

FILED
SUPREME COURT
STATE OF WASHINGTON
7/17/2019
BY SUSAN L. CARLSON
CLERK

SCANNED

97437-3

No. 77648-7-I

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2019 JUL 15 PM 12:09

SUPREME COURT OF THE STATE OF WASHINGTON

State of Washington, Respondent

V.

Courtney Wayne Dawson, Petitioner

Petition For Discretionary Review

Courtney Wayne Dawson, Pro Se Petitioner
CBCC-D-H-1, #366755
1830 Eagle Crest Way
CLallam Bay, WA 98326

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TABLE OF AUTHORITY

[1] Santobello v. New York, 404 U.S. 257, 92 S.Ct. 495, 30 L. Ed.2d 427 (1971) Supreme Court held that a prosecutor who induces a defendant to plea guilty based on certain promises had a duty to keep these promises.

[2] State v. Sledge, 133 Wn.2d 828, 839, 947, P.2d 1199 (1997) Common Law requires the State to act in good faith regarding a plea agreement.

[3] Davis v. Woodford, 446 F.3d 957, 961 (9th Cir 2006) If the prosecutor makes additional oral promises outside the written plea agreement to induce the defendants guilty plea, these promises are also enforceable.

[4] United States v. Camanillo-Tello, 236 F.3d 1024 (2000) when a plea rests in any significant degree on a promise or agreement of the prosecutor so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.

[5] State v. Ramos, 187 Wn.2d 420 A breach occurs when the State undercuts the terms of the agreement explicitly or implicitly by conduct evidences an intent to circumvent the terms of the plea agreement.

A. IDENTITY OF PETITIONER

Courtney Wayne Dawson, Petitioner Pro Se, asks The Supreme Court Of The State Of Washington to review the decision designated in part B. of this petition.

B. DECISION

Court of Appeals Division I State of Washington, No. 77648-7-
I. Unpublished Opinion filed: June 10, 2019, State of Washington
Respondent v. Courtney Wayne Dawson Appellate. (APPENDIX A)
The Court found that Courtney Wayne Dawson did not provide enough
information to prove breach of plea agreement.

C. ISSUE PRESENTED FOR REVIEW

Breach of Plea Agreement is one of Constitutional Magnitude
deserving Review by the Supreme Court of Washington. After
contacting John Henry Browne the former attorney of Courtney
Wayne Dawson, an affidavit was generated. (APPENDIX B) This
new information is being provided due to the fact that it will
probably change the Courts decision. Moreover this affidavit
does verify that Courtney Wayne Dawson did in fact have prior
knowledge of promises made by the prosecutor. (APPENDIX C) the
above mentioned promise involves that State of Oregon, and that
they promised to dismiss all indictments against Courtney Wayne
Dawson with prejudice. These promises were made before the plea
signing on May 29, 2013.

D. ARGUMENT

Prior to Dawson's signing of the State's plea agreement on May 29, 2013. Promises were offered to by John Henry Browne, Dawson's Attorney, from the prosecutors office. On CP 108 and APPENDIX C of this motion you will find an e-mail that contains the promises. The date on the e-mail is May 20, 2013 showing that it was in fact sent before the plea signing of May 29, 2013. The promises do show that The State of Oregon will dismiss all indictments against Dawson with prejudice. Affidavit of John Henry Browne found in APPENDIX B does verify that Dawson was told of these promises before the plea signing. It is the duty of the prosecutor to keep all promises made to a defendant where said promises induce the plea. [1] It was the duty of the prosecutor to make sure the terms from the e-mail were given to the Court in a verbatim manor, and to make sure they are fulfilled. Law requires State to act in good faith when dealing with plea deals. [2] Further if there are promises that are made outside the written plea agreement that induce a plea, they must also be enforced. [3,4]

An ex parte motion found on CP 110 and APPENDIX D of this motion was filed in the State of Oregon on August 14, 2013 which does not include the promise of prejudice. The State of Oregon does in fact "Undercut" the promises made by the State of Washington.

