



Relations between the two after the December date were acrimonious to say the least, resulting in defendant's plea to reckless conduct, a Class A misdemeanor, and an order of protection. As to the property in this case, defendant bought a 1989 Ford Taurus in June of 1999 for \$1,010.

¶ 5 On July 19, 1999, defendant entered Wilson's home armed with a pistol, forced Wilson into her car, drove her to a storage facility where the Taurus was parked, sexually assaulted her, handcuffed her to the floor of the car, and attempted to drive the Taurus out of the storage unit. Defendant was arrested at that point in time. An inventory of the Taurus revealed two loaded handguns and three five-gallon containers of gasoline and a detonator switch. The Taurus also contained a number of items indicating plans for an extended trip, including cash, blankets, food, and drinks. The next day, defendant was charged with home invasion, kidnaping, aggravated kidnaping, three counts of criminal sexual assault, three counts of aggravated criminal sexual assault, two counts of unlawful use of a weapon, and armed violence. In October of 1999, he pled guilty to one count of home invasion and one count of aggravated kidnaping. Negotiation included the State's agreement to impose a 27-year sentencing cap and to not seek consecutive sentences, as well as an agreement to dismiss a forfeiture action filed against the Ford Taurus. Defendant was sentenced to 20 years on November 4, 1999.

¶ 6 Subsequent to the plea, defendant filed a motion to reduce sentence and later amended that to include withdrawal of his guilty plea. Among various subsequent pleadings in June of 2002, defendant filed a third amended motion to reduce his sentence and withdraw his guilty plea alleging, *inter alia*, that return of his property was a term of the plea agreement. At a hearing on August 22, 2002, defendant's counsel during the criminal proceeding testified that there was an understanding with the State that the noncontraband items of defendant's personal property would be returned to him after all of the criminal proceedings were final,

specifically, after the plea was final and could no longer be appealed. Counsel testified that he explained to defendant that he would not receive the property until the case was concluded and was final. The circuit court entered the following order:

"While there is some indication that the matter was referred to in discussions of counsel, the evidence shows that [attorney for defendant] understood and informed [d]efendant that the property would be returned after thirty days after the judgment was entered on the plea. The sentencing judgment was entered 11-5-99. Defendant filed his '[m]otion to [r]educe [s]entence' 12-2-99, within 30 days. However, the filing of the motion, in effect, stayed the finality of the sentencing judgment from taking effect. Furthermore, having filed the [m]otion to [r]educe [s]entence, the possibility remained open for [d]efendant to file a [m]otion to [w]ithdraw [g]uilty [p]lea and thus himself renege on the plea agreement. That being the case, this court finds that [d]efendant has not carried his burden of proving that the State reneged on its plea agreement."

Defendant appealed the subsequent written order, which appeal was dismissed by this court on the basis of lack of jurisdiction, and a subsequent petition for leave to appeal to the supreme court was denied.

¶ 7 In August of 2009, defendant filed a "petition for specific performance of negotiated plea agreement" alleging that the return of his property was a term of the plea agreement and that, at the date of filing, the appeals were complete. At a subsequent hearing in September of 2009, the State agreed to return to defendant's son, Martin, the items not used in the commission of the offenses to which defendant pled guilty. In December of that year, the State indicated it had returned all of the questioned property to Martin, except for the 1989 Ford Taurus, which had been destroyed. The petition was set for hearing.

¶ 8 On April 8, 2010, a hearing was held on the petition. Included in the hearing was the

testimony of Ron Stanley, the owner of the Repair Shop in Olney, Illinois. The Taurus had been towed to his facility on July 19, 1999, and he testified that as of July 29, 1999, the value of the Taurus was \$700. The towing fee owed to the Repair Shop was \$50, and the storage fee the shop charged was \$10 per day. Defendant's son, Martin, acting on defendant's behalf with power of attorney, testified that the State's Attorney's office had told him that he could not retrieve the Taurus until appeals were complete. Martin and Stanley both testified that they had a subsequent conversation about the automobile and that Stanley pointed out to Martin that, considering towing and storage, the outstanding balance as of December 16, 1999, would have been \$1,560. Both also agreed that upon payment of the outstanding fees at that time, Martin could have taken possession of the Taurus. Martin declined to pay the fees and, therefore, did not take possession of the Taurus. In 2000, the Repair Shop bought the Taurus at a public sale for \$370. The State issued a junk title and Stanley subsequently transferred ownership of the Taurus to his son who owned a salvage yard where the car was destroyed.

¶ 9 The circuit court requested written arguments from both parties. Defendant, representing himself, in a written submission to the court conceded that the circuit court had never found that return of the property was part of the plea agreement.

