

Affirmed and Opinion filed June 7, 2001.



In The

Fourteenth Court of Appeals

NO. 14-99-01375-CR

WELDON GREER, JR., Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 337th District Court
Harris County, Texas
Trial Court Cause No. 820,450**

OPINION

The trial court convicted appellant of credit card abuse upon his plea of guilty, and assessed punishment at ten years' confinement. Appellant raises one point of error, contending that his guilty plea was involuntary because the State breached its plea agreement. We affirm.

Appellant asserts that his guilty plea was involuntary because it was induced by the promise of the State to dismiss forever an aggravated sexual assault charge. The record does not support the assertion that the State promised to dismiss forever, or even dismiss, the

aggravated sexual assault charge in exchange for appellant's plea.

Plea bargaining may consist of the prosecutor making concessions regarding punishment in exchange for the defendant's guilty plea. *Ex parte Williams*, 637 S.W.2d 943, 947 (Tex. Crim. App. 1982); *Benjamin v. State*, 874 S.W.2d 132, 134 (Tex. App.—Houston [14th Dist.] 1994, no pet.). A promise or agreement by the prosecutor must be enforced if it induced or is consideration for the defendant's plea. *Santobello v. New York*, 404 U.S. 257, 262 (1971); *Bass v. State*, 576 S.W.2d 400, 401 (Tex. Crim. App. [Panel Op.] 1979). If the State does not honor its part of the agreement, the plea is rendered involuntary. *Zinn v. State*, 35 S.W.3d 283, 285 (Tex. App.—Corpus Christi 2000, no pet. h.); *Hargrave v. State*, 10 S.W.3d 355, 359 (Tex. App.—Houston [1st Dist.] 1999, no pet.). However, if there was no agreement, there was no breach of duty. *Bass*, 576 S.W.2d at 401; *Hargrave*, 10 S.W.3d at 359.

The record in this case reflects no agreement between the State and appellant in which the State agreed to dismiss any charges in exchange for a plea of guilty in the credit card abuse case. The record does reveal that the State dismissed the aggravated sexual assault charge against appellant, but it also reveals that one of the State's reasons for doing so was because of a missing witness. Moreover, appellant's own testimony at a hearing considering his right to appeal from his guilty plea fails to disclose any promise by the State to dismiss forever the charge of aggravated sexual assault.

At the hearing, appellant complained that he was being punished twice. Appellant contended that in addition to the sentence he received in the credit card abuse case, the State was punishing him by failing to return his property seized as evidence in the aggravated sexual assault case. The trial court responded to appellant's complaint by instructing him that nothing in the file mentioned the return of property as a condition of the plea agreement. Appellant failed to assert that the State promised the return of his property. At another exchange in the record, appellant once again conveyed his desire that the State should return his property. The

trial court explained to appellant that “they’ve got 10 years from the date of the offense to decide whether or not they’re going to indict you or can indict you for that offense.” Again, appellant failed to assert that the State promised to dismiss forever the charge of aggravated sexual assault in exchange for his plea of guilty.

We hold that the plea agreement in cause number 820,450 was not breached, because there is no evidence to support appellant’s contention that a promise to dismiss forever the aggravated sexual assault charge was ever part of the plea agreement. Accordingly, appellant’s plea of guilty to the offense of credit card abuse was not involuntary.

Appellant’s sole point of error is overruled, and we affirm the judgment of the trial court.

/s/ Paul C. Murphy
Senior Chief Justice

Judgment rendered and Opinion filed June 7, 2001.

Panel consists of Justice Edelman, Justice Frost, and Senior Chief Justice Murphy.¹

Do Not Publish — TEX. R. APP. P. 47.3(b).

¹ Senior Chief Justice Paul C. Murphy sitting by assignment.