A breach occurs when the State "Undercuts" the plea deal. [5] after accepting the written terms set forth in the prosecutor's e-mail, all prosecutors were bound by Federal and State law to see the terms fulfilled. [1,2,3]

E. CONCLUSION

For the reasons stated in this Petition for Review, and the new new information found in APPENDIX B. the Petitioner Pro Se, does ask this Honorable Court to reverse the Trial Court, an remand to permit Courtney Wayne Dawson to withdraw this guilty plea.

Respectfully Submitted this 10th day of July, 2019.



Courtney Wayne Dawson, Pro Se Petitioner
CBCC-D-H-1, #366755
1830 Eagle Crest Way
Clallam Bay, WA 98326

APPENDIX A

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

STATE OF WASHINGTON,)	No. 77648-7-1
)	
Respondent,)	
)	
v.)	
)	UNPUBLISHED OPINION
COURTNEY WAYNE DAWSON,)	
)	FILED: June 10, 2019
Appellant.)	
<hr/>		

VERELLEN, J. — A defendant seeking to withdraw a guilty plea after entry of judgment must prove he did not enter it knowingly, intelligently, and voluntarily. Because Courtney Wayne Dawson’s attorneys accurately apprised him about the plea agreement’s terms and consequences, he entered his guilty plea voluntarily, intelligently, and knowingly. The court properly denied his CrR 7.8 motion to withdraw his plea.

A defendant also can withdraw his guilty plea where the State breaches the agreement. Dawson contends Oregon, which was party to his global plea agreement, breached by merely dismissing the charges against him and not doing so with prejudice. Because the plea agreement did not oblige Oregon to dismiss with prejudice, Oregon did not breach.

Therefore, we affirm.

FACTS

Dawson flew from Colorado to Oregon and raped a woman at knifepoint.¹ Dawson then drove to Washington and raped another woman at knifepoint.² After being arrested in Washington, Dawson confessed to raping women in both states.³ While awaiting trial, Dawson attempted to pay his second victim to recant her statements to the police.⁴

The State charged Dawson with first degree rape, first degree kidnapping, and bribing a witness, and Oregon indicted him for first degree rape, first degree sodomy, and first degree unlawful sexual penetration.⁵ In a global plea agreement that disposed of all charges against him in both states, Dawson promised to plead guilty only to the charges in Washington. In exchange, Washington would recommend a 16-year sentence at the high end of the standard range, and Oregon would dismiss all charges against him.⁶

Dawson pleaded guilty. Nearly one year later, he moved to withdraw his plea because it was based on misinformation from his attorneys and because

¹ Clerk's Papers (CP) at 60-61. Oregon did not adjudicate Dawson's rape there in accordance with his plea agreement, but he admitted to the facts of that crime for purposes of sentencing and paying restitution to the victim. CP at 54; Report of Proceedings (RP) (June 6, 2013) at 10-11.

² CP at 24.

³ RP (July 19, 2013) at 10-11.

⁴ RP (June 6, 2013) at 14-15.

⁵ CP at 10-11.

⁶ RP (June 6, 2013) at 9-10.

Oregon did not dismiss charges against him with prejudice.⁷ The court denied the motion.⁸

Dawson appeals.

ANALYSIS

If a defendant moves under CrR 7.8 to withdraw a guilty plea due to claimed constitutional error, we conduct review de novo.⁹ We review a court's factual findings for substantial evidence.¹⁰ Substantial evidence supports a finding of fact where sufficient evidence would persuade a reasonable person of the finding.¹¹ Unchallenged findings are verities on appeal.¹² The defendant has the burden of proving that constitutional error occurred and that substantial evidence does not support challenged findings of fact.¹³

"Due process requires that a guilty plea may be accepted only upon a showing the accused understands the nature of the charge and enters the plea intelligently and voluntarily."¹⁴ A defendant must understand a plea's consequences, including possible sentencing consequences, for the plea to have

⁷ CP at 81-90,105-06.

⁸ CP at 278.

⁹ State v. Buckman, 190 Wn.2d 51, 57, 409 P.3d 193 (2018).

¹⁰ State v. A.N.J., 168 Wn.2d 91, 107, 225 P.3d 956 (2010).

¹¹ Id.

