CASELAW APPENDIX (B)

Detrimental Reliance

In re Kenneth H., 80 Cal.App.4th 143, 95 Cal.Rptr.2d 5 Cal.App. 3 Dist., 2000. The Court of Appeal, Scotland, J., held that: (1) plea agreement was subject to specific enforcement, and (2) effect of specific enforcement would be to require prosecutor to move for dismissal. Plea agreement, which had not been submitted for court approval, was subject to specific enforcement, where district attorney proposed, and parties agreed, that minor would pay for and take polygraph examination, and would plead guilty to inflicting cruelty upon an animal if he failed examination, but charge would be dropped if he passed; juvenile relied upon agreement to his detriment by giving up his Fifth Amendment right against self-incrimination, paying $350 for private polygraph examination, and taking examination. Prosecutor may withdraw from a plea bargain before a defendant pleads guilty or otherwise detrimentally relies on that bargain; absent detrimental reliance on the bargain, the defendant has an adequate remedy by being restored to the position he occupied before he entered into the agreement. Fact that the court is not bound by a plea agreement entered into by the prosecutor and the accused, and the fact that a plea agreement made by the parties before it is submitted for court approval is akin to an executory contract which does not bind the accused, do not undermine the principle that the prosecutor should be bound by the agreement if the accused has relied detrimentally upon it. Under the circumstances of this case, we conclude that the prosecution could not renege on its plea agreement. As we shall explain, the need for public confidence in the integrity of the prosecutor's office requires the prosecution to abide by its promise if the accused has relied detrimentally upon the agreement. As to the motion for specific enforcement of his agreement with Deputy District Attorney Goldkind, the minor contends it should have been granted because he relied upon the agreement to his detriment by giving up his Fifth Amendment right against self-incrimination and paying $350 for the polygraph examination. The People disagree, arguing the agreement is unenforceable because it "was not actually a plea bargain" and had not been approved by the juvenile court. The People wisely do not attempt to defend the juvenile court's rationale for denying the minor's motion for specific performance, i.e., (1) Deputy District Attorney Goldkind "was operating under a misapprehension as to what in fact transpired with respect to the meeting with the minor and [polygraph examiner] Mansfield," (2) consequently, there "was miscommunication that prevented a meeting of the minds," and (3)

"although we may have [had] reliance [by the minor], we never had an agreement." Nothing in the record supports a conclusion that the agreement was entered into based upon a misunderstanding. The agreement was simple-if the minor submitted to, and passed, a polygraph examination administered by Lister, the People would move to dismiss the petition. The minor complied with his part of the agreement, but the prosecution reneged on its promise. The minor has the better argument. The question "whether a prosecutor can withdraw from a plea bargain before the bargain is submitted for court approval" recently was addressed in *People v. Rhoden* (1999) 75 Cal.App.4th 1346, 1351-1352, 89 Cal.Rptr.2d 819. Noting that the question "appears to be an issue of first impression in California courts," *Rhoden* reviewed cases from other jurisdictions, as well as secondary authority (*id.* at pp. 1352-1355, 89 Cal.Rptr.2d 819), and concluded "a prosecutor may withdraw from a plea bargain before a defendant pleads guilty *or otherwise detrimentally relies on that bargain.*" (Id. at p. 1354, 89 Cal.Rptr.2d 819, italics added.) "'Absent detrimental reliance on the bargain, the defendant has an adequate remedy by being restored to the position he occupied before he entered into the agreement.' " (*Id.* at p. 1356, 89 Cal.Rptr.2d 819, quoting *State v. Becke`s* (1980) 100 Wis.2d 1, 7, 300 N.W.2d 871, 874.) The fact that the court is not bound by a plea agreement entered into by the prosecutor and the accused, and the fact that a plea agreement made by the parties before it is submitted for court approval is akin to an executory contract which does not bind the accused, do not undermine the principle that the prosecutor should be bound by the agreement if the accused has relied detrimentally upon it. The integrity of the office of the prosecutor is implicated because a "'pledge of public faith'" occurs when the prosecution enters into an agreement with an accused. (*Butler v. State* (1969) 228 So.2d 421, 424.) A court's subsequent approval or disapproval of the plea agreement does not detract from the prosecutorial obligation to uphold "our historical ideals of fair play and the very majesty of our government····" (*Id.* at p. 425.) The "failure of the [prosecutor] to fulfill [his] promise ··· affects the fairness, integrity, and public reputation of judicial proceedings." (*U.S. v. Goldfaden* (5th Cir.1992) 959 F.2d 1324, 1328.) Here, the minor relied upon the agreement by waiving his Fifth Amendment right to remain silent and by paying $350 to take the polygraph examination. The People believe this is insufficient to warrant enforcement of the agreement. They argue: "Although by submitting to a polygraph examination [the minor] may have given up his Fifth Amendment right to remain silent, his statements were not used for any purpose in adjudication or disposition. The only other detriment [the minor] suffered was financial-the $350 fee paid for the

