

In the
Supreme Court of Ohio

STATE OF OHIO,	:	Case No. 2013-0382
	:	
Plaintiff-Appellee,	:	On Appeal from the
	:	Hamilton County Court of Appeals,
v.	:	First Appellate District
	:	
KAREEM GILBERT,	:	Court of Appeals Case
	:	No. C-110382
Defendant-Appellant.	:	

**AMICUS CURIAE ATTORNEY GENERAL OF OHIO'S
MEMORANDUM IN SUPPORT OF JURISDICTION**

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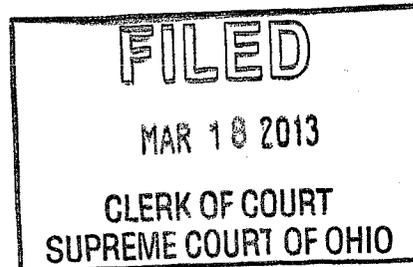


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INTRODUCTION

The first principle of judicial authority is that “courts have inherent authority—authority that has existed since the very beginning of the common law—to compel obedience of their lawfully issued orders.” *Cramer v. Petrie*, 70 Ohio St. 3d 131, 133, 1994-Ohio-404. Further, courts have express authority to relieve parties of judgments when the interests of justice demand it. Civ. R. 60(B). That is precisely what happened in this case. Kareem Gilbert and the State proposed a plea arrangement to the trial court. The trial court accepted the agreement, and sentenced Gilbert under the terms of the agreement. When Gilbert later reneged, the trial court enforced the terms of the agreement; it compelled obedience to its order.

The First District came to the conclusion that the trial court’s actions were a reconsideration of the prior judgment, and therefore barred by this Court’s precedent. But it plainly was not. The State did not ask the trial court to correct a legal or procedural error, and the court of appeals erred in concluding, without any justification or explanation, that enforcing a plea bargain was a motion for reconsideration.

This Court has taken a firm position on motions for reconsideration, and that is why it is important for the Court to reverse the judgment below. By simply calling the action in this case a motion for “reconsideration,” the lower court abrogated its duty to fairly arbitrate a genuine dispute amongst the parties. That decision undermines the power of trial courts to craft fair and equitable plea bargains, it reduces the confidence of parties that they will receive justice, and, ultimately, the limits authority of courts to enforce their lawful orders.

This Court need not resolve whether Civ. R. 60(B) applies in this case, but it must find that the action in this case was not a “reconsideration” of the final judgment, and therefore it should accept jurisdiction and vacate the decision of the lower court.

STATEMENT OF THE CASE AND FACTS

Amicus Curiae Attorney General of Ohio incorporates the State of Ohio's Statement of the Case and Facts.

THE CASE PRESENTS A SUBSTANTIAL CONSTITUTIONAL QUESTION AND IS OF PUBLIC AND GREAT GENERAL INTEREST

Although fundamentally adversarial, the ability for parties in the criminal justice system to deal fairly with one another is the keystone to plea bargains. The State of Ohio, in its prosecutorial authority, the people of Ohio, and the Ohio Constitution are all deeply affected by a failure of justice that undermines confidence in the judicial system, such as the one that occurred in this case.

A. The trial court was not asked to “reconsider” its judgment.

The Court of Appeals grounded its decision in the line of cases that bars reconsideration of final judgments. *State v. Carlisle*, 131 Ohio St. 3d 127, 2011-Ohio-6553, ¶1 (“Absent statutory authority, a trial court is generally not empowered to modify a criminal sentence by reconsidering its own final judgment”). In doing so, the court simply applied the label of “reconsideration,” and concluded that the trial court lacked subsequent authority. But this was not a motion for reconsideration at all.

The purpose of a motion for reconsideration is to “to correct decisions which, upon reflection, are deemed to have been made in error.” *State ex rel. Huebner v. West Jefferson Village Council*, 75 Ohio St. 3d 381, 383 (1995). In this case, the State did not ask for error correction. If anything, it was asking the court to *enforce* its original order, not to reconsider it. In fact, even if the State had erroneously titled its motion as a Motion for Reconsideration, which it did not, “[i]t has long been recognized that trial courts have been allowed some discretion to

treat a motion for reconsideration as a motion to vacate under Civ. R. 60(B).” *State ex rel. Albourque v. Terry*, 128 Ohio St. 3d 505, 2011-Ohio-1913, ¶2, quoting *Pete's Auto Sales v. Conner* (Aug. 24, 2000), Cuyahoga App. No. 77014, 2000 Ohio App. LEXIS 3838, 2000 WL 1222015, *3.

