

Original

Court of Appeals No. 35845-0-II

**COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO**

STATE OF WASHINGTON

Plaintiff/Respondent,

v.

PETER ANTON LINDAHL,

Defendant/Appellant.

FILED
STATE OF WASHINGTON
BY: [Signature]
CLERK OF COURT

BRIEF OF APPELLANT

**Appeal from the Superior Court of Pierce County,
Cause No. 00-1-04870-1**

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I. ASSIGNMENTS OF ERROR

1. The trial court erred in denying Mr. Lindahl's motion for specific performance of his plea agreement.
2. The trial court erred in granting the State's motion to withdraw the Amended Information and to be allowed to proceed to trial under the initial information.

II. ISSUES PRESENTED

1. Is a defendant entitled to specific performance of a plea bargain where the crimes to which he pled guilty were later found to be nonexistent? (Assignment of Error No. 1)
2. Post *Andress* and *Hinton*, is a defendant who pled guilty to Murder in the Second Degree committed by Felony Murder entitled to have his plea modified to a plea of guilty to Murder in the Second Degree committed by the alternative means of intentional murder? (Assignment of Error No. 1)
3. Where a defendant seeks specific performance of his plea bargain following the Washington Supreme Court finding the charge to which the defendant pled is nonexistent, is the State entitled to withdraw the Amended Information and to bring the defendant to trial under the original Information? (Assignments of Error Nos. 1 and 2)
4. Where the State voluntarily withdraws a criminal charge and the defendant relies on that withdrawal and pleads guilty, is the State barred by equitable estoppel from refileing the criminal charge if the sentence pursuant to the plea bargain is invalidated through no fault of either party? (Assignments of Error Nos. 1 and 2)

III. STATEMENT OF THE CASE

Factual and Procedural Background

On October 10, 2000, Mr. Lindahl was charged with intentional murder in the second degree with a deadly weapon enhancement. Mr. Lindahl was charged in the alternative with second degree felony murder with second degree assault as the underlying felony but without a deadly weapon enhancement. CP 1-2.

On November 3, 2000, the charge of intentional second degree murder was dropped and a deadly weapon enhancement was added to the felony murder charge. CP 3.

On March 14, 2001, the charges were amended to list the statute defining second degree assault. CP 4.

On May 22, 2001, pursuant to a plea negotiation, the deadly weapon enhancement was dropped in exchange for a guilty plea. CP 5-16. On May 22, 2001, Mr. Lindahl pled guilty to felony murder in the second degree. CP 7-14. As part of the plea agreement, the State agreed to recommend a sentence of 123 months, the low end of the standard range, and Mr. Lindahl was free to seek an exceptional sentence downward. CP 7-14.

On August 8, 2001, Mr. Lindahl was sentenced to 330 months

confinement with 24 to 48 months of community custody. CP 17-34.

On August 21, 2001, Mr. Lindahl appealed his sentence. CP 35-50.

On September 20, 2002, the Court of Appeals affirmed Mr. Lindahl's conviction and sentence. CP 52-69.

On June 2, 2005, the Court of Appeals granted Mr. Lindahl's Personal Restraint Petition for the vacation of his conviction under *In re Andress*, 147 Wn.2d 602, 616, 56 P.3d 981 (2002). CP 70-71. The State conceded that Mr. Lindahl's felony murder conviction had to be vacated under *Andress* and *In re Hinton*, 152 Wn.2d 853, 100 P.3d 801 (2004). CP 70-71. At the request of the State, the Court of Appeals vacated Mr. Lindahl's conviction and remanded the case "for further proceedings consistent with *Andress* and *Hinton*." CP 70-71.

On August 10, 2005, an order was entered vacating Mr. Lindahl's sentence pursuant to *Andress* and *Hinton*. CP 74-75. Also on August 10, 2005, an order was entered withdrawing Mr. Lindahl's plea of guilty pursuant to *Andress* and *Hinton*. CP 76-77. This order was not entered at Mr. Lindahl's request and was specifically entered without prejudice to Mr. Lindahl's ability to raise the issue of specific performance of his plea

agreement before the trial judge. RP 17, 19, 4-24-06.¹ Further, on August 10, 2005, an order was entered granting the State's motion to withdraw the Amended Informations and to allow the case to proceed under the original information filed on October 10, 2000. CP 78-80.

On May 5, 2006, the court granted the State's motions to file aggravating factors and to pursue an exceptional sentence against Mr. Lindahl. CP 81-83. The court also granted the State's motion to be allowed to pursue a charge of first degree murder against Mr. Lindahl. CP 84-86. The trial court denied Mr. Lindahl's motion for specific performance of the plea bargain. CP 87-89.

