

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 13, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Nos. 00-2375-CR, 00-2717-CR

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

RICHARD V. STIGLITZ,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Pepin County:
DANE F. MOREY, Judge. *Reversed.*

¶1 PETERSON, J.¹ Richard Stiglitz appeals his judgment of conviction for two counts of disorderly conduct, contrary to WIS. STAT. § 947.01. Stiglitz argues that the circuit court erroneously accepted his guilty pleas after the term of

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

a deferred acceptance of guilty plea contract expired. We agree and therefore reverse.

BACKGROUND

¶2 Stiglitz was charged with two counts of disorderly conduct. He and the State entered into a contract to defer acceptance of Stiglitz's guilty pleas. The contract stated that Stiglitz would plead guilty to the two misdemeanors. The State would recommend that the circuit court defer acceptance of the pleas for one year. If Stiglitz complied with the conditions of the contract, the State would recommend that the charges be dismissed. If Stiglitz violated the conditions, the State would move the circuit court to accept the pleas. One condition was that Stiglitz not violate any criminal law.

¶3 On March 22, 1999, Stiglitz pled guilty to the misdemeanors. In accordance with the terms of the contract, the circuit court deferred acceptance of the pleas.

¶4 On August 30, 1999, the State charged Stiglitz with operating a motor vehicle while under the influence of an intoxicant, second offense.² The complaint alleged that the conduct occurred on July 12, 1999.

¶5 On May 15, 2000, following Stiglitz's conviction for the OWI offense, the State moved the circuit court to accept Stiglitz's guilty pleas to the disorderly conduct charges. Stiglitz objected to the motion because the State failed to make the motion within the one-year time period specified in the contract.

² See WIS. STAT. § 346.63(1).

The circuit court overruled the objection, accepted his pleas and found Stiglitz guilty. This appeal followed.

STANDARD OF REVIEW

¶6 A plea agreement is analogous to a contract and, therefore, we draw upon contract law principles to interpret a plea agreement. *State v. Windom*, 169 Wis. 2d 341, 348, 485 N.W.2d 832 (Ct. App. 1992). Construction of a written contract is a question of law we review independently. *Leitzke v. Magazine Marketplace, Inc.*, 168 Wis. 2d 668, 673, 484 N.W.2d 364 (Ct. App. 1992). Furthermore, when terms of a contract are plain and unambiguous, we will construe the contract as it stands. *Borchardt v. Wilk*, 156 Wis. 2d 420, 427, 456 N.W.2d 653 (Ct. App. 1990). The analogy to contract law, however, is not entirely dispositive because a plea agreement also implicates a defendant's due process rights. *State v. Rivest*, 106 Wis. 2d 406, 413, 316 N.W.2d 395 (1982).

DISCUSSION

¶7 The sole issue on appeal is whether the circuit court erroneously accepted Stiglitz's pleas after the term of the contract expired. The State argues the circuit court properly accepted the pleas because Stiglitz violated the contract within the one-year time period.

¶8 The language in the contract is as follows:

NOW, THEREFORE, on authority of the Pepin County Circuit Court, acceptance of the guilty or no contest plea in this County shall be deferred for a period of one year (1) years [sic], at the conclusion of which the case shall be dismissed provided you abide by the following contract conditions:

....

If you violate the terms of this contract, the Pepin County District Attorney may, during the period of deferred acceptance of guilty or no contest plea contract (1) revoke or modify; add or delete conditions of this deferred acceptance of guilty or no contest plea contract; (2) change the period of deferment; (3) move the Court for acceptance of your guilty or no contest plea.

The unambiguous language in the contract gives the district attorney the ability to take action against Stiglitz if he violates the terms of the contract, but that action must be taken “during the period” of the contract. The contract was for one year. Consequently, the district attorney had until March 22, 2000, to take action.

¶9 The State concedes that this portion of the contract could have been drafted to more accurately express the nature of the agreement. However, the State urges us to view the contract as a whole with the purpose of the contract in mind. The State contends that interpreting the contract to mean Stiglitz could violate the contract during the contract’s term and only be held accountable if the district attorney brought the violation to the attention of the circuit court within one year leads to a result not contemplated by the parties. We disagree.