The seminal case on the invalidity of trial court motions for reconsideration is *Pitts v. Ohio Department of Transportation*, 67 Ohio St.2d 378 (1981). In *Pitts*, the Court found that motions for reconsideration are a nullity because (1) the Civil Rules did not recognize the existence of a trial court motion for reconsideration, and (2) practical concerns militated against such filings. Neither of those concerns is present in this case.

1. Civil Rule 60(B) authorizes a trial court to grant relief from judgment when it serves the interests of justice.

In *Pitts*, this Court said, “[T]he Rules of Civil Procedure specifically limit relief from judgments to motions expressly provided for within the same Rules. A motion for reconsideration is conspicuously absent within the Rules.” *Pitts*, at 380.

What is not conspicuously absent from within the Rules, however, is a motion allowing *relief* from judgment, which is precisely what the State is seeking in this case. Far from asking for error correction, the State actually asked the trial court to *enforce* its original order by giving it relief from judgment based on Gilbert’s breach of the plea bargain. Civil Rule 60(B) allows parties to seek relief in the interests of justice, and that is what the State did. Civ. R. 60(B) (“A court may “relieve a party . . . from a final judgment [for] . . . any . . . reason justifying relief from the judgment”);, see also Crim. R. 57(B) (“If no procedure is specifically prescribed by rule, the court may proceed in any lawful manner not inconsistent with these rules of criminal procedure, and shall look to the rules of civil procedure and to the applicable law if no rule of criminal procedure exists.”).

The lower court should not be allowed so quickly to wash its hands of this important issue by simply calling the pleading a “motion for reconsideration.”

2. None of the practical concerns militating against motions for reconsideration is present here.

The *Pitts* Court also disfavored motions for reconsideration for practical reasons. It noted that motions for reconsideration require courts to perform the “arduous task of trying to inspect each and every motion for reconsideration which is filed in the trial court after a final judgment, and try to decipher form over substance”, *Pitts*, at 381, and that the procedure was costly and inefficient, creating a “procedural morass” that confused “timeliness of appeal and whether the Court of Appeals is vested with jurisdiction.” *Id.* These are all legitimate problems with motions that ask a court to “to correct decisions which, upon reflection, are deemed to have been made in error.” *Huebner*, at ¶2.

None of those problems are present in this case. There is no sifting through voluminous motions to decipher form over substance. The State asserted an unequivocal position: the defendant breached his duty. Plus, it asked for a definite relief: the court must enforce its prior order, relieve the State from the breached judgment, and allow the State redress.

Nor do these cases present a procedural morass that threatens to obscure the merits of the judgment. The “merits” of the judgment were settled in the plea bargain: the defendant received the benefit if he performed his duty. When a defendant breaches his duty, he loses the benefit.

Finally, these cases do not implicate the “timeliness of appeal” or the jurisdiction of the court of appeals. A defendant who enters into a plea bargain may always appeal the sentence. That appeal occurs irrespective of whether he performs his duty under the plea bargain, and his performance or non-performance in the plea bargain is irrelevant to the appeal.

3. Finality, for the sake of finality, does not justify preventing the trial court from enforcing its order.

The primary case that the First District relied upon, *State v. Raber* ___ Ohio St.3d ___, 2012-Ohio-5636, further reinforces the differences between “reconsideration” and relief from judgment. In *Raber*, the parties were disputing whether the case involved consensual activity in a sexual assault case. The trial court afforded the State a hearing to prove lack of consent, but the State failed to do so, and therefore the court did not order Raber to register as a sex offender.

Then, a year later, the court *sua sponte* reopened the case, conducted a hearing, transferred the case to another judge on the bench, conducted another hearing, and ordered Raber to register as a sex offender. In other words, the trial court deemed itself to have made an error, and reconsidered the entire case anew. It is not surprising that the Rules of Procedures do not condone this type of arbitrary reconsideration of a final judgment. *Raber* aptly demonstrates the uncertainty that litigants would face if trial courts could wantonly reconsider any judgment for any reason. Having once run the gantlet, Raber should not have been called back before the court and forced to run it again.

