Supreme Court No. 101677-8
(COA No. 83833-4-I)

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ELIZABETH STRATEGOS,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

PETITION FOR DISCRETIONARY REVIEW

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A. INTRODUCTION

There is no dispute there was a mutual mistake based on the parties' miscalculation the offender score and the standard range. There is no dispute that a mutual mistake renders a plea involuntary. Yet Ms. Strategos was not allowed to elect specific performance or an opportunity to withdraw her plea.

The Court of Appeals strains to distinguish *State v. Walsh*, 143 Wn.2d 1, 17 P.3d 591 (2001). But *Walsh* is on point and entitles Ms. Strategos to elect specific performance or to withdraw her guilty plea. The ruling rejected the sole argument the State relied on: that Ms. Strategos waived her challenge to the voluntariness of her guilty plea. Nevertheless, through legal gymnastics, the ruling invents other bases to deny Ms. Strategos her contractual rights under the plea

agreement. This Court should accept review and correctly apply *Walsh* to this case.

B. IDENTITY OF PETITIONER AND DECISION BELOW

Elizabeth Strategos asks this Court to accept review of the Court of Appeals's unpublished decision issued on January 30, 2023. RAP 13.3, 13.4(a).

D. STATEMENT OF THE CASE

The State charged Ms. Strategos with second degree assault because her car hit a woman. CP 1; RP at 8. Ms. Strategos agreed to plead guilty to a reduced charge of third degree assault. RP at 34.

The parties calculated her offender score as 3 and the standard range sentence as 9 to 12 months. RP 23, 34.

Just before sentencing, the parties apprised the trial court they miscalculated the offender score and the standard range. See CP 40; RP at 37. And that in

fact, the offender score was 2, and the correct standard range was 4 to 12 months. See CP 40; RP at 37. The prosecution informed the court of the mutual mistake and indicated Ms. Strategos was made "aware" of the "incorrect score" and the "properly" calculated score and she still wished to proceed with sentencing:

> The parties improperly calculated the defendant's score as a "3" when it should be a "2", which reduces the standard range to 4-12 months. The defendant has been advised of this error and still wishes to proceed to sentencing.

CP 47.

Neither the stipulation nor the trial court apprised Ms. Strategos the mutual mistake entitled her to elect specific performance or withdraw her plea.

Sentencing resumed with the parties jointly recommending 9 months as appropriate. RP 40. The court asked Ms. Strategos whether she wished to say anything before it passed sentence. RP 43. Ms.

Strategos, said if she was *going to plead guilty* she would only accept an Alford Plea:

> Um, if I were to plea guilty to this, I would prefer it be an Alford Plea because the whole report, to me, is fabricated and probably coached --

RP at 44.

Neither defense counsel nor the court explained to Ms. Strategos that the mutual mistake entitled her to elect specific performance or withdraw her guilty plea before she was sentenced. RP 44.

The trial court ignored the joint recommendation and imposed a 12 months-sentence. RP at 45.

On appeal to the Court of Appeals, Ms. Strategos argued the mutual mistake entitled her to elect specific performance or withdraw her guilty plea. Slip. Op. at 3. The Court of Appeals correctly reduced the question to whether Ms. Strategos is entitled to withdraw her plea based on the mutual mistake of the parties. Slip. Op. at

6. It also rejected the State's sole argument that Ms. Strategos waived her right to challenge the voluntariness of her guilty plea. Slip. Op. at 7-8; Br. of Resp. at 5-9. Nevertheless, the ruling concludes Ms. Strategos failed to demonstrate she is entitled to withdraw her guilty plea. Slip. Op. at 9.

E. ARGUMENT

This Court should accept review because the mutual mistake rendered Ms. Strategos's plea involuntary.

a. The Court of Appeals' ruling is incorrect.

The Court of Appeal agrees there was mutual mistake in calculating the offender score and the standard range. Slip. Op. at 8. The ruling correctly determines Ms. Strategos has not waived her challenge to the voluntariness of her plea. Slip. Op. at 6. However, the ruling incorrectly holds Ms. Strategos

has not demonstrated she is entitled to withdraw her guilty plea. Slip. Op. at 9.

