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COURT OF APPEALS

STATE OF NEW YORK

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PEOPLE,

Appellant,

-against-

No. 36

CHRISTIAN WILLIAMS,

Respondent.

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20 Eagle Street  
Albany, New York 12207  
February 16, 2016

Before:

CHIEF JUDGE JANET DIFIORE  
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM  
ASSOCIATE JUDGE LESLIE E. STEIN  
ASSOCIATE JUDGE EUGENE M. FAHEY  
ASSOCIATE JUDGE MICHAEL J. GARCIA

Appearances:

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Meir Sabbah  
Official Court Transcriber

1 CHIEF JUDGE DIFIORE: Next on the calendar is  
2 number 36, People V. Christian Williams.

3 MS. COHEN: May it please the court, I'm  
4 Beth Fisch Cohen on behalf of the People of the State  
5 of New York. I'd like to request three minutes for  
6 rebuttal, please.

7 CHIEF JUDGE DIFIORE: Very well, counsel.

8 MS. COHEN: When defendant accepted a  
9 conditional plea, the court explained that if he  
10 complied with the court's conditions, he would be  
11 sentenced to three years; if not, he faced up to  
12 twelve years in prison. Just two weeks after his  
13 felony plea, defendant breached the commission - - -  
14 the conditions by committing a new crime, and the  
15 court sentenced him to six years. The term was legal  
16 and comported with defendant's legitimate and  
17 reasonable expectations of the promise.

18 JUDGE GARCIA: Counsel, I - - - I have some  
19 trouble with how it comported with his legitimate  
20 expectations, because weren't his legitimate  
21 expectations, at that plea, three years to twelve  
22 years? And I know he happened to get a sentence that  
23 was six, but to me, the key sentence in that plea  
24 allocution was, I can give you more, but I don't have  
25 to, if you violate the terms, right?

1           So his mind, he's thinking, I got a minimum  
2 of three; if I violate the terms of this agreement, I  
3 can still get three, but he doesn't have to give me  
4 three any more, he can give me more. Isn't that  
5 different then saying his legitimate expectations  
6 were met because he got a six-year sentence?

7           MS. COHEN: Well, the court explained that  
8 it would conduct a hearing and would determine  
9 whether or not the nature of the violation would lead  
10 to an enhanced sentence. It said, I could continue  
11 to give you three, or I could not - - -

12           JUDGE GARCIA: Which was not true.

13           MS. COHEN: - - - he got a full - - -

14           JUDGE GARCIA: He couldn't, in law,  
15 continue to give that defendant three years.

16           MS. COHEN: Well, that's not because - - -  
17 that's because the defendant had an intervening act  
18 of breaching the conditions.

19           JUDGE GARCIA: No, it's because of the law;  
20 he could not give that defendant a legal three-year  
21 sentence, right?

22           MS. COHEN: That's correct. And if  
23 defendant had not breached the conditions and  
24 returned to court, either he would have been able to  
25 withdraw his plea, or they could have done a

1           repleader and you could of - - -

2                   JUDGE GARCIA: Looking at the voluntariness  
3 of this plea, he's there - - - I mean, knowing and  
4 voluntary plea, right? He's there thinking, I could  
5 get three years; if I violate the terms of my  
6 continued release, I can get three or more years, but  
7 I could still get three years.

8                   My minimum is - - - my minimum sentence is  
9 three, but in fact his minimum sentence is six. So  
10 how is that a legitimate sentencing expectation? And  
11 do you think there's an appearance problem here? But  
12 let's get to the first; how do you think there's a  
13 legitimate expectation on that defendant's part that  
14 he can - - - he has to get six years?

15                   MS. COHEN: By being told he could get up  
16 to twelve; that was that direct consequence.

17                   JUDGE FAHEY: But that's - - - that's the  
18 top end. See, I think Judge Garcia has hit really on  
19 the heart of it, and he's correct - - - Judge Garcia  
20 is correct; it's the false inducement that really is  
21 the heart of the plea, not - - - not that the top  
22 number may be right, and that's - - - I think we  
23 really need to address his question on that point.

