

NO. 40899-6

COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEFENDANT

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**COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON**

STATE OF WASHINGTON, APPELLANT

v.

JAMES JOHN CHAMBERS, JR, RESPONDENT

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Appeal from the Superior Court of Pierce County  
The Honorable Thomas Felnagle

No. 99-1-00817-2

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**Reply Brief of Appellant**

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**Table of Contents**

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR..... 1

    1. Whether the terms of the plea agreement are in dispute between the parties? ..... 1

    2. Whether there was consideration for the modification of the first plea agreement? ..... 1

    3. Whether the matter should be remanded back to the trial court for a factual determination of the terms of the plea agreement? ..... 1

B. STATEMENT OF THE CASE. ..... 1

    1. Procedure..... 1

    2. Facts ..... 1

C. ARGUMENT..... 2

    1. THE PARTIES ARE IN DISPUTE AS TO THE TERMS OF THE PLEA AGREEMENT. .... 2

    2. CONSIDERATION WAS EXCHANGED IN THE MODIFICATION OF THE ORIGINAL PLEA AGREEMENT. .... 3

    3. THE COURT SHOULD REMAND THE MATTER TO THE TRIAL COURT FOR AN EVIDENTIARY HEARING ON THE NATURE OF THE PLEA AGREEMENT. .... 4

D. CONCLUSION. ..... 5

## Table of Authorities

### State Cases

<i>State v. Frederick</i> , 100 Wn.2d 550, 558, 674 P.2d 136 (1983) <i>overruled on other grounds</i> <i>Thompson v. State, Dept. of Licensing</i> , 138 Wn.2d 783, 798, 982 P.2d 601 (1999).....	4
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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Whether the terms of the plea agreement are in dispute between the parties?
2. Whether there was consideration for the modification of the first plea agreement?
3. Whether the matter should be remanded back to the trial court for a factual determination of the terms of the plea agreement?

B. STATEMENT OF THE CASE.

1. Procedure

The State incorporates by references the procedural statement of the case made in its Brief of Appellant.

2. Facts

The State incorporates by references the factual statement of the case made in its Brief of Appellant.

C. ARGUMENT.

1. THE PARTIES ARE IN DISPUTE AS TO THE TERMS OF THE PLEA AGREEMENT.

The respondent claims that the parties are not in dispute as to the terms of the plea agreement on CA# 99-1-05307-1.<sup>1</sup> Br. Resp. 3. Without ascribing any ill intent to opposing counsel, it is the State's position that the respondent's statement is not sufficiently precise and does not accurately reflect the respective positions of the parties.

The parties are in disagreement as to the terms of the plea agreement. This is because it is the State's position that the plea on this case, CA# 99-1-00817-2, was part of a larger combined plea encompassing three separate cases, including CA# 99-1-05307-1. As such, it is the State's position that the complete agreement included terms that went beyond the prosecutor's recommendation on any one of the individual cases, and that the totality of all the terms as to all three cases are part of the agreement.

In contrast, the defense position is that each case constituted a separate plea agreement, which consisted only of the defendant's plea and the prosecutor's recommendation on each particular case.

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<sup>1</sup> While that is not the cause number on appeal in this case, the State has argued in its Brief of Appellant that it was part of a single multi-case plea agreement that must be considered in conjunction with this case in light of the issues that have been raised.

Given this fundamental difference of position, the State cannot agree that the terms of the plea agreement are not in dispute.

While CP 93 reflects the recommendation the State agreed to make on that particular case, that recommendation in isolation is not reflective of the totality of the plea agreement. Moreover, while the plea on CA# 99-1-05307-1 occurred eight months after the plea on CA# 99-1-00817-2, it occurred on the same date the defendant was sentenced on CA# 99-1-00817-2, and at that sentencing, the State made a modified sentencing recommendation on that case in light of the defendant's plea on the new case. RP 03-17-2000, p. 15-17.

2. CONSIDERATION WAS EXCHANGED IN THE  
MODIFICATION OF THE ORIGINAL PLEA  
AGREEMENT.

Originally, the State's recommendation on this case was "Open." *See* CP 155. The State was entitled to ask for the high end of the defendant's range. Instead of recommending the high end of the range, the State recommended the low end, even though the defendant's offender score was higher because of the defendant's plea on CA# 99-1-05307-1. *See* RP 03-17-2000, p. 15, ln. 3-17.

In recommending the low end, it was expressly noted on the record, that part of the rationale for the State's recommendation on the case was the defendant's willingness to plead guilty on CA# 99-1-05307-1, combined with the fact that the defendant received additional

consideration by avoiding the murder prosecution. RP 03-17-2000, p. 16, ln. 18 to p. 17, ln. 6. Defense counsel then went on to essentially affirm the State's representations and acknowledge that the defendant received benefits by entering the plea. RP 03-17-2000, p. 18, ln. 16.

3. THE COURT SHOULD REMAND THE MATTER TO THE TRIAL COURT FOR AN EVIDENTIARY HEARING ON THE NATURE OF THE PLEA AGREEMENT.

Ultimately, the question of whether there were three separate plea agreements, or a modified agreement encompassing all three cases as part of a single agreement, is a question of fact that this court is not properly in a position to determine. Such a determination should be made by the trier of fact pursuant to a proper hearing. *See, e.g., State v. Frederick*, 100 Wn.2d 550, 558, 674 P.2d 136 (1983) *overruled on other grounds* *Thompson v. State, Dept. of Licensing*, 138 Wn.2d 783, 798, 982 P.2d 601 (1999) (to take the issue of the voluntariness of a plea from the trier of fact there must be no substantial evidence from which a reasonable trier could conclude the plea was voluntary). Accordingly, the court should remand both cases on appeal for a determination of this issue.

10 DEC -2 PM 3:05

STATE OF WASHINGTON  
BY   
DEPUTY

D. CONCLUSION.

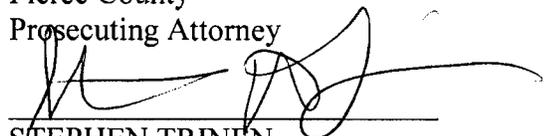
Even though the parties are in agreement as to what the State's recommendation was on CA# 99-1-05307-1, the parties are in disagreement as to the terms of the plea agreement where the State's position is that the plea on that case was part of a larger agreement encompassing three cases.

There was consideration for modification of the plea agreements on the two cases that were pleaded out before the third case was committed.

This case should be reversed, and both cases linked on appeal should be remanded back to the trial court for a determination of the terms of the plea agreement.

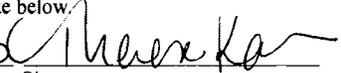
DATED: December 2, 2010.

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Certificate of Service:  
The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

12.2.10   
Date Signature