

CANTERO v. STATE OF PONAPE

SEMENS CANTERO, Appellant

v.

STATE OF PONAPE, TRUST TERRITORY OF THE  
PACIFIC ISLANDS, Appellee

Criminal Appeal No. 91

Appellate Division of the High Court

March 14, 1983

Appeal of conviction and sentence for illegal possession of a firearm. The Appellate Division of the High Court held that government's violation of its plea bargain agreement mandated vacation of sentence and remand to trial court for either withdrawal of guilty plea or resentencing by a different judge.

**Criminal Law—Plea Bargaining—Violation of Agreement**

Government's violation of a plea bargain agreement upon which the defendant relied in good faith mandates that the judiciary prescribe a remedy that insures the defendant is not prejudiced by such violation.

---

Before MUNSON, *Chief Justice*, MIYAMOTO, *Associate Justice*, and LAURETA,\* *Associate Justice (Temporary)*

Semens Cantero appeals the conviction and sentence of the Trial Division of the High Court for the Trust Territory of the Pacific Islands which adjudged him guilty on two counts of violating 63 TTC § 552. The primary question raised on appeal is whether the government's violation of its plea bargain agreement mandates vacation of

---

\* Judge, District Court for the Northern Mariana Islands, designated Temporary Judge by the Secretary of Interior.

appellant's sentence. We hold that such prosecutorial misconduct requires vacation of sentence and remand for either withdrawal of guilty plea or resentencing by a different judge.

### I. FACTS

Appellant was initially charged by information (Criminal Case No. 79-79) with: (1) possession of a firearm in violation of 63 TTC § 552; and (2) use of a firearm without identification card in violation of 63 TTC § 556. By amended information (Criminal Case No. 80-79) appellant was charged with: (1) possession of a dangerous device (dynamite) in violation of 63 TTC § 552; (2) possession of stolen property in violation of 11 TTC § 855; and (3) taking and carrying away of another's personal property in violation of 11 TTC § 852. The incidents allegedly took place on or about December 3, 1979.

Appellant and the government entered into the following plea bargaining agreement:

1. Appellant promised to plead guilty to:
  - (a) Possession of a firearm in violation of 63 TTC § 552 as alleged in Criminal Case No. 79-79; and
  - (b) Possession of dynamite in violation of 63 TTC § 552 as alleged in Criminal Case No. 80-79.
2. The government promised:
  - (a) To drop all other charges in Criminal Case Nos. 79-79 and 80-79;
  - (b) To dismiss two other pending criminal charges against appellant; and
  - (c) Not refer during sentencing in Criminal Case Nos. 79-79 and 80-79 to appellant's use of dynamite on occasions other than the incident which resulted in the conviction.

After conviction upon his bargained guilty pleas, appellant was sentenced on April 9, 1980. During the sentence hearing, the government stated that it had information that the appellant had used dynamite for his personal use. As the incident to which appellant pleaded guilty occurred within the course of his employment, the reference to personal use was made in violation of the government's plea agreement. Appellant moved to withdraw his guilty plea; the motion was denied.

Appellant raises several arguments in his appeal primarily addressing the issue of the breach of the plea agreement. We decide this case on the basis of that breach, making it unnecessary to decide the other issues.

## II. DISCUSSION

The government noticeably declines to challenge, and thus implicitly concedes appellant's charge that the plea agreement included the prohibition on prosecutorial comment on appellant's other uses of dynamite. Therefore, the court need not remand for an evidentiary hearing on the terms of the agreement.

In *Santobello v. New York*, 404 U.S. 257, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971), the United States Supreme Court addressed the issue now before this Court. In *Santobello*, the defendant and the government entered into an agreement whereby the defendant promised to plead guilty to a lesser included offense in exchange for the government's promise to make no recommendation as to sentence. The defendant pleaded guilty as agreed; however, the government breached its promise and recommended the maximum sentence. Applying principles of contract law, the Supreme Court concluded:

This phase of the process of criminal justice, and the adjudicative element inherent in accepting a plea of guilty, must be attended by safeguards to insure the defendant what is reasonably due in the circumstances. Those circumstances will vary, but a constant

factor is that 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 promise must be fulfilled. 404 U.S. 257, 262.

The Court continues to hold that the inadvertence of the breach does not lessen its impact. *Id.* When the government makes a plea agreement upon which the defendant relies in good faith, the judiciary will not let the defendant be prejudiced if that reliance is betrayed. *United States v. Goodrich*, 493 F.2d 390, 393 (9th Cir. 1974).

*Santobello* prescribed two possible remedies for a breach of the plea agreement: (1) "special performance" of the agreement through resentencing by a different judge; or (2) withdrawal of the guilty plea and an opportunity to plead anew to the original charges. The ultimate relief to which the appellant is entitled is to be left to the trial court. 404 U.S. 257, 263. In the interests of justice, the case should be reassigned upon remand. *Id.* See, e.g., *State v. Waiiau*, 60 Hawaii 93, 588 P.2d 412, 415-16 (1978).

The judgment is vacated and the case is remanded for reassignment and reconsideration not inconsistent with this opinion.