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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-1621**

State of Minnesota,  
Appellant,

vs.

Natasha Janice Schweitzer,  
Respondent.

**Filed May 20, 2008  
Affirmed  
Worke, Judge**

Winona County District Court  
File No. 85-CR-06-782

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

Charles E. Maclean, Winona County Attorney, Kevin P. O’Laughlin, Assistant County Attorney, Winona County Courthouse, 171 West Third Street, Winona, MN 55987 (for appellant)

Gary A. Gittus, 423 Third Avenue S.E., Rochester, MN 55904 (for respondent)

Considered and decided by Lansing, Presiding Judge; Worke, Judge; and Collins, Judge.

**UNPUBLISHED OPINION**

**WORKE**, Judge

On appeal from sentencing following a guilty plea for third-degree assault, the state argues that (1) the district court erred in finding that the plea agreement called for a

sentencing recommendation, rather than an agreed-on executed sentence of 24 months; (2) the guilty plea and the plea agreement, which the district court had accepted, called explicitly for an agreed-upon sentence rather than a recommendation, and the district court, in rejecting the terms of the agreement, was required to allow either party to withdraw from the agreement; and (3) by not doing so the district court violated the separation-of-powers doctrine and acted contrary to public policy as well as basic principles of fairness and contract law. We affirm.

## **D E C I S I O N**

The state argues that the district court erred in denying its motion to withdraw from the plea agreement when the district court failed to sentence respondent Natasha Janice Schweitzer to the agreed-upon executed sentence of 24 months. The interpretation and enforcement of plea agreements present issues of law subject to de novo review. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004).

In 2006, respondent, a daycare provider, intentionally broke the femur of a seven-month-old baby in her care. Respondent did not seek medical attention for the victim, and did not inform the victim's mother of the injury when she picked the infant up from daycare. Respondent was charged with first- and third-degree assault. A plea agreement was reached, which was memorialized in a rule 15 petition, providing:

If I plead guilty to [third-degree] assault with an agreed upon durational and dispositional departure, the state will dismiss the first-deg[ree] assault and I agree to cooperate with the pre-sentence investigation process. The parties agree that I can remain at liberty as long as I cooperate with the PSI and cond[ition]s of release.

The petition also had an appendix attached detailing the sentencing recommendation. The presumptive sentence was a stayed sentence of 12 months and one day. At sentencing, the district court imposed a sentence of 24 months in prison but stayed execution of 12 months of the sentence and placed appellant on probation for up to five years. The district court denied the state's motion to withdraw from the plea agreement. Several days after sentencing, the district court filed a sentencing order affirming the sentence imposed. The state subsequently moved for reconsideration of the motion to withdraw from the plea agreement, which the district court also denied.

In a criminal case when a plea agreement has been reached that contemplates entry of a guilty plea, a district court may accept or reject the terms of the plea agreement or postpone acceptance or rejection of the terms of the agreement until a presentence-investigation report has been completed. Minn. R. Crim. P. 15.04, subd. 3(1). District courts also have the discretion at sentencing to change their minds regarding a plea agreement earlier deemed acceptable. *State v. Kunshier*, 410 N.W.2d 377, 379 n.1 (Minn. App. 1987), *review denied* (Minn. Oct. 21, 1987). In that event, however, the district court “must inform [the defendant] of his right to withdraw the guilty plea and his right to take his chances at trial on all counts.” *Id.* at 379. A criminal defendant does not have an absolute right to withdraw a guilty plea once entered. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998).

The supreme court “has recognized that a defendant who pleads guilty in exchange for an *agreed-upon* sentence faces different consequences than a defendant who exchanges a guilty plea for the state's *recommendation* of a certain sentence.” *Perkins v.*

*State*, 559 N.W.2d 678, 687 (Minn. 1997). “[I]f the [district] court rejects an agreement as to a defendant’s [agreed-upon] sentence, the defendant is entitled to withdraw the guilty plea.” *Id.* (citing *State v. DeZeler*, 427 N.W.2d 231, 234 (Minn. 1988)). If, however, the district court rejects a recommendation regarding sentencing, then the defendant may not withdraw the guilty plea unless the defendant can establish that he mistakenly believed he could withdraw the plea if the court rejected the recommendation, or that there is some other ground for withdrawal. *Id.*

Here, the plea agreement, at best, constituted an agreement between the state and respondent for a sentencing recommendation. There is nothing in the record to indicate that the parties agreed to a specific sentence. In addition, when the plea agreement was presented to the court the prosecutor stated “[t]he parties will jointly *recommend* an upward durational as well as an upward dispositional departure.” (Emphasis added.) There also was no objection by the prosecutor when respondent’s attorney asked respondent “[y]ou understand that it’s ultimately still up to the judge in terms of what sentence is ultimately handed down here; correct?” Further, the appendix attached to the rule 15 petition details the *sentencing recommendation* to the court, which reinforces the conclusion that the plea agreement was not binding on the court. Finally, the district court sentenced respondent to a durational departure. The presumptive sentence was a stayed sentence of 12 months and one day. The district court imposed a sentence of 24 months; 12 months of the sentence was stayed to probation and respondent was ordered to serve the other 12 months as probationary jail time.

Because this constituted a sentencing recommendation, the state is not permitted to withdraw from the plea agreement unless it can establish that it mistakenly believed it could withdraw from the agreement if the court rejected the recommendation. Again, there is nothing in the record to show that the district court agreed to allow the defendant or the state to withdraw from the plea agreement in the event the court did not follow the sentencing recommendation. The state has also failed to show a basis for believing it would be permitted to withdraw from the plea agreement. Because we conclude that the agreement regarding sentencing was a recommendation, and that the state failed to show that it mistakenly believed it would be permitted to withdraw from the plea agreement in the event the district court rejected the recommendation, the district court did not err in denying the state's motion to withdraw from the plea agreement.

**Affirmed.**