The ruling invents alternative facts. It reframes, and distorts plain facts to deny Ms. Strategos relief. Slip. Op. at 5-8. First, the ruling declares Ms. Strategos appeared to agree the "error" was "corrected" before the court imposed sentence. Slip. Op. at 8. No such concession happened in this record. Second, the ruling creatively misframes Ms. Strategos's expression that she would prefer to enter an alford plea at sentencing. Rp 34-35. The ruling recasts those plain facts thusly: "initially [Ms. Strategos was] mistaken about the purpose of the hearing" but when she was reminded she already entered a plea of guilty she "understood" and that acknowledgment meant she agreed not to insist on changing her guilty plea. See Slip. Op. at 5 citing RP 34-35. First, this slanted alternative facts

storytelling was not presented in the State's briefing. Secondly, this rendition is not factual.

Additionally, the Court of Appeals misses the nuance of Ms. Strategos's argument. To be clear, Ms. Strategos argues that when she expressed confusion or, her "initially mistaken" remarks clearly indicated her desire to change her guilty plea to an Alford plea. RP 34-35. And that expression triggered the trial court's obligation to halt sentencing and allow her to elect specific performance or withdraw her plea. RP 34-35.

Moreover, the stipulation does not establish anyone informed Ms. Strategos she could chose specific performance or to withdraw her plea because of the mutual mistake. The Court of Appeals conveniently overlooks these inconvenient facts to avoid invalidating Ms. Strategos's plea agreement.

Ultimately, the ruling concludes Ms. Strategos has not demonstrated she is entitled to withdraw her guilty plea. Slip. Op. at 9. The ruling purports to distinguish *Walsh* on the ground that Ms. Strategos did not make a "unequivocal request" to withdraw her guilty plea. Slip. Op. 5. The ruling strains and but fails to distinguish this case from *Walsh*. Slip. Op. at 8-9.

Walsh is on point and clearly controls. The mutual mistake rendered Ms. Strategos guilty plea involuntary and she was not clearly told she was entitled to elect specific performance of the plea or withdraw it. *Walsh*, 143 Wn. 2d at 8–9.

b. *The parties' mutual mistake about the offender score and standard sentencing range rendered the plea involuntary.*

A party seeking to rescind an agreement on the basis of mutual mistake must show by clear, cogent and convincing evidence that the mistake was independently made by both parties. *Simonson v. Fendell*, 101 Wn.2d 88, 91, 675 P.2d 1218, (1984) *citing Beaver v. Estate of Harris*, 67 Wn.2d 621, 409 P.2d 143 (1965); *Carson v. Isabel Apartments, Inc.*, 20 Wn. App. 293, 296, 579 P.2d 1027 (1978).

A mistake is a belief not in accord with the facts. Restatement (Second) of Contracts § 151 (1981). A mutual mistake or reliance on misinformation occurs when the State and the defendant stipulate in the plea agreement to a sentence that is contrary to law. *State v. Barber,* 170 Wn. 2d 854, 859, 248 P.3d 494 (2011).

Accordingly, "even when a mutual mistake about the proper offender score ultimately results in a lower standard range than anticipated by the parties when negotiating the plea, the defendant's plea is involuntary and may be withdrawn." *State v. Codiga*, 162 Wn.2d 912, 925, 175 P.3d 1082 (2008) (internal citation omitted). Where a criminal history is correct and complete, but the attorneys miscalculate the resulting offender score, then the defendant should not be burdened with assuming the risk of legal mistake. *Id.* at 929.

In *Walsh*, 143 Wn.2d at 4, this Court held that a plea agreement was not voluntary where the prosecutor agreed to recommend the low-end of a standard range sentence, but the plea agreement contained a mistaken standard range. The Court held, "[Mr.] Walsh has established that his guilty plea was

involuntary based upon the mutual mistake about the standard range sentence." *Id*. at 9. The Court further held, "Where a plea agreement is based on misinformation, as in this case, generally the defendant may choose specific enforcement of the agreement or withdrawal of the guilty plea." *Id*.

Walsh argued that his plea was not voluntary because of the mutual mistake about the standard range sentence and therefore he was entitled to withdraw the plea. *Walsh*, 143 Wn. 2d at 6–7.

While the Court of Appeals agreed that Walsh had the right to withdraw his guilty plea when it became apparent that it was based upon a misunderstanding of the standard range, the Court of Appeals held that Walsh waived the error by electing to proceed with sentencing and failing to move at the trial court for withdrawal. *Walsh*, 143 Wn. 2d at 6–7.

