

FILED
Court of Appeals
Division III
State of Washington
3/27/2018 11:08 AM

NO. 35440-7-III

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON

PLAINTIFF/RESPONDENT,

V.

NATHANIEL JAMES EDENSO

DEFENDANT/APPELLANT

BRIEF OF RESPONDENT

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Prosecuting Attorney
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Leif Drangsholt
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STATEMENT OF THE CASE

1. Procedural History

Pre-Trial

The Defendant was formally charged on September 8th 2016 in Okanogan County Superior Court case 16-1-00388-3 with one count of Trafficking in Stolen Property in the First Degree and one count of Possession of Stolen Property in the Third Degree. [CP 4] Bail was set at \$5,000. The Defendant was found indigent and the Court ordered appointed counsel from the contract indigent defense firm of MacDougall and Prince. [CP 2] An attorney from this firm, Jason Wargin, entered a notice of appearance on September 9th 2016. [CP 6].

On November 11th 2016 the Defendant bailed out of jail. The Defendant returned to custody several days later after being arrested on new law violations. These were charged in Okanogan County Superior Court case 16-1-00487-1 as Taking a Motor Vehicle without Permission Second Degree, Theft of a Motor Vehicle, Residential Burglary, and Theft Third Degree. *See Appendix A.* The Defendant was again found indigent, and attorney Jason Wargin entered a notice of appearance for this case as well. *See Appendix B.* From this point onward, both 16-1-00487-1 and 16-1-00388-3 had the same assigned deputy prosecutor (Leif Drangsholt),

the same defense attorney (Jason Wargin), and were addressed together on the same court calendars. Because of the new criminal charges and an increase in bail, the Defendant remained in custody for the duration of these cases. On November 27th 2016, deputy prosecutor Drangsholt emailed Jason Wargin a plea offer for both of the Defendant's cases. *See Appendix C.* The offer involved the Defendant pleading to 14 months on 16-1-00487-1, and 33 months on 16-1-00388-3, both counts running concurrently for a total confinement of 33 months.

On December 2nd 2016 the Defendant wrote a letter to Judge Christopher Culp, the presiding judge in Okanogan County Superior Court. In the letter, the Defendant says that he has been lied to by his attorney Jason Wargin. He wrote that he suspects that he was being provided with inaccurate information regarding concurrent and consecutive sentences. He expressed frustration that victim of his crime, George Hill wasn't being more helpful to him. He then said that he wanted a "Res-Dosa" [Residential Drug Offender Sentencing Alternative], and was confused when his attorney told him that he did not qualify.¹ *See Appendix D.* The Defendant wrote another letter dated December 8th 2016 essentially saying the same thing. He ended this letter by saying that he

¹Because the Defendant did not list both of his cause numbers on this 12/2/16 letter, it appears to have only entered the Clerks Papers on the 16-1-00487-1 case.

does not trust Jason Wargin, and wanted a new attorney to work on his cases. [CP 29 and *Appendix E*]

On December 16th 2016, Judge Christopher Culp addressed these letters with the Defendant in open Court. Judge Culp told the Defendant that he was not involved in settlement negotiations, and really did not know the terms of settlement offers and how the sentencing regime might apply to his cases. [Supplemental RP 2- 3] Judge Culp told the Defendant that he as the Judge did not know about whether the Defendant would or would not be eligible for a Residential Drug Offender Sentencing Alternative (DOSA). Judge Culp told the Defendant that while prison based DOSA sentences were somewhat common, Residential DOSA sentences were highly unusual in Okanogan County. Judge Culp stated he was not entirely sure of the trust issues between the Defendant and his attorney, but was ultimately denying the Defendant's request for new counsel. [Supplemental RP 2 - 4 and Supplemental RP 2 - 10]

After the December 16th 2016 hearing, the Defendant never asked the Court for a new attorney. Jason Wargin represented the Defendant at all subsequent court appearances. The State ultimately dismissed cause number 16-1-00487-1 because the State was unable to locate the victim. *See Appendix F*. The Defendant proceeded to trial on 16-1-00388-3.

2. Jury Trial

City of Tonasket Police Chief Darin Curtis testified that in August 2016 he investigated a theft complaint. The complaint was from George Hill, a local business owner. Hill reported that some unique tires that were normally outside his Tonasket business were now missing. Hill described to Chief Curtis the size, make, and tread patterns of the tires. Hill estimated their value as being between \$400 and \$600. [RP 27 – RP 29]

Chief Curtis testified that he then drove to Valley Tires, one of the local tire stores. He spoke with the owner Daniel Lowe, and learned that someone named “Nate” had come by the store a couple of days earlier and asked Lowe if he was interested in buying tires. Someone drove to the store and dropped the tires off. Later on “Nate” came to the store and collected \$10 from Lowe for these tires.

Chief Curtis suspected that “Nate” was Nathaniel Edenso, and that Edenso’s girlfriend Meadow Sky likely drove the vehicle to the tire shop. Chief Curtis was familiar with the pair. He knew they were dating and that Meadow Sky had a driver’s license and often drove Edenso around. Chief Curtis showed Daniel Lowe a photo lineup. Lowe identified the Defendant as the one he bought the tires from, and Meadow Sky as the person who drove the Defendant.

