Supreme Court No. 100797-3
COA No. 80473-1-I (Cons. with No. 79219-9-I)

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ANTHONY ENRICO HAMILTON,

Petitioner.

PETITION FOR REVIEW

On Appeal from King County Superior Court
The Hon. Susan Agid, the Hon. Richard Ishikawa and
the Hon. Nicole Gaines Phelps, Presiding

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A. IDENTITY OF PETITIONER

Anthony Enrico Hamilton, the petitioner, asks this Court to accept review of the Court of Appeals' decision terminating review set out in Section B, *infra*.

B. COURT OF APPEALS' DECISION

Mr. Hamilton seeks review of the unpublished opinion of Division One of the Court of Appeals in *State of Washington v. Anthony Enrico Hamilton*, 80473-1-I (consolidated with 79219-9-I) issued on March 7, 2022. A copy is attached in Appendix A.

C. ISSUES PRESENTED FOR REVIEW

1. An essential element of robbery is that force or fear was used by the defendant to obtain or retain possession of the property or to prevent or overcome resistance to the taking. The document charging second degree robbery in this case, CP II 1, omitted this element. Is the charging document defective, in violation of the right to notice of the charge and due process of

law, protected by the Sixth and Fourteenth Amendments to the United States Constitution and article I, sections 3 and 22, of the Washington Constitution?

2. Anthony Hamilton, a twenty-year old young man with limited exposure to the legal system, was arrested, jailed, charged, and pled guilty to a serious criminal charge all within 33 days. Mr. Hamilton insisted he was innocent, but pled guilty under *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970). Did the trial judge adequately insure that Mr. Hamilton understood the procedure he was going through, that he understood the elements of the offense, and that he knowingly, intelligently and voluntarily gave up his constitutional rights, or were Mr. Hamilton's rights under the Fifth, Sixth and Fourteenth Amendments and article I, sections 3, 9, 21 and 22, violated?

3. Should a reviewing court consider the youthfulness of a defendant when determining if a guilty plea colloquy is constitutionally adequate?

4. Is the record adequate to decide the issue of the validity of the guilty plea where the transcript from one day of proceedings cannot be located? If the record is not adequate, does deciding the appeal without this transcript violate Mr. Hamilton's rights to due process of law and the right to an appeal, protected by the Fourteenth Amendment and article I, sections 3 and 22?

5. Where the trial court failed to exercise discretion on a motion to withdraw a guilty plea, but decided another motion regarding the term of a no contact order, and the defendant appeals, should this Court remand the case to the trial court to exercise discretion and make a ruling on the motion to withdraw the guilty plea?

6. Should the Court grant review of Mr. Hamilton's *pro se* issues?

D. STATEMENT OF THE CASE

On May 2, 1990, in King County Superior Court the State charged Anthony Hamilton with robbery in the second degree, alleging:

> That the defendant Anthony Enrico Hamilton in King County, Washington, on or about April 27, 1990, did unlawfully take personal property, to-wit: lawful money of the United States from the person and in the presence of Dannielle Johnson against her will, by the use or threatened use of immediate force, violence and fear of injury to such person or her property.

CP II 1.

In the certification of probable cause, the State alleged that Mr. Hamilton approached someone (Ms. Johnson) sitting in a car, put a gun to her cheek, and demanded money. She gave him $75 and went to a nearby house where she called the police. The police arrived and arrested Mr. Hamilton who was nearby. CP II 2. The original police reports, though, contained a dramatically different version of the facts, and years later, reached in Atlanta,

Ms. Johnson denied there was a gun at all, describing a theft from the person. *Amended Opening Brief of Appellant* ("*BOA*"), Exhibits 1 and 2.[1]

Mr. Hamilton had just turned 20. He was arrested and jailed even though he was relatively young and had very limited criminal history. CP II 23, 35-37, 39. A few weeks later, after two hearings before Judge Susan Agid on May 29 and May 30, 1990, Mr. Hamilton entered an *Alford* plea of guilty. CP 3-13.

The hearing was very brief and consisted mostly of Mr. Hamilton giving "yes" or "no" answers. Mr. Hamilton said he was pleading guilty to take advantage of the State's recommendation and to avoid "possibly more serious consequences" if the case went to trial. CP II 7-8. There was no discussion of what those "more serious consequences" would be either in the plea form or in the colloquy. The plea form did not

[1] The exhibits were submitted as part of the motion to reverse because an inadequate record.

reference any of the elements of robbery in the second degree, instead referring to the "attached information." CP II 3. However, the information was not attached to the plea form – only the certification of probable cause. CP II 12. There was no recitation of the elements of the crime of second degree robbery; there was no inquiry about the significance of an *Alford* plea or whether Mr. Hamilton understood the significance of denying guilt at the same time he was pleading guilty. On June 29, 1990, the Hon. Richard Ishikawa sentenced Mr. Hamilton to serve 3 months in jail. RP (6/29/90) 3-5; CP II 24-27.

Years later the court reporters' notes from May 30 and June 29, 1990, could be located and transcripts produced, but the court reporter's notes from May 29, 1990, could not be located and there is no transcript from that hearing. *BOA*, Ex. 5 at 20-28; Ex. 6 at 30-32. Although the minute entry from May 29th revealed that nothing had taken place, CP II 42, the transcript from May 30th showed that there had been some attempt to plead guilty the

day before, that Mr. Hamilton did not understand everything, and the case had to be set over. RP (5/30/90) 2, 5, 6. Neither the lawyer (Carl Nadeau) for May 29, 1990, nor Mr. Hamilton's assigned counsel (Kenneth Scearce) recalled what took place. *BOA*, Ex. 5 at 24; Ex. 8 at 45. Mr. Hamilton recalls being in court and was confused about things. He told the judge that he was not guilty. He was taken away and at some point his attorney came to see him and told him simply to say "yes" to the questions in court so that he could go home. *BOA*, Ex. 3 at 21-22.

Mr. Hamilton would later be convicted of a "strike" offense in Pierce County and given a life without parole sentence in part based on this case. *BOA*, Ex. 7 at 34-43.[2] In June 2017, Mr. Hamilton filed *pro se* motions to withdraw the guilty plea under CrR 4.2 and CrR 7.8. He noted the motions, but the superior court

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[2] While the Legislature subsequently removed second degree robbery from the list of "strikes," Laws of 2021 ch. 141, § 1, the existence of this prior conviction will drive the calculation of the offender score when Mr. Hamilton is resentenced in Pierce County.

did not act on them. CP I 28-33, 34-37, 38-46, 47-54. A year later, in June 2018, Mr. Hamilton filed other motions to correct his sentence (referencing the duration of a no contact order). CP I 55-66, 67-68, 69, 70-75, 76-77. Four days before the noting date, in an *ex parte* proceeding, Judge Nicole Gaines Phelps changed the no contact order's duration, but never ruled on the CrR 7.8 motions. CP I 67-68, 78-79. Hamilton appealed. CP I 80-81 (COA No. 79219-9-I).

On September 10, 2019, with the assistance of counsel, Mr. Hamilton filed a notice of appeal from the original judgment. CP II 28-34 (COA No. 80473-1-I). The Court of Appeals granted a motion to extend the time for filing the appeal. *Notation Ruling*, Dec. 20, 2019, App. B. The two appeals were consolidated on February 5, 2020.

Mr. Hamilton raised issues related to the sufficiency of the charging document, the voluntariness of the guilty plea, whether the record was sufficiently complete for review, whether the case

should be remanded to address the CrR 7.8 motion and whether Judge Phelps should have ruled on Mr. Hamilton's motion in an unscheduled, *ex parte* hearing.

On March 7, 2022, the Court of Appeals affirmed. App. A. Mr. Hamilton now seeks review in this Court.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

1. *The Information is Fatally Defective*

While tracking a portion of former RCW 9A.56.190,[3] the information in this case, CP II 1, failed to include the additional

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[3] Former RCW 9A.56.190 (1990) provided in part:

> A person commits robbery when he unlawfully takes personal property from the person of another or in his or her presence against his will by the use or threatened use of immediate force, violence, or fear of injury to that person or his property or the person or property of anyone. *Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking*; in either of which cases the degree of force is immaterial. . . .

Emphasis added.

language set out in the statute that the "force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking." The failure to include this language violated Mr. Hamilton's rights to notice of the charge and due process of law, protected by the Sixth and Fourteenth Amendments and article I, sections 3 and 22. *See State v. Zillyette*, 178 Wn.2d 153, 158, 307 P.3d 712 (2013); *State v. Kjorsvik*, 117 Wn.2d 93, 97, 812 P.2d 86 (1991).

The Court of Appeals rejected this argument relying on its earlier decision in *State v. Phillips*, 9 Wn. App. 2d 368, 444 P.3d 51 (2019). Slip Op. at 6-8. Division One in *Phillips* was wrong. The second sentence of RCW 9A.56.190 does not, as the *Phillips* court concluded, merely define "force," and "fear," as used in the first sentence of the statute. *See Phillips*, 9 Wn. App. 2d at 377.