¹² Robel v. Roundup Corp., 148 Wn.2d 35, 42, 59 P.3d 611 (2002).

¹³ Buckman, 190 Wn.2d at 65; A.N.J., 168 Wn.2d at 107.

¹⁴ Id. at 59 (quoting A.N.J., 168 Wn.2d at 117).

Relying on the fragment “roughly 10 more years” and his affidavit, Dawson argued below that Gause misinformed him about the length of his sentence based on how she calculated his potential early release time.²⁰ The court found Dawson’s “assertions and allegations are not credible.”²¹ It also found Gause “did not misinform the defendant as to his ‘good time’ calculation.”²² Dawson challenges only this finding as lacking substantial evidence.²³

RCW 9.94A.729(3)(c) caps the maximum aggregate early release time a defendant may earn at 10 percent where he has been convicted of a serious violent offense. Gause submitted an affidavit stating she “did not and would have never informed [Dawson] that his good time was 25 [percent]” because “I was well aware that the good time on Rape in the First Degree was 10 [percent].”²⁴ To support her affidavit, Gause submitted additional meeting notes and a memo written for Dawson. Those documents show she told him the early release accrual amount was 10 percent.²⁵ For example, Gause’s memo goes through the mathematical steps to demonstrate how a 16-year sentence can, with time served and early release time, result in a sentence of approximately 13 years. In addition to showing the math, her notes state the phrase “good time (10%)” in two different

²⁰ CP at 85-86, 94; RP (Sept. 27, 2017) at 7-8.

²¹ CP at 268.

²² CP at 267.

²³ Appellant’s Br. at 1.

²⁴ CP at 257.

²⁵ CP at 187-88, 190.

calculations.²⁶ Based on this evidence, a reasonable person could be persuaded that Gause did not misinform Dawson. Finding of fact 8 is supported by substantial evidence.

In addition to finding of fact 8, the court's unchallenged findings support its conclusion. These findings are verities on appeal.²⁷ Significantly, the court found Dawson's asserted facts were "not credible."²⁸ It also found that another of Dawson's attorneys never misinformed him about the duration of his sentence, and that Dawson understood the consequences of pleading guilty.²⁹ The court's findings show Dawson knowingly, intelligently, and voluntarily entered his plea.³⁰ He fails to establish a constitutional error.

Dawson filed a statement of additional grounds in which he contends the State breached the plea agreement because Oregon did not dismiss all charges against him with prejudice.³¹

We review unambiguous plea agreements de novo.³² Because "[a] plea agreement is a contract with constitutional implications," we evaluate plea

²⁶ CP at 188.

²⁷ Robel, 148 Wn.2d at 42.

²⁸ CP at 268.

²⁹ CP at 267.

³⁰ Dawson also argued to the trial court that he is dyslexic and, consequently, struggled to understand the plea agreement. But the court credited Gause's assertion "that she never observed [Dawson] struggle mentally or display any substantive disability." CP at 277. Dawson does not challenge this finding of fact on appeal.

³¹ SAG at 1-2.

agreements using basic contract principles.³³ We interpret a plea agreement to give effect to the parties' intent as shown by their objective manifestations.³⁴ We consider the whole record objectively to determine whether the State breached a plea agreement.³⁵

On May 29, 2013, Dawson signed a felony plea agreement stating, "Oregon will dismiss its indictment following sentencing."³⁶ During his plea hearing, the court explained Oregon's obligation to Dawson:

Now, there is one promise that's been made that hasn't been incorporated into this contract formation process, and that's the agreement that the Oregon authorities, who are now party to this case, will take certain actions down there in dismissing a pending charge against you. Beyond that, is there any other promise that's been made, any expectation that you have that we ought to put on the record as a part of this agreement?^[37]

Dawson responded, "No, sir. Not that I'm aware of. No, sir."³⁸

³² State v. Church, 5 Wn. App. 2d 577, 584, 428 P.3d 150 (2018) (quoting State v. Ramos, 187 Wn.2d 420, 433, 387 P.3d 650, cert. denied, — U.S. —, 138 S. Ct. 467, 199 L. Ed. 2d 355 (2017)).

