

SUPREME COURT OF LOUISIANA

No. 04-KK-0742

STATE OF LOUISIANA

v.

CLIVE PEYREFITTE

On Writ of Certiorari to the
First Circuit Court of Appeal

PER CURIAM:

Granted. The rulings below are reversed and the defendant's guilty pleas and sentences are reinstated.

In Ricketts v. Adamson, 483 U.S. 1, 107 S.Ct. 2680, 97 L.Ed.2d 1 (1987), the Supreme Court held that the Double Jeopardy Clause offers a defendant no protection from a second prosecution for the same offense, after sentencing and finality of his conviction by way of a guilty plea, as a consequence of voluntarily and unilaterally breaching the terms of a plea bargain with the state. However, the agreement in Adamson explicitly informed the defendant that in the event he did not testify against his former associates, the deal would be considered "null and void and the original charge will be automatically reinstated." Adamson, 483 U.S. at 9, 107 S.Ct. at 2685. The Supreme Court thus found that "[t]he terms of the agreement could not be clearer: in the event of respondent's breach occasioned by a refusal to testify, the parties would be returned to the status quo ante, in which case respondent would have no double jeopardy defense to waive. Id., 483 U.S. at 10, 107 S.Ct. at 2685. Because the defendant "clearly appreciated and understood

the consequences were he found to be in breach of the agreement," Adamson, 483 U.S. at 12, 107 S.Ct at 2687, his decision to renege on the agreement with the state represented a knowing and deliberate choice to upset the interests in finality of his conviction that the Double Jeopardy Clause would otherwise have protected.

United States v. Scott, 437 U.S. 82, 92, 98 S.Ct. 2187, 2194, 57 L.Ed.2d 65 (1978)

(Primary purpose of the Double Jeopardy Clause is "to protect the integrity of a final judgment . . .").

On the other hand, in the present case, the record establishes only that during the plea colloquy which immediately preceded sentencing, see La.C.Cr.P. art. 592 ("When a defendant pleads guilty, jeopardy begins when a valid sentence is imposed."), the trial court informed the defendant that he had obligations under the plea bargain and that failure to abide by the terms of his agreement with the state might expose him to a charge of perjury. The record does not disclose affirmatively that the defendant was also advised that he faced a second prosecution for the same criminal acts in the event he breached the plea bargain. Unlike the circumstances in Adamson, the present record thus fails to reveal that the defendant appreciated and understood the full consequences of breaching the plea bargain and thereby deliberately chose to upset the finality of his convictions and sentences when he decided not to abide by the terms of the agreement.

Adamson therefore provides no authority for vacating the defendant's guilty pleas and sentences and exposing him to a second prosecution for the crimes originally charged by the state. See Dyer v. State, 34 P.3d 652 653-54 (Okla Crim. App. 2001) (distinguishing Adamson because "[t]he state merely stated that [defendant] could then be charged with perjury" if he breached his plea bargain, and "[n]o other possible results of a breach were discussed."); cf. State v. Nall, 379 So.2d 731 (La.

1980)(a defendant's unilateral breach of a plea bargain may constitute "cause" for setting aside his agreement with the state and returning the parties to their pre-plea positions in cases in which he or she has not yet been sentenced on his guilty plea and jeopardy has therefore not yet attached); State v. Kelly, 96-0903 (La. App. 5th Cir. 11/12/97), 704 So.2d 800, writ denied, 97-3104 (La. 4/9/98), 717 So.2d 1142 (same).