

34984-5-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

CALEB TOWNSEND, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

BRIEF OF RESPONDENT

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I. APPELLANT'S ASSIGNMENT OF ERROR

The trial court erred in finding Townsend breached his plea agreement when Townsend was not convicted of any new crimes, and no evidentiary hearing was held at which he would have an opportunity to rebut the State's allegations.

II. ISSUE PRESENTED

Has the defendant waived any alleged confrontation clause violation at the hearing to determine whether he breached the plea agreement if he failed to present the issue to the trial court or voice an objection at that time?

III. STATEMENT OF THE CASE

Procedural history.

The defendant/appellant, Caleb Townsend, was charged by information on December 9, 2015, with first degree robbery and first degree burglary. CP 4-5.

On June 22, 2016, the defendant, his counsel, and the deputy prosecutor appeared before the court and the defendant entered a plea of guilty as charged. RP 3-17. Sentencing was delayed pending resolution of a different case in which the defendant was a witness. RP 3.

Prior to the plea hearing, the parties formally entered into a written plea agreement. CP 38-42. As part of the agreement, the State agreed to

recommend an exceptional sentence downward¹ of 79 days credit for time served in exchange for the defendant testifying in a pending, unrelated criminal trial. CP 40; RP 10. As part of the plea agreement, the defendant specifically agreed, in pertinent part, to the following:

7. The defendant agrees to abide by all release conditions set at the time of the plea.

CP 39.

The parties further agree and understand that if it becomes apparent, for whatever reason or from whatever source, that the defendant has not fully complied with the terms and conditions of this agreement, the State will move the Court to vacate this plea agreement, and any Judgment and Sentence Order entered therein which is related to this agreement. The defendant agrees and stipulates that he will then be sentenced to the high end of the standard range, 61 months.

CP 40.

At the time of the plea hearing and as requested by both parties, the trial court entered an order releasing the defendant on his own recognizance, and set forth release conditions. CP 28-30. As part of the release conditions, which the defendant acknowledged by his signature, the court specifically ordered that (1) the defendant “commit no law violations” and (2) “comply with conditions of plea agreement.” CP 28, 30.

¹ The defendant’s standard range sentence for the first degree robbery was 46-61 months incarceration and 36-48 months on the first degree burglary. CP 9, 40.

With regard to the plea agreement conditions, and at the time of the court's acceptance of the plea, defense counsel, John Stine, remarked:

Your Honor, I did spend a quite a bit of time yesterday reviewing the written agreement with Mr. Townsend. He's signed it, as I have, and I have another copy of it as well. So Mr. Townsend is aware of all the conditions.

RP 11-12.

Less than one month after the defendant's release, Spokane Police took a report of a robbery that occurred on July 11, 2016, near the Gonzaga University District.² CP 31. Mr. Dempsey reported that he had been approached by three males. CP 31. He was subsequently punched several times and knocked to the ground. CP 31. Mr. Dempsey's friends were also hit about the head and shoulders and tasered. CP 31. Mr. Dempsey's wallet, including a credit card, was taken during the event. CP 31. Mr. Dempsey's face was bloody and swollen after the event. CP 32,

Ms. Holland was with Mr. Dempsey before and during the incident. CP 32. After she was tasered and groped, the suspects rummaged through her purse, taking her cell phone, perfume, and \$100 in cash. CP 32.

² The following facts are taken from a probable cause affidavit prepared by a detective and submitted by the deputy prosecutor to the trial court for its determination as to whether the defendant breached the terms of the plea agreement. *See* CP 31-35.

During the investigation, it was discovered that Mr. Dempsey's credit card had been used at an Exxon Mobil gas station in the Gonzaga District in the early morning hours of July 10, 2016. CP 33. The transaction was recorded on surveillance video by the store. CP 33. The defendant was the individual making the purchase, as he stood with two other males. CP 33. The detectives observed the three males rummaging through a wallet, as if they were unfamiliar with its contents. CP 34. He also observed the defendant make an additional purchase inside the store with the credit card. CP 34.

The defendant was subsequently interviewed by a detective on July 26, 2016, in the presence of his counsel, John Stine. CP 34. After being advised of and waiving his rights, the defendant admitted he was involved in the robbery. CP 34. He claimed he observed one of his associates striking and tasing Mr. Dempsey. CP 34. He further admitted that he participated in searching Mr. Dempsey's wallet after the incident. CP 34. Finally, the defendant admitted he used an unknown credit card to make two purchases at the convenience store. CP 34.

