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

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| **CITY OF SPOKANE,** | ) | **No. 28815-3-III** |
| | ) | |
| **Respondent,** | ) | |
| | ) | |
| **v.** | ) | **Division Three** |
| | ) | |
| **JOE TAYLOR, JR.,** | ) | |
| | ) | |
| **Petitioner.** | ) | **UNPUBLISHED OPINION** |

Korsmo, J. — Joe Taylor, Jr., pleaded guilty in municipal court to third degree driving while license suspended (DWLS 3) in an attempt to take advantage of an erroneous citation form. The superior court vacated the guilty plea. We agree with the superior court and affirm.

FACTS

Mr. Taylor was stopped on February 25, 2009, for driving with an expired vehicle license. He provided a Washington identification card. Upon discovering that Mr. Taylor had been deemed an habitual traffic offender, the officer issued a criminal citation

requiring Mr. Taylor to appear in the Spokane Municipal Court.[1] The front of the citation lists the code violation as "RCW 46.20.342.1A." Immediately below that notation are the words, "DWLS 3rd." Municipal Court Record, Front of Citation. The officer's report concludes, "A [Department of Licensing] check revealed his driver's license to be suspended in the 1st Degree. I then cited him for DWLS 1st." Municipal Court Record, Back of Citation.

Upon receiving the citation, the court clerk entered the offense on the computer as third degree driving while license suspended. Arraignment was scheduled for March 6, 2009. A public defender appeared on behalf of Mr. Taylor. The city attorney responsible for the calendar notified the public defender by e-mail that the City of Spokane (City) would be amending the charge to first degree driving while license suspended (DWLS 1).

At the arraignment, Mr. Taylor asked to enter a guilty plea to DWLS 3 and his counsel presented a completed statement of defendant on plea of guilty. The city attorney asked to amend the charge to DWLS 1. The court heard argument and ruled that a charge of DWLS 3 had been filed. The court denied the motion to amend, accepted the guilty plea, and imposed sentence. The City sought reconsideration. The court heard argument on the motion, but ultimately denied reconsideration. The City then appealed to superior

[1] Two infractions for driving with expired vehicle tabs and with expired insurance were also filed.

court pursuant to the RALJ[2] process.

The superior court reversed the trial court and vacated the guilty plea. The superior court ruled that the trial court erred by not granting the motion to amend because there was no prejudice to the defendant. The court also concluded that there was no factual basis for the guilty plea to DWLS 3.

This court granted discretionary review of the RALJ ruling.

ANALYSIS

Mr. Taylor attacks both aspects of the RALJ decision. He contends that his right to plead guilty at arraignment trumped the City's motion to amend. He also argues that there was a factual basis for pleading guilty to DWLS 3. We will analyze each respective argument in turn.

*Amendment and Right to Plead Guilty*

Mr. Taylor argues both that he had a right to plead guilty at arraignment and that the discretionary decision to permit an amendment must defer to that right. Under the facts of this case, we believe those two arguments are simply different aspects of the same issue.

CrRLJ 2.4(f) provides in pertinent part that a citation may be "amended at any time before verdict or finding if substantial rights of the defendant are not prejudiced."

[2] Rules for Appeal of Decisions of Courts of Limited Jurisdiction.

This rule has its counterpart in CrR 2.1(d), which uses virtually identical language in permitting amendments to informations or bills of particulars. The superior court version of the rule has been interpreted as permitting the prosecution "latitude to amend" subject to exceptions for timeliness and prejudice to the defendant. *State v. Ford*, 125 Wn.2d 919, 928, 891 P.2d 712 (1995). The trial court's decision to grant or deny an amendment is reviewed for abuse of discretion. *State v. Brett*, 126 Wn.2d 136, 155, 892 P.2d 29 (1995), *cert. denied*, 516 U.S. 1121 (1996); *State v. Haner*, 95 Wn.2d 858, 864, 631 P.2d 381 (1981). Discretion is abused when it is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

CrRLJ 4.2(a) lists the types of pleas that may be entered, including a plea of guilty. CrR 4.2(a) is identical. The superior court rule has been interpreted as creating a right to plead guilty at arraignment. *Ford*, 125 Wn.2d at 923; *State v. Martin*, 94 Wn.2d 1, 4, 614 P.2d 164 (1980). RCW 10.04.070 provides that in district court, "The defendant may plead guilty to any offense charged."

Mr. Taylor argues that *Martin* and RCW 10.04.070 convey an absolute right to plead guilty at arraignment, thus outweighing any competing effort to amend the charging document. His argument is a very broad reading of *Martin*. It also is a dubious one in

light of *Ford*. There the court found no prejudice to any substantial right of the defendant from the trial court's decision to amend the charging document even though the defendant attempted to plead guilty to the original (and lesser) charges. 125 Wn.2d at 928. *Ford* is admittedly confusing on this point because while acknowledging that the proffered plea was not a substantial right of the defendant, it affirmed *Martin* even while finding that there was no *Martin* violation. *Id*.