But none of those interests are implicated here. There was no perceived error by the court to reconsider or correct. Nor were there any surprises waiting for Gilbert. His story had already been written, and Gilbert was the master of his own fate in it. He chose to breach the plea bargain, and the court correctly chose to enforce its terms

B. Although the impact of this case is limited, it will advance the interests of justice.

This is not a case that threatens the sanctity of final judgments in Ohio, nor will it lead to uncertainty in the finality of criminal verdicts. It would not disturb the principle or the holding of *Pitts* or *Raber*'s predecessors, and, in fact, it is entirely consistent with both. This case simply acknowledges a power that has existed in every court “since the very beginning of the common

law,” *Petrie*, that courts have the power to enforce their lawful orders, and one that is codified in Civil Rule 60(B): that they can grant relief from judgment when the interests of justice demand it.

Thus, the overall impact of this case on the entire body of criminal cases will be minimal. First, it will only apply to cases that are plea-bargained, but more importantly, it will apply only to a limited set of plea bargains where, for prudential reasons, the State *and* the defendant elect to proceed with sentencing. However, while the number of cases that it affects will be only a small portion of criminal cases, the principle of the case is vital: parties must know that the judiciary will enforce its orders and it will hold parties accountable. Any other result leads to a justice system that condones injustice.

ARGUMENT

Amicus Curiae’s Proposition of Law:

A motion to vacate a judgment an order to enforce a plea bargain is not a “motion for reconsideration.”

The plea bargain is fundamental to the operation of the modern criminal justice system. It is, essentially, a lawful contract struck between the State and a defendant; *State v. Bethel*, 110 Ohio St.3d 416, 2006-Ohio-4853 ¶50, 854 N.E.2d 150. Like any contract, it is one in which both parties agree to give up fair consideration, and expect fair arbitration. But, unlike a typical contract, a plea bargain is not simply an agreement between two parties. Rather, a plea bargain only becomes binding when its terms are accepted by a court. *State v. Lundgren (In re Mitrovich)*, 74 Ohio St. 3d 1219, 1220 (1990) (“the final judgment on whether a plea bargain shall be accepted must rest with the trial judge”). Put simply, a plea bargain is not final until a judge finds that the bargain is fair and lawful.

That is why Civ. R. 60(B) empowers a court to relieve a party from judgment when it serves the interests of justice. Here, that power enables the court to exercise its “inherent authority—authority that has existed since the very beginning of the common law—to compel obedience of their lawfully issued orders.” *Petrie*, 70 Ohio St. 3d at 133. Plea bargains are unique functions of criminal law, and therefore warrant the application of Civ. R. 60(B)’s exceptional power.

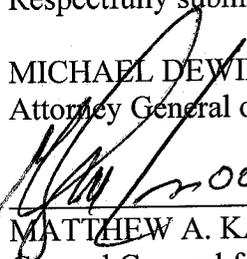
CONCLUSION

Kareem Gilbert agreed to set aside his plea and sentence if he breached his promise to the State. The State now seeks relief, and is asking the court to enforce the terms of the lawful plea bargain. The State is entitled to relief from the judgment, and the trial court was entitled to provide it both as a matter of its inherent authority and its authority to provide relief from judgment in the interests of justice.

For these reasons, the Attorney General of Ohio asks that this Court accept jurisdiction, reverse the judgment, and remand with instructions to reinstate the order of the trial court granting the State a new trial. In the alternative, this Court should accept jurisdiction, vacate the judgment, and remand with directions to the Court of Appeals to consider whether this case is properly brought under Civ. R. 60(B).

Respectfully submitted,

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CERTIFICATE OF SERVICE

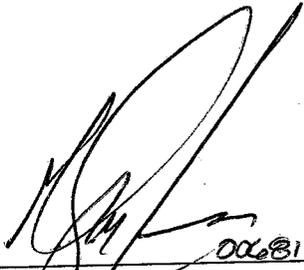
I certify that a copy of the foregoing Defendant-Appellant's State of Ohio Memorandum in Support of Jurisdiction was served by U.S. mail this 18th day of March, 2013, upon the following counsel:

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