

FILED
SUPREME COURT
STATE OF WASHINGTON
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BY SUSAN L. CARLSON
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No. 98161-2
COA No. 79645-1-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JERRY D. WIATT JR.,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR THURSTON COUNTY

The Honorable Mary Sue Wilson, Judge
The Honorable Lisa Sutton, Judge
Cause No. 01-1-01136-1

ANSWER TO PETITION FOR REVIEW

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A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Whether Wiatt has demonstrated a sufficient basis pursuant to RAP 13.4(b) for this case to accept review where the decision of the Court of Appeals is consistent with previous decisions of this Court and does not affect the understood principal that plea agreements are contractual in nature.

B. STATEMENT OF THE CASE.

On January 31, 2011, Jerry D. Wiatt, Jr., appeared for a change of plea and sentencing in Thurston County cause number 01-1-01136-1. Wiatt had been serving a prison sentence for convictions for two counts of rape in the second degree, two counts of rape in the third degree, one count of attempted rape in the third degree, six counts of furnishing liquor to a minor, one count of voyeurism, and one count of communication with a minor for immoral purposes. All of the convictions were vacated by a decision of this Court and the charges had been remanded to Thurston County for a retrial. CP 145-146. The State had filed a Petition in the Washington Supreme Court seeking review of this Court's decision. CP 146.

Wiatt entered into an agreed resolution, in which the State committed to reduce the charges to seven counts of assault in the

fourth degree and two counts of furnishing liquor to a minor. CP 41, 146. The plea agreement was summarized in the Statement of Defendant on Plea of Guilty submitted by the defendant to the court that day:

. . . 365 days on each count with 60 day suspended for a period of two years, with time on all counts running concurrently; that the defendant receive credit for 305 days served as to all counts and that he be released from the custody of the Department of Corrections at the time of sentencing; that supervision of probation by the Department of Corrections be in King County where the defendant will be residing; that the conditions of probation be as follows: no criminal law violations, defendant engage in treatment as recommended in the December 4, 2010 evaluation by Michael Comte, and that the defendant not maintain a principal residence, or have a principal place of employment or principal place of schooling in Thurston County. Pursuant to the plea agreement of the parties, the defendant would agree to the entry by this court at the time of sentencing of a permanent civil anti-harassment order for each of the victims named in the nine counts against the defendant. The State recommends legal financial obligations in the amount of \$500 for the victim penalty assessment and \$200 for court costs.

CP 6, 41.

At the change of plea hearing, the defendant acknowledged he fully understood what was stated in the statement of defendant on plea of guilty. CP 55. The State noted the following in regard to

its recommendations following the court's acceptance of the defendant's guilty pleas:

. . . Your Honor, I'm asking the court to impose a permanent antiharassment order for each victim, and for the purposes of the record I'm going to read their names into the -- on the record. Magen Blevins, Jennifer Bowles, Alvina Cruz, Erin Gundlach, Zoe Hawkins, Krystal Hoskins, Heather Kamilkov, Raminta Rankis, and Sherri Waltermeyer.

CP 57. The court accepted the defendant's guilty pleas to all nine counts, finding that the defendant had made those pleas freely, voluntarily, intelligently, and competently, and that he understood the consequences of his guilty pleas. CP 64.

The prosecutor then provided to the court the following information concerning the victims of the defendant's crimes:

. . . The only additional information at this point that I would like to add to the Court is that information regarding the contact with the victims. The victims are all aware, all the victims have been sent letters by certified mail. Ms. Carroll has been the victim advocate, had contact with all the victims in this case. Some of them have had more contact, more than majority of them have had more contact than others with Ms. Carroll, they have all chosen not to be present here today. They still are all requesting the permanent lifetime no contact or, excuse me, antiharassment orders that are before the court. They did not want to see the defendant. They're all young woman (sic) who -- incidents as the Court can see from the dates in the information were affected by crimes 11 and 12 years ago. Many of them have gotten married, some of them have children, some of

them live in Thurston County, many of them still have contacts like relatives, parents that live in Thurston County even if they live elsewhere. But the one unifying comment from all the victims is they never want to see the defendant ever again. . .

