70060-0

70060-0

NO. 70060-0-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

PAOLO GALEAZZI,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE ANDREA DARVAS

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

1. Prosecutors must adhere to the terms of a plea agreement. Here, the plea agreements for both of Galeazzi's guilty pleas stated that: "The State's recommendation will increase in severity... if the defendant commits any new charged or uncharged crimes[.]" Less than a week after Galeazzi pleaded guilty, he was charged with eluding law enforcement and assaulting an officer; the State accordingly increased its sentencing recommendation. Did the State adhere to the plea agreement?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

Defendant Paolo Galeazzi was charged by Amended Information with Violation of the Uniform Controlled Substances Act (VUCSA), possession with intent to deliver methamphetamine, for a crime that was alleged to have occurred on May 17, 2011. 1CP[1] 9. Under a separate cause number, Galeazzi was charged by

[1] There are 2 volumes of clerk's papers. 1CP refers to clerk's papers in King County Superior Court cause number 11-1-05993-2 and Court of Appeals case number 70060-I. 2CP refers to clerk's papers in King County Superior Court cause number 12-1-02213-1 and Court of Appeals case number 69963-6-I. These cases are linked for consideration before this Court.

Information with theft of a motor vehicle for a crime that was alleged to have occurred on March 13, 2012. 2CP 1.

Following two days of pretrial hearings, the trial court ruled that the statements and evidence that Galeazzi sought to suppress at trial were admissible. 2RP[2] 171-72, 181. Over the next two days, Galeazzi pleaded guilty under both cause numbers as part of an indivisible plea agreement. 1CP 33; 2CP 34; 3RP 11; 4RP 11-12. Pursuant to the agreement, in exchange for Galeazzi's pleas of guilty, the State amended the charge of theft of a motor vehicle down to taking a motor vehicle in the second degree and agreed not to file bail jumping charges under both cause numbers. 1CP 33. For both cause numbers, all parties signed their names on the plea agreements immediately below the following provision of the agreement: "The State's recommendation will increase in severity if additional criminal convictions are found or ***if the defendant commits any new charged or uncharged crimes***, fails to appear for sentencing or violates the conditions of release." 1CP 33; 2CP 34 (emphasis added). Following the pleas of guilty, Galeazzi was allowed to remain out of custody pursuant to the

[2] There are 4 volumes of verbatim report of proceedings. They will be referred to as follows: 1RP (Jan. 15, 2013); 2RP (Jan. 16, 2013); 3RP (Jan. 17, 2013); and 4RP (Jan. 18 and Feb. 8, 2013).

condition of release that he commit "no new law violations." 4RP 13-15; 2CP 50-51. The sentencing hearing was scheduled for a date three weeks later. 1CP 56; 2CP 44.

On January 21, 2013, three days after Galeazzi pleaded guilty, he was arrested for fleeing from the police and ramming an occupied police vehicle. 2CP 53, 58-59. For these acts, Galeazzi was charged on February 4, 2013 with attempting to elude a pursuing police vehicle and assault in the third degree. 2CP 53.[3] Based on these new charges, the State informed Galeazzi prior to sentencing that it would increase its recommendation to the court. 4RP 17.[4]

At sentencing, citing Galeazzi's new criminal charges and the terms of the plea agreement, the State argued that it should be

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[3] These new crimes were charged under King County Superior Court cause number 13-1-01218-5. 2CP 53. Galeazzi was charged under a different cause number with felony harassment-domestic violence and assault in the fourth degree-domestic violence for crimes that were alleged to have occurred on December 24, 2012. 2CP 53. These crimes were committed before Galeazzi pleaded guilty; the State did not consider these offenses as "new crimes" under the language of the plea agreement and, thus, they are not relevant to the Court's inquiry here. 4RP 23.

