

COURT OF APPEALS  
 OF THE STATE OF WASHINGTON  
 DIVISION II

07 MAR 22 PM 1:40  
 STATE BY SW

STATE OF WASHINGTON, )  
 )  
 Respondent, )  
 )  
 v. )  
 )  
LUIS RUEDA-NACASPACA, )  
 )  
 Appellant. )

35041-6  
 No. ~~34310~~-0-II  
 CAUSE NO. 05-1-00291-1  
 STATEMENT OF ADDITIONAL  
 GROUNDS FOR REVIEW  
 RAP 10 10

I, The Appellant, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

IT WAS ESTABLISHED IN PRIOR RULING THAT MAXIMUM TERM THE DEFENDANT COULD RECIEVE WAS 5years NOT 10 years.

Plea agreement was reached between the parties after consideration of what was believed to be the true consequences of such agreement according to the facts contained within the agreement. Subsequeintly it has been made clear that there was an error in the information of the agreement. Accordingly we ask that the (COMPLETE PLEA AGREEMENT BE RENDERD VOID).

Additional Ground 2

PROSECUTORIAL MISCONDUCT VIOLATED THE DEFENDANTS 5th AMENDMENT CONSTITUTIONAL RIGHT TO DUE PROCESS.

While it is lawful for the prosecutor to inform the defendant certian rihgts given up when entering into a plea agreement according to law, it is not lawful for the prosecutor to make specific denial of the defendants apart of the plea agreement. In this case the prosecutor wrongly makes the defendants right to request of the sentencing court for a lighter sentence. Also the defendants right to seek appeal. In that a plea bargan is an agreement between the parties and not the court, the court is not bound by such agreement. It is within the sole

Additional Ground 2 CONTINUED

discretion of the sentencing judge to either depart or remain within the confines of any agreement reached between the parties, As such there is no law precluding the defendant from seeking leniency of the court. To knowingly mis-inform the defendant of his rights in effort to strengthen the prosecution position constitutes mis-conduct. Accordingly (PLEA AGREEMENT MUST BE RENDERD VOID AND VACATED).

Additional Ground 3

**CONDITIONS OF PLEA AGREEMENT HAS NOT BEEN MET BY STATE.**

As part of the plea agreement a portion of the defendants total sentence was to be converted to community custody, this was indeed one of the deciding factors considered by the defendant in entering into the agreement. When it was discovered that there was an error in the plea agreement, (MAXIMUM TERM EXCEEDED THE 60 MONTHS) And the court remanded this case back for resentencing. The recalculation of the defendants total sentence must include the 9-12 months of community as part of the maximum sentence of 60 months. the exceeded time must be deducted from the time of confinement, in order to satisfy the terms of the plea agreement. in that this is a violation of the defendants (5th amendment) constitutional right to due process. (THE COURT MUST REMAND FOR RESENTENCING).

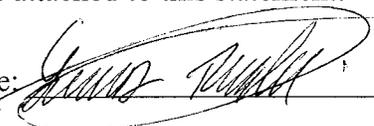
Additional Ground 4

**CHALLENGE TO THE CALCULATION OF OFFENDER SCORE.**

The state contends that the defendant has an offenders score of (5) The state counts the defendants three prior convictions as one point each. This is an error; in that the defendant was convicted/sentenced for all three prior offences in the same court, on the same day at the same time, For the purpose of calculating an offenders score this should of amounted to a total of (1 point) for prior criminal history.

If there are additional grounds, a brief summary is attached to this statement.

Date: 3/27/2007

Signature: 

Additional Ground 5

At the time of conviction the crime of (INTENT TO DELIVER  
A CONTROLLED SUBSTANCE, TO WIT METHAMPHETAMINE HYDROCHLORIDE)  
As charged in the charging information was classified as  
an unranked felony. Unranked felonies can be punished with no  
more than one year of total confinement.  
The state assigned a term of 60 months to the charge of  
count III of the charging information this is error.

Additional Ground 6

ACCUMULATIVE ERRORS: The cumulative error doctrine states  
in part that ;when errors even though individually not  
reversible errors alone, cumulatively produce an unfair  
outcome the outcome must be reversed.  
In this case there were several individual errors that  
rendered the outcome fundamentally unfair.

If there are additional grounds, a brief summary is attached to this statement.

Date: 3/27/2007.

Signature: 

STATEMENT OF ADDITIONAL GROUNDS  
SUPPORTING STATUES

- (1) Case records-document plea agreement.  
(CrR 4.2.p.207 (6) States; In considering the consequences of the guilty plea that I understand (A) each crime with which I am charged carries a maximum sentence.
- 
- (2) TRUSSELL V. BOWERSOX 447 f3d (8th cir 2006)  
A breach of a plea agreement violates defendants due process rights.
- 
- (3) US V. ROQUE.421 f3d (2nd cir 2005)  
A defendants ignorance of existing rights may void plea agreement and waiver of appellates rights.
- 
- (4) UNITED STATES V. FOWLER 984 f3d (2006)  
Once the sentence was amended it violates the plea agreement.
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- (5) US V. KING 257 f3d 1013 (9th cir 2001)  
Any error in a guilty plea hearing are reversible unless shown to be harmless.
- 
- (6) US V. GOINGS 200 f3d 539 (8th cir 2000)  
Where it is clear that the gover ment violated the terms of a plea agreement, the defnendant is typically given the option of withdrawing his guilty plea or demanding specific performance.
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- (7) STATE V. GREIFF, 141 wn 2d (200)  
ACCUMULATIVE ERROR DOCTRINE.

3/27/2007/



COURT OF APPEALS  
DIVISION II  
OF THE STATE OF WASHINGTON

LUIS RUEDA-NACASPACA )  
Petitioner )  
 )  
V. ) No. 34310-0-II  
 ) CAUSE NO. 05-1-00291-1  
 ) DECLARATION OF SERVICE BY MAIL  
STATE OF WASHINGTON )  
Respondent )

I, LUIS RUEDA-NACASPACA, the PETITIONER in  
the above entitled cause do hereby declare that I have served the following documents:

RAP 10.10 STATEMENT OF ADDITIONAL GROUNDS FOR REVEIW.

Upon:  
COURT OF APPEALS, DIVISION II, 950 BROADWAY, SUITE 300  
TACOMA WA, 98402-4454

CATHERINE E. GLINSKI (ATTORNEY AT LAW) P.O. BOX 761  
MANCHESTER, WA 98353-0761

SUSAN I. BAUR (PROSECUTING ATTORNEY) HALL OF JUSTICE  
312 S.W. FIRST AVENUE  
KELSO, WA 98626

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I deposited with the Unit Officer's Station, by processing Legal Mail, with first-class Postage affixed thereto, at the STAFFORD CREEK CORRECTION CENTER  
UNIT H2-A

On this 27 day of march 2007

I certify under penalty of perjury under the laws of the State of Washington that the forgoing is true and correct.

FILED  
COURT OF APPEALS  
DIVISION II  
07 MAR 29 PM 1:41  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

Respectfully submitted,

\_\_\_\_\_  
(Signature)

**DECLARATION OF SERVICE**  
I certify that I served  
copies of SA's  
S. Baur  
UNIT H2-A