The detective also interviewed co-defendant Torres who had also participated in the alleged robbery. CP 34. He stated that defendant Townsend struck Mr. Dempsey several times, causing Mr. Dempsey to fall to the ground. CP 34.

On December 21, 2016, the parties appeared for sentencing. RP 18. The deputy prosecutor asked the court to find the defendant violated the terms of the plea agreement, asserting the defendant had committed a “new law violation” by being arrested for several new felony offenses. RP 18-19. The deputy prosecutor summarized the alleged robberies and the investigation for the court as contained within the probable cause affidavit for the court. RP 19-20.

The court then heard from defense counsel. CP 22-25. Mr. Stine argued that the standard for the trial court’s review of whether a breach of the plea agreement occurred was “by a preponderance of evidence that the violation had been proven beyond a reasonable doubt.” RP 23.

Thereafter, the court ruled:

THE COURT: Thanks, Counsel. As we know, this phraseology "commit no law violations" is quite common. It's -- if it hasn't become a term of art, it's pretty close to that with regard to what may constitute a valid reason to modify release conditions or revoke release conditions as the case may be. In this instance, the court finds itself in agreement with the state, and so there has been a breach of the plea agreement. Further, breach of contract is not a matter as to which the quantum of proof must be beyond a reasonable doubt, as we know. It's simply a preponderance of evidence. And I would stress that the evidence to show that Defendant Mr. Townsend was on -- did have knowledge of the wrongfulness of the conduct in using the credit card, aside from the robbery, which he didn't admit, has yet to be proven, nonetheless, it's quite clear and persuasive evidence that items were bought with the card. There was an

admission of that. For purposes of this hearing, I believe the court can rely on that admission.

RP 25-26.

Thereafter, the court proceeded to sentencing. During the defendant's allocution, he alleged he did not commit the new crimes he was charged with. RP 27-28. Neither defense counsel nor the defendant requested an evidentiary hearing or the opportunity to present any evidence at the hearing. This appeal timely followed.

IV. ARGUMENT

Standard of review.

Plea agreements are contracts and issues concerning their interpretation are reviewed de novo. *State v. Bisson*, 156 Wn.2d 507, 517, 130 P.3d 820 (2006). An appellate court's primary objective in interpreting a plea agreement is to give effect to the intent of the parties. *State v. Lathrop*, 125 Wn. App. 353, 362, 104 P.3d 737 (2005). This court reviews the plea agreement as a whole, considering the objective of the agreement, all the circumstances surrounding the agreement, and the reasonableness of respective interpretations advocated by the parties. *Id.* Any ambiguities are resolved against the drafter. *Id.*

A. AT A HEARING, THE STATE MUST PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT THE DEFENDANT FAILED TO PERFORM HIS PART OF THE PLEA AGREEMENT.

A plea agreement is a contract between the State and the defendant. *State v. Sledge*, 133 Wn.2d 828, 838-39, 947 P.2d 1199 (1997). Because plea agreements implicate fundamental due process rights, a prosecutor must follow the terms agreed upon. *Id.* at 839. When a prosecutor breaches an agreement, a defendant is entitled to withdraw his plea or demand specific performance. *In re Pers. Restraint of James*, 96 Wn.2d 847, 851-52, 640 P.2d 18 (1982). These rights exist provided the defendant complies with the conditions of the agreement. *Id.* at 850.

In *James*, the defendant entered into a plea agreement with the State but was later arrested on misdemeanor charges. *Id.* at 848. The defendant maintained his innocence on the misdemeanor charges. *Id.* The State argued that it was not obligated to perform as promised under the agreement, and it therefore refused to recommend probation. *Id.* The Supreme Court held that the defendant was entitled to a hearing on whether he had breached the agreement.³ Our high court held that the trial court must hold an evidentiary

³ In the present case, the plea agreement between the State and the defendant was not conditioned on a formal “conviction” for a new offense but, like the standard condition found in probation, was conditioned on the requirement that the defendant not commit any law violation.

hearing and due process requires a defendant the opportunity to call witnesses and to require “that the State prove, by a preponderance of the evidence, that the defendant has failed to perform his or her part of the agreement.” *Id.* at 850.