[4] Galeazzi requested a continuance of sentencing "to attempt to negotiate the resolution of the new charges with the existing charges" so that all offenses would be sentenced on the same date. 4RP 18. Under RCW 9.94A.589(1)(a), if Galeazzi was sentenced for all offenses on the same date, all of the sentences would then be presumed to run concurrently. The State opposed Galeazzi's motion to continue, arguing that Galeazzi should not receive a benefit for committing new crimes while his trial and sentencing were pending. 2CP 53-56; 4RP 21-23. The trial court found that there was no equitable reason for a continuance and proceeded to sentence Galeazzi as scheduled. 4RP 25-26.

allowed to increase its recommendation from 65 to 90 months of incarceration for the VUCSA charge. 4RP 28, 31.[5] The trial court found that the State was allowed to make such a recommendation ***pursuant to the terms of the plea agreement contract***. 4RP 36. The court specifically found that the increased recommendation was not based on a breach of the contract. 4RP 36. Galeazzi argued that the State was in breach of the agreement, and moved to withdraw his plea. 4RP 37. The court denied his motion and reiterated that there was no breach: "[T]here [are] grounds for the State pursuant to the terms of the plea agreement to change its sentencing recommendation." 4RP 38. At that time, the court had the Certification for Determination of Probable Cause for the new charges, and probable cause had already been found for these charges. 2CP 66. Galeazzi did not deny committing the newly charged crimes nor did he say anything to call into doubt the validity of these new charges.

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[5] Galeazzi's standard range for the VUCSA charge was 60 to 120 months of incarceration based on his offender score of 15. 1CP 37-38; 4RP 31. The State did not increase its recommendation of 25 months of incarceration for taking a motor vehicle in the second degree; Galeazzi's standard sentence range for that charge was 22 to 29 months based on his offender score of 17. 2CP 35, 39; 4RP 26. Pursuant to the plea agreement, the State and Galeazzi requested that these periods of incarceration be served concurrently. 4RP 26.

Galeazzi maintained that the State was in breach of the plea agreement, and that he was thus released from the agreement. 4RP 43. Galeazzi then requested three alternative terms of confinement: 1) 12 months and 1 day – claiming that he no longer agreed to his offender score of 15 and that he should be sentenced as if he had no criminal history; 2) 60 months – the low end of the standard range, based on his criminal history; or 3) 65 months – the term of confinement under the plea agreement. 4RP 44.

The court imposed concurrent standard range sentences of 80 months of incarceration for the VUCSA charge and the agreed-upon 25 months of incarceration for taking a motor vehicle. 1CP 55; 2CP 43; 3RP 16.

2. SUBSTANTIVE FACTS.

The Certifications for Determination of Probable Cause and Prosecutor's Case Summaries describe the facts underlying the charges.[6] 1CP 2-7; 2CP 2-6.

[6] Galeazzi stipulated that the court could consider the facts set forth in the Certifications for Determination of Probable Cause and the Prosecutor's Summaries for purposes of the sentencing hearing. 1CP 33; 2CP 34.

a. VUCSA Possession With Intent To Deliver Methamphetamine.

Officer Chris Walker of the Federal Way Police Department received information from two separate arrested individuals that Galeazzi was selling "large amounts" of methamphetamine out of his car and from an apartment where he lived with his girlfriend. 1CP 4-5. On May 17, 2011, Officer Walker conducted surveillance at the apartment. 1CP 4. He observed Galeazzi exit the apartment carrying a small black bag that he placed into the trunk of a car before driving away with his girlfriend and her five-month-old child in the car. 1CP 4-5.

From information provided by the arrested individuals, Officer Walker suspected that Galeazzi had methamphetamine with him and requested that another officer stop the vehicle. 1CP 5. After the other officer attempted to pull over the vehicle, Galeazzi fled on foot but was eventually apprehended by the officer. 1RP 5-6. Galeazzi had methamphetamine in his pocket and admitted to the police that he had methamphetamine in his car. 1CP 6-7. Officers located a larger quantity in Galeazzi's trunk next

to a digital scale and 86 empty "baggies." 1CP 6-7. Galeazzi's girlfriend told the police that Galeazzi had been selling methamphetamine out of her apartment for approximately one month. 1CP 7.

b. Taking A Motor Vehicle In The Second Degree.

