

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

August 28, 2024

[Cite as *08/28/2024 Case Announcements #3, 2024-Ohio-3230.*]

APPEALS NOT ACCEPTED FOR REVIEW

2024-0523. State v. Clark.

Cuyahoga App. No. 112810, **2024-Ohio-734.**

Donnelly, J., dissents, with an opinion joined by Stewart and Brunner, JJ.

DONNELLY, J., joined by STEWART and BRUNNER, JJ., dissenting.

{¶ 1} This appeal presents an opportunity for this court to address a deeply troubling flaw that plagues our criminal-justice system: postconviction plea agreements, which I colloquially refer to as “dark pleas.” Dark pleas—pleas entered by convicted prisoners who do not have any charges pending against them—lack the procedural guardrails that protect a criminal defendant’s constitutional rights and are often entered into by prisoners only because of the unconscionable level of prosecutorial pressure on them to abandon colorable claims of innocence. I dissent from this court’s decision not to accept jurisdiction over this case to address this subversion of criminal defendants’ due-process rights.

{¶ 2} According to the facts as described by the Eighth District Court of Appeals and by appellant, Lamont Clark, Clark was convicted of murder in 1993. In 2015, he filed a postconviction motion for a new trial after discovering evidence that the prosecutor in his murder case had removed portions of a medical record containing a statement from the victim that her ultimately fatal gunshot wound was self-inflicted. 2024-Ohio-734, ¶ 3-4 (8th Dist.). Appellee, the State of Ohio, opposed Clark’s motion, and the matter was scheduled for a hearing for early 2016. *Id.* Clark claims that prior to the start of the hearing, he learned that his mother was gravely ill. *See id.* at ¶ 6. He was then presented with a plea deal in which the State would

rescind its opposition to Clark's motion for a new trial in exchange for his pleading guilty to involuntary manslaughter. *Id.* at ¶ 4. According to Clark, if he accepted the plea deal, he would be released that same day, but if he rejected the plea deal, he would go back to prison indefinitely while the matter was being litigated. *See id.* at ¶ 6. Fearing that he had no other chance of seeing his mother before she died, Clark accepted the plea. *See id.* at ¶ 7.

{¶ 3} Seven years later, Clark filed a motion to withdraw his guilty plea, claiming that under the circumstances of his mother's illness, his plea was coerced and made while he was under duress. *Id.* at ¶ 5, 12. In addition to his own affidavit, Clark presented an affidavit from the victim's mother stating her belief that her confiding in the prosecutor that she had ill feelings toward Clark may have fueled the narrative that Clark was guilty of her daughter's murder. *Id.* at ¶ 5.

{¶ 4} The trial court denied Clark's motion, and the Eighth District affirmed the trial court's judgment, holding that Clark had failed to make the required showing of manifest injustice to support withdrawing his guilty plea, because the record of the plea hearing did not reflect his affidavit's stated reason for his having pleaded guilty. *Id.* at ¶ 13. The Eighth District further determined that the established prosecutorial misconduct in Clark's murder case was not relevant, because even though the misconduct undermined confidence in the guilty verdict, Clark had relinquished the right to raise the issue at an evidentiary hearing by entering a guilty plea. *Id.* at ¶ 14.

{¶ 5} During pretrial proceedings, the accused in a criminal action is presumed innocent until proven guilty beyond a reasonable doubt. R.C. 2901.05(A); *Fuller v. State*, 12 Ohio St. 433, 434 (1861); *Estelle v. Williams*, 425 U.S. 501, 503 (1976). Courts must diligently safeguard that presumption by avoiding factors that would undermine fairness in the proceedings. *In re Winship*, 397 U.S. 358, 362-363 (1970). Furthermore, under the Sixth Amendment to the United States Constitution, criminal defendants are afforded several rights that have long been held to be "the most basic ingredients of due process of law." *Washington v. Texas*, 388 U.S. 14, 18 (1967). Those rights include a defendant's " 'right to reasonable notice of [the] charge against him, . . . a right to his day in court . . . , a right to examine the witnesses against him, [a right] to offer testimony, and [a right] to be represented by counsel.' " *Id.*, quoting *In re Oliver*, 333 U.S. 257, 273 (1948).