test···· [A]ttempting to recoup this kind of loss is better addressed in a civil action under principles of contract law. It does not involve a denial of due process or abridgment of liberty and cannot warrant dismissal of a juvenile petition charging criminal behavior." We are unpersuaded. "'A defendant relies upon a [prosecutor's] plea offer by taking some substantial step or accepting serious risk of an adverse result following acceptance of the plea offer. [Citation.] Detrimental reliance may be demonstrated where the defendant performed some part of the bargain. [Citation.]' " (Rhoden, *supra,* 75 Cal.App.4th at p. 1355, 89 Cal.Rptr.2d 819, quoting *Reed v. Becka* (1999) 333 S.C. 676, 511 S.E.2d 396, 403.) By paying for, and submitting to, the polygraph examination, the minor took a substantial step toward fulfilling his obligation under the agreement, and accepted a serious risk that he might suffer an adverse result, i.e., fail the examination, which he would not have been required to take but for the agreement. Accordingly, we conclude that the prosecution should be bound by its agreement.

Coleman v. State, 621 P.2d 869 Alaska, 1980. "Defense counsel is subject to standard of competence of performing at least as well as lawyer with ordinary training and skill in criminal law and conscientiously protecting his client's interest, undeflected by conflicting considerations, and counsel's violations of standard, either generally throughout trial or in one or more specific instances, will justify new trial."

As the U.S. Supreme Court noted in this seminal case, "[d]isposition of charges after plea discussions is not only an essential part of the process but a highly desirable part for many reasons," including judicial economy, limiting the time defendants are on pretrial release & shortening the time between charge & disposition. However, *Santobello* specifically emphasized that "all of these considerations presuppose fairness in securing agreement between an accused & a prosecutor." "The State may withdraw from a plea bargain arrangement at any time prior to, but not after, the actual entry of the guilty plea by defendant or any other change of position by him constituting detrimental reliance upon the arrangement. *Santobello v. New York*, 404 U.S. 257, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971). See also *State v. Edwards*, 279 N.W.2d 9 (Iowa 1979); *State v. Brockman*, 277 Md. 687, 357 A.2d 376 (1976); *Wynn v. State*, 22 Md. App. 165, 322 A.2d 564 (1974); *People v. Heiler*, 79 Mich. App. 714, 262 N.W.2d 890 (1977); *State ex rel. Gray v. McClure*, supra.

Tyoga Closson v. State, 812 P.2d 966 Supreme Court of Alaska (1991). " The court of appeals began its analysis in