¶ 10 The circuit court denied defendant's motion for specific performance. The circuit court, in its docket order, reiterated that there was no indication on the record made at the time of the plea agreement that a promise by the State to return any property was part of the plea agreement. The court further found that the side agreement between the State and defendant to return property was to be executed 30 days after the criminal matter was final. The circuit court concluded, based on the record in this case, that the State did not violate the plea agreement or any side agreement, and it denied the motion for specific performance. Defendant timely appealed, arguing to this court that the circuit court was in error and that,

because the property was destroyed, the only effective remedy would be to allow withdrawal of the plea agreement.

¶ 11

#### ANALYSIS

¶ 12 Defendant argues that due process requires that a guilty plea be knowingly and voluntarily made (*Boykin v. Alabama*, 395 U.S. 238 (1969)) and that a valid plea agreement presupposes that the parties will carry out the agreement and each will receive the benefit of their bargain (citing *Santobello v. New York*, 404 U.S. 257 (1971)). As a matter of due process, because the plea affects constitutionally protected interests, a defendant in a plea agreement is protected from breach. Defendant further argues 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 a promise must be fulfilled." *People v. Whitfield*, 217 Ill. 2d 177, 189 (2005). While the record of the plea agreement indicates, as to the Ford Taurus, that pending forfeiture proceedings against the automobile would be dismissed, there is nothing else in the plea agreement concerning the Taurus. Defendant argues that in making his plea, he relied upon the State's promise that his noncontraband personal property, including the Taurus, would be returned to him. Because that did not occur and return is physically impossible, defendant argues he should be allowed to withdraw his guilty plea.

¶ 13 The court, in denying defendant's motion for specific performance, noted that the record did not indicate that an agreement to return the property was part of the plea agreement. The court also found that the side agreement as to personal property return was to take effect after the criminal matter was final. The court then noted that defendant's postplea motion, specifically his motion to reduce sentence and his motion to reduce sentence and withdraw guilty plea, had tolled the appeal time after sentence that was implicit in the side agreement and, therefore, kept the agreement from becoming final. The court also noted

defendant's appeal from denial of both motions. During the hearing, defendant's counsel indicated that the criminal matter would have to be concluded and the plea final in his discussions with defendant. Implicit or explicit in these discussions was an anticipated period of 30 days, but the essence of the communication from counsel to defendant was conclusion and finality as to the criminal proceeding.

¶ 14 Where the terms of a plea agreement are in dispute, we review the terms of the plea agreement under an objective standard and should not reverse the circuit court's determination unless contrary to the manifest weight of the evidence. *People v. Navaroli*, 121 Ill. 2d 516 (1988). Defendant argues that the instant case is analogous to *Whitfield*. In *Whitfield*, the defendant pled in exchange for a 25-year sentence but was not made aware of an additional 3 years of mandatory supervised release that he would have to serve. Our supreme court concluded, because the defendant was not made aware of the mandatory supervised release, that the plea was not voluntary. *Whitfield* is distinguishable, however, from the instant case. Here, defendant, in his plea negotiations and subsequent plea, was aware that return of his personal property, including the Ford Taurus, was conditional upon finality of his criminal proceedings. We imply no blame or criticism of defendant for pursuing the postplea motions and appeal he attempted after the actual plea agreement. We note, however, that pursuit of the relief in these postplea motions resulted in his criminal proceeding not being final until a substantial period after the Ford Taurus had been destroyed. We also note that defendant's son, Martin, was fully advised as to the financial obligations concerning the Ford Taurus and chose not to pay the towing and storage fees, which nonpayment resulted in a junk title and destruction of the automobile. In its order concerning the motion for specific performance, the circuit court concluded:

"[T]he [S]tate did not violate its agreement with [defendant]. They agreed that [defendant] or [defendant's] agents could secure his rights to the vehicle after the

judgment entered on the plea was final. In the meantime, the tower obtained a junk title. There is no showing of any intervention by the prosecutor to prevent the [d]efendant or his agent from acting to object to Mr. Stanley obtaining a junk title or otherwise preventing [defendant] or his agent from taking the vehicle if the towing and storage fees were paid. The [m]otion for [s]pecific [p]erformance is denied."

¶ 15 We conclude that the State did not breach the plea agreement or the side agreement concerning the return of personal property, and accordingly, the circuit court's order, reviewed by the objective standard indicated in *Navaroli*, is supported by the evidence in this record.

¶ 16 Accordingly, for the reasons stated above, the order of the circuit court of Richland County denying defendant's motion for specific performance is affirmed.

¶ 17 Affirmed.