

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

NOVEMBER 1995 SESSION

FILED
January 26, 1996
Cecil W. Crowson
Appellate Court Clerk

STATE OF TENNESSEE,

Appellee,

VS.

JAMES R. RAY,

Appellant.

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C.C.A. NO. 01C01-9503-CC-00051

WILLIAMSON COUNTY

HON. DONALD P. HARRIS ,
JUDGE

(Certified Question of Law)

FOR THE APPELLANT:

FOR THE APPELLEE:

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OPINION FILED: _____

REVERSED AND DISMISSED

JOHN H. PEAY,
Judge

OPINION

The defendant was arrested on a *capias* issued as a result of an indictment containing four charges of drug violations by the defendant. At the time of his arrest, the defendant was found to be in possession of an additional quantity of marijuana. The defendant eventually pled guilty on two of the original drug charges pursuant to a plea agreement reached with the State which involved fines of three thousand dollars (\$3000) on each charge and two years probation. An additional condition of the plea bargain agreement was that the State would not pursue the marijuana charge in exchange for the defendant's guilty pleas.

In March of 1994, the defendant filed a petition pursuant to T.C.A. § 40-24-104 to have his fines reduced. After the hearing the trial judge reduced his fines from three thousand dollars (\$3000) to one thousand dollars (\$1000) on each conviction. After this reduction of fines, the State proceeded to indict the defendant on a charge of possession of marijuana with intent to sell or deliver.

The defendant filed a motion to dismiss the indictment based on the plea agreement entered into with the State. The trial judge denied this motion to dismiss and thereafter the defendant entered a guilty plea to this charge but reserved a certified question of law. It is the trial judge's denial of his motion to dismiss the indictment that the defendant now appeals to this Court.

The State now concedes, relying on a previous unpublished opinion of this Court, that the district attorney general erred when he prosecuted the defendant for an offense disposed of by the plea agreement. See State v. Kimberly Denton, C.C.A. No.

01C01-9207-CC-00229, Williamson County (Tenn. Crim. App. filed April 22, 1993, at Nashville).

From our review of the record, we agree that the district attorney general violated the terms of the plea agreement. Therefore, the trial judge's action in denying the defendant's motion to dismiss is reversed, the defendant's conviction for possession of marijuana with intent to sell is set aside, and this charge against the defendant is dismissed with prejudice.

JOHN H. PEAY, Judge

CONCUR:

JOE B. JONES, Presiding Judge

JOE H. WALKER III, Special Judge