24                   MS. COHEN: But - - - but it isn't - - - in  
25 - - - this court has repeatedly held that when you're

1 talking about sentencing expectations, specifically  
2 as opposed to due process rights, then the defendant  
3 - - - the defendant can meet those expectations - - -  
4 the promise can be met so long as there's an  
5 objective determination that the ultimate sentence  
6 was fulfilled. This is just like in Collier, where  
7 the - - -

8 JUDGE GARCIA: But it's not like Collier,  
9 because Collier, the defendant goes in with a  
10 legitimate expectation he's getting twenty-five  
11 years. He pleads knowing his minimum sentence is  
12 twenty-five years; it could be thirty in that case,  
13 but it's not going to be anything less than twenty-  
14 five, which is what he understands, and which is  
15 true. When it goes back, the top range - - - as  
16 Judge Fahey was saying, the top range gets increased  
17 to thirty-five, but the judge runs him concurrently  
18 and he gets the twenty-five years minimum that he  
19 legitimately expected in his original plea. I can't  
20 see the analogy with this case.

21 MS. COHEN: I - - - I think it's actually  
22 better, because if actually imposing an illegal  
23 sentence - - - which is what happened in Collier,  
24 there was an illegal sentence, he got half of the  
25 minimum, he needed ten and he got five.

1                   JUDGE STEIN: Aren't you saying that the  
2 three years wasn't a legitimate expectation,  
3 especially if he - - - well, really only if he  
4 violated the terms of his release.

5                   MS. COHEN: Well, certainly a defendant  
6 cannot have a legitimate expectation of finality in  
7 an illegal sentence, and that is how this court has  
8 said, courts have the inherent authority to correct  
9 an illegal promise; such as in Collier, in DeValle,  
10 in Williams; and in those cases, when a defendant did  
11 not move to withdraw his plea, there were times the  
12 sentence was enhanced. But if he wants to say that  
13 the three induced him, he needed to preserve that,  
14 which he never did.

15                  JUDGE GARCIA: Well, so how would he have  
16 done that here?

17                  MS. COHEN: He could have either - - -

18                  JUDGE GARCIA: Where you have a judge  
19 saying this is a legal sentence, and you have a  
20 prosecutor saying this is a legal sentence, and there  
21 is no indication he knows it is anything other; how  
22 would he have done that?

23                  MS. COHEN: There are two ways; of course  
24 he could have filed a 440 motion.

25                  JUDGE GARCIA: When?

1 MS. COHEN: After - - - after he was - - -  
2 after the plea was - - - after he was sentenced, he  
3 could have moved to vacate his judgment.

4 JUDGE GARCIA: Before he goes on appeal, he  
5 could file of 440.

6 MS. COHEN: Yes. Alternatively, he did  
7 have practical ability to object here because he was  
8 not immediately sentenced. He showed up two weeks  
9 later for an Outley hearing.

10 The court gave misinformation, there is no  
11 doubt about that, but just like in - - - any time,  
12 you have the ability to object, they did not go  
13 straight to sentencing. So - - -

14 JUDGE PIGOTT: Are - - - are you suggesting  
15 that he brings a motion saying, I know you sentenced  
16 me to three but I want to vacate that because the  
17 minimum you could sentence me to is six?

18 MS. COHEN: Sure.

19 JUDGE PIGOTT: And how many defendants have  
20 done that in your career?

21 MS. COHEN: How many defendants? I'm not  
22 sure, but I think - - -

23 JUDGE STEIN: He could have done it when he  
24 knew he was subject to an enhanced - - -

25 MS. COHEN: Certainly, I mean, the three

1 became legally irrelevant, not just because the court  
2 could not fulfill the promise, but because of the  
3 defendant's own misconduct. But he still received  
4 what he bargained for; he bargained for under twelve,  
5 and that's why I think this case is not only - - -

6 JUDGE GARCIA: He bargained for a minimum  
7 of three is what he bargained for, and he didn't get  
8 that. And going back to my point on appearance, I  
9 know there is nothing in this record, but do you  
10 think the public and people watching this proceeding  
11 might think that a judge, realizing he took in a plea  
12 to an illegal sentence, would give the person three  
13 more years on a marijuana violation so that the plea  
14 fell within your range?

15 MS. COHEN: No, I don't think there's any -  
16 - - any concern that if defendant had managed to  
17 abide by the - - - the prerequisites, he would have  
18 either gotten three on a fifth-degree sale instead of  
19 a third-degree sale, or he would have withdrawn his  
20 plea.

