IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 27729-1-III**
Respondent,	)	
	)	**Division Three**
v.	)	
	)	
JACOB DANIEL LEVEL,	)	
	)	**UNPUBLISHED OPINION**
Appellant.	)	
	)	

Siddoway, J. — Jacob Level appeals his conviction of possession with intent to deliver marijuana, contending that evidence obtained in a probation officer's walk-through of Level's home should have been suppressed. In a statement of additional grounds, Level represents that he is allowed to possess medical marijuana under chapter 69.51A RCW. We need not address the claimed illegal seizure, because Level's plea of guilty after losing his effort to suppress the evidence waives this issue. His claimed right to possess marijuana relates to matters outside the record that we cannot address on direct appeal. We affirm the trial court.

CONTROLLING FACTS AND PROCEDURAL HISTORY

As of March 2008, Level was serving community custody imposed for a 2005 conviction for assault. Between the 2005 conviction and a prior conviction for assaults, Level had been under active supervision by the Department of Corrections (DOC) for four years. In each case, community custody was imposed on "standard mandatory conditions." Clerk's Papers (CP) at 82, 96. Among conditions described in written instructions reviewed with Level by his probation officer, and signed by Level, were being subject to search of his residence if DOC had reasonable cause to believe he had violated the conditions of his community custody and consenting to DOC home visits to monitor compliance. Home visits were described as including "'access for the purposes of visual inspection of all areas of residence in which the offender lives or has exclusive/joint control/access.'" CP at 171.

In early 2008, Level's probation officer, Travis Hurst, became suspicious that Level was involved in illegal activity based on Level's apparent increase in income. Suspecting that Level might be involved in thefts and dealing in stolen property, Hurst contacted a Stevens County detective and asked that the detective accompany him on a walk-through of Level's new home, which Hurst had not yet visited. During the course of the walk-through and after viewing the home, Level invited Hurst and the detective into the backyard, where Hurst noticed and inquired about a padlocked shed 30 to 35 feet

behind the house. Level stated it was the landlord's and that he did not have access to it, or any idea what it contained. Hurst circled the shed, looking for any openings or signs of the shed's contents, and upon rounding the back of the shed noticed a duffel bag, in which Hurst could see surgical tubing, some bongs, and small bags of what appeared to be marijuana. On closer inspection, he found large bags of smaller bags of marijuana, a list of names and associated numbers, and a scale. As Hurst walked back into the main part of the yard from behind the shed, duffle bag in hand, Level immediately stated that it was his, but was only medical marijuana and supplies.

The State charged Level with possession of marijuana with intent to deliver. Level filed a motion to suppress the duffel bag and its contents, contending that the warrantless search was illegal on several grounds. His motion to suppress was denied. After losing his motion to suppress the evidence, Level was offered a plea agreement by which he would serve 12+ months' confinement, 9-12 months' community custody, and pay approximately $3,000 in fines and assessments; the standard range for his offender score was 12+ to 24 months, with a maximum penalty of five years and $10,000. CP at 123-29. Level accepted the agreement and entered a plea of guilty; in so doing, Level acknowledged that his lawyer had explained, and Level understood, the terms and consequences of his plea. CP at 130-39; Report of Proceedings (RP) at 139-52.

In a sentencing hearing a few weeks later, there was discussion among counsel,

Level, and the trial judge of disagreement whether Level had been promised that his wife, who had reached a related plea agreement at the same time, would not be charged with a felony. During the course of that discussion, Level also raised a claimed understanding that he had reserved his right to appeal the outcome of the suppression hearing, to which the trial judge responded that he had not; the judge told Level, "When you enter a plea you waive, in effect, or give up that right of appeal, on the marijuana charge." RP at 167. Neither Level nor his counsel took exception to the judge's statement.

Level filed his notice of appeal pro se. CP at 157. His counsel on appeal assigns error to the trial court's denial of Level's motion to suppress evidence obtained in the walk-through on grounds that the probation officer lacked reasonable suspicion of criminal activity to justify the walk-through, that the walk-through was a pretext for a warrantless search in support of a burglary investigation, that the walk-through exceeded the permissible scope of a probationary home visit, and that the trial court improperly considered facts outside the record in denying his motion to suppress.

ANALYSIS

A threshold and controlling question is whether Level waived his right to challenge the suppression decision by pleading guilty.[1] Ordinarily, a plea of guilty

[1] The parties' briefs do not address the waiver issue. We have not requested written argument because the record on appeal is adequate to decide it, and it appears simply to have been overlooked.

constitutes a waiver by the defendant of his right to appeal. While a defendant who pleads guilty preserves the right to challenge the judgment and sentence on collateral grounds, he waives or renders irrelevant all constitutional violations that occurred before the guilty plea, except those related to the circumstances of the plea or the government's legal power to prosecute regardless of factual guilt. *State v. Brandenburg*, 153 Wn. App. 944, 947-48, 223 P.3d 1259 (2009) (citing *State v. Majors*, 94 Wn.2d 354, 356, 616 P.2d 1237 (1980)), *review denied*, 236 P.3d 207 (2010).

Level has not assigned error on appeal to any collateral matter. His assignments of error are based, instead, on the legality of the search and the conduct of the suppression hearing. Appellant's Br. at 1-2. Appeal of these matters has been waived.

In a statement of additional grounds, Level represents that he is allowed to possess marijuana under the Washington State Medical Use of Marijuana Act, chapter 69.51A RCW, and asserts that Hurst was aware of this, yet harassed him for his marijuana use. Because these claims relate to matters outside the record, we cannot address them on direct appeal. *State v. McFarland*, 127 Wn.2d 322, 338 & n.5, 899 P.2d 1251 (1995). If Level wishes to bring a claim based upon matters outside the record, he must do so through a personal restraint petition. *Id*.

Affirmed.

A majority of the panel has determined that 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.

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Siddoway, J.

WE CONCUR:

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Kulik, C.J.

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Korsmo, J.