

In the
Supreme Court of Ohio

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

**MERIT BRIEF OF *AMICUS CURIAE* ATTORNEY GENERAL OF OHIO
IN SUPPORT OF PLAINTIFF-APPELLANT STATE OF OHIO**

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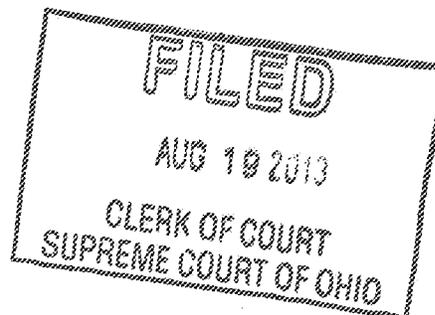


TABLE OF CONTENTS

	Page
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
STATEMENT OF AMICUS INTEREST	2
STATEMENT OF THE CASE AND FACTS	2
ARGUMENT.....	2
 <u>Amicus Curiae Attorney General of Ohio’s Proposition of Law:</u>	
<i>A motion to vacate a judgment in order to enforce a plea bargain is not a “motion for reconsideration.”</i>	
	<i>2</i>
A. A motion to enforce a plea bargain by vacating a sentence is a motion for relief from judgment made pursuant to Crim. R. 57(B) and Civ R. 60(B).	2
B. A motion to vacate a sentence and to enforce the terms of a plea bargain is not a motion for reconsideration; the First District erred by treating the prosecutor’s motion as a motion for reconsideration.	3
1. None of the practical concerns militating against motions for reconsideration are present here.	5
2. A general interest in finality does not prevent the trial court from enforcing its order.	6
CONCLUSION.....	7
CERTIFICATE OF SERVICE	unnumbered

TABLE OF AUTHORITIES

CASES	PAGE(S)
<i>Cramer v. Petrie</i> , 70 Ohio St. 3d 131, 1994-Ohio-404.....	2
<i>Pete’s Auto Sales v. Conner</i> , Cuyahoga App. No. 77014, 2000 Ohio App. LEXIS 3838, 2000 WL 1222015 (Aug. 24, 2000),.....	5
<i>Pitts v. Ohio Department of Transportation</i> 67 Ohio St. 2d 378 (1981).....	4, 5, 6
<i>State ex rel. Albourque v. Terry</i> , 128 Ohio St. 3d 505, 2011-Ohio-1913.....	5
<i>State ex rel. Huebner v. West Jefferson Village Council</i> , 75 Ohio St. 3d 381 (1995).....	3, 5
<i>State v. Bethel</i> , 110 Ohio St. 3d 416, 2006-Ohio-4853, 854 N.E.2d 150	4
<i>State v. Carlisle</i> , 131 Ohio St. 3d 127, 2011-Ohio-6553.....	4
<i>State v. Lundgren (In re Mitrovich)</i> , 74 Ohio St. 3d 1219 (1990).....	4
<i>State v. Raber</i> , 134 Ohio St. 3d 350, 2012-Ohio-5636.....	6, 7
<i>State v. Schlee</i> , 117 Ohio St. 3d 153, 2008-Ohio-545.....	3
<i>State v. Wells</i> , No. 92AP-1462, 1993 Ohio App. LEXIS 1857 (10th Dist. 1993)	3
STATUTES, RULES, AND CONSTITUTIONAL PROVISIONS	
Civ R. 60(B).....	2, 3, 5
Crim. R. 57(B)	2, 3
R.C. 109.02	2

INTRODUCTION

The First District Court of Appeals overturned the judgment of the trial court because it mistakenly assumed that the court had “reconsidered” its original judgment. The parties to this case have presented the Court with arguments regarding when, and under what circumstances, reconsideration is justified by the malfeasance of a party.

But the Court need not reach these issues because nothing in this case was “reconsidered.” The purpose of “reconsideration” is to correct an error in a judgment that is discovered after a decision is rendered. That did not happen here; there was no error. In this case, as in the vast majority of criminal cases, the parties struck a deal: specifically, a favorable sentence in exchange for the defendant’s testimony. Gilbert received his part of the bargain, but then, when it was time for him to play his part, he backed out.