21 JUDGE PIGOTT: Could the People have moved  
22 to - - - to set the sentence aside as illegal?

23 MS. COHEN: He wasn't sentenced illegally.  
24 Had he been sentenced illegally, that would have been  
25 different; but here, he happened to get a legal

1 sentence, which was six, and that was with - - -

2 JUDGE PIGOTT: No, no, no - - -

3 MS. COHEN: I'm sorry.

4 JUDGE PIGOTT: At the three - - - when he  
5 got the three.

6 MS. COHEN: I have no doubt that if he - -  
7 - if they had actually imposed three, several things  
8 could have happened; either this could've been a case  
9 where the Department of Corrections realized the  
10 mistake; that happened in DeValle. Or it could have  
11 been one where the court sua sponte realized it; that  
12 happened in Williams. It could have been one where  
13 the defendant realized it afterward, and he filed a  
14 440.

15 JUDGE STEIN: Here, the court said, "I'm  
16 not really sure, I don't have my sentencing  
17 guidelines with me", so that might've triggered - - -

18 MS. COHEN: Of course, it would trigger  
19 something. I mean, no one is saying that this was an  
20 ideal plea allocution.

21 JUDGE RIVERA: But under your - - - your  
22 scenario, no matter what he does.

23 MS. COHEN: I'm sorry.

24 JUDGE RIVERA: Under your scenario, no  
25 matter what he does, whether he complies with the

1 requirements, he doesn't comply with requirements,  
2 nobody's going to meet his expectations, the  
3 expectations he understood at the time he took the  
4 plea.

5 MS. COHEN: I don't agree - - -

6 JUDGE RIVERA: Because three would - - - is  
7 illegal, so he can't get the three.

8 MS. COHEN: But they could have done a  
9 repleader. I mean, when you look at the plea  
10 minutes, several times there is a discussion about  
11 the offer of three years. So - - - there's an - - -  
12 if the People were focused on three years, if the  
13 defense was focused on three years - - - I mean, you  
14 realize, this plea took place nearly two years after  
15 the crime. There's a lot of negotiation and a lot of  
16 back and forth. If three is what they wanted,  
17 legally they could have gotten three on a repleader  
18 to a fifth-degree sale. There's no plea restrictions  
19 under the statute that would have prohibited that.

20 So if what they wanted was three, on a B  
21 felony for drugs, he could replead to a D felony and  
22 get the three years, and - - - and we would not be  
23 here; it would've been - - -

24 JUDGE GARCIA: Do you think the people - -

25 -

1                   JUDGE ABDUS-SALAAM: This isn't - - - this  
2 is not something that's uncommon or unusual, right,  
3 counsel? This happens all the time, doesn't it?

4                   MS. COHEN: Unfortunately, it happens more  
5 than we would like it to, that - - - that there are a  
6 sentencing mistakes, and this court has dealt with  
7 many of them, times when - - - when the parties did  
8 not understand the minimum. There was a case this  
9 court had where they thought an attempted first-  
10 degree sale was an A2, but it was actually still an  
11 A1.

12                   So this falls well within cases that this  
13 court has had, and when you have a case where there  
14 was an illegal promise, then - - - then often  
15 specific performance is involved under the Selikoff  
16 line of cases, and under Collier. That didn't need  
17 to happen here; it could've happened, but it wasn't  
18 necessary, and as a result, he was able to get a  
19 sentence that did comport with his legitimate  
20 expectations. If he - - -

21                   JUDGE FAHEY: You have to admit, though,  
22 going back to the point that Judge Garcia was making,  
23 how does it look? A judge offers you a deal that is  
24 improper, in the sense that it's - - - it's something  
25 that he's - - - legally can't do, you know, so he

1 induces you to plea, you plea, then you're a drug  
2 addict, you go out and smoke marijuana in the hallway  
3 of a public building; my understanding is this is not  
4 an unusual crime in the city of New York. Now, then  
5 what happens is, he gets twice as much time as he was  
6 originally offered, which then makes it a legal  
7 sentence in the enhancement hearing. From an equity  
8 point of view, doesn't that strike you as - - - as  
9 harsh, unfair?

10 MS. COHEN: Well, I think it's important to  
11 realize the intervening actions that took place aside  
12 from the arrest.