On March 1, 2012, a King County Sheriff's Deputy signaled for Galeazzi to stop the vehicle he was driving. 2CP 4. Galeazzi failed to yield and sped away from the deputy. 2CP 4. Galeazzi abandoned the car in an apartment complex, continued to flee on foot, and successfully evaded the deputy. 2CP 4.

At a used car lot adjacent to the apartment complex where Galeazzi abandoned the car, employee William Soden had momentarily left his car "warming up" in front of the office building while he went inside. 2CP 4. While Soden was inside, two of his coworkers saw Galeazzi run toward the vehicle, get inside it, and drive it away from the area. 2CP 4. The vehicle was later recovered after being abandoned alongside a roadway. 2CP 5.

C. ARGUMENT

1. THE TRIAL COURT DID NOT ERR IN DENYING GALEAZZI'S MOTION TO WITHDRAW HIS GUILTY PLEA WHERE THE STATE ADHERED TO THE TERMS OF THE PLEA AGREEMENT.

Galeazzi claims that the State violated the plea agreement and the trial court accordingly erred in not allowing him to withdraw his plea of guilty. This claim should be rejected. The plea agreement stated that the State's recommendation would increase in severity if the defendant committed any new charged or uncharged crimes. No breach of the agreement occurred where, following the commission of new crimes by Galeazzi, the State increased its recommendation, as promised in the agreement. The trial court did not abuse its discretion in denying Galeazzi's motion to withdraw.

A plea agreement is a contract between the State and the defendant. State v. Sledge, 133 Wn.2d 828, 947 P.2d 1199 (1997). Because a defendant gives up important constitutional rights by agreeing to a plea bargain, due process requires the State to adhere to the terms of the agreement. Id. at 839. The State fulfills its obligations "if it acts in good faith and does not contravene the defendant's reasonable expectations that arise from the

agreement." State v. McInally, 125 Wn. App. 854, 861-62, 106 P.3d 794, review denied, 155 Wn.2d 1022 (2005).

As with any contract, to ascertain and to give effect to the intent of the parties, courts look to the language of the plea agreement. State v. Olivia, 117 Wn. App. 773, 779, 73 P.3d 1016 (2003). In determining whether there was a breach, "reviewing courts consider whether the State's words and conduct, objectively viewed, contradict a promise." State v. Lake, 107 Wn. App. 227, 233, 27 P.3d 232 (2001).

A court must allow a guilty plea to be withdrawn if withdrawal is necessary to correct a manifest injustice. CrR 4.2(f). A manifest injustice occurs where the plea agreement was not kept by the prosecution. State v. Taylor, 83 Wn.2d 594, 597, 521 P.2d 699 (1974). The trial court's decision to allow a defendant to withdraw a guilty plea is reviewed for abuse of discretion. State v. A.N.J., 168 Wn.2d 91, 109, 225 P.3d 956 (2010). A trial court abuses its discretion if its decision is manifestly unreasonable or rests on untenable grounds or reasons. State v. Powell, 126 Wn.2d 244, 258, 893 P.2d 615 (1995).

Here, the trial court did not abuse its discretion in finding that the State did not breach the plea agreement when it performed

exactly as promised by the plea agreements. Both plea agreements stated: "The State's recommendation will increase in severity if additional criminal convictions are found or ***if the defendant commits any new charged or uncharged crimes***, fails to appear for sentencing or violates the conditions of release." 1CP 33; 2CP 34 (emphasis added).

The language of the plea agreements points to four triggers that will increase the State's recommendation: 1) if any additional criminal convictions are found; 2) if the defendant commits any new crimes that are either charged or uncharged; 3) if the defendant fails to appear for sentencing; and 4) if the defendant violates a condition of release. 1CP 33; 2CP 34. Notably, the language of the plea agreement does not expressly require conviction to make the second, third, or fourth triggers effective.