I can also indicate to the Court that as we've been sitting here and as the Court's been proceeding on this very hearing, Ms. Carroll has been in contact and has actually received some e-mail contact back from the victims that are very anxious to hear what's going to be happening so they are very much present, very much concerned about what the Court's proceeding on today. I don't want the fact that their presence is not actual in court today for the Court to think that there is any less import to the victim's feelings regarding this case.

CP 65-67.

The prosecutor went on to discuss the entry of the proposed anti-harassment orders within the context of the criminal change of plea and sentencing hearing that was taking place.

. . . In this case, Your Honor, because of the unique circumstances, the State in effect is acting as the petitioner for this hearing on behalf of the victims, and so I believe that it would be appropriate for the State to sign but I have not done so until the Court approves. I believe that's Mr. Zuckerman and defense counsel's opinion as well and I'll hand those forward to the Court if the Court wants to review those as well.

CP 67-68 (emphasis added). After the court reviewed the proposed anti-harassment protection orders, the court asked for a response from defense counsel. That response was as follows:

Yes, Your Honor. Thank you, Your Honor, I do want to confirm that all of these conditions are fully agreed upon by the defense. As I think Your Honor knows, this was the result of considerable negotiations between the defense and the prosecutor's office and I know that the prosecutor also took the time to correspond with all the victims in the case and make sure that the settlement was acceptable to them as well. So we agree to all the terms recommended. . . .

CP 68-69 (emphasis added). The defendant was asked if he had any comment to make. He declined, saying that he was deferring to his attorney. CP 69.

The court then noted that several published Washington appellate opinions had been presented in support of the proposal for entry of the anti-harassment orders, and that the court had reviewed those. Those cases were State v. Alphonse, 147 Wn. App. 891, 197 P.3d 1211 (2008) and State v. Schimelpfenig, 128 Wn. App. 224, 115 P.3d 338 (2005). The judge stated that she had studied those cases and noted that the cases set forth six nonexclusive factors that the court should consider when determining whether to impose a lifetime order such as was being requested. The court indicated the belief that the most important consideration was whether there was no less restrictive means available to accomplish the purpose of the order, and that the orders must be narrowly tailored to serve the interests involved.

CP 70-71. The court stated that the court was accepting the joint recommendation of the parties as proposed. CP 72. The court then specifically found that it was appropriate under both the statute and the cases referred to above that there be lifetime anti-harassment orders imposed. CP 72. The State, in return, confirmed that a withdrawal of the State's Petition for Review would be submitted to the Washington Supreme Court. CP 76.

Along with the filing of each of the nine anti-harassment protection orders approved by the court on January 31, 2011, the court also entered an Order Waiving Fees. In each such order, the court summarized what had taken place regarding these anti-harassment orders in the following manner:

In the above-named causes, the State of Washington, through Christen Anton Peters and James C. Powers, Deputy Prosecuting Attorneys for Thurston County, sought Permanent Anti-Harassment Orders for the protection of victims of offenses regarding which findings of guilt were entered against Jerry Dale Wiatt, Jr., respondent herein, and defendant in Thurston County Superior Court Cause 01-1-01136-1. This was done pursuant to a plea agreement reached with Jerry Dale Wiatt, Jr., in that criminal cause. Consequently, the respondent/defendant, Jerry Dale Wiatt, Jr., stipulated to the entry of those Permanent Anti-Harassment Orders in the above causes on January 31, 2011, at a hearing at which a Judgment and Sentence was also entered against defendant Wiatt in the criminal cause, Cause No. 01-1-01136-1. Because of the circumstances in which Permanent

Anti-Harassment Orders were entered in the above-identified cases, the Court hereby finds it appropriate that all court and service fees be waived with regard to the entry and service of these Anti-Harassment Orders.

CP 116. The Honorable Judge Lisa Sutton also sentenced Wiatt as requested in the plea agreement. CP 40-44, 79-81.

