

FILED
JAN 14, 2014
Court of Appeals
Division III
State of Washington

NO. 316432-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent

v.

JESUS TORRES, Appellant

APPEAL FROM THE SUPERIOR COURT
FOR BENTON COUNTY

NO. 12-1-01214-1

BRIEF OF RESPONDENT

ANDY MILLER
Prosecuting Attorney
for Benton County

TERRY J. BLOOR, Chief Deputy
Prosecuting Attorney
BAR NO. 9044
OFFICE ID 91004

7122 West Okanogan Place
Bldg. A
Kennewick WA 99336
(509) 735-3591

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

I. COUNTER STATEMENT OF FACTS.....1

II. STATEMENT OF FACTS.....

II. ARGUMENT.....2

1. RESPONSE TO DEFENDANT’S ARGUMENT A
“Mr. Torres’ Sentence Exceeded the Statutory
Maximum Term.” (App. Brief at 2)......2

2. RESPONSE TO DEFENDANT’S ARGUMENT B
“The Trial Court Lacked Authority To Impose A “Jury
Demand Fee” When Mr. Torres Pleaded Guilty.” (App.
Brief at 4)......3

III. CONCLUSION3

TABLE OF AUTHORITIES

WASHINGTON STATUTES

RCW 9A.20.021(c).....	3
RCW 9A.72.120(2).....	2
RCW 10.46.190	3
RCW 69.50.4013(2).....	2

I. COUNTER STATEMENT OF FACTS

The defendant was sentenced to 24 months on Count I, Unlawful Possession of a Controlled Substance, with 12 months on community custody. (CP 72, 76).

The defendant was charged by an Amended Information with two Counts, Unlawful Possession of a Controlled Substance and Tampering with a Witness. (CP 46-47). The defendant plead guilty to those two Counts and was sentenced as follows:

Count I, Unlawful Possession of a Controlled Substance: 24 months. (CP 72, 76).

Count II, Tampering with a Witness: 60 months. (CP 76).

He was also given 12 months community custody on Count I. (CP 76 - section 4.5). The two charges ran concurrently. (CP 76 - Section 4.4(a)).

A jury panel was twice summonsed to the Superior Court for trial at the defendant's request.

On November 28, 2012, the defendant stated he was ready for trial, which was set for the week of December 10, 2012. (CP 85). A jury panel was summonsed for the trial on December 12, 2012. (CP 38 – Trial Calendar). The defendant requested a continuance, which was granted. (CP 38-39). Of note is that the defense attorney submitted a bill for legal

services to the Benton & Franklin Counties Office of Public Defense for one-half day of trial with a trial date of December 12, 2012. (CP 42).

On February 19, 2013, a jury was again summonsed for trial at the defendant's request. This time, the defendant plead guilty. (CP 87). Again, the defense attorney submitted a bill to the Office of Public Defense for one-half day of trial with a trial date of February 19, 2013. (CP 59)

II. ARGUMENT

1. **RESPONSE TO DEFENDANT'S ARGUMENT A "Mr. Torres' Sentence Exceeded The Statutory Maximum Term." (App. Brief at 2).**

The total amount of confinement and community custody on Count I, Unlawful Possession of a Controlled Substance-Methamphetamine, is 36 months: 24 months confinement plus 12 months of community custody. (CP 76). The total amount of confinement and community custody on Count II, Tampering with a Witness, is 60 months: 60 months of confinement and no community custody. (CP 76).

The trial court's sentence, combining confinement plus community custody, for both offenses was within the statutory maximum. Unlawful Possession of a Controlled Substance-Methamphetamine, is a class C felony. RCW 69.50.4013(2). Tampering With a Witness is a class C felony. RCW 9A.72.120(2). The statutory maximum sentence for a class

C felony is five years (60 months) of confinement. RCW 9a.20.021.

Therefore, no error occurred.

**2. RESPONSE TO DEFENDANT’S ARGUMENT B
“The Trial Court Lacked Authority To Impose A “Jury
Demand Fee” When Mr. Torres Pleaded Guilty.” (App.
Brief at 4).**

The defendant is factually incorrect. Jury panels were twice summonsed to the courthouse after the defendant told the trial court that he was ready for trial. On the first occasion, on December 12, 2012, the defendant requested a continuance. (CP 38-39). On the second occasion, on February 19, 2013, the defendant plead guilty. (CP 87). The trial court properly assessed the jury demand fee. RCW 10.46.190.

III. CONCLUSION

The defendant was sentenced within the statutory maximum for both counts. On Count I, the defendant was sentenced to 24 months confinement, along with 12 months of community custody. On Count II, the defendant was sentenced to 60 months, with no community custody.

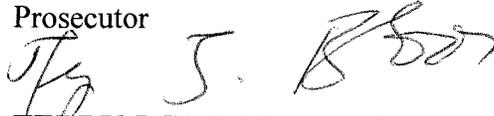
The defendant twice had jurors summonsed after he told the trial court that he was ready to proceed to trial at the next hearing. The trial court appropriately assessed a jury demand fee for one of those occasions.

Based on the foregoing argument, the appeal should be dismissed.

RESPECTFULLY SUBMITTED this 13th day of January 2014.

ANDY MILLER

Prosecutor

A handwritten signature in black ink, appearing to read "T. J. Bloor", is written over the typed name of Terry J. Bloor.

TERRY J. BLOOR, Chief Deputy

Prosecuting Attorney

Bar No. 9044

OFC ID NO. 91004

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

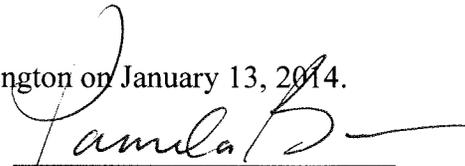
Marie Jean Trombley
Attorney at Law
P.O. Box 829
Graham, WA 98338-0829

E-mail service by agreement
was made to the following
parties:
marietrombley@comcast.net

Jesus Torres
#825222
Coyote Ridge Correctional Center
P.O. Box 769
Connell WA 99326

U.S. Regular Mail, Postage
Prepaid

Signed at Kennewick, Washington on January 13, 2014.



Pamela Bradshaw
Legal Assistant