¶10 Our interpretation of the contract is based on the unambiguous language of the contract itself. We cannot revise an unambiguous contract in order to relieve a party from a disadvantageous term to which that party agreed. *See State v. Toliver*, 187 Wis. 2d 346, 355, 523 N.W.2d 113 (Ct. App. 1994). Under the State’s interpretation, Stiglitz would never be assured that the underlying case would be dismissed because it leaves open the possibility that the district attorney may seek acceptance of the pleas at some future date, long after the contract expired. We conclude the only reasonable interpretation of the contract is that the district attorney is required to move for acceptance of the pleas within one year.

¶11 The State argues that Stiglitz is protected from the possibility that there would be no closure to his case because the circuit court has the discretion not to accept the pleas. According to the State, if it took action at some future date, long after the contract expired, the circuit court would certainly not accept the pleas.

¶12 However, the circuit court, once it accepts the plea agreement, is obligated to follow the terms of a plea agreement. *See State v. Barney*, 213 Wis. 2d 344, 361, 570 N.W.2d 731 (Ct. App. 1997). If the contract allowed the district attorney to move for acceptance of the plea beyond one year, the circuit court would be bound by the terms of the contract and would have to accept the pleas. Once a circuit court accepts the terms of a plea agreement, it is bound by that agreement. *State v. Comstock*, 168 Wis. 2d 915, 951, 485 N.W.2d 354 (1992).

¶13 The State further argues that Stiglitz's interpretation of the contract was not the original intent of the parties. The State contends that a defendant could violate the terms of the contract the day before it expires, thus making it impossible for the district attorney to move the circuit court to accept the pleas within the required time frame.

¶14 Preliminarily, we note that this hypothetical is not relevant here. The State had knowledge of Stiglitz's violation on August 30, 1999. The contract did not expire until March 22, 2000. The State could have complied with the timing requirements of the contract by filing a motion for the circuit court to accept the pleas at the time.

¶15 However, even if Stiglitz had violated the contract one day before its expiration, the plain language of the contract requires the district attorney to take

action within one year. By analogy, in *In re Leif E.N.*, 189 Wis. 2d 480, 526 N.W.2d 275 (Ct. App. 1994), we interpreted WIS. STAT. 48.32(3)³, pertaining to revoking juvenile consent decrees, and held that the juvenile court, before the consent decree expires, must find that the terms of the consent decree have been violated. *Id.* at 483. The State argued that requiring the juvenile court to vacate a consent decree before it expires effectively shortened the term of the consent decree. *Id.* at 487. We rejected the State's argument because of the unambiguous language of the statute. The contract at issue here is similar to WIS. STAT. § 48.32(3) in that the contract requires the district attorney to take action during the period of deferred acceptance, or in other words, before the contract expires.

¶16 Finally, the State argues that it was impossible for the district attorney to move the circuit court to accept the pleas when it became aware of Stiglitz's violation of the contract because there was, at that point, no adjudication of guilt. However, nothing in the contract required a conviction of the OWI violation before the district attorney could move to have the contract enforced. As soon as the State became aware of the OWI allegation, it could have moved to enforce the contract. The contract only requires that the district attorney make the motion within the one-year time period. It does not require convictions or ultimate resolution of the district attorney's motion under the contract to occur within one year.

³ WISCONSIN STAT. § 48.32(3) reads as follows:

(3) If, prior to discharge by the court, or the expiration of the consent decree, the court finds that the child, parent, guardian, legal custodian or expectant mother has failed to fulfill the express terms and conditions of the consent decree or that the child or expectant mother objects to the continuation of the consent decree, the hearing under which the child or expectant mother was placed on supervision may be continued to conclusion as if the consent decree had never been entered.

By the Court.—Judgment reversed.

This opinion will not be published. *See* WIS. STAT. RULE
809.23(1)(b)4.