This Court disagreed. *Walsh*, 143 Wn. 2d at 6–7. It reasoned that a challenge to the voluntariness of a plea agreement is an issue that can be raised for the first time on appeal. *Walsh*, 143 Wn. 2d at 7 *citing In re Personal Restraint of James*, 96 Wn.2d 847, 849, 640 P.2d 18 (1982). The court noted that in *State v. Skiggn*, 58 Wn.App. 831, 795 P.2d 169 (1990), as in this case, an error was made in calculating the standard range. *Walsh*, 143 Wn. 2d at 7. Skiggn was given an opportunity to withdraw his plea, but declined, apparently hoping the court would specifically enforce the agreement. *See Skiggn*, 58 Wn.App. at 834-35. On appeal, the Court of Appeals held that specific performance would be unjust under the circumstances because the error was largely attributable to the defense (not the case here). The Court of Appeals held that although the defendant was not entitled to specific

performance, he should be given another opportunity to withdraw the plea, now that he knows specific enforcement was not an option. *Walsh*, 143 Wn. 2d at 7 *citing Skiggn*, 58 Wn.App. at 838–39.

This Court disagreed and held that in accord with these cases, Walsh should be allowed to raise the issue of the validity of his plea for the first time on appeal. *Walsh*, 143 Wn. 2d at 7. Walsh was never even offered an opportunity to withdraw his plea or to seek specific performance; the new standard range was not brought to his attention at the sentencing hearing. *Walsh*, 143 Wn. 2d at 7. The Court held that Walsh established that his guilty plea was involuntary based upon the mutual mistake about the standard range sentence and allowed him his choice of specific enforcement of the agreement or withdrawal of the guilty plea. *Walsh*, 143 Wn. 2d at 8–9.

Here, like in *Skiggn* and *Walsh*, both parties agreed there was a mutual mistake—the parties were mistaken as to the correct offender score and the correct standard range for the second degree assault. *See Skiggn*, 58 Wn. App. at 837.

The defense counsel, the prosecution, and the court did not specifically inform Ms. Strategos she had a right to elect specific performance or withdraw her guilty plea. The stipulation does not apprise Ms. Strategos that the mutual mistake entitled her to specific performance or to withdraw the plea. See CP 47; RP 34-35. When she expressed a desire to withdraw her guilty plea and enter an Alford plea instead, the trial court was obligated to provide her an opportunity to do so. RP 34-35; *See In re Quinn*, 154 Wn. App. 816, 839–40, 226 P.3d 208, 221 (2010). This mutual mistake renders the plea involuntary regardless of the fact that

the correct sentencing range may be less onerous. *See State v. Murphy*, 119 Wn. App. 805, 806, 81 P.3d 122 (2002) (internal citations omitted). Such an involuntary plea constituted a manifest injustice. *Id.*

c. The remedy for mutual mistake is a choice of specific performance or withdrawal of the plea

This Court concluded in *Walsh* that when a defendant establishes her guilty plea was involuntary based upon the mutual mistake about the standard range sentence the defendant must be allowed to choose specific enforcement of the agreement or withdrawal of the guilty plea. 143 Wn. 2d at 8–9.

Specific performance entitles a defendant to "the benefit of his original bargain." *State v. Tourtellotte*, 88 Wn.2d 579, 585, 564 P.2d 799 (1977). A plea agreement functions as a contract in which the defendant exchanges her guilty plea for some bargained-for

concession from the State: dropping of charges, a sentencing recommendation, etc. *See State v. Sledge*, 133 Wn.2d 828, 838–40, 947 P.2d 1199 (1997); *State v. Hunsicker*, 129 Wn.2d 554, 559, 919 P.2d 79 (1996). Specific performance ensures that the defendant receives the promise she bargained for.

The record is clear, nobody—not counsel, not the prosecution, not the court—told Ms. Strategos she could elect specific performance or to withdraw her plea. *See Walsh*, 143 Wn. 2d at 7. The Court must remand with instructions to allow Ms. Strategos to rescind the plea and elect her choice of remedy. *Murphy*, 119 Wn. App. at 806. *State v. Moon*, 108 Wn. App. 59, 62–63, 29 P.3d 734 (2001); *Walsh*, 143 Wn. 2d at 8–9.

The Court should accept review because the proper construction of mutual mistake is a matter of substantial public interest. RAP 13.4(b)(4).

E. CONCLUSION

The Court of Appeals misunderstands that the mutual mistake rendered the guilty plea involuntary. Ms. Strategos asks this Court to accept review under RAP 13.4(b)(3)-(4).

