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## State v. King

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### *The State Lacks The Right To Appeal When The Trial Court Disregards A Negotiated Sentence Pursuant To A Plea Agreement*

In *State v. King*, A12A11127 (Nov. 14, 2013) (en banc), King was charged with armed robbery and aggravated assault. The parties negotiated a plea agreement in which the State agreed to reduce the armed robbery to robbery and the defendant agreed to accept concurrent sentences of 20 years, with 15 to serve. The trial court accepted King's guilty plea to both charges, but then rejected the agreed-upon sentence and instead, imposed concurrent sentences of 15 years, with 5 years to be served. The State appealed pursuant to O.C.G.A. § 5-7-1(a)(6), contending that the sentences were void because the State was not given the opportunity to withdraw from the plea agreement.

The Court dismissed the appeal for lack of jurisdiction. The Court found that a sentence is void, and thus, appealable by the State, only if it is either entered by a court without competent jurisdiction, or imposes a punishment that the law does not allow. Here, the sentences were not void because the superior court had jurisdiction over the charges and the sentences were within the statutory limits for robbery and aggravated assault. At best, the Court found, the sentences were merely voidable due to the trial court's deviation from the negotiated plea agreement.

In so holding, the Court noted that in *State v. Harper*, 279 Ga.App. 620(1) (2006), under circumstances similar to this case, the State was permitted to appeal from a "void sentence" after the trial court imposed a sentence "in complete disregard of [the] plea agreement." The Court found that "[t]o the extent that *Harper* conflicts with the instant opinion and holds that the state may directly appeal from a sentence on the ground that the trial court allegedly erred in disregarding a recommended sentence pursuant to a plea agreement, without first notifying the state and giving it the opportunity to withdraw, *Harper* is hereby overruled."

The decision in *King* has grave implications for prosecutors. Conveniently left out of the opinion is the fact that the State only agreed to reduce the armed robbery to robbery as part of the negotiated plea. This, of course, makes all the difference because under armed robbery, the trial court could not have lawfully imposed the sentence King received. In other words, but for the agreement by the State, the sentence would have been void. As a result of the *King* decision, no negotiated plea may be worth the paper it is written on and prosecutors should be extremely wary of entering into any deal in which the State agrees to reduction of the charges in exchange for a specific sentence. Additionally, under Uniform Superior Court Rule 33.5(B), prosecutors may wish to seek an indication from the court in advance of the tendering of the plea, whether the court is likely to concur in the proposed disposition in accordance with the plea agreement.