The second sentence of RCW 9A.56.190 does not explain what "force" or "fear" mean. Rather, the second sentence of RCW 9A.56.190 has independent legal significance. It is not

enough that a person acquires property of another and also uses force or fear. To commit robbery, a person must use force or fear in a specific way, for a specific purpose: "to obtain or retain possession of the property, or to prevent or overcome resistance to the taking." *Id*. This separate element "describ[es] the offender's purpose for using force." *State v. Todd*, 200 Wn. App. 879, 885, 403 P.3d 867 (2017). *See also State v. Allen*, 159 Wn.2d 1, 9, 147 P.3d 581 (2006) (describing second sentence as separate element of robbery); *State v. Allen*, 94 Wn.2d 860, 863, 621 P.2d 143 (1980) (same). Without proof of this fact, the State cannot establish conduct as the offense of robbery.

The recognition of a fact as an element for purposes of challenges to the sufficiency of the evidence demonstrates that the prosecution must also allege that fact in the information. *State v. Pry*, 194 Wn.2d 745, 755-57, 452 P.3d 536 (2019). This Court has explicitly rejected the argument that essential elements differ for sufficiency and charging purposes. *Id*. at 757. *See also State*

v. Canela, ___ Wn.2d ___, ___ P.3d ___ , 2022 Wash. LEXIS 159 at *7-*13 (No. 100029-4, March 17, 2022) (rejecting distinction between elements in jury instructions and elements in charging documents).

Not only does *Phillips* conflict with a contrary decision in *State v. Todd*, *supra*, and the decisions of this Court cited above, but this Court recently granted review of this issue in *State v. Derri* [*Stites*], 17 Wn. App. 2d 376, 486 P.3d 901, *review granted*, 198 Wn.2d 1017 (2021), a case that was argued on February 15, 2022.

This Court should stay consideration of this petition pending its decision in *Derri*. Ultimately, this Court should grant review under RAP 13.4(b)(1), (2) and (3), and reverse and remand for dismissal without prejudice because Mr. Hamilton's rights to due process and notice of the charge, protected by the Sixth and Fourteenth Amendments and article I, sections 3 and 22, were violated.

2. *The Record Does Not Show a Knowing and Voluntary Waiver of Constitutional Rights*

a. The Record is Inadequate for Review

Mr. Hamilton's constitutional right to an appeal under article 1, section 22, was violated, and thus the Court of Appeals extended the time for him to file the notice of appeal. App. B. As a matter of due process, the right to counsel, the right to equal protection and the right to an appeal, under the Sixth and Fourteenth Amendments and article I, sections 3, 12 and 22, Mr. Hamilton was "constitutionally entitled to a record of sufficient completeness to permit effective appellate review of his or her claims." *State v. Tilton*, 149 Wn.2d 775, 781, 72 P.3d 735 (2003) (internal quotes omitted). Where portions of the record are missing, one remedy is to reverse the conviction if a reconstructed record cannot be accomplished and the defendant can demonstrate

prejudice by the missing record. *See State v. Larson*, 62 Wn.2d 64, 65-67, 381 P.2d 120 (1963).[4]

In this case, there clearly was a guilty plea hearing on May 29, 1990, that was cut short because of questions about the procedures involved. *See* RP (5/30/90) 2, 5, 6. Yet, there is no transcript available for what took place on May 29th. Event with attempts to track down the coverage attorney from the public defense firm who appeared at that hearing with Mr. Hamilton on that day, there is no way to reconstruct what took place. *See BOA*, Ex. 4 at 25; Ex. 5 at 27-28; Ex. 6 at 30-32; Ex. 8 at 45.

On the other hand, the hearing on May 30th does not include any mention of the elements of the offense and there an inadequate colloquy about the nature of an *Alford* plea. Mr. Hamilton has a memory of insisting on his innocence and having

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[4] *See also Tilton*, *supra* (reversal based on 36-minute gap in the recorded proceedings that included direct and most of cross of defendant, and appellate counsel could not properly raise ineffective assistance of counsel).

questions about the procedure, combined with being told by his assigned lawyer simply to say "yes" when he went back to court again. Mr. Hamilton did not even understand what he was charged with (thinking erroneously that he was originally charged with first, not second, degree robbery). *BOA*, Ex. 3 at 21-23.

The Court of Appeals rejected Mr. Hamilton's arguments concluding that the guilty plea occurred on May 30th, not May 29th, and that the record from May 30th was complete. Slip Op. at 8-10. However, it is clear that the plea colloquy on the 30th referred back to confusion of some sort that occurred the day before, RP (5/30/90) 2, 5, 6, and what took place on court on May 30th was very brief and sparse for what was a huge decision for a young person (20 years old) being asked to plead guilty to a very serious crime, while insisting he was innocent.

In light of the confusion over even what crime Mr. Hamilton was charged with and in light of importance of the elements of robbery, *see supra* at § E(1), and in light of the unique

procedure by which someone who claims they are innocent pleads guilty, the Court of Appeals erred when reaching its conclusion that the record was sufficient. Mr. Hamilton's rights under the Sixth and Fourteenth Amendments and article I, sections 3, 12 and 22, were violated. This Court should grant review under RAP 13.4(b)(1) and (3) and reverse.

b. The Guilty Plea Was Not Knowing and Voluntary

The record that exists reveals that young Mr. Hamilton was processed through the system quickly. Charged with a serious felony on May 2, 1990, assigned a lawyer on May 7, 1990, and denied release from jail on May 14, 1990, two weeks later, after one aborted proceeding with a coverage attorney, Mr. Hamilton pled guilty while another coverage attorney was in court with him. The hearing was brief. The judge used legal jargon, and no one made any inquiries as to whether Mr. Hamilton – only 20-years old and locked up in an adult jail – truly understood what was

happening when he pled guilty while at the same time insisting on his innocence.

A plea of guilty impacts multiple state and federal constitutional rights, including the right to due process of law, the right against self-incrimination and the right to a jury trial, all protected by the Fifth, Sixth and Fourteenth Amendments and article I, sections 3, 9, 21 and 22. *See McCarthy v. United States*, 394 U.S. 459, 466, 89 S. Ct. 1166, 22 L. Ed. 2d 418 (1969); *Boykin v. Alabama*, 395 U.S. 238, 243 n.5, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969). The record must show the defendant was aware of various constitutional rights, that the defendant knowingly and voluntarily gave them up, and that the defendant knew the elements of the crime. *See Henderson v. Morgan*, 426 U.S. 637, 645, 96 S. Ct. 2253, 49 L. Ed. 2d 108 (1976); *State v. Holsworth*, 93 Wn.2d 148, 153, 607 P.2d 845 (1980).

Given the constitutional rights at stake, courts have viewed guilty pleas with suspicion: "[A] plea of guilty is more than an

admission of conduct; it is a conviction. [Footnote omitted] Ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats might be a perfect cover-up of unconstitutionality." *Boykin*, 395 U.S. at 242-43. While this Court has upheld the *Alford* procedure of someone pleading guilty while claiming innocence, *see In re Pers. Restraint of Cross*, 178 Wn.2d 519, 309 P.3d 1186 (2013); *State v. Newton*, 87 Wn.2d 363, 552 P.2d 682 (1976), traditionally there has been some degree of judicial hostility towards the procedure. *See State v. Stacy*, 43 Wn.2d 358, 363, 261 P.2d 400 (1953) ("[W]henever a defendant attempts to make a plea which by its very wording couples a protestation of innocence with an assertion of guilt, the trial court should refuse to accept the plea until the equivocation therein has been eliminated.").

The Court of Appeals here rejected Mr. Hamilton's arguments, noting the judge's colloquy and Mr. Hamilton's "yes" and "no" answers. Slip Op. at 10-19. The court distinguished the

searching *Alford* plea colloquy in *Cross* as being confined to the death penalty context because of the serious risk of being sentenced to death. Slip Op. at 15.

Yet, nothing in *Cross*'s illustration of the proper colloquy for an *Alford* plea was predicated on the requirements of the Eighth Amendment. While the consequences of a guilty plea in a capital case are indeed very serious, the consequences to a 20-year-old of being convicted of a felony in adult court are very serious too.

In this regard, the Court of Appeals' decision is flawed in that it never mentions the developing jurisprudence regarding the special vulnerabilities of young people, like Mr. Hamilton, caught up in an adult criminal justice system. *See In re Pers. Restraint of Monschke*, 197 Wn.2d 305, 482 P.3d 276 (2021). Indeed, the "incompetencies associated with youth" include an "inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys." *Miller*

v. Alabama, 567 U.S. 460, 477-78, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012). Recognizing the vulnerabilities of young people in the criminal justice system, this Court has condemned the type of "'meet 'em, greet 'em and plead 'em'" system that existed in this very case in 1990. *State v. A.N.J.*, 168 Wn.2d 91, 98, 225 P.3d 956 (2010) (invalidating a guilty plea for a juvenile who barely met with his lawyer).