{¶ 6} Despite being nearly indistinguishable from pretrial proceedings, postconviction proceedings following a motion for a new trial are handled in an entirely different manner; they lack the procedural guardrails that protect a criminal defendant’s constitutional rights, and trial judges use their discretion in deciding whether to hold a hearing in open court to allow a defendant to present the allegedly new exculpatory evidence—defendants’ motions for such hearings are usually denied. Donnelly, *The Dark Plea: One of the Most Coercive Abuses of Power Permitted in the Criminal Justice System*, 72 Clev.St.L.Rev. Et Cetera, 125, 128-131 (2024), available at <https://engagedscholarship.csuohio.edu/etcetera/vol72/iss1/6>.

{¶ 7} Clark’s case involved the insidious practice by prosecuting attorneys of pressuring a prisoner to plead guilty to nonexistent, nonpending charges in exchange for the State’s withdrawing its opposition to a motion for a new trial on the basis of newly discovered exculpatory evidence. Clark did not regain the Sixth Amendment rights that he enjoyed during the pendency of the underlying case. Nor was his presumption of innocence restored. The State circumvented its burden to proceed with the prosecution in light of what was then known to be true. *See id.* at 130-131. It can be gleaned from the State’s willingness to withdraw its opposition to Clark’s motion for a new trial that it conceded that prosecutorial misconduct had occurred in the underlying case. In fact, the State implied this concession after the plea colloquy:

COURT: The basis for this motion was?

COUNSEL [for defendant]: Basis for the motion was it was learned last year in April, we obtained the full medical records for Ms. Banks from her brief hospitalization for this and we learned that the prosecutor in the case, Edward Walsh, had removed a number of pages from the medical records which the victim had stated that the gunshot was self-inflicted. I believe that this would undermine confidence in the verdict sufficient to warrant vacating and granting the petition for postconviction release.

COURT: Very good.

STATE: We agree with that, Your Honor. Although we don’t believe it absolved Mr. Clark of all responsibility, it undermined our confidence in the verdict, as well.

COURT: Well, lesson to be learned for your office.

STATE: Yes, Your Honor.

2024-Ohio-734 at ¶ 4.

{¶ 8} In light of the State’s willingness to withdraw its opposition to the motion for a new trial in the wake of strong evidence of prosecutorial misconduct, it can be concluded that the dark plea allowed the State to avoid (1) losing face through a likely defeat at a hearing on the new-trial motion, (2) regaining the burden to prove the charges against Clark beyond a reasonable doubt, and (3) engaging in plea negotiations with a defendant who is protected by a full panoply of constitutional rights instead of a prisoner who lacks such protections. The unsettling consequence is that in exchange for his freedom, the prisoner relinquishes the possibility of facing a new trial with all the protections of the Constitution. The cost of that freedom is a conviction on a charge that wasn’t even pending for a crime that the person maintains he did not commit.

{¶ 9} The flaws in Clark’s postconviction plea proceedings were compounded by the fact that Clark’s actual reasons for entering the plea agreement were not stated on the record. The lack of a record later allowed the appellate court to decline to actively consider the validity of Clark’s guilty plea and instead simply note that the plea colloquy was recited on the record. *Id.* at ¶ 16-17. The appellate court also refused to consider the egregiousness of the 1992 prosecutorial misconduct by noting that no record was made about the matter during the 2016 postconviction plea proceedings and concluding that *res judicata* applied. *Id.* at ¶ 14.

{¶ 10} Although the prosecutorial misconduct during Clark’s trial proceedings is an issue on its own, its place in this appeal should not be considered in a vacuum; its impact was pervasive. The prosecutor’s corrupt act of removing exculpatory evidence from the victim’s medical record potentially caused Clark’s wrongful conviction and his being falsely imprisoned for decades. Clark was then forced to navigate the defective postconviction-proceedings process, which culminated with the horrible choice of returning to prison indefinitely or being free to go after pleading guilty to an unsubstantiated crime (despite having otherwise asserted his innocence).

{¶ 11} This appeal represents a chance for this court to address the breakdown of justice in the postconviction world. It is unsettling that dark pleas exist as a means of circumventing the revival of the State’s burden of proof and the defendant’s constitutional rights that would

normally result from a meritorious motion for a new trial to withdraw a guilty plea. We should take this opportunity to address the deeply rooted flaws in postconviction plea bargaining. Because I would accept Clark's jurisdictional appeal, I dissent.