Daniel Lowe testified that he recognized the Defendant in Court, and he was the one who sold him the tires. Lowe said that once he learned the tires where stolen he gave them back to George Hill. [RP 42- RP 49]

George Hill testified that once he discovered that his tires were missing, he told a local homeless man named Dennis Glover to be on the lookout for them. He told Mr. Glover that he had surveillance footage that would likely show who the thief was. Sometime after this discussion with Mr. Glover, the Defendant came around to George Hill's shop and revealed that he had knowledge about the missing tires. [RP 55 – RP 58.]

George Hill testified in further detail about the condition of the tires and the value of them. [RP 55, 59] He said that he was positive that the tires he recovered from Lowe's shop were his stolen tires. [RP 55] George Hill testified that after the Defendant was arrested and charged, that the Defendant's father had contacted him and stated that it was unfortunate that all this trouble was over such a small theft.

Okanogan Jail Commander Noah Stewart authenticated recordings of phone conversations that the Defendant made while in custody. [RP 62 – RP 67] On one of these phone calls the defendant phoned his father and admitted "yah the two tires I fucked off." [Exhibit 3 at 12:00].

The Defendant was found guilty as charged on both Trafficking in the First Degree, and Theft in the Third Degree.

3. Sentencing

Sentencing was held on July 7th 2017. The State submitted a sentencing memorandum and asked for the Defendant to be sentenced at the mid-point of the standard range, which was 38 months. [CP 80] The State made an oral record of the Defendant's history of accruing 30 misdemeanor convictions that were not taken into account in calculating the Defendant's offender score. [RP 126- RP 127].

The Defense attorney requested a drug offender sentencing alternative (DOSA) sentence. He mentioned that the Defendant had young children, and would benefit from a DOSA. The Defense attorney commented that the legislative goal of DOSA schemes were to reduce recidivism. [RP 127- 128]

The Court then asked the Defendant if he would like to say anything, the Defendant said:

Your Honor, I've been in the system since I was 17 and messed up a slew of times. I apologize to the Courts for wasting your guys' times. I know you have bigger and better things to worry about. I still made a mistake. I still believe in punishment. I do believe that treatment also would be a -- more beneficial than throwing me back in the joint for X amount of time. I've been in prison twice.

It's - doesn't produce the most upstanding citizens in there, even though they do provide schooling and all that. It's all -- it's a hard road to walk. I'm 36 years old now. Like my lawyer says, I do have three children. This will be my last time in the system. As I said I apologize for wasting your guys' time.

[RP 128- 129]

After giving the State, Defense attorney, and Defendant the opportunity to speak, the Court addressed the sentencing recommendation of the Defendant and his attorney. The Court noted that the Defendant had no record of previous drug convictions. The Court surmised that while some of the Defendant's older theft convictions may have been indirectly related to drug use, there was no actual information before the Court that indicated the Defendant has or had a substance abuse issue. The Court then imposed a sentence at the lowest end of the standard range: 33 months. [RP 128 – 129]

ARGUMENT

A. The Defendant was Not Denied Access to Counsel

The Defendant argues on appeal that the Court abused its discretion when it refused to appoint new counsel. The Defendant fails to identify any error in reasoning made by the judge. The Defendant also

fails to demonstrate how this decision impacted the Defendant's case and prejudiced him.

The complete record of these proceedings shows that the Defendant became suspicious about his attorney's motives once the State's settlement offer was conveyed. The Defendant wrote a letter to the Judge voicing concern that he was not being accurately informed of a settlement offer, and that he wasn't receiving a fair chance at a sentencing alternative.² A hearing was held in which the Court went over each of the Defendant's concerns. The Court ultimately noted that it was denying the Defendant's request for new counsel. The Defendant's attorney continued to competently represent the Defendant. One of the Defendant's cases was ultimately dismissed, while the other (the subject of this appeal) resulted in a conviction, but with a low end sentence.

The court is not obligated to appoint an attorney requested or selected by the Defendant. Rather, the selection, appointment, or removal of counsel in a particular case is a matter largely committed to the sound discretion of the trial judge. *State v. Price*, 17 Wn.App. 247, 562 P.2d 256 (1977); *State v. Cunningham*, 23 Wn.App. 826, 598 P.2d 756 (1979)

² A comparison of these letters the Defendant wrote with the State's settlement offer (Appendix C) indicates that Attorney Wargin accurately conveyed this settlement offer to the Defendant.

remanded on other grounds 93 Wn.2d 823, 613 P.2d 1139 (1980), on remand 27 Wn.App. 834, 620 P.2d 535 (1980); Seattle v. Sandholm, 65 Wn.App. 747, 829 P.2d 1133 (1992) (defendant was not denied right to counsel where he talked to public defender although he requested to speak with his family's lawyer); State v. Thompson, 169 Wn. App. 436, 290 P.3d 996 (2012), review denied, 176 Wn.2d 1023, 299 P.3d 1172 (2013) (prosecution for multiple offenses; defendant was a very difficult and disruptive client who also threatened court-appointed counsel; defendant is not entitled to demand a reassignment of counsel on the basis of a breakdown in communications where he one-sidedly simply refuses to cooperate with his attorney); U.S. v. Gonzalez-Lopez, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2007) (federal district trial court's refusal to admit to practice defendant's paid counsel of choosing violated right to counsel).

CrR 3.1(e) provides that once a criminal case has been set for trial, an attorney is not permitted to withdraw from the case, except upon written consent of the court, for good and sufficient reason. State v. Hegge, 53 Wn.App. 345, 766 P.2d 1127 (1989) (while simple lack of rapport between attorney and client is not a basis for withdrawal of counsel, a complete breakdown of communication, including commencement of a civil suit by the defendant against the lawyer and the defendant's intention to call the lawyer as a witness, is a good and

sufficient reason for withdrawal); *State v. Staten*, 60 Wn.App. 163, 802 P.2d 1384 (1991), review denied 117 Wn.2d 1011, 816 P.2d 1224 (1991) (a defendant's conclusory, unsubstantiated statement that his current counsel is unqualified does not entitle a defendant to new counsel).

