

SUPREME COURT OF LOUISIANA

No. 2006-KK-2305

STATE OF LOUISIANA

v.

STERLING CARDON

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIRST CIRCUIT, PARISH OF ST. TAMMANY

PER CURIAM.

Writ granted. The appellate court decision to deny a writ, which affirms the trial court’s judgment is reversed.

In this case, an agreement not to prosecute was entered into by the District Attorney’s office and the defendant. The validity of an agreement not to prosecute is generally determined under contract principles, “while recognizing at the same time that a criminal defendant’s constitutional right to fairness may be broader than his or her rights under contract law.” *State v. Givens*, 1999-3518 p. 14 (La. 1/17/01), 776 So.2d 443, 455.

Here, the defendant substantially complied with the terms of the agreement and detrimentally relied upon its provisions. The District Attorney’s office failed to show that it had grounds “in the best interests of society and justice” to set aside the defendant’s diversionary status. The defendant did not violate the law anew or participate in new criminal conduct after he signed the agreement not to prosecute. The language of the agreement, with regard to its prohibition of committing a “new” offense is, at the least, ambiguous as to a guilty plea entered after the signing of the agreement to criminal behavior which occurred prior to the signing of the agreement.

Therefore, the language of the agreement must be construed against the District Attorney's office which drafted its provisions.

This case is remanded to the district court with orders to grant, at this time, the defendant's motion to quash the bill filed against him in connection with the criminal matter for which he was placed in diversion. The defendant is ordered to complete the requirements of community service pursuant to the agreement not to prosecute and to perform all other requirements of the agreement remaining and applicable, including the payment of the monthly supervisory fee. Should the defendant fail to complete the requirements of the diversion agreement, or should the defendant violate the agreement, then the District Attorney's office may proceed with prosecution pursuant to the agreement.