In this case, there was a complete lack of any attention by Judge Agid to Mr. Hamilton's youth and tragic circumstances. While certainly a 20-year-old is different from someone 12-years old, *see* Slip Op. at 16 (discussing *State v. S.M.*, 100 Wn. App. 401, 996 P.2d 1111 (2000)), still the record shows that Mr. Hamilton was processed through the system no differently than if he were 50-years old with decades of experience in the legal system. He was locked up in an inhumane adult jail.[5] He had a

[5] The poor conditions in the King County Jail were the subject of a 1989 federal class action lawsuit that ended up (continued...)

series of coverage attorneys. There was no searching inquiry as to whether he understood what an *Alford* plea was and whether Mr. Hamilton truly understood what was taking place; the judge never explained the elements of a robbery and they were not, as noted, contained in the charging document, nor was there much attention to an explanation of the rights Mr. Hamilton was giving up and the life-long consequences of his decisions.

In the past, where a defendant was laboring under various disabilities, courts have held that monosyllabic responses to a judge's questions are not sufficient to show a knowing and voluntary waiver of rights.[6] In this case, Mr. Hamilton's youth

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[5](...continued)
settled by a 1998 consent degree. *See Hammer v. King County*, No. C-89-521-R (W.D. Wash.) (not cited as authority but as historic fact).

[6] *See, e.g., Miles v. Stainer*, 108 F.3d 1109, 1113 (9th Cir. 1997) ("The state-court plea colloquy consisted almost entirely of yes or no questions which shed little light on complex reasoning ability."); *United States v. Christensen*, 18 F.3d 822, 825-26 (9th Cir. 1994) (short, perfunctory colloquy is (continued...)

puts him into the same category and a more searching inquiry was needed than just the type of "yes" or "no" questions and answers that took place here.

This Court should accept review under RAP 13.4(b)(1), (3) and (4). The decision of the Court of Appeals conflicts with cases like *Cross* which set the standard for a proper *Alford* plea colloquy. The decision below conflicts with modern cases recognizing that young people should be treated differently than adults (*i.e.*, *Monschke*, *Miller*), not just in sentencing but in the guilty plea process (*i.e.*, *A.N.J.*). The issue of whether a 1990 *pro forma* plea colloquy for a 20-year-old is constitutionally adequate given what is now known about the brains of young people is also an issue of public importance. Mr. Hamilton's rights to due process of law, right against self-incrimination and right to a jury

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[6](...continued)
inadequate basis for waiver of right to jury trial when judge is on notice of defendant's possible mental or emotional instability).

trial were violated, U.S. Const. amends. V, VI & XIV; Const. art. I, § 3, 9, 21 and 22, and this Court should accept review and reverse.

3. *This Case Should Be Remanded to the Trial Court to Rule on Mr. Hamilton's Pro Se Motions to Withdraw the Guilty Plea*

Mr. Hamilton filed a series of *pro se* motions in the superior court under CrR 7.8 claiming variously that he did not understand the sentencing consequences of a conviction and that the judgment was invalid on its face. CP I 55-66, 67-68, 69, 70-75, 76-77. The trial court never ruled on most of the motions, deciding instead, on an *ex parte* basis at a hearing that had not been scheduled, an issue related to the duration of the no contact order. CP I 78-79.

On appeal, Mr. Hamilton argued for a remand under RAP 12.2 so that his *pro se* motions could be addressed on the merits. Because of the order extending the time for his appeal, any motion to withdraw the guilty plea and any amendments to that motion would be timely under RCW 10.73.090 since the mandate from

the direct appeal has not even been entered. Upon remand, Mr. Hamilton would raise extra-record information contained in his motion to reverse based on a missing record – i.e. specific facts about his lack of understanding of the procedures under *North Carolina v. Alford*, *supra*, the lack of defense investigation regarding the conflict between the police reports, the certificate of probable cause and the complaining witness's current declaration, the prejudice caused by the lack of all elements in the charging document, and Mr. Hamilton's youth and lack of understanding of what was going on in court.

The Court of Appeals rejected this argument:

> Because he is unlikely to succeed in a motion to withdraw his plea, he has not established the existence of a manifest error affecting a constitutional right under RAP 2.5(a)(3). Remand to allow Hamilton to obtain a trial court ruling on a CrR 7.8 motion to withdraw his plea is unnecessary.

Slip Op. at 19.

This conclusion conflicts with the well-accepted principle that a direct appeal cannot be decided on the basis of extra-record matters. *See State v. Linville*, 191 Wn.2d 513, 525, 423 P.3d 842 (2018); *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). Here, the Court of Appeals denied a remand because it substantively concluded that Mr. Hamilton was not entitled to relief. Yet this conclusion was based upon the limited record. This is flawed reasoning and fails to take into account how a court hearing a timely post-conviction motion can consider new materials not in the record.

The Court of Appeals' decision could have the potential for creating confusion in the future when Mr. Hamilton's files a future timely post-conviction petition. The decision purports to make a substantive ruling on the *pro se* CrR 7.8 motions, without consideration of the full record that Mr. Hamilton undeniably has the right to try to create. In this way, the procedural ruling violates due process of law protected by the Fourteenth

Amendment and article I, section 3, in that it changes the procedural rules without notice. *See Hicks v. Oklahoma*, 447 U.S. 343, 346, 100 S. Ct. 2227, 65 L. Ed. 2d 175 (1980) (violation of state procedural rule violated due process).

Accordingly, this Court should accept review under RAP 13.4(b)(1) and (3) and remand to the superior court for consideration of Mr. Hamilton's amended post-conviction motion.

4. *The Court Should Accept Review of the Important Issues Raised in the Pro Se Pleadings*

The Court should also grant review of the issues raised in Mr. Hamilton's *pro se* pleadings. *See* Slip Op. at 18-23. Mr. Hamilton argues that he was not informed of the correct maximum term and not informed of the potential for the robbery conviction to be used to incarcerate him for life. This would violate his rights to due process of law and interfere with a knowing and voluntary guilty plea, in violation of the right to due process of law, the right against self-incrimination and the right to a jury trial, all protected

by the Fifth, Sixth and Fourteenth Amendments and article I, sections 3, 9, 21 and 22. Hamilton also argues that the entry of an *ex parte* order correcting the judgment would violates due process of law and the right to be present. U.S. Const. amends. VI & XIV; Const. art. I, §§ 3 & 22. This Court should accept review of these issues under RAP 13.4(b)(3).

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F. CONCLUSION

For the above-noted reasons, this Court should accept review, and reverse or remand for full consideration the CrR 7.8 motion.

DATED this 4th day of April 2022.

I certify that this pleading contains 4610 words (as calculated with the WordPerfect Word Count function), excluding the categories set out in RAP 18.17.

Respectfully submitted,

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APPENDIX A

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. ANTHONY ENRICO HAMILTON, Appellant.	No. 80473-1-I (Consolidated with 79219-9-I) DIVISION ONE UNPUBLISHED OPINION

ANDRUS, A.C.J. —Anthony Hamilton appeals his 1990 second degree robbery conviction, arguing that the information failed to allege all essential elements of second degree robbery. He also contends his guilty plea should be vacated because the record of his plea hearing is insufficient for direct appellate review and his plea was not voluntary. Finally, he appeals a 2018 order correcting the duration of a no contact order in the judgment and sentence, arguing it was an improper ex parte order that rendered the judgment and sentence invalid. We disagree and affirm.

FACTS

The State charged Anthony Hamilton with second degree robbery on May 2, 1990. He appeared with counsel in King County Superior Court for a plea

hearing on May 29, 1990. The minute entry for this hearing stated "change of plea" and "cause continued to [May 30, 1990]." There is no transcript of the May 29 hearing and the parties cannot locate the court reporter's notes.

On May 30, 1990, he again appeared before the court and entered an Alford[1] plea—stating that he was not guilty of robbery, but recognized he would likely be found guilty at trial and wished to take advantage of the State's offered plea deal. The court asked Hamilton if he had reviewed the plea materials with his attorney and whether he understood that by pleading guilty he was waiving his trial rights. It further asked if his statements in the plea form were accurate and if all of his questions had been answered. Hamilton answered yes to each question and the court accepted the guilty plea. The court later sentenced Hamilton to 3 months' confinement and 12 months of community custody.