Where the defendant expresses a desire to discharge his or her court-appointed counsel, the trial judge should inquire as to the reasons for the request. If incompetency of counsel is assigned as a reason, the trial judge should make sufficient inquiry to determine whether there is reasonable cause to believe that counsel is not rendering effective assistance. *See e.g. State v. Barton*, 28 Wn.App. 690, 626 P.2d 509 (1981) (trial court did not abuse its discretion in denying defendant's request to substitute counsel where defendant gave no reason for his lack of confidence in appointed counsel and request by him on day of trial was untimely in any event); *State v. Sinclair*, 46 Wn.App. 433, 730 P.2d 742 (1986) (even when a defendant does not want to appear pro se, if he fails to provide the court with legitimate reasons why he is entitled to reassignment of counsel, the court can require that he either waive or continue with appointed counsel); *State v. Staten*, 60 Wn.App. 163, 802 P.2d 1384 (1991), review denied 117 Wn.2d 1011, 816 P.2d 1224 (1991) (requiring a defendant to choose between waiving counsel and continuing

with present counsel is not constitutionally offensive unless defendant's objections to existing counsel are such that he has a right to new counsel).

Here, the Court engaged in a relatively lengthy analysis of the Defendant's concerns regarding his appointed attorney. The Court addressed these concerns as best as it could. The Court noted that it was not involved in plea negotiations, and was unable to say whether or not the potential incarceration detailed in the State's plea offer was correct or not.³ The Court then addressed the Defendant's contention that his attorney erroneously stated that he did not qualify for a Residential DOSA. The Court heard from Melissa MacDougall, the indigent defense contract administrator. She noted to the Court that recently inmates were discussing Residential DOSA schemes among themselves, even though Residential DOSA sentences were very rarely imposed in Okanogan County. [Supplemental RP 6-8] The Court then explained to the Defendant that while DOSA sentences were not unusual, Residential DOSA's were very rarely imposed. The Court concluded stating that it was denying the Defendant's request, but would revisit the issue if a breakdown in communication occurred. [Supplemental RP at 10]

This decision was made with the benefit of reviewing the Defendant's letter, and a discussion involving the Defendant and the

³ If the plea offer was conveyed as stated in the Defendant's letter to the Judge, then this was indeed a complete and accurate description of the State's plea offer.

indigent defense administrator. The Court's inquiry was more than sufficient to determine that there was insufficient cause to discharge and replace his attorney. *See State v. Staten*, 60 Wn.App. 163. The Court's inquiry revealed that there was no showing that any of the Defendant's rights would be altered or denied. *Cf. State v. Hampton*, 182 Wn.App. 805, 332 P.3d 1020 (2014).

There was no error when the Court denied the Defendant's request to replace his appointed attorney. The Court correctly found that there was insufficient cause to do so.

B. Defendant was Not Prejudiced by The Court's Denial of his Request for New Counsel

Even if this reviewing Court was to conclude that the lower Court erred when it denied the Defendant's request for new counsel, any error was harmless. "A "peremptory denial" of a defendant's request for new counsel is harmful only if counsel's performance actually violated the defendant's Sixth Amendment right to effective assistance of counsel. *State v. Morrison*, 946 F.2d 484, 499. (7th Circuit 1991). *State v. Lopez*, 79 Wn. App. 755, 767, 904 P.2d 1179, 1186 (1995).

Appellate counsel has failed to identify any reason why the failure to replace Attorney Wargin actually constituted a kind of ongoing failure

of representation. *Cf. State v. Hegge*, 53 Wn. App. 345, 351, 766 P.2d 1127, 1130 (1989). The record of the Defendant's two cases indicates that whatever attorney-client issues might have existed between the Defendant and his Attorney at the beginning of December of 2016, these were resolved after the Court's conversation with the Defendant. The Court ordered Attorney Wargin to meet with the Defendant, and indicated that if Attorney Wargin was to state that attorney-client communications had broken down, then new counsel would be appointed. [Supplemental RP 10-11]

The Defendant never made a renewed attempted to replace his attorney and Attorney Wargin never attempted to withdraw as counsel. The Defendant and his attorney elected to reject a global settlement offer, and schedule his two cases for trial. This strategy ultimately resulted in the State's dismissal of one of the cases pending against the Defendant. *See Appendix F.*

To prove an attorney's representation was unconstitutionally ineffective, a defendant must show (1) that, considering all the circumstances, the attorney's performance was deficient, i.e., that it fell below an objective standard of reasonableness; and (2) that the defendant was prejudiced, i.e., there is a reasonable probability that the result would

have been different but for the attorney's deficient performance. *State v. McFarland*, 127 Wn.2d 322, 334–35, 899 P.2d 1251 (1995).

There has been no showing, or even assertion that Attorney Wargin's performance was deficient in his handling of the Defendant's cases. Because the Defendant was not prejudiced by the Court's denial of his request for new counsel, any possible error is harmless.

C. The Court Properly Considered both Parties' Sentencing Recommendations.

The Defendant on appeal argues that the Court did not meaningfully consider his request for a DOSA sentence. This is incorrect. There are several assertions made by the Defendant that are not supported by the record.

