criminal Case No. 98-0051(R) charging Camacho and his two codefendants with Criminal Coercion, Assault with a Dangerous Weapon, and Assault and Battery. On July 17, 1998, in a separate case (Criminal Case No.

98 - 0262(R)), Camacho was charged with one count of Assault and Battery.

¶4 As part of Camacho's plea negotiations, the Government tendered an unsigned, draft copy of a plea agreement [hereinafter Draft Plea Agreement] to Camacho's counsel. According to the terms of Draft Plea Agreement, Camacho would, in each case, agree to plead guilty to one count of Assault and Battery while the Government would agree to drop the remaining charges.¹ Among other conditions listed in the Draft Plea Agreement, Camacho would promise to testify truthfully in Criminal Case 98-0051(R). Camacho also offered to provide the Government with a knife used in at least one of his criminal cases. Excerpts of Record [hereinafter E.R.] at 18.² According to the Draft Plea Agreement, the Government, for its part, agreed to a two-year sentence of imprisonment with all but the first ten days suspended.

¶5 In preparation for his plea, Camacho personally met with Assistant Attorney General Colin Thompson [hereinafter Prosecutor] and several police officers at the Department of Public Safety [hereinafter DPS] on Rota. Camacho's counsel, Charles R. Rotbart [hereinafter Defense Counsel], who was not on Rota at the time, took part in the meeting by telephone. During the meeting, while Defense Counsel was still present via telephone, the Prosecutor presented Camacho with a copy of the

¹ The actual language of the Draft Plea Agreement is unclear, specifying only that Camacho would plead guilty to Assault and Battery "as charged in the information." However the transcript of the Defendant's plea makes it clear that both the Government and Camacho understood the agreement to include pleas in both cases.

THE COURT: So he is pleading to one count based on two events?

MR. THOMPSON [representing the Government]: He is being plead to two counts of Assault and Battery in two separate cases.

THE COURT: Oh, two separate cases. Is there another case?

MR. THOMPSON: Yes.

THE COURT: And what is the other case number?

MR. ROTBART[counsel for Camacho]: It's on the face of the plea agreement your honor, 98-0262(R)

THE COURT: Oh, okay.

Excerpts of Record at 41.

² This offer was not part of the draft plea agreement.

self-incriminating statement that Camacho had signed during the police investigation. The Prosecutor then asked Camacho whether the statement was accurate. Camacho admitted that he had lied in the original statement, however, he indicated that he was willing, at that point, to provide a truthful statement. At this point in the meeting Defense Counsel apparently hung up the phone after consenting to the Government's continued interviewing of his client, outside of his presence. With only Government representatives as witnesses, Camacho started describing his new version of the events leading up to his alleged criminal act.

¶6 According to the Prosecutor, after Camacho began speaking, “[those listening] concluded very quickly that [Camacho] was not telling the truth.”³ E.R. at 14. Upon deciding that Camacho was being less than truthful, the Prosecutor terminated the meeting, called Defense Counsel, and withdrew from plea negotiations. Camacho subsequently filed a Motion to Enforce Specific Performance of a Plea Bargain Contract with the trial court.

¶7 On September 14, 1998, the lower court heard Camacho's motion to enforce. The court held that Camacho had entered into a valid plea agreement and that the Government could not withdraw the offer. The Government objected, prompting the court to summarize its factual findings.⁴ Then, making its final

³ The record presented to this court does not contain either of Camacho's statements, nor does it give any indication or summary of what Camacho said or what parts of what he said were untrue. From the transcript below it appears that the trial court was also unaware of the nature of either of Camacho's statements to investigators.