13 JUDGE FAHEY: Okay.

14 MS. COHEN: And that was pretty extensive.  
15 The court made clear there was conspiratorial conduct  
16 where the defendant was trying to find people to lie  
17 about his presence in the building, and that was well  
18 established before the court - - -

19 JUDGE FAHEY: Well, I - - - I think you're  
20 totally right about that - - -

21 MS. COHEN: Okay - - -

22 JUDGE FAHEY: And that you're totally right  
23 about - - -

24 MS. COHEN: - - - so it - - -

25 JUDGE FAHEY: Let's just assume that he did

1 all that, and you're totally right about all that.

2 MS. COHEN: Okay. So - - -

3 JUDGE FAHEY: Still, you've doubled the  
4 sentence on the guy for smoking some marijuana in a  
5 building, and enhanced it that way on - - - but you  
6 then induced him on an original plea deal on a  
7 sentence that the court couldn't properly give.

8 MS. COHEN: But if the defendant wants to  
9 say, I was induced by an illegally low promise, he  
10 had to have shown prejudice in - - - which would have  
11 been, I would not have plead had I known I could not  
12 get three. And had he done that, he would have  
13 either gotten his plea back, or they would have  
14 renegotiated.

15 JUDGE PIGOTT: Can he go back to trial now?

16 MS. COHEN: Can he? Six years later? I  
17 mean, if - - - if this court found that that was the  
18 proper remedy. I mean, it seems a little bit - - - I  
19 - - - I don't know if that's really what anybody is  
20 seeking.

21 JUDGE PIGOTT: Well, I mean, it would be  
22 kind of interesting to see what the sentence was  
23 after trial.

24 MS. COHEN: I mean - - -

25 JUDGE PIGOTT: Just like it served, but

1           okay.

2                       MS. COHEN:  He got - - - he ultimately got  
3           the minimum on the B.

4                       JUDGE PIGOTT:  Right.

5                       MS. COHEN:  So I see my time is up.

6                       CHIEF JUDGE DIFIORE:  Thank you, counsel.

7                       MS. COHEN:  Thank you.

8                       JUDGE FAHEY:  Thank you.

9                       CHIEF JUDGE DIFIORE:  Counsel.

10                      MS. ABOAGYE-AGYEMAN:  Good afternoon, Your  
11           Honors, and may it please the court.  I am Anita  
12           Aboagye-Agyman and I represent the respondent, Mr.  
13           Christian Williams.

14                      Going back to Judge Garcia's initial question,  
15           in fact, Mr. Williams was induced to plead guilty here  
16           with the promise of an illegal promise - - - sentence.

17                      JUDGE STEIN:  Why couldn't he have a raised  
18           that at some point before sentencing or in a 440  
19           motion?

20                      MS. COHEN:  Your Honor, he didn't have to  
21           here; in fact, he - - - he didn't have to because the  
22           error here was plain on the face of the record.  And  
23           in fact, as Judge - - -

24                      JUDGE STEIN:  Yeah, but it has to - - -  
25           there are two requirements for that, aren't there,

1 under Canseco (ph.) and some other cases, that it has  
2 to be plain on the face of the record, but it also  
3 has to be practically impossible to have raised it,  
4 why would - - - why is that the case here?

5 MS. ABOAGYE-AGYEMAN: He doesn't have to  
6 raise it; certainly, Your Honor, he could have.

7 JUDGE STEIN: Well, he does, unless it's  
8 practically impossible; that's what our case law  
9 says.

10 MS. ABOAGYE-AGYEMAN: Not - - - not, that's  
11 incorrect, your honor, in Johnson, Lopez, and Louree  
12 - - - and Louree is perhaps more applicable here  
13 because it deals with legal sentencing issues - - -  
14 the court - - - this court noted that where the error  
15 is clear in the face of the record, even if defendant  
16 could have raised in a 440 motion, he doesn't have  
17 to; he can raise it for the first time on direct  
18 appeal. And that is certainly what Mr. Williams did  
19 in this instance.

20 And in fact, going back to the discussion  
21 Your Honors were having with appellant, Mr. Williams  
22 here cannot, the layperson, be expected to be the one  
23 to raise his hand and say, I was given an illegal  
24 promise, when the judge, the prosecutor, and defense  
25 counsel all failed him. The parties here, that were

1           supposed to be guiding him, essentially led him  
2           astray.