The Defendant on appeal states that the sentencing Court pronounced its sentence "without warning." *Appellate Br. at 6*. This is curious. The State, Defense Attorney, and then the Defendant each provided their recommendations, in that sequence. The Court then stated that a DOSA sentence was not appropriate and specifically indicated its reasoning. The Defendant was not "cut off" from making a recommendation. The Defendant was silenced when he interrupted the

Court. The representation to this Appellate Court that the stolen property was valued at \$10 in this case is also misleading. The testimony was consistent with the Defendant selling this stolen property for far less than its market value of several hundred dollars. [RP 59:7 – RP 59:22]

The Defendant's request for a drug offender sentencing alternative was first made by his attorney. His attorney stated that it was appropriate based on policy reasons. [RP 127:15 – RP 128:11]. The Defendant then spoke to the Court and stated that he had been to prison twice, had three children, and would benefit more from treatment than being in prison. [RP 128:18 – RP 129:6]

The Defendant was entitled to have his request for sentencing alternative actually considered. *State v. Grayson*, 154 Wn.2d 333, 341–42, 111 P.3d 1183, 1187–88 (2005). Here, the Defendant's request *was* in fact, meaningfully considered. The Court having been already provided with the State's sentencing brief, did an independent review of the Defendant's criminal history. The Court noted that the Defendant had no record of drug related offenses and that there was nothing in his history that would indicate there was a substance abuse issue. [RP 129:7 – RP 129:24] Inherent with this commentary was the recognition that this offense did not involve testimony about drug use.

The Court did not allow the State to make rebuttal argument against DOSA. [RP 128:14] The Court then prevented the Defendant from interrupting or arguing with the Court. [RP 130:3]. It was well within the Court's discretion to not permit both parties to essentially re-argue the merits of their recommendations.

As a general rule, the trial judge's decision whether to grant a DOSA sentence is not reviewable. RCW 9.94A.585(1); *Grayson*, 154 Wn.2d at 338, 111 P.3d 1183. The exception to this rule is if the sentencing judge categorically refuses to consider a Defendant's request, or bases a denial on untenable reasons. *State v. Jones*, 171 Wn. App. 52, 55, 286 P.3d 83, 85 (2012).

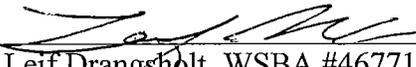
The sentencing Court allowed both the Defendant and Defense Counsel to ask for their sentencing comments. Both of them asked for a sentencing alternative, and stated their reasons for the recommendation. The Court then clearly considered this request, because the Court reviewed the criminal history of the Defendant, and commented on the lack of indicia of drug use. The Defendant was not entitled to a sentencing alternative, just as the State was not entitled to a mid-range sentence. There is no legal basis for this Court to disturb the jury's verdict or the Defendant's sentence.

CONCLUSION

For the aforementioned reasons, the State asks that this Court affirm the Defendant's conviction and sentence.

Dated this 27th day of March, 2018

Respectfully Submitted:


Leif Drangsholt, WSBA #46771
Deputy Prosecuting Attorney
Okanogan County, Washington

Appendix A:

Information for Okanogan County

Superior Court Case 16-1-00487-1

FILED

2016 NOV 18 PM 1:19

CHARLEEN GARDNER
OKANOGAN COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF OKANOGAN

STATE OF WASHINGTON,

Plaintiff,

vs.

NATHANIEL JAMES EDENSO,

Defendant

NO. 16-1-00487-1

INFORMATION

KARL F. SLOAN, Prosecuting Attorney in and for the County of Okanogan, Washington by this INFORMATION, accuses the Defendant above-named of the crime(s) committed as follows:

COUNT NO. 1

RCW 9A.56.075 ~ Taking a Motor Vehicle Without Permission in the Second Degree

On or about the 11th day of November, 2016, in Okanogan County, State of Washington, the above-named Defendant, intentionally and without permission of the owner or person entitled to the possession thereof, did take or drive away a motor vehicle, to-wit: Dodge Ram VIN 3D7KU28C14G268649, or, with knowledge that such motor vehicle had been unlawfully taken, did voluntarily ride in or upon such motor vehicle; contrary to Revised Code of Washington 9A.56.075(1).

Maximum Penalty Five (5) years imprisonment or \$10,000 fine, or both pursuant to RCW 9A.56.075(2) and RCW 9A.20.021(1)(c), plus restitution, assessments and court costs.

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COUNT NO. 2

RCW 9A.56.065 ~ Theft of a Motor Vehicle

On or about the 15th day of November, 2016, State of Washington, the above-named Defendant did wrongfully obtain or exert unauthorized control over a motor vehicle of another, to-wit: Dodge Ram VIN 3D7KU28C14G268649, with intent to deprive such other of such property; contrary to Revised Code of Washington 9A.56.065 and 9A.56.020.

Maximum Penalty ten (10) years imprisonment or \$20,000 fine, or both pursuant to former RCW 9A.56.065(2) and RCW 9A.20.021(1)(c), plus restitution, assessments and court costs.

COUNT NO. 3

RCW 9A.52.025(1) ~ Residential Burglary

On or about the 15th day of November, 2016, in the County of Okanogan, State of Washington, the above-named Defendant with intent to commit a crime against a person or property therein, entered or remained unlawfully in the dwelling of Jeffrey Epley, located at 136 Crumbacher Road, Tonasket; contrary to Revised Code of Washington 9A.52.025(1).