⁴ In response to the Government's objection that the court's ruling was unsubstantiated by the facts presented, the court noted that it had seen the unsigned copy of the Draft Plea Agreement. The court then made the following factual finding:

[W]e also have the fact that you both have stipulated in your argument to the facts that [Camacho] came to DPS here on Rota. That you [Prosecutor] were present. That [Defense Counsel] was present via conference call to some extent and that you had some sort of interview with the Defendant and that after that interview, I guess, after he hung up on the conference call, you also continued to have an interview with [Camacho] and at that point you made some determination that, you know, either his cooperation or his testimony was not to your liking, and therefore, you decided that there was going to be no plea agreement. Is that a fair statement of what you stated to the court this morning? [reply omitted] So that's what I am relying on as the evidentiary factual basis of the ruling is that those things have occurred. Now again, I ask you do you have something else to present, that the court can

ruling from the bench, the court stated:

[a]ll right, well, I think that even with this additional information the court is going to maintain its original ruling. I think under the circumstances we're all going to be biting the bullet. I think the management of this case by the court, the other factors all considered and the constitutional rights of the defendant[] as well, I think the court must rule in favor of the [Camacho]. I think the court has to consider those issues as paramount and I think that the court is basically looking at the injury, relative to the parties and the court feels that the injury to the prosecution is the *de minimus* one here and so therefore the court is going to enforce the plea agreement.

E.R. at 23. After accepting Camacho's plea, the court held a sentencing hearing in which it sentenced Camacho in accordance with the terms set out in the Draft Plea Agreement. The Government now appeals the court's ruling.

ANALYSIS

¶8 We begin our review examining the possible constitutional implications of the Government's withdrawal from plea negotiations.

1) Camacho's constitutional rights were not violated because he had not entered a plea of guilty prior to the Government's attempt to withdrawal from plea negotiations.

¶9 A criminal defendant has no constitutional right to a plea bargain. *United States v. Moody*, 778 F.2d 1380, 1385-86 (9th Cir. 1985). As such, the government is not obligated to enter into plea negotiations with a defendant. *See Bordenkircher v Hayes*, 434 U.S. 357, 98 S. Ct. 663, 54 L. Ed. 2d 604 (1978). However, "when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such a promise must be fulfilled." *Santobello v. New York*, 404 U.S. 257, 262, 92 S. Ct. 459, 499, 30 L. Ed. 2d 427, 433

allow you to present at this time?
E.R. at 23.

(1971).⁵

¶10 In *Marby v. Johnson*, a unanimous Supreme Court clarified *Santobello* stating,

[a] plea bargain standing alone is without constitutional significance; in itself it is a mere executory agreement which, until embodied in the judgment of a court, does not deprive an accused of liberty or any other constitutionally protected interest. It is the ensuing guilty plea that implicates the Constitution.

467 U.S. 504, 507, 104 S. Ct. 2543, 2546, 81 L. Ed. 2d 437, 442 (1984) (footnote omitted).⁶ Read together, *Mabry* and *Santobello* stand for the proposition that when a defendant enters a guilty plea, as part of a plea agreement, due process requires that the government honor its promises. See *Nevada v. Crockett*, 877 P.2d 1077, 1079 (Nev. 1994) (citing *Santobello*, 404 U.S. 257, 92 S. Ct. 459, 30 L. Ed. 2d 427 (1971)).

¶11 In the present case, the Government sought to withdraw its offer before Camacho had entered a plea of guilty. Because Camacho had not yet entered a guilty plea his due process rights are not implicated. Therefore, the Government may withdraw its offer without violating Camacho's due process rights.

⁵ There may be some support, based on *Santobello*, that detrimental reliance could also trigger a defendant's due process rights violation argument. *Virgin Islands v. Springette*, 614 F.2d 360, 365 (3rd Cir. 1980). In the instant case, we need not address this issue, as Camacho did not detrimentally, rely on the Government's offer. (See ¶¶ 16-21 below.)