The State, understandably, asked the trial court to enforce the terms of the plea bargain. The trial court vacated Gilbert’s conviction and put the parties in the same place they had been in before Gilbert’s breach. In doing so, the trial court merely enforced the terms of the plea bargain; the trial court was not “reconsidering” or correcting an error in the original judgment.

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 and it reduces the confidence of all parties that they will receive justice. No court should be allowed to deny justice merely by calling an act a “reconsideration,” when the act plainly is not.

STATEMENT OF AMICUS INTEREST

As the State's chief law enforcement officer, R.C. 109.02, the Ohio Attorney General has an interest in ensuring that defendants who receive the benefit of plea bargains are not allowed to ignore their reciprocal obligations under the express terms of those bargains.

STATEMENT OF THE CASE AND FACTS

The Ohio Attorney General incorporates Plaintiff-Appellant State of Ohio's Statement of the Case and Facts.

ARGUMENT

Amicus Curiae Attorney General of Ohio's Proposition of Law:

A motion to vacate a judgment in order to enforce a plea bargain is not a "motion for reconsideration."

The power to grant relief from judgment is inherently and expressly within a court's power. When a court vacates a judgment and enforces the express terms of a plea bargain, the court is merely exercising that inherent power. An order enforcing the express terms of a plea bargain is therefore not a "motion for reconsideration" and is not subject to the limitations on such motions.

A. A motion to enforce a plea bargain by vacating a sentence is a motion for relief from judgment made pursuant to Crim. R. 57(B) and Civ R. 60(B).

A trial court's power to enter a judgment or order necessarily includes the power to ensure compliance with that judgment or order. It is well-established 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. That is why Civ. R. 60(B) empowers a court to relieve a party from judgment when doing so serves the interest of justice: it is necessary to preserve and protect a trial court's authority. Furthermore, the power to vacate a judgment is not limited to civil cases—it may be

exercised in criminal cases as well. *See* 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.”); *see also State v. Schlee*, 117 Ohio St. 3d 153, 2008-Ohio-545 ¶10 (The “plain language of Crim. R. 57(B) permits a trial court in a criminal case to look to the Rules of Civil Procedure for guidance when no applicable Rule of Criminal Procedure exists.”).

When a defendant fails to comply with the commitments he made as part of his plea bargain, a prosecutor may enforce the terms of the bargain by moving to vacate the defendant’s sentence pursuant to Crim. R. 57(B) and Civ. R. 60(B). Plea bargains are unique functions of criminal law, and therefore warrant the application of Civ. R. 60(B) power. *See State v. Wells*, No. 92AP-1462, 1993 Ohio App. LEXIS 1857 (10th Dist. 1993) (“Defendant’s motion, in effect, is a motion which in the civil arena would fall within the parameters of Civ. R. 60(B): defendant seeks to vacate the guilty plea entered pursuant to his plea agreement with the state and to enforce the agreement he alleges he has fulfilled.”) If a trial court lacked the power to vacate the sentence of defendants who fail to uphold their end of a plea bargain, then there would be no way to hold defendants to the terms of their agreement. Defendants could claim the benefits of a plea bargain without any of the reciprocal burdens.

B. A motion to vacate a sentence and to enforce the terms of a plea bargain is not a motion for reconsideration; the First District erred by treating the prosecutor’s motion as a motion for reconsideration.

A motion to vacate a sentence is not a motion for reconsideration and neither party in this case asked the trial court to reconsider its judgment. 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), and they are

generally prohibited in trial courts. *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”). There was no error in the trial court’s judgment in this case however. The judgment did not need to be *modified*. Instead, the State merely asked the court to *enforce* the terms of the plea bargain. Gilbert, by comparison, asked the court to ignore it.

A plea bargain is a contract between the State and a defendant, *State v. Bethel*, 110 Ohio St. 3d 416, 2006-Ohio-4853 ¶150, 854 N.E.2d 150. That contract 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”). In other words, a plea bargain is both a contract between the parties and an order of the court. A court is asked to enforce a contract in the event of a breach; it is not asked to “reconsider” the contract. For example, if a person contracts with a company to perform work that the company then fails to perform, then the person would not seek “reconsideration” of the contract. They would seek enforcement of the contract. A breach by one party does not create an “error” in the contract that needs to be reconsidered.

