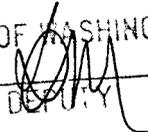


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DIVISION II

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STATE OF WASHINGTON
BY 
DEPUTY

No. 36472-7-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Douglas Baker,

Appellant.

Jefferson County Superior Court

Cause No. 02-1-00116-1

The Honorable Judge Theodore Spearman

Appellant's Reply Brief

Manek R. Mistry
Jodi R. Backlund
Attorneys for Appellant

BACKLUND & MISTRY
203 East Fourth Avenue, Suite 404
Olympia, WA 98501
(360) 352-5316
FAX: (866) 499 7475

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ARGUMENT

THE STATE SHOULD BE REQUIRED TO PERFORM ITS OBLIGATIONS UNDER THE “COMPREHENSIVE PLEA AGREEMENT.”

The state should not be excused from performing obligations under a plea agreement simply because it has dragged its feet for more than a year. This is the result sought by Respondent. Brief of Respondent, p. 8. Respondent—having negotiated and entered a “Comprehensive Plea Agreement” to resolve all of Mr. Baker’s matters—now wishes to carve out from this comprehensive plea agreement a “civil portion,” which it characterizes as “ancillary” and involving only “minutiae.” Brief of Respondent, pp 6-8.

But the agreement is not so easily divisible. The state cannot establish that those allegedly “ancillary” portions of the plea agreement were not part of the inducement it used to obtain Mr. Baker’s guilty plea. On the contrary, the very word used to describe the plea agreement – “Comprehensive”—shows that the parties intended the agreement to be considered as a whole, rather than as separate agreements.

In short, this is exactly the situation that the doctrine of equitable tolling was designed to address. *See State v. Littlefair*, 112 Wn. App. 749 at 759, 51 P.3d 116 (2002). Respondent’s attempt to distinguish *Littlefair* as a “wholly criminal” case is nonsensical, since the deportation at issue in

that case was not a criminal matter. Brief of Respondent, p. 6; *see also State v. Yokley (In re Yim)*, 139 Wn.2d 581 at 588, 989 P.2d 512 (1999) (“a deportation proceeding that occurs subsequent to the entry of a guilty plea is merely a collateral consequence of that plea.”). Despite the collateral nature of the threatened deportation in *Littlefair*, the Court of Appeals applied the doctrine of equitable tolling to grant the defendant relief.

The state entered a plea agreement, and now, according to Mr. Baker, has failed to perform its part of the bargain. Given the factual dispute, Mr. Baker should be granted a hearing to prove the breach he has alleged.

CONCLUSION

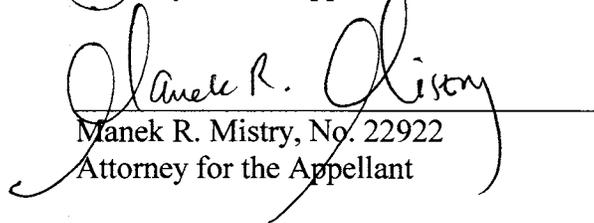
This Court should grant Mr. Baker the opportunity to establish a material breach of the "Comprehensive Plea Agreement." The state should not be permitted to breach such agreements with impunity.

Respectfully submitted on May 12, 2008.

BACKLUND AND MISTRY



Jodi R. Backlund, No. 22917
Attorney for the Appellant



Manek R. Mistry, No. 22922
Attorney for the Appellant

CERTIFICATE OF MAILING

I certify that I mailed a copy of Appellant's Reply Brief to:

Douglas Baker
1142 East Craig Ave.
Port Angeles, WA 98362

and to:

Douglas E. Jensen
Special Deputy Prosecuting Attorney
For Jefferson County
Clallam County Courthouse
223 East Fourth Street, Suite 11
Port Angeles, WA 98362-3015

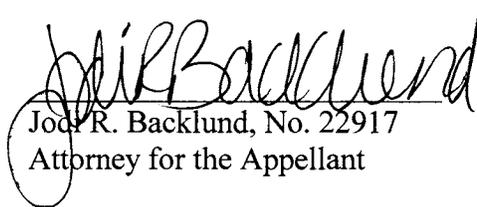
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And that I sent the original and one copy to the Court of Appeals, Division II, for filing;

All postage prepaid, on May 12, 2008.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on May 12, 2008.


Jodi R. Backlund, No. 22917
Attorney for the Appellant