3                   JUDGE PIGOTT: Well, the poor guy, but he -  
4           - - he didn't make it to sentencing.

5                   MS. ABOAGYE-AGYEMAN: I'm sorry, Your  
6           Honor?

7                   JUDGE PIGOTT: He didn't - - - he didn't  
8           even make it to the point where he got the sentence;  
9           he got in trouble before he even got back for  
10          sentencing.

11                   MS. ABOAGYE-AGYEMAN: That's true, Your  
12          Honor, he did get in trouble. However, as Judge  
13          Fahey was mentioning, he got double the sentence for  
14          smoking marijuana, but - - -

15                   JUDGE STEIN: But we're not here to decide  
16          whether it was harsh and excessive for him to get  
17          that sentence, correct?

18                   MS. ABOAGYE-AGYEMAN: That's correct, Your  
19          Honor, but I also want to go back to - - - appellant  
20          makes a lot of the fact that Mr. Williams violated  
21          and did all these things, but the important issue is,  
22          what happened at the time the plea was taken.

23                   JUDGE PIGOTT: I don't understand why  
24          that's true; I get all that, and I understand the  
25          arguments that were made that way; but isn't - - -

1 does it become moot when you say, don't get in  
2 trouble, and the next thing you do is get in trouble?

3 MS. ABOAGYE-AGYEMAN: No, Your Honor.

4 JUDGE PIGOTT: So he could have gotten a  
5 legal sentence, and he'd have been in trouble, and -  
6 - - and that legal sentence would have been changed.  
7 I mean, it - - - it was all gone; he had - - - he had  
8 an opportunity to go straight and he chose not to,  
9 and therefore that - - - everything is dissipated.

10 MS. ABOAGYE-AGYEMAN: No, Your Honor, it  
11 doesn't dissipate, because we go back, again, to the  
12 time that the error occurred, which is at the plea.  
13 And going back to Judge Garcia's questions about  
14 legitimate sentencing expectations, yes, what  
15 happened here was that Mr. Williams got six years,  
16 but it wasn't because the court or anyone was aware  
17 that they were sentencing him to what is technically  
18 a legal sentence; it was simply a matter of luck.  
19 And in fact, he could've gotten four years or - - -

20 JUDGE PIGOTT: Bad luck.

21 MS. ABOAGYE-AGYEMAN: True, certainly, but  
22 as the court indicated, he didn't have to sentence -  
23 - - enhance the sentence at all; the court could have  
24 stuck with the three or given him four or even five.

25 JUDGE ABDUS-SALAAM: So why is your client

1 prejudiced then, when the court decides to enhance  
2 the sentence, because the court warned him that he  
3 would - - - he might do that very same thing; he  
4 said, I'll listen to what happened and then I'll make  
5 a decision, right, which is what the court did. I  
6 think you said it, when he looked up and got the  
7 right sentence, and if he had gotten four years, and  
8 your client didn't want to do four years, then your  
9 client would've said, well, but you promised me  
10 three, and the court would have said, okay, fine, if  
11 you hadn't gotten into trouble, then we would have  
12 made it so that you can get three, right? In other  
13 words, plea to a lesser charge, and he could've  
14 gotten the three.

15 MS. ABOAGYE-AGYEMAN: That's correct, Your  
16 Honor, and Your Honor is right; what would have  
17 happened here is that if the court had realized at  
18 some point, and correct me if I'm wrong, that there  
19 was an error somewhere, the court would have the  
20 inherent authority to fix that error, but here, the  
21 court - - - there was never that awareness.

22 And appellant cites to all these cases that  
23 - - - where the court inherently corrected an error,  
24 but in all of those cases, there was an awareness on  
25 the part of the court that recognized that, applying

1 the Selikoff standard, that you can have one of two  
2 things; either vacatur of the plea or correction of  
3 the sentence. But here, even if we're applying the  
4 Selikoff ruling, we have to remember that Selikoff,  
5 the sentencing expectations is grounded in due  
6 process.

7 JUDGE ABDUS-SALAAM: But what would have  
8 happened, counsel, had your client not gotten - - -  
9 done anything wrong and come back for sentencing,  
10 been sentenced to the three years that he anticipated  
11 he'd get, then DOCs or somebody else says, oh, that  
12 was an illegal sentence; what do you think would have  
13 happened then?