On April 7, 2017, Wiatt filed in each of the nine civil causes a motion to vacate the permanent anti-harassment order that had been entered by the court on January 31, 2011, arguing that the court had committed legal error in issuing each of those orders. CP 147. The State intervened and argued that the motions to vacate breached the terms of the plea agreement that had been reached in 2011. CP 118. The trial court agreed that Wiatt had breached the terms of the plea agreement by attacking the validity of the permanent civil protection orders and found that the remedy of specific performance precluded Wiatt from proceeding in his motions to vacate. CP 144-150. Wiatt appealed that finding.

Division I of the Court of Appeals affirmed holding that the trial court had the authority to enforce the plea agreement. Opinion,

No. 79646-1-II at 5.¹ Wiatt now seeks review of the decision of the Court of Appeals.

C. ARGUMENT.

1. Wiatt offers no basis pursuant to RAP 13.4 for this Court to accept review because the decision of the Court of Appeals is consistent with prior precedent from this Court.

A petition for review will be accepted by this Court only if the petitioner demonstrates that review is appropriate under the criteria set forth in RAP 13.4(b). Without making reference to the rule, Wiatt argues that “clear delineation and understanding of the limits of such an agreement are of paramount importance” and raise an issue of substantial public and professional interest. Petition at 2. The State interprets this argument as a request for review under RAP 13.4(b)(4).

While the State agrees that the nature and enforceability of plea agreements is of substantial public importance, it is already understood that “a plea agreement is a contract between the State and the defendant.” State v. McDonald, 183 Wn.2d 1, 8, 346 P.3d 748 (2015). As the Court of Appeals noted, “the language of the plea agreement is clear.” Opinion at 5. Wiatt understood the

¹ The unpublished opinion is attached to the Petition for Review. It has been ordered published, but for purposes of this brief it will be referred to as “Opinion.”

agreement and there should be no need for clarification in regard to its enforceability.

As is generally the case with contracts, whether the terms of the contract are to be considered separable or indivisible depends upon the intent of the parties. In determining the intent of the parties in the context of a plea agreement, a court must consider only objective manifestations of that intent, not claims of subjective intent. State v. Turley, 149 Wn.2d 395, 400, 60 P.3d 338 (2003). The terms of the contract in this case were likewise indivisible. It is an “unreasonable windfall” when a defendant negotiates a plea agreement with the State that provides him with important benefits, and then tries to repudiate that agreement to his further benefit. In re Personal Restraint of Swagerty, 186 Wn.2d 801, 812, 383 P.3d 454 (2016). The decisions of the trial court and the Court of Appeals applied this Court’s previous opinions to prevent Wiatt from receiving an “unreasonable windfall.”

This Court has long accepted that matters negotiated in a plea agreement can encompass more than just a criminal sentence. In State v. Lee, 132 Wn.2d 498, 506, 939 P.2d 1223 (1997), this Court acknowledged that “agreements to forgo seeking an exceptional sentence, to decline prosecuting all offenses, to pay

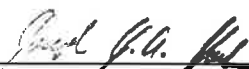
restitution on uncharged crimes, and to waive the right to appeal are all permissible components of a valid plea agreement.

The Court of Appeals correctly found that the civil antiharassment orders were entered pursuant to the trial court's authority under RCW 10.14.080(4), were specifically negotiated for and agreed upon by Wiatt to the benefit of both parties, and therefore, the trial court did not err by ordering specific performance. While the enforceability of plea agreements is of substantial public import, nothing in the Court of Appeals' decision in this case confuses the issue. There is no reason for this Court to accept review pursuant to RAP 13.4(b).

D. CONCLUSION.

The decision of the Court of Appeals correctly found that Wiatt had breached the plea agreement that he entered and that the State was entitled to specific performance. Wiatt has not demonstrated a basis for which this Court should accept review.

Respectfully submitted this 5th day of March, 2020.



Joseph J.A. Jackson, WSBA# 37306
Attorney for Respondent

DECLARATION OF SERVICE

I hereby certify that on the date indicated below I electronically filed the foregoing document with the Clerk of the Supreme Court using the Appellate Courts' Portal utilized by the Washington State Court of Appeals, Division II, for Washington, which will provide service of this document to the attorneys of record.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Olympia, Washington.

Date: March 5, 2020

Signature: 

THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE

March 05, 2020 - 3:46 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 98161-2
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