On May 5, 2006, an Amended Information was filed charging Mr. Lindahl with first degree murder and alleging the aggravating factors that Mr. Lindahl was armed with a deadly weapon at the time of the crime and that the crime involved domestic violence and occurred within sight or sound of the victim's or Mr. Lindahl's minor child. CP 90-91.

On January 26, 2007, the charge against Mr. Lindahl was amended to second degree intentional murder and the State alleged the aggravating

¹ The volumes of the Report of Proceedings are not numbered continuously. Reference to the record will be made by giving the page cite followed by the date of the hearing being referenced.

factors that Mr. Lindahl was armed with a deadly weapon at the time of the crime and that the crime involved domestic violence and occurred within sight or sound of the victim's or Mr. Lindahl's minor child. CP 96-97. The State filed this information because Mr. Lindahl

agreed to a stipulated facts trial that will result in the identical conviction as before *Andress* and *Hinton*. Further, the current stipulation will allow the State to seek the identical sentence he received in 2000, which was previously upheld on appeal and which was not subject to *Blakely* relief until *Andress* and *Hinton*...

CP 98.

The trial court found Mr. Lindahl guilty of intentional murder in the second degree with a deadly weapon enhancement and sentenced him to 330 months imprisonment. CP 112-122.

IV. SUMMARY OF TESTIMONY

No testimony was given at the trial court proceedings.

V. ARGUMENT

1. Mr. Lindahl's requested remedy of specific performance of the plea bargain controlled the trial court's remedy and it was error for the trial court to deny Mr. Lindahl's request for specific performance.

In denying Mr. Lindahl's motion for specific performance of his plea bargain, the trial court held, "Because the defendant's conviction was

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obtained by plea of guilty, the appellate court's order effectively invalidates the defendant's plea. Put another way, a conviction obtained via a guilty plea can only be vacated by the withdrawal of that plea." CP 87-89. The court cited no authority and the State provided no authority for the proposition that a conviction obtained pursuant to a guilty plea could only be vacated by the withdrawal of that plea.

In *State v. DeRosia*, 124 Wn.App 138, 100 P.3d 331 (2004), this court held that *Andress* compelled the revocation of Mr. DeRosia's *Alford* plea to second degree felony murder predicated on second degree child assault. *DeRosia*, 124 Wn.App. at 150, 100 P.3d 331. However, *DeRosia* is distinguishable from Mr. Lindahl's case because Mr. DeRosia specifically sought the revocation of his sentence, while Mr. Lindahl sought specific performance of his plea bargain. While revocation of his conviction is certainly Mr. Lindahl's right post *Andress*, as discussed below, it is not his only remedy.

a. *Mr. Lindahl was entitled to specific performance of his plea bargain.*

"Where fundamental principles of due process so dictate, the specific terms of a plea agreement based on a mistake as to sentencing consequences may be enforced despite the explicit terms of a statute." *State v. Miller*, 110

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Wn.2d 528, 532, 756 P.2d 122 (1988), *citing State v. Cosner*, 85 Wn.2d 45, 530 P.2d 317 (1975).

Defendant's constitutional rights under plea agreements take priority over statutory provisions. We decline to hold here that withdrawal of a plea is the only legal remedy where the plea agreement clashes with the Sentencing Reform Act of 1981. Moreover...if the defendant does not wish withdrawal of the plea, that 'remedy' may be unjust, especially where the defendant has relied to his or her detriment on the plea bargaining process by giving evidence to the State. As this court stated in *State v. Tourtellotte*, 88 Wn.2d 579, 585, 564 P.2d 799 (1977):

To place the defendant in a position in which he must again bargain with the state is unquestionably to his disadvantage. The security he had gained as a result of the plea negotiation from being charged with the more grievous offense would be lost...The defendant is entitled to the benefit of his original bargain.

Miller, 110 Wn.2d at 533, 756 P.2d 122 (citations omitted), *citing State v. Tourtellotte*, 88 Wn.2d 579, 585, 564 P.2d 799 (1977).

b. Fundamental principles of due process required specific performance of Mr. Lindahl's plea bargain.