³³ Id. (quoting State v. Townsend, 2 Wn. App. 2d 434, 438, 409 P.3d 1094 (2018)).

³⁴ See State v. Chambers, 176 Wn.2d 573, 580-81, 293 P.3d 1185 (2013) (citing State v. Turley, 149 Wn.2d 395, 400, 69 P.3d 338 (2003)).

³⁵ State v. Carreno-Maldonado, 135 Wn. App. 77, 83, 143 P.3d 343, 349 (2006).

³⁶ CP at 54.

³⁷ RP (June 6, 2013) at 20. Because the Oregon authorities were never joined as parties in this Washington criminal proceeding, we note the phrase "who are now a party to this case" appears to contain a transcription error, and it is likely the court stated, "who are not a party to this case." In either event, the outcome of the appeal is the same.

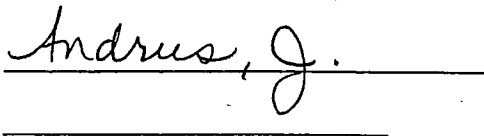
³⁸ Id.

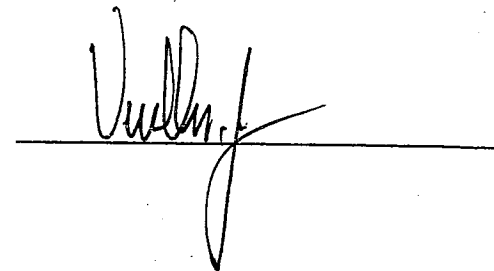
The prosecutor reiterated this obligation: "One of the conditions on this is that the Oregon authorities, Oregon prosecutor's office, will at the time of sentencing dismiss the indictments that they have currently against you with respect to a victim by the name of [M.J.S.]. Do you understand that?"³⁹ Dawson replied, "I do, sir."⁴⁰ Neither colloquy refers to dismissal with prejudice.

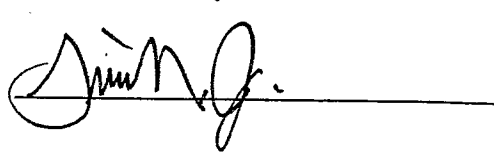
The only evidence of a possible dismissal with prejudice is an e-mail that a prosecutor from King County, Washington sent to Dawson's attorneys more than two weeks earlier stating that Oregon "has agreed to dismiss their indictments with prejudice."⁴¹ But Dawson provides no evidence that he knew of this e-mail at the time of his plea hearing. And both the State and the court told Dawson unambiguously that Oregon's offer was to dismiss the indictments against him, not that they would be dismissed with prejudice. Because Dawson does not show that the parties to the plea agreement understood it as requiring dismissal with prejudice at the time it was made, he fails to show any breach of the agreement.

Therefore, we affirm.

WE CONCUR:







³⁹ Id. at 10.

⁴⁰ Id.

⁴¹ CP at 108.

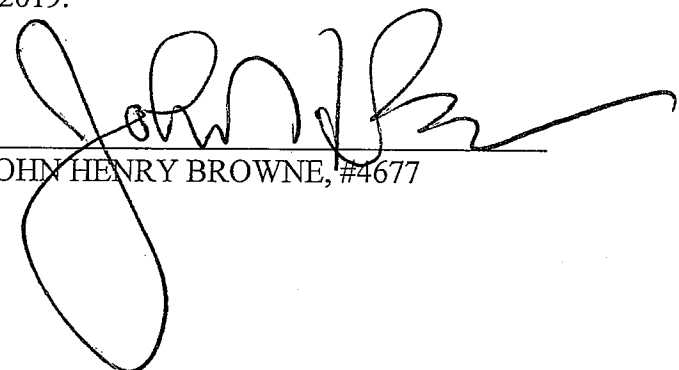
APPENDIX B

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- 4) Mr. Dawson would not have been advised to plea guilty in Washington unless the Oregon cases were dismissed, nor would he;
- 5) My office received an email from the assigned Prosecutor, Hugh Barber, on May 20, 2013 confirming this agreement, See Exhibit A;
- 6) I am quite certain there are notes in our file, in storage, indicating that this was discussed with Mr. Dawson and that dropping the Oregon matters was the deciding factor in entering a plea of guilty.

