

FILED
Oct 19, 2011
Court of Appeals
Division III
State of Washington

NO. 30104-4-III
COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

WILLIAM A. PAGE,

Defendant/Appellant.

APPELLANT'S BRIEF

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ASSIGNMENT OF ERROR

1. The trial court impinged on William A. Page's rights under the Fourteenth Amendment to the United States Constitution, at a resentencing hearing, when it denied him the opportunity to bail forfeit on a bail forfeitable offense.

ISSUE RELATING TO ASSIGNMENT OF ERROR

1. When a court rule declares that an offense is bail forfeitable, but the State mischarges it as a felony, can a convicted defendant later bail forfeit after an appeal has reclassified the offense to its original bail forfeiture status?

STATEMENT OF CASE

An Information was filed on December 11, 2008 charging Mr. Page with various wildlife offenses. Amended Information's were subsequently filed on March 18, 2009 and May 6, 2009. The final Amended Information charged Mr. Page with 3 counts of unlawful trafficking in

wildlife 1st degree and 3 counts of unlawful trafficking in wildlife 2nd degree. (CP 1; CP 7; CP 13).

Mr. Page was convicted of all 6 counts following a jury trial. Judgment and Sentence was entered on December 18, 2009. (CP 44).

Mr. Page appealed his conviction on January 15, 2010. His convictions for trafficking in wildlife 1st degree were reversed. The Court of Appeals directed the trial court to resentence him on the lesser degree of offense of trafficking in wildlife 2nd degree. The Court of Appeals issued its Mandate on June 17, 2011. (CP 54; CP 59).

A resentencing hearing was conducted on July 15, 2011. Defense counsel requested that Mr. Page be allowed to bail forfeit on all 6 counts. The trial court denied the request. (RP 2, ll. 11-15; RP 4, ll. 2-5; RP 7, l. 7).

During his right of allocution Mr. Page described how he felt he was forced into trial because of the downside of a potential felony conviction. He further stated that he had always admitted that he had committed the offenses, but did not want a felony on his record. (RP 5, l. 17 to RP 6, l. 10).

An Amended Judgment and Sentence was entered on July 15, 2011. The trial court imposed a jail sentence of 6 months on each of the 6 counts to run concurrently. The total legal financial obligations are \$7,610.00. (CP 68; RP 2, ll. 21-23; RP 7, ll. 10-12; RP 16, l. 14).

Mr. Page filed a Notice of Appeal on July 27, 2011. (CP 78).

SUMMARY OF ARGUMENT

When an individual is not fully and accurately informed of either the nature of the crime or the severity of the penalty, he/she is deprived of due process under the Fourteenth Amendment. Due process and the need to make an informed decision go hand-in-hand.

ARGUMENT

We conclude that RCW 77.15.030 applies to trafficking charges brought under RCW 77.15.260 when animals (or parts thereof) specified by the...statute are the objects of the trafficking alleged, and that RCW 77.15.030 does not permit the value aggregation of different animals when it applies. Accordingly, a trafficking transaction involving the purchase of two black bear gallbladders, which necessarily came from two different bears, amounts to two distinct crimes under the legislature's chosen unit of prosecution.

State v. Yon, 159 Wn. App. 195, 202 (2010).

The *Yon* decision controlled Mr. Page's original appeal. The Court of Appeals remanded his case to the trial court for resentencing.

Mr. Page contends that if the State had correctly charged him at the inception of the case, he would have had the option of forfeiting bail in conjunction with the respective offenses.

CrRLJ 3.2(r) provides, in part:

Forfeitable Wildlife and Fisheries Offenses. The following offenses shall be forfeitable as a final disposition in the amounts listed, to include statutory assessments:

...
77.15.260.1 Trafficking Second 2nd (GM) \$184.00 \$128.80 \$64.40 \$378.00

CrRLJ 3.2(r) provides an option to an individual who is charged with a forfeitable wildlife offense. Mr. Page could have forfeited \$378.00 on each of the Counts for a total of \$2,268.00.

Instead, as the resentencing proceedings now stand, Mr. Page faces 6 months in the Ferry County Jail and legal financial obligations totaling \$7,610.00.

Mr. Page contends that the failure of the trial court to allow him to elect bail forfeiture constitutes a denial of due process under the Fourteenth Amendment to the United States Constitution.

“Citizens must have notice not only of what conduct is criminal but also of the severity of the penalty.” *State v. Hunter*, 102 Wn. App. 630. 638, 9 P. 3d 872 (2000).

Due to the State’s mischarging of Mr. Page, even though he had an option to bail forfeit on the original felony charges, he did not want a felony charge on his record. *See*: CrRLJ 3.3(r); RCW 77.15.260.2.

Due process violations are reviewed de novo. *State v. Eckblad*, 152 Wn. 2d 515, 518, 98 P. 3d 1184 (2004).

The Fourteenth Amendment to the United States Constitution provides, in part:

...No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law... .