A hearing ensures that the right or the expectation is not arbitrarily denied. With plea bargains, if there were no evidentiary hearings, a defendant merely accused of post-plea crimes, but innocent and later acquitted of them, could nonetheless lose the benefit of his or her bargain.

Id.

The defendant relies on *James* and several other cases for the proposition that the defendant was not allowed the opportunity to call and cross-examine witnesses at the hearing. Those cases are factually distinguished as discussed below.

In *State v. Galeazzi*, 181 Wn. App. 1023 (2014), 2014 WL 2574034,⁴ an unpublished opinion, the parties signed a plea agreement that the State’s recommendation would increase if the “defendant commits any new charged or uncharged crimes” or law violations. *Galeazzi*, 181 Wn. App. 1023. Three days after pleading guilty, the defendant was arrested on new charges. Thereafter, the deputy

⁴ Pursuant to GR 14.1, this decision has no precedential value, is not binding on any court, and it can only be cited for such persuasive value if the Court deems appropriate.

prosecutor informed defense counsel that it would recommend a higher sentencing recommendation to the court. At sentencing, the defendant argued the State breached the plea agreement by recommending a higher sentence and asked the court to allow the defendant to withdraw from the plea agreement. Moreover, the defense requested a continuance, in part, to investigate the new charges and to research whether an allegation was sufficient to prove a breach of the plea agreement.

Division One of this Court found that the sentencing court held no evidentiary hearing, which would allow the deputy prosecutor to ask for a longer sentence than agreed upon. In addition, the State and defense did not call witnesses or present anything other than the probable cause affidavit. The court ultimately found “the State sought to avoid its sentencing obligation by alleging [the defendant] committed new crimes.” *Id.* The court remanded the case to the trial court to conduct an evidentiary hearing “at which the burden will be on the State to prove by a preponderance of the evidence that [the defendant] committed new crimes or otherwise failed to comply with the plea agreement’s terms.” *Id.*

In *State v. Roberson*, 118 Wn. App. 151, 155-56, 74 P.3d 1208 (2003), a juvenile defendant pled guilty to first degree child molestation. In return, the State agreed to recommend an amendment to either fourth degree assault with sexual motivation or indecent exposure, on the condition that

the defendant first take a sexual history polygraph and show that the molestation charged was an isolated incident. *Id.* at 156. It was discovered that the defendant was deceptive on his post-plea psychosexual evaluation and he continued acts of voyeurism. At sentencing, the State recommended a manifest injustice upward instead of following the plea agreement.

Finding the record incomplete as to whether the defendant violated the terms of the plea agreement, the court remanded to the trial court for an evidentiary hearing to determine whether the defendant violated the terms of the plea agreement. *Id.* at 159.

In *State v. Morley*, 35 Wn. App. 45, 46, 665 P.2d 419 (1983), the defendant pleaded guilty to second degree assault in return for the State's recommendation that it would ask for probation. Sentencing was delayed at the defendant's request to enter into a rehabilitation facility. At sentencing, the State had mixed feelings on whether it could support the plea bargain because the defendant had subsequently consumed alcohol and had been charged with several new misdemeanor charges. *Id.* at 47. The defendant admitted to becoming intoxicated and being arrested. No inquiry was made or proof offered as to the underlying facts or disposition of the charges. *Id.* The trial court sentenced the defendant to not more than 10 years. The defendant subsequently moved to withdraw his plea based upon the State violating the plea bargain agreement.

This Court relied on *James, supra*, and held the court had not conducted an evidentiary hearing to determine whether the defendant breached the plea agreement.

It is unclear in the cases discussed above whether the defendants exercised their right to call and cross-examine witnesses. As discussed below, the defendant in the present case never exercised that right at the time of hearing to call or question witnesses. He consequently has waived his right to claim a due process violation on appeal.

B. THE DEFENDANT HAS WAIVED ANY DUE PROCESS CLAIM ON APPEAL BECAUSE HE DID NOT ASSERT A CONFRONTATION CLAUSE OBJECTION AT OR BEFORE THE HEARING TO DETERMINE WHETHER HE VIOLATED THE TERMS OF THE PLEA AGREEMENT.