Further affiant says not.

DATED this 25th day of June, 2019.



JOHN HENRY BROWNE, #4677

EXHIBIT A



Emily Gause <emily@jhblawyer.com>

Dawson Offer

Barber, Hugh <Hugh.Barber@kingcounty.gov>

Mon, May 20, 2013 at 2:28 PM

To: Emily Gause <emily@jhblawyer.com>, Emma Scanlan <escanlan@jhblawyer.com>

Cc: "Richey, Valiant" <Valiant.Richey@kingcounty.gov>

Emma and Emily:

We have been contacted by the Oregon DA, and they have conveyed Mari Jo's willingness to accept the terms of our preliminary offer, provided she and her case are referenced in the plea paperwork, your client agrees to restitution for her and your client does not object to her being present, and possibly speaking, at the sentencing. So here is the offer:

Plead to Rape 1, Kidnap 1 and Bribery. I believe the ranges are as follow:

Rape 1: score → 1, range 102-136

Kidnap 1: score → 0, range 51-68 consecutive to Rape time

Bribery: score → 2, range 21-12

Joint recommendation of 192 months (16 years → 136 on Ct. I consecutive to 56 on Ct. II), with all other standard conditions, as well as agreement to those related to Mari Jo above. In return, the State of Oregon has agreed to dismiss their indictments with prejudice.

Even though the trial date is not until July, there will be lots of scheduling etc. to be done in preparation for it. So we need to set a deadline for acceptance and entry of the plea. Your client has until a week from today- Monday the 27th to convey his acceptance of these terms. We will then prepare the paperwork, and the plea must be completed by Thursday the 30th.

If I have missed anything, or you have any questions, please feel free to get in touch.

Thanks,

HB

Hugh Barber

Senior Deputy Prosecuting Attorney

Special Assault Unit

King County Prosecutor's Office

516 3rd Ave.

Seattle, Wa. 98104

206-296-8994

APPENDIX C



Emily Gause <emily@jhblawyer.com>

Dawson Offer

Barber, Hugh <Hugh.Barber@kingcounty.gov> Mon, May 20, 2013 at 2:28 PM
To: Emily Gause <emily@jhblawyer.com>, Emma Scanlan <escanlan@jhblawyer.com>
Cc: "Richey, Valiant" <Valiant.Richey@kingcounty.gov>

Emma and Emily:

We have been contacted by the Oregon DA, and they have conveyed Mari Jo's willingness to accept the terms of our preliminary offer, provided she and her case are referenced in the plea paperwork, your client agrees to restitution for her and your client does not object to her being present, and possibly speaking, at the sentencing. So here is the offer:

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Even though the trial date is not until July, there will be lots of scheduling etc. to be done in preparation for it. So we need to set a deadline for acceptance and entry of the plea. Your client has until a week from today - Monday the 27th to convey his acceptance of these terms. We will then prepare the paperwork, and the plea must be completed by Thursday the 30th.

If I have missed anything, or you have any questions, please feel free to get in touch.

Thanks,

HB

Hugh Barber
Senior Deputy Prosecuting Attorney
Special Assault Unit
King County Prosecutor's Office
516 3rd Ave.
Seattle, Wa. 98104
206-296-8994

FSRB? SPE

Bill Lenon

APPENDIX D

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR MULTNOMAH COUNTY

THE STATE OF OREGON,

Plaintiff,

v.

COURTNEY WAYNE DAWSON
DOB: 11/02/1974

Defendant.

No. C 12-03-31452

DA 2240270-1

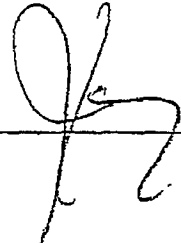
JUDGMENT OF DISMISSAL

On the application of Christopher Ramras, Deputy District Attorney, this matter came before the court for a judgment dismissing the within indictment as to the defendant, and

It appearing to the court that the defendant has been convicted in King County, Washington, and that the ends of justice will be best served by the dismissal of the within matter, and being fully advised in the premises,

IT IS ADJUDGED that the indictment herein against the above-named defendant, charging defendant with the charge(s) of Count 1-RAPE IN THE FIRST DEGREE, and Count 2-3-SODOMY IN THE FIRST DEGREE, , be and the same is hereby dismissed.

