

NO. 39001-9-II

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

STATE OF WASHINGTON,

Respondent,

v.

KEATON CARTER FOX EGIZI,

Appellant.

FILED
COURT OF APPEALS
DIVISION II
10 MAR 11 AM 11:49
STATE OF WASHINGTON
DEPUTY

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR CLARK COUNTY

The Honorable Barbara D. Johnson, Judge

APPELLANT'S SUPPLEMENTAL BRIEF

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91-8-5 WA-1

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A. SUPPLEMENTAL ARGUMENT

On February 16, 2010, Commissioner Skerlec requested supplemental briefing to address the impact of Mr. Egizi's agreement to five years of no contact with A.R.B. as part of his plea to an amended information charging rape in the third degree. Specifically, Mr. Egizi agreed:

You shall not have any direct or indirect contact with the victims, including but not limited to personal, verbal, telephonic, written, or through a third person without prior written permission from his community corrections officer, his therapist, the prosecuting attorney, and the court only after an appropriate hearing. This condition is for the statutory maximum sentence of 5 years, and shall also apply during any incarceration.

CP 32.

The trial court accepted Mr. Egizi's plea and abided by the terms of the agreement at sentencing. At the January 12, 2009, sentencing, the court ordered Mr. Egizi to serve 6 months in jail with credit for 123 days already served, followed by an unspecified term of community custody not to exceed 12 months. CP 24-25; Supplemental Designation of Clerk's Papers (Memorandum of Disposition, sub. nom. 23). The court also entered a Sexual Assault Protection Order with a January 12, 2014, expiration date. CP 36. Immediately below the January 2014 expiration date on the Order, it reads:

A final assault protection order entered in conjunction with criminal prosecution shall remain in effect for a period of two years following the expiration of any sentence of imprisonment and subsequent period of community supervision, conditional release, probation, or parole.

CP 36.

As pointed out in Appellant's Brief, the length of the order is in error. Because Mr. Egizi pleaded guilty to third degree rape, a sex offense, all restrictions with victim contact must be recorded as a sexual assault protection order. RCW 7.90.150(6)(a). "When a defendant is found guilty of a sex offense...and a condition of the sentence restricts the defendant's ability to have contact with the victim, the condition shall be recorded as a sexual assault protection order." RCW 7.90.150(6)(a). It is the sexual assault protection order statute that dictates the length of the protection order:

A final sexual assault protection order entered in conjunction with a criminal prosecution shall remain in effect for a period of two years following the expiration of any sentence of imprisonment and subsequent period of community supervision, conditional release, probation, or parole.

RCW 7.90.150(6)(c). A statute is to be enforced in accordance with its plain meaning. State v. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201, 203 (2007). The meaning of RCW 7.90.150(6)(c) is plain and clear. The court is obliged to follow the law. By entering an order valid for five years, the court exceeded its sentencing authority as applied to Mr. Egizi.

With that said, Mr. Egizi does not want any contact with A.R.B. Consistent with his plea agreement, he has no objection to a formal five-year protective order if it could be entered as a lawful order.

In requesting additional briefing, Commissioner Skerlec might think that Mr. Egizi breached his plea agreement by challenging the length of the Sexual Assault Protection Order. (Or, more accurately, challenging one of the two lengths specified in the Order.) If the State thinks that Mr. Egizi, by this appeal, breached the plea agreement, the State should say so. The State has the option to specifically enforce or rescind a plea agreement after a breach by the defendant. State v. Thomas, 79 Wn.App. 32, 37, 899 P.2d 1312, 1315 (1995).

Instead, the State asks this court to remand “for further proceedings consistent with the clear language of the statute.” Brief of Respondent at page 3. The State concedes that “clear language of the statute,” means a “clarifying order which should simply set termination at two-years following expiration of any sentence of imprisonment and subsequent period of community supervision, conditional release, probation, or parole.” Brief of Respondent at page 2. By its concession, the State is expressly stating that there is no breach of the plea agreement. Rather, the error was at their end when the deputy prosecutor premised one aspect of the guilty plea on a misapplication of the law.

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CERTIFICATE OF MAILING

State of Washington, Respondent, v. Keaton Carter Fox Egizi, Appellant
Court of Appeals No. 39001-9-II

I certify that I mailed a copy of Appellant's Supplemental Brief to:

Mr. Keaton Egizi
2375 E. Valentine Dr., Lot #2.
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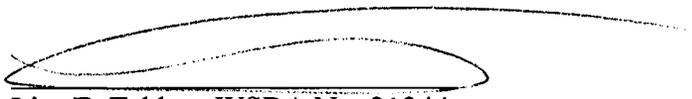
Michael C. Kinnie
Clark County Prosecuting Attorney's Office
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Vancouver, WA 98666-5000

And the original plus one copy to the Court of Appeals, Division II.

All postage prepaid, on March 8, 2010.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE
OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT .

Signed at Longview, Washington, on March 8, 2010.



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