In 1998, a Pierce County Superior Court jury convicted Hamilton of first degree murder, first degree kidnapping and first degree robbery. That court sentenced Hamilton to life without parole as a persistent offender,[2] with one of his prior "strike" offenses being the 1990 second degree robbery conviction.[3]

In June 2017, Hamilton filed a CrR 7.8 motion to withdraw his 1990 guilty plea in King County Superior Court, claiming it was not knowing, intelligent and voluntary. For reasons not evident in this record, the court took no action on the

[1] North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).
[2] Washington voters passed Initiative 593, entitled "Persistent Offender Accountability Act" in November 1993, also known as the "three strikes and you're out" law, after Hamilton was convicted of second degree robbery in 1990 and before he was convicted in Pierce County of murder, kidnapping and first degree robbery. See State v. Thorne, 129 Wn.2d 736, 746, 921 P.2d 514 (1996). Under Initiative 593, robbery in the second degree was "a most serious offense," and thus a "strike." Id. at 747 (quoting former RCW 9.94A.030(23)(1993)).
[3] Hamilton's second "strike" was a 1991 conviction for first degree robbery.

motion. A year later, he filed a CrR 7.8 motion to correct his sentence, this time arguing that the failure of the original sentencing court to identify a specific term for the no contact order contained in the judgment and sentence rendered it invalid. He refiled the same motion in September 2018.

A month later, the court entered an "Order on Defendant's Motion to Correct Judgment & Sentence," specifying that the judgment "should reflect that the no contact [order] was for (10) TEN years." The order added, "However, even the 10 years has passed, Department of Corrections has terminated supervision and any [no contact order] in the judgment is hereby expired." Hamilton timely appealed this order.

In September 2019, Hamilton filed a notice of appeal of the 1990 judgment and sentence. He moved to extend the time to file his appeal, which this court granted because he had not been informed of his limited right to appeal in 1990. In February 2020, we consolidated Hamilton's two appeals.

In July 2020, Hamilton filed a motion to reverse his conviction, alleging there was an insufficient record of the 1990 proceedings for effective direct review. Pursuant to RAP 17.4(f), Hamilton provided a series of declarations establishing that the court reporter's notes from the May 29, 1990 hearing had been lost and that Hamilton's attorney in that case had no memory of the proceedings. Hamilton also attached his own declaration, dated May 22, 2020, in which he stated he did not understand the proceedings of his 1990 plea hearing, he had limited opportunity to review the case with his appointed attorney, and he simply followed the attorney's advice to plead guilty and answer all of the court's questions with

"yes." We denied this motion and Hamilton filed a motion for discretionary review with the Supreme Court.[4]

The Supreme Court commissioner stayed Hamilton's appeal pending its decision in State v. Jenks, No. 98496-4. The Court issued its opinion in May 2021, holding that ESSB 5288, which amended the persistent offender statute in 2019 to eliminate second degree robbery from the list of "strike" offenses, did not apply retroactively. 197 Wn.2d 708, 727, 487 P.3d 482 (2021). Shortly thereafter, the Supreme Court denied discretionary review of Hamilton's motion to reverse, noting that the legislature had, after Jenks, amended the persistent offender statute to make the statutory amendment retroactive, and acknowledging that Hamilton will be resentenced regardless of the outcome of this appeal.[5] The Supreme Court

[4] Supreme Court No. 99162-6.

[5] See Laws of 2021 ch. 141, § 1, codified at RCW 9.94A.647, which now provides:

> (1) In any criminal case wherein an offender has been sentenced as a persistent offender, the offender must have a resentencing hearing if a current or past conviction for robbery in the second degree was used as a basis for the finding that the offender was a persistent offender. The prosecuting attorney for the county in which any offender was sentenced as a persistent offender shall review each sentencing document. If a current or past conviction for robbery in the second degree was used as a basis for a finding that an offender was a persistent offender, the prosecuting attorney shall, or the offender may, make a motion for relief from sentence to the original sentencing court.
>
> (2) The sentencing court shall grant the motion if it finds that a current or past conviction for robbery in the second degree was used as a basis for a finding that the offender was a persistent offender and shall immediately set an expedited date for resentencing. At resentencing, the court shall sentence the offender as if robbery in the second degree was not a most serious offense at the time the original sentence was imposed.
>
> (3) Notwithstanding the provisions of RCW 9.94A.345, for purposes of resentencing under this section or sentencing any person as a persistent offender after July 25, 2021, robbery in the second degree shall not be considered a most serious offense regardless of whether the offense was committed before, on, or after the effective date of chapter 187, Laws of 2019 [July 28, 2019].

lifted the stay in Hamilton's case in October 2021 and it is now before us to address his consolidated appeal on the merits.

ANALYSIS

A. Legal Adequacy of the Information

Hamilton challenges the legal adequacy of his 1990 information. He argues that the information failed to include the element of second degree robbery that "force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking." We disagree.

The Sixth Amendment to the United States Constitution and article I, section 22 of the Washington Constitution require that a charging document allege all essential elements of a crime, statutory and nonstatutory, to inform the defendant of the charges against him and to allow him to prepare his defense. State v. Hopper, 118 Wn.2d 151, 155, 822 P.2d 775 (1992); State v. Kjorsvik, 117 Wn.2d 93, 101-02, 812 P.2d 86 (1991); State v. Ralph, 85 Wn. App. 82, 84, 930 P.2d 1235 (1997).

The sufficiency of an information is an issue of constitutional magnitude that may be raised for the first time on appeal. RAP 2.5(a)(3); Kjorsvik, 117 Wn.2d at 102. Because Hamilton challenges the charging document for the first time after the verdict was rendered, we construe the information liberally and ask (1) whether the necessary elements of the offense do not appear in any form, or by fair construction cannot be found, in the charging document; and (2) whether he was actually prejudiced by the faulty information. Id. at 105-06. We review the

constitutional sufficiency of an information de novo. State v. Johnson, 180 Wn. 2d 295, 300, 325 P.3d 135 (2014).

"A person is guilty of robbery in the second degree if he or she commits robbery." RCW 9A.56.210(1). RCW 9A.56.190 provides

> A person commits robbery when he or she unlawfully takes personal property from the person of another or in his or her presence against his or her will by the use or threatened use of immediate force, violence, or fear of injury to that person or his or her property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

The charging information alleged:

> That the defendant Anthony Enrico Hamilton in King County, Washington, on or about April 27, 1990, did unlawfully take personal property, to-wit: lawful money of the United States from the person and in the presence of Dannielle Johnson against her will, by the use or threatened use of immediate force, violence and fear of injury to such person or her property.

This language is verbatim to the first sentence of RCW 9A.56.190.

Hamilton contends that the information is deficient because it did not include the language of the second sentence of RCW 9A.56.190, that "force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking." But this court rejected the same argument in State v. Phillips, 9 Wn. App. 2d 368, 444 P.3d 51, review denied, 194 Wn.2d 1007 (2019). In that case, we held that the first sentence of RCW 9A.56.190 sets forth the essential elements of robbery, while the second and third sentences are merely definitional. Id. at 377. We adhere to that ruling here.

Hamilton cites State v. Todd, 200 Wn. App. 879, 885-86, 403 P.3d 867 (2017), in which Division Three of this court held that the second sentence of RCW 9A.56.190 constituted a statutory element of the crime of robbery. But, as we explained in Phillips,

> The Todd opinion is best understood in light of its assertion that the Supreme Court has identified force or fear being used to obtain or retain possession of property as an element of robbery. See 200 Wn. App. at 885-86, 403 P.3d 867. In fact, the Supreme Court opinion to which the Todd opinion cited for this proposition, State v. Allen, 159 Wn.2d 1, 147 P.3d 581 (2006), did not so hold.

Phillips, 9 Wn. App. 2d at 379 (emphasis in original). In Allen, the defendant challenged the sufficiency of the evidence supporting his conviction for first degree murder with an aggravating circumstance of robbery. Allen, 159 Wn.2d at 7. It held that,

> to establish the aggravating factor of robbery in this case, the State had to prove beyond a reasonable doubt that Allen: (1) took the cashbox from his mother's person or in her presence, (2) against her will, and (3) used force or fear to take the cashbox or to prevent his mother from resisting the taking.

Id. at 9. Thus,

> the Allen court was not engaged in announcing a new statutory element of robbery. Rather, it was discussing what the State—in that case, as the case had been tried—had to establish to prove guilt of the charge. There are no statutory elements of robbery requiring proof of "cashboxes" or "mothers." Instead, the court was referencing the State's theory of the case at hand—and the court was evaluating whether the evidence adduced actually proved that theory. The Allen opinion did not purport to add to the statutory elements of robbery.

Phillips, 9 Wn. App. 2d at 380.[6] We reject Hamilton's challenge to the legal sufficiency of his information for the reasons set out in Phillips.

B. Voluntariness of Hamilton's Guilty Plea

Hamilton next argues he is entitled to withdraw his guilty plea to second degree robbery for several reasons. First, he argues, the record below is insufficient to determine that his plea was in fact knowing, intelligent, and voluntary. Second, he maintains he did not understand the nature of the Alford plea he entered or the consequences of the plea.

1. Sufficiency of Record for Review

Hamilton contends that his conviction must be reversed because the absence of a report of proceedings on the May 29, 1990, hearing renders the record insufficient to permit effective appellate review. We disagree.