Maximum Penalty -- Ten (10) years imprisonment and/or a \$20,000.00 fine pursuant to RCW 9A.52.025(2) and RCW 9A.20.021(1)(b), plus restitution and assessments.

COUNT NO. 4

RCW 9A.56.050 ~ Theft in the Third Degree

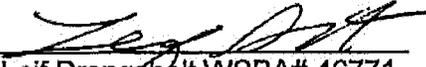
On or about the 15th day of November, 2016, in the County of Okanogan, State of Washington, the above-named Defendant did (1) wrongfully obtain or exert unauthorized control over the property or services of another (Kerri McKinney), or the value thereof, with intent to deprive that person of such property or services; and/or (2) obtain control over the property or services of another, or the value thereof, by color or aid of deception, with the intent to deprive that person of such property or services; and/or (3) appropriate lost or misdelivered property or services of another, or the value thereof, with intent to deprive that person of such property or services; contrary to Revised Code of Washington 9A.56.050(1) and 9A.56.020.

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Maximum Penalty—Three Hundred Sixty-Four (364) days in jail or \$5,000 fine, or both pursuant to RCW 9A.20.021 (2), plus restitution, assessments and court costs.

DATED this 17th day of November, 2016

KARL F. SLOAN
Prosecuting Attorney
Okanogan County, Washington

By: 
Leif Drangsholt WSBA# 46771
Criminal Deputy Prosecutor

Appendix B:

Attorney Jason Wargin Notice of
Appearance for 16-1-00487-1

1

Record Certification: I certify that the electronic copy is a correct copy of the original, on the date filed in this office, and was taken under the Clerk's direction and control.
Okanogan County Clerk,
by CO\kdescoteaux Deputy - # pages 1 - 12/1/2016 10:59:52 AM

2016 NOV 18 PM 3:04

OKANOGAN COUNTY CLERK

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF OKANOGAN

STATE OF WASHINGTON)	
)	
Plaintiff,)	No. 16-1-00487-1
)	
vs.)	NOTICE OF APPEARANCE
)	
NATHANIEL EDENSO,)	CLERK'S ACTION REQUIRED
)	
Defendant.)	

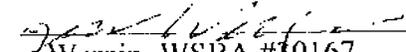
TO: The Clerk of the Court, and
AND TO: The Office of the Okanogan County Prosecuting Attorney

YOU AND EACH OF YOU PLEASE TAKE NOTICE that the defendant herein, hereby appears in the above cause and requests that all further papers and pleadings herein, except original process, be served upon the undersigned attorney at the address stated below.

Defendant enters a Not Guilty Plea and demands a jury trial.

Defendant demands discovery be provided to his/her attorney as required by decisional law and court rule; to include all law enforcement database entries, Okanogan County Jail intake interview materials/reports and all Washington State Patrol Crime Lab raw data and notes leading to a crime lab report, if any, all jail recorded phone calls, and all Brady material

Dated this 15th day of November, 2016,


Jason Wargin, WSBA #30167
Attorney for Defendant

NOTICE OF APPEARANCE, NOT
GUILTY PLEA, DEMAND FOR
JURY TRIAL, AND DEMAND
FOR DISCOVERY - 1



ORIGINAL

WARGIN LAW PLLC
Jason Wargin, Attorney at Law
P.O. Box 164 / 511 Queen Street
Okanogan, WA 98840
Tel: (509) 422-1236 / Fax: (509) 826-2032

2.1

Appendix C:

State's 11/27/16 Settlement Offer

Leif Drangsholt

From: Leif Drangsholt
Sent: Sunday, November 27, 2016 4:40 PM
To: 'Jason Wargin'
Subject: Edenso, N. Global Offers 16-1-00388-3 and 16-1-00487-1
Attachments: Nedenso Burg Case Offer Sheet (JDA 2.0).rtf; Edenso Trafficking Offer Sheet (JDA 2.0).rtf

Offer's for Nate Edenso's 2 x cases.

Leif Drangsholt
OKDC Deputy Prosecutor

~~_____~~ Phone # Redacted

KARL F. SLOAN
Okanogan County Prosecuting Attorney
P. O. Box 1130 / 237 Fourth Avenue North
Okanogan, WA 98840
(509) 422-7280 / Fax: (509) 422-7290

To: Jason Wargin
Attorney for the defendant

Date: March 22, 2018

← * This is date of printing

Re: STATE v. Nathaniel James Edenso

Case # 16-1-00487-1

Should you choose to resolve this matter without the need for a trial, the State makes the following offer:

Count 2 – Taking Motor Vehicle Without Permission Second

14 days months with offender score of 7, Range 14 to 18 months, based on: current offense, 7 prior felonies

- | | |
|---|---|
| <input type="checkbox"/> 1. Convert days to | <input checked="" type="checkbox"/> 6. LFO \$ 1260.50; |
| <input type="checkbox"/> 2. SSOSA if <u>amenable</u> | <input type="checkbox"/> 7. VUSCA \$; |
| <input type="checkbox"/> 3. DOSA if <u>amenable</u> | <input checked="" type="checkbox"/> 8. Restitution \$ / <input checked="" type="checkbox"/> TBD |
| <input type="checkbox"/> 4. First Time Offender | <input type="checkbox"/> 9. Alcohol/Drug treatment |
| <input type="checkbox"/> 5. Community Custody months; | <input type="checkbox"/> 10. Other: |

Count 4 – Theft 3rd

364/184 days suspended for two years months with offender score of N/A, based on:

- | | |
|---|---|
| <input type="checkbox"/> 1. Convert days to | <input checked="" type="checkbox"/> 6. LFO \$ 1260.50; |
| <input type="checkbox"/> 2. SSOSA if <u>amenable</u> | <input type="checkbox"/> 7. VUSCA \$; |
| <input type="checkbox"/> 3. DOSA if <u>amenable</u> | <input checked="" type="checkbox"/> 8. Restitution \$ / <input checked="" type="checkbox"/> TBD |
| <input type="checkbox"/> 4. First Time Offender | <input type="checkbox"/> 9. Alcohol/Drug treatment |
| <input type="checkbox"/> 5. Community Custody months; | <input type="checkbox"/> 10. Other: |

*Dismiss Count 1 TMVWOP (Defendant agrees to pay restitution though in amount TBD)

*Dismiss Count 3 Residential Burglary

Time and /Costs concurrent with Trafficking case for total confinement of 33 months.

Note: Defendant faces significant amount of time, if for example a Res Burg conviction, and just one conviction on this case or the other, then the mid point is 50 months. Same would apply in other case- if convicted of Trafficking 1st, and just one felony conviction here, then faces a mid point of 50 months. If conviction on all counts then range is 63 to 84 months.

Other: Offer Expires at Omnibus. Defendant also takes the offer in in Trafficking Case (reducing from Trafficking 1st to Trafficking 2nd) in 16-1-00388-3

This offer is automatically revoked if the case is set for motion(s); your client fails to appear at a mandatory hearing or violates conditions of release; your client receives new criminal charges; or previously unknown criminal history comes to light.

If this offer involves a dismissal or reduction of any charge(s), the settlement offer (including any dismissal or reduction in charges) is conditioned on the defendant agreeing to the State's recommendations. The defendant agrees not to argue for or request a lower sentencing, First Time Offender option, DOSA, SOSSA, or any deferral of sentence, unless specifically set forth within this agreement.

Sincerely,

Karl Sloan Branden Platter Leif Drangsholt

KARL F. SLOAN
Okanogan County Prosecuting Attorney
P. O. Box 1130 / 237 Fourth Avenue North
Okanogan, WA 98840
(509) 422-7280 / Fax: (509) 422-7290

← This is date of printing

To: Jason Wargin
Attorney for the defendant

Date: March 22, 2018

Re: STATE v. Nathaniel James Edenso Case # 16-1-00388-3

Should you choose to resolve this matter without the need for a trial, the State makes the following offer:

Count 1 Trafficking 2nd (lesser included than 1st) -

33 days months with offender score of 7, Range is 33 to 43 months, based on: 6 prior felonies (I confirmed adult and separate conduct) Res Burg 1998, Malmisch 1st 1998, Unlawful Imprisonment 06', Attempt to Elude 07, Theft 2 08' and Robbery 2 08', + 1 x current offense in 16-1-004871

- | | |
|---|---|
| <input type="checkbox"/> 1. Convert days to | <input checked="" type="checkbox"/> 6. LFO \$ 1260.50; |
| <input type="checkbox"/> 2. SSOSA if <u>amenable</u> | <input type="checkbox"/> 7. VUSCA \$; |
| <input type="checkbox"/> 3. DOSA if <u>amenable</u> | <input checked="" type="checkbox"/> 8. Restitution \$ / <input checked="" type="checkbox"/> TBD |
| <input type="checkbox"/> 4. First Time Offender | <input type="checkbox"/> 9. Alcohol/Drug treatment |
| <input checked="" type="checkbox"/> 5. Community Custody 12 months; | <input type="checkbox"/> 10. Other: |

Count 2 Possession of Stolen Property 3rd -

364/184 days suspended for two years months with offender score of N/A, based on: Gross Misdemeanor

- | | |
|---|---|
| <input type="checkbox"/> 1. Convert days to | <input checked="" type="checkbox"/> 6. LFO \$ 1160.50; |
| <input type="checkbox"/> 2. SSOSA if <u>amenable</u> | <input type="checkbox"/> 7. VUSCA \$; |
| <input type="checkbox"/> 3. DOSA if <u>amenable</u> | <input checked="" type="checkbox"/> 8. Restitution \$ / <input checked="" type="checkbox"/> TBD |
| <input type="checkbox"/> 4. First Time Offender | <input type="checkbox"/> 9. Alcohol/Drug treatment |
| <input type="checkbox"/> 5. Community Custody months; | <input type="checkbox"/> 10. Other: |

This is global offer with that 16-1-00487-1

Other:

This offer is automatically revoked if the case is set for motion(s); your client fails to appear at a mandatory hearing or violates conditions of release; your client receives new criminal charges; or previously unknown criminal history comes to light.

If this offer involves a dismissal or reduction of any charge(s), the settlement offer (including any dismissal or reduction in charges) is conditioned on the defendant agreeing to the State's recommendations. The defendant agrees not to argue for or request a lower sentencing, First Time Offender option, DOSA, SOSSA, or any deferral of sentence, unless specifically set forth within this agreement.

Sincerely,

Karl Sloan Branden Platter Leif Drangsholt

Appendix D:

12/2/2016 Letter from the Defendant

Record Certification: I certify that the electronic copy is a correct copy of the original, on the date filed, in this office, and was taken under the Clerk's direction and control.
Okanogan County Clerk,
by C. K. Descoeaux Deputy - # pages 3, 12/13/2016 4:23:11 PM

My name is Nathaniel Edmondson and I would like to say that I introduced myself to the justice system at an early age of 17 back in 1997 I was charged as an adult.

