

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

NO. 36472-7-II

STATE OF WASHINGTON,

Respondent,

vs.

DOUGLAS EUGENE BAKER,

Appellant.

FILED
COURT OF APPEALS
DIVISION II
08 APR 28 AM 9:01
STATE OF WASHINGTON
BY DEPUTY

RESPONDENT'S BRIEF

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I. STATEMENT OF THE CASE

On January 16, 2004, Douglas Eugene Baker (Baker) entered a plea in this Superior Court to various crimes involving manufacturing marijuana and theft of power. CP 3-13; RP (1.16.04) 10 *et seq.* The plea was a result of a global settlement negotiated between John Prentiss, a special deputy prosecuting attorney appointed for Jefferson County, and Karen Unger, Baker's attorney, and Dave Neupert, Francine Baker's attorney. *Id.* Almost one year later, on January 13, 2005, Baker filed a "MOTION TO VACATE JUDGMENT WITH REQUEST TO WITHDRAWAL OF GUILTY PLEA [sic]". *See*, discussion in Supp CP, Response to Motion to Withdraw Guilty Plea, pp 2-3

Baker's express bases for plea-withdrawal under his 2005 Motion were limited to assertions of "extreme extraordinary, medical, intimidations, and coercion to force this breached plea agreement", and that "[Baker's] grounds are warranted because through his unlawful conviction for unlawful, fraudulent, intimidating, coercion breached plea agreement contract was the results Ground 1[sic]." *See*, discussion in Supp CP, Response to Motion to Withdraw Guilty Plea, pp 2-3.

Baker's Motion was denied after the Honorable Anna Laurie found that Baker had failed to meet even the sufficient threshold showing to warrant consideration of his request. Minute Order of March 18, 2005. RP (03.18.05) 26, *et seq.*

During this entire period and since entry of the plea, neither Baker nor his spouse, nor their respective legal counsels had asserted any specific, alleged breach of the plea agreement by the State.

Then, on August 2, 2006, more than two and a half years after entry of the plea, Baker was back before the court, again motioning to vacate and/or withdraw his plea—albeit, this time, alleging breach of the ‘spirit’ of the plea agreement by the State, to wit: that the County failed to sell Baker's properties at fair market value and return 15% of the proceeds to Baker's wife; that the County failed to return personal property; and that the County failed to provide his wife with 30 days to remove her personal possessions after closing. *See*, discussion in Supp CP, Response to Motion to Withdraw Guilty Plea, pp 2-3.

In response to Baker's allegations, the State responded that: one item of property, an Olympus digital camera, listed in the plea agreement for return was still held by the Clallam County Superior Court pursuant to Baker's on-going proceedings therein—and that item could be available for release forthwith.; the Clallam County Superior Court also held approximately \$8000 in its registry from proceeds from timber, and those monies were subject to release upon action by the Baker's attorneys and entry of an appropriate Order from a Superior Court (not of Clallam or Jefferson) with jurisdiction; and that fifteen percent (15%) of such proceeds would be due under the agreement to Mrs. Baker. *See*, discussion in Supp CP, Response to Motion to Withdraw Guilty Plea, pp 2-3. In July 2005, Mrs. Baker's attorney was contacted as regarding release of the 15% proceeds; there was no response. *See*, discussion in Supp CP, Response to Motion to Withdraw Guilty Plea, pp 2-3.

The context of the plea bargain was, as follows: Baker had lost a suppression hearing on the search warrants by which the evidence against him and his wife was obtained and had recently been convicted in two separate Clallam County jury trials of some twenty-nine counts of Money Laundering and Delivery of Cocaine as well as Manufacturing Marijuana and Defrauding a Public Utility. *See*, discussion in Supp CP, Response to Motion to Withdraw Guilty Plea, pp 6-7.

Baker bargained for no additional time, for the charges against his wife to be dismissed, and for certain personal property and the return of 15% of the net proceeds of the sale of the real property. *Id.* The collective counties honored the sentencing recommendations as negotiated, dismissed appellant's wife's case, kept his wife's attorney apprised of the details concerning the sales, paid the 15% of the net profits from the real estate to Baker's wife, and provided an accounting as to its calculation of all monies owed. *See*, discussion in Supp CP, Response to Motion to Withdraw Guilty Plea, pp 6-7. Although the Bakers have continued to maintain that the real properties were not sold for fair market value and that Baker's wife never received any proceeds therefrom, she in fact obtained over \$18,000 from the sales, as the amount due to her. *See*, discussion in Supp CP, Response to Motion to Withdraw Guilty Plea, pp 2-3.