Closson by correctly noting that "immunity agreements are contractual in nature and general principles of contract law apply to the resolution of disputes concerning their enforcement and breach." 784 P.2d at 664 (citing U.S. v. Irvine, 756 F.2d 708, 710-11 (9th Cir. 1985); U.S. v. Carrillo, 709 F.2d 35, 36 n.1 (9th Cir. 1983); U.S. v. Brown, 801 F.2d 352, 354 (8th Cir. 1986)). The court of appeals also properly cautioned that "although the analogy between immunity agreements and ordinary contracts is useful, immunity agreements are subject to constitutional restraints, foremost of which is the due process clause's overriding guarantee of fundamental fairness to the accused." Closson, 784 P.2d at 665 (citing Surina v. Buckalew, 629 P.2d 969, 975 (Alaska 1981)). In Surina v. Buckalew, 629 P.2d 969 (Alaska 1981), we confronted the situation where a witness made a self-incriminating statement in reliance on the prosecution's promise of immunity. We stated that when the prosecution breaches an immunity agreement, the promisee is entitled to rescission, which "should have the effect of placing the individual in the same position he would have been in had he not engaged in the agreement." Id. at 975 n.14. However, because of the inherent impossibility of rescinding an incriminating statement, we noted that "the alternative remedies of 'rescission' and 'specific performance' will collapse into one, in most cases." Id Where an accused relies on a promise of immunity to perform an action that benefits the state, this individual too will not be able to "rescind" his or her actions. Therefore, we believe that the remedy of specific performance is equally applicable to Closson's situation, whether viewed as a remedy for a breach or for an anticipatory breach. Fundamental fairness dictates that the state be held to strict compliance after it breached its promise to Closson. Many courts consider the defendant's detrimental reliance as the gravamen of whether it would be unfair to allow the prosecution to withdraw from a plea agreement. See Annotation, Right of Prosecutor to Withdraw From Plea Bargain Prior to Entry of Plea, 16 A.L.R.4th 1089, 1094-1100 (1982). Here, Closson cooperated with the state and took risks on behalf of the state, which he would not have otherwise done but for the agreement. Moreover, Closson's cooperation conferred a large benefit on the state. To the extent that detrimental reliance is determinant, fundamental fairness dictates that the state should be required to specifically perform its part of the bargain. Here, Closson cooperated fully with every reasonable request. As a result of Closson's assistance, the state was able to proceed in a very important case. Thus, given Closson's substantial performance of his part of the bargain, the indeterminate scope of the agreement, the fact that fundamental fairness weighs heavily in favor of

Closson, and the state's breach of the agreement, we find it would be unfair for the state to renege on its part of the bargain. As one court has explained, "it would be grave error to permit the prosecution to repudiate its promises in a situation in which it would not be fair and equitable to allow the State to do so." *Kisamore v. State*, 286 Md. 654, 409 A.2d 719, 721 (Md. 1980) (quoting *State v. Brockman*, 277 Md. 687, 357 A.2d 376, 383 (Md. 1976)). See also *People v. Fisher*, 657 P.2d 922, 925 (Colo. 1983) ("no other remedy short of enforcement of the promise would secure fundamental fairness to the defendant"). In the plea bargaining arena, the U.S. Supreme Court has held that states should be held to strict compliance with their promises. In *Santobello v. New York*, 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971), the prosecutor promised that, in return for a guilty plea, he would not make a sentence recommendation. However, at sentencing, a different prosecutor represented the state and he recommended the maximum sentence. The Judge imposed the maximum sentence, but stressed that he was compelled to do so by the facts and was not influenced by the prosecutor's recommendation. Id. at 259. The Supreme Court found such a breach to be a violation of fundamental fairness. The defendant had "'bargained' and negotiated" for this promise so "the prosecution is not in a good position to argue that its inadvertent breach of agreement is immaterial." Id. at 262. "When a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." Id. We recognize that not all of the judicial concerns of plea bargaining are implicated when the prosecution grants immunity in exchange for cooperation without requiring the accused to plea to a lesser charge. However, we have previously applied the principles of Santobello to prosecutorial breaches outside the plea bargaining arena. Surina, 629 P.2d at 978. We believe that the interests of fairness and the integrity of the criminal Justice system require the application of those principles here as well. See *U.S. v. Carter*, 454 F.2d 426, 427-428 (4th Cir. 1972); *People v. Fisher*, 657 P.2d 922, 927 (Colo. 1983); *State v. Kuchenreuther*, 218 N.W.2d 621, 623-24 (Iowa 1974)."

