

**FILED**

**JAN 03 2012**

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

No. 301044

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

---

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM A. PAGE,

Appellant.

---

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

The Honorable Allen C. Nielson, Judge  
Cause No. 081000478

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BRIEF OF RESPONDENT

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## A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Whether the trial court's refusal to allow Page to forfeit bail on his six convictions constitutes a denial of due process or an abuse of discretion, when Page had the option of forfeiting bail prior to entering a plea and proceeding through the criminal process.

## B. STATEMENT OF THE CASE.

The State accepts the appellant's statement of the substantive and procedural facts.

## C. STANDARD OF REVIEW

Violations of a defendant's due process rights are reviewed de novo. *State v. Oppelt*, 172 Wn.2d 285, 290, 257 P.3d 653 (2011). A trial court's statutorily authorized exercise of discretion in imposing criminal sentences is reviewed for abuse of discretion. *State v. Hunter*, 102 Wn. App. 630, 9 P.3d 872 (2000). The standard of review to be used here depends on whether the reviewing Court finds that the trial court's ruling implicates Page's due process rights. The State argues that the trial court's ruling does not implicate Page's due process rights, and the correct standard of review is abuse of discretion.

#### D. ARGUMENT.

1. The trial court's refusal to allow Page to forfeit bail on his six convictions does not constitute a denial of due process or an abuse of discretion because Page had the option to forfeit bail prior to entering a plea and proceeding through the criminal process.

Under Criminal Rules for Courts of Limited Jurisdiction (CrRLJ) 3.2(r), fish and wildlife offenses are forfeitable as a final disposition. This includes crimes for which the defendant's appearance in court is mandatory:

Forfeiture of bail shall not constitute a final disposition for a mandatory offense or comparable ordinance without a written order of the court showing the reasons. The order may be a simple docket entry. If the court allows forfeiture of bail for a mandatory offense, it may accept bail in an amount no less than that set forth in these rules as full payment including all statutory assessments. CrRLJ 3.2(o)(3).

A forfeiture of bail on a criminal charge is an alternative disposition to entering a plea and proceeding through the criminal process. Bail forfeitures are not available after the State has obtained a conviction, because the conviction is the final disposition.

In Page's case, he had the option of forfeiting bail on his six original charges, which included three counts of Unlawful Trafficking in the First Degree, which were class C felonies and required a mandatory appearance; and three counts of Unlawful

Trafficking in the Second Degree, which were gross misdemeanors and did not require appearance in court. (CP 1; CP 7; CP 13.)

It is true that Page's case was remanded for resentencing based on the decision in *State v. Yon*, 159 Wn. App. 195, 202 (2010). *Yon* prohibited the state from aggregating the value of wildlife parts for charging purposes, which the state had done in Page's case for three of the counts. (Appellant's brief 3.) In the *Page* decision, the Court vacated Page's three felony convictions of wildlife trafficking in the first degree and directed their resentencing as misdemeanors. *State v. Page*, No. 28762-9-III, slip op. at 8 (Wash. Ct. App. May 10, 2011).

Page contends that if the State had correctly charged him with six gross misdemeanors at the inception of his case, he would have had the option to forfeit bail on the six counts. (Appellant's brief 3, 6, 8.) This is a disingenuous argument; Page indicates he knew he had the option to forfeit bail on the original three felony and three gross misdemeanor counts. (Appellant's brief 4.) Instead, Page chose to go to trial because "he did not want a felony charge on his record." (Appellant's brief 4.) However, he knew the evidence the State intended to bring against him. The two undercover detectives present for each bear gall-bladder sale were

prepared to give identical testimony relating to the sales. (11/9/09 RP 142, 151-52, 158, 165, 173, 179; 11/10/09 RP 136, 140, 142-43, 180-82.) The detectives had copies of the cash and checks Page paid with. (11/9/09 RP 141, 153, 162, 171, 177, 183; 11/10/09 RP 52-53.) Covert video showed Page inspecting the bear gall bladders prior to three of the sales and paying for the gall bladders in two of the sales. (11/10/09 RP 152, 154-55.) Prior to and at trial, Page admitted he committed the offenses. (Appellant's brief 2.) As the trial court stated during the resentencing on July 15, 2011,

I do give you credit for being completely honest throughout this whole process. I think you have. On the other hand, it could be said you didn't have any choice cause [sic] it was all recorded and it was all on the table. (Transcript of hearing 7.)

Page was not forced to trial to avoid a felony on his record. He knew he had little chance of winning his case. He could have forfeited bail on the original three felonies and three gross misdemeanors, and then appealed after the *Yon* decision. His three felony bail forfeitures would have been reduced to three gross misdemeanor bail forfeitures.

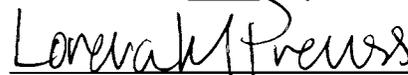
The trial court did not abuse its discretion in denying Page's motion to forfeit bail at resentencing. Bail forfeiture was not

available as a final disposition. Page had already been convicted. Page was not denied due process under the Fourteenth Amendment of the U.S. Constitution. He knew what conduct was criminal and the severity of the penalty if he had chosen to forfeit bail at the case's inception. *State v. Hunter*, 102 Wn. App. 630, 638, 9 P.3d 872 (2000).

#### E. CONCLUSION

At resentencing, Page was not denied due process when the trial court refused to let him forfeit bail. Page knew from the case's start that he had the option to forfeit bail rather than enter a plea and proceed through the criminal process. He knew that if he went to trial, the outcome would not likely be different. It was not different; he was convicted of all six counts. These convictions were the final dispositions in the case. Bail forfeiture was no longer available. The trial court did not abuse its discretion by refusing to let him forfeit bail on the convictions. The State respectfully asks this Court to affirm the trial court's ruling.

Respectfully submitted this 29<sup>th</sup> day of December 2011.



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By \_\_\_\_\_

CERTIFICATE OF SERVICE

December 29, 2011

Superior Court Case No. 08-1-00047-8

Court of Appeals Case No. 301044

Case Name: *State of Washington v. William A. Page*

I declare under penalty of perjury under the laws of the State of Washington that on **Thursday, December 29, 2011**, I filed by United States of America mail a BRIEF OF RESPONDENT plus one copy with the Division Three Court of Appeals and served copies of the same by depositing in the United States of America mail an addressed, postage-paid envelope to the following counsel of record and/or other interested parties:

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