⁶ After the Supreme Court decided *Santobello* in 1971, trial courts split over when the government's withdrawal from a plea agreement implicated a defendant's constitutional rights. The minority of courts agreed with the Fourth Circuit's decision in *Cooper v. United States*, 594 F.2d 12 (4th Cir. 1979), and held that the a defendant's due process rights protected them throughout the plea bargaining process. See *Ex parte Yarber*, 437 So. 2d 1330 (Ala. 1983); *Maryland v. Brockman*, 357 A.2d 376 (Md. 1976); *Johnson v Mabry*, 707 F.2d 323 (8th Cir. 1983), *rev'd* 467 U.S. 504, 104 S. Ct. 2543, 81 L. Ed. 2d 437 (1984). However, the majority of courts held that until executed, plea bargaining agreements generally did not implicate a defendant's constitutional rights. See *Virgin Islands v. Springette*, 614 F.2d 360 (3rd Cir. 1980); *California v. Barnett*, 170 Cal. Rptr. 255 (Cal. Ct. App. 1980); *Illinois v. Ferguson*, 413 N.E.2d 135 (Ill. App. Ct. 1980); *North Carolina v. Collins*, 265 S.E.2d 172 (N.C. 1980); *Iowa v. Edwards*, 279 N.W. 2d 9 (Iowa 1979); *Washington v. Wheeler*, 631 P.2d 376 (Wash. 1981); *Massachusetts v. Smith*, 427 N.E.2d 739 (Mass. 1981); *Wisconsin v. Beckes*, 300 N.W.2d 871 (Wis. Ct. App. 1980). The unanimous Supreme Court decision in *Mabry* discredited, if not outright overruled, the minority argument. *Plaster v. United States*, 789 F.2d 289, 292 (4th Cir.1986) (acknowledging, in dicta, that the court's own *Cooper* opinion was overruled by *Mabry*.)

2) No enforceable contract was ever created because Camacho did not enter a plea of guilty prior to the Government’s attempt to withdraw its offer.

¶12 Having determined that the Government’s withdrawal of its offer did not violate Camacho’s constitutional rights, we must now determine whether any other source of rights was implicated.

¶13 While a plea bargain is a matter of criminal procedure, courts have held that “[p]lea agreements are to be construed by ordinary contract standards.” *Commonwealth v. Duenas*, 4 N.M.I. 377, 379 (1996) (citation omitted). *See also United States v. Kingsley*, 851 F.2d 16, 21 (1st Cir. 1988); *Virgin Islands v. Springette*, 614 F.2d 360, 364 (3rd Cir. 1980); *Cooper v. United States*, 594 F.2d 13, 16 (4th Cir. 1979). The vast majority of courts that have considered the contractual nature of plea agreements have likened a plea agreement to a unilateral contract where a defendant can only accept through performance.⁷ As is true with any unilateral contract, the defendant’s mere promise of performance does not qualify as acceptance of the government’s offer. Instead, a party can only accept the terms of a unilateral offer through performance. In the case of a plea offer, a defendant can only accept the offer by pleading guilty (i.e., performing).

¶14 In *United States v. Savage*, 978 F.2d 1136, 1138 (9th Cir. 1992), the Ninth Circuit Court of Appeals adopted the rule that “neither the defendant nor the government is bound by a plea agreement until it is approved by the court.” The court reasoned that,

⁷ *See e.g. United States v. Papaleo*, 853 F.2d 16, 20 (1st Cir. 1988) (“a plea agreement [where defendant agreed to plead guilty to one count of the indictment in exchange for the dismissal of two other counts] is no more than an offer by the government: if the defendant pleads guilty and if that plea is accepted by the court, then the government will perform as stipulated in the agreement. Until performance took place by [defendant], the government was free to withdraw its offer.”); *Washington v. Bogart*, 788 P.2d 14 (Wash. Ct. App. 1990) (the prosecution could withdraw a plea proposal after learning additional facts implicating defendant, where defendant had not yet entered guilty plea and had failed to establish that he detrimentally relied on the bargain in such a way that a fair trial was no longer possible). *See also Shields v Delaware*, 374 A.2d 816 (Del. 1977); *Springette*, 614 F.2d at 360; *Reed v. Becka*, 511 S.E.2d 396 (S.C. Ct. App. 1999); *Minnesota v. Johnson*, 617 N.W.2d 440 (Minn. Ct. App. 2000).

the realization of whatever expectations the prosecutor and defendant have as a result of their bargain depends entirely upon the approval of the trial court. Surely neither party contemplates any benefit from the agreement unless and until the trial judge approves the bargain and accepts the guilty plea. Neither party is justified in relying substantially on the bargain until the trial court approves it. We are therefore reluctant to bind them to the agreement until that time. As a general rule, then, we think that either party would be entitled to modify its position and even withdraw its consent to the bargain until the plea is tendered and the bargain as it then exists is accepted by the court.

