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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2217**

State of Minnesota,
Respondent,

vs.

Scott Douglas Miska,
Appellant.

**Filed January 20, 2009
Affirmed
Shumaker, Judge**

Pine County District Court
File No. 58-CR-05-754

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

John Carlson, Pine County Attorney, Nathan E. Sosinski, Assistant County Attorney, Pine County Courthouse, 635 Northridge Dr. NW, Suite 310, Pine City, MN 55063 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Marie Wolf, Assistant Public Defender, Suite 300, 540 Fairview Avenue North, St. Paul, MN 55104 (for appellant)

Considered and decided by Shumaker, Presiding Judge; Peterson, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

SHUMAKER, Judge

Appellant challenges the district court's denial of his motion for specific performance of the state's offer of a plea bargain. Because no plea agreement was ever reached and there is no authority to compel the state to keep an offer open indefinitely, we affirm.

FACTS

This appeal stems from the district court's denial of appellant Scott Miska's motion for specific performance of the state's offer of a plea bargain.

On July 26, 2005, the state charged Miska with careless driving and driving after cancellation of his license. At the omnibus hearing on June 1, 2006, Miska's defense attorney indicated that the state had made a favorable offer of a plea bargain but it would require that Miska's driver's license be reinstated. Counsel indicated that it would take some time to accomplish a reinstatement and he requested a continuance. Neither defense counsel nor the prosecutor spelled out the terms of the plea bargain offer on the record, but later proceedings reveal that the essence of the offer was that the state would agree to a stay of adjudication if Miska first obtained a reinstatement of his license. The court continued the case until September 29, 2006.

On that date, Miska's attorney told the court that Miska was close to having his license reinstated but he needed time to pay the reinstatement fee. He requested another continuance. The court denied the request, and Miska then pleaded not guilty and the matter was set for a jury trial.

When the parties appeared for a jury trial on July 9, 2007, defense counsel told the court that he thought the case had been resolved but that the “plea bargain changed.” He stated that Miska had done everything he could to have his license reinstated but that the department of public safety required him to wait approximately nine months before reinstatement. Defense counsel then indicated that he had prepared a plea petition reflecting the original plea bargain offer that Miska would “get reinstated and that he then [would] receive a stay of adjudication on the driving after cancellation charge” The prosecutor objected, stating that a stay of adjudication was not the “offer at this time.” He indicated that “the offer at one point was if he is valid, a stay of adjudication would be granted at the time of sentencing or a plea”

Referring to its own notes as to the history of the case, the court stated that “Mr. Miska was clearly told by this court on June 1 of 2006 that, if he wanted the benefit of that offer, he needed to be valid and that no more continuances would be granted.” The court also noted: “There is no offer that can be accepted by Mr. Miska because he simply has not been able to comply with the obligations that were expected when the offer was made,” and the court stated it would not grant a stay of adjudication. Finally, the court indicated that it did “not believe that this is a case in which the prosecutor gave Mr. Miska incorrect information or led him to believe something that wasn’t true”

The case was reset for jury trial on July 16, 2007. Defense counsel moved for specific performance of the plea bargain offer, and the court denied the motion because Miska “was not able to meet the prerequisite to that offer, which was reinstatement of his license.” Miska then waived a jury trial and the matter was tried to the court. The court

found him guilty and ordered judgment of conviction only on the offense of driving after cancellation of his driver's license. Thereafter, the court imposed a sentence and did not stay adjudication. This appeal followed.

DECISION

Because he detrimentally relied on the state's offer of a plea bargain, Miska claims he is entitled to specific performance of that offer. "On demonstration that a plea agreement has been breached, the court may allow withdrawal of the plea, order specific performance, or alter the sentence if appropriate." *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000). However, "there is no constitutional right to specific performance of a plea agreement." *State v. Garcia*, 582 N.W.2d 879, 882 (Minn. 1998) (citing *Santobello v. New York*, 404 U.S. 257, 262, 92 S. Ct. 495, 498 (1971)). Specific performance is an equitable remedy within the sound discretion of the court. *Lilyerd v. Carlson*, 499 N.W.2d 803, 811 (Minn. 1993). But issues involving the interpretation and enforcement of a plea are issues of law that we review de novo. *Brown*, 606 N.W.2d at 674 (citation omitted).

We reject Miska's argument for three reasons. First, as the district court noted, the parties never reached a plea agreement because Miska was unable to fulfill the condition precedent of reinstatement of his driver's license. We do not doubt that he made a good-faith effort to satisfy that condition, but the burden of determining the likelihood of reinstatement before "detrimentally" relying on the offer should be placed on Miska. Thus, there was no plea agreement to enforce, and Miska has not shown any authority for requiring the state to hold its plea bargain offers open indefinitely.

The second reason that Miska's claim lacks merit is that a plea of guilty is an essential component of a plea agreement. *Mabry v. Johnson*, 467 U.S. 504, 507, 104 S. Ct. 2543, 2546 (1984) (stating a plea bargain is executory until the court accepts the defendant's plea of guilty). Miska pleaded not guilty, never changed his plea, and went to trial on the basis of his plea.

The third problem with Miska's contention is that even if there were an agreement and a plea of guilty in accordance with that agreement, the agreement remained subject to the court's approval and acceptance. *See State v. Pero*, 590 N.W.2d 319, 324 (Minn. 1999) (finding that "the trial court has discretion in accepting a defendant's plea."); *State v. Goulette*, 258 N.W.2d 758, 762 (Minn. 1977) (holding that "[n]either the constitution nor our Rules of Criminal Procedure give to a criminal defendant an absolute right to have his plea of guilty accepted."); *see also State v. Linehan*, 276 Minn. 349, 353, 150 N.W.2d 203, 206 (1967) (holding that there is no "absolute right on the part of a defendant to plead guilty.") There is nothing in the record on appeal to suggest that the court would have granted a stay of adjudication to Miska, an individual with nine previous convictions for driving while under the influence.

Affirmed.