A criminal defendant is "constitutionally entitled to a 'record of sufficient completeness' to permit effective appellate review of his or her claims." State v. Tilton, 149 Wn.2d 775, 781, 72 P.3d 735 (2003) (quoting State v. Thomas, 70 Wn. App. 296, 298, 852 P.2d 1130 (1993)). "A 'record of sufficient completeness' does not translate automatically into a complete verbatim transcript." Mayer v. City of Chicago, 404 U.S. 189, 194, 92 S. Ct. 410, 30 L. Ed. 2d 372 (1971). Other methods of reporting trial proceedings may be constitutionally permissible if they permit effective review. Tilton, 149 Wn.2d at 781. "[W]here the affidavits are

[6] Our Supreme Court has granted review of this issue in State v. Derri, 17 Wn. App. 2d 376, 486 P.3d 901, review granted, 198 Wn.2d 1017 (2021). Unless and until the Supreme Court instructs otherwise, we will continue to follow the well-reasoned analysis in Phillips. Hamilton's motion to stay this case pending the resolution of Derri is thus denied.

unable to produce a record which satisfactorily recounts the events material to the issues on appeal, the appellate court must order a new trial." Id. at 783.

RAP 9.3 and 9.4 establish the procedure for reconstructing a record when the tape recording of the proceedings has been lost. State v. Waits, No. 37894-2-III, slip op. at 6 (January 20, 2022).[7] These rules authorize the parties to give a "fair and accurate" non-verbatim summary of testimony and events in the event of a lost report of proceedings. Id.

Although Hamilton tried to comply with these procedures, the age of the case made it impossible to create a narrative report of proceedings for May 29, 1990. Thirty years have passed since that hearing and, as Hamilton has noted, both the prosecutor and judge have since passed away and Hamilton's attorney cannot recall the proceeding. The State does not dispute these facts.

Hamilton argues that remand for a new trial is required by the Supreme Court's decision in State v. Larson, 62 Wn.2d 64, 381 P.2d 120 (1963). In that case, the defendant was convicted of attempted burglary after a jury trial. Id. On appeal, the parties determined that the court reporter's notes of the trial had been lost and that a verbatim statement of proceedings could not be furnished. Id. at 65. The State asked the trial court to furnish the defendant with a narrative statement of proceedings based on the trial court's own notes, but the defendant's appellate counsel contended he was unable to test the sufficiency of this narrative statement of proceedings since he did not participate in the trial. The Supreme Court agreed and concluded that the defendant was unable to test the sufficiency

[7] https://www.courts.wa.gov/opinions/pdf/378942_pub.pdf.

of completeness of the narrative statement of proceedings for an adequate review by this court or to determine what errors to assign for the purpose of obtaining an adequate review on appeal. Id. at 67.

Larson is distinguishable. The report of proceedings for Larson's entire jury trial was lost. We confront a completely different situation; the lost report of proceedings consists of a single hearing originally scheduled for the entry of a plea, but during which the court continued the plea hearing to the following day. We have a complete transcript of Hamilton's May 30, 1990 plea hearing, during which Hamilton was notified of his rights, questioned about his understanding of them, and discussed the consequences of his plea in open court.

Hamilton has not demonstrated how the contents of the transcript of the May 29, 1990 hearing would be material to this appeal. Hamilton is challenging the validity of his plea. The plea was not entered on May 29; his plea hearing took place on May 30. The record contains the complete verbatim report of proceedings for that hearing. We have an adequate record with which to review Hamilton's claims of error.

2. Voluntariness of Guilty Plea

Hamilton contends he is entitled to withdraw his guilty plea because he did not understand the nature and consequences of the plea. We reject this argument.

Generally, a party may raise on appeal only those issues raised at the trial court. In re Det. of Brown, 154 Wn. App. 116, 121, 225 P.3d 1028 (2010). But a defendant may raise the voluntariness of a plea for the first time on appeal if the defendant establishes a manifest error affecting a constitutional right. RAP

2.5(a)(3); State v. Walsh, 143 Wn.2d 1, 7, 17 P.3d 591 (2001). Given the fundamental constitutional rights of an accused which are implicated when a defendant pleads guilty, a claim that a guilty plea pursuant to a plea agreement was involuntary is the kind of constitutional error that RAP 2.5(a) encompasses. Walsh, 143 Wn.2d at 7.

But we first preview the merits of the claimed constitutional error to determine whether the argument is likely to succeed. Id. at 8. Only if an error did occur do we address whether the error caused actual prejudice and was therefore manifest. State v. Kirkman, 159 Wn.2d 918, 935, 155 P.3d 125 (2007).

Under CrR 4.2(f), "[t]he court shall allow a defendant to withdraw the defendant's plea of guilty whenever it appears that the withdrawal is necessary to correct a manifest injustice." A manifest injustice is one that is obvious, directly observable, overt, and not obscure. State v. Wilson, 162 Wn. App. 409, 414, 253 P.3d 1143 (2011). A plea must be knowing, voluntary, and intelligent to be valid. State v. Mendoza, 157 Wn. 2d 582, 587, 141 P.3d 49 (2006). For purposes of CrR 4.2(f), an involuntary plea is a per se instance where a manifest injustice exists. Wilson, 162 Wn. App. at 414. The defendant bears the burden of proving a manifest injustice required for withdrawal of a guilty plea. State v. Ross, 129 Wn.2d 279, 283-84, 916 P.2d 405 (1996).

When a defendant completes a plea statement and admits to reading, understanding, and signing it, this creates a strong presumption that the plea is voluntary. State v. Smith, 134 Wn.2d 849, 852, 953 P.2d 810 (1998). A judge's on-the-record inquiry of a defendant who signs a plea agreement strengthens the

inference of voluntariness. In re Det. of Scott, 150 Wn. App. 414, 427, 208 P.3d 1211 (2009). Indeed, "[w]hen the judge goes on to inquire orally of the defendant and satisfies himself on the record of the existence of the various criteria of voluntariness, the presumption of voluntariness is well nigh irrefutable." State v. Branch, 129 Wn.2d 635, 642 n.2, 919 P.2d 1228 (1996) (quoting State v. Perez, 33 Wn. App. 258, 261-62, 654 P.2d 708 (1982)). To overcome this presumption, the defendant must present some evidence of involuntariness beyond his self-serving allegations. Scott, 150 Wn. App. at 427.

Hamilton first contends the record does not demonstrate that he understood the elements of the charged crime. The record does not support this argument.

A defendant must understand the facts of his case in relation to the elements of the crime charged, protecting the defendant from pleading guilty without understanding that the alleged conduct falls within the charged crime. State v. Codiga, 162 Wn.2d 912, 923-24, 175 P.3d 1082 (2008).

On May 23, 1990, Hamilton signed a plea agreement with the State in which he agreed to plead guilty as charged in exchange for the State's recommendation of a three-month jail sentence. He then appeared with counsel for a plea hearing on May 30, 1990. On that day, he signed a written "Statement of Defendant on Plea of Guilty." In this document, Hamilton stated "I have been informed and fully understand that I am charged with the crime(s) of robbery in the second degree." In the section of the statement reserved for the elements of the crime, Hamilton wrote "see attached information." Although Hamilton argues that no information was attached to this document, on the next page he certified that "I have been

given a copy of the information." The information laid out the elements of second degree robbery.

Moreover, the documents Hamilton signed made it clear that he did not believe he was guilty of the charged crime, but recognized he would probably be found guilty, and wanted to take advantage of the plea deal to avoid a longer prison sentence:

> I am not guilty of robbery, however, I want to plead guilty in order to take advantage of the prosecutor's recommendation, and to avoid possibly more serious consequences if this case went to trial. I have reviewed the . . . case materials with my lawyer, and I agree that there is a substantial likelihood I would be found guilty at a trial.

At the May 30 hearing, the court conducted an on-record inquiry and asked Hamilton if he had reviewed the entire plea form with his attorney, to which Hamilton responded "Yes ma'am." The court asked if Hamilton understood his trial rights, understood that by pleading guilty he waived those rights, and if all of Hamilton's questions had been answered. Hamilton responded "Yes" to each inquiry.

The court explicitly discussed with Hamilton that he agreed that the court could review the determination of probable cause to verify that there was a factual basis for the plea and to determine the appropriate sentence, but that he was not agreeing that it could be relied on as a basis for imposing an exceptional sentence. Hamilton indicated that he understood this part of the agreement. Id. Hamilton reaffirmed that he had read his entire plea statement, that he understood his sentence, and had no questions about the process.

Following this inquiry, the trial court found that Hamilton's decision to plead guilty was knowing, intelligent, and voluntary and it accepted his guilty plea. Because the record shows Hamilton acknowledged in writing and orally at the plea hearing that he understood the charge against him, including the elements of the crime, there is an extremely strong presumption that Hamilton's plea was voluntary.

Next, Hamilton argues that the record does not demonstrate that he understood the nature of his Alford plea. Again, we disagree.