Id. (quoting *United States v. Ocanas*, 628 F.2d 353, 358 (5th Cir. 1980)). We find the logic employed in *Savage* and similar decisions persuasive and hold that a plea agreement is not binding on either party until the defendant has pled guilty and that plea has been accepted by the court.

¶15 In the present case, the Government moved to retract its offer before Camacho tendered his plea and before the court accepted the plea bargain. Without a valid guilty plea the Government's withdrawal did not violate Camacho's contractual rights.

3) Camacho failed to demonstrate that he had relied on the Government's plea offer to his detriment.

¶16 As the Ninth Circuit noted in *Savage*,

[t]he general rule [requiring the trial court's acceptance of a plea bargain for such a bargain to become enforceable], however, is subject to a detrimental reliance exception. Even if the agreement has not been finalized by the court, 'a defendant's detrimental reliance on a prosecutorial promise in plea bargaining could make a plea agreement binding.'

978 F.2d at 1138 (citation omitted).

¶17 A defendant who can show that he took action based on a promise, made by a qualified

government agent, may be entitled to some form of relief.⁸ Detrimental reliance occurs when,

[a] defendant relies upon a prosecutor's plea offer by taking some substantial step or accepting serious risk of an adverse result following acceptance of the plea offer. Detrimental reliance may be demonstrated where defendant performed some part of the bargain. For example, a defendant who provides beneficial information to law enforcement can be said to have relied to his detriment. Reliance may not be shown 'by the mere passage of time.' Also, it may not be shown where the defendant stopped preparing his defense, absent a showing of specific prejudice. Nor may detrimental reliance be shown by the prospect of a longer sentence.

California v. Rhoden, 89 Cal. Rptr. 2d 819 (Cal. Ct. App. 1999) (citations and emphasis omitted). There is some debate over whether any actions short of a guilty plea can be said to constitute detrimental reliance.⁹ We take no side in this argument today and only note that Camacho has failed to show that he detrimentally relied on the Government's offer, whether through a plea of guilt or by other means, prior to the Government's withdrawal of the offer.

¶18 Camacho points to three specific actions that, he argues, demonstrate his detrimental reliance on the Government's plea offer. First, Camacho notes that he "proceed[ed] to DPS to give a statement regarding a purported crime." Camacho's second act, supposedly showing detrimental reliance, occurred when he did, "in fact give a detailed statement to Appellant." Finally, Camacho notes that he detrimentally

⁸ There is an issue of whether the relief required, upon a showing of reliance, accords the defendant the benefit of the bargain or merely restores the defendant to the status quo. However, we do not address this issue as we do not find any evidence of detrimental reliance in this case.

⁹ See *United States v. Coon*, 805 F.2d 822, 825 (8th Cir. 1986) ("The only change in position that can be considered 'detrimental reliance' is the actual entry of an involuntary guilty plea."); *United States v. Kettering*, 861 F.2d 675 (11th Cir. 1988); *United States v. McGovern*, 822 F.2d 739 (8th Cir. 1987). But see *Papaleo*, 853 F.2d at 20 n.2 (criticizing *Coon* for ignoring partial performance). Also see *United States v. Ware*, 161 F.3d 414, 425-27 (6th Cir. 1998) (Wellford, J. concurrence) (Questioning whether promising "truthful testimony" can be consideration when, should witness testify, witness has a pre-existing duty to testify truthfully.); *Washington v. Bogart*, 788 P.2d 14 (Wash. Ct. App. 1990) (defendant's actions only considered detrimental reliance if a fair trial is no longer possible).

relied on the Government's offer when he "agreed to surrender the knife" to DPS. We address these three actions out of order.

