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Opinion No. 08-39

Prosecutorial discretion as to plea-bargaining in DUI cases

QUESTION

Does Senate Bill 3040 violate the Tennessee Constitution by limiting the district attorney's discretion to accept a plea to lesser offenses of driving under the influence?

OPINION

Yes.

ANALYSIS

Senate Bill 3040 provides, in pertinent part, that:

> The district attorney shall not have the authority to offer, accept or enter into a plea agreement . . . if the agreement allows the person to enter a plea of guilty or nolo contendre (sic) to an offense that does not have as an essential element the person being in physical control of a motor vehicle while under the influence of an intoxicant.

In effect, SB 3040 prohibits district attorneys from plea-bargaining DUI cases; however, this prohibition violates the Tennessee Constitution.

A District Attorney General is an elected constitutional officer whose function is to prosecute state criminal offenses in his or her circuit or district. *Ramsey v. Town of Oliver Springs*, 998 S.W.2d 207, 209 (Tenn.1999); Tenn. Const. Art. VI, § 5; Tenn. Code Ann. § 8-7-103(1). The prosecutor's discretion to seek a warrant, presentment, information, or indictment is extremely broad and subject only to certain constitutional restraints.[1] *City of Chattanooga v Davis*, 54 S.W.3d 248, 278-279 (Tenn. 2001); *Ramsey*, 998 S.W.2d at 209. "The general assembly cannot enact laws which impede the inherent discretion and responsibility of the district attorney general without violating Article

[1]*Blackledge v. Perry*, 417 U.S. 21, 27 (1974) (due process may be implicated if a prosecutor vindictively increases a charge to a felony after a misdemeanant has prevailed on appeal); *Wayte v. United States*, 470 U.S. 598, 608, (1985) (equal protection prevents selective prosecution on the basis of race, religion, the exercise of protected statutory and constitutional rights, or other arbitrary classifications).

VI, Section 5, of the Tennessee Constitution." *Tennessee Downs, Inc. v. Gibbons*, 15 S.W.3d 843, 848 (Tenn. App. 1999) (citations omitted).

The prosecutor's discretion with regard to prosecution extends to the plea-bargaining process. *See Ramsey*, 998 S.W.2d at 209; *State v. Superior Oil, Inc.*, 875 S.W.2d 658, 660 (Tenn.1994); *Young v. United States*, 481 U.S. 787, 807 (1987). Plea-bargaining is "entirely within the district attorney general's discretion," *State v. Head*, 971 S.W.2d 49, 51 (Tenn. Crim. App. 1998), though the trial court is not obligated to accept any plea agreement. *State v. Layman*, 214 S.W.3d 442, 452 (Tenn. 2007). A prosecutor may even dismiss an indictment so long as the dismissal was not motivated by bad faith or by "considerations that could be fairly characterized as clearly contrary to manifest public interest." *Id.*

Accordingly, because the district attorney's jurisdiction is constitutionally vested, it cannot be limited by statute. Therefore, it is the opinion of this office that SB 3040 violates the Tennessee Constitution.

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