

FILED
SEP 14 2012
COURT OF APPEALS

30517-1-III
COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON
STATE OF WASHINGTON, RESPONDENT
v.
JAMES W. FOLEY, APPELLANT

APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY

BRIEF OF RESPONDENT

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I.

APPELLANT'S ASSIGNMENT OF ERROR

- A. The court erred in concluding that Mr. Foley breached the plea agreement.

II.

ISSUES PRESENTED

- A. Can the defendant abandon common sense and standard practices in order to claim that he did not breach his plea agreement by departing Washington State for eight years and committing multiple felonious crimes across the United States during that interval?

III.

STATEMENT OF THE CASE

For the purposes of this appeal only, the State accepts that defendant's version of the Statement of the Case.

IV.

ARGUMENT

- A. IT IS ONLY THROUGH A STRAINED INTERPRETATION OF THE PLEA AGREEMENT THAT THE DEFENDANT CAN SUPPORT HIS ARGUMENTS THAT THE STATE SHOULD HAVE ANTICIPATED THAT THE DEFENDANT WOULD ABSCOND FROM WASHINGTON STATE AND COMMENCE AN EIGHT YEAR FELONIOUS CRIME SPREE ACROSS THE UNITED STATES.

The language of the defendant's own briefing obliterates his arguments. The State agrees that a plea agreement is based on contract law. *In re Quinn*, 154 Wn. App. 816, 226 P.3d 208 (2010). The defendant argues that the terms of the "...agreement are construed based on the defendant's *reasonable* understanding." (emphasis added) Brf. of App. pg. 4. By the defendant's own language, he is attempting to convince this court that he thought the plea agreement between he and the State included permission to abscond from the State of Washington for a number of years while committing over a dozen additional crimes in jurisdictions across the country.

No reasonable person could have believed that the State was agreeing to release the defendant during the time between his plea and the much delayed sentencing, so that the defendant could spread out across the country and commit various forms of mayhem. It is difficult to accept that the defendant had the above mentioned possibilities in mind when he entered the plea. Equally difficult

is to assume that the prosecutor was fine with the idea that the defendant could depart the State after entering a guilty plea and pursue a multi-year course of plundering and pillaging.

According to the defendant's briefing, the plea contract in this case "...expressly provided for the possibility that Mr. Foley might remain at large and might commit additional offenses." Brf. of App. pg. 5. Presumably the defendant is arguing an extension of the standard language that states that if any additional crimes are discovered, they will be added to his score. It is, at the very least, a "stretch" to abuse the scoring language to support the idea that the State planned on the defendant absconding and committing more crimes.

As for defendant's argument that the State knew and accepted the chances that the defendant might not return to be sentenced, there is no language in the documentation that even arguably supports such a concept. Prosecutors do not release defendant's between entry of plea and the actual sentencing so that the defendant's can depart for parts unknown.

Not only did the defendant abscond for many years and commit a number of felonies, he never did appear in 2002 to be sentenced and complete his plea agreement. The State maintains that any arguments from the defense based on contract principles must fail as the defendant never completed any contract between the defendant and the State. The defendant did enter a plea, but failed to follow through and be sentenced. The plea negotiation was never completed.

V.

CONCLUSION

For the reasons stated, the conviction of the defendant should be affirmed.

Dated this 14th day of November, 2012.

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