

FILED
COURT OF APPEALS
DIVISION II
2019 JUL 18 PM 12:07
STATE OF WASHINGTON
BY _____
DEPUTY

FILED
DEPT. 15
IN-OPEN COURT
JUL 10 2019
By *[Signature]*
DEPUTY

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6 **IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE**
7 STATE OF WASHINGTON,
8 Plaintiff ,
9 vs.
10 BLACKWEL, CHRISTOPHER WILLIAM,
11 Defendant

Cause No: 8-034036

**ORDER ON DEFENDANT'S MOTION TO
MODIFY JUDGMENT AND SENTENCE**

CLERK'S ACTION REQUIRED

12 THIS MATTER came before the undersigned judge of the above entitled court upon
13 review of the defendant's motion(s) filed on May 8th, 2019. After reviewing the defendant's
14 written pleadings, the court now enters the following order pursuant to CrR 7.8(c)(2):

15 **A. IT IS HEREBY ORDERED** that this petition is transferred to the Court of
16 Appeals, Division II, to be considered as a personal restraint petition. The petition is being
17 transferred because:

18 it appears to be time-barred under RCW 10.73.090;

19 is not time-barred under RCW 10.73.090, but is untimely under CrR 7.8(a)

20 and therefore would be denied as an untimely motion in the trial court; or

21 is not time barred but does not meet the criteria under CrR 7.8 (c)(2) to allow

22 the court to retain jurisdiction for a decision on the merits.

23 **If box "A" above is checked, the Pierce County Superior Court Clerk shall forward**
24 **a copy of this order as well as the defendant's pleadings identified above, to the Court of**
25 **Appeals.**

1 **B. [] IT IS HEREBY ORDERED** that this court will retain consideration of the motion
2 because the following conditions have been met: 1) the petition is not barred by the one year
3 time bar in RCW 10.73.090, and either:

4 [] the defendant has made a substantial showing that he or she is entitled to relief; or

5 [] the resolution of the motion will require a factual hearing.

6 **IT IS FURTHERED ORDERED** that the defendant's motion shall be heard on its merits.

7 The State is directed to:

8 [] file a response by _____. After reviewing
9 the response, the Court will determine whether this case will be transferred to the
10 Court of Appeals, or if a hearing shall be scheduled.

11 [] appear and show cause why the defendant's motion should not be granted. That
12 hearing shall be held on _____ at _____ a.m. / p.m.

13 [] As the defendant is in custody at the Department of Corrections, the State is further
14 directed to arrange for defendant's transport for that hearing.

15 **If box "B" above is checked, the clerk is directed to send a copy of this Order to**
16 **the Appellate Division of the Pierce County Prosecutor's Office.**

17 DATED this 10th of July, 2019.

18 
19 JUDGE GRETCHEN LEANDERSON





FILED
IN PIERCE COUNTY JUVENILE COURT

A.M. MAY 08 2019 P.M.

PIERCE COUNTY WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

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**IN THE PIERCE COUNTY SUPERIOR COURT
FOR THE STATE OF WASHINGTON
JUVENILE DIVISION**

8 STATE OF WASHINGTON,
9 Plaintiff,

NO. 297774 R090
8-034036

10 v.

MOTION TO DECLARE BREACH
OF PLEA AGREEMENT

11
12 CHRISTOPHER BLACKWELL,
13 Defendant.

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MOTION

When he pleaded guilty, Mr. Blackwell was told that the instant dispositions would never be used against him as criminal history in adult court. That agreement was breached. The convictions were later used to increase his murder sentence in Pierce County Case No. 06-1-01066-5.

Mr. Blackwell is not challenging his sentence in adult court in this proceeding. He alleges that the State breached the plea agreement and that his guilty plea was rendered involuntary by using the instant-conviction to increase Mr. Blackwell's murder sentence when he was told it would not be used in adult court. As a result, he moves this Court to vacate his conviction and to permit him to withdraw his guilty plea.

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FACTS

When he was 12, Christopher Blackwell pleaded guilty to []. The guilty plea form stated: "I have been told and fully understand that: (a) my plea of guilty and the Court's acceptance of my plea will become part of my criminal history; and (b) if the offense is a felony and I was 15 years of age or older when the offense was committed, then the plea will remain part of my criminal history when I am an adult, if I commit another offense prior to my twenty-third birthday, and may remain beyond that date." As applied to this case, the clear implication from this provision is that if the offense is not a felony or if the person is under 15 years old, then the plea will not remain part of his criminal history when he is an adult. The inclusion of the warning for offenses committed by a person over 15 that, not only will the conviction be included for crimes committed prior to age 23, but "may remain beyond that date," includes the possibility that the law may change but any change would only apply to crimes committed after age 15.