In *Tourtellotte*, Mr. Tourtellotte pled guilty to the charge of second degree arson. *Tourtellotte*, 88 Wn.2d at 580-581, 564 P.2d 799. In return, the State agreed not to pursue any larceny charges. *Tourtellotte*, 88 Wn.2d at 581, 564 P.2d 799. The trial court accepted the plea, but prior to

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sentencing, the State moved pursuant to then current CrR 4.2 to withdraw the guilty plea on grounds that the alleged victims of the arson had not been informed of the plea negotiations.² *Tourtellotte*, 88 Wn.2d at 581-582, 564 P.2d 799. The trial court granted the State's motion and withdrew the plea of guilty. *Tourtellotte*, 88 Wn.2d at 581, 564 P.2d 799. Prior to the trial on the arson charges, Mr. Tourtellotte successfully moved for dismissal on grounds of double jeopardy. *Tourtellotte*, 88 Wn.2d at 582, 564 P.2d 799. Several months later, the prosecutor filed an information charging Mr. Tourtellotte with three counts of grand larceny, charges which were identical to those which were the subject of the plea-bargaining agreement. *Tourtellotte*, 88 Wn.2d at 582, 564 P.2d 799. Mr. Tourtellotte again moved for dismissal but was denied. *Tourtellotte*, 88 Wn.2d at 582, 564 P.2d 799.

The Washington Supreme Court held that the information for the three counts of grand larceny would be dismissed, the plea of guilty to second-degree arson would be entered, and that the trial court would sentence Mr. Tourtellotte on the plea. *Tourtellotte*, 88 Wn.2d at 586, 564 P.2d 799. In reaching this decision, the Washington Supreme Court reasoned that

² The then-applicable version of CrR 4.2 allowed, upon motion of the defendant, withdrawal of a plea to correct a manifest injustice. *Tourtellotte*, 88 Wn.2d at 584, 564 P.2d 799.

because Mr. Tourtellotte “had [his plea bargain] withdrawn from him after the court had previously fully considered the plea and had accepted it without equivocation or reservation.”

[S]pecific performance is the only adequate remedy available to [Mr. Tourtellotte]. To place [Mr. Tourtellotte] in a position in which he must again bargain with the state is unquestionably to his disadvantage. The security he had gained as a result of the plea negotiation from being charged with the more grievous offense would be lost.

Tourtellotte, 88 Wn.2d at 585-586, 564 P.2d 799.

A similar result was reached in *State v. Goodwin*, 146 Wn.2d 861, 50 P.3d 618 (2002). In *Goodwin*, Mr. Goodwin entered into a plea bargain and stipulated to an offender score. The Supreme Court then decided a series of cases addressing the washout provisions for juvenile offenses. As a result of those cases, Mr. Goodwin determined that his offender score was incorrect and he filed a personal restraint petition. The State conceded that Mr. Goodwin’s offender score was incorrect, but contended that Mr. Goodwin had waived the issue by stipulating to an erroneous criminal history and, alternatively, that Mr. Goodwin had breached the plea agreement by collaterally attacking his sentence. *Goodwin*, 146 Wn.2d at 865, 50 P.3d 618.

The Washington Supreme Court rejected the State’s contentions, and in so rejecting them cited *In re Personal Restraint of Carle*, 93 Wn.2d 31, 604

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P.2d 1293 (1980), for the proposition that, “[w]hen a sentence has been imposed for which there is no authority in law, the trial court has the power and duty to correct the erroneous sentence, when the error is discovered.” *Goodwin*, 146 Wn.2d at 869, 50 P.3d 618, citing *Carle*, 93 Wn.2d at 33, 604

P.2d 1293. The *Goodwin* court continued,

The State maintains, however, that *Goodwin* cannot show a complete miscarriage of justice because he agreed to the criminal history in the plea agreement and the State has detrimentally relied on that agreement. The State says that the miscalculated offender score resulted from a mutual mistake. The State contends that the usual remedy is the defendant's withdrawal of his guilty plea, leaving the State free to reinstate the original charges. Here, the State says, it cannot reinstate the original charges because the statute of limitations has run. The State urges that the court should leave the parties as it found them since the mistake cannot be corrected.

We reject this argument. Our focus is not the voluntariness of the plea agreement,^{FN6} nor are we engaging in a balancing process, weighing the harm to the State versus the harm to the personal restraint petitioner. Rather, we are considering a fundamental defect, which is not of constitutional magnitude, and whether that defect has resulted in a complete miscarriage of justice. As noted, this court has already held that a sentence based upon a miscalculated offender score is a fundamental defect that results in a complete miscarriage of justice. *Johnson*, 131 Wn.2d at 568-69, 933 P.2d 1019. We conclude that the fact that a negotiated plea agreement was involved here does not require any other conclusion. First, that holding is in keeping with this court's precedent. As explained, the court has granted relief to personal restraint petitioners in the form of resentencing within statutory authority where a sentence in excess of that authority had

been imposed, without regard to the plea agreements involved. *See Gardner*, 94 Wn.2d 504, 617 P.2d 1001; *Moore*, 116 Wn.2d 30, 803 P.2d 300. Correcting an erroneous sentence in excess of statutory authority does not affect the finality of that portion of the judgment and sentence that was correct and valid when imposed. *Carle*, 93 Wn.2d at 34, 604 P.2d 1293. The court has also recognized, on direct appeal, that the erroneous portion of a sentence in excess of statutory authority must be reversed, and a plea agreement to the unlawful sentence does not bind the defendant. *Eilts*, 94 Wn.2d 489, 617 P.2d 993.