This brief contains 2,276 words and complies with RAP 18.17(b).

DATED this 31st day of January 2023.

Respectfully submitted,

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APPENDIX:

January 30, State v. Strategos Unpublished Opinion

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. ELIZABETH MARGARET STRATEGOS, Appellant.	No. 83833-4-I DIVISION ONE UNPUBLISHED OPINION

HAZELRIGG, J. — Elizabeth Strategos entered a guilty plea which advised her of maximum penalties based on an inaccurate calculation of her offender score. However, the mistake was identified and corrected prior to the imposition of sentence. She signed a stipulation affirming that she had been advised of the error and her corrected sentencing range, and that she wished to proceed with sentencing. She now seeks to withdraw her plea and further challenges the imposition of the mandatory victim penalty assessment as unconstitutionally excessive. Finding no error, we affirm.

FACTS

Elizabeth Strategos was charged with assault in the second degree with a deadly weapon on November 3, 2021, based on an incident that occurred a few days prior. Pursuant to negotiations between the parties, the State filed an

amended information on February 9, 2022, which reduced the charge to assault in the third degree by criminal negligence. She entered a guilty plea to the amended charge that same day. Attached to her statement of defendant on plea of guilty was a written plea agreement, which included a statement of her criminal history signed by Strategos, her defense attorney, and the prosecutor.

Sentencing was held on February 25, 2022, and, at the start of the hearing, defense counsel advised the court that the parties had miscalculated Strategos's offender score. She indicated that the error did not change the agreed recommendation, but it did change the standard sentencing range. The prosecutor then provided the court with a stipulation signed by Strategos and both attorneys, acknowledging and correcting the error, setting out the proper standard range, and indicating that Strategos wished to proceed with sentencing.

The judge accepted the stipulation and proceeded to sentence Strategos after confirming the correct offender score of two and a standard range of 4-12 months of incarceration. However, the trial court rejected the parties' joint recommendation of nine months in jail and imposed a high end sentence of 12 months, based on the nature of the crime and the "danger that Ms. Strategos posed to these people." The court found Strategos was indigent and, on that basis, waived all non-mandatory fees. The mandatory $500 victim penalty assessment (VPA)[1] was imposed.

Strategos timely appealed.

[1] Trial courts, and different panels of this court, have alternately referred to the mandatory fee imposed pursuant to RCW 7.68.035 as the "victim penalty assessment," VPA, or "crime victim assessment," CVA. The parties here use VPA, so we also use that terminology.

ANALYSIS

I. Strategos is not entitled to withdrawal of her guilty plea

Strategos asserts she is entitled to either withdrawal of her guilty plea, or "specific performance,"[2] based on inaccurate advice as to her offender score and standard sentencing range, arguing it rendered her guilty plea involuntary.

To comport with due process, a trial court may only accept a guilty plea that is made knowingly, voluntarily, and intelligently. Boykin v. Alabama, 395 U.S. 238, 241-42, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969). "A knowing, voluntary, and intelligent guilty plea requires a meeting of the minds." State v. Mendoza, 157 Wn.2d 582, 590, 141 P.3d 49 (2006). When a guilty plea is based on incorrect information regarding a direct consequence of the plea, it may be deemed involuntary. Id. at 591. Accordingly, if a defendant enters a guilty plea based on a miscalculation of their offender score which results in an incorrect higher standard range, the defendant may move to withdraw the plea. Id. at 591-92.

> "However, if the defendant was clearly informed before sentencing that the correctly calculated offender score rendered the actual standard range lower than had been anticipated at the time of the guilty plea, and the defendant does not object or move to withdraw the plea on that basis before he is sentenced, the defendant waives the right to challenge the voluntariness of the plea."

Id. at 592.

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[2] The joint recommendation of the parties was for a sentence of nine months in jail, which would have been a low end sentence under the mistaken range. The court ultimately imposed a sentence of 12 months in jail, which was the high end of both the erroneous and corrected ranges.

Because the prosecutor urged the court to impose nine months pursuant to the original plea agreement, and, more critically, because the judge has broad discretion to disregard all recommendations when imposing a sentence, it is unclear how specific performance would remedy the asserted error here.

Strategos expressly argues that the trial court "refused to allow" her to withdraw her plea after she "expressed a preference" to do so just prior to the imposition of sentence. However, the record establishes two critical facts fatal to Strategos's claims on this issue: first, she did not seek to withdraw her guilty plea, so the court did not refuse any such request, and second, her signed stipulation expressly indicated that she wished to proceed with sentencing.