The implication for Blackwell, who was under 15, is clear: these convictions will not remain part of his criminal history when he becomes an adult, not under current law and no matter what happens in the future.

That promise to Blackwell was not kept.

He now seeks to have this Court find a breach, to vacate the disposition, and to permit him to withdraw his plea.

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ARGUMENT

A breach of a plea agreement occurs when the State "undercut[s] the terms of the [plea] agreement explicitly or implicitly by conduct evidencing an intent to circumvent the terms of the plea agreement." *State v. Ramos*, 187 Wn.2d 420, 433, 387 P.3d 650 (2016). There can be no harmless error when the State breaches a plea agreement. *State v. MacDonald*, 183 Wn.2d 1, 21,346 P.3d 748 (2015).

"[A] defendant gives up important constitutional rights by agreeing to a plea bargain[.]" *State v. Jerde*, 93 Wash.App. 774, 780, 970 P.2d 781 (citing *State v. Talley*, 134 Wash.2d 176, 183, 949 P.2d 358 (1998); *In re Palodichuk*, 22 Wash.App. 107, 109–110, 589 P.2d 269 (1978). "Because [plea agreements] concern fundamental rights of the accused, constitutional due process considerations come into play." *State v. Sledge*, 133 Wash.2d 828, 839, 947 P.2d 1199 (1997).

A breach of a plea agreement is a violation of due process. *See Mabry v. Johnson*, 467 U.S. 504 (1984) ("when the prosecution breaches its promise with respect to an executed plea agreement, the defendant pleads guilty on a false premise, and hence his conviction cannot stand"); *see also State v. Wakefield*, 130 Wash.2d 464, 472, 925 P.2d 183 (1996) (breach of plea agreement is criteria for determining whether "manifest injustice" mandates withdrawal of guilty plea under CrR 4.2(f)). If a defendant was misinformed

1 regarding the consequences of a plea, he may be entitled to set aside the plea
2 through a collateral attack. See *In re Montoya*, 109 Wash.2d 270, 277, 744
3 P.2d 340 (1987). However, the plea agreements themselves do not entitle the
4 defendants to any exemption from the sentencing laws, instead a defendant
5 must collaterally attack the conviction itself. *State v. McRae*, 96 Wash. App.
6 298, 305–06, 979 P.2d 911, 915 (1999).

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10 The State may argue that the plea statement does not expressly
11 address the future use of convictions committed when the offender is under
12 15. However, by referring to the future use of convictions for offense
13 committed after age 15, the statement unmistakably implies a different rule
14 for under 15 offenses. *State v. Linville*, 191 Wash. 2d 513, 520, 423 P.3d 842,
15 845 (2018) (recognizing that terms can be implied in fact); *In re Det. of*
16 *Williams*, 147 Wash.2d 476, 491, 55 P.3d 597 (2002) (“*expressio unius est*
17 *exclusio alterius*”—the express inclusion of specific items in a class impliedly
18 excludes other such items that are not mentioned).

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23 Here, by explaining that crimes committed when the offender is over 15
24 may be used in calculating an adult offender score for crimes committed
25 before the person’s 23rd birthday, the agreement implies that crimes
26 committed when under the age of 15 cannot be used as criminal history in
27 adult court. By referencing that the law regarding the use of over 15
28 convictions may change, the language of the plea agreement implies that any
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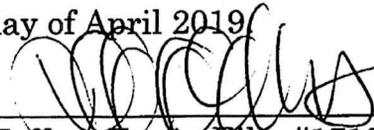
1 change will affect only convictions committed after age 15. The clear
2 implication is that crimes committed by an offender under 15 will never be
3 used to increase punishment in adult court.
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5 Because that promise was broken, Mr. Blackwell must be permitted to
6 withdraw his plea. *State v. Shineman*, 94 Wash. App. 57, 64, 971 P.2d 94, 98
7 (1999).
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10 CONCLUSION

11 This Court should grant Mr. Blackwell's motion.
12

13 DATED this 27th day of April 2019

14 
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