14 MS. ABOAGYE-AGYEMAN: Well, there a couple  
15 of things that could have happened; what would have  
16 happened was it would have been bounced back to the  
17 court, the court would have realized that it made an  
18 error, and then, at the time, the court would've  
19 said, okay, I made an error, here are the options  
20 under Selikoff, either vacatur of the plea, or  
21 sentence you in line with your sentencing  
22 expectation; however, that second option is not  
23 available in this instance because three, four, and  
24 five are illegal, and in fact, Mr. - - - Mr.  
25 Williams' maximum is fifteen years, not twelve, and

1 so his minimum is not applicable, and the maximum  
2 goes way up; which means that under even Selikoff,  
3 the appropriate remedy would be vacatur of the plea,  
4 and then if the People would consent to a repleader,  
5 he could plead down where he is within the three-year  
6 range.

7 But, even under Selikoff and under a  
8 straight due process claim, which we believe is what  
9 - - - a straight due process error, which we believe  
10 is what happened here, the only remedy available to  
11 Mr. Williams is to have the plea vacated such that he  
12 can go back and, as Judge Pigott mentioned, either  
13 ask for repleader or exercise his right to a trial.  
14 But because that option was taken away from Mr.  
15 Williams via the inducement of an illegal promise,  
16 the court can't do anything but to order that his  
17 plea be vacated.

18 JUDGE RIVERA: So if - - - if - - - I'm  
19 sorry, if the court had said, here are the conditions  
20 and if you violate any of them, I'm giving you a  
21 minimum of six, would we be here?

22 MS. ABOAGYE-AGYEMAN: If the court had let  
23 him know at the time.

24 JUDGE RIVERA: At that time, yes.

25 MS. ABOAGYE-AGYEMAN: Yes, we would,

1           because the promise would still be illegal; the  
2           sentence promise of three, you're going to get three,  
3           would still be illegal. And so what we need to look  
4           at here is that inducement. What information did the  
5           court provide to Mr. Williams for Mr. Williams to  
6           say, all right - - -

7                    JUDGE RIVERA: So even if the court says  
8           it's three but - - - but if you violate these  
9           conditions, I'm telling you it's at least six?

10                   MS. ABOAGYE-AGYEMAN: That's correct, Your  
11           Honor, the reason is because he doesn't have all the  
12           information available to him.

13                   JUDGE ABDUS-SALAAM: The court didn't say  
14           clearly - - - the court said, I lost my sentencing  
15           chart - - - I mean, I don't know why there wasn't  
16           another one in the court or somewhere else, but the  
17           court didn't exactly say that this is the sentence  
18           range; it said, I think it is, and didn't somebody  
19           have the wherewithal to find out what the real  
20           sentence was, between the plea and the sentence?

21                   MS. ABOAGYE-AGYEMAN: Certainly, somebody  
22           should have, but at the moment that the court engaged  
23           with Mr. Williams and sanctioned this plea - - -

24                   JUDGE RIVERA: Well, apparently the judge  
25           assumed that the DA and the defense counsel had done

1 this.

2 MS. ABOAGYE-AGYEMAN: That's correct, the  
3 court assumed that the learned folks in the  
4 prosecutor's office knew what they were talking  
5 about. And it goes back to the earlier discussion we  
6 were having about the integrity of the plea, and I  
7 think Judge Garcia mentioned this, about people  
8 watching this and hearing that judges are engaged in  
9 conduct where they are making illegal promises that  
10 they cannot keep; it certainly doesn't engender any  
11 confidence in the criminal justice system, especially  
12 where we know that a majority of the criminal justice  
13 system - - -

14 JUDGE ABDUS-SALAAM: But it's not a - - -

15 JUDGE RIVERA: I guess that's what I'm  
16 asking you, that when he says, but if you violate any  
17 of these conditions, I promise you it's at least six.