We need not resolve the confusion because here the trial court did accept the guilty plea rather than permit the amendment. We agree with the superior court that this was error. The basis for the error is found in RCW 10.04.070, which permits a guilty plea "to any offense charged." Mr. Taylor assumes that he was charged with DWLS 3 because the court clerk listed that offense in the computer. However, a listing in a computer record is not the same as a charging document stating an offense.

The citation filed against Mr. Taylor provided the statutory authority for DWLS 1 and identified the factual basis for that offense in the probable cause statement provided on the back of the ticket, which also stated the offense as DWLS 1. Mr. Taylor relies solely on the front page reference to DWLS 3 to claim that he was actually charged with that offense. The court rules require more.

CrRLJ 2.1(b) addresses the requirements for criminal citations. In addition to

other identifying information, the citation must also include the "numerical code section" and a "description of the offense charged." CrRLJ 2.1(b)(3)(iii). The officer must also certify there is probable cause to believe that "the person committed the offense charged." CrRLJ 2.1(b)(4).

In light of these requirements, the citation did not charge DWLS 3. We do not decide if the citation was sufficient to charge DWLS 1 in light of the erroneous description on the front. However, we are quite confident that the citation was not sufficient to charge DWLS 3. In light of the citation's defects, it was error to accept the proffered guilty plea to an uncharged offense. The combination of the error in the description and the clerk's error in entering DWLS 3 into the computer did not constitute a charge of DWLS 3.

The remaining question then is whether the trial court erred in declining to grant the motion to amend. While Mr. Taylor correctly notes that the decision to grant an amendment is discretionary, even if it is to be liberally permitted, a discretionary decision is not beyond all challenge. In light of the fact that the charging document had a clear error on the face of it that had misled the clerk of the court, we hold that the trial court abused its discretion in not permitting the amendment. It was untenable to believe that this citation charged DWLS 3. When faced with a confusing charging document, the trial

court should not even arraign the defendant. Instead, the court should either consider any proposed amendment or dismiss for failure to state a charge if the citation is seriously defective.

The superior court correctly ruled that it was error to permit the guilty plea and to deny the amendment.

*Factual Basis for Guilty Plea*

Mr. Taylor also challenges the superior court's determination that there was no factual basis for the guilty plea. His argument misconstrues the statute. Again, the superior court correctly assessed the circumstances.

Before accepting a guilty plea, a trial court should be satisfied that there is a factual basis for believing that the crime occurred. CrRLJ 4.2(d). RCW 46.20.342 defines the offense of driving while license invalidated because of suspension or revocation. As it existed[3] at the time of Mr. Taylor's driving, former RCW 46.20.342(1) (2009) declared that it was a crime to drive while one's license or privilege to drive was suspended or revoked. The following three subsections established the requirements for each degree of the offense.

Former RCW 46.20.342(1)(a) stated that anyone revoked as an habitual offender pursuant to chapter 46.65 RCW was guilty of driving while license suspended in the first

[3] Laws of 2008, ch. 282, effective January 1, 2009.

degree. Former RCW 46.20.342(1)(b) listed the 18 different suspension orders that resulted in the crime of second degree driving while license suspended. Former RCW 46.20.342(1)(c) defined third degree driving while license suspended as driving under any of seven listed circumstances.

Contrary to Mr. Taylor's argument, RCW 46.20.342 establishes three different offenses, the degree of which is dependent upon which of the 26 suspension order circumstances apply. The case he relies upon is squarely on point against his position. *State v. Smith*, 155 Wn.2d 496, 120 P.3d 559 (2005). There the defendant was charged with DWLS 1. The State's proof at trial included a document from the Department of Licensing stating that the defendant's driver's license was "suspended/revoked in the first degree." *Id*. at 499. The court concluded this was insufficient proof of the crime, noting that "under the plain terms of this statute," "the criminal act is DWLS in the first degree as a result of being found to be an habitual offender." *Id*. at 502-503. Accordingly, the court held that "the State must prove that the accused was under an order of revocation as an habitual offender under chapter 46.65 RCW at the time of the violation." *Id*. at 504. Failure to prove the basis for the revocation "would render the portions of RCW 46.20.342(1) that distinguish between crimes defined in that statute meaningless." *Id*.

The superior court correctly interpreted *Smith*. The basis for the license

revocation is an element of the offense and must be established. Here, there was no factual basis at the time of the plea for believing that DWLS 3 had been committed—there was no proof of any of the seven relevant suspension circumstances. Accordingly, for this reason also the plea was invalid.

The superior court correctly determined that the plea to the uncharged offense was invalid. The RALJ ruling is affirmed and this case is remanded to municipal court for further proceedings consistent with this opinion.

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.

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Korsmo, J.

WE CONCUR:

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Kulik, C.J.

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Sweeney, J.