An Alford plea is inherently equivocal in the sense that it requires a defendant to plead guilty without admitting guilt. In re Pers. Restraint of Montoya, 109 Wn.2d 270, 280, 744 P.2d 340 (1987) (abrogated on other grounds by State v. Buckman, 190 Wn. 2d 51, 61, 409 P.3d 193 (2018)). This alone, however, does not render an otherwise voluntary and intelligent guilty plea invalid. Id. "An Alford plea is valid when it 'represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.' " State v. Stowe, 71 Wn. App. 182, 187, 858 P.2d 267 (1993) (quoting Montoya, 109 Wn.2d at 280).

In the context of an Alford plea, the accused must understand the nature and consequences of the plea bargain and must decide that pleading guilty is in his best interest. In re Pers. Restraint of Barr, 102 Wn.2d 265, 270, 684 P.2d 712 (1984).

> For the trial court to make the proper evaluation, the plea bargain must be fully disclosed. The trial court must find a factual basis to support the original charge, and determine that defendant understands the relationship of his conduct to that charge. Defendant must be aware that the evidence available to the State on the original offense is sufficient to convince a jury of his guilt.

Id.

These criteria were satisfied here. The record convinces us that Hamilton chose to plead guilty to obtain the benefit of a recommended three-month sentence. He understood that the probable cause certification was sufficient to establish a factual basis for the second degree robbery charge and that he was likely to be found guilty if he went to trial on that charge.

Hamilton contends that, in the Alford plea context, the trial court's colloquy was not sufficiently probing to ensure he understood he was pleading guilty to a crime he did not commit. He relies on In Pers. Restraint of Cross, 178 Wn.2d 519, 309 P.3d 1186 (2013), in which our Supreme Court upheld a death sentence based on an Alford plea. In doing so, the court relied on the fact that the trial court had

> painstakingly walked Cross through the elements of the crimes of which he was charged, his potential defenses, the rights he was relinquishing, and the punishment he faced. On the issues of premeditation and common scheme or plan, the judge had Cross state in his own words his understanding of the meaning of those concepts.

Id. at 530.

But Cross does not stand for the proposition that an Alford plea is only valid if a trial court engages in the extensive inquiry that occurred in Cross's case. The issue there was whether a death sentence could be predicated on an Alford plea. Id. at 529. The trial court engaged in an in-depth inquiry with Cross because he was facing the very serious risk of being sentenced to death. We simply cannot equate Cross to this case.

Hamilton also relies on State v. S.M., 100 Wn. App. 401, 996 P.2d 1111 (2000), in which Division Two of this court reversed the conviction of a 12-year-old defendant for three counts of first degree rape of a child, concluding that the defendant's plea agreement was not voluntary. But that case is also distinguishable. S.M.'s counsel was not present when he signed the plea form and his only contact with appointed counsel was a brief meeting immediately before the plea hearing, during which counsel did not discuss the substance of the plea with S.M. Id. at 403-04. On appeal, the court concluded that this colloquy was inadequate because "the record does not show that S.M. understood the law in relation to the facts." Id. at 414-15.

> At the plea hearing, the trial court asked S.M. whether he knew the meaning of "sexual intercourse" but it did not ask what he thought it meant or inquire into his understanding of the nature of the charges. . . .
>
> S.M.'s plea statement does not provide the necessary factual basis for the charge of rape of a child. It states only that "[i]n Cowlitz County in the Spring of 1994, I had sexual contact with my Brother who is age 10 in 1994. It happened three times." This statement lacks any indication that S.M. understood that the crime of rape of a child required penetration. Nor does S.M.'s simple "yes" response to the court's oral question about the meaning of sexual intercourse cure this deficiency.
>
> The plea statement is a critical indicator of S.M.'s understanding about the nature of the charges, especially under the circumstances here where the record shows that S.M. did not have the full assistance of counsel before entering his plea.

Id. at 415.

Unlike S.M., there is no indication that Hamilton lacked the full assistance of counsel before entering his plea. And while Hamilton may have been a youthful offender at the age of 20, he certainly was not 12, as was the case in S.M. The

legal meaning to the phrase "sexual intercourse" may be difficult for a 12-year-old to understand. We cannot say the same for the phrase "robbery," particularly as laid out in the information and as detailed in the accompanying probable cause certification. Hamilton affirmed in his plea that he had reviewed the case materials, including the charging information, with counsel and was voluntarily pleading guilty to a crime he did not believe he committed to gain a clear benefit. The court repeatedly inquired into Hamilton's understanding of the consequences of his plea, specifically the sentencing range of 3 to 9 months, and the waiver of his trial rights and asked if he had any questions concerning the process. None of this occurred in S.M.

Despite Hamilton's suggestion to the contrary, there is no due process requirement that the court orally question a defendant to ascertain whether he understands the consequences of the plea and the nature of the offense. In re Pers. Restraint of Keene, 95 Wn.2d 203, 206-07, 622 P.2d 360 (1980). In Keene, our Supreme Court upheld a defendant's forgery conviction where the plea was prepared with the help of an attorney, the defendant verbally informed the court that his plea statement was truthful, and the defendant acknowledged receiving a copy of the charging information containing the facts and elements of the crime. Id. at 206-08. We reach the same conclusion here. Hamilton argues Keene is distinguishable because the defendant in that case did not enter an Alford plea. This argument is unpersuasive. As in Keene, the record here demonstrates that Hamilton was apprised of the nature of his offense multiple times. He acknowledged in his plea statement that he received this information, went over it

with his attorney, and understood it. The trial court then explicitly had Hamilton confirm that he understood that he was pleading guilty to a crime he did not commit to take advantage of a plea offer from the State and that the court would review the probable cause determination to ensure there was a factual basis for the plea.

The plea documentation and colloquy were adequate to ensure Hamilton's Alford plea was voluntary.

Finally, in his statement of additional grounds, Hamilton argues that his plea was invalid because he was not informed that his conviction could be used as a strike offense. He also contends he was affirmatively misinformed that the maximum sentence for his crime was 5, rather than 10 years.

Before a trial court accepts a guilty plea, the defendant must be informed of all direct consequences of the plea. Mendoza, 157 Wn.2d at 588 Whether a consequence is direct turns on whether "the result represents a definite, immediate and largely automatic effect on the range of the defendant's punishment." State v. Ross, 129 Wn.2d 279, 284, 916 P.2d 405 (1996) (quotation marks omitted). Failing to inform a defendant of, or misinforming the defendant about, collateral consequences of a plea does not render that plea involuntary. State v. Gregg, 196 Wn.2d 473, 485, 474 P.3d 539 (2020).

Hamilton argues he did not know that his conviction could be used as a strike offense under the persistent offender statute. First, no one knew in 1990 that Washington voters would pass a "three strikes" law in 1993. Second, the fact that his robbery conviction would become a strike offense is not a direct consequence of his plea. In order to trigger the persistent offender statute,

Hamilton needed to commit additional qualifying strike offenses. "The potential for the crime to count as a strike at some later time rests only on the possibility that the defendant will commit future crimes." State v. Lewis, 141 Wn. App. 367, 395, 166 P.3d 786 (2007). Future possible eligibility for persistent offender status is not a direct consequence of a guilty plea about which a defendant must be informed before pleading guilty to a crime. Id.

Hamilton also argues that his plea agreement incorrectly informed him that the statutory maximum for second degree robbery was five years, when it is in fact ten years. Although the plea agreement did incorrectly state that the relevant maximum sentence was five years, this error was corrected at the plea hearing where the court stated, and Hamilton acknowledged, that robbery in the second degree "carries with it a maximum sentence of ten years."

Hamilton has not overcome the presumption that his plea was knowing, intelligent, and voluntary. Because he is unlikely to succeed in a motion to withdraw his plea, he has not established the existence of a manifest error affecting a constitutional right under RAP 2.5(a)(3). Remand to allow Hamilton to obtain a trial court ruling on a CrR 7.8 motion to withdraw his plea is unnecessary.

C. Order Correcting Judgment and Sentence

Hamilton next argues that the trial court violated his due process rights by entering a 2018 "ex parte" order specifying that the no contact order in his 1990 judgment and sentence expired in 2000. We disagree.

On June 21, 2018, Hamilton filed a motion to correct his judgment and sentence, indicating that while the judgment ordered that he have no contact with

his two victims, it did not specify the duration of this no contact order. He submitted, with the motion, a form entitled "Note for Criminal Motion," setting the motion for consideration by Judge Laura Inveen on July 17, 2018. The motion does not appear to have been properly noted because the form itself indicates that all criminal motions are to be heard by the Assistant Chief Criminal Judge. Judge Inveen was not the Assistant Chief Criminal Judge at that time.

Hamilton refiled the motion on September 13, 2018, and used a different form, entitled "Notice of Court Date," setting the motion for consideration by Judge Nicole Phelps without oral argument on October 19, 2018, "or earliest convenience."