Since then I have been in and out of the system way to much.

Now in 36 and am facing more time in prison. My lawyer told me that with the glide resolution, my charges would be run concurrent if I took the deal on the table. For the PSP 3 & trafficking SP would be 19 months. The other charges would be dropped except taking a motor vehicle without permission, 14 months. Concurrent would not that be 19 months? My lawyer says that it would be 33 months, that to me sounds like consecutive not concurrent like he is telling me.

He at our last conference did not even ask me my side of the story, he just told me the offer and wants me to take it. That to me is in a way a bit disrespectful.

He talks me in circles without answering my questions and only bring me back to how much time I'd be getting. When I tell him I don't understand it does not even try to explain any thing, he again takes us in to the circle talk and ends it with how much time.

That day when I was in court all day from 8:30 am until 3:30 or so, I have him recorded on my girl friend's phone during our conference on how he was disrespectful and how he lied to me about Res-dosa when I said this is my FN life.

He said I don't have to take this abuse and walked out on me. This was at the 9:30 break, he then told me to come back at the 1:30 court session and I heard that I had took off.

FILED
OCT 5 2016
OKANOGAN COUNTY CLERK

my lawyer told me to come back later when I could have #2 stayed.

- I have asked him for copies of every thing and have received nothing, this was wensday when I made that request.

- He has also lied to me about what the project investigator said. at first my lawyer told me that Georg Hill is requesting a jury trial, and now with these new charges when I asked him about that he says he never said that and Georg Hill is requesting punishment. I know what my lawyer told me the first time I don't understand why he is lying to me not only about Georg Hill's request but also about there not being Res-dosa in this county, but to then tell me I'm not eligible for Res-dosa Hexayd that for me to get Res-dosa I would have to be in Spokane or some where in a larger population.

Also I sent you a letter through him and when I asked if you had received it or not his response was I don't know. it didn't tell me if he sent it to you or not or if he even received it.

for honor, I'm sorry for the years that I have wasted.

I'm sorry for wasting taxpayers money over my

mistakes, I'm really sorry for taking time away from

my children that they ~~can~~ (we) can not get back.

this will be the last time I will ever be in trouble your

friend, I make this promise not only to you but most importantly

my family. And to myself.

- I don't want this letter to affect my case in any way

negative, I don't feel like my lawyer has treated me fair

at all, I'm not confident in what he tells me to do

THE 11/9/16 I THANK YOU FOR YOUR TITLE.

#3

With all my Respect,

Walter Edmond

FILED

2016 DEC -5 AM 9:27

OKANOGAN COUNTY CLERK

16-1-00487-1
KD, JW

Read at pm 4:50 pm
Dec. 4, 16. Copy to PA & PD.
No action by court.
LSP

Record Certification: I certify that the electronic copy is a correct copy of the original, on the date filed in this office, and was taken under the Clerk's direction and control.
Okanogan County Clerk,
by CO:Speiker Deputy - # pages 3 - 12/13/2016 11:02:11 AM

Appendix E:

12/8/2016 Letter from the Defendant

Mr. Hill

Dec 8, 2016

16-1-388-3
16-1-487-1
LD/JW

FILED

2016 DEC 14 PM 1:15

CHARLEEN GROHES
MAGISTRATE COURT

3) My lawyer Mr. Warren has tried to get me on more than one

occasion. First hearing time would be run concurrent with the global resolution of 14 months and 19 months. He says I'll do 33 months. To me that sounds like consecutive.

At our last conference he didn't ask me my side of the story, all he did was tell me how much time I could get and to take the deal.

He talks me in circles without explaining anything when I tell him I don't understand all he does is bring me back to x-amount of time on the deal. And that to take the deal.

I have asked him for copies of my paper work with out even receiving ~~me~~ a response, let alone the copies I have requested.

I sent you a letter through him, which has not been received. When I asked him what happened to the letter his response was, "I don't know."

That day when I was at the court house all day from 8:30 AM till 3:30 PM or so he could have had me seen a lot sooner than he did. Only after I had told Noah how long I had been there did my lawyer do anything. When I asked him what the District Investigator said the first time his response was that "George Hill is requesting exoneration, a couple weeks later when we spoke, my lawyer's response to the same question was, "I never said that. Mr. Hill is wanting there to be punishment."

12/13/16: Request for New Counsel denied in open court. Copy to

also when I asked him about the court he says
that I would have to live in a bigger area then he
and that I don't qualify for res-daca. I'm confused
and he has not helped me understand when I tell him
I'm confused I do not feel that Mr. Wargin has treated
me fairly also I am not at all confident in his words
being the truth.

Mr. Culp, I Nathaniel J. Edensso am requesting
a New lawyer to help me with my cases please.
Thank you for your time.

Nathaniel Edensso

16-1-00388-3
16-1-00487-1

Record Certification: I certify that the electronic copy is a
correct copy of the original, on the date filed in this office,
and was taken under the Clerk's direction and control.
Okanogan County Clerk,
by CO'sspeiker Deputy - # pages 3 - 12/20/2016 9:52:40 AM

Matthew Edens
16-1-00388-3
16-1-00487-1

Judge Bill

Appendix F:

Motion and Order for Dismissal for

16-1-00487-1

2

FILED

JUN 30 2017

OKANOGAN
COUNTY CLERK

Record Certification: I certify that the electronic copy is a correct copy of the original, on the date filed in this office, and was taken under the Clerk's direction and control.
Okanogan County Clerk,
by COZvanbrunt Deputy - # pages 2 - 7/6/2017 11:37:10 AM

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF OKANOGAN

STATE OF WASHINGTON,

NO. 16-1-00487-1

Plaintiff,

MOTION TO DISMISS WITHOUT
PREJUDICE

vs.