Due process in Mr. Page's case means being fully apprised not only of the nature of the charges; but also of the subsequent penalties. A person charged with a crime is entitled to full knowledge of the implications if convicted. Only then can the individual make an informed decision.

...[D]ue process of law is satisfied when one present in court is convicted of a crime after having been fairly apprized of the charges against him and after a fair trial in accordance with constitutional procedural safeguards

In re Davis v. Rhay, 68 Wn. 2d 496, 499, 413 P. 2d 64 (1966); 96 A.L.R. 982; Am. Jur. 2d, § 380 quoting *Frisbie v. Collins*, 342 U.S. 519, 522, 72 S. Ct. 509, 96 L. Ed. 541 (1952).

Mr. Page was not fairly apprized of the charges against him because of the State's mischarging of Counts 2, 5 and 6.

Procedural due process imposes constraints on governmental decisions which deprive individuals of "liberty" or "property" interests within the meaning of the due process clauses of the fifth and fourteenth amendments to the United States Constitution. [Citations omitted.] "[T]he right to be heard before being condemned to suffer grievous

loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society.” *Joint-Antifascist Refugee Comm. v. McGrath*, 341 U.S. 123, 168, 71 S.Ct. 624, 95 L. Ed. 817 (1951) (Frankfurter, J., concurring).

Washington Medical Disciplinary Board v. Johnston, 99 Wn. 2d 466, 474, 663 P. 2d 457 (1983).

Mr. Page did not want a felony on his record. He was willing to admit that he had committed the offense(s). If the felonies had not been charged he would have had the option of a bail forfeiture.

The Legislature has recognized that bail forfeiture is appropriate on wildlife violations. RCW 77.15.050(1) defines “conviction”, in part, as follows: (c) “An unvacated forfeiture of bail paid as a **final disposition** for an offense.” (Emphasis supplied.)

The interplay of the court rule, the statute and the *Yon* case fully support the position taken by Mr. Page.

Court rules are interpreted as if drafted by the Legislature. [Citation omitted.] We must construe court rules consistent with their purpose. [Citation omitted.] Accordingly, **the spirit and intent of the rule should take precedence over a strained and unlikely interpretation.**

State v. Wittenbarger, 124 Wn. 2d 467, 484-85, 880 P. 2d 517 (1994).

(Emphasis supplied.)

Mr. Page asserts that the spirit and intent of CrRLJ 3.2 is a necessary alternative expedient relieving the State of potential excessive caseloads and allowing for early disposition of less serious offenses.

No comparable rule exists under the Criminal Rules for Superior Court.

Promulgation of state court rules creates procedural rights. Creation of substantive rights is in the province of the legislature in the absence of any constitutional prohibitions. ...

...[T]his court follows general guidelines in analyzing the issue. ...

Substantive law prescribes norms for social conduct and punishments for violations thereof. It thus creates, defines, and regulates primary rights. In contrast, practice and procedure pertain to the essentially mechanical operations of the courts by which substantive law, rights, and remedies are effectuated.

...

...[T]he right to fix bail is related to the court's responsibility to ensure that the alleged offense is adjudicated, a matter which is essentially procedural in nature.

State v. Templeton, 148 Wn. 2d 193, 212-14, 59 P. 3d. 632 (2002), quoting

State v. Smith, 84 Wn. 2d 498, 501-02, 527 P. 2d 674 (1974).

Thus, if the State had not originally mischarged Mr. Page, he would have had these options because the case would have been filed in a court of limited jurisdiction:

Bail forfeiture under CrRLJ 3.2(r);

Not guilty under CrRLJ 4.2(a);

Guilty under CrRLJ 4.2(a).

CONCLUSION

Mr. Page was denied due process as a result of the State's mischarging of the offenses for which he has been convicted. Instead of a bail forfeiture in the amount of \$2,268.00 he now must serve 6 months in the Ferry County Jail and pay legal financial obligations of \$7,610.00.

Mr. Page's property and liberty interests are obviously impacted by the fact that the matter was commenced as a combination of felonies and gross misdemeanors in Superior Court as opposed to gross misdemeanors in either Superior Court or a court of limited jurisdiction.

The trial court's sentence should be reversed and the case remanded in order to allow Mr. Page to forfeit bail.

DATED this 19th day of October, 2011.

Respectfully submitted,

s/ Dennis W. Morgan

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| | | |
|----------------------|---|-------------------------------|
| STATE OF WASHINGTON, |) | |
| |) | FERRY COUNTY |
| Plaintiff, |) | NO. 08 1 00047 8 |
| Respondent, |) | |
| |) | CERTIFICATE OF SERVICE |
| v. |) | |
| |) | |
| WILLIAM A. PAGE, |) | |
| |) | |
| Defendant, |) | |
| Appellant. |) | |
| _____ |) | |

I certify under penalty of perjury under the laws of the State of Washington that on this 19th day of October, 2011, I caused a true and correct copy of the *APPELLANT'S BRIEF* to be served on:

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