ORIGINAL

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

NOTICE: SERVE COPIES OF THE ENCLOSED WRIT ON ALL PARTIES AND THE TRIAL COURT, THEN RETURN THE ORIGINAL WITH PROOF OF SERVICE.

RODNEY JARMIN, Petitioner, v. THE SUPERIOR COURT OF SAN LUIS OBISPO COUNTY, Respondent; THE PEOPLE, Real Party in Interest.	2d Crim. No. B266321 (Super. Ct. No. F458519) (San Luis Obispo County)
TAMMY JORDAN, Petitioner, v. THE SUPERIOR COURT OF SAN LUIS OBISPO COUNTY, Respondent; THE PEOPLE, Real Party in Interest.	2d Crim. No. B266814 (Super. Ct. No. F458519) (San Luis Obispo County) ALTERNATIVE WRIT OF MANDATE AND ORDER

TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO:

Petitioners seek a writ of mandate directing the superior court to vacate its order of July 22, 2015, granting the People's motion to set aside petitioners' pleas of no contest to misdemeanor charges and reinstate the felony information.

Where the prosecution has, on the record, accepted a plea bargain and it has been approved by the court, "both the prosecution and the defendant are entitled to the benefits for which they have bargained." (*People v. Daugherty* (1981) 123 Cal.App.3d 314, 321.) All participants in a plea bargain must conduct themselves openly and with the utmost fairness. (*Ibid.*) It is well established that "'the People will be held strictly to the terms of a plea bargain made with a criminally accused.'" (*Ibid.*) The failure of the prosecutor to fulfill his promise affects the fairness, integrity, and public reputation of judicial proceedings. (See, e.g., *Amin v. Superior Court* (2015) 237 Cal.App.4th 1392, 1409-1410; *In re Kenneth H.* (2000) 80 Cal.App.4th 143, 148-149.)

Here, petitioners entered pleas of no contest to seven misdemeanor counts of violating Corporations Code sections 25540 and 25401, pursuant to *Alford*[1] and *West*,[2] and agreed to pay restitution to the victims in the amount of $107,200. The pleas were contingent on the trial court hearing restitution claims at sentencing and allowing petitioners to withdraw their pleas should the court determine that the restitution was inadequate. The prosecutor raised no objections on the record when the superior court recited its understanding of the parties' plea agreement, which included petitioners' willingness to plead no contest to all charges as misdemeanors, as well as pay restitution to the victims in the above amount. Nor did the prosecutor object during the court's plea canvass, during which pleas to misdemeanor charges were entered and the enhancements were stricken.[3] The record reveals that the prosecutor suggested the amounts of

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[1] *North Carolina v. Alford* (1970) 400 U.S. 25.

[2] *People v. West* (1970) 3 Cal.3d 595.

[3] Indeed, the prosecutor interjected during the plea canvass that an enhancement could be stricken because it pertained to eligibility for probation. The prosecutor also told the court he had no objection to a "terminal disposition" for petitioner Rodney Jarmin (meaning a misdemeanor disposition), as long as Jarmin paid the agreed-upon restitution before sentencing.

restitution to be paid by petitioners, and offered to prepare the court's order releasing a restraining order imposed on petitioner Rodney Jarmin so he could sell his property to pay for restitution.[4] The superior court found the prosecutor initiated the settlement discussions with defense counsel and impliedly consented to the reduction of the felony charges to misdemeanors. Nevertheless, the court granted the People's motion to set aside the pleas.

Nothing in Penal Code section 1192.5 or in related decisional law "permits the prosecutor, absent defendant's fraud or deception, or other valid reason, to repudiate a plea bargain previously accepted by him. Such a repudiation would manifestly defeat the principle that both the prosecutor and the defendant are entitled to the benefit of the bargain they have struck." (*Daugherty*, *supra*, 123 Cal.App.3d at p. 321.)

Good cause appearing, therefore, you are commanded, immediately upon receipt of this writ, either to:

(a) vacate your order of July 22, 2015, granting the People's motion to set aside petitioners' no contest pleas, and reinstate their pleas on the same terms and conditions specified on June 10, 2015, after providing notice to the parties pursuant to *Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233, 1250, footnote 10; or, in the alternative,

(b) show cause before this court at its courtroom located at 200 East Santa Clara Street, Ventura, California, at a date and time to be determined, why a peremptory writ of mandate should not issue requiring the respondent superior court to vacate its order of July 22, 2015, and enter a new order denying the People's motion.

In the event the respondent superior court elects to comply with alternative (a) above, it shall so advise this court by sending a copy of its minute order to the clerk of this court on or before March 3, 2016.

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[4] When directly asked by the court whether he was "satisfied that the readily available restitution was an amount or fund that could be created to reimburse the alleged victims $107,200," the prosecutor replied, "Yes, Your Honor. That's correct."

In the event the respondent superior court does not comply with alternative (a) above, the real party in interest shall serve and file a written return to this writ on or before March 17, 2016. Petitioners may serve and file replies to the return on or before April 1, 2016. The parties will be notified by the clerk of this court of the date and time of oral argument.

WITNESS THE HONORABLE ARTHUR GILBERT, Presiding Justice of Division Six of the Court of Appeal of the State of California, Second Appellate District.

ATTEST my hand and seal of this court this 11th day of February 2016.

JOSEPH A. LANE, CLERK

By _____
Senior Deputy Clerk