II. RESPONSE TO ASSIGNMENTS OF ERROR

- A. **The trial court did not err in denying appellant's latest attempt to withdraw his plea.**
- B. **The trial court did not err in ruling appellant's motion was time barred.**
- C. **Appellant was not denied constitutional protections respective the global settlement agreement.**

For purposes of its responding to the Assignments of Error, the State would consolidate its arguments, as follows:

Appellant Douglas Baker's (Baker's) motion is time-barred. RCW 10.73.090 provides in pertinent part that "No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction." Motions to vacate judgment or to withdraw guilty pleas are considered collateral attacks. Under RCW 10.73.090, Mr. Baker's judgment became final on the date it was filed with the trial court, to wit: January 16, 2004.

And, of course, none of the exceptions to this one year time bar specified within RCW 10.73.100 apply to appellant Baker.

Thus, Baker has turned his attention to RCW 10.73.090 in his latest withdrawal-offering, and alchemized yet one last argument for withdrawal of his appeal, namely: “equitable tolling”. Citing to *State v. Littlefair*, 112 Wn.App. 749, 51 P.3d 116 (2002), rev. den., 149 Wn.2d 1020, 72 P.3d 761 (2003), Baker attempts to analogize a wholly criminal case involving a defendant not being advised of the deportation consequences of a plea by his counsel with Baker’s situation of ‘buyer’s remorse’ as to the civil portion of a global, drug-forfeiture settlement. As detailed above, in the Statement, Baker has only belatedly challenged this ancillary, money-portion of his criminal case, and raised a myriad of ‘contract’ challenges.

Equitable tolling is a remedy that “permits a court to allow an action to proceed when justice requires it, even though a statutory time period has nominally elapsed.” *State v. Duvall*, 86 Wn. App. 871, 874, 940 P.2d 671 (1997).

However, ‘equitable tolling’ in criminal cases has, in a word, been “sparingly” utilized in only a smattering of cases, and such usage has never been ratified by our state Supreme Court.

State v. McLean (In re Carlstad), 150 Wn.2d 583, 593, 80 P.3d 587 (2003), quoting *State v. Duvall*, at 875.

And when such an equitable ‘tweak’ to the plain language of the court rules has been applied on appeal, it has only been utilized with the most “unique and bizarre series of events”, involving errors on the part of the court or counsel (or both)¹, affecting the defendants right to timely and effective counsel. *Littlefair, supra*, at 763. And see, *In re Pers. Restraint of Hoisington*, 99 Wn. App. 423, 993 P.2d 296 (Div. III, 2000)(guilty plea premised on an understated maximum range, and the failure of counsel to advise that the stated, lesser sentencing range could be enforced as precondition to plea).

In the present case, and under the best light, the withdrawal of plea by Baker is founded upon disagreements involving minutiae of personal property matters associated with a civil forfeiture, and whether or not Baker (and more accurately Baker’s wife) received ‘just compensation’ from the sale of real property.

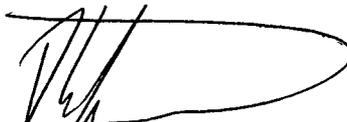
¹ Unlike the cited cases, which involve ineffective counsel and trigger due process concerns, Baker has wholly failed to articulate any particular constitutional right which was violated by the State.

Relying neither upon law nor case law, Baker nevertheless advocates an impracticable “Judge Judy” appellate remand Order, whereupon the criminal trial judge will adjudicate the adequacy of a seller’s performance in obtaining ‘fair market value’ on sale of real property, and dust off his or her Restatement (Second) of Contracts for other issues—ostensively as part of a criminal proceeding.

III. CONCLUSION

Based upon the foregoing arguments and authorities, the State respectfully requests that Baker’s plea, conviction and sentence be affirmed.

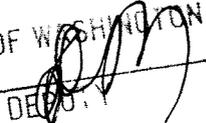
DATED this 25th day of April, 2008.



DOUGLAS E. JENSEN, WSBA #20127
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AFFIDAVIT OF SERVICE BY MAIL

Ⓞ

STATE OF WASHINGTON)
: ss.
County of Clallam)

The undersigned, being first duly sworn, on oath deposes and says:

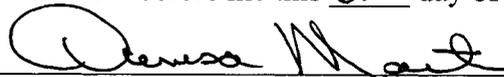
That the affiant is a citizen of the United States and over the age of eighteen years; that on the 25th day of April, 2008, affiant deposited in the mail of the United States of America a properly stamped and addressed envelope containing a copy of the Brief of Respondent, addressed as follows:

Mr. David C. Ponzoha, Clerk
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Cathleen L. Dryke

SUBSCRIBED AND SWORN TO before me this 25 day of April, 2008.


(PRINTED NAME:) Teresa Martin
NOTARY PUBLIC in and for the State of Washington
Residing at Port Angeles, Washington
My commission expires: 10-1-08