At the time of the hearing, the defense did not ask for or proffer any testimony or evidence. His only argument to the trial court was regarding the standard of proof necessary to establish whether a violation occurred of the plea agreement. Moreover, the defendant offers no analysis or any citation to the record on “*how*” the trial court prevented him from presenting any testimony or in what way he was barred from cross-examining any witnesses. The defense never requested any witness be produced at the time of hearing nor did the defense object to the court’s procedure for making its factual determination.

In finding the defendant violated the plea agreement, the lower court relied on the defendant's own statements (that he unlawfully possessed the credit card of another), non-hearsay,⁵ in making its determination. There was no objection to the court's use of this evidence.

In a similar setting and with regard to probation violation hearings, our Supreme Court has rejected this type of maneuvering. The following passage is instructive:

The probationer may not sit by, without objection (and in fact use similar hearsay evidence), and then on appeal for the first time claim lack of due process. Revocation of probation is so much within the discretion of the trial court, *State v. Kuhn*, 81 Wn.2d 648, 503 P.2d 1061 (1972), that the probationer must bear some responsibility for the orderly administration of the process. Such simple suggested notification, objection or motion does not unduly burden the probationer's rights or relieve the State of its burden of proof. So long as probationer's minimal due process rights are protected to an appropriate degree, the ultimate decision rests in the discretion of the trial court, subject to appellate review. Defendant simply has both failed to show the merits of his claim and failed to raise the issue of due process right of confrontation at any stage prior to appeal.

State v. Nelson, 103 Wn.2d 760, 766-67, 697 P.2d 579 (1985).

As stated above, the defendant did not assert his right to due process or confrontation in the lower court at the time of the hearing and he cannot now do so on appeal.

⁵ ER 801(d)(2) (admission by party-opponent).

RAP 2.5(a)⁶ affords the trial court an opportunity to rule correctly on a matter before it can be presented on appeal. *State v. Strine*, 176 Wn.2d 742, 749, 293 P.3d 1177 (2013). With regard to this rule, the Supreme Court has stated:

“[T]here is great potential for abuse when a party does not object because ‘[a] party so situated could simply lie back, not allowing the trial court to avoid the potential prejudice, gamble on the verdict, and then seek a new trial on appeal.’” ... The “theory of preservation by timely objection” also addresses several other concerns:

[I]t serves the goal of judicial economy by enabling trial courts to correct mistakes and thereby obviate the needless expense of appellate review and further trials, facilitates appellate review by ensuring that a complete record of the issues will be available, ensures that attorneys will act in good faith by discouraging them from “riding the verdict” by purposefully refraining from objecting and saving the issue for appeal in the event of an adverse verdict, and prevents adversarial unfairness by ensuring that the prevailing

⁶ RAP 2.5(a) generally does not allow parties to raise claims for the first time on appeal. But RAP 2.5(a)(3) allows appellants to raise claims for the first time on appeal if such claims constitute manifest error affecting a constitutional right. Our Supreme Court has held that a defendant may raise a confrontation clause claim for the first time on appeal if he meets the requirements of RAP 2.5(a)(3). *State v. Kronich*, 160 Wn.2d 893, 899-01, 161 P.3d 982 (2007), *overruled on other grounds by State v. Jasper*, 174 Wn.2d 96, 116, 271 P.3d 876 (2012).

party is not deprived of victory by claimed errors that he had no opportunity to address.

Strine, 176 Wn.2d at 749-50 (citations omitted), in part, quoting Bennett L. Gershman, *Trial Error and Misconduct* § 6-2(b), at 472-73 (2d ed. 2007).

1. The defendant has waived any claimed confrontation error with regard to confrontation at the hearing.

The gravamen of the defendant's claim is that he was denied his due process right to a hearing at which time he could confront witnesses. *See Morrissey v. Brewer*, 408 U.S. 471, 489, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972) (The minimum requirements of due process for a parole revocation hearing are the same criteria applicable to probation revocation hearings. These requirements include, among others: an opportunity to be heard in person and to present witnesses and documentary evidence; and a statement by the fact finder as to the evidence relied on and reasons for revoking probation).

