

79236-4

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, PETITIONER

v.

ALYSSA KNIGHT, RESPONDENT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

HONORABLE JEROME J. LEVEQUE

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SUPREME COURT
STATE OF WASHINGTON

SUPPLEMENTAL BRIEF OF PETITIONER

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I. INTRODUCTION

Appellant, State of Washington, respectfully submits this supplemental brief as permitted by RAP 13.7(d).

II. ARGUMENT

Since the State filed its Petition for Review, this Court has issued the relevant opinion in *In re Pers. Restraint of Shale*, 160 Wn.2d 489, 158 P.3d 588 (2007).

In *Shale*, the Court examined *State v. Turley*, 149 Wn.2d 395, 398, 69 P.3d 338 (2003) and held that plea bargains are indivisible "...where pleas were made at the same time, described in one document, and accepted in a single proceeding." *Turley, supra* at 398. *See also State v. Ermels*, 156 Wn.2d 528, 540, 131 P.3d 299 (2006); *State v. Bisson*, 156 Wn.2d 507, 130 P.3d 820 (2006). ("In light of the bright-line rule stated in *Turley*, we hold that, if Bisson initially elects the remedy of withdrawal of the plea agreement, the remedy is restricted to the withdrawal of his plea in its entirety.")

The record shows that the pleas in this case were made at the same time, described in one document and accepted in a single proceeding. If anything, this case shows the intent of the parties even more clearly than the facts in *Turley*. The information was amended on the day of the plea

to reflect two counts of conspiracy and murder in the second degree. CP 11-12.

The Statement of Defendant on Plea of Guilty includes all of the counts in question. CP 13-20. In fact, the Statement of Defendant on Plea of Guilty lists all of the counts on the first page and where the elements are supposed to be filled in, the document states, "See information (2nd amended)." CP 13. Page three of the document states: "Please see attached plea agreement." CP 16. Page six of the document lists each of the three counts separately and notes that the defendant is pleading guilty to each of the counts. CP 18. Page six also has a box checked off indicating that the court could use the police reports/affidavit of probable cause to establish a factual basis. CP 18.

There can be no argument regarding the pleas all being accepted during the May 3, 2004 proceeding.

It is quite clear that the parties intended that the defendant would (and did) plead guilty to two counts of conspiracy and one count of murder in the second degree. It is not logical that the State should remain silent while the defendant attempts to abrogate part of her plea agreement in an effort to obtain a more favorable sentencing situation. The defendant has argued in previous briefs that she did not seek to withdraw the pleas. A rose by any other name is still a rose. It is true that the defendant did

not ask for the entire plea agreement to be withdrawn. Whatever one wishes to call it, the defendant's appeal of one count, with subsequent resentencing at a lower range, is still a withdrawal of her plea on one part of the bargain. It is not logical that the State would intend that the defendant would appeal a plea arrangement to which she had agreed.

Since the factual basis surrounding the pleas is firmly established, the analysis moves to the question of remedy when a defendant decides to collaterally attack a guilty plea on double jeopardy grounds. As noted in the concurring opinion in *Shale*, the defendant in *Shale* did not request to withdraw his guilty pleas, but rather attacked the pleas in a collateral action. *Shale, supra* at 497-98. The defendant in *Shale*, like the defendant in this case, claimed that some of his counts violated double jeopardy. *Id.*

This Court held in *Shale* that the plea agreements which meet the above mentioned criteria are *indivisible*. *Shale, supra* at 493. There is nothing to distinguish the situation in *Shale* from that existing in this case. The defendant in this case sought relief from the Court of Appeals based on the grounds of double jeopardy. The Court of Appeals granted the relief sought and reversed only one of the counts and remanded for resentencing with a lower score. This remedy was not available to the Court of Appeals.

The plea bargain, being indivisible, is not subject to being reversed in a piecemeal fashion. The defendant initially had the option of specific performance of the plea bargain or withdrawal of the pleas. *In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 303, 88 P.3d 390 (2004). The defendant, in light of her previous submissions to the courts, does not appear to want specific performance. Specific performance is what the defendant already had when she first pled guilty to the amended charges. The defendant also apparently does not want the entire plea withdrawn. The defendant wants only one count of the plea removed. This is not a remedy available to the defendant. The only remedy available is to vacate all the counts or dismiss this appeal.

III. CONCLUSION

For the reasons stated herein and previously, the State respectfully requests that the decision of the Court of Appeals be reversed and this appeal be dismissed or vacate the plea bargain and remand for trial.

Dated this 17 day of August, 2007.

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