

NO. 69415-4-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

RONALD WAYNE MACDONALD

Appellant.

REC'D
JUN 28 2013
King County Prosecutor
Appellate Unit

2013 JUN 28 PM 4:15
COURT OF APPEALS
STATE OF WASHINGTON
[Signature]

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

The Honorable Harry McCarthy, Judge

REPLY BRIEF OF APPELLANT

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A. ISSUE IN REPLY

Under State v. Sanchez¹ did the State breach the plea agreement in violation of the appellant's state and federal constitutional due process rights?

B. ARGUMENT IN REPLY

THE LEAD DETECTIVE'S SENTENCING RECOMMENDATION, MADE OVER DEFENSE OBJECTION, BREACHED THE PLEA AGREEMENT.

The State argues the lead detective was merely acting as a victim advocate. Under Sanchez, however, the detective was an arm of the prosecution and was not entitled to assume that role, given the contract the prosecution had entered into.

The question is not whether victims have important rights under the Washington constitution. They clearly do. The question before this Court is, rather, whether the detective, who was a party to the plea negotiations,² could then undermine the very contract that bound him. The clear answer, according to the Supreme Court, is no. Sanchez, 146 Wn.2d at 358-59, 364; see also State v. Matson, 268 Wis.2d 725, 674

¹ 146 Wn.2d 339, 46 P.3d 774 (2002).

² CP 112, 147-48; 1RP 9-10.

N.W.2d 51 (Wis. App. 2003) (adopting holding of Sanchez “dissent” and holding that letter from investigating detective undermined plea bargain).

Sanchez holds that an investigating officer is an arm of the prosecutor and thus a party to a plea agreement. In Sanchez, moreover, a majority of Supreme Court justices explicitly rejected the primary argument the State now makes, that the sentencing court had no choice but to accept the detective’s sentencing recommendation. Sanchez, 146 Wn.2d at 358, 367. Even though statutes including former RCW 9.94A.110 permit argument from individuals including an “investigative law enforcement officer” at sentencing, these provisions must be read in conjunction with the United States Supreme Court authority, which holds that a party’s recommendation that undermines a plea agreements violates constitutional due process. Sanchez, 146 Wn.2d at 367 (Madsen, J., dissenting), citing, *inter alia*, Santobello v. New York, 404 U.S. 257, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971) (Justice Madsen joined by three justices); Sanchez, 146 Wn.2d at 358 (Chambers, J., dissenting in part and concurring in part). This makes sense under the facts of this case.

Although the controlling portion of Sanchez does not discuss Article 1, section 35, the State’s argument under that provision should be rejected for similar reasons. In the event the victim is unable to address the court, the “prosecuting attorney *may* identify a representative to

exercise the victim's rights." Const. art. 1, § 35 (amend. 84) (emphasis added). Of course, the State cites no authority for the proposition that this representative *must* be the lead detective, nor any policy in favor of such. Because the victim's rights provision may be harmonized with state and federal due process rights, this Court should interpret the provision in a manner that gives effect to both. State v. Gentry, 125 Wn.2d 570, 625, 888 P.2d 1105 (1995) (citing Port of Longview v. Taxpayers, 85 Wn.2d 216, 232-33, 533 P.2d 128 (1974)). Such an interpretation precludes a sentencing recommendation by a lead detective – a party – that undermines a plea agreement because it violates state and federal due process rights.

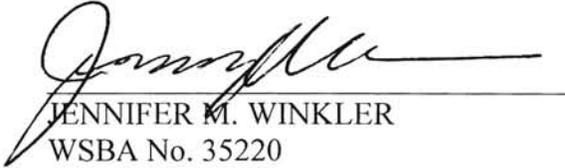
C. CONCLUSION

For the reasons set forth above and in the opening brief, this Court should remand so the appellant may elect whether to withdraw his plea or seek specific performance of the parties' agreement.

DATED this 28TH day of June, 2013.

Respectfully submitted,

NIELSEN, BROMAN, & KOCH, PLLC

A handwritten signature in black ink, appearing to read "Jennifer M. Winkler", is written over a horizontal line. The signature is fluid and cursive.

JENNIFER M. WINKLER

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Attorneys for Appellant

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v.)	COA NO. 69415-4-I
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RONALD MACDONALD,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 28TH DAY OF JUNE 2013, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY EMAIL AND/OR DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] RONALD MACDONALD
DOC NO. 902835
COYOTE RIDGE CORRECTIONS CENTER
P.O. BOX 769
CONNELL, WA 99326

SIGNED IN SEATTLE WASHINGTON, THIS 28TH DAY OF JUNE 2013.

x *Patrick Mayovsky*