18 MS. ABOAGYE-AGYEMAN: Your Honor, it's  
19 still not - - -

20 JUDGE RIVERA: That's - - - that's too  
21 attenuated from the plea for some reason or another,  
22 you're saying?

23 MS. ABOAGYE-AGYEMAN: No, Your Honor, I'm  
24 saying that where we go back to the plea and the  
25 promises made - - -

1 JUDGE RIVERA: Uh-huh.

2 MS. ABOAGYE-AGYEMAN: - - - to get him to  
3 plead guilty - - -

4 JUDGE RIVERA: Yes.

5 MS. ABOAGYE-AGYEMAN: - - - that promise  
6 was wrong; that promise is a promise no one could  
7 keep. It was an illegal promise, and because - - -

8 JUDGE ABDUS-SALAAM: Well, it was a promise  
9 - - -

10 JUDGE RIVERA: Uh-huh.

11 JUDGE ABDUS-SALAAM: - - - that the  
12 prosecutor made, right, that you would have three,  
13 and the court essentially endorsed that, and so if  
14 the prosecutor wanted your client to have three  
15 years, as the ADA says, if that had been brought to  
16 the court's attention, then the court or the  
17 prosecutors could have said well, we'll have you  
18 plead to a lesser crime and you could still get your  
19 three. So I'm - - - I'm a little confused about why  
20 the initial wrong sentence inducement holds even  
21 after that.

22 MS. ABOAGYE-AGYEMAN: Because you - - - you  
23 - - - if we were to go back, and the court says you  
24 can still get your plea, that is that key there, you  
25 can still get your plea, so the old plea that is

1 based on the bad promise is vacated, and he is  
2 allowed to replead with the consent of the  
3 prosecutor.

4 And so what the court - - - what you're  
5 hitting on, essentially, is the solution; that for us  
6 to get to that plead down, the old bad plea, based on  
7 the illegal promise, must be done away with; and the  
8 only way we can do away with it is to vacate this  
9 plea right here, which was based on an illegal  
10 promise. Regardless - - -

11 JUDGE FAHEY: It would reduce the range  
12 too, wouldn't it? In other words, it wouldn't be six  
13 to fifteen, or whatever, it would be three to nine, I  
14 think - - -

15 MS. ABOAGYE-AGYEMAN: That's correct, Your  
16 Honor, and we have to remember, Your Honor, that  
17 obviously the People in practi - - - the People  
18 believe that this was a case that was worth three  
19 years in prison. And so we certainly don't think  
20 that if the court were to vacate the plea based on an  
21 illegal promise, that it would be - - - it would be  
22 completely absurd for the People to agree to plead  
23 down.

24 And so, Your Honors, the issue here is  
25 quite simple; the promise made to get - - - to Mr.

1 Williams, to get him to plead guilty, was an illegal  
2 promise. No matter how you slice it, either under  
3 Selikoff or Collier, or under straight due process  
4 claim, which this is, the only solution is to vacate  
5 the plea and to have - - - and to start all over  
6 again, because if - - - even if this were a  
7 sentencing expectations case, as the prosecutor would  
8 have it - - - have you believe, Mr. Williams'  
9 sentencing expectations could never be met because  
10 either - - - he could've gotten three, four, or five,  
11 which were all illegal sentences, regardless of  
12 whatever violations he may have committed.

13 Thank you.

14 CHIEF JUDGE DIFIORE: Counsel, how did the  
15 court fulfill its obligation to inform this defendant  
16 of the direct consequences of his plea?

17 MS. COHEN: The direct consequence was jail  
18 and he could face up to twelve years. There was no  
19 additional component as in the post-release case - -  
20 - supervision cases upon which respondent relies.

21 JUDGE GARCIA: So a mandatory minimum is  
22 never a direct result of your plea? So that - - -  
23 you don't have to say that, so we can just say, you  
24 could get up to twelve years and that would be okay,  
25 even though there's a mandatory minimum?

1 MS. COHEN: If - - - if the plea has been  
2 induced, as it was here - - - I mean, we recognize  
3 that the sentence is illegal; we're not saying that.  
4 But it seems as though respondent turns on whether  
5 this happened hypothetically or in reality. In  
6 reality, had he complied, we both agree he either  
7 would have gotten his plea back or we would have done  
8 are repleader. Had he done a 440 motion, that same  
9 thing would've happened; but for some reason, the  
10 fact that it - - -

11 JUDGE GARCIA: Even at the sentence, that  
12 would have happened, so he gets six years this way  
13 and then he files a 440, he would get his plea back.

14 MS. COHEN: After - - - if he - - - if the  
15 court actually believed that the defendant was  
16 prejudiced, that he would not have pled knowing he  
17 couldn't get three after he violated and breached and  
18 then got six, then he would get his plea back or the  
19 court would - - - you know, then it would be the  
20 Selikoff option of deciding which is more  
21 appropriate. But somehow, the defendant is no - - -  
22 is not required to preserve under this scenario, and  
23 I just don't see how this falls into any recognized  
24 exception to preservation.

