

SUPREME COURT OF LOUISIANA

No. 96-K-0195

STATE OF LOUISIANA

Versus

BRUCE YOUNG, JR.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIRST CIRCUIT, STATE OF LOUISIANA

CALOGERO, C.J., dissenting.

There is nothing in the language of La. C.Cr.P. art. 881.2(A)(2) that precludes an appeal of a sentence entered by a trial court after agreeing to a sentencing cap. In this case, the trial court did not agree to impose a specific sentence, but rather only agreed to exercise his discretion within a certain sentencing range. Where there is an exercise of discretion, there is a potential for abuse of that discretion, and that abuse must be subject to appellate review. In State v. Smack, 425 So.2d 737 (La. 1983), we acknowledged that a defendant sentenced under an agreed upon sentencing cap had the right to appeal that sentence. La. C.Cr.P. art. 881.2(A)(2) did not overrule Smack.

Accordingly, I respectfully dissent.