FN6. The State's proposed remedy is, in any event, incorrect where a plea agreement is involuntary because based on a mutual mistake. As the court observed in *State v. Walsh*, 143 Wn.2d 1, 8-9, 17 P.3d 591 (2001), in such a case the defendant ordinarily has the choice of specific enforcement or withdrawal of the guilty plea, unless there are compelling reasons not to allow defendant's choice of remedy.

Goodwin, 146 Wn.2d at 877, 50 P.3d 618.

Thus, where a defendant's sentence is invalid, it is the defendant's choice as to specific enforcement of the plea agreement or withdrawal of the guilty plea. *See also State v. Turley*, 149 Wn.2d 395, 399, 69 P.3d 338 (2003) (*citing Miller*, 110 Wn.2d at 536, 756 P.2d 122) ("Where the terms of a plea agreement conflict with the law or the defendant was not informed of the sentencing consequences of the plea, the defendant must be given the initial choice of a remedy to specifically enforce the agreement or withdraw

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the plea.”).

Here, Mr. Lindahl detrimentally relied on the plea bargain in the same manner as Mr. Tourtellotte. Mr. Lindahl pled guilty and the plea was accepted and entered by the trial court. Through no fault of Mr. Lindahl’s or the State’s, Mr. Lindahl’s plea bargain subsequently became invalid, placing Mr. Lindahl in the same position as Mr. Tourtellotte-- having either to face trial or again “bargain with the state.” As held in *Tourtellotte*, this position was unquestionably to Mr. Lindahl’s disadvantage: the original plea agreement was that Mr. Lindahl would plead guilty to murder in the second degree with no aggravating factors and with no deadly weapon enhancement and the State agreed to recommend a sentence at the low end of the standard sentence range (CP 4-14); at the second trial, Mr. Lindahl stipulated to facts sufficient to find him guilty of second degree intentional murder with the aggravating factors that the crime was an act of domestic violence committed within sight and sound of his minor child and with a deadly weapon and agreed that the State could seek a sentence of 330 months. CP 125-143. Clearly, Mr. Lindahl was placed in a worse position in the second trial than he was in the first trial.

c. *The trial court abused its discretion in denying Mr. Lindahl’s motion for specific performance of his plea*

agreement.

Counsel for Mr. Lindahl was unable to find any authority stating what standard of review applies to the review of a trial court's denial of a defendant's motion for specific performance of a plea agreement. However, the Court of Appeals reviews a trial court's denial of a defendant's motion to *withdraw* his plea for abuse of discretion. *State v. Conley*, 121 Wn.App. 280, 284, 87 P.3d 1221 (2004). The trial court abuses its discretion if it relies on unsupported facts or applies the wrong legal standard. *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003).

A court should permit a defendant to withdraw his plea to correct a "manifest injustice." *State v. Forest*, 125 Wn.App. 702, 706, 105 P.3d 1045 (2005). A manifest injustice is "an injustice that is obvious, directly observable, overt, and not obscure." *State v. Haydel*, 122 Wn.App. 365, 367, 95 P.3d 760 (2004). Extending this logic to the facts of this case, if a trial court abuses its discretion in preventing a defendant from *withdrawing* his plea agreement to prevent a manifest injustice, then a trial court would also abuse its discretion in preventing a defendant from *enforcing* his plea agreement to prevent a manifest injustice.

As discussed above, Mr. Lindahl was entitled to specific performance

of his plea agreement. Mr. Lindahl had substantially performed his obligations under the plea agreement by serving his sentence for five and a half years and paid all of his legal financial obligations. RP 18, 4-24-06. The trial court's denial of Mr. Lindahl's motion for specific performance placed Mr. Lindahl in a worse position in the second trial than he had been in the first trial. Placing Mr. Lindahl in a far worse position than he had been at the end of the first trial was an injustice which was obvious, directly observable, and not obscure. The trial court abused its discretion in denying Mr. Lindahl's motion to specifically enforce his plea agreement.