25 There are the Lopez factual allocution

1 exceptions and there are the post-release  
2 supervision. There are no sentencing expectation  
3 cases where this happens on direct appeal. Not  
4 Collier, DeValle, Williams; none of those happened in  
5 the context. And the reason for that is that in the  
6 440, he would have had to say what we are assuming, I  
7 was induced by this illegal promise, but there has to  
8 - - -

9 JUDGE STEIN: But what if, for example, the  
10 plea and the sentencing took place at the same time,  
11 would - - - would that possibly be an exception to  
12 the preservation requirement?

13 MS. COHEN: Well, he would not have had a  
14 practical ability to withdraw his plea as he did  
15 here, I think he still could have done a 440 motion,  
16 but he did neither here, and it just - - -

17 JUDGE PIGOTT: Why - - - why would he? I -  
18 - - maybe I'm missing it. If I was a defense lawyer  
19 and I got a sentence that was less than I could  
20 possibly hope for, why should I bring it to anybody's  
21 attention?

22 MS. COHEN: Well, if he was actually  
23 sentenced to an illegal term, I think it would have  
24 been figured out either by the Department of  
25 Corrections or by the court, as it happened in

1 DeValle and Williams, but if he - - -

2 JUDGE PIGOTT: Well, then I - - - then I'd  
3 say - - - okay, go ahead.

4 MS. COHEN: But if an illegal sentence  
5 alone - - - excuse me, an illegal promise alone  
6 invalidated every plea, how do we reconcile that with  
7 the numerous cases from this court that says, you  
8 have inherent authority to correct. The fact that  
9 the defendant breached - - -

10 JUDGE RIVERA: That depends on what you  
11 promise and what the expectations are; we're going  
12 full circle to where we started with Judge Garcia and  
13 Judge Fahey; it's about this minimum.

14 MS. COHEN: I recognize that, but this  
15 isn't the first time that a defendant has been told  
16 that - - - that he received - - - that he was being  
17 promised something that the court could not fulfill,  
18 and when that happened, this court has looked to see  
19 whether there was a way of meeting the legitimate  
20 expectations.

21 JUDGE GARCIA: And that's Collier, is that  
22 case?

23 MS. COHEN: That's one of the cases, yes.

24 JUDGE GARCIA: What's the case where he was  
25 promised a minimum that he could never get, but his

1 expectations were met; what's that case?

2 MS. COHEN: Williams. Because Williams, he  
3 was promised three-and-a-half to seven, and the court  
4 raised it to three-and-a-half to ten-and-a-half.

5 There you expanded the range because of the - - -

6 JUDGE GARCIA: So what's the case with the  
7 mandatory minimum that was wrong?

8 MS. COHEN: I'm not sure - - - I mean, I  
9 don't know if the minimum was wrong in - - -

10 JUDGE GARCIA: You don't think that makes a  
11 difference?

12 MS. COHEN: No, because he could've gotten  
13 - - - because you cannot overlook the intervening  
14 factor; that's what I think - - - I mean, because  
15 we're all in agreement that he would have gotten  
16 three, had he done the right thing.

17 JUDGE GARCIA: But to go back to my,  
18 perhaps poorly articulated, policy point; in that  
19 case where you happen to have - - - and I'm not  
20 saying this is here, but the appearance is here,  
21 where you happen to have a fortuitous intervening - -  
22 - and he committed this, and we'll accept the facts,  
23 as Judge Fahey said, and the judge then  
24 coincidentally increases the sentence to what should  
25 have been the mandatory minimum; you don't think that

1 creates an appearance problem, that that was done to  
2 avoid giving this person his plea back?

3 MS. COHEN: I - - - I think that when you  
4 have the full record, as you have here, it does not  
5 create that impression. And if it did, they could  
6 still do a 440 and a judge could still say he was  
7 induced by an illegal promise, he should've gotten  
8 his plea back, and that could have been appealed as  
9 well, as opposed to handling it just on direct  
10 appeal.

11 Thank you very much.

12 CHIEF JUDGE DIFIORE: Thank you, counsel.

13 (Court is adjourned)

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C E R T I F I C A T I O N

I, Meir Sabbah, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Christian Williams, No. 36 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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