

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-090603
Plaintiff-Appellee,	:	TRIAL NO. B-0809428-A
vs.	:	<i>JUDGMENT ENTRY.</i>
TERENCE JAMES,	:	
Defendant-Appellant,	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Defendant-appellant Terence James was indicted for murder with a firearm specification, aggravated burglary, and having weapons under a disability. He waived his right to a jury trial. Before the trial began, he was offered a plea bargain: if he pleaded guilty to manslaughter and aggravated burglary, and agreed to testify for the state, he would receive a four-year sentence. He refused the offer and the trial began. The next day, James decided to enter a plea of guilty to reduced charges. At a later sentencing hearing, the court sentenced James to seven years' incarceration.

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

In his sole assignment of error, James argues that his plea was not voluntary because it was his understanding that he would receive a four-year sentence upon entering the plea.

Any plea of guilty in a criminal case must be entered knowingly, intelligently, and voluntarily,<sup>2</sup> and the trial court cannot accept an involuntary plea.<sup>3</sup> Guilty pleas are not deemed to be voluntary when the trial court promises a particular sentence, accepts the plea, and then gives the defendant a more severe sentence than promised.<sup>4</sup> Any ambiguity about whether a promise has been made must be resolved in favor of the defendant.<sup>5</sup>

The state argues in this case that it never agreed to a four-year sentence after the defendant had turned down the initial plea offer and the trial had started. Although this is confirmed by the record, it is the court that ultimately determines the sentence, and our task here is to decide not what the state agreed to, but what effect is to be given to the representations made by the court before it accepted James's plea. After carefully examining the record, we hold that James entered his plea based upon a reasonable expectation that the court would impose a four-year sentence.

According to the crucial portion of the record, the trial court asked James, "Now, as I understand it, before the trial started, the State had offered you a plea to a four-year sentence; is that correct?" T.p. 77. James answered in the affirmative. The trial court then went on to say, "And he's willing to plead today. And after a presentence investigation, **this court would still honor that agreement.** I

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<sup>2</sup> *State v. Engle*, 74 Ohio St.3d 525, 1996-Ohio-179, 660 N.E.2d 450.

<sup>3</sup> Crim.R.11(C)(2)(a).

<sup>4</sup> *State v. Elias*, 8th Dist. No. 88945, 2007-Ohio-5444, at ¶6.

<sup>5</sup> *State v. Asberry*, 173 Ohio App.3d 443, 2007-Ohio-5436, 878 N.E.2d 1082, at ¶41.

think some members of the family may want six and may not be in agreement with this; is that correct?” (Emphasis added.) After this, James entered the plea.

The trial court clearly stated that James would receive a four-year sentence after the presentence investigation was completed. At the sentencing hearing, the trial court referred to the four-year sentence as a “suggested sentence” and stated that it was then unwilling to impose it: “So it’s going to go up some from the suggested sentence. And if you wish you can appeal this to the First District Court of Appeals \* \* \*.” On this record, we conclude that the four-year term of incarceration was a promised sentence, not a “suggested sentence.”

If, at the time of accepting the plea, the trial court would have said that the four-year sentence was contingent upon a review of the presentence investigation and the victim-impact statement, our holding in the case would be different. But here the record shows a promise of a specific sentence to induce a plea, and the imposition of a longer sentence rendered James’s plea involuntary. For this reason, the trial court should have granted James’s motion to withdraw his guilty plea. His sole assignment of error is, accordingly, well taken.

The trial court’s judgment is hereby reversed, and this cause is remanded for the withdrawal of the guilty plea and for further proceedings in accordance with the law.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**CUNNINGHAM, P.J., SUNDERMANN and HENDON, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on August 27, 2010

per order of the Court \_\_\_\_\_  
Presiding Judge