Judge Phelps addressed this motion on October 15, 2018 by entering a handwritten order that recognized the original judgment and sentence left the term of the no contact provision blank. The court ordered that "the judgment should reflect that the no contact [order] was for (10) ten years. However, even the 10 years has passed. Department of Corrections has terminated supervision and any NCO in judgment is hereby expired."

When a judgment and sentence is missing a term over which there is no dispute, the appropriate method for correcting the error is a motion to correct a clerical mistake under CrR 7.8(a). State v. Priest, 100 Wn. App. 451, 455, 997 P.2d 452 (2000). That rule provides:

> Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an

> appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).

The court clearly had the authority to correct Hamilton's judgment and sentence, at his request, to reflect the correct duration of his no contact order. It also had the authority to note, for the record, that the no contact provision had expired and Hamilton was no longer under DOC supervision for that conviction. Hamilton does not identify anything erroneous in the court's ruling.

Hamilton contends that there must have been an ex parte communication about his motion between the prosecutor and the court because he had no prior notice that the court's order would be entered. An ex parte communication is a communication "made by or to a judge, during a proceeding, regarding that proceeding, without notice to a party." State v. Watson, 155 Wn.2d 574, 579, 122 P.3d 903 (2005). While the State may have submitted, as its response to Hamilton's motion, a proposed order for the court to sign, and the State may have neglected to serve a copy of its proposed order on Hamilton, we have no evidence before us that the judge was aware of any defects in the State's service on Hamilton. The court did not abuse its discretion in entering the order proposed by the State.

And, in any event, the court gave Hamilton the relief he sought—it granted his motion to amend the judgment and sentence. Only an aggrieved party may appeal. State v. Taylor, 150 Wn.2d 599, 603, 80 P.3d 605 (2003). An aggrieved party is one whose personal rights or pecuniary interests have been affected. Id. Hamilton is not an aggrieved party to the 2018 order because it has no effect on his personal rights or pecuniary interests.

In his SAG, Hamilton additionally argues that the ex parte order violated his constitutional right to be present at any stage in the criminal proceeding as well as his right to assistance of counsel. First, Hamilton himself noted this motion for the court's consideration without oral argument at the court's "earliest convenience." He can hardly complain about a process he put into motion. Second, the right to be present only extends to hearings critical to the outcome of the defendant's case. State v. Love, 183 Wn.2d 598, 608, 354 P.3d 841 (2015). Hamilton cites no case to support his contention that a post-judgment motion to correct a clerical error, noted for consideration without oral argument, is a hearing critical to the outcome of Hamilton's case.

Finally, a criminal defendant has no constitutional right to counsel in post-conviction proceedings other than first direct appeal of right. State v. Forest, 125 Wn. App. 702, 707, 105 P.3d 1045 (2005) (citing Pennsylvania v. Finley, 481 U.S. 551, 555, 107 S. Ct. 1990, 95 L. Ed. 2d 539 (1987)).

The trial court did not err in correcting the judgment and sentence as Hamilton asked it to do.

D. Community custody term

Finally, Hamilton argues in his SAG that the court erred in imposing an "exceptional sentence" beyond the standard range of 3 to 9 months by sentencing him to 3 months of confinement and 12 months of community custody. He argues that his sentence "exceeded the standard range sentence, and thus exceeded the 'relevant' statutory maximum." But Hamilton conflates his standard range with the statutory maximum.

"The term of community custody . . . shall be reduced by the court whenever an offender's standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime as provided in RCW 9A.20.021." RCW 9.94A.701(10). The statutory maximum for second degree robbery, a class B felony, is 10 years. RCW 9A.20.021(1)(b). Hamilton's sentence thus did not exceed the statutory maximum.

Affirmed.

Andrus, A.C.J.

WE CONCUR:

APPENDIX B

RICHARD D. JOHNSON,
Court Administrator/Clerk

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of the
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December 20, 2019

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CASE #: 80473-1-I
State of Washington, Respondent v. Anthony Enrico Hamilton, Appellant

Counsel:

The following notation ruling by Commissioner Mary Neel of the Court was entered on December 20, 2019:

RULING ON MOTION TO ENLARGE TIME TO FILE NOTICE OF APPEAL
State v. Anthony Hamilton
No. 80473-1-I
December 20, 2019

On September 10, 2019, Anthony Hamilton filed a notice of appeal of a June 29, 1990 judgment and sentence entered on his conviction for robbery in the second degree. Because it was filed long after the 30-day time period to file a notice of appeal, Hamilton also filed a motion to enlarge the time to file the notice.

On May 2, 1990, the State charged Hamilton with robbery in the second degree. On May 30, 1990, Hamilton entered an Alford plea of guilty. In his Statement on a Plea of Guilty, Hamilton wrote that he was not guilty of robbery, but he was pleading guilty to take advantage of the prosecutor's sentencing recommendation to avoid more serious consequences if the case went to trial.

Hamilton's Statement on a Plea of Guilty provided in part:

> 6. I have been informed and fully understand that:
> . . .
> (f) I have the right to appeal a determination of guilt after a trial.
> (g) If I plead guilty I give up the rights in statements (a) through (f) of this paragraph 6.

Appen. at 21. The Statement did not inform Hamilton of his limited right to appeal after a guilty plea.

On June 29, 1990, the trial court sentenced Hamilton to three months in jail. It is undisputed that the sentencing court did not inform Hamilton of his right to appeal or the time limit to do so. Nor is there in the record a written notice of the right to appeal or a certificate of compliance with CrR 7.2(b). Hamilton has filed a declaration stating that he was never informed of the right to appeal or the deadline for doing so. The declaration provides:

> 2. When I was sentenced in 1990 in this case, I do not recall that the judge (or anyone else) told me that I could appeal the judgment, and that if I was going to appeal the judgment, such an appeal would have to be filed within 30 days of the entry of the judgment or else my right to appeal would be waived.
> 3. I was confused at the time of the entry of the guilty plea and at the time of sentencing about all the procedures and what my rights were. Had I known that I could have appealed and had I known some of the things about this case and the consequences of a conviction that I later learned about, I would have appealed.

Appen. at 67.

At the time of sentencing Hamilton also was not informed of the rules and time limits for filing a collateral attack under chapter 10.73 RCW.

Until recent changes in the law, the robbery conviction was a predicate offense under the Persistent Offender Accountability Act (POAA). In 1998 Hamilton was convicted of robbery, kidnapping, and murder and sentenced as a persistent offender; the 1990 robbery conviction was one of the predicate offenses.

In June 2017, Hamilton filed a motion to withdraw his guilty plea under CrR 4.2 and CrR 7.8. He noted the motion, but the superior court did not act on it. A year later Hamilton filed a pro se motion to correct his sentence (related to the duration of a no contact order), followed in September 2018 by another motion to correct the sentence alleging the judgment and sentence was invalid on its face. When the superior court changed the no contact order without notice to

Hamilton, he appealed (No. 79219-9-I). Counsel obtained the transcript from the 1990 sentencing and filed the notice of appeal and motion to enlarge in the current action within 30 days of obtaining the transcript.

Under RAP 18.8(b), this court will extend the time to file a notice of appeal "only in extraordinary circumstances and to prevent a gross miscarriage of justice . . . The appellate court will ordinarily hold that the desirability of finality of decisions outweighs the privilege of a litigant." RAP 18.8(b) is a "specific exception" to RAP 1.2(a), which requires a liberal interpretation of the rules on appeal. Shumway v. Payne, 136 Wn.2d 383, 394, 964 P.2d 349 (1998).

The strict application of RAP 18.8(b) must be balanced against a defendant's state constitutional right to an appeal, and there is no presumption that a criminal defendant has waived the constitutional right to an appeal. State v. Kells, 134 Wn.2d 309, 314, 949 P.2d 818 (1998). "[A] criminal appeal may not be dismissed as untimely unless the State demonstrates that the defendant voluntarily, knowingly, and intelligently abandoned his appeal right." Id at 313; State v. Tomal, 133 Wn.2d 985, 990, 948 P.2d 833 (1997).

Where the appeal is from a guilty plea, the appellate court may consider the limited nature of the appeal right in determining whether the defendant abandoned the right to appeal. State v. Cater, 186 Wn. App. 384, 395, 345 P.3d 843 (2015) (presumption of a voluntary plea, exceptionally favorable plea agreement, unexplained 34–year delay in filing a notice of appeal, and Cater's complete failure to assert any facts suggesting he was unaware of his limited right to appeal, supported strong inference that he knowingly, intelligently, and voluntarily waived his limited right to appeal following a guilty plea).

The State argues that it has demonstrated that Hamilton knowingly, intelligently, and voluntarily waived his limited right to appeal following a guilty plea, based on the passage of time, Hamilton's inaction, and the limited scope of any right to appeal. The State argues that for 27 years Hamilton took no action to withdraw his plea or otherwise challenge the conviction, even though the State relied on the conviction in 1998 as a predicate offense, and then in 2017 and 2018 he challenged aspects of his sentence but did not move to withdraw his plea or argue he was uniformed or misinformed of his right to appeal.