A. Strategos did not request to withdraw her guilty plea

Strategos asserts that she sought withdrawal of her guilty plea before the court imposed the sentence and cites to the transcript of the hearing. However, the record does not support this argument. The exchange identified by the defense as constituting both the request to withdraw the plea, and the court's denial of that request, is as follows:

> [Strategos]: Um, if I were to plea guilty to this, I would prefer it be an Alford[3] [p]lea because the whole report, to me, is fabricated and probably coached —
>
> I mean, she was never on top of the hood of the vehicle. They were running away laughing —
>
> [Defense counsel]: You have already entered a plea.
>
> The Court: Ma'am, you have already plead [sic] guilty.
>
> At this point, it is what I am going to sentence you to.
>
> [Strategos]: Understood.
>
> The Court: Do you have anything you would like to say to what I should or shouldn't do regarding your sentence?

[3] North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970). Our Supreme Court adopted the Alford holding in State v. Newton, 87 Wn.2d 363, 552 P.2d 682 (1976).

> [Strategos]: I just wanted to say that I don't know who these people are. I have gone out of my way not to memorize any information. I don't know their names. And I do not want any contact with them whatsoever in the future.
>
> The Court: All right. Anything else?
>
> [Strategos]: No, ma'am.

In briefing, the defense variously characterizes this exchange as, Strategos's "wish," "express[ion of] a preference," "clearly demonstrat[ing her] preference," and, ultimately, her "unequivocal request to withdraw her guilty plea."[4] At no point during this exchange, or any other portion of the sentencing hearing, did Strategos express a preference or wish to withdraw her plea, much less make an "unequivocal request" to do so. Rather, the record demonstrates that Strategos was initially mistaken about the purpose of the hearing and then corrected by her counsel and the court. When advised that she had already entered a plea of guilty, and that the sole purpose of the instant hearing was sentencing, she indicated only, "Understood." In fact, she was asked by the court if she had anything further and explicitly responded, "No, ma'am." Because no request to withdraw the plea was before the court, there was nothing to be "off handedly ignored."[5]

B. Strategos signed a stipulation that she wished to proceed

Strategos urges this court to conclude that the mistake as to offender score and corresponding offender range rendered her guilty plea involuntary, and sets out case law regarding mutual mistake and remedies. She also emphasizes

[4] Appellant's Reply Brief at 1, 3, 6, and 4.
[5] Appellant's Reply Brief at 1.

that, "Nothing in the stipulation, or the entire record[,] establishes that Ms. Strategos was specifically informed she could withdraw the guilty plea or her [sic] insist on specific performance."[6] It is noteworthy that Strategos does not challenge the validity of the signed stipulation, nor assert that counsel was ineffective. She further offers no authority that suggests the stipulation was required to include this particular information.

The issue before us is ultimately whether Strategos is entitled to withdraw her plea based on the error of the parties. Strategos offers State v. Walsh as controlling authority, but that case is distinguishable. 143 Wn.2d 1, 17 P.3d 591 (2001). Walsh pleaded guilty to rape in the second degree based on the consideration of an incorrect standard range sentence in the plea agreement. Id. at 3-4. At the plea hearing, Walsh's standard range was presented as 86 to 114 months, and the prosecutor agreed to recommend a low end sentence of 86 months. Id. at 4. Before sentencing, however, it was discovered that Walsh's actual standard range sentence was 95 to 125 months. Id. At sentencing, the prosecutor presented the new standard range and recommended the new low end of 95 months. Id. at 5. Walsh was neither advised of the higher standard range nor aware of the prosecutor's changed recommendation; "There was simply no discussion of the matter at all." Id. Walsh did not move to withdraw his plea and was given an exceptional 136-month sentence. Id. For the first time, on appeal, Walsh argued that his plea was involuntary and that he was entitled to withdraw it. Id. at 6. Our Supreme Court agreed, noting that, "[Walsh] was never

[6] Appellant's Reply Brief at 9.

even offered an opportunity to withdraw his plea," and "the new standard range was not brought to his attention at the sentencing hearing." Id. at 7. Accordingly, the court held that the plea agreement was not voluntary and that Walsh was entitled to challenge its validity for the first time on appeal. Id. at 4. Unlike Walsh, who was unaware of the miscalculation and faced a higher standard range than agreed to, Strategos was informed that her offender score had been incorrectly calculated and that her standard range sentence was lower than represented in the plea agreement.

