

Case # 326373

**Statement of Additional Grounds
for Review**

**State of Washington
v.
Rigoberto G. Sanchez**

FILED

NO. 32637-3-III

FEB 11 2015

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

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

STATE OF WASHINGTON,

Respondent,

v.

RIGOBERTO G. SANCHEZ,

Appellant.

STATEMENT OF ADDITIONAL
GROUND; RAP 10.10

1. OPENING STATEMENT

Mr. Sanchez and defense counsel Mr. Alfred Jr., believed that part of the benefit of entering into the Newton plea agreement, was that the State would not be seeking the exceptional sentence. The exceptional sentence was not part of the plea agreement. The plea Judge excepted the plea agreement, and set a sentencing date. At the sentencing hearing the Judge accepted a late amendment of the charges, and allowed the state to take Mr. Sanchez to a jury trial only on the aggravating factors, for the exceptional sentence.

The Plea Judge rendered defense Counsel ineffective in plea negotiations. Recently, the U.S. Supreme Court held that plea negotiations are part of Substantive Due Process. Missouri v. Frye, 132 S.Ct. 1399, 1407-08 (U.S.Mo.2012). Mr. Sanchez is entitled to effective assistance of counsel during plea negotiations. The 4th circuit has held that the prosecution, or plea Judge cannot render counsel ineffective during plea negotiations. Cooper v. U.S., 594 F.2d 12 (4th Cir. 1979).

Mr. Sanchez will place the relevant facts within the applicable arguments below. Mr. Sanchez is claiming that both his State & Federal Rights to Substantive & Procedural Due Process, Effective assistance of counsel, and Fair Administration of justice have been violated. 28 U.S.C. 5, 6, 14 Amendment; Wash. Const. Art 1 § 3, 22. Mr. Sanchez asks that this court does not hold him to the same standards as a lawyer. Mr. Sanchez is untrained in the law. Please give these pleadings liberal interpretation. Maleng v. Cook, 490 U.S. 488, 493 (1989).

2. GROUNDS & ARGUMENT FOR RELIEF

A. THE PROSECUTION CANNOT BE ALLOWED TO CHANGE THE MUTUAL UNDERSTANDING OF THE BINDING PLEA AGREEMENT AT SENTENCING BECAUSE THIS JEOPARDIZES THE RELIABILITY OF THE GOVERNMENT AND EFFECTIVENESS OF DEFENSE COUNSEL

The State charged Mr. Sanchez with one count of delivery of Methamphetamine. (CP 10). On the same day as the Information was filed, the State filed a document entitled "Notice of Intent to Seek Exceptional Sentence" Stating in pertinent part:

"the State intends to seek an exceptional sentence in the above matter, and will argue for the sentences on each felony conviction to be ordered consecutive to each other." (CP 13).

Mr. Sanchez plead guilty as charged to one count, so that the State would not add charges and seek an exceptional CONSECUTIVE sentence. (CP 30-40; RP 17-27). Since the notice to seek an exceptional sentence informed Mr. Sanchez that the form of exceptional sentence would be a consecutive sentence, the natural and logical intent of the parties when entering into the plea on one count, would naturally be to avoid the consecutive exceptional sentence. The reason being that two or more counts are required to seek an exceptional consecutive sentence.

Following the plea, the trial court scheduled the case for sentencing. (RP 28-29). At the hearing, Mr. Sanchez requested the trial court to impose the sentence immediately. (RP 39). Even though Mr. Sanchez plead guilty to one count, and the State did not mention the exceptional sentence in the plea agreement, Shockingly, the State requested a trial on its request for an exceptional sentence. (RP 39). The trial court allowed the parties to submit briefing on the issue. (CP 42-48; RP 39-45).

The State filed a document entitled "Amended Notice of Intent to Seek Exceptional Sentence." The State changed the basis for the exceptional sentence from a consecutive exceptional to "a major violation of the Uniform Controlled Substance Act ... which was more onerous than the [sic] typical offense of its statutory definition." (CP 41). This document was filed almost one month after Mr. Sanchez entered into the Newton plea. (CP 41).

Mr. Sanchez objected to this document. (CP 51-53; RP 52-53). The trial court overruled Mr. Sanchez's objections to the State's notice and amend notice of its intent to seek an exceptional sentence. (RP 56-58). The case proceeded to a jury trial on the exceptional sentence.

In Frye, the U.S. Supreme Court stated that "The initial question is whether the Constitutional right to counsel extends to the negotiation and consideration of plea offers that lapse or are rejected." 132 S.Ct. 1404. The State argued in Frye that when a plea offer had been rejected no formal proceedings are involved, and there is no right to receive a plea offer. Id. at 1407. The State Supreme Court rejected the 4th circuit case Cooper v. U.S., 594 F.2d 12, 18-19 (1979) for the same reason in State v. Wheeler, 95 Wn.2d 799 (Wash.1981). The State Supreme Court reasoned that plea negotiations are not part of any Substantive Due Process rights and that

essentially that the effectiveness of counsel cannot be threatened by the Prosecution rescinding a plea. The Wheeler court flat out rejected the Cooper analysis because "a defendant does not have a constitutional right to a plea bargain." Wheeler, at 631 P.2d 379.

Frye sub silentio overrules the Wheeler decision. The U.S. Supreme Court rejected the State's argument & the Wheeler decision when reasoning that "The state's contentions are neither illogical nor without some persuasive force, yet they do not suffice to overcome a simple reality. Ninety seven percent of federal and 94 percent of State-convictions are the result of guilty pleas." Frye at 132 S.Ct. 1407.

This reality was not discussed in Wheeler the fact is that Substantive Due Process is implicated in what constitutes 94 percent of the process in the State Criminal Justice System. "The reality is that plea bargains have become so central to the administration of the criminal justice system that defendants counsels have responsibilities in the plea bargain process that must be met to render effective assistance." Id. at 1407.

"It is well settled that the right to effective assistance of counsel applies to certain steps before trial. The sixth Amendment guarantees a defendant the right to have counsel present at all critical stages of a criminal proceedings." frye at 132 S.Ct. 1405. Two Constitutional rights protect the enforcement of a formal plea agreement, as was entered into in Mr. Sanchez's case. "Fundamental fairness embraced within Substantive Due process [and] the 6th Amendment right to effective assistance of counsel The general relevance of the former is too plain to require discussion. That of the latter can be readily stated ... to the extent that the government

attempts through defense counsel to change or retract positions earlier communicated, a defendant's confidence in counsel's capability and professional responsibility, as well as in government's reliability, are necessarily Jeopardized and the effectiveness of Counsel's assistance is easily compromised." Cooper at 594 U.S. 18-19.

The Cooper analysis is in full compliance with Frye and advances the intent of Frye. The prosecution in the instant case retracted their position when after the plea agreement was accepted for one count, the State sought an exceptional sentence on different grounds than an exceptional consecutive sentence. When the State changed their position, it rendered counsel ineffective, and took away the benefit of the plea agreement. Mr. Sanchez received more time than if he would have went to trial.

This Court cannot allow the State & trial Judge to render counsel ineffective by retracting & changing their original position surrounding the parameters & basis that the plea agreement was negotiated upon, and accepted in the courts.

Conclusion

Mr. Sanchez asks for specific performance, in that this court vacates the exceptional sentence and remands for re-sentencing within the standard range of the binding plea agreement.

Respectfully Submitted,

2-5-15

X 
RIGOBERTO G. SANCHEZ