The trial court abused its discretion in not allowing Mr. Lindahl to have specific performance of his plea agreement and fundamental principles of due process require that the trial court be reversed.

Mr. Lindahl was in a position similar to that of Mr. Tourtellotte; through no fault of his own, the plea bargain which Mr. Lindahl had bargained for and detrimentally relied on was "withdrawn from him." Under *Miller and Tourtellotte*, Mr. Lindahl was entitled to specific performance of his plea agreement because it was a validly entered plea agreement on which Mr. Lindahl detrimentally relied and which he did not violate.

The trial court erred in denying Mr. Lindahl's motion for specific

performance of his plea agreement. Further, forcing the vacation of Mr. Lindahl's conviction would be an unjust remedy as discussed in *Miller*, and the trial court should have followed Mr. Lindahl's wishes regarding the proper remedy.

Because the trial court erred in denying Mr. Lindahl's motion for specific performance of his plea bargain, it was also error for the trial court to allow the State to withdraw the amended information and proceed under the original information.

2. Equitable estoppel barred the State from filing new charges.

Aside from due process, equitable estoppel operated to require the State to abide by the terms of the original plea agreement and it was error for the trial court to deny Mr. Lindahl's motion for specific performance.

"Equitable estoppel is based on the notion that a party should be held to a representation made or position assumed where inequitable consequences would otherwise result to another party who has justifiably and in good faith relied thereon." *Lybbert v. Grant County*, 141 Wn.2d 29, 35, 1 P.3d 1124 (2000).

A party seeking to apply equitable estoppel against the government must establish: (1) a party's admission, statement or act inconsistent with its

later claim; (2) action by another party in reliance on the first party's act, statement or admission; (3) injury that would result to the relying party from allowing the first party to contradict or repudiate the prior act, statement or admission; (4) equitable estoppel must be necessary to prevent a manifest injustice; and (5) the exercise of governmental functions must not be impaired as a result of the estoppel. *Kramarevcky v. Dept. of Soc. Health Services*, 122 Wn.2d 738, 743, 863 P.2d 535 (1993).

Here, the State originally dropped the charge of intentional second degree murder independent of any plea bargain. The second degree intentional murder charge was dropped on November 3, 2000 (CP 3), but this was not done as part of plea negotiations. The benefit Mr. Lindahl received from the State in return for his plea of guilty was removal of the deadly weapon sentencing enhancement and the agreement that the State would recommend the low end of the standard range at sentencing. CP 4-16. The withdrawal of the charge of intentional murder amounted to a “statement or act” on the part of the State indicating that the State would not seek to charge Mr. Lindahl with intentional murder. The State’s decision to refile intentional murder charges against Mr. Lindahl are contrary to the State’s earlier “statement” that such charges would not be brought.

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Mr. Lindahl relied on this “statement” that no intentional murder charges would be filed by entering into a plea bargain and abiding by its terms.

As set forth above, Mr. Lindahl suffered an injury and a manifest injustice when the State was allowed to file charges of intentional murder with additional aggravators against Mr. Lindahl.

No governmental function would have been impaired had the State been required to abide by the terms of the original plea bargain. The governmental function at stake in this case would be the prosecution of criminal activity. However, this function would not have been impaired since Mr. Lindahl still would have been convicted of second degree murder and would have served an appropriate sentence.

The doctrine of equitable estoppel barred the State from filing charges of intentional murder against Mr. Lindahl. The trial court erred in allowing the State to file new charges against Mr. Lindahl.

VI. CONCLUSION

This court should vacate the trial court’s ruling denying Mr. Lindahl’s request for specific performance of his plea agreement, vacate the trial court’s ruling granting the State’s motion to withdraw the amended information, and

remand this case to the trial court for specific performance of Mr. Lindahl's plea agreement as requested by Mr. Lindahl.

DATED this 15th day of August, 2007.

Respectfully submitted,



Sheri Arnold, WSBA No. 18760
Attorney for Appellant

CERTIFICATE OF SERVICE

The undersigned certifies that on August 15, 2007, she delivered: in person to the Pierce County Prosecutor's Office, County-City Building, 930 Tacoma Ave. South, Tacoma, WA. 98402,, and by U.S. mail to appellant, Peter Anton Lindahl, DOC # 825917, Stafford Creek Corrections Center, 191 Constantine Way, Aberdeen, Washington 98520, true and correct copies of this Opening Brief. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington on August 15, 2007.


Norma Kinter

01 AUG 15 PM 10:50
STATE DEPT
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COURT REPORTER

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