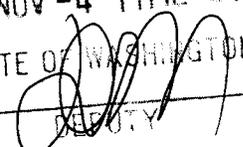


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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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No. 40899-6-II

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Appellant,

v.

JAMES JOHN CHAMBERS, JR., Respondent

Reply Brief Of Respondent

Stephen G. Johnson, WSBA # 24214
Attorney for Appellant

925 South Ridgewood Avenue
Tacoma, WA 98405
Telephone: 253.370.3931
Facsimile: 253.238.1428
Email: badseedlawyer@gmail.com

ORIGINAL

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I. INTRODUCTION.

COMES NOW the Respondent James John Chambers, Jr. (henceforth Respondent), to reply to the opening brief of Appellant State of Washington (henceforth State).

II. STATEMENT OF THE CASE.

The Respondent adopts the State's recitation of fact and procedure as contained in §B (Statement of the Case) of the State's opening brief on appeal.

III. ARGUMENT.

Plea agreements are contracts. State v. Mollochi, 132 Wn.2d 80, 90, 936 P.2d 408 (1997). See also, State v. Knight, 162 Wn.2d 806, 812, 174 P.3d 1167 (2008); State v. Turley, 149 Wn.2d 395, 400, 69 P.3d 338 (2003). Plea agreements are regarded and interpreted as contracts and both parties are bound by the terms of a valid plea agreement. In Re Personal Restraint of Breedlove, 138 Wn.2d 298, 309, 979 P.2d 417 (1999). Just as in contracts, there is an implied duty of good faith and fair dealing in plea agreements. Due process requires a prosecutor to adhere to the terms of the agreement. State v. Sledge, 133 Wn.2d 828, 839 (1997). See also, State v. Harrison, 148 Wn.2d 550, 61 P.3d 1104 (2003). Once entry of a guilty plea confirms the establishment of the plea agreement, the

State is obligated to fully comply with the terms of the agreement. State v. Hall, 104 Wn.2d 486, 490, 706 P.2d 1074 (1985).

As cited in the State's brief, "[b]ecause a plea agreement is a contract, interpretation of the plea's terms is a question of law, reviewed de novo." In Re Hudgens, 156 Wn.App. 411, 416, 233 P.3d 566 (2010), citing State v. Bisson, 156 Wn.2d 507, 517, 130 P.3d 820 (2006).

A. THE TRIAL COURT DID NOT ERR IN ALLOWING RESPONDENT TO WITHDRAW HIS GUILTY PLEA.

On July 7, 1999, Respondent gave up his constitutional rights to remain silent, to confront his accusers, to present witnesses on his behalf, to have a jury hear his case, the right to appeal, *et al.*, in exchange for his guilty plea and an open sentencing recommendation¹ on Pierce County Superior Court cause number 99-1-00817-2. CP 150-161.

On March 17, 2000, Respondent gave up his constitutional rights to remain silent, to confront his accusers, to present witnesses on his behalf, to have a jury hear his case, the right to appeal, *et al.*, in exchange for his guilty plea and a sentencing recommendation on Pierce County Superior Court cause number 99-1-05307-1 as follows:

¹ Paragraph 6(g) of the Statement of Defendant On Plea Of Guilty under Pierce County Superior Court Cause number 99-1-00817-2 contains two (2) handwritten entries, each in a distinctly different hand. The first entry states "s/o sentencing." The second states "State's rec is open [sic]."

(f) The prosecuting attorney will make the following recommendation to the judge

The state will recommend ~~the~~ 240 months incarceration, time to be served consecutive to ^{residence arising from} 99-1-00817-2 and 99-1-02235-3 cause numbers. The state will further agree to not amend charges to include Murder 2°, nor will they seek sentences for firearm enhancements. Ct I, 60 mo, Ct II & Ct III 57mo Ct IV 116mo Ct V 240mo concurrent with each other consecutive to 99-1-00817-2 & 99-1-02235-3
12 ~~mo~~ community placement on Ct V license suspension as required by law on Ct I, \$3000 fine on Ct V ~~DADA~~ \$110, \$500 cvpa restitution on all counts

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - 3

“The state will recommend 240 months incarceration, time to be served consecutive to the sentences arising from 99-1-00817-2 and 99-1-02235-3 cause numbers. The state will further agree to not amend charges to include Murder 2°, nor will they seek sentences for firearm enhancements. Ct I 60 mo, ct II & ct III 57 mo ct IV 116 mo ct V 240 mo concurrent with each other consecutive to 99-1-00817-2 & 99-1-02235-3 12 mo community placement on ct V license suspension as required by law on ct I, \$3000 fine on ct V \$110, \$500 cvpa restitution on all counts.”

CP 93. Respondent’s March 17, 2000, plea on Pierce County Superior Court cause number 99-1-05307-1 involved a plea to crimes that occurred on or about November 14, 1999, nearly four (4) months following his plea on cause number 99-1-00817-2. See, CP 95, 150-161. Additionally, the plea to cause number 99-1-05307-1 occurred eight (8) months following his plea on cause number 99-1-00817-2. Id. The terms of the plea agreement as reflected in CP 93 are not in dispute between the parties.