Thus the fact that the Civil Rules do not permit courts to reconsider final judgments does not mean that courts cannot grant relief from judgments—especially when a defendant violates the terms of a plea bargain. In *Pitts v. Ohio Department of Transportation*, 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.” 67 Ohio St. 2d 378, 380 (1981). But what is not “conspicuously absent” from the Rules is a motion allowing *relief* from judgment, which is what the State sought below.

The First District should have recognized the State's request for what it was: a request to vacate the judgment and to receive the relief that it was legally entitled to under the terms of the plea bargain. Even if the State had erroneously titled its motion as a Motion for Reconsideration, "[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*, Cuyahoga App. No. 77014, 2000 Ohio App. LEXIS 3838, 2000 WL 1222015, *3 (Aug. 24, 2000). Properly construed, the State's motion asked for nothing more than to have the trial court exercise its inherent authority and hold Gilbert to the terms of the bargain that he made. The First District's decision to the contrary was in error and should be reversed.

1. None of the practical concerns militating against motions for reconsideration are present here.

There are reasons to disfavor motions for reconsideration. As this Court noted, reconsideration of trial court decisions is disfavored because it requires 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*, 67 Ohio St. 2d at 381. Not only that, but the Court also stated that allowing for reconsideration of final judgments would be costly and inefficient; it would create a "procedural morass" that would confuse the "timeliness of appeal and whether the Court of Appeals is vested with jurisdiction." *Id.* The concerns that the Court expressed in *Pitts* are all legitimate problems with motions that ask a court to correct errors after judgment is final. *Huebner*, 75 Ohio St. 3d 381 at ¶2.

Because the State's request to enforce Gilbert's plea bargain was not a motion for reconsideration however, none of those problems are present in this case. The State asserted an unequivocal position: that the defendant breached his duty under the plea bargain. There was no

need to decipher the nature of State's motion. *Compare Pitts*, 67 Ohio St. 2d 378 at 381 (If motions for reconsideration were permitted courts would have to "try to decipher form over substance."). The State also asked for definitive relief: that the court enforce the terms of Gilbert's plea bargain. Finally, this case does not present a "procedural morass" regarding the merits or timeliness of the judgment. Motions to enforce plea bargains 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 on any matter properly preserved on appeal. And, of course, if the State reconvicts a defendant, he will have the opportunity to fully appeal the subsequent conviction. Thus, a criminal defendant who breaches a plea agreement has not been deprived of any of his appellate rights, nor is there any confusion about when the defendant can appeal. *Compare id.*, (expressing concerns about "the timeliness of appeal and whether the Court of Appeals is vested with jurisdiction.").

2. A general interest in finality does not prevent the trial court from enforcing its order.

The primary case that the First District relied upon below, *State v. Raber*, 134 Ohio St. 3d 350, 2012-Ohio-5636, reinforces the differences between "reconsideration" and relief from judgment. *Raber* highlighted the arbitrary effects that flow from a trial court's reconsideration of a final judgment. In that case, the State failed to present evidence necessary to classify Raber as a sex offender. *Id.* at ¶3. Yet, 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. *Id.* at ¶9.

The facts of *Raber* reflect precisely the type of judicial caprice that the prohibition on reconsideration is designed to avoid. Having once run the gantlet, Raber should not have been called back before the court and forced to run it again. Yet, in Raber's case, he was required to

run it twice, before two different judges, and was still denied the protection of the original judgment in his favor.

None of those concerns raised in *Raber* are implicated here. There was no perceived error by the court to reconsider or correct. The trial court was not acting capriciously when it vacated the judgment. Indeed, Gilbert was the master of his own fate; there were no surprises waiting for him. Had Gilbert fulfilled his part of the bargain, this case would not be before this Court today. But once he chose to disregard his duty, he knew the State could move against him. Gilbert chose to breach the plea bargain, and the trial court correctly chose to enforce its terms.

CONCLUSION

For these reasons, the Attorney General of Ohio asks that this Court reverse the judgment of the lower court and reinstate the trial court's decision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Merit Brief of *Amicus Curiae* Attorney General of Ohio in Support of Plaintiff-Appellant State of Ohio was served by U.S. mail this 19th day of August, 2013, upon the following counsel:

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