Because the lack of confrontation is the defendant's main complaint, the State will analyze the issue as if he had the same confrontation rights as one possesses at trial. *But see State v. Abd-Rahmaan*, 154 Wn.2d 280, 288, 111 P.3d 1157 (2005) ("By its own terms, the guaranties of the Sixth Amendment do not apply in these post-conviction settings, but to 'criminal prosecutions.' We also note that in *Crawford*, the United States Supreme Court analyzed the right to cross-examine witnesses exclusively within the context of the confrontation clause of the Sixth Amendment. Congruent

with the explicit terms of the Sixth Amendment, the *Crawford* holding applies to criminal prosecutions and does not require prior cross-examination of testimonial evidence in civil proceedings or in post-conviction hearings”).

In *State v. O’Cain*, 169 Wn. App. 228, 247-48, 279 P.3d 926 (2012), Division One of this Court declined to consider a confrontation clause argument raised for the first time on appeal. At trial, the defendant objected to evidence on relevance grounds and did not assert a violation of his right to confrontation. The court observed that under *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 129 S.Ct. 2527, 174 L.Ed.2d 314 (2009),⁷ a defendant loses the right to confront witnesses by failing to assert it at trial. *Id.*

The court reasoned that if it were not the defendant’s burden to object on confrontation grounds, trial judges would be placed in the

⁷ In *Melendez-Diaz*, 557 U.S. 305, the United States Supreme Court declared that the defendant *always* has the burden of raising his federal confrontation clause objection at trial. The Court reasoned:

It is common to require a defendant to exercise his rights under the Compulsory Process Clause in advance of trial, announcing his intent to present certain witnesses. There is no conceivable reason why he cannot similarly be compelled to exercise his Confrontation Clause rights before trial.

Id. at 327 (internal citations omitted).

untenable position of either *sua sponte* interposing a confrontation objection or knowingly presiding over a trial headed for likely reversal on appeal. *O’Cain*, 169 Wn. App. at 243.

Requiring the defendant to assert the confrontation right at trial is ... consistent with other Sixth Amendment jurisprudence. Indeed, were this not the defendant’s burden, the trial judge would be placed in the position of *sua sponte* interposing confrontation objections on the defendant’s behalf—or risk knowingly presiding over a trial headed for apparent reversal on appeal. Such a state of affairs is obviously untenable. Trial judges should be loathe to interfere with the tactical decisions of trial counsel—the delegation of which lies at “the heart of the attorney-client relationship.” *Taylor v. Illinois*, 484 U.S. 400, 417, 108 S.Ct. 646, 98 L.Ed.2d 798 (1988). As our state Supreme Court has noted, it would be “ill-advised to have judges ... disrupt trial strategy with a poorly timed interjection.” *State v. Thomas*, 128 Wn.2d 553, 560, 910 P.2d 475 (1996). Indeed, such interjections could impermissibly “intrude into the attorney-client relationship protected by the Sixth Amendment.” *In re Pers. Restraint of Lord*, 123 Wn.2d 296, 317, 868 P.2d 835 (1994).

Id. at 243-44.

The court ultimately concluded that objecting on confrontation grounds is a tactical decision for defense counsel and that, absent such an objection, ER 103⁸ precludes the predication of error on confrontation

⁸ ER 103(a)(1) states:

Effect of Erroneous Ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

grounds and prevails over RAP 2.5 (a)(3) (allowing appellate courts to consider errors, including “manifest error affecting a constitutional right,” for the first time on appeal). *Id.*

Division One reached the same conclusion in *State v. Fraser*, 170 Wn. App. 13, 282 P.3d 152 (2012). There, the defendant objected to evidence at trial on the ground that it was more prejudicial than probative. *Id.* at 25. For the first time on appeal, he argued that the evidence violated his right to confrontation. *Id.* The court reaffirmed its decision in *O’Cain*, holding that Fraser waived his confrontation argument by not objecting on that particular ground at trial. *Id.* at 26. The court added an alternative analysis that “[i]f” RAP 2.5(a)(3) is read as a state procedural exception to the objection requirement for confrontation clause errors, Fraser would still not be entitled to review because he failed to make a showing of manifest constitutional error.” *Id.* at 26-27.