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1. The State's Belief Of The Existence Of An Indivisible Plea Agreement Is Absurd.

“A plea agreement is indivisible, and its terms must be enforced as a whole where ‘a defendant pleads guilty to multiple counts or charges at the same time, in the same proceedings, and in the same document.’” Knight, 162 Wn.2d at 812-813, *quoting* Turley, 149 Wn.2d at 402. According to this definition, the pleas under cause numbers 99-1-00817-2 and 99-1-05307-1 are separate and distinct, not indivisible. Factually, the pleas were eight months apart, in separate proceedings and in different documents. According to Knight and Turley, cause numbers 99-1-00817-2 and 99-1-05307-1 are clearly not “indivisible”—they are separate and distinct from one another. The trial court did not err when it allowed Respondent to withdraw his plea to 99-1-00817-2 independent of 99-1-05307-1.

2. Under Contract Law, There Is A Lack Of Consideration To Support The State's Claim That Respondent's Multiple And Separate Pleas Are One Indivisible Plea Agreement.

As previously noted, criminal plea agreements are contracts. See, §III, supra. Extending the application of contract law, the State's claim of a single, indivisible plea agreement fails for lack of consideration.

Consideration is “any act, forbearance, creation, modification or destruction of a legal relationship, or return promise given in exchange.” [] Consideration is a bargained for exchange of promises.

Labriola v. Pollard Group, Inc., 152 Wn.2d 828, 833, 100 P.3d 791 (2004)
(citations omitted).

On July 7, 1999, the State and the Respondent exchanged valuable consideration when Respondent entered his plea on cause number 99-1-00817-2. There was nothing left to bargain as for or with in this case. See, CP 150-161.

On March 17, 2000, Respondent exchanged valuable consideration (viz. his constitutional rights and liberty) in exchange for a promise of certain performance by the State (*inter alia*, not charging Murder 2°). See, CP 90-96. According to the terms of the agreement (see, CP 93), the only mention of cause number 99-1-00817-2 is that the 99-1-05307-1 bargained for sentence would run consecutive to any 99-1-00817-2 sentence. Thus, the exchange in consideration for the plea involving cause number 99-1-05307-1 did not change, alter, effect or affect the previously completed transaction under 99-1-00817-2. The consideration transacted in cause number 99-1-05307-1 only effected and affected the outcome of 99-1-05307-1.

Extrinsic evidence of the 99-1-05307-1 plea offer bears this analysis out. In his February 9, 2000 letter to Respondent's then trial counsel, Pierce County Deputy Prosecuting Attorney Allen P. Rose

outlined the State's offer to resolve cause number 99-1-05307-1. CP 44-45. Mr. Rose's letter details the resolution of cause number 99-1-05307-1 only, including the condition that it runs consecutive to cause numbers 99-1-00817-2 and 99-1-02235-3. As to cause number 99-1-00817-2, the Rose letter states:

First as to the 02235-3 and 00817-2 matters, your client must agree that the sentenced in those matters run consecutive to the 05307-1 matter. My understanding of your clients's [sic] range on the 02235-3 and 00817-2 matters is 149 to 198 [months]. This standard range applies only to count 1 on the cause number 99-1-00817-2. I am not going to outline all the other applicable ranges because they involve periods of time less than the 149 to 198 [months]. All of those counts would run concurrent to one another but consecutive to the matters involving the hit and run injury accident (99-1-05307-1). Your client would be free to ask for the 149 months, which is the low end of the standard range on count 1.

CP 44. This is simply a restatement that Respondent had an open sentencing recommendation. See, CP 150-161. Thus, the focus of contract consideration and negotiation was on the disposition of cause number 99-1-05307-1, and not 99-00817-2. There was no consideration supporting the claim that the Respondent contracted for an "indivisible plea agreement."

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3. The Trial Court Did Properly Consider The Injustice Of Granting Respondent's Motion To Withdraw His Guilty Plea.

Though assigned as an error of the trial court (see, Opening Brief Of Appellant, page 1), the State does little in their briefing of how the trial court failed to consider their claim of injustice, or to explain what compelling reasons existed to deny the Appellant his motion. See, Opening Brief of Appellant, pages 15-16.

The Court should cast its eyes upon what the Respondent *initially* sought in this case—re-sentencing. The Respondent wanted a proper and legal sentence. See, CP 2-8; RP (April 2, 2010) 7²-8. In response, the State argued that re-sentencing is inappropriate, and that he should only be allowed to withdraw his guilty plea. RP (April 2, 2010) 14, ln. 10-18. The State rejected what the Respondent requested—re-sentencing.