People v. Rhoden (1999). The Court of Appeals, Fourth Appellate District for the State of CA states, "The great weight of case law supports the position that a prosecutor may withdraw from a plea bargain before a defendant pleads guilty with Court approval or otherwise detrimentally relies on that bargain." Detrimental reliance is a term commonly used to force another to perform their obligations under a contract, using the theory of promissory estoppel. Promissory estoppel may apply when the

following elements are proven: A promise was made; Relying on the promise was reasonable or foreseeable; there was actual & reasonable reliance on the promise; the reliance was detrimental. Injustice can only be prevented by enforcing the promise. Detrimental reliance must be shown to involve reliance that is reasonable, which is a determination made on an individual case-by-case basis, taking all factors into consideration. Detrimental means that some type of harm is suffered."

LaFave et al., Criminal Procedure (1984. "The overwhelming majority of cases summarized in Annotation, Right of Prosecutor to Withdraw From Plea Bargain Prior to Entry of Plea (1982) 16 A.L.R.4th 1089, & later cases (1999 pocket supp.) page 95, permit a prosecutor to withdraw from a plea bargain before a defendant pleads guilty or otherwise detrimentally relies on that bargain. The decision to compel enforcement of the agreement, in other words, is determined according to the action taken by the defendant, if any in reliance on the agreement. In *State v. Crockett* (Nev. 1994) 877 P.2d 1077, at pages 1078-1081, the Court reviewed cases from other jurisdictions & concluded: "The greater weight of authority supports the State's contention that a prosecutor can withdraw a plea bargain offer anytime before a defendant pleads guilty, so long as the defendant has not detrimentally relied on the offer."

Workman v. Commonwealth, 580 S.W.2d 206, 207 (Ky. 1979). "If the government breaks its word, it breeds contempt for integrity & good faith. It destroys the confidence of citizens in the operation of their government & invites them to disregard their obligations. That way lies anarchy. We deal here with a 'pledge of public faith-a promise made by State officials--& one that should not be lightly disregarded.'"); see generally Rynning, supra, at 606-07 (Examples of detrimental reliance requiring enforcement of an agreement have included: "[p]roviding information to government authorities, testifying for the government, confessing guilt, returning stolen property, making monetary restitution, failing to file a motion to have charges presented to a grand jury, submitting to a lie detector test & waiving certain procedural guarantees.") (citations omitted). Guided by such principles, we hold that where a plea agreement calls for performance by the defendant & the defendant has performed pursuant to the terms of the agreement, the agreement will be enforced. *Reed v. Becka*, supra, 511 S.E.2d at p.403 "A defendant relies upon a [prosecutor's] plea offer by taking some substantial step or accepting serious risk of adverse result following acceptance of the plea offer. Detrimental reliance may be demonstrated where the defendant performed some part of the

bargain. For example, a defendant who provides beneficial information to law enforcement can be said to have relied to his detriment.