¶19 The record available to this Court is far from clear in establishing that Camacho made a "detailed statement" to the Government while at DPS. As noted earlier we have not been provided with either of Camacho's statements to investigators, and the trial court failed to make any finding of fact regarding the nature of either statement. Our review of the record leaves us with the distinct impression that Camacho's interview was brief and contained little reliable detail. Camacho now claims that the record "only shows that Camacho was providing truthful information."¹⁰

¶20 At its base, detrimental reliance involves taking some substantial step towards or accepting serious risk of, an adverse result. When a defendant enters into plea negotiations but is unable to reach an agreement with the government, any statements made by the defendant during the course of the plea negotiations are inadmissible against the defendant pursuant to Commonwealth Rules of Criminal Procedure 11(e)(6). Since Camacho's second statement could not be used against him at trial, he cannot argue that his position somehow changed for the worse after he made the statement.¹¹

¹⁰ Camacho has expressed dismay over the Government's "subjective" judgment that he was lying. As stated above, no contract had been formed at the time Camacho made his statement to the Government. Whether Camacho lied or not, is not at issue. The issue is only whether his statement demonstrated detrimental reliance. However, we note that Camacho seems to argue that, had there been a valid contract, such a contract would have protected any lies he told the prosecutor so long as his eventual courtroom testimony was truthful. If this is a correct statement of Camacho's argument, he is quite wrong. Both the duty of good faith bargaining and the responsibility of attorneys not to suborn perjury point to the Government's right to have an accurate overview of Camacho's testimony before allowing him to take the stand. It would run contrary to public policy, not to mention being patently absurd, for this Court to support the premise that the Government should be forced into presenting mystery testimony.

¹¹ Statements made during plea negotiations are inadmissible at a subsequent trial. *United States v. Mezzanatto*, 513 U.S. 196, 200, 115 S. Ct. 797, 130 L. Ed. 2d 697 (1995); *see also* Commonwealth Rules of Evidence 410. When the Government rescinded its offer Camacho was placed in the same position that he was in before he agreed to accept the offer.

¶21 Without facts, it is difficult to judge whether Camacho's surrendering "the knife" would have constituted detrimental reliance in this case. However, since it appears from the record that Camacho never actually surrendered the knife but only claimed that he intended to do so, our job is less difficult. Detrimental reliance requires at least some action that places Camacho in a different position than he was in before relying on a promise. Merely stating an intent to take an action, absent some showing that the promise to act itself has a detrimental effect on the speaker, does not change Camacho's position at all.

¶22 Camacho is left with the claim that he "proceed[ed] to DPS to give a statement regarding a purported crime." We agree that, from the record before us it appears that Camacho went to DPS. We cannot conclude that Camacho's appearance for an interview at DPS has disadvantaged him in any significant way. Mere presence at DPS is not an act that could be seen as substantially changing Camacho's position. It is the actions Camacho failed to take, once at DPS, that could, under certain circumstances, have lead to a finding of detrimental reliance.

CONCLUSION

¶23 Camacho and the Government were not contractually bound by a plea agreement when Camacho had not yet performed his duties under the unilateral contract by pleading guilty and the trial court had not yet approved the plea bargain. Since these two steps had not yet been taken, the Government was free to withdraw from plea negotiations without violating Camacho's constitutional or contractual rights. The record does not show that Camacho detrimentally relied on a promise made by the Appellant and therefore Camacho is not entitled to relief.

¶24 The decision of the trial court is hereby **REVERSED** and this matter is **REMANDED** for proceedings consistent with this opinion.

SO ORDERED this 3rd day of October 2002.

/s/ Miguel S. Demapan
MIGUEL S. DEMAPAN, Chief Justice

/s/ Alexandro C. Castro
ALEXANDRO C. CASTRO, Associate Justice

/s/ John A. Manglona
JOHN A. MANGLONA, Associate Justice