On May 14, 2010, Respondent appeared before the trial court and opted to withdraw his guilty plea. See, RP (May 14, 2010) 4. Respondent requested that the matter be set for pre-trial and trial. Id. The State then informed the trial court that all evidence in the case has been destroyed. RP (May 14, 2010) 5-6. The State then requested that the trial court only allow withdrawal of the Respondent's guilty plea to counts III and IV

² It should be noted that the Respondent's position that his plea under cause number 99-1-00817-2 is separate and distinct from 99-1-05307-1 was clearly articulated to the Court. See, RP (April 2, 2010), page 7, ln. 6, through page 8, ln. 3.

only, and to dismiss those counts for lack of evidence to prosecute. RP (May 14, 2010) 6-7. During the colloquy with the Court, the State did not argue that it was unjust to allow the Respondent to withdraw his guilty plea as to Counts III and IV. Specifically, the State said:

As to Counts III and IV, I am stuck with what the Court of Appeals indicated. The Court of Appeals indicated that the defendant has the right to withdraw the plea. His doing so and counsel's suggestion that we set a pretrial conference is a waste of time. I have no evidence. I cannot prosecute those cases.

So, under RAP 2.2(b)(1) and (b)(3), I would ask the Court to make the finding that your decision as to III and IV terminates this action, and the Court should dismiss Counts III and IV.

RP (May 14, 2010) 6-7. In essence, the State conceded that justice was served by withdrawal of the guilty plea on Counts III and IV³, and their dismissal.

On May 28, 2010, the Respondent sought reconsideration of the trial court's denial of relief as to Counts I and II, citing State v. Turley as authority. RP (May 28, 2010) 3-7. The State argued, *inter alia*, that the destruction of evidence serves as an injustice in allowing the Respondent to withdraw his guilty plea. RP (May 28, 2010) 7. The trial court was

³ Arguably, if it is just to withdraw a guilty plea on Counts III and IV, it is also just to withdraw a guilty plea on Counts I and II since all four (4) counts are involved in the same guilty plea.

very troubled that the State destroyed their evidence and would not be able to prosecute their case:

And I am doubly concerned with the idea that the State no longer can pursue the case. It seems, on its face, to be really unfair to the State to allow the plea to be withdrawn, and then the State can't proceed. That doesn't seem like it puts us back in the position everybody was in.

RP (May 28, 2010) 15-16. The trial court then balanced the respective positions, and ruled in favor of the Respondent:

I have to think that Mr. Chambers is entitled to have these all treated together, which is the posture they were in when he entered into the plea agreement and when he pled guilty. So, with a great deal of reluctance, I think Turley controls this, and I am prepared to reconsider with regard to Counts I and II.

RP (May 28, 2010) 16.

The only compelling reason the State proffered to the trial court to deny Respondent relief was that they destroyed their own evidence against him, and they could not re-prosecute him. The trial court heard that, weighed that against the Respondent's rights as articulated in cited case law, and reluctantly decided to follow case law and decide in favor of the Respondent. The trial court did not err.

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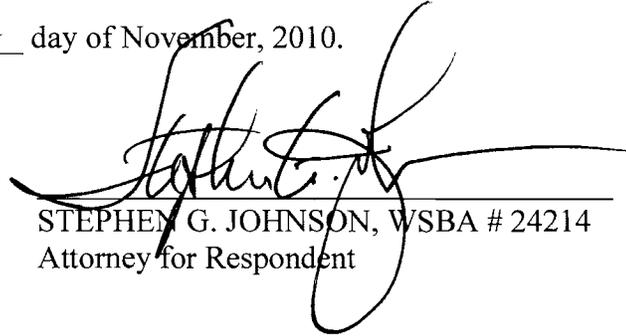
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IV. CONCLUSION.

For the foregoing reasons, the Respondent respectfully requests that the Court AFFIRM the trial court.

DATED THIS 4th day of November, 2010.



STEPHEN G. JOHNSON, WSBA # 24214
Attorney for Respondent

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DECLARATION OF SERVICE

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I certify under penalty of perjury under the laws of the State of Washington that on this day I caused the under named Person(s) with a true, correct and complete copy of this document:

STATE OF WASHINGTON
DEPUTY

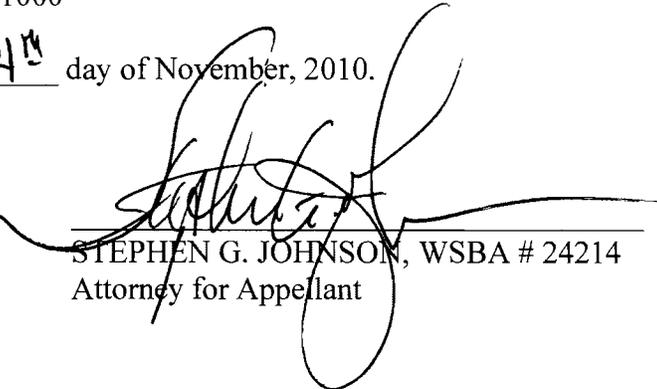
Mr. Stephen Trinen
Ms. Kathleen Proctor, DPA
Pierce County Prosecutor's Office
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402

via Personal Service

Mr. James John Chambers, Jr.
Inmate No. 743702
McNeil Island Correction Center
P.O. Box 881000, Unit D-205-1
Steilacoom, WA 98388-1000

via First Class Mail

DATED THIS 4th day of November, 2010.



STEPHEN G. JOHNSON, WSBA # 24214
Attorney for Appellant