In the present case, the defendant not only failed to make a proper objection, *he made no objection at all* to the procedure employed by the trial court. Like the defendants in *O’Cain* and *Martinez*, the defendant

(1) *Objection.* In case the ruling is one admitting evidence, a timely objection or motion to strike is made, stating the specific ground of objection, if the specific ground was not apparent from the context; or

waived his confrontation claim and cannot raise it for the first time on appeal. *Cf., Nelson*, 103 Wn.2d 760.

Here, the defense failed to take advantage of the opportunity to object to the evidence and the manner in which it was presented at the hearing, which would have allowed the trial court to address the issue and prevent any potential error. This Court should hold that the defendant failed to preserve his claim that his confrontation clause rights were violated at the hearing.

2. The defendant has waived any right to confrontation to the trial court's use of the probable cause affidavit to establish a violation of the plea agreement.

Likewise, the defendant has waived his right to confrontation with regard to the trial court's use of a probable cause affidavit alleging the crimes committed after the plea was taken in this case. In *State v. Schroeder*, 164 Wn. App. 164, 166, 262 P.3d 1237 (2011), the defendant argued that his right to confrontation of witnesses was violated by the admission of the laboratory results without testimony from the analyst who performed the testing. The defendant did not object to the admission of a crime laboratory certificate at his trial. *Id.* at 168. Relying on the decision in *Melendez-Diaz*, this Court held that the defendant waived his right to confrontation on that piece of evidence. *Id.*

Similarly, in *Nelson, supra*, the defendant pleaded guilty to several offenses, including first degree rape. The defendant's sentence was suspended on the condition he successfully complete an in-patient sexual psychopath program. 103 Wn.2d. at 762. Seven months later, the State moved to revoke his probation and suspended sentence on the grounds that he failed to complete the program. *Id.* At the revocation hearing, the State presented no witnesses; instead, it furnished the court and defense counsel with staff reports from Western State Hospital. *Id.* Defense counsel made no objection to the written reports from staff. *Id.* The trial court revoked the suspended sentence and imposed a prison term of incarceration.

The Supreme Court focused on the defense failure to object to the procedures used at the hearing:

Defendant's only objection came in the form of a motion after the court's ruling regarding the insufficiency of evidence in support of the court's decision to revoke probation. Defendant's failure to object to a violation of due process and his own use of hearsay during argument constituted a waiver of any right of confrontation and cross examination.

As noted by the United States Supreme Court, there may be instances where there is no substitute for live testimony, thereby providing a right of confrontation and cross examination. If the probationer believes such is necessary for protection of his due process rights he can seek a pretrial order from the trial court or challenge the State's evidence by timely objection or at the end of the State's case. Such suggested procedures guarantee the probationer's due process right. The probationer may not sit by, without

objection (and in fact use similar hearsay evidence), and then on appeal for the first time claim lack of due process... Such simple suggested notification, objection or motion does not unduly burden the probationer's rights or relieve the State of its burden of proof... Defendant simply has both failed to show the merits of his claim and failed to raise the issue of due process right of confrontation at any stage prior to appeal.

Id. at 766-67 (citation omitted).

Assuming, arguendo, that the defendant claims he was not required to call any witness and his failure to call a witness did not waive this claim, the United States Supreme Court has said “the defendant *always* has the burden of raising [a] Confrontation Clause objection.” *Melendez-Diaz*, 557 U.S. at 327 (emphasis in the original). Likewise and in regard to raising a confrontation claim in the trial court, Division One in *O’Cain* noted: “[a]lways’ means always. It means every time. It means without exception. And it means always, every time, without exception, *in the trial court.*” *O’Cain*, 169 Wn. App. at 239 (emphasis in the original).

To the extent there may have been a violation of the defendant's right to confrontation in the trial court, it was caused by defense counsel's decision not to object on confrontation grounds. He has therefore waived this mixed due process and confrontation claim on appeal.

V. CONCLUSION

The defendant waived any right to have witnesses appear and to cross-examine them by not objecting at the time of hearing. In addition, the defendant in no way contested the validity of his own confession being used as to the violation. *See* ER 801(d)(2). The State respectfully requests this Court affirm the trial court's decision finding the defendant was in breach of the plea agreement.

Dated this 5 day of July, 2017.

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

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CALEB TOWNSEND,

Appellant.

NO. 34984-5-III

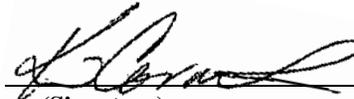
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