Hamilton argues that there is no passage of time exception to the rule against implying a waiver of appellate rights and that a waiver cannot be presumed from a silent record. He argues the State must but cannot demonstrate he understood the right to appeal and consciously gave it up. State v. Chetty, 184 Wn. App. 607, 613, 338 P.3d 298 (2014 (Chetty II). He also argues that an intervening conviction where he was properly advised of appellate rights is insufficient to establish a knowing waiver of appellate rights for the earlier conviction. See In re Pers. Restraint of Stockwell, 161 Wn. App. 329, 334 n.4, 254 P.3d 899 (2011), aff'd, 179 Wn.2d 588, 593-94, 316 P.3d 1007 (2014) (judgment and sentence gave petitioner notice that any collateral attack on this judgment and sentence must be filed within one year but was not sufficient notice that his 1998 judgment and sentence was also subject to a one-year time

limit). Finally, Hamilton argues that Cater is distinguishable because there, not only was there an unexplained 34-year delay and an exceptionally favorable plea agreement, but also the defendant did not file a declaration supporting his motion to enlarge or assert any facts indicating he was unaware of his limited right to appeal.

Here, the record includes the presumption of a voluntary plea, along with Hamilton's statement that although he did not believe he was guilty of robbery, he agreed to plead guilty to take advantage of the State's very favorable sentencing recommendation. Hamilton in fact did receive a lenient sentence (three months in jail for second degree robbery allegedly committed with a handgun), giving him little motivation to pursue a limited right to appeal. Despite raising other challenges to his judgment and sentence over the years and pursuing an appeal of another conviction, Hamilton waited 30 years to appeal his 1990 conviction. These factors support the conclusion that Hamilton knowingly, intelligently and voluntarily waived his right to appeal.

But it is undisputed that at the time of sentencing Hamilton was not advised of his right to appeal, and he has filed a declaration stating: he was not informed of the right to appeal or the time limit for an appeal; he was confused about the procedures and his rights; and if he had known he could appeal and had known some of the consequences of his conviction, he would have appealed. Hamilton's declaration casts doubt on whether he waived his limited right to appeal. Hamilton's late appeal may not be dismissed as untimely unless the State shows a knowing, intelligent, and voluntary waiver of the right to appeal. Under the case law, the State has not done so.

Therefore, it is

ORDERED that Hamilton's motion to enlarge the time to file his notice of appeal is granted.

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

LAW

STATUTORY APPENDIX

CrR 4.2(f) provides:

> The court shall allow a defendant to withdraw the defendant's plea of guilty whenever it appears that the withdrawal is necessary to correct a manifest injustice. If the defendant pleads guilty pursuant to a plea agreement and the court determines under a RCW 9.94A.431 [sic] that the agreement is not consistent with (1) the interests of justice or (2) the prosecuting standards set forth in RCW 9.94A.401-.411, the court shall inform the defendant that the guilty plea may be withdrawn and a plea of not guilty entered. If the motion for withdrawal is made after judgment, it shall be governed by CrR 7.8.

CrR 7.8 provides:

> (a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).
>
> (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party from a final judgment, order, or proceeding for the following reasons:
>
> (1) Mistakes, inadvertence, surprise,

excusable neglect or irregularity in obtaining a judgment or order;

(2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 7.5;

(3) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(4) The judgment is void; or

(5) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1) and (2) not more than 1 year after the judgment, order, or proceeding was entered or taken, and is further subject to RCW 10.73.090, .100, .130, and .140. A motion under section (b) does not affect the finality of the judgment or suspend its operation.

(c) Procedure on Vacation of Judgment.

(1) Motion. Application shall be made by motion stating the grounds upon which relief is asked, and supported by affidavits setting forth a concise statement of the facts or errors upon which the motion is based.

(2) Transfer to Court of Appeals. The court shall transfer a motion filed by a defendant to the Court of Appeals for consideration as a personal

> restraint petition unless the court determines that the motion is not barred by RCW 10.73.090 and either (i) the defendant has made a substantial showing that he or she is entitled to relief or (ii) resolution of the motion will require a factual hearing.
>
> (3) Order to Show Cause. If the court does not transfer the motion to the Court of Appeals, it shall enter an order fixing a time and place for hearing and directing the adverse party to appear and show cause why the relief asked for should not be granted.

Laws of 2021, ch.141 provides in part:

> (1) In any criminal case wherein an offender has been sentenced as a persistent offender, the offender must have a resentencing hearing if a current or past conviction for robbery in the second degree was used as a basis for the finding that the offender was a persistent offender. The prosecuting attorney for the county in which any offender was sentenced as a persistent offender shall review each sentencing document. If a current or past conviction for robbery in the second degree was used as a basis for a finding that an offender was a persistent offender, the prosecuting attorney shall, or the offender may, make a motion for relief from sentence to the original sentencing court.
>
> (2) The sentencing court shall grant the motion if it finds that a current or past conviction for robbery in the second degree was used as a basis for a finding that the offender was a

> persistent offender and shall immediately set an expedited date for resentencing. At resentencing, the court shall sentence the offender as if robbery in the second degree was not a most serious offense at the time the original sentence was imposed.
>
> (3) Notwithstanding the provisions of RCW 9.94A.345, for purposes of resentencing under this section or sentencing any person as a persistent offender after the effective date of this section, robbery in the second degree shall not be considered a most serious offense regardless of whether the offense was committed before, on, or after the effective date of chapter 187, Laws of 2019. . . .

RAP 2.5 provides in part:

> (a) Errors Raised for First Time on Review. The appellate court may refuse to review any claim of error which was not raised in the trial court. However, a party may raise the following claimed errors for the first time in the appellate court: (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right. A party or the court may raise at any time the question of appellate court jurisdiction. A party may present a ground for affirming a trial court decision which was not presented to the trial court if the record has been sufficiently developed to fairly consider the ground. A party may raise a claim of error which was not raised by the party in the trial court if another party on the same side of

the case has raised the claim of error in the trial court.

RAP 12.2 provides:

> **DISPOSITION ON REVIEW**
>
> The appellate court may reverse, affirm, or modify the decision being reviewed and take any other action as the merits of the case and the interest of justice may require. Upon issuance of the mandate of the appellate court as provided in rule 12.5, the action taken or decision made by the appellate court is effective and binding on the parties to the review and governs all subsequent proceedings in the action in any court, unless otherwise directed upon recall of the mandate as provided in rule 12.9, and except as provided in rule 2.5(c)(2). After the mandate has issued, the trial court may, however, hear and decide postjudgment motions otherwise authorized by statute or court rule so long as those motions do not challenge issues already decided by the appellate court.

RAP 13.4 provides in part:

> (b) Considerations Governing Acceptance of Review. A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States

is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Former RCW 9A.56.190 (1990) provided:

> **Robbery—Definition.**
> A person commits robbery when he unlawfully takes personal property from the person of another or in his or her presence against his will by the use or threatened use of immediate force, violence, or fear of injury to that person or his property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

RCW 10.73.090 provides:

> (1) No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.
>
> (2) For the purposes of this section, "collateral attack" means any form of postconviction relief other than a direct appeal.

"Collateral attack" includes, but is not limited to, a personal restraint petition, a habeas corpus petition, a motion to vacate judgment, a motion to withdraw guilty plea, a motion for a new trial, and a motion to arrest judgment.

(3) For the purposes of this section, a judgment becomes final on the last of the following dates:

(a) The date it is filed with the clerk of the trial court;

(b) The date that an appellate court issues its mandate disposing of a timely direct appeal from the conviction; or

(c) The date that the United States Supreme Court denies a timely petition for certiorari to review a decision affirming the conviction on direct appeal. The filing of a motion to reconsider denial of certiorari does not prevent a judgment from becoming final.

U.S. Const. amend. V provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be

deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. VI provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

U.S. Const. amend. VIII provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Const. amend. XIV, § 1 provides in part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Wash. Const. art. I, § 3, provides:

> No person shall be deprived of life, liberty, or property, without due process of law.

Wash. Const. art. I, § 9, provides:

> No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense.

Wash. Const. art. I, § 12, provides:

> No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

Wash. Const. art. I, § 21, provides:

> The right of trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any court of record, and for waiving of the jury in civil cases where the consent of the parties interested is given thereto.

Wash. Const. art. I, § 22 (amend. 10), provides in part:

> In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to

testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed and the right to appeal in all cases. . . .

Certificate of Service

I, Alex Fast, certify and declare as follows:

On April 4, 2022, I served a copy of the attached Petition for Review by filing it with the Appellate Portal which will send a copy to all parties in this matter.

I certify or declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 4th day of April 2022, at Seattle, WA.

s/ Alex Fast
Legal Assistant
Law Office of Neil Fox PLLC

LAW OFFICE OF NEIL FOX PLLC

April 04, 2022 - 11:27 AM

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