

FILED
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In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON)	No. 30104-4-III
)	
Respondent,)	
)	
v.)	
)	
WILLIAM A. PAGE,)	UNPUBLISHED OPINION
)	
Appellant.)	
)	

Kulik, J. — William A. Page appeals his sentence for his conviction of six counts of unlawful wildlife trafficking. Mr. Page contends that his Fourteenth Amendment due process rights were violated because he was not fully and accurately informed as to the criminality of his conduct and the severity of the penalty. The State mischarged three of the six offenses as felonies rather than gross misdemeanors. Mr. Page chose to go to trial instead of bail forfeiting as a final disposition of the case. Mr. Page now seeks to bail forfeit his offenses as a final disposition due to the reduction of his felonies to gross misdemeanors.

We agree that under these facts Mr. Page's due process rights were violated. We reverse and remand to allow Mr. Page to forfeit bail.

FACTS

On December 11, 2008, the State charged Mr. Page with nine counts of various wildlife offenses under chapter 77.15 RCW. The charges were amended twice, with a final charge of three felony counts of unlawful wildlife trafficking in the first degree and three misdemeanor counts of unlawful wildlife trafficking in the second degree. A jury convicted Mr. Page on all six counts and the court entered judgment on December 18, 2009. Mr. Page appealed his convictions for all six counts based on prejudicial testimony. In an unpublished opinion, *State v. Page*, noted at 161 Wn. App. 1036, 2011 WL 1758636, this court affirmed the convictions on the grounds of the appeal. However, this court reduced the felonies to gross misdemeanors based on the improper aggregation of values under the 2010 case of *State v. Yon*, 159 Wn. App. 195, 246 P.3d 818 (2010). This court remanded the case for resentencing on six misdemeanor counts of unlawful trafficking in the second degree.

At the resentencing hearing, Mr. Page requested bail forfeiture as a final disposition on all six counts in accordance with CrRLJ 3.2(r). During his right of

allocution, Mr. Page stated that the only reason he did not bail forfeit on the original charges was to avoid a felony conviction on his record. The court denied bail forfeiture and sentenced Mr. Page to six months' imprisonment on each count, running concurrently. The court also imposed various fees and costs totaling \$7,610. Mr. Page appeals this sentence.

ANALYSIS

Due Process Violation. Whether a violation of Mr. Page's due process rights occurred is reviewed de novo. *See State v. Oppelt*, 172 Wn.2d 285, 290, 257 P.3d 653 (2011). If no due process violations exist, the sentence is reviewed for an abuse of discretion. *State v. Hunter*, 102 Wn. App. 630, 640, 9 P.3d 872 (2000).

Mr. Page contends that the denial of bail forfeiture as a final disposition on remand constitutes a denial of due process. The Fourteenth Amendment to the United States Constitution provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. As applicable to Mr. Page, the due process clause has been interpreted to mean that "[c]itizens must have notice not only of what conduct is criminal but also of the severity of the penalty." *Hunter*, 102 Wn. App. at 638 (citing *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 574, 116 S. Ct. 1589, 134 L. Ed. 2d 809 (1996); *United States v. Batchelder*, 442 U.S. 114,

123, 99 S. Ct. 2198, 60 L. Ed. 2d 755 (1979)).

Illustrating this principle, Division One of this court in *Hunter* considered a due process argument for the imposition of a drug fund contribution as part of a sentence. *Hunter*, 102 Wn. App. at 632-33. The defendant, Mr. Hunter, argued that the mere inclusion of a drug fund contribution as part of the sentencing statute failed to provide adequate notice of when one will be imposed and in what amount. *Id.* at 637. The court determined that Mr. Hunter knew a drug fund contribution may be exacted because it was provided for in the statute. *Id.* at 639. Further, a statutory maximum of fines for his crime existed. *Id.* Therefore, no due process violation resulted. *Id.* at 641.

Here, however, the State mischarged Mr. Page. And Mr. Page chose not to bail forfeit, to go to trial, and to try to avoid felony convictions. RCW 9A.20.021(2) provides the maximum penalties for conviction of gross misdemeanors. RCW 77.15.060 provides that convictions under chapter 77.15 RCW may be punished in accordance with the Washington State criminal code.

But when a person is not fully and accurately informed of the nature of the crime or the penalties, due process is violated. Because of the State's mischarging of counts 2, 5, and 6, Mr. Page was not fairly apprised of the charges against him. If felonies had not been charged, he would have had the option of bail forfeiture. *See former*

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RCW 77.15.050(1) (1998). Taken together, the statute, court rule CrRLJ 3.2(r) allowing for bail forfeit, and *State v. Yon*, 159 Wn. App. 195 compel us to reverse the convictions and remand to allow Mr. Page the option to forfeit bail on the corrected charges. We reverse and remand.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Kulik, J.

I CONCUR:

Sweeney, J.