[X] CLERK'S ACTION REQUIRED

NATHANIEL EDENSO,

Defendant

COMES NOW the Plaintiff, State of Washington, by and through the undersigned Deputy Prosecuting Attorney in and for Okanogan County, Washington, and moves the court to dismiss the above entitled action without prejudice.

This motion is based upon the following declaration of counsel, and any records and files herein.

DATED this 30 June, 2017.

KARL F. SLOAN
Prosecuting Attorney
Okanogan County, Washington

By:


Leif Drangsholt, WSBA# 46771
Criminal Deputy Prosecutor

1 STATE OF WASHINGTON)
2 : ss
3 COUNTY OF OKANOGAN)

4 Under penalty of perjury under the laws of the State of Washington, the undersigned
5 hereby declares:

- 6 1. That I am a Deputy Prosecuting Attorney for this County and make this
7 Declaration in that capacity;
8 2. That the Defendant is charged in Okanogan County Superior Court with one count
9 of Residential Burglary, Taking a Motor Vehicle without Permission, Theft of a
10 Motor Vehicle, and Theft in the Third Degree;
11 3. That the State has lost contact with the complaining witness and victim, Kerri
12 McKinney.
13 4. That service of a trial subpoena was previously attempted, but the serving officer
14 received information that she was likely in the State of Oregon.
15 5. That the State attempted to reach her through multiple phone numbers, without
16 success.
17 6. That she has had warrants for her arrest issues out of Okanogan County District
18 that have been active during the month of June 2017, but law enforcement has
19 been unable to locate her.
20 7. That the State is unable to proceed without her testimony and presence.
21 8. That the State moves to dismiss without prejudice.

22 Executed this 30 June, 2017, in Okanogan, WA.

23 By:


24 Leif Drangsholt, WSBA# 46771
25 Criminal Deputy Prosecutor
26
27
28

FILED

JUN 30 2017

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
OKANOGAN COUNTY CLERK
IN AND FOR THE COUNTY OF OKANOGAN

STATE OF WASHINGTON,

16-1-00487-1

Plaintiff,

ORDER TO DISMISS
WITHOUT PREJUDICE

vs.

NATHANIEL EDENSO,

*CLERK'S ACTION REQUIRED

Defendant.

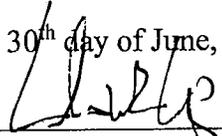
THIS MATTER having come on regularly before the undersigned Judge of the above-entitled Court upon the Motion of the State of Washington, Plaintiff, and the Court having considered the files and records herein and the Declaration of the Deputy Prosecuting Attorney in support of the Motion, and the ends of justice not warranting further proceedings in this matter as to the Defendant, now, therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that the above-entitled cause be and the same is hereby dismissed without prejudice. Any bail or bond is hereby exonerated and the defendant shall be immediately released from custody on this matter, subject to any other holds. Any pre-trial no contact orders shall be terminated.

Shall be sent to OCSO.

A copy of this Order

ORDERED this 30th day of June, 2017.



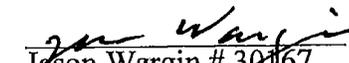
JUDGE

Presented by:
KARL F. SLOAN

Prosecuting Attorney
Okanogan County, Washington

Notice Received


By: Leif Drangsholt, WSBA #46771
Deputy Prosecuting Attorney


Jason Wargin # 30167
Attorney for Defendant

PROOF OF SERVICE

I, Shauna Field, do hereby certify under penalty of perjury that on the 27th day of March, 2018, I provided email service to the following by prior agreement (as indicated), a true and correct copy of the Brief of Respondent:

E-mail: penoyarlawyer@gmail.com

Joel Morris Penoyar
Joel Morris Penoyar, Attorney at Law
PO Box 425
South Bend, WA 98586

A handwritten signature in cursive script that reads "S Field". The signature is written in black ink and is positioned above a horizontal line.

Shauna Field, Office Administrator

BRANDEN E. PLATTER
Okanogan County Prosecuting Attorney
P. O. Box 1130 • 237 Fourth Avenue N.
Okanogan, WA 98840
(509) 422-7280 FAX: (509) 422-7290

OKANOGAN COUNTY PROSECUTING ATTORNEY'S OFFICE

March 27, 2018 - 11:08 AM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 35440-7
Appellate Court Case Title: State of Washington v. Nathaniel James Edenso
Superior Court Case Number: 16-1-00388-3

The following documents have been uploaded:

- 354407_Briefs_20180327110751D3447288_1454.pdf
This File Contains:
Briefs - Respondents
The Original File Name was 3.27.18 Brief of Respondent.pdf

A copy of the uploaded files will be sent to:

- bplatter@co.okanogan.wa.us
- edwardpenoyar@gmail.com
- penoyarlawyer@gmail.com

Comments:

Sender Name: Shauna Field - Email: sfield@co.okanogan.wa.us

Filing on Behalf of: Leif Timm Drangsholt - Email: ldrangsholt@co.okanogan.wa.us (Alternate Email: sfield@co.okanogan.wa.us)

Address:
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Okanogan, WA, 98840
Phone: (509) 422-7288

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