

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS
DIVISION II

2020 APR -6 PM 1:06

STATE OF WASHINGTON)
)
Respondent,)
)
v.)
Michael Hudson)
(your name))
)
Appellant.)

No. 53280-8-II BY _____

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, Michael Hudson, 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

The guilty plea was based on a plea agreement that was not followed, nor, based on contractual law, was it legally binding to begin with because threats, intimidation, & coercion were used to force its creation.

Additional Ground 2

Some criminal conduct was not applied when it should have been in order to protect the accused from abuse of judicial power in sentencing.

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

Date: 3/30/2020

Signature: 

Additional Ground 1:

Plea agreements are contracts in nature, and are measured by contractual standards. *US v Schuman*, 127 F 3d 815, 817 (9th Cir 1997). Just as with other forms of contracts, a negotiated guilty plea is a "bargained for quid pro quo." *US v Sandoval-Lopez*, 122 F3d 797, 800 (9th Cir 1997). The defendant performs his side of the bargain by entering a guilty plea. The government is then required to perform its duty, whether dismissing charges, recommending sentences, or remaining silent. If the court accepts the agreement and the government's promise is performed, then the agreement is complete and the defendant gets the benefit of the bargain. However, if the court rejects the government's proposed promise, then the agreement is terminated and the defendant has the right to back out of the plea. This is analogous to a binding contractual duty extinguished by the nonoccurrence of a condition subsequent. *US v Hyde*, 520 US 670, 117 S ct 1630, 1634, 137 L Ed 2d 935 (1997). See also, J Calamari and J Perillo, *Law of Contracts*, section 11-7, p 441 (3rd Ed, 1987).

The Supreme Court has specifically addressed this situation in *Santobello v New York*, 404 US 257, 262, 92 S ct 495, 499, 30 L Ed 2d 427 (1971) directing that when the government has made a plea agreement and then breaches its terms, the remedy is to either allow the defendant to withdraw the guilty plea or to require specific performance. The Supreme Court remanded *Santobello* back to the State for determination of the issue of whether or not the defendant could be made whole by resentencing before the same judge, or if justice could better be served by transferring the case for re-sentencing to a judge who was untainted by the government's conduct.

For the argument above, Appellant asks court to allow

the withdrawal of his guilty plea and be remanded to a judge who has not shown bias against the accused.

To further support the argument of an invalid plea deal, a coerced guilty plea is open to collateral attack. *Fontaine v US*, 411 US 213, 215 (1973).

Coercion is defined by Black's Law Dictionary, 10th Ed, as "compulsion of a free agent by, physical, moral, or economic force or threat of physical force." Coercion intended to restrict another's freedom of action by threatening to commit a criminal act against that person; threatening to accuse that person of having committed a criminal act; threatening to expose a secret that either would subject the victim to hatred, contempt, or ridicule or would impair the victim's credit or goodwill, or taking or withholding official action or causing an official to take or withhold action is 'criminal coercion'.

With the use of intimidation of Appellant's surroundings while detained in Clark County Jail, the prosecutor used threats, through the defendant's own defense attorney, that if the plea deal was not accepted, the prosecutor would add more charges against defendant. These veiled threats violate the very definition of coercion.

In *Strickland v Washington*, 466 US 668 (1984), the Supreme Court created a standard for measuring effective assistance of counsel as a two-part test. First, did the counsel perform below an objective standard of reasonableness? As stated above, the defense attorney assisted in the signing of a plea agreement using coercion of the prosecutor. This created a violation against the defendant under 42 USC § 1983 and § 1985. Every member, under the BAR Association, should have such a basic grasp to understand when they are committing a criminal act. Second, because of that failure it created a reasonable probability that, but

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For the errors, the outcome would have been different. If Appellant was not wrongfully intimidated, threatened or coerced, his Seventh Amendment right to trial by jury would have been upheld and no plea agreement would have signed.

Additional Ground 2:

As defined in RCW 9A.589, same criminal conduct incorporates two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim.

In Appellant's case, same criminal intent should have been applied to counts 1-4, 10 as, based on the understanding and date placed in the plea agreement signed, they applied to one victim, they were at the same time, and their intent would be for the same ending, sexual satisfaction. It disgusts me to write that so plainly, but when arguing law there is no grey areas. That includes the time and place requirement for same criminal conduct. As explained to Appellant by his original trial attorney, the plea deal that resulted in a plea of guilt was for an incident that had to do with a promise to go to a pool. So, as understood by Appellant, these incidents occurred at the same place and time. If something different was implied by the prosecution, why is the date of the crime the same overly broad time period?

At sentencing, the State has the burden of proving the defendant's criminal history by a preponderance of the evidence. If the time an offense was committed affects the seriousness of the sentence, the State must prove the relevant time. Based solely on the charges with a broad time range of alleged offenses, it bears the State did not show, based on a preponderance of evidence, to show proof of multiple incidents since no single incident was declared. Furthermore, the tactic used by applying multiple charges over such a broad range of times makes it impossible to defend one's innocence since the ability to provide an alibi,

or evidence of innocence, over such a time frame can not be done.

For the same argument, counts 6-9 should be applied as same criminal conduct and applied as one charge.

If a defendant is convicted of violating a single statute multiple times, the proper inquiry in a single statute case is what "unit of prosecution" has the legislature intended as the punishable act under the specific criminal statute. When the legislature defines the scope of a criminal act (the unit of prosecution), double jeopardy protects a defendant from being convicted twice under the same statute for committing just one unit of crime. And, if the statute is ambiguous because the legislature has failed to denote the unit of prosecution, the ambiguity should be construed in favor of lenity. *Bell v United States*, 349 US 81, 75 S Ct 620, 99 L Ed 905 (1955). The rule of lenity provides that any ambiguity in a criminal statute must be resolved in favor of the accused and against the State.

For these arguments, Appellant asks charges 1-4 and 10 be applied as one charge to the sentencing / offender score and charges 6-9 be applied as one charge to the sentencing / offender score.

Conclusion:

Using the arguments of the Statement, Appellant asks the court to grant relief of his current sentence. In the light most favorable to the Appellant, the Civil Rights violations committed by the prosecuting attorney should grant this Appellant his freedom since the acts committed were not harmless error. The Appellant could not expect to receive a fair and unbiased trial when the State is using criminal tactics to gain a conviction.

Though Appellant stands strongly for his relief, at a different view, the entered guilty plea should be allowed to be withdrawn as the contract was not upheld by the State. In the eyes of contractual law, the plea bargain is null and void, along with the subsequent conviction.

In the light least favorable to the Appellant, a corrected sentence should be given based on the charges of the plea agreement and within the guidelines set forth by legislation.

Court of Appeals
Division Two of
the State of Washington

In re: <u>State of Washington,</u> Respondent	No. <u>53280-8-II</u>
V. <u>Michael Hudson,</u> Appellant	Proof of Service (RTS)

Proof of Service

I declare: that the Statement of Additional Grounds was served via mail to
~~I am age 18 or older and not a party to this case.~~ the court listed below.

Served to (name): Court of Appeals-Div II of WA directly

in care of (name): _____ ~~at:~~

I declare under penalty of perjury under the laws of the state of Washington that the statements on this form are true.

Signed at Connell, WA Date: 4/1/2020


Signature of server

Michael Hudson
Print or type name of server