

FILED

Nov 6, 2013

Court of Appeals
Division III
State of Washington

No. 31401-4-III

**IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON**

**STATE OF WASHINGTON,
Plaintiff/Respondent,**

v.

**JUAN ALEJANDRO MENDOZA,
Defendant/Appellant.**

RESPONDENT'S MOTION ON THE MERITS

Douglas J. Shae
Chelan County Prosecuting Attorney

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Chief Deputy Prosecuting Attorney

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1. Identity of Moving Party

State of Washington, by James A. Hershey, Chief Deputy Prosecuting Attorney for the County of Chelan.

2. Statement of Relief Sought

State of Washington, by counsel, makes this motion on the merits to affirm the action taken by the Superior Court for Chelan County as indicated herein.

3. Facts Relevant to Motion

On September 13, 2010, the defendant was charged by Second Amended Information with delivery of cocaine in Count 1, delivery of cocaine within 1000 feet of a school bus stop in Count 2, delivery of cocaine within 1000 feet of a school bus stop in Count 3, and possession of cocaine with intent to deliver in Count 4, also within 1000 feet of a school bus stop. (CP 9-11). The defendant pleaded guilty and was sentenced to a standard range sentence that same day. (CP 12-19; 20-31).

4. Grounds for Relief and Argument

The Defendant's Assignment of Error is Clearly Without Merit.

The defendant claims on appeal that he is entitled to withdraw his guilty plea because the plea was not voluntary due to him being misinformed that the statutory maximum penalty was 20 years, instead of 10 years, on Counts 2, 3, and 4. The defendant, however, was not misinformed as to the maximum penalty at the time he pleaded guilty; thus, his assignment of error to the contrary is clearly without merit.

In both Counts 2 and 3, the defendant was charged with and pleaded guilty to delivery of cocaine in violation of RCW 69.50.401(1), while within 1000 feet of a school bus stop, thereby invoking the provisions of RCW 69.50.435 and 9.94A.533(6). In Count 4, the defendant was charged with and pleaded guilty to possession of cocaine with intent to deliver, also in violation of RCW 69.50.401(1), and while within 1000 feet of a school bus stop under the provisions of RCW 69.50.435 and 9.94A.533(6).

Pursuant to RCW 69.50.435, when one commits the crimes of delivery of cocaine or possession of cocaine with intent to deliver

and does so within 1000 feet of a school bus stop, the maximum penalty is doubled from 10 to 20 years. RCW 69.50.435. "The doubling provision in RCW 69.50.435 defines a new maximum penalty for the manufacture, sale, delivery, or possession with intent to manufacture, sell, or deliver a controlled substance if the crime is committed in certain locations, including within 1000 feet of a school bus stop. See, RCW 69.50.435(a)(1)-(10)." State v. Blade, 126 Wn. App. 174, 180, 107 P.3d 775 (2005), *review denied*, 155 Wn.2d 1019, 124 P.3d 659 (2005). Likewise, Division Three held in State v. Barajas, 88 Wn. App. 387, 960 P.2d 940 (1997), that:

RCW 69.50.435(a) provides that drug offenses committed within a school zone 'may be punished . . . by imprisonment of up to twice the imprisonment otherwise authorized by this chapter' The statute by its terms increases the otherwise maximum penalty.

Barajas, 88 Wn. App. at 389.

Therefore, the defendant was not misinformed as to the maximum penalty for Counts 2, 3 and 4; hence, he did not plead guilty as a result of being misinformed as to the maximum penalty. Consequently, the defendant's assignment of error in that regard is clearly without merit. Furthermore, given the authority cited above,

the defendant's statement of additional grounds for review are likewise clearly without merit.

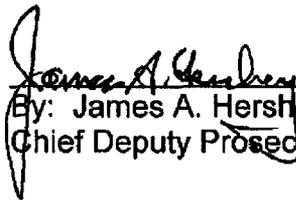
5. Conclusion

For the reasons set forth above, the State's motion on the merits should be granted.

DATED this 6th day of November, 2013.

Respectfully submitted,

Douglas J. Shae
Chelan County Prosecuting Attorney



By: James A. Hershey WSBA #16531
Chief Deputy Prosecuting Attorney

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DIVISION III

STATE OF WASHINGTON,

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)
) No. 31401-4-III
) Superior Court No. 09-1-00630-1
)
)
) DECLARATION OF SERVICE

I, Cindy Dietz, under penalty of perjury under the laws of the State of Washington, declare that on the 6th day of November, 2013, I electronically transmitted to:

Renee S. Townsley
Clerk/Administrator
Court of Appeals, Div. III
500 N. Cedar Street
Spokane, WA 99201

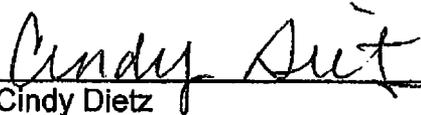
AND deposited in the United States Mail properly stamped and addressed envelopes directed to:

David N. Gasch
Gasch Law Office
P.O. Box 30339
Spokane, WA 99223-3005

Juan Alejandro Mendoza
#343534
Airway Heights Corrections Center
P.O. Box 2049
Airway Heights, WA 99001

1 said electronic transmission and envelopes containing true and correct copies of
2 Respondent's Motion on the Merits.

3 Signed at Wenatchee, Washington, this 6th day of November, 2013.

4 
5 _____
6 Cindy Dietz
7 Legal Administrative Supervisor
8 Chelan County Prosecuting Attorney's Office

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