

FILED
Court of Appeals
Division III
State of Washington
4/18/2018 1:31 PM

No. 35313-3-III

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

STATE OF WASHINGTON,

Respondent,

v.

RONALD ROSCOE HEVEWAH,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SPOKANE COUNTY

The Honorable Judge Annette S. Plese

APPELLANT'S REPLY BRIEF

Jill S. Reuter, WSBA #38374
Nichols and Reuter, PLLC
Eastern Washington Appellate Law
PO Box 19203
Spokane, WA 99219
Phone: (509) 731-3279
admin@ewalaw.com

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A. INTRODUCTION

Appellant Ronald Roscoe Hevewah accepts this opportunity to reply to the State's brief. Mr. Hevewah requests that the Court refer to his opening brief for issues not addressed in this reply.

B. ARGUMENT IN REPLY

1. The guilty pleas to counts II and III of the amended information were involuntary because there was an insufficient factual basis for each charge; Mr. Hevewah did not enter an *In re Barr* plea.

This argument pertains to Issue 2 raised in Mr. Hevewah's opening brief. Mr. Hevewah argues his guilty pleas to count II and count III of the amended information were involuntary, because there was an insufficient factual basis for each charge. *See* Appellant's Opening Brief pgs. 14-19.

In response, the State argues Mr. Hevewah's guilty pleas to counts II and III were valid under *In re Personal Restraint of Barr*. *See* Respondent's Brief pgs. 18-26; *see also In re Pers. Restraint of Barr*, 102 Wn.2d 265, 684 P.2d 712 (1984). The State argues "there was a factual basis for the charged crimes contained with the original information[,]” and “the record clearly shows [Mr. Hevewah] knowingly and intelligently pleaded guilty to the reduced charges to gain the benefit of the plea agreement and to avoid a potentially greater sentence should he be found guilty of the original charges.” *See* Respondent's Brief pg. 25.

Under *In re Barr*, “[a] plea does not become invalid because an accused chooses to plead to a related lesser charge that was not committed in order to avoid certain conviction for a greater offense.” *In re Barr*, 102 Wn.2d at 269-70. In order for such a plea to be valid, the following criteria must be met:

The choice to plead to such lesser charges is voluntary if it is based on an informed review of all the alternatives before the accused. What must be shown is that the accused understands the nature and consequences of the plea bargain and has determined the course of action that he believes is in his best interest. For the trial court to make the proper evaluation, the plea bargain must be fully disclosed. The trial court must find a factual basis to support the original charge, and determine that defendant understands the relationship of his conduct to that charge. Defendant must be aware that the evidence available to the State on the original offense is sufficient to convince a jury of his guilt.

Id. at 270 (citations omitted).

In addition, the record must establish that the defendant “was aware that he was pleading guilty to charges for which there was no factual basis in order to receive the benefit of a plea bargain.” *State v. Zhao*, 157 Wn.2d 188, 204, 137 P.3d 835 (2006).

Here, Mr. Hevewah did not enter an *In re Barr* plea. (CP 178-188). Mr. Hevewah pleaded guilty to the charges in the amended information, and the trial court found a factual basis for these specific charges. (CP 188). The trial court did not find a factual basis to support the original charges. (CP 188). There was no discussion of the original charges at the plea hearing. (CP 178-188).

Nothing in the record shows that Mr. Hevewah pleaded guilty to charges for which there was no factual basis in order to receive the benefit of a plea bargain. (CP 178-188). The record show that Mr. Hevewah pleaded guilty in order to resolve the case:

[Trial court:] Okay. Do you still want to enter this plea today, Mr. Hevewah?

[Mr. Hevewah:] Yes, so I can get this out and get this over with.

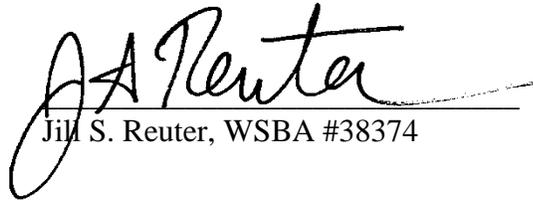
(CP 187-188).

This was not an *In re Barr* plea, but rather, a straight guilty plea to the charges in the amended information. *In re Barr* does not apply to this case.

C. CONCLUSION

Based upon the arguments set forth above and those set forth in Mr. Hevewah's opening brief, his convictions should be reversed.

Respectfully submitted this 18th day of April, 2018.



Jill S. Reuter, WSBA #38374

COURT OF APPEALS
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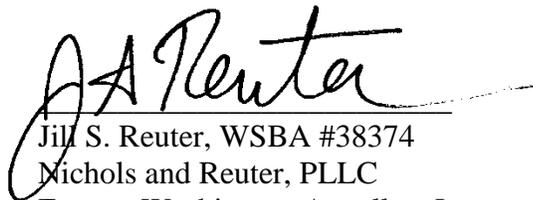
STATE OF WASHINGTON)
Plaintiff/Respondent) COA No. 35313-3-III
vs.) Spokane Co. No. 15-1-04595-5
)
RONALD ROSCOE HEVEWAH) PROOF OF SERVICE
)
Defendant/Appellant)
_____)

I, Jill S. Reuter, assigned counsel for the Appellant herein, do hereby certify under penalty of perjury that on April 18, 2018, I deposited for mailing by U.S. Postal Service first class mail, postage prepaid, a true and correct copy of the Appellant's reply brief to:

Ronald Roscoe Hevewah
c/o Thunderbird Treatment Center
9236 Renton Avenue S.
Seattle, WA 98118

Having obtained prior permission, I also served a copy on the Spokane County Prosecutor's Office at scpaappeals@spokanecounty.org using the Washington State Appellate Courts' Portal.

Dated this 18th day of April, 2018.


Jill S. Reuter, WSBA #38374
Nichols and Reuter, PLLC
Eastern Washington Appellate Law
PO Box 19203
Spokane, WA 99219
Phone: (509) 731-3279
admin@ewalaw.com

NICHOLS AND REUTER, PLLC / EASTERN WASHINGTON APPELLATE LAW

April 18, 2018 - 1:31 PM

Transmittal Information

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Appellate Court Case Number: 35313-3
Appellate Court Case Title: State of Washington v. Ronald Roscoe Hevewah
Superior Court Case Number: 15-1-04595-5

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Address:
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