The second trigger, the trigger at issue here, advises Galeazzi that criminal conduct resulting in arrest will jeopardize the sentencing recommendation contained in the plea agreement, even if charges have not been filed or a conviction has not been entered. 1CP 33; 2CP 34. Galeazzi was so advised and entered into this plea agreement. Galeazzi and his defense attorneys both signed these forms directly below this clause. 1CP 33; 2CP 34.

In pleading guilty, Galeazzi expressed no misunderstanding of the terms of his plea agreement; to the contrary, he affirmed that he understood the agreement, had reviewed all forms with his attorneys, and did not have any additional questions. 3RP 6, 11; 4RP 11-12. Upon the courts' acceptance of Galeazzi's guilty pleas, the plea agreement became a binding contract.

Following the entry of his pleas of guilty, Galeazzi was arrested and charged with additional crimes. 4RP 13-15; 2CP 53. This alleged criminal conduct was sufficient, under the terms of the plea agreement, to permit the State to increase its sentencing recommendation.[7]

In essence, Galeazzi on appeal asks this Court to add additional terms to the plea agreement. Galeazzi claims that, under the terms of the agreement, the State needed to prove the new crimes by a preponderance of the evidence. To support this claim, Galeazzi relies on cases which are inapposite. In re Personal Restraint of James, 96 Wn.2d 847, 850, 640 P.2d 18 (1982); State v. Roberson, 118 Wn. App. 151, 158-59, 74 P.3d 1208 (2003);

[7] The plea agreement also promised that the State would increase its recommendation to the court if Galeazzi violated a condition of his release. 1CP 33; 2CP 34. Although it was not addressed before the trial court, Galeazzi's new charges also qualify as a violation of the condition of his release that he commit "no new law violations." 2CP 50-51.

State v. Morley, 35 Wn. App. 45, 665 P.2d 419 (1983).[8] Here, the State was not seeking to avoid its obligations under the plea agreement; rather, the State was performing ***pursuant*** to the plea agreement, as promised, by increasing its recommendation to the court after Galeazzi committed new crimes. Moreover, ***not one of these cases addresses the exact plea language that Galeazzi and the State agreed to under this agreement***.[9]

Nothing in the plea agreement, plea statement, or the State's recommendation indicated that the State would not increase its recommendation if Galeazzi committed new crimes between the guilty pleas and the date of sentencing. Additionally, during the first plea colloquy, the prosecutor asked Galeazzi if he understood that the State could increase its recommendation if he committed a new crime. 3RP 6. Galeazzi stated that he understood this provision. 3RP 6.

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[8] Galeazzi cites to these cases for the proposition that an evidentiary hearing is required when the State seeks to be relieved of its duty to perform as provided in the plea agreement. But in each of these cases, the State asked to be relieved of the terms of the agreements based on the defendants' alleged breaches of their respective plea agreements. Here, Galeazzi did not breach the terms of the agreement allowing the State to alter the terms of the agreement, rather the *terms of the agreement itself* allowed for the State to increase its recommendation.

[9] There appear to be no published cases discussing this exact plea language.

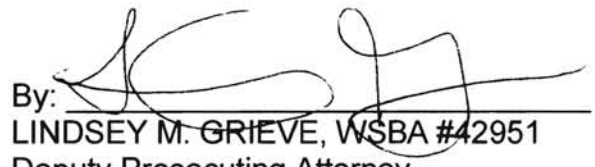
D. CONCLUSION

Galeazzi entered into a plea agreement with the State where he agreed that if he committed new crimes, charged or uncharged, before his sentencing date, the State would increase its recommendation. After Galeazzi was arrested and charged with new crimes, the State, by the terms of the agreement, was allowed to argue for a higher sentence, as it did. In so arguing, the State did not breach the plea agreement; rather, it performed exactly as promised. For all of the foregoing reasons, the State respectfully asks this Court to affirm Galeazzi's convictions and sentence.

DATED this 25 day of November, 2013.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney



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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Jennifer J. Sweigert, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the BRIEF OF RESPONDENT, in STATE V. PAOLO GALEAZZI, Cause No. 70060-0 -I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 25th day of November, 2013

UBrame

Name
Done in Seattle, Washington