Dated: AUG 14 2013



Judge

SUBMITTED BY:

Christopher Ramras, OSB 965056
Multnomah County District Attorney Office
600 Multnomah County Courthouse
Portland, OR 97204

ENTERED
AUG 14 2013
CLERK OF COURT

JUDGMENT OF DISMISSAL

CR:mmm
PP 11-61036
PP 11-60576

SUPREME COURT OF THE STATE OF WASHINGTON

State of Washington,)	No. 77648-7-I
Respondent)	
)	
v.)	Affidavit for Emergency
)	Review RAP 17.4(b)
)	
Courtney Wayne Dawson,)	
Petitioner)	
)	

AFFIDAVIT

Pursuant to 28 U.S.C. § NO NOTARY REQUIRED.

I, Courtney Wayne Dawson, did place in the internal mail system of Clallam Bay Corrections Center three copies of a petition for Discretionary Review on July 10th, 2019, at 7:00 PM. These copies were addressed to the following parties:

Washington State Court of Appeals Division I
600 University Street
One Union Square
Seattle, WA 98101-1176

Gregory Link, Attorney
Washington Appellate Project
1511 Third Avenue, Suite 610
Seattle WA 98101

King County Prosecutor's Office - Appellate Unit
W554 King County Courthouse, 516 Third Avenue
Seattle, WA 98104

This petition for review should be expedited due to the fact that it involves an issue of Constitutional Magnitude, Breach of Plea Agreement. Further a plea of guilty can not stand on its own if it originates from a breached plea deal. The petition outlines this and does provide new information to support breach of plea agreement.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2019 JUL 15 PM 12:09

I, Courtney Wayne Dawson, am over the age of majority and competent to testify and herein attest under penalty of perjury that all statements contained herein is the absolute truth. Affidavit pursuant to 28 U.S.C. § 1746 and Dickinson Wainwright, 626 F.2d 1184 (1980) sworn as true and correct under penalty of perjury has full force of and does not have to be verified by Notary Public.

Respectfully Submitted on this 10th day of July, 2019.

A handwritten signature in black ink, appearing to read 'Courtney Dawson', written over a horizontal line.

Courtney Wayne Dawson, Pro Se Petitioner
CBCC-D-H-1, #366755
1830 Eagle Crest Way
Clallam Bay, WA 98326

SUPREME COURT OF THE STATE OF WASHINGTON

State of Washington,) No. 77648-7-I
Respondent)
v.)
Courtney Wayne Dawson,)
Petitioner)

Declaration of Service by Mail

I, Courtney Wayne Dawson, state that on the 10th day of July 2019, I deposited the listed documents:

Affidavit for Emergency Review RAP 17.4(b)
Petition for Discretionary Review, COA #77648-7-I
or a copy thereof, in the legal mail system of
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA 98326

and made arrangements for postage, addressed to:

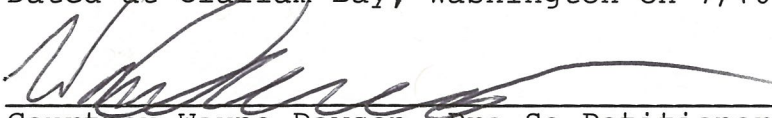
Washington State Court of Appeals Division I
600 University Street, One Union Square
Seattle, WA 98101-1176

Gregory Link, Attorney
Washington Appellate Project
1511 Third Avenue, Suite 610
Seattle, WA 98101

King County Prosecutor's Office - Appellate Unit
W554 King County Courthouse, 516 Third Avenue
Seattle, WA 98104

I declare under penalty of perjury under the laws of the State of Washington that the above is true and correct.

Dated at Clallam Bay, Washington on 7/10/2019



Courtney Wayne Dawson, Pro Se Petitioner
CBCC-D-H-1, #366755
1830 Eagle Crest Way
Clallam Bay, WA 98326

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2019 JUL 15 PM 12:10