Mabry v. Johnson *No. 83-328 (1983) In the Supreme Court of the U.S.*, "See *U.S. v. Goodrich*, 493 F. 2d 390, 393 (9th Cir. 1974) (Emphasis added) ("when the prosecution makes a 'deal' within its authority & the defendant relies on it in good faith, the Court will not let the defendant be prejudiced as a result of that reliance"). As we survey the possible points in the plea negotiations process at which the plea proposal could be deemed binding -- at the oral offer, the oral acceptance, the written reduction of terms, the time of reliance, the actual plea, the acceptance by the Court, the pronouncement of sentence; there may be others -- we do not see why "fundamental fairness" should preclude adoption of any of the alternatives (so long as a known rule is consistently followed), at least up to the point where the defendant pleads guilty or otherwise acts to his detriment in reliance on the bargain. Only at that point, we submit, could due process considerations come into play *U.S. v. Carrillo*, 709 F.2d 35, 36 & n.1 (9th Cir. 1983); *Brooks v. U.S.*, 708 F.2d 1280, 1281 (7th Cir. 1983). A plea bargain is essentially a form of unilateral executory contract; the government's promise becomes binding only upon performance or detrimental reliance by the defendant. *Scotland*, 614 F.2d at 364. Under the contractual doctrine of detrimental reliance or promissory estoppel, detrimental reliance on a promise is treated as if it were consideration; the effect is to estop the offeror from revoking his proposal. This solves the problems that otherwise would occur if the offeror were permitted to revoke his offer after the offeree had partially performed or substantially changed his position to his detriment in reliance on the offer. In the plea bargaining context, the doctrine of detrimental reliance would fully vindicate the rights of the accused & cure any unfairness resulting from the government's ability to revoke its nonbinding unilateral offer. An example of detrimental reliance might be a defendant's cooperation with law enforcement officials by testifying or providing valuable information, or by making restitution to victims. If the government has bargained for such actions, in return for which it would receive a guilty plea & recommend a light sentence or dismissal of other charges, & if the defendant has cooperated in reliance on the bargain, the circumstances may be such that the government should not thereafter be permitted to renege on the concessions it has offered to induce the defendant's actions. *U.S. v. Carrillo*, 709 F.2d 35, 37 (9th Cir. 1983); *State v. Brockman*, 277 Md. 687, 357 A.2d 376 (1976); *State v. Kuchenreuther*, 218 N.W.2d 621 (Iowa

1974). In some instances, the reliance may be less active. For example, a defendant might be induced by a plea proposal to neglect preparation for his defense; in such a case, the mere passage of time without trial preparation might constitute detrimental reliance. Moreover, a due process claim might be made out upon a showing that the government's conduct in the plea bargaining negotiations was motivated by bad faith or an attempt to gain undue advantage over the defendant. *U.S. v. Goodwin*, 457 U.S. 368 (1982) The Court perceived a possibility that the government could "take advantage of (the defendant's) acceptance of the plea proposal," perhaps by "exploit(ing) (his) decision to plead guilty by further hard bargaining & by recommending a longer sentence." "Perhaps there could be cases in which manipulative offers & withdrawals of plea proposals would so prejudice the defendant's rights as to violate due process."

Government of Virgin Islands v Scotland (1980, CA3 VI) 614 F2d 360. This fundamental right (trial) would be belittled if it were held to constitute an inadequate remedy for a defendant who has not been induced to rely on the plea to his detriment, remarked the court, adding, however, that where an accused detrimentally relies on the government's promise, the resulting harm from this induced reliance implicates due process guaranteed.

United States v Aguilera (1981, CA5 Fla) 654 F2d 352, Defense counsel's failure to immediately object to prosecutor's ... breach of defendant's plea agreement, was not reasonable conduct within professional norms and constituted deficient performance; no further information or investigation was required to enable defense counsel to offer objection at hearing, and failure to object was breakdown in a system and flew in the face of informed strategic choice made by defendant when he entered into plea agreement.

People v. Rhoden (1999) 75 Cal.App.4th 1436, 1355, 89 Cal.Rptr.2d 819. "[w]hich stated that detrimental reliance may be demonstrated where the defendant has performed some part of the bargain. It concluded that the prosecution should be bound by its agreement. The failure of a prosecutor to fulfill his or her promise affects the fairness, integrity, & public reputation of judicial proceedings. (*U.S. v. Goldfaden* (5th Cir. 1992) 959 F.2d 1324, 1328.)"

State v. Collins, 300 N.C. 142, 265 S.E.2d 172 (1980). "Squarely stands for the proposition that a defendant who relies to his disadvantage upon the prosecution's plea offer may have a

right to compel enforcement of the agreement, even though the State would otherwise have an absolute right to rescind its offer prior to acceptance of the plea by the Court. As *Collins'* exhaustive discussion illustrates, this principle is based on both fundamental principles of due process & well-established precepts of contract law. See, e.g., *Home Electric v. Hall & Underdown Heating & Air*, 86 N.C. App. 540, 358 S.E.2d 539(1987): A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person & which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. Id. at 542"