The State relies on State v. Mendoza in support of its argument that Strategos waived her right to challenge the plea as involuntary. 157 Wn.2d 582, 141 P.3d 49 (2006). Mendoza's offender score was incorrectly listed as seven in his plea statement, and that incorrect score was relied upon when negotiating the agreement. Id. at 584. As an offender score of seven would have resulted in a standard range of 51 to 60 months, the State agreed to recommend 60 months. Id. However, a sentencing report showed that Mendoza's actual offender score was six, resulting in a standard range of 41 to 54 months. Id. Accordingly, at sentencing, the State requested 54 months. Id. at 585. Mendoza did not object to the State's revised recommendation or raise any concern regarding his offender score or the lower standard range. Id. On review, the issue was whether the incorrect standard range sentence provided on the plea agreement rendered the plea involuntary "when the defendant is told after his plea is entered that he faces a lower standard range." Id. at 590. First, the court held that a guilty plea may be deemed involuntary when based on incorrect sentencing

consequences, "regardless of whether the actual sentencing range is lower or higher than anticipated." Id. at 591. Second, the court explained that "when the defendant is informed of the less onerous standard range before he is sentenced and given the opportunity to withdraw the plea," the defendant may waive the right to challenge his guilty plea on appeal. Id. As Mendoza was advised of the mistake before being sentenced, and did not object to the lower standard range or move to withdraw his plea as involuntary, the court held that he had waived his right to raise the issue on appeal. Id. at 592.

However, neither Walsh nor Mendoza involved a signed stipulation expressing the intent of the defendant to proceed with sentencing once the error had been identified and corrected. The stipulation at issue here is handwritten on a form "Order on Criminal Motion" and states:

> This Court, having heard a motion *that the parties improperly calculated the defendant's score as a "3" when it should be a "2," which reduces the standard range to 4-12 months. The defendant has been advised of this error and still wishes to proceed to sentencing.*[7]

Below the title of the order is a handwritten notation "Stipulation/Order" and the signatures of Strategos, her defense counsel, the prosecuting attorney, and the sentencing judge all appear at the bottom of the document.

It was undisputed at sentencing, and now on appeal, that there was a mutual mistake as to the applicable standard range. The parties appear to similarly agree that the error was corrected before the court imposed its sentence. The record demonstrates that Strategos signed a stipulation that

[7] The italicization in the quoted text represents the portion of the stipulation that is handwritten on the standardized court form.

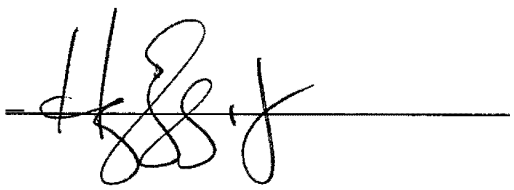
explicitly indicated that she "still wishe[d] to proceed to sentencing." Strategos does not assign error to the court's acceptance of the stipulation, which suggests that she concedes its validity. In light of this record, she fails to demonstrate entitlement to withdrawal of her guilty plea.

II. The VPA is not unconstitutionally excessive

Strategos asserts that the imposition of the VPA after the court's finding of indigency violates the excessive fines clauses of the state and federal constitutions. However, the State properly notes in its response brief that a panel of this court rejected the same argument in State v. Tatum, 23 Wn. App. 2d 123, 514 P.3d 763 (2022). Strategos did not respond to this argument or otherwise address Tatum in her reply brief.

We follow our own analysis and holding in Tatum and conclude that the VPA is not unconstitutionally excessive and the trial court did not err by imposing this mandatory fine.

Affirmed.



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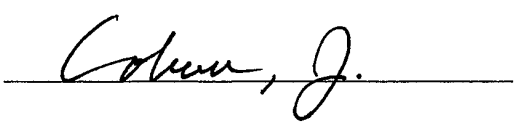

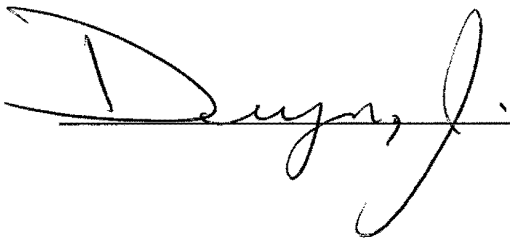

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