

FILED

FEB 07, 2012

Court of Appeals

Division III

State of Washington

NO. 29791-8-III

**COURT OF APPEALS, DIVISION THREE
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

RESPONDENT,

v.

CHRISTOPHER JOHN DALLUGE,

APPELLANT.

RESPONDENT'S BRIEF

**D. ANGUS LEE
PROSECUTING ATTORNEY
Carole L. Highland, WSBA #20504
Deputy Prosecuting Attorney
Attorney for Respondent**

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I. IDENTITY OF RESPONDENT

The State of Washington, represented by the Grant County Prosecuting Attorney's Office, is the Respondent herein.

II. RELIEF REQUESTED

Reversal is not warranted and Appellant's sentence must be upheld.

III. ISSUES

1. Whether the prosecutor breached the plea agreement by not explicitly stating an implied term which the trial court actually imposed.

IV. STATEMENT OF THE CASE

On March 11, 2011, the appellant, Christopher Dalluge, was found guilty of two counts of gross misdemeanor harassment. 03/11/11 RP 300, 302.

Sentencing was scheduled for March 15, 2011 to coincide with Mr. Dalluge's pending charge. 03/11/11 RP 305-306. On January 5, 2011, Mr. Dalluge had failed to appear for a previously scheduled trial date and a bench warrant had been issued. On March 15, 2011, prior to sentencing, the parties agreed to resolve Mr. Dalluge's pending charge of bail

jumping. 03/15/11 RP 69. The State then filed the fourth amended information adding a count six of “Bail Jumping — Gross Misdemeanor or Misdemeanor Court Appearance — For Crimes Committed On or After July 1, 2011 — RCW 9A.76.170 (Laws of 2001, ch. 264, section 3).”¹

In addition to the reduction from a potential felony charge of bail jumping to the misdemeanor charge of bail jumping, the parties also agreed that the maximum penalty of 90 days would be suspended concurrent with the two charges that Mr. Dalluge was being sentenced on from trial. CP 51.

After having accepted his plea to the bail jumping, the court asked the State for its recommendation. 03/15/11 RP 75. The State, per its agreement, recommended on count six, the bail jumping, 90 days all suspended for a period of two years on the condition of no criminal offenses. 03/15/11 RP 75. On counts three and four, on which the State had prevailed at trial, the request was for 365 days with 180 days suspended. *Id.*

¹ The State had moved to add the bail jumping charge for purposes of trial, but that motion was denied. Upon the resolution of the bail jumping charge by the parties, the charge was added to the information that had been presented to the jury for purposes of trial, rather than a separate document being filed. 03/15/11 RP 69-70. The appellant’s judgment and sentence reflected that counts one and five had been dismissed, and that Mr. Dalluge had been found not guilty of count two. Counts three and four were the two gross misdemeanor harassment charges for which he was found guilty.

Defense counsel then argued that the events for which Mr. Dalluge had been found guilty were not as egregious as characterized by the State. 03/15/11 RP 78-80. He did not address the bail jumping charge. *Id.* Mr. Dalluge was then sentenced to 180 days on count three (gross misdemeanor harassment) with 90 days suspended for two years “upon the terms and conditions stated in Paragraph 4.3”.² He was also sentenced to 180 days on count four (gross misdemeanor harassment) with 90 days suspended for two years “upon the terms and conditions stated in Paragraph 4.3”. Finally Mr. Dalluge was sentenced to 90 days on the bail jumping charge with 90 days suspended for two years “upon the terms and conditions stated in Paragraph 4.3”. The terms in counts three, four, and six were imposed concurrently. 03/15/11 RP 86.

V. ARGUMENT

- A. THE STATE DISPUTES THAT THE PLEA AGREEMENT WAS BREACHED, BUT ASSUMING *ARGUENDO* THAT IT WAS, APPELLANT CAN SHOW NO HARM AS THE TERMS OF THE AGREEMENT WERE ACTUALLY IMPOSED.

Appellant counsel appears to argue that since the prosecutor did not specifically use the word “concurrent”, the State breached its

² Paragraph 4.3 are Conditions for Suspension.

agreement. The State would argue that it was implied by the terms of the recommendation. Further, although the word "concurrent" was used by neither counsel, that term of sentencing was so imposed. 03/15/11 RP 86. Two year probation terms for the imposition of suspended jail time on conditions are to run concurrently. *State v. Parent*, 164 Wn.App. 210, ___ P3d. ___ (2011). Thus even if Mr. Dalluge can show breach, which the State disputes, Mr. Dalluge can show no harm.

VI. CONCLUSION

As Mr. Dalluge's alleged claim of error is tenuous at best, and he can show no harm, it is difficult to discern any available remedy. For the foregoing reasons, the State would respectfully request Mr. Dalluge's motion for reversal of his judgment and sentence be denied.

DATED THIS 7th day of February, 2012.

Respectfully submitted:

D. Angus Lee, WSBA #36473
Grant County Prosecuting Attorney

Carole L. Highland
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COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 29791-8-III
)	
vs.)	
)	
CHRISTOPHER DALLUGE,)	DECLARATION OF SERVICE
)	
Appellant.)	
_____)	

Under penalty of perjury of the laws of the State of Washington, the undersigned declares:

That on this day I served a copy of the Respondent's Brief in this matter by e-mail on the following party, receipt confirmed, pursuant to the parties' agreement:

Christopher H. Gibson
Nielsen, Broman & Koch, PLLC
sloanej@nwattorney.net

That on this day I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to Appellant containing a copy of the Respondent's Brief in the above-entitled matter.

Christopher Dalluge
550 Castle Dr.
Moses Lake WA 98837

Dated: February 7, 2012



Kaye Burns